CITY COUNCIL AGENDA

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

WORK SESSION
May 7, 2007
6:00 PM

CALL TO ORDER BY MAYOR ROGERS

1 ROLL CALL BY THE CITY CLERK

2 LEGISLATIVE UPDATE

City Staff will present to Council a legislative update. For information, discussion and direction.

3 IMPLEMENTATION OF THE EL RIO WATERCOURSE MASTER PLAN

Staff will provide City Council an update regarding the implementation of the El Rio Watercourse Master Plan. For information and discussion only.

4 AGUA FRIA WATERCOURSE MASTER PLAN AND CHANNELIZATION ALTERNATIVE

Staff will provide City Council an update regarding the Agua Fria Watercourse Master Plan (WCMP) and Channelization Alternative. For information and discussion.

5 ADJOURNMENT

Respectfully submitted,

Linda M Farris

Linda Farris, CMC
City Clerk

Any individual with a qualified disability may request a reasonable accommodation by contacting the City Clerk at 623-333-1200 at least 48 hours prior to the council meeting.

CITY COUNCIL REPORT

SUBJECT:
Legislative Update

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Shirley Gunther, Intergovernmental Affairs Manager (623)333-1612

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The City Council authorized the City's 2007 State Legislative Program on December 11, 2006 and received an update during the Work Session on February 20, 2007 and Council meetings March 5, April 2, and today May 7, 2007. Staff will continue to come before the City Council on a regular basis throughout the legislative session to provide updates and seek additional policy direction, as needed.

BACKGROUND:

Session Overview
The Arizona Legislature has been in Session for 115 days. More than 1,500 bills have been introduced; 206 bills have passed the Legislature; 177 bills have been signed and 6 have been vetoed.

DISCUSSION:

Legislative Budget
The House of Representatives and Senate have released their budgets. The plans have nearly identical spending amounts but different priorities. The Senate Leadership has been trying to craft a bipartisan measure where the House has been working with Majority Party. The Arizona state budget consists of approximately $11 billion.

The Senate and the House offer similar amounts of spending but have established different spending priorities. The key policy areas of differences appear in tax cuts, education, and transportation.

Tax Cuts - The Senate wants a $7 million in tax cuts, aimed at lowering the state's tax take on business property. The House Majority plan calls for nearly $60 million in tax cuts, with most of it aimed at businesses.

Education - The Senate plans to appropriate $46 million for teacher pay raises. The House plan includes $8.7 million for pay raises; the House plan calls for $80 million for additional kindergarten funding which can be spent as school districts please.

Transportation - The Senate supports the Governor's plan to extend highway bonds from 20 years to 30 years, this is estimated to bring the state an extra $500 million in immediate funding, The House firmly opposes extending the bonding period. Both chambers are proposing $62 million into the STAN account to pay for accelerated highway projects.

Tax Incentives - Last month two Strikers were offered, one in the Senate and one in the House to prohibit cities from giving tax incentives to retailers. While neither of those bills passed out of their respective Chambers and the provision has not appeared in any of the budget bills, it is a provision we could see yet before the session ends.

Staff has opposed the provision and will continue to monitor the issue.

Revenue Sharing - To date, niether the House or the Senate budget bills include provisions to amend the state shared revenue statutes. Staff will continue to monitor.

SB 1353 major event reimbursement (previously SB 1406) (Senator Blendu)

The Striker to SB 1353 includes the same intent as the language in SB 1406 that died in the Senate. The measure establishes a fund for reimbursing host communities for public safety expenses associated with major events. The new version expands those events and communities eligible for reimbursement and more narrowly restricts funding.

Staff has been supporting the measure and working with various stakeholders. The bill has been held in House Rules and may be part of the budget discussions as negotiations continue.

HB 2793 Transportation Budget Reconcilation Bill (Representative McComish)
HB 2793 includes the STAN interest rate reimbursement provisions. The language is identical to that which passed the full House and Senate transportation Committee as part of HB 2562.

Staff has been supporting the bill and working legislators, legislative staff and other local elected officials to maintain this provision in the BRB as the transportation budget negotiations continue.

SB 1552 Air Quality (Senator Allen)
SB 1552 makes various changes to statutes pertaining to air quality.
The Maricopa Association of Governments (MAG) has until the end of the year to submit a plan to the Environmental Protection Agency (EPA) outlining how the region will cut PM-10 particulate pollution emissions by five percent each year until the particulate standard is met. This “Five Percent Plan” is expected to include aggressive measures for reducing particulate pollution in the Valley.

As part of SB 1552, Senator Allen plans to legislate some air quality requirement's to ensure the state's air quality plan meets the EPA standards. As a result, the Senator has been holding various stakeholder group meetings and with the help of MAG, devised 41 measures to reduce PM10 emissions.

From those measures the stakeholders have been meeting and discussing which measures should or should not be included in SB 1552. Entities that will be required to implement the measures include state, local and county governments and the private sector.

Staff has been participating with the stakeholders and has been supporting legislative actions that require local entities to contribute to improving air quality.

RECOMENDATION:

This item is for information and discussion only.

ATTACHMENTS:

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No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Implementation of the El Rio Watercourse Master Plan

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Director of Parks, Recreation and Libraries (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will provide City Council an update regarding the implementation of the El Rio Watercourse Master Plan.

BACKGROUND:

The Maricopa County Flood Control District, in cooperation with the City of Avondale, City of Goodyear, and the Town of Buckeye initiated the El Rio Watercourse Master Plan project. The study area includes a 17.5 mile reach of the Gila River from the Agua Fria River in Avondale, west to the SR 85 Bridge in Buckeye. The purpose of the El Rio Watercourse Master Plan is to examine the benefits, opportunities, and impacts of flood control management in the study area and to recommend a preferred design alternative. The District's goal is to provide a flood protection strategy that preserves the cultural and archaeological heritage of the river that is consistent with a long-term multi-use vision of the river corridor.
The plan was developed based upon public input and includes hydrologic, hydraulic and sediment analyses, geomorphic evaluations and environmental and visual resource investigation. Flood control management alternatives developed and evaluated for the El Rio Watercourse Master Plan included structural, soft structural, non-structural, and no-action alternatives.

The recommended alternative is a combination of the soft structural and non-structural alternatives and resource vegetation management. The alignment of the soft structural element closely follows the 100-year floodway alignment. The non-structural alternative will apply to river segments where flow-resistant geologic formations occur.

On February 13, 2006, staff from Maricopa County Flood Control District and their Engineering Design Team presented the recommended El Rio Watercourse Master Plan to City Council.

DISCUSSION:

On April 3, 2006 City Council adopted a resolution approving the El Rio Watercourse Master Plan. Staff from the respective municipalities and agencies collaborated in developing a Memorandum of Understanding (MOU) for the implementation of the El Rio Watercourse Plan. The purpose of the MOU is to establish the framework of cooperation between the project partners for the development of the Watercourse Master Plan implementation strategy. The implementation strategy will include funding options, programs and policies, maintenance, liability, regulatory compliance and community outreach.

RECOMENDATION:

For information and discussion purposes.

ATTACHMENTS:

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No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Agua Fria Watercourse Master Plan and Channelization Alternative

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Director of Parks, Recreation and Libraries (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will provide City Council an update regarding the Agua Fria Watercourse Master Plan (WCMP) and Channelization Alternative.

BACKGROUND:

In 2001, the Maricopa County Flood Control District, in cooperation with the Cities of Avondale, Surprise, Phoenix, Glendale, Peoria, and the Towns of El Mirage and Youngtown conducted the Agua Fria Watercourse Master Plan project. The study area includes a 32 mile reach of the Lower Agua Fria River from the Gila River in Avondale, north to the New Waddell Dam. The purpose of the Agua Fria Watercourse Master Plan was to examine the benefits, opportunities, and impacts of flood control management in the study area and to recommend a preferred design alternative. The District's goal is to provide a flood protection strategy that preserves the cultural and archaeological heritage of the river that is consistent with a long-term multi-use vision of the river corridor. The plan was developed based upon public input and includes: hydrologic, hydraulic and sediment analyses, geomorphic evaluations and environmental and visual resource investigation. Flood control management alternatives developed and evaluated for the Agua Fria Watercourse Master Plan included full structural, partial structural, low impact structural and non-structural approach to flood and erosion hazard mitigation. The recommended plan for the water course-based flood control management for the Agua Fria Watercourse Maser Plan study area is the non-structural alternative which defines a corridor and allows the watercourse to function naturally and is defined by the 100 year floodplain, erosion hazard zone and a buffer between human activity and the channel corridor. The Maricopa County Flood Control District, in cooperation with the participating municipalities and other stakeholders, conducted the Agua Fria Watercourse Master Plan Channelization Addendum to analyze and develop the Channelization Alternative. The Channelization Alternative was issued in January 2005, and included a low-flow channel with armored banks to contain the 10-year flood, a raised terrace and a high-flow channel to accommodate the 100-year flood and the Standard Project Flood (SPF), and drop structures and grade control structures at specific locations.

DISCUSSION:

Staff from Maricopa County Flood Control District and their Engineering Design Team previously presented updates regarding the Agua Fria Watercourse Master Plan to City Council as it was being developed from 2001-2005. It was discovered that the City of Avondale never took formal action in the adoption of the Watercourse Master Plan or the Channelization Alternative. The City of Avondale has used the Agua Fria WCMP and Channelization Alternative as the planning guideline for the implementation of the West Valley Recreation Corridor and the Army Corp of Engineers Riparian Habitat Restoration Project. The Flood Control District and representatives from the Friends of the West Valley Recreation Corridor have requested that the City of Avondale take formal action to adopt the WCMP and Channelization Alternative.

RECOMENDATION:

For information and discussion purposes.

ATTACHMENTS:

Click to download

- RES 2640-507

RESOLUTION NO. 2642-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ADOPTING THE AGUA FRIA WATERCOURSE MASTER PLAN AND AGUA FRIA WATERCOURSE MASTER PLAN ADDENDUM CHANNELIZATION ALTERNATIVE.

WHEREAS, the Avondale City Charter, Article I, Section 3, allows the City of Avondale ("Avondale") to cooperate with counties, other municipalities, and other political subdivisions regarding matters and problems which are common or impacting upon such jurisdictions; and

WHEREAS, ARIZ. REV. STAT. Title 48, Chapter 21 requires the Board of Directors of the Flood Control District of Maricopa County (the "District") to identify flood problems and prepare plans such as the Agua Fria Watercourse Master Plan (the "Agua Fria WCMP") to eliminate or minimize flooding problems by implementing flood hazard mitigation programs within Maricopa County; and

WHEREAS, impending development adjacent to the Agua Fria River, sand and gravel mining operations within the river, the record of historic flood events, and the increasing need to protect public safety and infrastructure from flood hazards and accommodating the economic and social needs of the greater community, necessitated timely development of a comprehensive watercourse management strategy; and

WHEREAS, the District and the City of Surprise, City of Peoria, City of Glendale, Town of Youngtown, Town of El Mirage, City of Phoenix, and City of Avondale conducted the Agua Fria WCMP to identify and address flood and erosion hazards in a 32-mile reach of the Lower Agua Fria River from the Gila River to the New Waddell Dam, and the study included public participation, hydrologic, hydraulic, sedimentation, floodplain delineations, geomorphic evaluations, environmental, visual, and recreational analyses and transportation analysis; and

WHEREAS, the Agua Fria WCMP study identified flood control and erosion hazard impacts of varying intensities in the study area by evaluating the benefits and opportunities of a full structural, partial structural, low impact structural, and non-structural approach to flood and erosion hazard mitigation; and

WHEREAS, the District issued the Final Recommended Plan Report (Final Report) for the Agua Fria WCMP in November, 2001; and

WHEREAS, the recommended plan for the watercourse-based flood control management for the Agua Fria WCMP study area is the Non-Structural Alternative which defines a corridor (non-encroachment area) that allows the watercourse to function naturally and is defined by the 100-year floodplain, erosion hazard zone and a buffer between human activity and the channel corridor; and

WHEREAS, the Agua Fria WCMP recognizes that there may be situations in which development activities may be required or desired within the erosion hazard zone and has, therefore, identified a Low Impact Structural Alternative primarily for mining extraction activities within the floodway; and

WHEREAS, the Agua Fria WCMP considered structural improvements for channelization and levee protection but the Final Report did not include this alternative due to the cost and lack of apparent cost-share partners; and

WHEREAS, prior to consideration of the Final Report for adoption by the District's Board of Directors and the City Councils of partner cities, property owners and other interested parties approached the District for reconsideration of a channelization alternative from New Waddell Dam downstream to Indian School Road; and

WHEREAS, the District, in cooperation with neighboring municipalities and other stakeholders, conducted the Agua Fria Watercourse Master Plan Channelization Addendum (the "Addendum") to analyze and develop the Channelization Alternative; and

WHEREAS, the final reports on the Channelization Alternative was issued in January 2005, and outline a low-flow channel with armored banks to contain the 10-year flood, a raised terrace and high-flow channel to accommodate the 100-year flood and the Standard Project Flood (the "SPF"), and drop structures and grade control structures at specific locations; and

WHEREAS, the raised terrace and high-flow channel is compatible with proposed recreational facilities such as parks and trail systems for the Maricopa County Parks and Recreation Department and the adjacent cities; and

WHEREAS, several sand and gravel mining companies have approached the District desiring to incorporate portions of the Channelization Alternative on their respective sites as part of their mine plans as required under the terms of their Floodplain Use Permits for activities within the 100-year floodplain; and

WHEREAS, others have expressed support for implementing the Channelization Alternative through the establishment of a Recreational Corridor Channelization District as authorized under ARIZ. REV. STAT., Title 48, Chapter 35.

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

SECTION 1. That the City of Avondale hereby adopts the recommendations of the Agua Fria WCMP, Non-Structural Alternative for watercourse-based flood control management which

defines a corridor (non-encroachment area) that allows the watercourse to function naturally and is defined by the 100-year floodplain and erosion hazard zone, and authorizes and directs City staff to regulate to these standards, where deemed necessary, within Avondale's jurisdiction.

SECTION 2. That the City of Avondale hereby adopts the recommendations of the Agua Fria WCMP Addendum Channelization Alternative as an alternative watercourse-based flood management plan which defines the general alignment and configuration of the low flow channel with armored banks to contain the 10-year flood and a raised terrace and high-flow channel to accommodate the 100-year flood and the SPF from the New Waddell Dam, and drop structures and grade control structures at specific locations in accordance with the Channelization Alternative or as approved in final construction plans.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution, including (i) continuing to coordinate with the District, municipalities, government entities, property owners and mining interests to implement the Channelization Alternative; (ii) to negotiate and enter into cooperative agreements for the implementation of the Channelization Alternative; and (iii) amend regulatory guidelines, ordinances, comprehensive plans and other documents to be consistent with the Agua Fria WCMP and the Channelization Alternative.

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL AGENDA

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

REGULAR MEETING
May 7, 2007
7:00 PM

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

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2 CITY MANAGER'S REPORT

a. **The City of Avondale will be presented two (2) awards regarding the El Rio Watercourse Master Plan and the 2006 Walk the Vision event**

3 UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

4 CONSENT AGENDA

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

a. **APPROVAL OF MINUTES**
   a. Work Session of April 9, 2007
   b. Work Session of April 16, 2007
   c. Regular Meeting of April 16, 2007

b. **CLAIMS APRIL 2007**

c. **LIQUOR LICENSE - FRESH & EASY NEIGHBORHOOD MARKETS - DYSART AND THOMAS ROADS**
   The Council will consider a request for a Series 10 Beer & Wine Off Sale liquor license received from Randy Nations for Fresh & Easy Neighborhood Markets Inc for a location at the northeast corner of Dysart Road and Thomas Road. The Council will take appropriate action.

d. **PURCHASE AUTHORIZATION - EXTRICATION CONCEPTS**
   Staff is requesting Council authorize the purchase of vehicle rescue/extrication equipment from Extrication Concepts in the amount of $60,978.96. The Council will take appropriate action.

e. **PROFESSIONAL SERVICES AGREEMENT WITH AMEC EARTH & ENVIRONMENTAL, INC., FOR DESIGN, CONSTRUCTION MANAGEMENT AND WELL ABANDONMENT SERVICES FOR WELLS 22 AND 25**
   Staff is requesting that the Council approve a professional services agreement with AMEC Earth & Environmental, Inc. for design, construction management and abandonment services for Wells 22 and 25 in the amount of $149,796. The Council will take appropriate action.

f. **PURCHASE AUTHORIZATION - DEMOLITION OF CITY OWNED BUILDINGS - 3D INTERNATIONAL**

Staff is requesting that the City Council authorize a purchase order to 3D/International, Inc., through the Mohave Educational Services Cooperative in the amount of $ 96,800 for the demolition of city owned buildings. The Council will take appropriate action.

g. **DESIGN-BUILD AGREEMENT BETWEEN THE CITY OF AVONDALE AND HUNTER CONTRACTING CO.**
Staff is requesting City Council approval to enter into a Design-Build Agreement with Hunter Contracting Co. for the design and construction of a Mini Bus Center and parking lot on the Estrella Mountain Community College campus for an amount not to exceed $1.7 million. The Council will take appropriate action.

h. **RESOLUTION 2645-507 - AMENDING THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT**
The Council will consider a resolution amending the intergovernmental agreement with Maricopa County Community College District for the design and construction of a Mini Bus Center on the Estrella Mountain Community College campus for an amount not to exceed $850,000 and allow the design and construction of an adjacent parking lot for an amount not to exceed $850,000 to be paid for by Maricopa County Community College District. .

i. **RESOLUTION 2643-507 AUTHORIZING AN APPLICATION TO THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY - FIRE DEPARTMENT - CHILD SAFETY SEATS**
The Council will consider a resolution authorizing an application in the amount of $3,500 to the Governor's Office of Highway Safety on behalf of the Fire Department for Child Safety Seats. The Council will take appropriate action.

j. **RESOLUTION 2641-507 AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH LITTLETON ELEMENTARY SCHOOL DISTRICT**
The Council will consider a resolution authorizing an intergovernmental agreement with Littleton Elementary School District #65 for the purpose of offering a Summer Recreation Program for 2007. The Council will take appropriate action.

k. **RESOLUTION 2639-507 SUPPORTING JOB ACCESS AND REVERSE COMMUTE TRANSPORTATION PROGRAM GRANT FUNDS FOR START ROUTE 131**
The Council will consider a resolution supporting the submittal of a grant proposal to the Arizona Department of Transportation Public Transportation Division for the Rural and Small Urban Application Section 5316, Job Access and Reverse Commute Transportation Program; to provide funding to support transit operation for START Route 131, in the amount of $130,000 with a 50% match requirement.

l. **RESOLUTION 2644-507 - MEMORANDUM OF UNDERSTANDING FOR THE IMPLEMENTATION OF THE EL RIO WATERCOURSE MASTER PLAN**
The Council will consider a resolution approving a Memorandum of Understanding for the implementation El Rio Watercourse Master Plan. The Council will take appropriate action.

m. **RESOLUTION 2642-507 - ADOPTING THE AGUA FRIA WATERCOURSE MASTER PLAN AND CHANNELIZATION ALTERNATIVE**
The Council will consider a resolution approving the Agua Fria Watercourse Master Plan and Channelization Alternative. The Council will take appropriate action.

n. **RESOLUTION 2640-507 FOR A POLICE DEPARTMENT GRANT APPLICATION TO FUND D.U.I. OVERTIME.**
Staff is requesting that the City Council adopt a resolution authorizing the submittal of a grant in the amount of $80,000 for the Avondale Police Department's Driving Under the Influence Task Force overtime through the Governor's Office of Highway Safety Program. The Council will take appropriate action.

o. **ORDINANCE 1258-507 REVISING CHAPTER 24 WASTE OF WATER**
The Council will consider an ordinance revising Chapter 24 of the City of Avondale Municipal Code regarding waste of water. The Council will take appropriate action.

p. **ORDINANCE: CORRECTING A SCRIVENER'S ERROR IN ORDINANCE 1242-107 AND EXHIBIT FOR PUBLIC RIGHTS-OF-WAY FOR LOWER BUCKEYE ROAD AT AVONDALE**

BOULEVARD.

The Council will consider an ordinaance correcting a scrivner's error relating to public right-of-way for Lower Buckeye Road at Avondale Boulevard. The Council will take appropriate action.

5 PUBLIC HEARING AND RESOLUTION NO. 2638-507 APPROVING THE 2007/2008 ANNUAL ACTION PLAN

The Council will hold a public hearing and will consider Resolution No. 2638-507 which approves the 2007/2008 Annual Action Plan and authorizes its submission to the U.S. Department of Housing and Urban Development (HUD). The Annual Action Plan updates the 2006-2009 Consolidated Plan and contains recommended allocations for 2007/2008 CDBG and HOME funds. The Council will take appropriate action.

6 CONTRACT AWARD EMPLOYEE WELLNESS PROGRAM

Staff is requesting that the City Council award a contract to Kronos Optimal Health Company for an employee wellness program and authorize the Mayor, City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

7 DR-06-34 MASTER SITE PLAN FOR TRINITY LUTHERAN AND FINAL SITE PLAN FOR PHASE IV

The Council will consider a request for Master Site Plan approval for Trinity Lutheran and Final Site Plan approval for Phase IV, 21 acre site located on the southwest corner of Indian School Road and Dysart Road. The Council will take appropriate action.

8 MASTER SITE PLAN FOR COLDWATER SPRINGS PROMENADE AND FINAL SITE PLAN FOR MAJOR A, SHOPS B-D, PAD 1, PAD 6, AND OFFICE A-G (DR-06-8)

The Council will consider a request for approval of DR-06-8 - Master Site Plan for Coldwater Springs Promenade and Final Site Plan for Major A, Shops B-D, Pad 1, Pad 6, and Office A-G (continued from 4/16/07). The Council will take appropriate action.

9 PUBLIC HEARING AND ORDINANCE 1256-507 - OVERNIGHT PARKING IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS (TA-07-01)

The Council will consider an ordinance amending the Zoning Ordinance to restrict the overnight parking of commercial trucks and recreational vehicles in Commercial and Industrial Zoning Districts. The Council will take appropriate action.

10 PUBLIC HEARING AND ORDINANCE 1257-507 - VARIABLE MESSAGE SIGNS (TA-07-02)

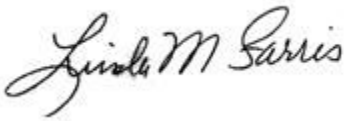
The Council will consider an ordinance amending the Zoning Ordinance to allow the limited use of variable message signs by certain specified land uses. The City Council will take appropriate action.

11 EXECUTIVE SESSION

a. The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(1) for discussion regarding the City Manager's annual evaluation.

12 ADJOURNMENT

Respectfully submitted,



Linda Farris, CMC
City Clerk

Any individual with a qualified disability may request a reasonable accommodation by contacting the City Clerk at 623-333-1200 at least 48 hours prior to the council meeting.

CITY COUNCIL REPORT

SUBJECT:
Award Recognition for the El Rio Watercourse Master Plan and the 2006 Walk the Vision Event.

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Director of Parks, Recreation and Libraries (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The City of Avondale will be presented two (2) awards regarding the El Rio Watercourse Master Plan and the 2006 Walk the Vision event

BACKGROUND:

Representatives from the Maricopa County Flood Control District and their consulting project engineers, Stantec will present the City of Avondale with an Arizona Planning Association Best Regional Plan Award. The City of Avondale has worked cooperatively with the Flood Control District and neighboring municipalities throughout the El Rio Watercourse Master Plan development. The City of Avondale has been an active member with the Friends of the West Valley Recreation Corridor Committee (WVRC). In October 2006, the City of Avondale hosted the "Walk the Vision" trail event at Friendship Park during Billy Moore Heritage Days. The event provided an opportunity for the City and the Friends of WVRC to continue to promote the opportunities and vision of the West Valley Recreation Corridor.

RECOMENDATION:

For information purposes only.

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Approval of Minutes

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Linda Farris

THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

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No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Claims April 2007

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Linda Farris

THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Liquor License - Fresh & Easy Neighborhood Markets - Dysart and Thomas Roads

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Linda Farris, City Clerk (623)333-1211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council consider a request by Mr. Randy Nations for a Series 10 Retailer's license to sell beer and wine at Fresh & Easy Neighborhood Markets, located at the northeast corner of Dysart and Thomas Roads.

BACKGROUND:

The City Clerk's Office has received an application for a Series 10 Retailer's license to sell beer and wine from Mr. Randy Nations, Fresh & Easy Neighborhood Markets, located at the northeast corner of Dysart Road and Thomas Road, Avondale, Arizona. This is a new license. The required fee of $500.00 has been paid.

As required by state law and city ordinance, the application was posted from April 9, 2007 through April 28, 2007 and a notice was published in the West Valley View on April 13, 2007 and April 17, 2007. Comments were received and are attached.

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

RECOMENDATION:

Staff recommends that the City Council approve this request by Randy Nations, Fresh & Easy Neighborhood Markets Inc., located at the northeast corner of Dysart Road and Thomas Road.

ATTACHMENTS:

Click to download

- Application
- Comments
- Vicinity Map

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595

APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

SECTION 1 This application is for a:

- ☐ INTERIM PERMIT *Complete Section 5*
- ☒ NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16, 17*
- ☐ PERSON TRANSFER (Bars & Liquor Stores ONLY) *Complete Sections 2, 3, 4, 11, 13, 15, 16, 17*
- ☐ LOCATION TRANSFER (Bars and Liquor Stores ONLY) *Complete Sections 2, 3, 4, 12, 13, 15, 16, 17*
- ☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE *Complete Sections 2, 3, 4, 9, 13, 15, 17* (fee not required)
- ☐ GOVERNMENT *Complete Sections 2, 3, 4, 10, 13, 15, 16, 17*

SECTION 2 Type of ownership:

- ☐ J.T.W.R.O.S. *Complete Section 6*
- ☐ INDIVIDUAL *Complete Section 6*
- ☐ PARTNERSHIP *Complete Section 6*
- ☒ CORPORATION *Complete Section 7*
- ☐ LIMITED LIABILITY CO. *Complete Section 7*
- ☐ CLUB *Complete Section 8*
- ☐ GOVERNMENT *Complete Section 10*
- ☐ TRUST *Complete Section 6*
- ☐ OTHER Explain _____

SECTION 3 Type of license and fees: LICENSE #: 10075385

Department Use Only

1. Type of License: Series 10 Beer & Wine Off 2. Total fees attached: $ 100.00

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.

A service fee of $25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

SECTION 4 Applicant: (All applicants must complete this section) P1002484

1. Applicant/Agent's Name: Mr. / Ms. Nations (Last) Randy (First) D. (Middle)
(Insert one name ONLY to appear on license)
2. Corp./Partnership/L.L.C.: Fresh & Easy Neighborhood Markets Inc. B1036191
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: Fresh & Easy Neighborhood Market
(Exactly as it appears on the exterior of premises)
4. Business Address: Dysart Rd. & Thomas Rd. NE Corner (Do not use PO Box Number) Avondale (City) Maricopa (COUNTY) 85323 (Zip)
5. Business Phone: ( ) Pending Residence Phone: (480) 813-1364
6. Is the business located within the incorporated limits of the above city or town? ☒ YES ☐ NO
7. Mailing Address: P.O. Box 2502 Chandler (City) Arizona (State) 85244 (Zip)
8. Enter the amount paid for a 06, 07, or 09 license: $_____ (Price of License ONLY)

DEPARTMENT USE ONLY

Accepted by: MC Date: 3/19/07 Lic. #: 10075385

Fees:					$
100				Ø	100.00
Application	Interim Permit	Agent Change	Club	F. Prints	TOTAL

PROCESSING APPLICATIONS TAKES APPROXIMATELY 90 DAYS, AND CIRCUMSTANCES OFTEN RESULT IN A LONGER WAITING PERIOD. YOU ARE CAUTIONED REGARDING PLANS FOR A GRAND OPENING, ETC., BEFORE FINAL APPROVAL AND ISSUANCE OF THE LICENSE.

LIC 0100 05/2004 ***Disabled individuals requiring special accommodation, please call (602) 542-9027.**

SECTION 5 Interim Permit:

1. If you intend to operate business while your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. _____
4. Is the license currently in use? ☐ YES ☐ NO If no, how long has it been out of use? _____

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

I, _____, declare that I am the CURRENT OWNER, AGENT, CLUB
(Print full name)
MEMBER, PARTNER, STOCKHOLDER OR LICENSEE of the stated license and location.

X _____ State of _____ County of _____
(Signature) The foregoing instrument was acknowledged before me this

_____ day of _____ , _____
Day Month Year

My commission expires on: _____ _____
(Signature of NOTARY PUBLIC)

07 MAR 21 LIQ. LIC. BR 9:07

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND $29 FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Residence Address	City State Zip

Partnership Name: (Only the first partner listed will appear on license) _____

General	Limited	Last	First	Middle	% Owned	Residence Address	City State Zip
☐	☐						
☐	☐						
☐	☐						
☐	☐						

(ATTACH ADDITIONAL SHEET IF NECESSARY)

2. Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO
If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

Last	First	Middle	Residence Address	City, State, Zip	Telephone#

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND $29 FEE FOR EACH CARD.

☒ CORPORATION *Complete questions 1, 2, 3, 5, 6, 7, 8.*

☐ L.L.C. *Complete questions 1, 2, 4, 5, 6, 7 and attach copy of Articles of Org. and Operation Agreement.*

1. Name of Corporation/L.L.C.: Fresh & Easy Neighborhood Market, Inc.
   (Exactly as it appears on Articles of Inc. or Articles of Org.)
2. Date Incorporated/Organized: 4/19/06 State where Incorporated/Organized: Delaware
3. AZ Corporation Commission File No.: F-1279650-8 Date authorized to do business in AZ: 4/19/06
4. AZ L.L.C. File No: _____ Date authorized to do business in AZ: _____
5. Is Corp./L.L.C. non-profit? ☐ YES ☐ NO If yes, give IRS tax exempt number: _____
6. List all directors,/ officers, controlling stockholders or members in Corporation/L.L.C.:

Last	First	Middle	Title	Residence Address	City State Zip
Pugh	William	Bryan	President/ CEO	115 23rd Street	Manhattan Beach, CA 90266
Evans	Peter	David	Vice President	1221 Ocean Avenue, #1001	Santa Monica, CA 90401

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

7. List stockholders or controlling members owning 10% or more:

Last	First	Middle	% Owned	Residence Address	City State Zip
Tesco Stores Holdings, Inc.			100	Delamare Road	Cheshunt, Herts UK EN8 9SL

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach an ownership, and director/officer/members disclosure for the parent entity. Attach additional sheets as necessary in order to disclose real people.

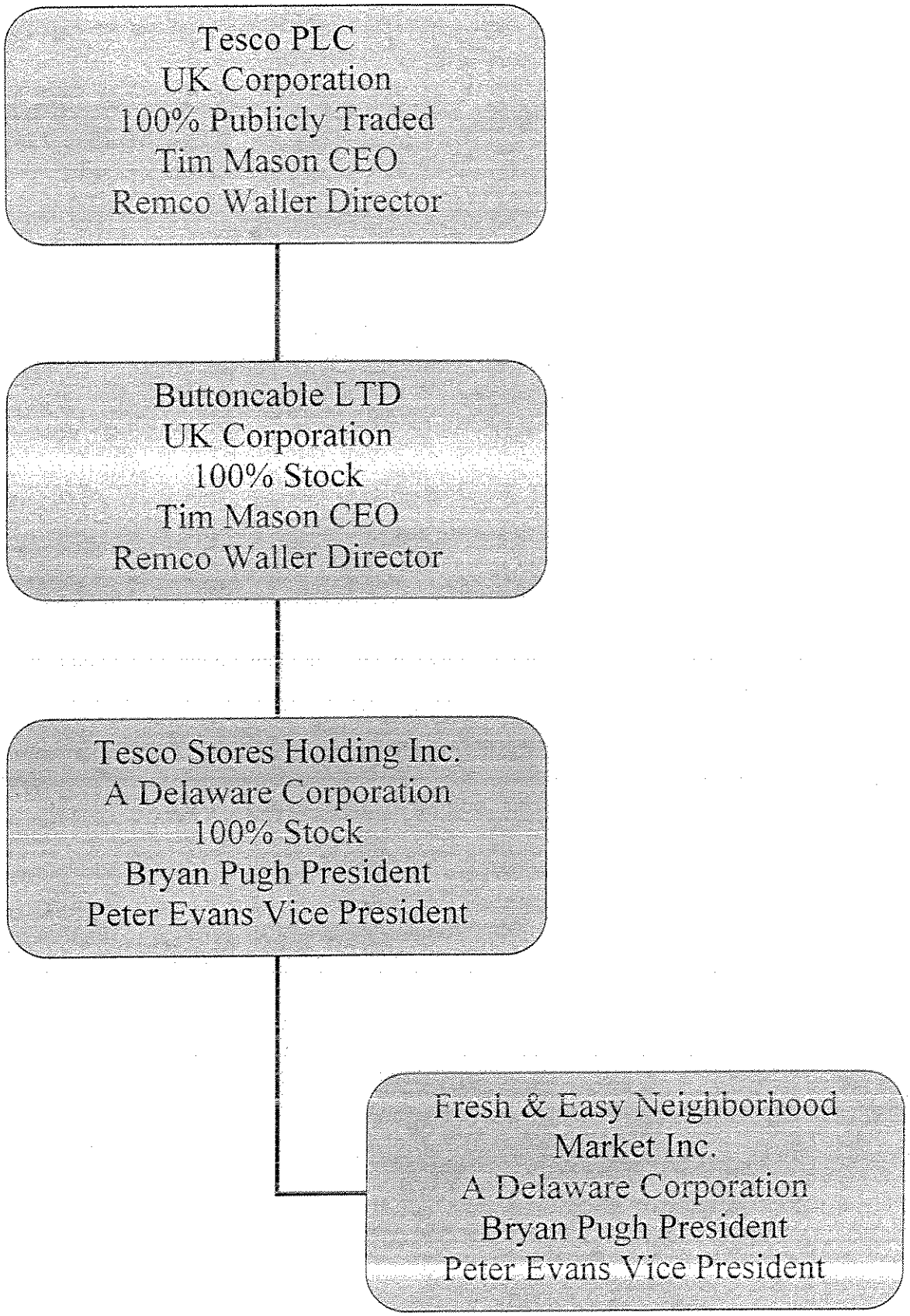
SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED FORM "LIC0101", AN "APPLICANT" TYPE FINGERPRINT CARD, AND $29 FEE FOR EACH CARD.

1. Name of Club: _____ Date Chartered: _____
   (Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)
2. Is club non-profit? ☐ YES ☐ NO If tax exempt, give IRS tax exempt number: _____
3. List officer and directors:

Last	First	Middle	Title	Residence Address	City State Zip

ATTACH ADDITIONAL SHEET(S) IF NECESSARY



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SECTION 9 **Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store:**

1. Current Licensee's Name: _____
(Exactly as it appears on license) Last First Middle

2. Assignee's Name: _____
Last First Middle

3. License Type: _____ License Number: _____ Date of Last Renewal: _____

4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

SECTION 10 **Government: (for cities, towns, or counties only)**

1. Person to administer this license: _____
Last First Middle

2. Assignee's Name: _____
Last First Middle

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

SECTION 11 **Person to Person Transfer:**

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY).

1. Current Licensee's Name: _____ Entity: _____
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)

2. Corporation/L.L.C. Name: _____
(Exactly as it appears on license)

3. Current Business Name: _____
(Exactly as it appears on license)

4. Current Business Address: Street _____
City, State, Zip _____

5. License Type: _____ License Number: _____ Last Renewal Date: _____

6. Current Mailing Address: Street _____
(Other than business)
City, State, Zip _____

7. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☐ YES ☐ NO

8. Does the applicant intend to operate the business while this application is pending? ☐ YES ☐ NO If yes, complete section 5, attach fee, and current license to this application.

9. I hereby relinquish my rights to the above described license to the applicant named in this application and hereby declare that the statements made in this section are true, correct and complete.

I, _____, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER,
(Print full name)
PARTNER, STOCKHOLDER or LICENSEE of the stated license. I have read this section and the contents and all statements are true, correct and complete.

X _____
(Signature of CURRENT LICENSEE)

State of _____ County of _____
The foregoing instrument was acknowledged before me this
_____ day of _____, _____
Day Month Year

My commission expires on: _____

_____
(Signature of NOTARY PUBLIC)

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE.

1. Current Business: (Exactly as it appears on license) Name _____
   Address _____
2. New Business: (Do not use PO Box Number) Name _____
   Address _____
3. License Type: _____ License Number: _____ Last Renewal Date: _____
4. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants:

1. Distance to nearest school: .5 ft. **(Regardless of distance)** Name of school: **Palm Valley Elementary School**
   Address **2801 N. 135th Ave. Goodyear, AZ 85338**
2. Distance to nearest church: .3 ft. **(Regardless of distance)** Name of church: **Church of Jesus Christ of Latter-Day Saints**
   Address **13277 W. Thomas Rd. Goodyear, AZ 85338**
3. I am the: ☒ LESSEE ☐ SUB LESSEE ☐ OWNER ☐ PURCHASER (of premises)
4. If the premises is leased give lessors: Name **Dysart Commons, LLC**
   Address **3753 Howard Hughes Pkwy #200 Las Vegas, NV 89109**

4a. Monthly rental/lease rate $ **19,534.92** What is the remaining length of the lease? **20** yrs. _____ mos.

4b. What is the penalty if the lease is not fulfilled? $ **None** or other _____
(give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness of the applicant for this license/location excluding lease? $ **0.00**

Does any one creditor represent more than 10% of that sum? ☐ YES ☒ NO If yes, list below. Total must equal 100%.

Last	First	Middle	% Owed	Residence Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for? (BE SPECIFIC) **Series 10 Beer & Wine Off-Sale**
7. Has a license, or a transfer license for the premises on this application been denied by the state within the past one (1) year?
   ☐ YES ☒ NO If yes, attach explanation.
8. Does any spirituous liquor manufacturer, wholesaler, or employee , have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:
   License # _____ (Exactly as it appears on license) Name _____

SECTION 14 Restaurant, or Hotel-Motel Applicants:

1. Is there a valid restaurant or hotel-motel liquor license at the proposed location? ☐ YES ☒ NO If yes, give licensee's name:

   _____ and license #: _____
   Last First Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. Section 4-203.01; and complete Section 5 of this application.

3. All restaurant applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor.

4. Do you understand that **40% of your gross revenue** must be from food sales? ☐ YES ☐ NO

SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

1. Check **ALL** boxes that apply to your licensed premises:

   ☒ Entrances/Exits ☒ Liquor storage areas
   ☐ Drive-in windows ☐ Patio enclosures
   ☐ Service windows ☒ Under construction: estimated completion date June 07

2. Restaurants and Hotel/Motel applicants must explicitly depict kitchen equipment and dining facilities.

3. The diagram below is the only area where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored. Give the square footage or outside dimensions of the licensed premises.

   DO NOT INCLUDE PARKING LOTS, LIVING QUARTERS, ETC.

See Attached

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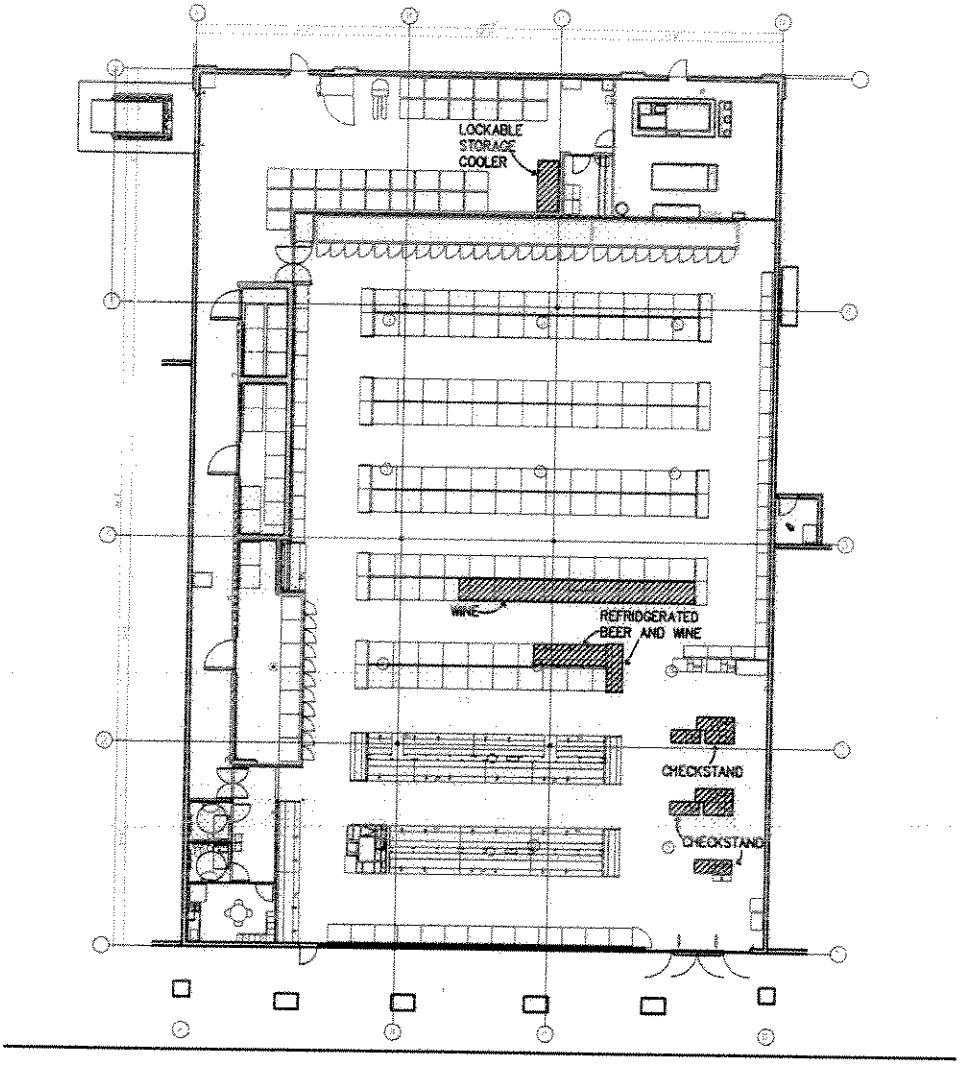
YOU MUST NOTIFY THE DEPARTMENT OF LIQUOR OF ANY CHANGES OF BOUNDARIES, ENTRANCES, EXITS, OR SERVICE WINDOWS MADE AFTER SUBMISSION OF THIS DIAGRAM.



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NORTH

PLAN

1" = 30'-0"

sheet
EX1
of
job 06503

design DB/CD
drawn MP
check RWK

FRESH & EASY
NEC DYSART ROAD &
THOMAS ROAD
AVONDALE, AZ

FLOOR PLAN

date 03/16/07

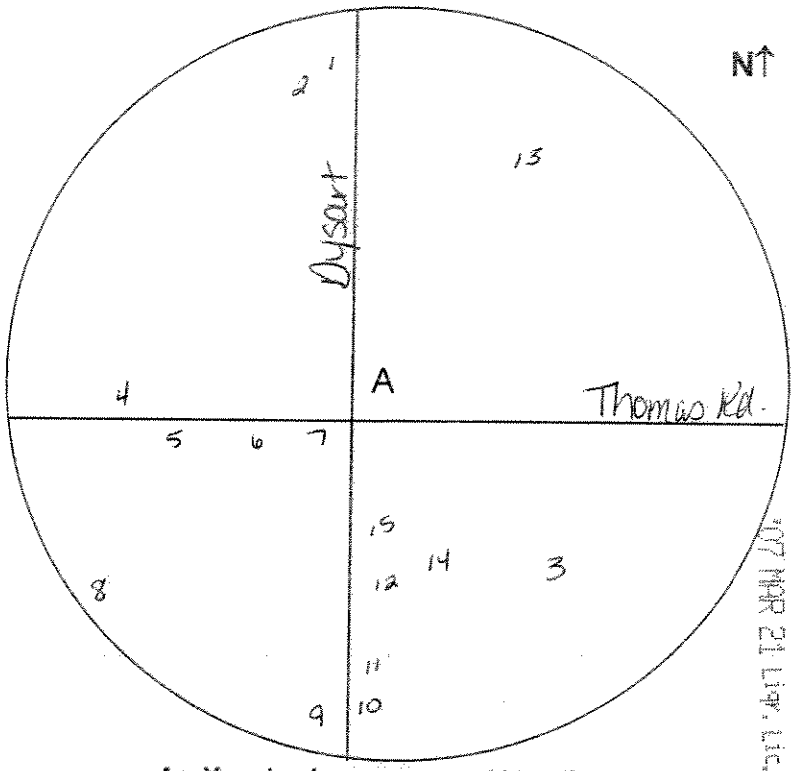
ROBERT KUBICKI
RKAA
Architects And Associates, Inc.
2203 East Thomas Road
Phoenix, Az. 85016-3474
(602) 955-3000 Phone
(602) 955-0466 Fax
www.rkaa.com

SECTION 16 Geographical Data: A SAMPLE FOR THIS SECTION IS PROVIDED ON THE NEXT PAGE.

List below the exact names of all churches, schools, and spirituous liquor outlets within a one mile radius of your proposed location. Ref. A.R.S. 4-201 (B)

1. First Baptist Church
2. Trinity Lutheran School & Church
3. Rancho Santa Fe School
4. St Thomas Aquinas School & Churc
5. Palm Valley Elementary School
6. Church of Jesus Christ LDS
7. CVS Pharmacy
8. Palm Valley Golf Club
9. Tutor Time
10. Pei Wei
11. NYPD Pizza
12. Johnny Carino's
13. Corte Sierra Elementary School
14. Sprouts Farmers Market
15. Papa Murphy's

ATTACH ADDITIONAL SHEET(S) IF NECESSARY



A = Your business name and identify cross streets.

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SECTION 17 Signature Block:

I, Randy D. Nations, declare that: 1) I am the APPLICANT (Owner, Agent, Partner, Stockholder
(Print name of APPLICANT/AGENT listed in Section 4 Question 1)
(10% or more), Member, Officer (10% or more ownership), or Club Member making this application; 2) I have read the application and the contents and all statements are true, correct and complete; 3) that this application is not being made to defraud or injure any creditor, taxing authority, regulatory authority, or transferor; 4) that no other person, firm, or corporation, except as indicated, has an interest in the spirituous liquor license for which these statements are made; and 5) that to the best of my knowledge and belief, none of the owners, partners, members, officers, directors or stockholders listed have been convicted of a felony in the past five (5) years.

X _____ (Signature)

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this

16th day of March 2007
Day Month Year

Miranda Bustamante
(Signature of NOTARY PUBLIC)

MIRANDA BUSTAMANTE
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
SEPTEMBER 24, 2007

My commission expires on _____

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

QUESTIONNAIRE

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595

FP current

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Eff. 10/01/03 there is a $29.00 processing fee for each fingerprint card submitted.
A service fee of $25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 10075385 (If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☐ Officer ☒ Agent ☐ Other _____ (Complete Questions 1-20 & 24) Licensee or Agent must complete # 25 for a Manager | ☐ Manager(Only) (Complete All Questions *except* # 14, 14a & 25) Licensee or Agent must complete # 25

2. Name: Nations (Last) Randy (First) D (Middle) Date of Birth: [redacted] (This Will Not Become a Part of Public Records)

3. Social Security Number: [redacted] (This [redacted] Public Records) Drivers License #: _____ State: Arizona

4. Place of Birth: Morenci (City) Arizona (State) USA (Country (not county)) Height: 6'1" Weight: 210 Eyes: Hzl Hair: Brn

5. Marital Status ☒ Single ☐ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (480) 813 - 1364

6. Name of Current or Most Recent Spouse: _____ Date of Birth: _____
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? Arizona If Arizona, date of residency: 9/6/47

8. Telephone number to contact you during business hours for any questions regarding this document. (480) 730 - 2675

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Fresh & Easy Neighborhood Market Premises Phone: (_____) Pending

11. Licensed Premises Address: Dysart Rd. & Thomas Rd. NE Corner (Street Address (Do not use PO Box #)) Avondale (City) Maricopa (County) 85323 (Zip)

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. **List most recent 1st.**

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
4/93	CURRENT	President	Arizona Liquor Industry Consultants 1811 S Alma School Rd Ste 268
			Mesa, Arizona 85210

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
12/95	CURRENT	Own	314 S Bayshore Blvd	Gilbert	AZ	85233

 Disabled individuals requiring special accommodations, please call the Department. (602) 542-9027

P.O. Box 2502
Chandler, Arizona 85244
(480) 730-2675 Phone (480) 730-2676 Fax

ARIZONA LIQUOR
INDUSTRY CONSULTANTS

This addendum is written in response to questions 17, 18, 19, and 20 on the QUESTIONNAIRE.

In response to question 17, my company is currently contracted with over five hundred (500) liquor establishments statewide, not to mention those who have cancelled services since our inception in 1993. Depending on when this document is reviewed, it's possible that there may be a pending administrative citation, compliance action, arrest or summons against one of them.

In response to question 18, since I began ALIC in April of 1993, I have been associated with hundreds of liquor establishments and liquor licenses. Several of them have received citations (fines) and in some instances, a suspension. I work with the compliance officer on a regular basis acting as a representative for those who utilize my contract service. I do not however, have anything to do with the actual operation of any liquor establishment in this or any other state. Therefore, none of the violations to which I have just referred can be associated to me personally. Additionally, it would be almost impossible for me to give you a reconciliation of these violations, as I have been associated with so many licenses for so many years.

Question 19. In early 1995, I was involved in litigation over the sale of a class six (6) liquor license. The seller in this case presented documents to me, you (DLLC), and the Arizona Department of Revenue, showing him as the president of a corporation that owned a liquor license. He requested my assistance in selling this license, as I am a liquor license broker. The license was brokered and sold by me. Some weeks later I discovered that the individual selling the license on behalf of the corporation was a fraud, therefore the sale of the license illegal. After notifying the purchaser (victim), he instigated a lawsuit against both me and the escrow company used to consummate the sale of the license. The litigation against my company and me was later dropped; I did however have to pay the buyer's attorney's fees. Additionally, I prepared a felony complaint, took it to prior police associates at the Arizona Department of Public Safety and we obtained a five count Grand Jury Indictment and six year prison conviction against the fraudulent seller.

Question 20. I am currently the Administrative Agent on numerous liquor licenses throughout the State of Arizona. I have also owned liquor licenses that were purchased for resale only.

Respectfully Submitted,

Randy Nations,
President ALIC

'07 MAR 21 Liq. Lic. 9:27

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate information is confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Eff. 10/01/03 there is a $29.00 processing fee for each fingerprint card submitted.
A service fee of $25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 10075385 (If the location is currently licensed)

P 1053603

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☒ Officer ☐ Agent ☐ Other _____ (Complete Questions 1-20 & 24) Licensee or Agent must complete # 25 for a Manager | ☐ Manager(Only) (Complete All Questions except # 14, 14a & 25) Licensee or Agent must complete # 25

2. Name: Waller (Last) Remco (First) Ewout (Middle) Date of Birth: [redacted] (This Will Not Become a Part of Public Records)

3. Social Security Number: [redacted] (This Will Not Become a Part of Public Records) Drivers License #: [redacted] State: Netherlands

4. Place of Birth: Voorburg (City) Netherlands (State) Country (not county) Height: 6'5" Weight: 220 lbs Eyes: Brn/Green Hair: Blonde

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (310) 374 - 9745

6. Name of Current or Most Recent Spouse: Van Den Hengel (Last) Mariel (First) (Middle) (Maiden) Date of Birth: [redacted]
(List all for last 5 years - Use additional sheet if necessary)

7. You are a bona fide resident of what state? California If Arizona, date of residency: _____

8. Telephone number to contact you during business hours for any questions regarding this document. (310) 341 - 1320

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Fresh & Easy Neighborhood Market Premises Phone: ( ) Pending

11. Licensed Premises Address: Dysart Rd. & Thomas Rd. NE Corner (Street Address) Avondale (City) Maricopa (County) 85323 (Zip)
(Do not use PO Box #)

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. **List most recent 1st.**

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
July 2006	CURRENT	Chief Financial Officer - Tesco USA Accountable for Finance, Legal and Strategy	Tesco Delamare Rd., Cheshunt Herts EN89SL England
Sept. 2002	June 2006	Chief Financial Officer - Tesco USA Accountable for Finance and Strategy	Tesco Delamare Rd., Cheshunt Herts EN89SL England
July 2001	August 2002	International Finance Director	Tesco Delamare Rd. Cheshunt Herts EN 89SL England

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
07/2006	CURRENT	Own	1656 Voorhees Avenue	Manhattan Beach	CA	90266
09/2002	06/2006	Own	077-329 Hannam Drive, Yonoson-Gu, Seoul, South Korea 740884	SOUTH	KOREA	
10/2001	08/2002	Own	506 Grand Avenue, Musweu Miu, London, England N103BP	ENGLAND		

Disabled individuals requiring special accommodations, please call the Department. (602) 542-9027

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the the licensed premises ? If you answered YES, how many hrs/day?_____, **answer #14a below**. If NO, skip to #15. ☐YES ☒NO

14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you **EVER** been ***detained, cited, arrested, indicted or summoned*** into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

16. Have you **EVER** been ***convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole*** for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved? ☐YES ☒NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor ***APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined*** in this or any other state? ☐YES ☒NO

19. Has anyone **EVER** ***filed suit or obtained a judgment against you*** in a civil action, the subject of which involved ***fraud or misrepresentation of a business, professional or liquor license***? ☐YES ☒NO

20. Are you **NOW** or have you **EVER** held ownership, been a controlling person , been an officer, member, director, or manager on ***any other liquor license*** in this or any other state? ☐YES ☒NO *but now in process of applying for liquor licenses in States of Nevada and Californ*

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? $_____ per month. Total debt to licensee $_____

23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Remco Ewout Waller (Print full name of Applicant), hereby declare that I am the APPLICANT filing this questionnaire.

I have read this questionnaire and the contents and all statements are true, correct and complete.

X_____ (Signature of Applicant)

State of California County of Los Angeles
The foregoing instrument was acknowledged before me this 29th day of November, 2006 (Day, Month, Year)

My commission expires on: 18th July 2008 (Day, Month, Year)

Linda Harris-Boyd Notary Public
(Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION
Licensee or Agent Approval of Manager

25. I, (**Print** Licensee/Agent's Name):_____
Hereby authorize the applicant to act as manager for the named liquor license.

State of_____ County of_____
The foregoing instrument was acknowledged before me this _____ day of _____ (Day, Month, Year)

X _____ (Signature of LICENSEE/AGENT)

My commission expires on: _____ (Day, Month, Year)

_____ (Signature of NOTARY PUBLIC)

LINDA HARRIS-BOYD
Commission # 1501556
Notary Public - California
Los Angeles County
My Comm. Expires Jul 18, 2008

07 MAR 21 11:46 LIC 09 27

FP current

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink.
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Eff. 10/01/03 there is a $29.00 processing fee for each fingerprint card submitted.
A service fee of $25.00 will be charged for all dishonored checks (A.R.S. 44.6852) P1053401

Liquor License # 10075385
(If the location is currently licensed)

1. **Check appropriate box** → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☒ Officer ☐ Agent ☐ Other _____ **(Complete Questions 1-20 & 24)** **Licensee or Agent must complete # 25 for a Manager**
   ☐ **Manager(Only)** **(Complete All Questions *except* # 14, 14a & 25)** **Licensee or Agent must complete # 25**

2. Name: Evans (Last) Peter (First) David (Middle) Date of Birth: [redacted] **(This Will Not Become a Part of Public Records)**

3. Social Security Number [redacted] **(This Will Not Become a Part of Public Records)** Drivers License #: _____ State: United Kingdom

4. Place of Birth: Pontypool (City) U.K. (State) Country (not county) Height: 5'11" Weight: 165 Eyes: Brown Hair: Brown

5. Marital Status ☒ Single ☐ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (310) [redacted] - 9761

6. Name of Current or Most Recent Spouse: N/A (Last) (First) (Middle) (Maiden) Date of Birth: N/A
   (List all for last 5 years - Use additional sheet if necessary)

7. You are a bona fide resident of what state? California If Arizona, date of residency: N/A

8. Telephone number to contact you during business hours for any questions regarding this document. (310) 341 - 1235

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Fresh & Easy Neighborhood Market Premises Phone: ( ) Pending

11. Licensed Premises Address: Dysart Rd. & THomas Rd. NE Corner Avondale Maricopa 85323
    Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. **List most recent 1st.**

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
1/1999	CURRENT	Vice President-Finance - Tesco USA	Tesco Delamare Rd., Cheshunt Herts EN89SL England

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
03/2005	CURRENT	OWN	1221 Ocean Avenue, Apt. 1001	Santa Monica	CA	90401
09/1996	03/2005	OWN	Flat 3, 108 Greencroft Gardens, London England NW63PH	ENGLAND		

 Disabled individuals requiring special accommodations, please call the Department. (602) 542-9027

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the the licensed premises ? If you answered YES, how many hrs/day?_____, **answer #14a below**. If NO, skip to #15. ☐YES ☒NO

14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you **EVER** been ***detained, cited, arrested, indicted or summoned*** into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

16. Have you **EVER** been ***convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole***, for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved? ☐YES ☒NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor ***APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined*** in this or any other state? ☐YES ☒NO

19. Has anyone **EVER** ***filed suit or obtained a judgment against you*** in a civil action, the subject of which involved ***fraud or misrepresentation of a business, professional or liquor license***? ☐YES ☒NO

20. Are you **NOW** or have you **EVER** held ownership, been a controlling person , been an officer, member, director, or manager on ***any other liquor license*** in this or any other state? ☐YES ☒NO *but now in process of applying for liquor licenses in States of Nevada and Californ*

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24.

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? $_____ per month. Total debt to licensee $_____

23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Peter David Evans (Print full name of Applicant), hereby declare that I am the APPLICANT filing this questionnaire.

I have read this questionnaire and the contents and all statements are true, correct and complete.

X_____ (Signature of Applicant)

State of California County of Los Angeles
The foregoing instrument was acknowledged before me this 4th day of December, 2006 (Day, Month, Year)

My commission expires on: 18 July 2008 (Day, Month, Year)

Linda Harris-Boyd Notary Public (Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION
Licensee or Agent Approval of Manager

25. I, (**Print** Licensee/Agent's Name): _____
Hereby authorize the applicant to act as manager for the named liquor license.

State of_____ County of_____
The foregoing instrument was acknowledged before me this _____ day of _____ (Day, Month, Year)

X _____ (Signature of LICENSEE/AGENT)

My commission expires on: _____ (Day, Month, Year)

_____ (Signature of NOTARY PUBLIC)

LINDA HARRIS-BOYD
Commission # 1501556
Notary Public - California
Los Angeles County
My Comm. Expires Jul 18, 2008

FP CURRENT

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate information is confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with black ink.
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Liquor License # 10075385 (If the location is currently licensed)

Eff. 10/01/03 there is a $29.00 processing fee for each fingerprint card submitted.
A service fee of $25.00 will be charged for all dishonored checks (A.R.S. 44.6852) P1053600

1. **Check appropriate box** →
   - ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☒ Officer ☐ Agent ☐ Other _____ **(Complete Questions 1-20 & 24)** **Licensee or Agent must complete # 25 for a Manager**
   - ☐ **Manager(Only) (Complete All Questions *except* # 14, 14a & 25) Licensee or Agent must complete # 25**

2. Name: Pugh (Last) William (First) Bryan (Middle) Date of Birth: [redacted] **(This Will Not Become a Part of Public Records)**

3. Social Security Number [redacted] **(This Will Not Become a Part of Public Records)** Drivers License #: _____ State: California

4. Place of Birth: Tachikawa Air Base, Tokyo, Japan (City, State, Country (not county)) Height: 5'10" Weight: 175 Eyes: Green Hair: Brown

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (310) 741 - 7705

6. Name of Current or Most Recent Spouse: Pugh (Last) Tracie (First) Gail (Middle) _____ (Maiden) Date of Birth: [redacted]
(List all for last 5 years - Use additional sheet if necessary)

7. You are a bona fide resident of what state? California If Arizona, date of residency: _____

8. Telephone number to contact you during business hours for any questions regarding this document. (310) 341 - 1322

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Fresh & Easy Neighborhood Market Premises Phone: ( ) Pending

11. Licensed Premises Address: Dysart Rd. & Thomas Rd NE Corner (Street Address (Do not use PO Box #)) Avondale (City) Maricopa (County) 85323 (Zip)

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. **List most recent 1st.**

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
1/2001	CURRENT	Chief Retail Officer Run all operations for stores	Tesco PLC (Thailand and USA) Delamare Rd. Cheshunt Herts EN8 9SL England

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
Feb 2006	CURRENT	Own	115 23rd Street	Manhattan Beach	CA	90266
Mar 2005	Feb 2006	Own	1221 Ocean Avenue	Santa Monica	CA	90401
Dec 2000	Mar 2005	Own	39/223 Nichada Park Nichada Thaui Bangkok Thailand 11120	THAILAND		

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the the licensed premises ? If you answered YES, how many hrs/day?_____, **answer #14a below**. If NO, skip to #15. ☐YES ☒NO

14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO

If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you **EVER** been ***detained, cited, arrested, indicted or summoned*** into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

16. Have you **EVER** been ***convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole*** for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved? ☐YES ☒NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor ***APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined*** in this or any other state? ☐YES ☒NO

19. Has anyone **EVER** ***filed suit or obtained a judgment against you*** in a civil action, the subject of which involved ***fraud or misrepresentation of a business, professional or liquor license***? ☐YES ☒NO

20. Are you **NOW** or have you **EVER** held ownership, been a controlling person , been an officer, member, director, or manager on ***any other liquor license*** in this or any other state? ☐YES ☒NO *but now in process of applying for liquor licenses in States of Nevada and Californ*

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☒NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☒ NO If "yes", how much? $_____ per month. Total debt to licensee $_____

23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☒ NO If "yes", attach a copy of such agreement

24. I, William Bryan Pugh (Print full name of Applicant), hereby declare that I am the APPLICANT filing this questionnaire.
I have read this questionnaire and the contents and all statements are true, correct and complete.

X _____ (Signature of Applicant)

State of California County of Los Angeles
The foregoing instrument was acknowledged before me this 29th day of November, 2006 (Day / Month / Year)

My commission expires on: 18th July 2008 (Day / Month / Year)

Linda Harris Boyd Notary Public (Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION

Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): _____
Hereby authorize the applicant to act as manager for the named liquor license.

State of _____ County of _____
The foregoing instrument was acknowledged before me this _____ day of _____ (Day / Month / Year)

X _____ (Signature of LICENSEE/AGENT)

My commission expires on: _____ (Day / Month / Year)

(Signature of NOTARY PUBLIC)

LINDA HARRIS-BOYD
Commission # 1501556
Notary Public - California
Los Angeles County
My Comm. Expires Jul 13, 2008

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
(602) 542-5141

400 W Congress #521
Tucson AZ 85701-1352
(520) 628-6595

QUESTIONNAIRE

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Read carefully. This instrument is a sworn document. Type or print with black ink. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial, or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Eff. 10/01/03 there is a $29.00 processing fee for each fingerprint card submitted.
A service fee of $25.00 will be charged for all dishonored checks (A.R.S. 44.6852)

Liquor License # 10075385 (If the location is currently licensed)

P1053602

1. **Check appropriate box** → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☒ Officer ☐ Agent ☐ Other _____ (Complete Questions 1-20 & 24) Licensee or Agent must complete # 25 for a Manager | ☐ Manager(Only) (Complete All Questions *except* # 14, 14a & 25) Licensee or Agent must complete # 25

2. Name: Rollit Mason (Last) Timothy (First) John (Middle) Date of Birth: [redacted] (This Will Not Become a Part of Public Records)

3. Social Security Number: [redacted] (Th[redacted]art of Public Records) Drivers License #: _____ State: United Kingdom

4. Place of Birth: Davonshire Place (City) St. Marylebone (State) U.K. (Country (not county)) Height: 6'1" Weight: 210 Eyes: Hazel Hair: Brown

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (310) 393 - 8231

6. Name of Current or Most Recent Spouse: Mason (Last) Fiona (First) Margaret (Middle) _____ (Maiden) Date of Birth: [redacted]
(List all for last 5 years - Use additional sheet if necessary)

7. You are a bona fide resident of what state? California If Arizona, date of residency: _____

8. Telephone number to contact you during business hours for any questions regarding this document. (310) 341 - 1270

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Fresh & Easy Neighborhood Market Premises Phone: ( ) Pending

11. Licensed Premises Address: Dysart Rd. & Thomas Rd. NE Corner (Street Address (Do not use PO Box #)) Avondale (City) Maricopa (County) 85323 (Zip)

12. List your employment or type of business during the past five (5) years, if unemployed part of the time, list those dates. **List most recent 1st.**

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (Give street address, city, state & zip)
1/1981	CURRENT	Board Director Tesco Group CMO	Tesco Delamare Rd., Cheshunt Herts EN89SL England

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
1/2006	CURRENT	Own	424 14th Street	Santa Monica	CA	90402
1/2001	1/2006	Own	Ladygrove Hunsdon Ware Herts SG 128P2 England	ENGLAND		

Disabled individuals requiring special accommodations, please call the Department. (602) 542-9027

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the the licensed premises ? If you answered YES, how many hrs/day?_____, **answer #14a below**. If NO, skip to #15. ☐YES ☒NO

14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☒NO
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you **EVER** been ***detained, cited, arrested, indicted or summoned*** into court for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

16. Have you **EVER** been ***convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole***, for violation of **ANY** law or ordinance (regardless of the disposition even if dismissed or expunged)? ***For traffic violations, include only those that were alcohol and/or drug related.*** ☐YES ☒NO

17. Are there **ANY** administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses **PENDING** against you or **ANY** entity in which you are now involved? ☐YES ☒NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor ***APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined*** in this or any other state? ☐YES ☒NO

19. Has anyone **EVER** ***filed suit or obtained a judgment against you*** in a civil action, the subject of which involved ***fraud or misrepresentation of a business, professional or liquor license***? ☐YES ☒NO

20. Are you **NOW** or have you **EVER** held ownership, been a controlling person, been an officer, member, director, or manager on ***any other liquor license*** in this or any other state? ☐YES ☒NO *but now in process of applying for liquor licenses in States of Nevada and Californ*

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24.

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO
If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? $_____ per month. Total debt to licensee $_____

23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Timothy John Rollit Mason (Print full name of Applicant), hereby declare that I am the APPLICANT filing this questionnaire.
I have read this questionnaire and the contents and all statements are true, correct and complete.

X _____ (Signature of Applicant)

State of California County of Los Angeles
The foregoing instrument was acknowledged before me this 29th day of November, 2006 (Day, Month, Year)

My commission expires on: 18th July 2008 (Day, Month, Year)

Linda Harris-Boyd, Notary Public (Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION
Licensee or Agent Approval of Manager

25. I, (**Print** Licensee/Agent's Name): _____
Hereby authorize the applicant to act as manager for the named liquor license.

State of_____ County of _____
The foregoing instrument was acknowledged before me this _____ day of _____ _____ (Day, Month, Year)

X _____ (Signature of LICENSEE/AGENT)

My commission expires on: _____ (Day, Month, Year)

_____ (Signature of NOTARY PUBLIC)

LINDA HARRIS-BOYD
Commission # 1501556
Notary Public - California
Los Angeles County
My Comm. Expires Jul 18, 2008

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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QUESTIONNAIRE

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Read carefully. This instrument is a sworn document. Type or print with black ink.
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH OWNER, AGENT, PARTNER, STOCKHOLDER (10% OR MORE), MEMBER, OFFICER OR MANAGER. ALSO EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD WHICH MAY BE OBTAINED AT THE DEPT. FINGERPRINTING MUST BE DONE BY A BONA FIDE LAW ENFORCEMENT AGENCY OR A FINGERPRINTING SERVICE APPROVED BY THE DEPARTMENT OF LIQUOR. THE DEPARTMENT DOES NOT PROVIDE THIS SERVICE.

Eff. 10/01/03 there is a $29.00 processing fee for each fingerprint card submitted.
A service fee of $25.00 will be charged for all dishonored checks (A.R.S. 44.6852) P1053964

Liquor License # 10075385
(If the location is currently licensed)

1. Check appropriate box → ☐ Owner ☐ Partner ☐ Stockholder ☐ Member ☐ Officer ☐ Agent ☐ Other _____ (Complete Questions 1-20 & 24) Licensee or Agent must complete # 25 for a Manager | ☒ Manager(Only) (Complete All Questions *except* # 14, 14a & 25) Licensee or Agent must complete # 25

2. Name: Cradick (Last) Matthew (First) Larry (Middle) Date of Birth: [redacted] (This Will Not Become a Part of Public Records)

3. Social Security Number: [redacted] (This Will Not Become a Part of Public Records) Drivers License #: _____ State: Arizona

4. Place of Birth: Lincoln (City) Nebraska (State) USA (Country (not county)) Height: 5'9 Weight: 170 Eyes: Blu Hair: Bro

5. Marital Status ☐ Single ☐ Married ☐ Divorced ☐ Widowed Residence (Home) Phone: (424) 675 - 0275

6. Name of Current or Most Recent Spouse: Cradick (Last) Laurie (First) Beth (Middle) Shafer (Maiden) Date of Birth: [redacted]
(List all for last 5 years - Use additional sheet if necessary)

7. You are a bona fide resident of what state? Arizona If Arizona, date of residency: 1/07

8. Telephone number to contact you during business hours for any questions regarding this document. (424) 675 - 0275

9. If you have been a resident less than three (3) months, submit a copy of driver's license or voter registration card.

10. Name of Licensed Premises: Fresh & Easy Neighborhood Market Premises Phone: ( ) Pend - ing

11. Licensed Premises Address: Dysart Rd. & Thomas Rd. NE Corner Avondale Maricopa 85323
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years, if unemployed [illegible] most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME & ADDRESS (Give complete address)
10/06	CURRENT	Regional Director	Tesco 2120 Park PL. El Segundo, CA 90245
6/96	10/06	Regional Director	Aldi Inc. 9342 S. 13th Pl. Oak Creek WI 53154

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENCE Street Address If rented, attach additional sheet giving name, address and phone number of landlord	City	State	Zip
1/07	CURRENT	Rent	11339 S. Hopi Street	Goodyear	AZ	85338
4/06	1/07	Own	900 N. Evergreen Circle	Harland	WI	53029
11/03	4/06	Own	South 96 West 126 Linksway Court	Muskego	WI	53150
9/01	11/03	Own	7499 Carter Circle South	Franklin	WI	53132

 Disabled individuals requiring special accommodations, please call the Department. (602) 542-9027

If you checked the Manager box on the front of this form skip to # 15

14. As an Owner, Agent, Partner, Stockholder, Member or Officer, will you be physically present and operating the the licensed premises ? If you answered YES, how many hrs/day?_____, **answer #14a below**. If NO, skip to #15. ☐YES ☒NO

14a. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO

If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

15. Have you EVER been *detained, cited, arrested, indicted or summoned* into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? *For traffic violations, include only those that were alcohol and/or drug related.* ☒YES ☐NO

16. Have you EVER been *convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole* for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)? *For traffic violations, include only those that were alcohol and/or drug related.* ☒YES ☐NO

17. Are there ANY administrative law citations, compliance actions or consents, criminal arrests, indictments or summonses PENDING against you or ANY entity in which you are now involved? ☐YES ☒NO

18. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor *APPLICATION OR LICENSE rejected, denied, revoked, suspended or fined* in this or any other state? ☐YES ☒NO

19. Has anyone EVER *filed suit or obtained a judgment against you* in a civil action, the subject of which involved *fraud or misrepresentation of a business, professional or liquor license*? ☐YES ☒NO

20. Are you NOW or have you EVER held ownership, been a controlling person , been an officer, member, director, or manager on *any other liquor license* in this or any other state? ☐YES ☒NO

If any answer to Questions 15 through 20 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved and dispositions.

If you checked the Manager box on the front of this form, fill in #21-23 and 24, all others skip the following box (21-23) and go to # 24

Manager Section

21. Have you attended a Department approved Liquor Law Training Course within the last 5 years? (Must provide proof) ☐YES ☐NO

If the answer to #21 is "NO" course must be completed BEFORE ISSUANCE of a new license OR APPROVAL on an existing license.

22. Do you make payments to the licensee? ☐ YES ☐ NO If "yes", how much? $_____ per month. Total debt to licensee $_____

23. Is there a formal written contract or agreement between you and the licensee relating to the operation or management of this business? ☐ YES ☐ NO If "yes", attach a copy of such agreement

24. I, Matthew Larry Cradick (Print full name of Applicant), hereby declare that I am the APPLICANT filing this questionnaire. I have read this questionnaire and the contents and all statements are true, correct and complete.

x_____ (Signature)

OFFICIAL SEAL
RHONDA J. PEREZ
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires Aug. 31, 2008

State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this 16 day of March 2007
(Day, Month, Year)

My commission expires on: 31 8 08 (Day Month Year)

Rhonda J Perez
(Signature of NOTARY PUBLIC)

FILL IN THIS SECTION ONLY IF YOU ARE A LICENSEE OR AGENT APPROVING A MANAGER APPLICATION

Licensee or Agent Approval of Manager

25. I, (Print Licensee/Agent's Name): Randy D. Nations
Hereby authorize the applicant to act as manager for the named liquor license.

x_____ (Signature of LICENSEE/AGENT)

State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this 16th day of March 2007
(Day, Month, Year)

My commission expires on:

Miranda Bustamante
(Signature of NOTARY PUBLIC)

MIRANDA BUSTAMANTE
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
SEPTEMBER 24, 2007

Attachment for Matthew L. Cradick

Questions 15 & 16

I was driving home from a concert and was pulled over. The officer conducted a field sobriety test and a breathalyzer test on site. I was then arrested for DUI. I was released from the Police Department that night.
The Judge dropped 1 of the 2 tickets I had received. I had to pay a fine and was ordered to attend an alcohol awareness class.

Matthew L. Cradick

Received 4/07

Comments from: Kris and Mike Simonsen, 12719 W Cambridge, Avondale

In favor of Fresh & Easy Neighborhood Markets liquor license.

Linda Farris

From: Pat and Ron [pselli@peoplepc.com]
Sent: Tuesday, April 17, 2007 5:06 PM
To: Linda Farris
Subject: Tesco

Hello. I received a postcard from UFCW local 99 in regards to a company named Tesco wanting to build a "Fresh and easy Neighborhood Market". I am writing to share my views which are most likely NOT the reason the Union wants to keep them from building . I grew up in California where these types of stores are everywhere. They start out nice but don't stay that way for very long. They become a quick place to run in and buy cigarettes and beer. The parking lots become trash piles. (Drive up to a circle K and see what I mean). But the main reason I don't want them in the neighborhood is our children. Children who walk home from school will be approached to buy stuff they are not of age to purchase. Believe me, I and my family can attest to this.. it happens all the time. (I was recently to a DBacks game and there were young people getting others to buy them beer. And sad to say, people did it, figuring it was no harm.) We need to clamp down on this if we care about what happens to our kids. As for our neighborhood, this type of business does not improve my property value. This type of convenience hurts. Adults can readily purchase this at any gas station or go to a near by market for prepared food. Please really consider the future of Avondale and not just the $$$ it will put in the budget.
The card said you will need my name and address : Pat Spriggs 10937 W. Citrus Grove Avondale 85323
Please do not put my name or e-mail or address on a list for others to use or publish. If you wish to contact me personally you may do so but I have seen these issues escalate into real problems and wish to remain anonymous

Linda Farris

From: Lmyrick [lmyrick03@cox.net]
Sent: Tuesday, April 17, 2007 1:50 PM
To: Linda Farris
Subject: Re: Tesco Corporation

The person giving me this information did not tell me the exact location only the City of Avondale.

Linda Myrick
12534 W. Madison Street
Avondale, AZ 85323

----- Original Message -----
From: Linda Farris
To: Lmyrick
Sent: Tuesday, April 17, 2007 1:44 PM
Subject: RE: Tesco Corporation

What location are you referring to?

Linda M. Farris, CMC
City Clerk
City of Avondale
623-333-1211

From: Lmyrick [mailto:lmyrick03@cox.net]
Sent: Tuesday, April 17, 2007 1:25 PM
To: Linda Farris
Subject: Tesco Corporation

Good Afternoon,

A few comments about the subject matter.

We do not need another liquor store/convenient store in this community. Liquor is their market and I think it is totally unacceptable to promote such.

Everyone was quick to jump on the no smoking allowed! but I think this liquor situation is far more important since we have lost too many lives to drunk
drivers. I wouldn't think Avondale would want to promote more liquor if you look at the police records and statistics.

Thanks for listening!
Linda Myrick
12534 W. Madison Street
Avondale, AZ 85323

City of Avondale
CITY CLERK'S OFFICE

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

- ☐ OFF TRACK BETTING
- ☒ LIQUOR LICENSE SERIES # 10
- ☐ EXTENSION OF PREMISES

ROUTING:

- ☐ POLICE DEPARTMENT
- ☒ DEVELOPMENT SERVICES
- ☐ FIRE DEPARTMENT

APPLICANT'S NAME: RANDY NATIONS

BUSINESS NAME: FRESH & EASY NEIGHBORHOOD MARKET

ADDRESS: DYSART ROAD AND THOMAS ROAD

CITY: AVONDALE **STATE:** AZ **ZIP CODE:** 85323

DEPARTMENTAL COMMENTS:

☑ APPROVED
☐ DENIED

Bob Bode
SIGNATURE

4/12/07
DATE

DEVELOPMENT SERVICES DIRECTOR
TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: MAY 7, 2007
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: APRIL 16, 2006

City of Avondale

DEVELOPMENT SERVICES

MEMORANDUM

DATE: April 11, 2007

TO: Linda Farris, City Clerk

PREPARED BY: Ken Galica, Planner II (623) 333-4019

SUBJECT: Series 10 Liquor License for Fresh & Easy Neighborhood Market
NEC Dysart Road and Thomas Road

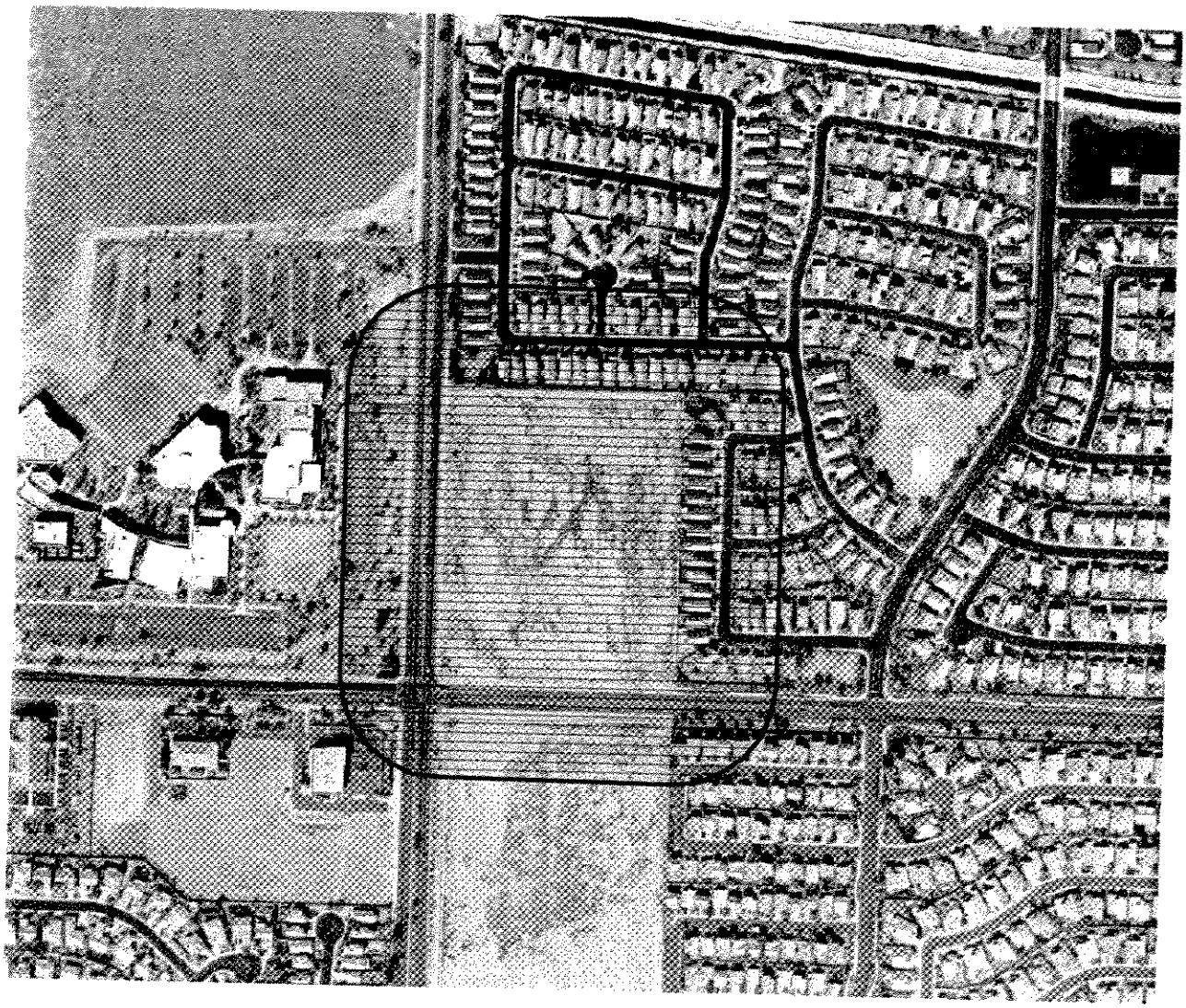
The proposed site is located at the northeast corner of Dysart Road and Thomas Road within "Major B" of the Dysart Commons Shopping Center. The site is currently under development.

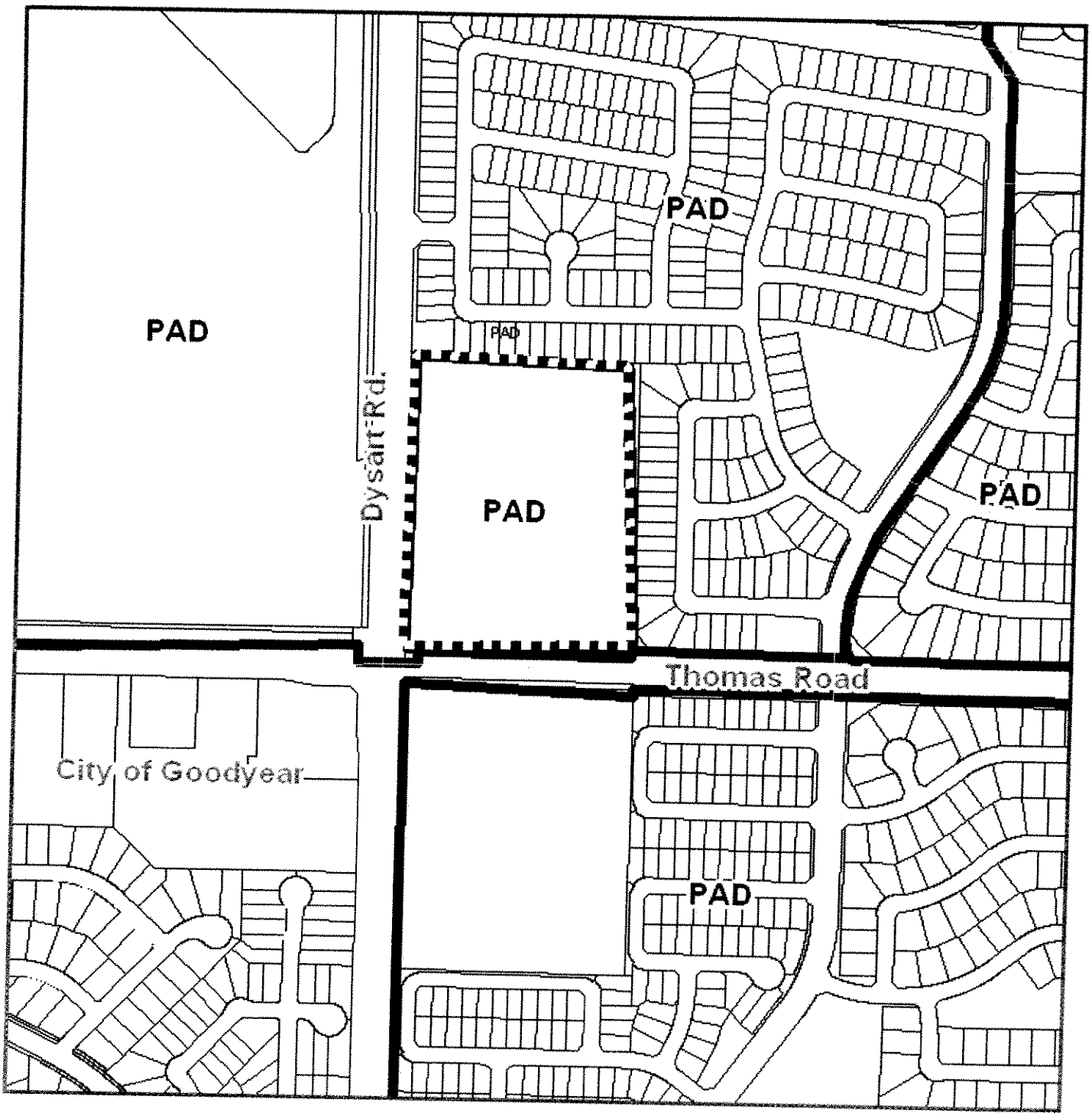
State Statute requires a minimum separation of 300 feet from K-12 schools or church buildings. It also requires 300 feet from fenced recreational areas that are part of a school building. There are no church buildings, K-12 school buildings, or fenced recreational areas associated with K-12 schools within 300-feet of the proposed site.

The General Plan designates the property as Commercial. The subject property is located within the Palm Valley PAD (Planned Area Development). The PAD includes areas for both residential and commercial development. The northeast corner of Thomas Road and Dysart Road allows for C-1 (Community Commercial) uses. A grocery store is a permitted use in the C-1 Zoning District.

Attachment: 2006 Aerial (300 Foot Separation)
Zoning Vicinity Map
Approved Site Plan – Dysart Commons

2006 Aerial Photograph
Fresh & Easy Neighborhood Market
300 Foot Separation Requirement





Zoning Vicinity Map

Avondale

Subject Site

N

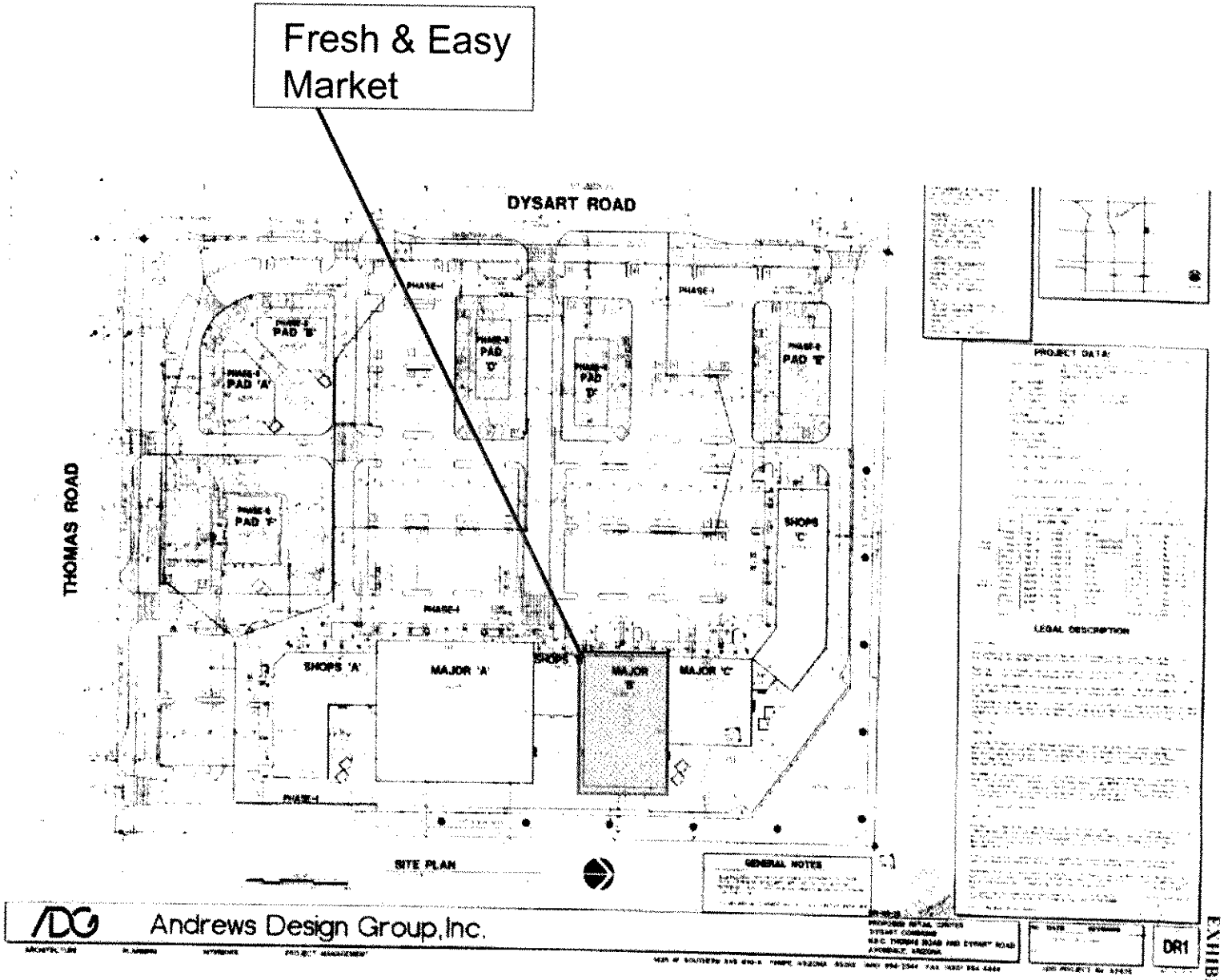

Fresh & Easy Market
DYSART ROAD
THOMAS ROAD
PHASE-I
PAD 'A'
PAD 'B'
PAD 'C'
PAD 'D'
PAD 'E'
PAD 'F'
SHOPS 'A'
MAJOR 'A'
SHOPS
MAJOR 'B'
MAJOR 'C'
SHOPS 'C'
SITE PLAN
GENERAL NOTES
PROJECT DATA
LEGAL DESCRIPTION
Andrews Design Group, Inc.
DR1

EXHIBIT D

City of Avondale
CITY CLERK'S OFFICE

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

- ☐ OFF TRACK BETTING
- ☒ LIQUOR LICENSE SERIES # 10
- ☐ EXTENSION OF PREMISES

ROUTING:

- ☐ POLICE DEPARTMENT
- ☐ DEVELOPMENT SERVICES
- ☒ FIRE DEPARTMENT

APPLICANT'S NAME: RANDY NATIONS

BUSINESS NAME: FRESH & EASY NEIGHBORHOOD MARKET

ADDRESS: DYSART ROAD AND THOMAS ROAD

CITY: AVONDALE **STATE:** AZ **ZIP CODE:** 85323

DEPARTMENTAL COMMENTS:

☒ APPROVED
☐ DENIED

SIGNATURE

FIRE MARSHAL
TITLE

9/9/07
DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: MAY 7, 2007
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: APRIL 16, 2006

City of Avondale
CITY CLERK'S OFFICE

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

- ☐ OFF TRACK BETTING
- ☒ LIQUOR LICENSE SERIES # 10
- ☐ EXTENSION OF PREMISES

ROUTING:

- ☒ POLICE DEPARTMENT
- ☐ DEVELOPMENT SERVICES
- ☐ FIRE DEPARTMENT

APPLICANT'S NAME: RANDY NATIONS

BUSINESS NAME: FRESH & EASY NEIGHBORHOOD MARKET

ADDRESS: DYSART ROAD AND THOMAS ROAD

CITY: AVONDALE **STATE:** AZ **ZIP CODE:** 85323

DEPARTMENTAL COMMENTS:

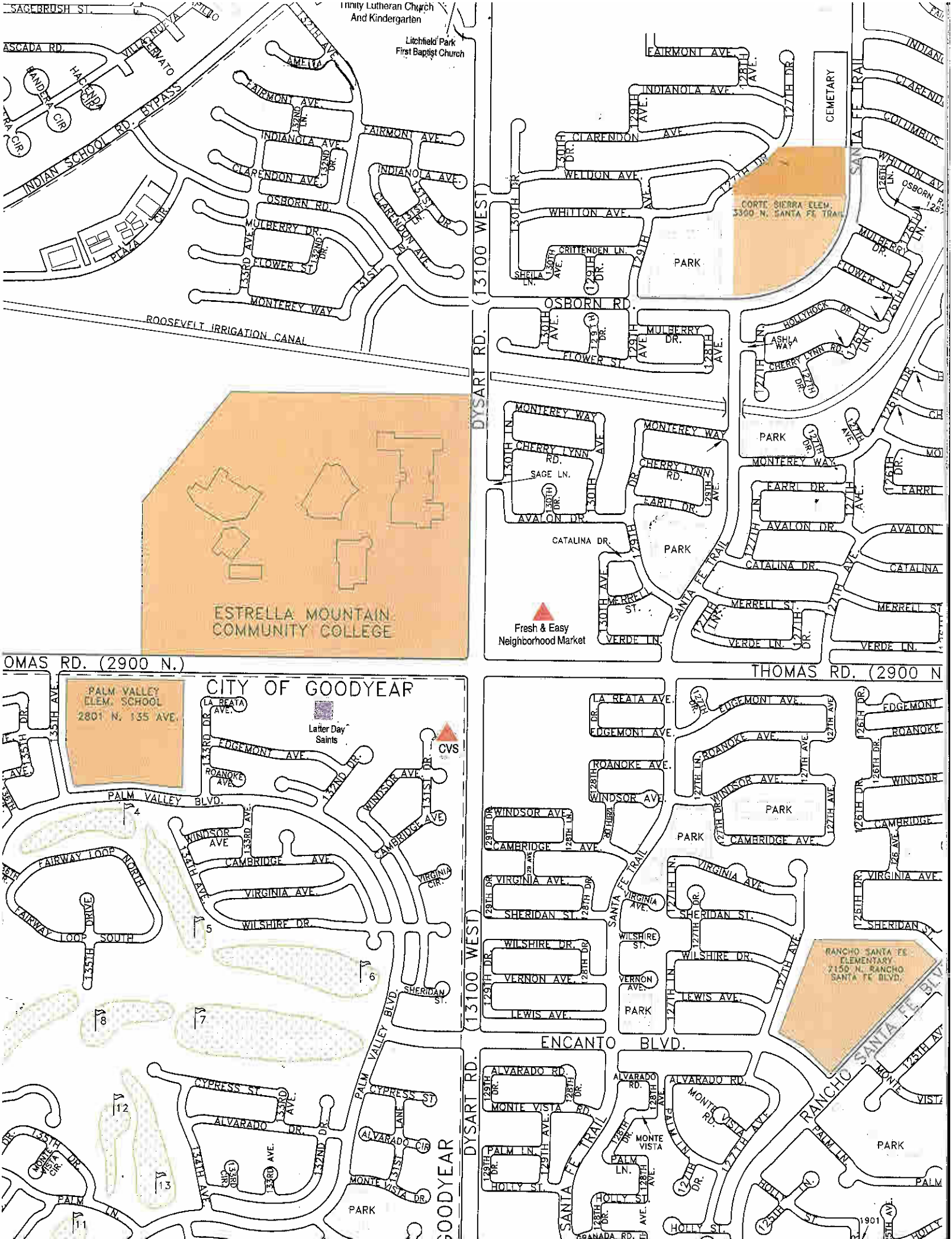
☑ APPROVED
☐ DENIED

SIGNATURE

4/1/07
DATE

TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: MAY 7, 2007
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: APRIL 16, 2006


Trinity Lutheran Church And Kindergarten
Litchfield Park First Baptist Church
SAGEBRUSH ST.
ASCADA RD.
VILLA NUEVA
HACIENDA
SANDRA CIR
INDIAN SCHOOL RD. BYPASS
PLAZA CIR.
AMELIA
FAIRMONT AVE.
INDIANOLA AVE.
CLARENDON AVE.
OSBORN RD.
MULBERRY DR.
FLOWER ST.
MONTEREY WAY
ROOSEVELT IRRIGATION CANAL
DYSART RD. (13100 WEST)
CEMETARY
SANTA FE TRAIL
WELDON AVE.
WHITTON AVE.
CRITTENDEN LN.
SHEILA LN.
PARK
CORTE SIERRA ELEM. 3300 N. SANTA FE TRAIL
HOLLYHOCK DR.
ASHLA WAY
CHERRY LYNN RD.
SAGE LN.
EARLL DR.
AVALON DR.
CATALINA DR.
MERRELL ST.
VERDE LN.
Fresh & Easy Neighborhood Market
ESTRELLA MOUNTAIN COMMUNITY COLLEGE
THOMAS RD. (2900 N.)
PALM VALLEY ELEM. SCHOOL 2801 N. 135 AVE.
CITY OF GOODYEAR
LA REATA AVE.
EDGEMONT AVE.
ROANOKE AVE.
Latter Day Saints
CVS
PALM VALLEY BLVD.
WINDSOR AVE.
CAMBRIDGE AVE.
VIRGINIA AVE.
VIRGINIA CIR.
FAIRWAY LOOP NORTH
FAIRWAY LOOP SOUTH
WILSHIRE DR.
SHERIDAN ST.
VERNON AVE.
LEWIS AVE.
ENCANTO BLVD.
ALVARADO RD.
MONTE VISTA RD.
PALM LN.
HOLLY ST.
GRANADA RD.
CYPRESS ST.
ALVARADO DR.
ALVARADO CIR.
MONTE VISTA DR.
MONTE VISTA CIR.
RANCHO SANTA FE ELEMENTARY 2150 N. RANCHO SANTA FE BLVD.
RANCHO SANTA FE BLVD.
GOODYEAR

CITY COUNCIL REPORT

SUBJECT:
Purchase authorization - Extrication Concepts

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Paul Adams, Fire Chief (623)333-6100

THROUGH: Charlie McClendon, City Manager

PURPOSE:

To request that the Mayor and City Council authorize the purchase of vehicle rescue / extrication equipment from Extrication Concepts in the amount of $60,978.96.

BACKGROUND:

As part of this year's budget process Council approved the purchase of a ladder truck, rescue support vehicle and all related equipment. Both vehicles are currently on order from Pierce Manufacturing with delivery expected to occur in mid-December. Due to restrictions in the Houston-Galveston purcahse agreement, which was used to purchase the vehicles, only a portion of the necessary equipment could be ordered with the apparatus. The remaining equipment will be ordered through separate purchase agreements with the individual manufacturers.

DISCUSSION:

A variety of pieces of vehicle rescue / extrication equipment will be necessary to appropriately equip the ladder and rescue support vehicles to perform their intended functions. Earlier this fiscal year, through grant funding provided by the Department of Highway Safety, the department evaluated various rescue equipment manufacturers and procured a small compliment of extrication equipment for each of our engine companies. It is our intent that the equipment purchased for the new vehicles be from the same manufacturer that provided the equipment carried on the engines to ensure compatibility and consistency. The equipment currently in use by the department is manufactured by Holmatro, and Extrication Concepts is the only authorized Holmatro dealer for the State of Arizona. Pricing quoted to the City of Avondale for this equipment is identical to that provided to the City of Phoenix for the same equipment. This request will provide all the hydraulic rescue equipment necessary to fully equip both the ladder truck and rescue support vehicle.

BUDGETARY IMPACT:

Funding for this purchase is included in line item 235-6330-00-8150 (public safety sales tax fund) of the fire department budget.

RECOMENDATION:

Staff recommends that the Mayor and City Council authorize the purchase of vehicle rescue / extrication equipment from Extrication Concepts in the amount of $60,978.96.

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Professional Services Agreement with AMEC Earth & Environmental, Inc., for Design, Construction Management and Well Abandonment Services for Wells 22 and 25

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Acting Water Resources Director (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a Professional Services Agreement with AMEC Earth & Environmental, Inc., for design, construction management, and well abandonment services for Wells 22 and 25 in an amount not to exceed $149,796 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The 2005 Water Master Plan evaluated current water resources and storage and booster pump capacity, and determined that an additional 8,400 gallons per minute (gpm) of supply is needed at the Coldwater Booster Station (east of the Agua Fria River and south of Van Buren) by build-out. Without this additional supply the facility will not operate at its optimum cycle time and redundant booster pump stations and reservoirs would be required to meet peak demands.

Well 22

In order to meet this need, staff is negotiating the transfer of ownership of an existing agricultural well with the developer of the proposed Coldwater Springs Promenade Development located at the southwest corner of Avondale Blvd. and Van Buren Street. Staff intends to relocate the well to a location within 660 feet of the existing well and pump the water to the Coldwater Booster Station through a 16-inch transmission line under Van Buren St. Well 22 is expected to add approximately 1,200 gallons per minute of supply to the Coldwater Site.

The developer of Coldwater Springs Promenade has agreed to transfer the ownership of the well and water rights and provide a new site for the well, and the City has agreed to provide abandonment services for the existing agricultural well, subject to final negotiation of the details. Upon completion of these negotiations, staff will submit the agreement for Council approval.

Well 25

The City obtained ownership of an existing agricultural well, on the south side of Van Buren St. at the El Mirage alignment, as part of the purchase of the Coldwater Booster Station property. Water Resources staff have been working with the Economic Development and Engineering Departments to coordinate the drilling of a replacement well with the sale of the surrounding property and the Van Buren St. improvements. Similar to Well 22, staff intends to relocate the well to a location within 660 feet of the existing well and pump the water to the Coldwater Booster Station through a 16-inch transmission line in Van Buren St. Well 25 is also expected

to add approximately 1,200 gallons per minute of supply to the Coldwater Site.

DISCUSSION:

These wells will be developed under separate contracts which will include drilling and wellhead development, and the design and installation of the pumping system, backup power, and other site improvements. AMEC Earth and Environmental, Inc. was determined to be the most qualified firm by a staff selection committee from three eligible firms selected from the Professional Consulting Services – Pre Qualifications list.

The scope of services associated with this contract includes:

- Existing Agricultural Well Abandonment Administration and new Well Permitting,
- Design Phase Services
- Technical Specifications Preparation
- Bid Period Assistance
- Construction Management Service
- Coordination, Inspection, and Testing during Borehole Drilling
- Construction Administration of Production Well Installation
- Post-Construction Well Testing and Analysis Preparation of Well Construction Report

Upon City Council approval of the professional services agreement, AMEC will immediately begin work. The following schedule highlights the milestones to complete the scope of services:

- Award Professional Services Agreement May 07, 2007
- Award Construction Contract November 05, 2007
- Notice to Proceed November 19, 2007
- Well drilling completed February 29, 2008

BUDGETARY IMPACT:

Funding for the proposed Professional Services Agreement is available in the CIP – Water Development Fund, 514-1201-00-8520.

RECOMENDATION:

Staff recommends that the City Council approve a Professional Services Agreement with AMEC Earth & Environmental, Inc., for design, construction management, and well abandonment services for Wells 22 and 25 in an amount not to exceed $149,796 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- PSA - AMEC

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
AMEC EARTH & ENVIRONMENTAL, INC.

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of May 7, 2007, between the City of Avondale, an Arizona municipal corporation (the "City") and AMEC Earth & Environmental, Inc., a Nevada corporation (the "Consultant").

RECITALS

A. The City issued a Request for Qualifications (the "RFQ") seeking statements of qualifications from Consultants for professional consulting services.

B. The Consultant responded to the RFQ and the City desires to enter into an Agreement with the Consultant for the abandonment of Wells 55-605042 and 55-604520 and the installation of Wells No.22 and No. 25 respectively (the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the following mutual covenants and conditions, the City and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until November 7, 2008.

2. Scope of Work. Consultant shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference.

3. Compensation. The City shall pay Consultant a price not to exceed $149,796.00 for the Services as set forth Exhibit A.

4. Payments. The City shall pay the Consultant 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. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Documents. All documents prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

6. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Consultant agrees to assign specific individuals to key positions. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are

not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the City.

8. Licenses; Materials. Consultant shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Consultant. The City has no obligation to provide Consultant, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Consultant.

9. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and Consultant will strive to perform Services in a manner consistent with that level of care and skill ordinarily exercised by other members of Consultant's profession currently practicing in the same locality under similar conditions.

10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Consultant, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies

and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. 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 are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreement with Subcontractor containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be

responsible for executing the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Consultant's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Additionally certificates of insurance submitted without referencing a contract number will be subject to rejection and returned or discarded. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(b) Auto Liability - Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability - Follow Form to underlying insurance.

(2) Consultant's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

a. Commercial General Liability. Consultant 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 this Agreement, 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.

b. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. 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 this Agreement, 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.

c. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of $2,000,000 each claim and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of the Services, and the Project Manager shall be required to submit certificates of insurance evidencing proper coverage is in effect as required above.

d. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state

statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement 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.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days' prior written notice to the City.

12. Applicable Law; Venue. In the performance of this Agreement, Consultant shall abide by and conform to any and all laws of the United States, State of Arizona and City of Avondale, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

13. Termination; Cancellation.

13.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Consultant of written notice by the City. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

13.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

13.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this

Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

14. Miscellaneous.

14.1 Independent Contractor. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements of its agreed scope of work as set forth in Section 2 above. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.

14.2 Laws and Regulations. The Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (a) existing and future City and County ordinances and regulations, (b) existing and future state and federal laws and (c) existing and future Occupational Safety and Health Administration ("OSHA") standards.

14.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.

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

14.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

14.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Consultant agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

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

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

14.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used.

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

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

14.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

14.13 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered to the party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (c) given to a recognized and reputable overnight delivery service, to the address set forth below or (d) delivered by facsimile transmission to the number set forth below:

If to the City:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Facsimile: 623-333-0100 Attn: Charles P. McClendon, City Manager
With copy to:	GUST ROSENFELD, P.L.C. 201 East Washington, Suite 800 Phoenix, Arizona 85004-2327 Facsimile: 602-340-1538 Attn: Andrew J. McGuire, Esq.
If to Consultant:	AMEC Earth and Environmental, Inc. 1405 West Auto Drive Tempe, Arizona 85284-1016 Facsimile: 480-785-0970 Attn: James M. Oliver

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (d) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.14 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

14.15 Conflicting Terms. In the event of a conflict between the RFQ, the Consultant's response to the RFQ, the Scope of Work and this Agreement, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

_____
Charles P. McClendon, City Manager

ATTEST:

_____
Linda M. Farris, City Clerk

"**Consultant**"

AMEC EARTH & ENVIRONMENTAL, INC., a Nevada corporation

By:_____

Name:_____

Its:_____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2007, by Charles P. McClendon, the 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

My Commission Expires:

_____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2007, by _____ as _____ of AMEC Earth & Environmental, Inc., a Nevada corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
AMEC EARTH & ENVIRONMENTAL, INC.

[Scope of Work]

See following pages.

April 25, 2007
AMEC Proposal No. PW07-03-03

City of Avondale
399 East Lower Buckeye Road
Avondale, Arizona 85323

Attn: Ms. Marilyn DeRosa, Water Resources Director

Re: Abandonment of Registered Wells 55-605042 and 55-604520 and Installation of Replacement Production Well No. 22 and Well No. 25

AMEC Earth and Environmental, Inc. (AMEC) is pleased to submit this proposal for the abandonment of two wells with replacement construction of new municipal service wells for the City of Avondale (City). The two project wells and approximate annual withdrawal replacement values, based upon Arizona Department of Water Resources (ADWR) new replacement standards, are as follows:

- Abandonment of existing Well 55-605042 and installation of replacement Well No. 22
  Replacement Value: 4,032 acre-feet per year (2,500 gallons per minute per 24-hours)
- Abandonment of existing Well 55-604520 and installation of replacement Well No. 25
  Replacement Value: 1,935 acre-feet per year (1,200 gallons per minute per 24-hours)

AMEC will not exceed the established budget without prior approval from the City of Avondale. The cost estimate for performing the services described by this proposal is $149,796, which includes labor charges of $115,500, direct expenses of $17,180 and outside services of $17,116.

We appreciate the opportunity to provide well abandonment and well construction services to the City of Avondale. If you have any questions regarding this proposal, please contact either of the undersigned at (480) 940-2320.

Respectfully submitted,

AMEC Earth & Environmental, Inc.

Gregory P. Nickel, R.G., P.E.
Hydrogeologist

And:

James M. Oliver, R.G.
Vice President Water Resources

c: Addressee (2)

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SCOPE OF WORK
DRILLING, INSTALLATION AND TESTING OF
CITY OF AVONDALE PRODUCTION WELL No. 22 AND WELL No. 25

Task 1.0 Well 55-605042 and Well 55-604520 Abandonment

AMEC Earth and Environmental, Inc. (AMEC) will provide professional services to properly abandon Arizona Department of Water Resources (ADWR) well registry numbers 55-605042 and 55-604520 and replace the two existing wells with City of Avondale (City) Production Well No. 22 and Well No. 25, respectively. A location map is presented as Figure 1. ADWR Registration reports for the two wells are attached in Appendix A.

Subtask 1.1 ***Well Permitting*** includes the preparation of an ADWR *Change of Ownership* form to transfer the existing well ownerships to the City, *Notice of Intent (NOI) to Drill a Replacement Well (NOI)* form for the replacement of Well 55-605042 and Well 55-604520, including the required *55-90 New Well Construction Supplement* with preliminary well designs. The replacement well NOI requires completion of a well abandonment NOI, including a preliminary abandonment design. The well abandonment applications will be finalized with ADWR pending completion of a down-hole well video (see Subtask 1.3 below). A variance method of abandonment (per ADWR A.A.C. R12-15-816) may be applicable to each specific well and will be evaluated subsequent to completion of the down-hole well video survey. An alternative method of abandonment will substantially reduce the overall standard abandonment costs, if applicable. AMEC and ADWR permitting representatives will conduct a site inspection of the existing and new well locations as required for issuance of each new replacement well drilling certificate.

Subtask 1.2 ***Well Abandonment Technical Specifications*** includes the preparation of well abandonment technical specifications applicable to each well individually. The technical specifications will present available information regarding each existing well and present the required and approved ADWR abandonment procedures and materials. The abandonment scope of work includes identifying, contacting, and securing bids from five licensed Arizona drilling contractors with the expertise and availability to perform the well abandonment work in a timely manner that meets the City scheduling requirements. AMEC will address any contractor questions, review solicited bids and provide a contractor recommendation to City representatives.

Subtask 1.3 ***Abandonment Administration*** involves the coordination of pre-abandonment activities including the recommendation of an abandonment variance, if applicable, and final abandonment design with approval by ADWR. AMEC will conduct discussions with ADWR as part of the scope of work to refine acceptable abandonment methods and materials, with the intent to properly abandon the well in a cost effective manner. Administration includes AMEC oversight and documentation of contractor field activities during final abandonment activities. Additionally, AMEC will complete site specific Health and Safety plans for review and approval by all field operation personnel including daily tailgate safety meetings.

A down-hole video survey will be conducted at each well to determine the overall well conditions. The video will allow the evaluation of well casing conditions, perforations, encrustation, and depth of fill. Well 55-605042 will require the removal of the existing down-hole pump equipment by the contractor prior to the video survey. Well 55-604520 will require the removal of backfilled material prior to the video survey. AMEC will review the well videos and make a final recommendation to the City regarding abandonment methods and determine if a variance method of abandonment is applicable. If applicable, a variance method of abandonment will be designed and submitted to ADWR for final approval. Upon final approval, the contractor will complete well abandonment. AMEC will conduct site visits daily during contractor abandonment activities (averaging 4 to 6 hours per day on-site).

Subtask 1.4 Preparation of Well Abandonment Report consists of the preparation of a Well Abandonment Report summarizing all work conducted during each well abandonment. The Well Abandonment Report will include documentation collected during field visits, including the pre-abandonment well video log, permitting, casing treatment methods, grouting and/or sanding methods and volumes, and down-hole seal type and installation depths. A detailed as-built drawing of the abandoned well will be included in the report. Subtask 1.4 deliverables will include two (2) final copies of the Well Abandonment Report within 30 days after completion of contractor abandonment activities.

Task 2.0 Design of City of Avondale Well No. 22 and Well No. 25

AMEC will provide professional services to design City Production Well No. 22 and Well No. 25. Scope of work includes preparation of well technical specifications, bid assistance and City support in the selection of a drilling contractor. Task 2.0 has been divided into the following two subtasks:

Subtask 2.1 Technical Specifications Preparation includes the preparation of a technical specification document for the drilling, zonal sampling, construction installation, and aquifer testing of Well No. 22 and Well No. 25. The technical specifications will provide details of the schedule, methods, materials, record keeping, and standards required of the drilling contractor for the specified work tasks. Subtask 2.1 deliverables will include two (2) copies of the draft technical specifications and two (2) bound copies and one (1) CD of the final technical specifications.

Subtask 2.2 Bid Period Assistance includes identifying, contacting, and securing bids from drilling contractors with the expertise and availability to perform the new wells installation work in a timely manner according to the City's schedule. The scope of work includes addressing any contractor questions, and assisting in the preparation of addenda to the bid technical specifications, if required. AMEC will provide a consultant's estimate of construction costs and will attend the bid meeting which will include a well site inspection. All participating bidders will be required to provide an available start date as part of the bid submission requirements. AMEC will also attend the new well pre-construction meeting with the selected contractor and the City prior to the start of work.

This subtask also includes compliance effort for Arizona Pollutant Discharge Elimination System (AZPDES) permitting for discharges (i.e., De Minimus General Permit No. AZG2004-001) from the wells during construction and testing.

Task 3.0 Installation, Sampling and Testing City Of Avondale Well No. 22 and Well No. 25

AMEC will provide professional services for the construction administration of the pilot boreholes and subsequent construction of City Production Well No. 22 and Well No. 25. Task 3.0 has been divided into the following four subtasks:

Subtask 3.1 Pilot Borehole Drilling involves the coordination, inspection and documentation of the borehole drilling, including zonal sampling. In order to provide cost-effective oversight while maintaining an acceptable level of quality assurance and contractor inspection, AMEC will conduct daily site visits during the borehole drilling (averaging 4 to 8 hours per day on-site), and will remain "on-call" on a 24-hour per day basis. The contractor will be required to record the penetration rate and drilling fluid properties, collect representative drill cutting samples, and report any significant events or problems during the borehole drilling operations. AMEC will conduct detailed field lithologic logging of the drill cuttings using the Unified Soil Classification System (USCS), including lithology composition. A maximum of four (4) representative drill cutting sample intervals will be collected, composited, and submitted for laboratory sieve analysis for the well screen perforation slot design. Down-hole geophysical surveying will be conducted by a contractor upon completion of the pilot borehole drilling. AMEC will inspect the geophysical logs with assistance by the geophysical logging company, who will be subcontracted directly by the selected drilling contractor.

Depth specific zonal sampling intervals will be identified by AMEC based on the detailed lithologic logging combined with the geophysical analysis. Zonal groundwater sampling will be conducted to provide depth-specific water quality information required for the final well design. AMEC will inspect and document the installation of a formation sampling tool to collect discrete zonal samples of formation water. A maximum of seven (7) intervals will be sampled in the pilot hole. Each depth specific zonal sample will be pumped up to 12 hours. During this time AMEC will monitor the zonal discharge water for electrical conductivity, sand content, pH, and temperature parameters. Upon acceptable discharge parameters, AMEC will collect water samples for laboratory analyses. Subsequent to sample collection the formation sample tool will be raised to the next depth specific interval. Two additional random backup samples will be collected for umpire comparison. AMEC will deliver the water samples to a Arizona Department of Health Services (ADHS) licensed laboratory to provide water quality analysis for major anions and cations including arsenic and chromium by E200.8, nitrate as nitrogen and fluoride by E300, and total dissolved solids (TDS) by SM 2450 C. AMEC will provide the City a summary evaluation meeting of the pilot-hole water quality sampling program 48 hours after receipt of the last laboratory water quality analysis. Based upon the City review each final well design will be developed and approved by both AMEC and the City. Each pilot hole will then be reamed to the final well design depth.

Subtask 3.2 Construction Administration of Production Well Installation involves the coordination, inspection and documentation of each well installation. After completion of borehole reaming, AMEC will conduct construction inspection on a continuous (24-hour per day) basis. Pre-construction certification and continuous inspection of the casing, screen and annulus material installation will assure that each well installation is conducted in accordance with the methods, materials and construction standards detailed in the Technical Specifications. AMEC will document all construction materials, installation techniques and well development techniques via pipe tallies, cement grout records, development records and field notes. Samples of the filter pack material and cement grout will be collected and submitted to the City for archival purposes, and a detailed as-built of each production well will be prepared for inclusion in the Well Construction Report (Subtask 3.4).

Subsequent to each well construction, drill rig well development by means of swabbing and surging will be conducted. AMEC will perform inspection during the well development operations to assure that the well development is conducted in compliance with Technical Specification methods and American Water Works Association (AWWA) standards, and well development is proceeding as required. AMEC will monitor and conduct routine field water quality sampling of the well development water discharge including electrical conductivity, sand content, pH, and temperature of the discharge water.

Subsequent to well development and drill demobilization a video survey and gyroscopic survey (plumbness and alignment test) will be performed by the contractor after each production well installation is complete. AMEC will inspect the final video survey and gyroscopic survey of each well to verify video integrity, well construction, and compliance with the plumbness and alignment requirements for a new well were met.

Subtask 3.3 Post-Construction Well Testing and Analysis consists of the contractor installing a temporary down-hole test pump assembly in each well, including surface discharge piping, valving and related flow meters and orifice plates. The testing will consist of an initial 6-hour pump and surge period during which time additional well development will occur to verify pump operation and define the overall low and high test production limits of the pump and well. Subsequently, a 10-hour step-discharge aquifer test and a 24-hour constant-rate aquifer test, followed by a recovery test will be designed and conducted. The step-discharge test will consist of up to five (5) varying discharge rates (steps), each approximately 2 hours in duration. During testing AMEC will record water-level measurements and monitor electrical conductivity, sand content, pH, and temperature of the discharge water.

Following the step-discharge test, a 24-hour constant-rate aquifer test will be conducted. The optimum pumping rate of the well (determined during the step-discharge test) will be maintained throughout the constant-rate test. During testing, AMEC will record water-level measurements and monitor electrical conductivity, sand content, pH, and temperature of the discharge water.

The contractor will perform a spinner flow meter survey during the pump testing. A maximum of four (4) depth specific water quality samples will be collected following the spinner test analysis and analyzed for the same suite of constituents as presented in the zonal sampling Subtask 3.1. The depth specific samples will document water quality through the screen interval for future

reference should modifications to the well be necessary as water quality requirement changes. Near the end of the constant-rate aquifer test, a groundwater sample will be collected by AMEC for analysis by a state licensed analytical laboratory for Drinking Water Standards New Source Approval including; perchlorate by EPA Test Method 314.0, which has recently been added to Arizona Drinking Water Standards.

Immediately upon terminating the constant-rate test, a recovery test will be conducted by AMEC personnel until the water level has obtained a 95 percent recovery to static conditions, or for an 8-hour period, whichever occurs first.

Subtask 3.4 Preparation of Well Construction Report consists of the preparation of a Well Construction Report summarizing all work conducted during the production well installation. The Well Construction Report will include applicable engineering design analysis and documentation collected during well drilling and installation, including pipe tallies, grout records, penetration rate logs, geophysical logs, the lithologic log, and the final video survey log. The Well Construction Report will also present the aquifer testing results, analytical results of the water quality samples, and recommendations of the optimum pumping rate and pump setting. A detailed as-built drawing of the production well will be included in the Well Construction Report. Included will be digital CDs containing all electronic geophysical datum, down-hole gyro and video survey logs, and photographs taken during the entire well construction and testing process. Subtask 3.4 deliverables will include two final copies of the Well Abandonment Report within 60 days after laboratory submission of the New Source Drinking Water Sample (30-day sample analysis turn-around).

Capacity to Perform Work

Preconstruction project scheduling will be reviewed with the City. Specific critical schedule tasks will be mutually identified and established as project milestones. AMEC will complete all work timely and within the timeframe required by the City.

Assumptions

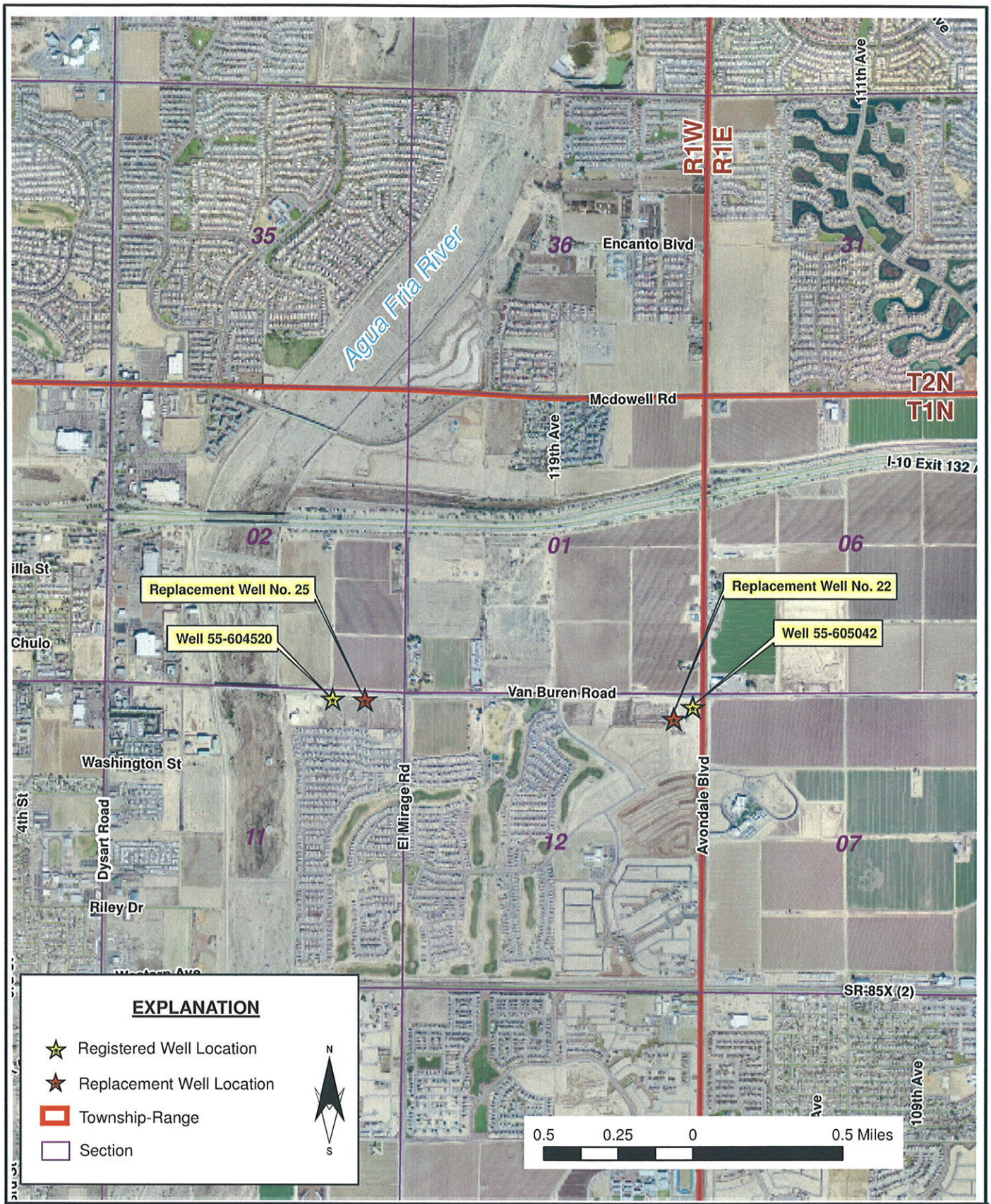
AMEC assumes that the City will contract directly with the well abandonment contactor and new well drilling contractor, each respectively, for well abandonment and new well construction activities. The drilling contractor will subcontract the geophysical surveys, down-hole spinner analysis, and the aquifer pump test work. AMEC will contract all water quality analyses with a ADHS licensed laboratory.

COST ESTIMATE
April 25, 2007

Task	Total Labor Cost	Direct Costs	Sub-contractor Costs	TOTAL COSTS
1.0 Well 55-605042 & 55-604520 Abandonment				
1.1 Well Permitting	3,360	300	--	3,660
1.2 Well Abandonment Technical Specifications	3,960	500	--	4,460
1.3 Abandonment Administration	11,400	900	--	12,300
1.4 Well Abandonment Report	3,960	600	--	4,560
Task 1.0 Subtotal	**22,680**	**2,300**	**--**	**24,980**
2.0 Design of the City of Avondale Production Well No. 22 & Well No. 25				
2.1 Technical Specifications Preparation	5,920	850	--	6,770
2.2 Bid Period Assistance	3,960	300	--	4,260
Task 2.0 Subtotal	**9,880**	**1,150**	**--**	**11,030**
3.0 Installation, Sampling, and Testing of the City of Avondale Production Well No. 22 & Well No. 25				
3.1 Borehole Drilling	26,920	1,050	5,566*	33,536
3.2 Construction Administration of Production Well Installations	18,560	2,100	--	20,660
3.3 Post-Construction Well Testing and Analysis	17,560	2,100	11,550*	31,210
3.4 Preparation of Well Construction Report	19,900	1,550	--	21,450
Task 3.0 Subtotal	**82,940**	**6,800**	**17,116**	**106,856**
6% Labor Administrative Recovery Fee		6,930		**6,930**
PROJECT TOTALS 1.0, 2.0 & 3.0	**115,500**	**17,180**	**17,116**	**149,796**

*Subtask 3.1 & 3.3 subcontractor costs include laboratory analysis for zonal water quality and New Source Approval constituents, respectively. Presented costs include a 10% markup.

FIGURES



JOB NO.:	PW07-03-03
DESIGN:	GPN
DRAWN:	GPN
DATE:	03/28/07
SCALE:	1:27,135

Replacement Well Location Map

City of Avondale
Maricopa County, Arizona

FIGURE
1

amec

Map Document: (X:\Projects\5-115-005100\MXD\Borehole Location Map.mxd)

APPENDIX A

ADWR REGISTRATION REPORTS

DEPARTMENT OF WATER RESOURCES
99 EAST VIRGINIA AVENUE
PHOENIX, ARIZONA 85004

RECEIVED MAR 25 1982 DEPT. OF WATER RESOURCES

REGISTRATION OF EXISTING WELLS

READ INSTRUCTIONS ON BACK OF THIS FORM BEFORE COMPLETING
PRINT OR TYPE — FILE IN DUPLICATE

06

FOR OFFICE USE ONLY	
REGISTRATION NO. 55-	605042
FILE NO.	B(1-1)12 aaa
FILED (DATE)	3-25-82 AT 9 (TIME)
INA	
AMA	Phoenix

REGISTRATION FEE (CHECK ONE)	
EXEMPT WELL (NO CHARGE)	☐
NON-EXEMPT WELL — $10.00	☒

1. Name of Registrant:
Carl E. Weiler and PATRICIA J. Weiler
Rt. 1 Box 311 Laveen Az. 85339
(Address) (City) (State) (Zip)

2. File and/or Control Number under previous groundwater law:
NA (File Number) 35- NA (Control Number)

3. a. The well is located within the NE ¼ NE ¼ NE ¼, Section 12, of Township 1 (N)S, Range 1 E(W) G & SRB & M, in the County of Maricopa.
b. If in a subdivision: Name of subdivision ——, Lot No. ——, Address ——.

4. The principal use(s) of water (Examples: irrigation - stockwater - domestic - municipal - industrial)
Irrigation.

5. If for irrigation use, number of acres irrigated from well 288.

6. Owner of land on which well is located. If same as Item 1, check this box ☒
(Address) (City) (State) (Zip)

7. Well data (If data not available, write N/A)
a. Depth of Well NA feet
b. Diameter of casing NA inches
c. Depth of casing NA feet
d. Type of casing NA.
e. Maximum pump capacity 2500 gallons per minute.
f. Depth to water 132 feet below land surface.
g. Date well completed NA (Month) (Day) 1951 (Year).

8. The place(s) of use of water. If same as Item 3, check this box ☒
____ ¼ ____ ¼ ____ ¼, Section ____ Township ____ Range ____
____ ¼ ____ ¼ ____ ¼, Section ____ Township ____ Range ____
Attach additional sheet if necessary.

9. DATE 3/19/82 SIGNATURE OF REGISTRANT [signature]
AGRICULTURAL ENTERPRISES, INC.
P.O. BOX 311
Laveen, AZ 85339

INSTRUCTIONS FOR COMPLETING REGISTRATION FORM

General Instructions

1. A person who owns an "Existing Well" shall register the well, pursuant to A.R.S. 45-593, by filing this form in duplicate with the Department of Water Resources not later than midnight June 14, 1982. The form must be completed and signed. Failure to do so will constitute a violation of A.R.S. 45-593, and may subject the well owner to injunction and/or civil penalties, pursuant to A.R.S. Title 45, Article 12.

2. An "Existing Well" means, (1) a well which was drilled on or before June 12, 1980 and which is not abandoned or sealed, or (2) a well which was not completed on or before June 12, 1980, but for which a Notice of Intention to Drill was on file with the Arizona Water Commission on or before June 12, 1980.

3. No registration fee is required for Exempt Wells. A $10.00 registration fee must accompany registration forms for all Non-Exempt Wells.

4. An "Exempt Well" means a well having a pump with a maximum capacity of not more than 35 gallons per minute which is used to withdraw groundwater. An Exempt Well may include the non-commercial irrigation of not more than 1 acre of land.

5. A "Non-Exempt Well" means a well that is not an "Exempt Well".

INSTRUCTIONS FOR REGISTRATION QUESTIONS

1. The Registrant must be the owner of the well and may be an individual, public or private corporation, company, partnership, firm, association, society, estate, trust, any other private organization or enterprise, the United States, any state, territory or country or a governmental entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this State.

2. If you own an existing irrigation well drilled at any time, or any other type of well drilled on or after June 20, 1968, you should have an assigned control and/or file number. Write these numbers in item 2. If you do not know the number, please explain the reason on the form or on an attached sheet.

3. a. Fill in the Section, Township and Range in all cases if it is available.
   b. If the well is in a subdivision and you have this information, give the subdivision name, Lot Number, and Address.

4. Show all purposes for which the water is used.

5. If the well is used for irrigation, give the number of acres irrigated in 1980 from the well.

6. If the owner of the land is an individual, give the last name, first name, middle initial. If the owner of the land is a corporation, partnership, firm, etc., fill in the appropriate title.

7. Complete the section on Well Data with the most accurate information available to you. If the data is not available, write N/A in the blanks.

8. Give the legal description of the place of use of the water. If place of use is in a subdivision and legal description is not available, give the subdivision name, Lot Number and/or address on the blank line.

9. The person in whose name a well is registered shall notify the Department of any change in ownership and shall keep all information on the registration record current and accurate. A form entitled "Change of Well Information/Ownership" is available for this purpose. A blank form will be furnished with the returned duplicate copy of the registration form.

ARIZONA DEPARTMENT OF WATER RESOURCES

GROUNDWATER MANAGEMENT SUPPORT SECTION
MAIL TO: P.O. BOX 458 - PHOENIX, ARIZONA 85001- 0458
FOR INFORMATION: CALL MONICA ORTIZ AT (602)417-2470

RECEIVED
FEB - 4 2000
RECORDS MGT

REQUEST FORM TO CHANGE WELL INFORMATION
OWNERSHIP * DRILLER

Please complete the appropriate section of this request form and return to P.O. Box 458, Phoenix, Arizona 85001-045. In accordance with A.R.S. § 45-113, please submit the applicable fee. NOTE: A.R.S. §45-593 (C) requires that the Department be notified of change of well ownership and that the new owner is required to keep the Department's Well Registration records current and accurate. Well data and ownership changes must be submitted within thirty days after changes take place.

SAVE THIS FORM TO REPORT FUTURE CHANGES IN OWNERSHIP, CHANGES IN ADDRESS, OR CHANGE IN WELL DATA SUCH AS PUMP CAPACITY, CORRECTION OF LEGAL DESCRIPTION, CHANGE OF WELL DRILLER AND AMENDING INFORMATION PREVIOUSLY FILED.

1. **CHANGE OF WELL INFORMATION: (NO FEE REQUIRED)**

NOTE: If the location of the proposed well changes after drilling authority has been issued, **attach a $10.00 reissue fee for each** of the drilling authorities to be changed.

WELL REGISTRATION NO. 55-_____ **FILE NO:**_____

I/We request the following well information be changed: _____

_____

Date_____ Signature of Current Well Owner_____

***Note: This information is on your copy of the Notice of Intent to Drill.**

2. **STATEMENT OF CHANGE OF WELL OWNERSHIP: ($10.00 FEE REQUIRED)**

NOTE: If this change consists of more than one well and the names are common: attach a $10.00 fee. Otherwise, each well requires a separate fee of $10.00.

I, Scott Zipprich, state that I am the **Previous/New Owner** of the well described below:

____ ¼ NE ¼ NE ¼ of Section 11 Township 1 (N)/S Range 1 (E)/W
10 Acre 40 Acre 160 Acre

Assessor's tax parcel number of the parcel on which the well is located: Book_____ Map_____ Parcel_____.

Well Registration No. 55- 604520

File No._____(if known)

Maricopa County
PRINT Previous Owner's Name

City Of Avondale
PRINT New Owner's Name

3335 W. Durango St.
Mailing Address

1211 South Fourth St.
Mailing Address

Phoenix AZ 85024
City State Zip

Avondale AZ 85323
City State Zip

Telephone Number

623-932-1909
Telephone Number

Signature of Previous/New Well Owner_____ **Date** 2/2/00

DWR 55-71a (Rev 1/99)

DEPARTMENT OF WATER RESOURCES
99 EAST VIRGINIA AVENUE
PHOENIX, ARIZONA 85004

MAR 1982 DEPARTMENT OF WATER RESOURCES

REGISTRATION OF EXISTING WELLS

READ INSTRUCTIONS ON BACK OF THIS FORM BEFORE COMPLETING
PRINT OR TYPE — FILE IN DUPLICATE

06 - SB 04

FOR OFFICE USE ONLY
REGISTRATION NO. 55- 604520
FILE NO. B(1-1)11 aa
FILED 3-12-82 (DATE) AT 8 (TIME)
INA
AMA Phoenix

REGISTRATION FEE (CHECK ONE)	
EXEMPT WELL (NO CHARGE)	☐
NON-EXEMPT WELL – $10.00	☒

1. Name of Registrant:
GEORGE J. & NEOMA B. TIBSHRAENY JT/WRS
5629 NORTH 7th DRIVE (Address) PHOENIX (City) ARIZONA (State) 85013 (Zip)

2. File and/or Control Number under previous groundwater law:
(File Number) 35- (Control Number) Well drilled prior 1968.

3. a. The well is located within the NE ¼ NE ¼ ____ ¼, Section 11, of Township 1 N/S, Range 1 E/W, G & SRB & M, in the County of Maricopa.
b. If in a subdivision: Name of subdivision ____, Lot No. ____, Address ____.

4. The principal use(s) of water (Examples: irrigation - stockwater - domestic - municipal - industrial)
Irrigation.

5. If for irrigation use, number of acres irrigated from well Originally .58

6. Owner of land on which well is located. If same as Item 1, check this box ☒
(Address) (City) (State) (Zip)

7. Well data (If data not available, write N/A)
a. Depth of Well 165 feet
b. Diameter of casing 20 inches
c. Depth of casing 165 feet
d. Type of casing Metal.
e. Maximum pump capacity 1200 gallons per minute.
f. Depth to water 80 feet below land surface.
g. Date well completed Prior 1949 (Month) (Day) (Year).

8. The place(s) of use of water. If same as Item 3, check this box ☒.
____ ¼ ____ ¼ ____ ¼, Section ____ Township ____ Range ____
____ ¼ ____ ¼ ____ ¼, Section ____ Township ____ Range ____
Attach additional sheet if necessary.

9. DATE 3/1/82 SIGNATURE OF REGISTRANT George J. Tibs / Neoma B. Tibshraeny

DEPARTMENT OF WATER RESOURCES
99 East Virginia Avenue
Suite 100
Phoenix, Arizona 85004

CHANGE OF WELL INFORMATION

OCT 1984 DEPARTMENT OF WATER RESOURCES

Registration Number 55- 604520

I request the following information be changed in Well File Number B(1-1)11AA

Date Sept. 28th, 1984 George J. Tibshraeny
Signature of Well Owner

STATEMENT OF CHANGE OF WELL OWNERSHIP

I, GEORGE. J. TIBSHRAENY, state that I am (no longer) the (new) owner of the well described below:

Township 1N Range 1W Section 11, NE ¼ NE ¼ ____ ¼

Registration #55- 604520 File No. B(1-1)11AA

Previous Owner	New Owner
GEORGE. J. AND NEOMA B. TIBSHRAENY	Flood Control Dist. of Maricopa Cou
Address: 1001 E. ROCKWOOD DRIVE	Address: 3335 W. Durango St.
City: Phoenix State: Arizona Zip: 85024	City: Phoenix State: Arizona Zip: 85024

NOTE: ARS §45-593 requires that the Department be notified of change of well ownership and that the well owner is required to keep the Department's Well Registration records current and accurate. Well data and ownership changes must be submitted within 30 days after changes take place.

NOTE: SAVE THIS FORM TO REPORT FUTURE CHANGES IN OWNERSHIP OR WELL DATA SUCH AS PUMP CAPACITY, ETC.

DWR-55-51-12/83.

CITY COUNCIL REPORT

SUBJECT:
Purchase Authorization - Demolition of City owned buildings - 3D International

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Director of Parks, Recreation and Libraries (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council authorize a purchase order to 3D/International, Inc., through the Mohave Educational Services Cooperative in the amount of $ 96,800 for the demolition of city owned buildings.

BACKGROUND:

The recently completed Municipal Operations Service Center has allowed staff to move forward with plans to demolish the old Development Services Buildings and Field Operations Maintenance Yard. In addition, the city acquired a car wash facility located at Western Avenue and 5th Street for the proposed Old Town Library, and a single family mobile home located at 103 West Elm Street that was damaged by excessive flood damage. The demolition of these city owned facilities will allow the new projects to move forward or will eliminate health and safety issues.

DISCUSSION:

Staff coordinated the selection of a General Contractor via the Mohave Educational Services Cooperative with the Finance Department Procurement Office. The selected contractor, 3D/International, Inc., provided a scope of work and fee proposal to demolish and remove the buildings and equipment from the three sites.

BUDGETARY IMPACT:

The total cost of the project is $96,800, which includes a $5,000 owner's contingency to cover any unforeseen work items that were not summarized in the scope of work. Funding for this work is budgeted in Building Maintenance Account # 101-5420-00-6180.

RECOMENDATION:

Staff recommends that the City Council authorize a purchase order to 3D/International, Inc., through the Mohave Educational Services Cooperative in the amount of $ 96,800 for the demolition of city owned buildings.

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Design-Build Agreement between the City of Avondale and Hunter Contracting Co.

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Jess Segovia, Transit Administrator (623)333-1030

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is seeking City Council's approval to enter into a Design-Build Agreement with Hunter Contracting Co. (HCC) for the design and construction of the Estrella Mountain Community College (EMCC) Mini Bus Center and parking lot (Attachment A). An estimate of $233,239 was received from HCC for all Pre-construction Design Services, which includes the design of the Mini Bus Center, adjacent Parking Lot and Landscaping. Upon completion of the design phase, HCC will submit a Guaranteed Maximum Price (GMP) for the construction portion of the project. The budget for this project is $1.7 million.

BACKGROUND:

In 2005, the City of Avondale approached Maricopa Community College District to install a bus stop shelter on the EMCC campus. Initial review of the project estimated the cost at $190,000. On November 24, 2005, City Council approved an Intergovernmental Agreement with Maricopa Community College District, on behalf of Estrella Mountain Community College, for an amount not to exceed $190,000 (Attachment B). Maricopa County Community College District was unable to contribute any funding to the project at that time.

In August 2006, Staff completed a conceptual design that was consistent with the existing artistic design elements on campus. This design incorporated a butterfly theme, which included colorful shade features and contemporary seating (Attachment C). The design and construction of the concept Mini Bus Center was then estimated to cost $850,000 (Attachment D). The increase in the design and construction estimate can be attributed to the design concept and rising construction costs. Shortly thereafter, Maricopa Community College District committed $850,000 for the design and construction of a parking lot adjacent to the Mini Bus Center.

The City released a Request for Statements of Qualifications for the Design/Build Services of the EMCC Mini Bus Center Project in November 2006 (Attachment A, Exhibit E). The City received a response from Hunter Contracting Co. and Kiewit. The selection team, consisting of City and EMCC staff, seeks Council's approval to award the contract to Hunter Contracting Co. based on their written proposal (Attachment A, Exhibit F), interview and experience working on transportation-related projects.

DISCUSSION:

This contract consists of two separate agreements. The first agreement is for the Pre-construction Design services, which was estimated by HCC to be an amount not to exceed $233,239 (Attachment A, Exhibit I). The second agreement is for Construction Services. Hunter Contracting Co. will submit a Guaranteed Maximum Price (GMP) for construction services upon completion of the design. If the GMP is within budget limits, the second agreement in the contract will be executed. If the GMP is for an amount greater than the budget allows, and staff cannot negotiate a lower contract price, the second agreement will not be executed. Staff may then seek another construction company to complete the construction services portion of the project.

Under the terms of the Intergovernmental Agreement with Maricopa County Community College District, the City of Avondale will be responsible for providing the bid process and securing and managing the design-build

contract with HCC. The City will contribute no more than $850,000 to the design and construction of the Mini Bus Center and landscaping. Maricopa County Community College District will be responsible for any and all costs associated with the design and construction of the adjacent parking lot.

The City will invoice Maricopa County Community College District for all parking lot design and construction costs immediately upon receipt of invoices from the selected design-construction company. The total estimated cost of this project is $1.7 million.

Estrella Mountain Community College will be responsible for maintaining the site once the project is complete. Bus Service will continue to be provided by the City of Avondale through an Intergovernmental Agreement with the City of Phoenix. There are currently two transit routes that serve EMCC; Route 41 (Indian School Road) and Route 131 (START).

BUDGETARY IMPACT:

The City of Avondale has been awarded $400,000 in Federal Transit Administration (FTA) Capital Assistance Grants to be used on this project. In addition, the City has received over $450,000 in Local Transportation Assistance Funds (LTAF I and II), which will be used as the local match requirement to the FTA Federal funding. The City is obligated to spend these funds in a timely manner.

	City of Avondale	**Maricopa County Community College District**
	Mini Bus Center & Landscaping	Parking Lot
FTA Grant	$400,000	
LTAF II Grant	$225,000	
LTAF I Grant	$225,000	
Subtotal	**$850,000**	
EMCC		**$850,000**
Project Total	***$1,700,000***	

RECOMENDATION:

Staff recommends that the City Council approve the Design-Build Agreement with Hunter Contracting Co. to design and construct a Mini Bus Center and parking lot on the Estrella Mountain Community College campus for an amount not to exceed $1.7 million.

ATTACHMENTS:

Click to download

- Design-Build Agreement with Hunter Contracting
- Attachment B - Intergovernmental Agreement with Maricopa Community College District
- Attachment C - Mini Bus Center Rendering
- Attachment D - Mini Bus Center Estimate

DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

THIS DESIGN-BUILD AGREEMENT (this "Agreement") is made _____ _____, 2007, by and between the City of Avondale, an Arizona municipal corporation (the "City") and Hunter Contracting Co., an Arizona corporation ("Contractor") for the purpose of designing and constructing a Mini Bus Center in conjunction with the Maricopa County Community College District on the campus of Estrella Mountain Community College ("the "Project").

ARTICLE 1
GENERAL PROVISIONS

1.1 Project Summary. The Contractor shall perform all design and construction services set forth in Article 3 below (the "Services"), including providing all material, equipment, tools and labor necessary to complete the work described herein and reasonably inferable from the Contract Documents (as defined below), including the upgrades and improvements to be encompassed in the Project.

1.2 Phased agreement. This Agreement consists of two discreet phases: (i) the pre-construction phase (design) and (ii) the construction phase. The Contractor shall be compensated on a not-to-exceed total fee basis for the pre-construction phase services as set forth in this Agreement, provided that such services may extend through the construction phase for various components of the Project. At the point in the pre-construction phase services as determined by the City, the City may request that the Contractor submit a proposal for a guaranteed maximum price for the construction phase of the Project (the "GMP"). If the City and the Contractor cannot, after good faith efforts, agree on the GMP for the construction phase of the Project, the City may, in its sole discretion, terminate this Agreement (subject to the terms and conditions set forth in Article 12 below) and shall be free to procure professional services to complete the remaining portions of the Project by any means legally available, utilizing the Construction Documents, as defined in subsection 3.2(F) below.

1.3 Definitions.

A. "Applicable Law" means any law, rule, code, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by, any governmental body having jurisdiction, relating to the design, permitting, construction, equipping, financing, ownership, possession, or any other transaction or matter contemplated hereby relating to the design and construction of the Project.

B. "City's Program" means an initial description of the City's objectives, including budgetary and time criteria, flexibility and expandability requirements, special equipment and systems and site requirements.

C. "Contract Documents" means:

1. Change orders and written amendments to this Agreement signed by both the City and the Contractor, including the amendments, if any, relating to the GMP (each referred to herein as a "GMP Amendment"), attached hereto on Exhibit A and incorporated herein by reference.

2. This Agreement.

3. The Contractor's Guaranteed Maximum Price Proposal (the "GMP Proposal"), if any, attached hereto as Exhibit B-1 and incorporated herein by reference.

4. The Contractor's proposed (a) Scope of Services for the Project, (b) Scope of Services Fee Breakdown for the Project and (c) Schedule for the Project (collectively, the "Scope"), all attached hereto and incorporated herein by reference as Exhibit B-2.

5. The most current documents approved by the City pursuant to subsections 3.3(D), 3.3(E) or 3.3(F) below, attached hereto as Exhibits C-1, C-2 and C-3, and incorporated herein by reference.

6. The City's Program and other information provided pursuant to Section 4.1 below, attached hereto as Exhibit D and incorporated herein by reference.

7. The City's Request for Qualifications (the "RFQ"), attached hereto as Exhibit E and incorporated herein by reference.

8. The Contractor's response to the City's RFQ, attached hereto as Exhibit F and incorporated herein by reference.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

C. "Day" means calendar day.

D. "Environmental Conditions" means collectively, Hazardous Materials and Underground Storage Tanks.

E. "Environmental Damages" means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney's fees, which are incurred at any time as a result of the existence of Hazardous Materials upon, about or beneath the Project site or migrating or threatening to migrate to or from the Project site, and including, without limitation;

1. Damages for personal injury, or injury to property or to natural resources occurring upon or off the Project site.

2. Fees incurred for the services of attorneys, consultants, the Contractor, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements.

3. Liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in subsection 1.2(E)(2).

F. "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the United States or the State of Arizona and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

1. All requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

2. All requirements pertaining to the protection of the health and safety of employees or the public.

G. "Final Completion" shall be defined as set forth in subsection 3.6(A)(11) and shall occur not later than 60 days from the Date of Substantial Completion, (the "Date of Final Completion"), subject to modification by changes in the Work as provided in Article 9 below.

H. "Hazardous Materials" means any substance:

1. The presence of which requires investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

2. Which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act. 42 U.S.C. §§ 9601 *et seq.* ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.* ("RCRA").

3. Which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons.

4. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality or the United States or the State of Arizona.

5. The presence of which on the Project site causes or threatens to cause a nuisance upon the Project site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Project site.

6. The presence of which on adjacent properties could constitute a trespass by the Contractor or the City.

I. "Punch List" means that list of items provided by City to Contractor at the time of Substantial Completion indicating items to be completed or corrected, including the time for completion or correction by Contractor after Substantial Completion.

J. "Substantial Completion" shall be defined as set forth in subsection 3.6(A)(10) below and shall occur not later than the date set forth in the applicable GMP Amendment (the "Date of Substantial Completion"), subject to modification by changes in the Work as provided in Article 9 below.

K. "Subcontractor" means a person or entity employed or engaged by the Contractor or any person or entity directly or indirectly in privity with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the City.

L. "Underground Storage Tank" shall have the definition assigned to that term by § 9001 of RCRA, 42 U.S.C. § 6991, as amended, and also shall include:

1. Any tank of 1,100 gallons or less capacity used for storing motor fuel.

2. Any tank used for storing heating oil for consumption on the premises where stored.

3. Any septic tank.

4. Any pipes connected to items listed in subsections 1.3(L)(1) and 1.3(L)(2) above.

M. The "Work" includes the (1) Environmental Investigation set forth in Section 3.1 below, (2) Review of Design Documents and design remedies set forth in Section 3.2 below, (3) Pre-construction Phase General Services set forth in Section 3.3 below, (4) GMP Proposal provided in accordance with Section 3.4 and Article 8 below, (5) Construction Phase General Services provided in accordance with Section 3.5 below, if applicable, (6) Construction Services provided in accordance with Section 3.6 below, if applicable, (7) additional services that may be provided pursuant to an approved change order in accordance with Article 9 below

and (8) other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

ARTICLE 2
RELATIONSHIP OF THE PARTIES

2.1 Team Relationship. The City and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and each shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Project to be constructed within the time and budget constraints established by the City.

2.2 City Representations.

A. Project Management. The City will provide project management services. None of the City's project management activities are intended to supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Contractor or subconsultants in accordance with generally accepted architectural/engineering practices, except as otherwise specifically modified by this Agreement.

B. No Third Party Relationships. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City or the Contractor.

2.3 Contractor Representations.

A. Contractor Consultants. The Contractor shall provide a list of all consultants that the Contractor intends to utilize relating to the Project. The list shall include such information on the qualifications of the consultants as may be requested by the City. The City reserves the right to review and reasonably object to the consultants proposed, and the Contractor shall not retain a consultant to which the City has a reasonable objection.

B. Architect/Engineer. The Contractor shall provide or procure architecture, landscape and engineering services. Architecture, landscape and engineering services shall be (1) procured from licensed, independent design professionals retained by the Contractor or (2) furnished by licensed employees of the Contractor and such services shall be provided as required or as permitted by the laws of the state of Arizona. The person or entity providing architecture, landscape and engineering services shall be referred to as the "Architect/Engineer". If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Architect/Engineer.

C. Standards. The Contractor covenants with the City to furnish its skill and judgment with due care and in accordance with the highest standards of its profession and with Applicable Law in effect on the date of this Agreement or as subsequently amended.

D. Subcontractor Selection Program. Prior to the selection of any Subcontractors for the Project, the Contractor shall submit to the City a written procedure in conformance with ARIZ. REV. STAT. § 34-601 *et seq.*, as amended, for qualifications-based selection of Subcontractors to be utilized in completion of the Project (the "Subcontractor Selection Program"), which shall be attached hereto as Exhibit G and incorporated herein by reference. The Contractor shall be solely responsible for ensuring that (1) the Subcontractor Selection Program is in conformance with Applicable Law and (2) all Subcontractors are selected in accordance with the Subcontractor Selection Program. The Contractor shall defend indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including, but not limited to, attorney fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the Contractor's failure to appropriately select its Subcontractors. Additionally, the Contractor shall provide the City a list of all Subcontractors that the Contractor intends to utilize relating to the Project. The list shall include such information on the qualifications of the Subcontractors as may be requested by the City. The City reserves the right to review and reasonably object to the Subcontractors proposed, and the Contractor shall not retain a Subcontractor to which the City has a reasonable objection.

E. Key Personnel. The Contractor shall provide to the City a list of the proposed key project personnel of the Contractor and its Subcontractors to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the City. Such key personnel and consultants shall be satisfactory to the City and shall not be changed except with the consent of the City. The City's approval of substituted personnel shall not be unreasonably withheld.

F. Site Conditions. The Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions and constraints that are applicable to the Work such as (1) conditions bearing on transportation, disposal, handling and storage of materials, (2) the availability of labor, water, power and roads, (3) normal weather conditions, (4) observable physical conditions at the Project site, (5) the surface conditions of the ground and (6) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Contractor encounters subsurface or concealed conditions that differ materially from those which could reasonably have been determined from a site surface investigation by the Contractor on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then the Contractor shall give notice to the City promptly before conditions are disturbed and in no event later than seven Days after the first observance of the conditions if a Change Order is contemplated by the Contractor due to such conditions. Such materially different conditions, if discovered after a GMP is approved, may entitle the Contractor to an equitable adjustment in the GMP or schedule pursuant to the Change Order provisions set forth in Article 9 below.

2.4 City and Subcontractors. The City will require the Contractor to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with (A) the applicable provisions of this Agreement and (B) Applicable Law.

ARTICLE 3
CONTRACTOR'S RESPONSIBILITIES

The Contractor shall provide professional architectural/engineering and construction services for the Project in accordance with the terms and conditions of this Agreement and consistent with the City's Program, as such Program may be modified by the City during the course of the Work. The Contractor shall exercise reasonable skill and judgment in the performance of its Services. The Contractor's performance of Services shall be as professional consultant to the City to carry out the activities of Project design and to provide the technical documents and supervision of the design team to achieve the City's Project objectives. The Contractor's Services shall be divided into two components. The initial Services shall be to provide (A) such environmental investigation services as applicable pursuant to section 3.1 below, (B) the Pre-Construction Phase General Services, pursuant to Section 3.2 below, (C) Pre-Construction Phase Design Services pursuant to Section 3.3 and (D) if requested by the City, the GMP Proposal pursuant to Section 3.4 below. If the City and the Contractor agree upon the GMP Proposal, the Contractor shall furnish (A) such environmental investigation services as applicable pursuant to section 3.1 below, (B) the Construction Phase General Services set forth in Section 3.5 below and (C) the Construction Services set forth in Section 3.6 below.

3.1 Environmental investigation.

A. Upon written notice from the City or upon Contractor's discovery of Environmental Conditions on either of the Project sites, the Contractor shall recommend, for execution by the City, one or more contracts ("Environmental Contracts") with suitably qualified consultants and/or engineers ("Environmental Engineers"), each of which Environmental Engineer and which form of Environmental Contract shall be subject to the approval of the City, for purposes of performing an investigation and analysis of the Project site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the applicable Project site. The Environmental Contracts shall provide for a commercially reasonable scope of investigation approved by the City, and may provide for conducting the investigation and testing in phases acceptable to the City. The Environmental Contracts shall also provide that the Environmental Engineers shall begin their tests and inspections at the Project site as soon as the City is able to arrange access to the Project site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that the Contractor, acting as agent of the City, shall coordinate the activities of the Environmental Engineers with the Work.

B. The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans ("Environmental Assessments") as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Project site. The Environmental Assessments shall contain a detailed analysis of the Environmental Conditions discovered, and the actions ("Remedial Actions") required for the response, removal, cleanup or remediation of such Environmental Conditions (1) which are required by Environmental Requirements, or (2) which are reasonably necessary to mitigate Environmental Damages.

C. The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide the City and the Contractor with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts. The Contractor shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to the City a written report setting forth the Contractor's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Schedule and the progress of the Work.

D. The Environmental Contracts shall provide that it shall be the responsibility of the Environmental Engineers to (1) give any necessary notice to the Federal government and the State of Arizona or other agencies of the presence of any Environmental Conditions, (2) to pursue all necessary negotiations with Federal and Arizona agencies concerning preparation and approval of a plan for clean-up to the extent required and (3) obtain all necessary permits to perform any Remedial Actions.

E. If so instructed by the City, based upon the results of the Environmental Assessments, the Contractor shall, as agent for the City, obtain bids from remediation contractors ("Remediation Contractors") suitably qualified and approved by the City, to perform the Remedial Actions selected by the City and shall submit such bids to the City, together with the Contractor's recommendation of the Remediation Contractor(s) who should be retained. If the City elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, the City will so advise the Contractor in a written notice on or before the date which is 60 Days after receipt of the foregoing matters from the Contractor. Promptly after receipt of such notice, the Contractor shall recommend for the City's execution remediation contracts ("Remediation Contracts") with the Remediation Contractors identified in such notice.

F. The Contractor, as agent for the City, shall be responsible for coordinating the work and services performed by the Remediation Contractors with the Work.

G. If in the course of performance of the Work, the Contractor encounters on the Project site any Hazardous Materials not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, the Contractor shall immediately suspend the Work in the area affected and promptly thereafter report the condition to the City.

H. The City will make all payments due under the Environmental Contracts and the Remediation Contractors directly to the Environmental Engineers and the Remediation Contractors. Such payments will be based on requisitions, which requisitions shall be approved by the Contractor prior to submission to the City.

I. All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the respective GMP, and shall be the sole responsibility of the City, except as expressly provided otherwise.

J. Except as set forth in subsection 3.1(M) below, it is understood and agreed that with respect to any Environmental Conditions existing on the respective Project site, the Contractor is not, and shall not be deemed to be, a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental

Conditions. It is understood and agreed that the Contractor shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

K. To the extent that the Contractor is not in violation of subsection 3.1(M) below, the City shall indemnify, defend and hold harmless the Contractor, the Subcontractors, and the directors, officers, agents and employees of each (the "Contractor Indemnitees"), from and against any Environmental Damages asserted against or sustained by such parties as a result of any of the Contractor Indemnities being deemed or determined to be a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

L. The City acknowledges and agrees that the Contractor shall not commence or continue any demolition or construction activities on any portion of the Project site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation Contractor and any required approvals of any applicable government agencies. The Contractor agrees to use good faith diligent efforts to adjust and reschedule its activities at the respective Project site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

M. The Contractor shall not bring Hazardous Materials to the respective Project site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Contractor shall comply, and shall cause the Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

N. The Contractor shall indemnify, defend and hold harmless the Indemnified Parties from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Contractor or the Subcontractors of any Environmental Requirements arising out of subsection 3.1(M) above.

3.2 Pre-Construction Phase General Services.

A. Personnel; Project Meetings; Project Analysis. The Contractor shall submit to the City an organizational chart and resumes of its key personnel assigned to the pre-construction phase of the Project. The Contractor will meet with the City, the Architect/Engineer and all the other Project stakeholders to fully understand the program, the Design Documents and all other aspects of the Project. Contractor shall attend the regularly scheduled meetings with the City and the Architect/Engineer to advise the City on matters of site use, improvements, selection of materials, building methods, construction details, building systems, equipment, phasing and sequencing.

B. Schedule Development. The Contractor shall (1) establish detailed Critical Path Method ("CPM") schedules for the pre-construction/design phase and the construction phase of the Project with concurrence of the City, (2) monitor the Project schedules during the pre-construction phase and ensure that the Project Master Schedule is updated as

necessary and (3) advise the City of any schedule deficiencies. The Contractor shall utilize Primavera SureTrak scheduling software to prepare, provide and maintain the detailed CPM schedules.

C. Cost Models. The Contractor shall provide the City with detailed cost information for all aspects of the Project. Each cost model will contain a detailed estimate of the direct cost (including materials, labor and equipment) pertaining to each aspect of the Project along with the cost of the contract bonds, the cost of the Project's required insurance, the cost of taxes, Contractor's general conditions, Contractor's fee and the amount of Contractor's contingency and shall be consistent with such requirements as determined by the City or the Architect/Engineer.

D. Traffic Control/Sequencing Plans. The Contractor shall provide the City with (1) a detailed traffic control plan, in accordance with subsection 3.6(A)(7) below and (2) construction sequencing plans. Upon approval by the City, the traffic control plan and the construction sequencing plan shall be attached hereto as Exhibit H, and incorporated herein by reference.

E. Phasing; Long Lead Procurement. The Contractor shall make recommendations to the City with respect to the phase issuance of the Contractor to facilitate phased construction of the Work, if appropriate. The Contractor may also recommend to the City a list and a schedule for the procurement of Long Lead Items, which shall be separately procured by the City. The Contractor shall make such adjustments to the Master Schedule as necessary to accommodate the procurement process for the Long Lead Items. Upon purchase, the Contractor shall safeguard the Long Lead Items until installed as part of the Project.

F. Other Deliverables; Pre-Construction Progress Payments. The Contractor shall provide the City with written plans for the pre-qualification of subcontractors (according to the Subcontractor Selection Program), subcontract bid packages, project safety, quality control, owner training and commissioning. The Contractor will prepare and submit monthly pay applications to the City for work performed during the specific payment period for the pre-construction phase of the Project.

3.3 Pre-Construction Phase Design Services.

A. Preliminary Evaluation. The Contractor shall provide a preliminary evaluation of the Project's feasibility based on the City's Program and other relevant information.

B. Preliminary Schedule. The Contractor shall prepare a preliminary schedule of the Work for the City's written approval. The schedule shall show the activities of the City, Architect/Engineer and Contractor necessary to meet the City's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Contractor shall recommend corrective action to the City in writing. The work will be scheduled, planned and reported using Critical Path Method software that is compatible with the City's scheduling program.

C. Preliminary Estimate. When sufficient Project information has been identified, the Contractor shall prepare for the City's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the City's budget, the Contractor shall make written recommendation to the City.

D. Schematic Design Documents. The Contractor shall submit for the City's written approval Schematic Design Documents, based on the City's Program and other relevant information. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale and their relationship to the site. Sets of these documents shall be furnished to the City as needed. The Contractor shall provide an updated preliminary schedule and construction cost estimate based on the Schematic Design Documents for review and approval by the City.

E. Design Development Documents. The Contractor shall submit for the City's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall illustrate and describe the refinements of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their level of quality. Upon completion of the Design Development Documents, the Contractor shall submit an updated construction cost estimate based upon the Design Development Documents for review and approval by the City.

F. Construction Documents. The Contractor shall submit for the City's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications, including City-supplied general conditions and general requirements, based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Construction Documents. Sets of these documents as needed shall be furnished to the City prior to commencement of construction.

G. Use of Drawings and Specifications. The City acknowledges the Contractor's construction documents as instruments of professional service. Nevertheless, the Schematic Design Documents and the Construction Documents prepared under this Agreement (collectively, the Schematic Design Documents and the Construction Documents are referred to as the "Drawings and Specifications") shall become property of the City upon completion of the Construction Documents and payment in full of all monies due to the Contractor for the pre-construction phase of this Agreement. The Contractor shall not use the Drawings and Specifications for any purpose not related to the Project without City's consent. The City shall not reuse, for matters unrelated to the Work and its subsequent usage, or make any modification to the Drawings and Specifications without the prior written authorization of the Contractor. The City agrees to the fullest extent permitted by law, to indemnify and hold the Contractor harmless

from any claim, liability or cost (including reasonable attorney's fees and defense cost) arising or allegedly arising out of any unauthorized reuse or modification of the Drawings and Specifications by the City or any person or entity that acquires or obtains the Drawings and Specifications from the or through the City without the written authorization of the Contractor.

H. Constructability Review and Certification. The Contractor shall perform complete constructability reviews throughout the pre-construction phase of each portion of the Project. The Contractor shall provide the City with a written report containing, at a minimum, (1) a summary of the research and analysis conducted, (2) a detailed description of any constructability issues or challenges and (3) recommendations for correcting any constructability issues or challenges. At the completion of its review of the Drawings and Specifications for each phase of the Project, the Contractor shall certify that the Drawings and Specifications are sufficient and complete to build the respective portion of the Project within (1) the time available before the respective Date of Substantial Completion and (2) the Project budget.

I. Value Analysis. The Contractor shall make recommendations to the City with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work. Contractor shall evaluate all design options to provide value analysis services and cost savings recommendations to the City. The Contractor shall consider options most effective in first costs as well as long term operational costs and life cycle costs when evaluating each design option. The Contractor shall submit to the City (1) written cost studies, (2) cost-benefit evaluations of each of the cost studies, (3) a formal report to the design team, (4) a final written analysis study document and (5) a tracking report for the increases or decreases in Project cost due to value engineering or scope changes.

3.4 Guaranteed Maximum Price Proposals.

A. GMP Submittal Process. At the stage of the pre-construction phase services as determined by the City, the Contractor shall, if requested by the City, submit the GMP Proposal, which shall be the sum of the estimated Cost of the Work relating to completion of the Project and that the Construction Phase Fee, as defined in Article 7 below.

B. Failure to Agree Upon GMP. If the City and the Contractor do not agree to a GMP, all references in this Agreement to the GMP shall not be applicable, and the parties shall proceed on the basis of reimbursement as provided in Articles 7 and 8 below.

C. Contractor's Contingency. The estimated Cost of the Work may include the Contractor's contingency, a sum established by the Contractor and approved by the City for use at the Contractor's discretion to cover costs that are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.

D. Submittal Requirements. The Contractor shall include with each GMP Proposal a written statement of its basis, which shall include:

1. A list of the Drawings and Specifications, including all addenda, which were used in preparation of the GMP Proposal.

2. A list of allowances and a statement of their basis.

3. A list of the assumptions and clarifications made by the Contractor in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications.

4. The Date of Substantial Completion, if applicable, upon which the GMP Proposal is based and the Master Schedule for the Work upon which the date of Substantial Completion is based.

5. A schedule of applicable alternate prices.

6. A schedule of applicable unit prices.

7. A statement of additional services included, if any.

8. The time limit for acceptance of the GMP Proposal.

E. GMP Proposal Review. The Contractor shall meet with the City to review the GMP Proposal. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

F. GMP Effective Date. Each GMP Proposal shall not become a part of this Agreement until the City accepts such GMP Proposal in writing by executing the applicable GMP Amendment, on or before the date specified in such GMP Proposal for such acceptance.

G. No Prior Costs. Prior to the City's acceptance of a GMP Proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work related to such GMP Proposal, except as provided in this Agreement or as the City may specifically authorize in writing.

H. Acceptance; Effect. Upon acceptance by the City of the GMP Proposal, the GMP contained therein and its basis shall be set forth in the GMP Amendment. Once established, the GMP and Date of Substantial Completion shall be subject to modification by changes in the Work as provided in Articles 6 and 9 below.

I. Taxes. The GMP Proposal shall include, in the Cost of the Work, those taxes that are applicable at the time the GMP is established. If, in accordance with the City's express written direction, an exemption is claimed for taxes, the City agrees to indemnify, defend and hold the Contractor harmless for any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in reliance upon the City's direction relative to such tax exemptions claimed by the City.

J. Control of Construction. After the date any Amendment to this Agreement is executed by the City and the Contractor approving a GMP Proposal, the Contractor shall become responsible for the means, methods, sequences and procedures used in the construction of the portion of the Project related to such GMP Proposal and shall proceed with the Contractor's Construction Services related to the GMP Proposal under this Agreement.

K. Contractor Assumptions. The GMP is the total cost of the Project including the cost of labor, equipment, supplies, materials, services and allowances to complete the Project. The cost data is directly correlated to the specific design drawings and specifications in existence at the time the GMP Proposal is prepared. The assumptions used in the preparation of the GMP Proposal shall be identified by the Contractor as part of the GMP Proposal.

3.5 Construction Phase General Services.

A. Project Management.

1. The Contractor shall prepare a construction management plan for the Project. In preparing the construction management plan, the Contractor shall consider the City's schedule, cost and design requirements for the Project. The Contractor shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the City. The construction management plan shall also include a description of the various proposal packages recommended for the Project. The construction management plan shall be presented to the City for acceptance.

2. The Contractor shall conduct periodic Project meetings attended by the City, the Architect/Engineer and other necessary parties. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of construction progress. The Contractor shall prepare and distribute minutes of these meetings to the City, and others in attendance.

3. The Contractor shall coordinate transmittal of documents to regulatory agencies (including the City of Phoenix Public Transit Department for the purposes of compliance with the DBE Program, as defined below, and other federal transit requirements), for review and shall advise the City of potential problems in completing such reviews.

4. The Contractor shall assist the City in public relations activities and shall prepare information for and attend public meetings regarding the Project.

5. The Contractor shall prequalify and select all Subcontractors according to the Subcontractor Selection Program set forth on Exhibit G. The Contractor shall conduct a telephone and correspondence campaign to attempt to create interest among Subcontractors. The Contractor shall develop and coordinate procedures to provide answers to Subcontractors' questions.

6. In conjunction with the Architect/Engineer and the City, the Contractor shall conduct a pre-construction conference with all Subcontractors during which the

Contractor shall review (a) the Master Schedule, as defined below, and (b) the reporting procedures and other rules.

7. The Contractor shall ensure that each Subcontractor has secured the required business licenses, permits, insurance and bonds.

8. The Contractor will maintain As-Built Drawings for the entire term of the Project. These As-Built Drawings will be reviewed monthly by the City. If As-Built Drawings are not acceptable to the City, progress monthly billings may be reduced until As-Built Drawings are acceptable. Final As-Built Drawings will be submitted to the City for review and acceptance. Such acceptance is required before final payment may be released to the Contractor.

B. Time Management.

1. In accordance with the construction management plan, the Contractor shall prepare a master schedule for the Project (the "Master Schedule"). The Master Schedule shall specify the proposed start dates for each project activity and the dates by which certain construction activities must be complete including the date of Substantial Completion established in the GMP Amendment. The Contractor shall submit the Master Schedule to the City for acceptance as part of the GMP Amendment. All schedules shall be submitted utilizing Primavera SureTrak scheduling software.

2. Prior to transmitting Contract Documents to Subcontractors, the Contractor shall prepare a pre-proposal construction schedule for each part of the Project and make the schedule available to the Subcontractors. The Contractor shall provide a copy of the Master Schedule to the Subcontractors. As part of the Notice of Award, the Contractor shall inform each Subcontractor of the requirements for the preparation of the Contractor's Construction Schedule. Each Subcontractor shall prepare its own Subcontractor Construction Schedule in accordance with the requirements of the Contract Documents.

C. Cost Management.

1. The Contractor shall make recommendations to the City concerning design changes that may result in revisions to the Project budget and division of the Work required for the Project.

2. The Contractor shall prepare an estimate of the construction cost for each submittal of Drawings and Specifications from the Architect/Engineer. The estimate for each submittal shall be accompanied by a report to the City identifying any variances from the Project budget. The Contractor shall coordinate and expedite the activities of the City and the Architect/Engineer when changes to the design are required to remain within the Project budget.

3. The Contractor shall assist the City with value analysis studies for major construction components. The results of these studies shall be in report form and distributed to the City, the Contractor and the Architect/Engineer. The Contractor shall analyze the cost for various design and construction alternatives relating to efficiency, useable life and maintenance.

4. The Contractor shall prepare an estimate of costs for all Addenda and shall submit the estimates to the City for approval. After approval by the City, the Addenda shall be transmitted to the Subcontractors.

5. Upon receipt of proposals, the Contractor shall evaluate the proposals, including alternate prices and unit prices.

6. The Contractor shall prepare a Project budget based on separate divisions of the Work required for the Project and shall submit a variance report with each pay application.

D. Reports.

1. The Contractor shall prepare and distribute design phase change order reports monthly to the City that shall list all City-approved change orders as of the date of the report and shall state the effect of the change orders on the Project budget and the Master Schedule.

2. The Contractor shall prepare and distribute schedule maintenance reports monthly to the City comparing the actual and scheduled dates for Subcontractors' contract awards and completion of each such Subcontractor's portion of the Project.

3. The Contractor shall prepare and distribute the Project cost reports monthly to the City specifying actual award prices and construction costs for each of the individually awarded components of the Project as compared to the Project budget.

4. The Contractor shall prepare and distribute cash flow reports monthly to the City specifying actual cash flow for each of the individually awarded components of the Project as compared to the projected cash flow.

5. The requirements for filing reports set forth in this subsection 3.5(D) shall not shall not be deemed to meet the requirements for requests for extensions of time or requests for change orders as set forth in Section 6 and Section 9 below.

3.6 Construction Services.

A. Project Management.

1. The Contractor shall provide and maintain a management team on the Project site to provide contract administration. The Contractor shall establish and implement coordination and communication procedures among the Contractor, the City, the Architect/Engineer and Subcontractors.

2. The Contractor shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, contract schedule adjustments, change orders, substitutes, payment requests

and the maintenance of logs. The Contractor shall maintain daily job reports. The Contractor shall be the party to whom requests for information, submittals, Subcontractor schedule adjustments, substitutions, change order requests and payment requests shall be submitted.

3. Periodically the Contractor shall conduct meetings at the Project site with each Subcontractor. The Contractor shall conduct coordination meetings with all Subcontractors. The Contractor shall record, transcribe and distribute minutes to all attendees, the City and the Architect/Engineer.

4. Technical inspection and testing provided by others who are not Subcontractors shall be coordinated with the Contractor. The Contractor shall be provided a copy of all inspection and testing reports on the day of the inspection or test. The Contractor is not responsible for providing, nor does the Contractor control, the actual performance of technical inspection and testing. The Contractor is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

5. The Contractor shall perform, with its own forces, construction work that amounts to not less than 45% of the total contract price for construction of the Project. For the purposes of this paragraph, the total contract price for construction of the Project (a) includes the total of the GMP amounts as agreed upon by the Contractor and the City and (b) does not include the cost of preconstruction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation.

6. Contractor shall ensure that each Subcontractor (a) has inspected the jobsite and has thoroughly reviewed this Agreement as the same may be revised by the City, and is not relying on any opinions or representations of the City, (b) agrees to perform and complete the Work in strict accordance with this Agreement and under the Contractor's direction, (c) agrees that any exclusions of any Work must be approved in writing by the Contractor prior to acceptance of any agreement between Contractor and a Subcontractor or same shall not be excluded hereunder, (d) is responsible for all safety precautions and programs and shall provide all protection and necessary supervision to implement said precautions and programs, (e) shall take all reasonable precautions for the safety of and provide reasonable protection to prevent damage, injury or loss to: (i) employees or others on the Project, (ii) the Work and materials and (iii) other property at the Project or adjacent thereto, (f) shall designate a responsible person on the Project whose duty shall be prevention of accidents, (g) shall provide all competent supervision necessary to execute all Work and any work incidental thereto in a thorough, first-class, workmanlike manner and (h) has acknowledged that it is Subcontractor's responsibility that all of the Work and any work incidental thereto conforms to, and is performed in accordance with, Applicable Law.

7. All traffic affected by the Work under this Agreement shall be regulated in accordance with the most recent revision of the United States Department of Transportation *Manual on Uniform Traffic Control Devices* (the "MUTCD"), which is incorporated herein by reference; provided, however, that this Agreement shall govern in a conflict with the terms of the MUTCD. At the time of the pre-construction conference, each Subcontractor shall designate an employee 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. At the same time the Contractor will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents. The Contractor shall ensure that Subcontractors adhere to the following:

a. All traffic control devices and advance warning signs (such as REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT and DO NOT PASS) required for the Work under this Agreement shall be placed in accordance with the MUTCD.

b. The Subcontractor provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs and shall take all necessary precautions for the protection of the Work and safety of the public. The Subcontractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

c. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Subcontractor shall conform to the standard design generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Agreement.

d. The Subcontractor shall ensure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Subcontractor shall notify the City at least 48 hours in advance for City personnel to temporarily relocate said signs. The City will direct the Subcontractor as to the correct positions to re-set all traffic and street name signs to permanent locations when notified by the Subcontractor that construction is complete.

e. When construction activities or traffic hazards at the construction site require the use of flagmen, it shall be the Subcontractor's responsibility to provide trained flagmen to direct traffic safely.

f. Manual traffic control shall be in conformity with the MUTCD, except that the designated liaison officer shall be contacted at the Avondale Police Department.

g. When traffic hazards at construction sites warrant the use of certified police personnel to direct traffic, arrangements must be made with the liaison officer at the Avondale Police Department.

h. The assembly and turnarounds of the Subcontractor's equipment shall be accomplished using adjacent local streets when possible.

i. Equipment used and/or directed by the Subcontractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Subcontractor shall provide a flagman or off-duty, uniformed Avondale Police officer to assist with spotting.

j. During construction, it may be necessary to alter traffic control. Any such alterations shall be in accordance with the MUTCD.

k. No street within the Project area may be closed to through traffic or to local emergency traffic without prior, written approval of the City. The City may give written approval as its sole discretion and only if sufficient time exists to allow for notification of the public at least two days in advance of such closing. Partial closure of streets within the Project shall be done in strict conformity with the City's written directions.

l. Caution should be used when excavating near intersections with traffic signal underground cable. Subcontractor shall notify the City 24 hours in advance of any work at such intersections. The Subcontractor shall install and maintain temporary overhead traffic signal cable as specified by the City when underground conduit is to be severed by excavations at intersections. The Subcontractor shall provide an off-duty uniformed Avondale police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City's satisfaction. Magnetic detector loops shall, under no circumstances, be spliced.

m. The Subcontractor shall accommodate local access to adjacent properties in accordance with the specification set forth below.

n. Where crossings of existing pavement occurs, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow, as determined by the City or its authorized representative in his sole discretion. If plates cannot be used, crossings shall either be back-filled or the Subcontractor shall provide a detour.

8. The Contractor shall review the contents of a request for changes to the subcontract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Contractor's analysis reveals that the request is valid, the Contractor shall prepare a detailed report to the City for approval in accordance with Section 6 below. The Contractor shall also prepare and timely deliver a detailed report to the City of other such requests and requests found to be invalid and timely inform the Subcontractor of any such determination. The Contractor shall prepare the necessary change order documents for signature by the Subcontractor.

9. The Contractor shall establish and implement a program to monitor the quality of construction by itself and by Subcontractors. The purpose of the program shall be to protect the City against defects and deficiency in the Work of the Contractor or the Subcontractors. The Contractor shall reject the Work and transmit to the Subcontractor a notice

of nonconforming work when it is the opinion of the Contractor that the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Contractor is not authorized as part of this service to change, evoke, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

10. The City shall determine when the Project and the Contractor's work is substantially complete. "Substantial Completion" means construction has been completed in accordance with the Contract Documents to the extent that the City can use or occupy the entire Project, or the designated portion of the Project, for the use intended without any outstanding, concurrent construction at the site, except as may be required to complete or correct Punch List items. A prerequisite for Substantial Completion, over and above the extent of construction completion required, is receipt by the City of acceptable documentation that Contractor has successfully tested and demonstrated all systems for their intended use. The date of Substantial Completion shall be confirmed by a Certificate of Substantial Completion signed by the City and Contractor. The Certificate of Substantial Completion signed by the City and Contractor shall state the respective responsibilities of the City and the Contractor for security, maintenance and damage to the work and insurance. The Certificate of Substantial Completion shall also include a Punch List created by the Architect/Engineer in consultation with the Contractor and establish the time for completion and correction of all Punch List items.

11. The City shall determine when the Project and the Contractor's Work is finally completed. "Final Completion" means completion of the Project by the Contractor in accordance with the Contract Documents, certified to the City by the Contractor. Final Completion shall be achieved only upon the City's written acceptance of (a) the Construction, (b) all testing, (c) demonstration by the Contractor that the Work functions as required by the Contract Documents and meets all Contract requirements, (d) resolution of all outstanding system deficiencies and Punch List items, if any, (e) delivery of all as-built documentation, drawings, completed record documents (with revisions made after Substantial Completion), annotated submittals and Design Document deliverables, (f) submittal, acceptance, and delivery of the 100% complete O&M manuals, (g) delivery of warranties, inspection certificates, bonds and all other required documents, (h) all pre-requisites for final payment and (i) submittal of Contractor's request for final payment and acceptance enclosing all required documentation. Upon Final Completion the City shall issue a Certificate of Final Completion to the Contractor on behalf of the City. Following receipt of payment from the City, the Contractor shall make all payments due to the Subcontractors.

12. The Contractor shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of record documents to the City.

B. Time Management.

1. The Contractor shall adjust and update the Master Schedule and distribute copies to the City and the Architect/Engineer. All adjustments to the Master Schedule must be (a) made for the benefit of the Project and (b) acceptable to the City.

2. The Contractor shall review each Subcontractor's construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

3. The Contractor shall (a) review the progress of construction of each Subcontractor on a monthly basis, (b) evaluate the percentage completion of each construction activity as indicated in the Subcontractor's construction schedule and (c) review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic construction schedule report that the Contractor shall prepare and distribute to the appropriate Subcontractor, the City and the Architect/Engineer. The report shall serve as the basis for (a) determining the actual progress compared to scheduled progress and (b) determining the progress payment due to the Subcontractor. The Contractor shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.

4. The Contractor shall, prior to the issuance of a Change Order, determine the effect on the Master Schedule of time extensions requested by a Subcontractor. The Contractor may require a Subcontractor to prepare and submit a recovery schedule in the event the Subcontractor fails to meet the Master Schedule.

5. The Contractor shall prepare an occupancy plan for the Project. This plan shall be provided to the City not later than 60 days prior to the scheduled Substantial Completion date.

C. Cost Management.

1. The Contractor shall, in participation with the Subcontractors, determine a schedule of values for each of the construction subcontracts. The schedule of values shall be the basis for the allocation of the contract price to the activities shown on the Subcontractors' construction schedule. The City shall approve the schedule of values before acceptance for progress billings.

2. Each Subcontractor's construction schedule shall have the total contract price allocated among the Subcontractor's scheduled activities so that each of the Subcontractor's activities shall be allocated a price and the sum of the prices of the activities shall equal to or less than the total contract price. The Contractor shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to a Subcontractor and Contractor shall be based on the Subcontractor's percentage of completion of the scheduled activities as set out in each

Subcontractor's construction schedule report and the Subcontractor's compliance in accordance with the Contract Documents.

3. The Contractor shall establish and implement a change order control system. All proposed change orders shall first be described in detail in writing by the Contractor and then shall be described in detail in a request for proposal to the affected Subcontractor accompanied by technical drawings and specifications prepared by the Architect/Engineer. In response to the request for a proposal, the Subcontractor shall submit detailed information to the Contractor for evaluation concerning the costs and time adjustments, if any, necessary to perform the proposed change order work. The Contractor shall discuss the proposed change order with the Subcontractor and endeavor to determine the Subcontractor's basis for the cost to perform the work and the effect, if any, on the GMP. The Contractor shall make a recommendation to the City pursuant to Section 6 below and prior to the City's acceptance of change orders and, following City acceptance, shall prepare the change order documents for approval by the City and signature by the Contractor and Subcontractor. In the event the change order increases the GMP, it must be approved City Council in the form of an amendment to this Agreement.

4. In instances where a lump sum or unit price is not determined prior to performing work described in a request for proposal as provided in subsection 3.6(C)(3) above, the Contractor shall request from the Subcontractor records for the cost of payroll, materials and equipment and the amount of payments to its Subcontractors, if any, incurred by the Subcontractor in performing the Work.

5. The Contractor shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the City and the Architect/Engineer.

6. In consultation with the Architect/Engineer, the Contractor shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Contractor shall make appropriate adjustments to each payment application and shall prepare and forward a progress payment report to the City. The progress payment report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate for payment that shall be signed by the Contractor and delivered to the City. The Contractor shall keep the Project and the site on which work is performed free and clear of all liens and claims from its Subcontractors, suppliers or materialmen.

7. The Contractor shall make recommendations to the City concerning construction changes that may result in revisions to the Project budget or the GMP.

D. Post-Construction Phase.

1. At the conclusion of the Project, the Contractor shall prepare final Project accounting and close-out reports.

2. The Contractor shall prepare and distribute reports as necessary associated with the occupancy plan.

3.7 Royalties, patents and copyrights. The Contractor shall pay all royalties and license fees that may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the City harmless for, from and against all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

3.8 Warranties and Completion.

A. New Materials. The Contractor warrants that all materials and equipment furnished under construction phase(s) of this Agreement will be (1) new unless otherwise specified, (2) of good quality, (3) in conformance with the Contract Documents and (4) free from defective workmanship, materials and hazardous materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion if the warranted items are fully installed, operational, and available for use and if not, at such time after the date of Substantial Completion as they are.

B. Defective Construction. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship and materials within a period of two years from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

C. Certificates. The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the City.

D. Manuals and Warranties. The Contractor shall require the Subcontractors to provide manufacturers' operations and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Prior to Final Completion of the Project, the Contractor shall compile such manuals, warranties and guarantees, bind same in an organized manner and deliver the bound materials to the City; the City shall not be required to issue the final payment to the Contractor pursuant to Section 10.2 below until after the compiled manuals, warranties and guarantees have been delivered to the City.

E. Inspection and Testing. With the assistance of the City's maintenance personnel, the Contractor shall direct the inspection of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

3.9 Additional services. Any additional services must be authorized in advance by the City in writing; the Contractor shall furnish or obtain from others such authorized services. The Contractor shall be paid for these additional services by the City as herein provided to the extent they exceed reasonably inferable obligations of the Contractor under this Agreement. Potential additional services include:

A. Financial Feasibility. Providing additional financial feasibility or other special studies other than as required or reasonably inferred in this Article 3.

B. Planning. Providing additional planning surveys or alternative site evaluations other than as required or reasonably inferred in this Article 3.

C. Future/Outside of Project Design. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and master planning for future work as indicated by the City's Project program. Providing design and engineering of any work outside the property line if said work is not expressly identified and included in the Scope.

D. Major Document Revisions/Additional Documents. Making major revisions in the construction documents, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the City or are due to causes beyond the control and without the fault and negligence or partial fault or negligence of the Contractor or its consultants or agents. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the Construction Phase, other than as required or reasonably inferred in this Article 3. Making revisions to design documents after the City has approved them when revisions are due to causes beyond the control and not the fault or partial fault of the Contractor.

E. Advanced Soils Analysis. Providing additional soils sampling, classification, and analysis other than as required or reasonably inferred in the foregoing sections of Article 3. Contractor is entitled to rely upon the soils analysis and recommendations as provided by a geotechnical consultant, however, Contractor is responsible for interpretation of such data for the purpose of establishing the means and methods of construction and such interpretation shall not be considered additional services during the design phase or the construction phase.

F. Expert Testimony. Preparing to serve or serving as an expert witness for the City in connection with any public hearing, arbitration proceeding, or legal proceeding wherein the Contractor or Subcontractor of the Contractor is not a party or allegedly at fault; however, preparing to serve or serving as a fact witness for the City or rendering testimony necessary to secure governmental approval for the Project shall not constitute an additional service.

G. Survey. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required or reasonably inferred in this Article 3.

H. Additional Travel. Providing additional services and costs necessitated by out-of-town travel required of and approved in writing by the City other than visits to the Project and other than for travel required to accomplish the Work.

I. Unrelated Services. Providing any other services not otherwise included in this Agreement, reasonably inferred by this Agreement or not customarily furnished in

accordance with generally accepted contractual practices consistent with the term of this Agreement.

J. Replacement Work. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Contractor's action or inaction during construction, or furnishing services required in connection with the replacement of such work.

L. Special Studies. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, other than as required or reasonably inferred in Article 3 above.

M. Investigating Existing Conditions/Drawings. Providing services to extensively investigate existing conditions or facilities or to make measured drawing thereof. Providing services, when demonstrated it is necessary, to verify the accuracy of drawings or other information furnished by the City.

N. O&M Analysis. Providing analyses of operating and maintenance costs, unless provided for in the Scope.

O. Assisting with City-Performed Work. Designing, and providing other services supporting the procurement of materials to be obtained, or work to be performed by the City, including, but not limited to, _____ that are not a part of the Work.

ARTICLE 4
CITY RESPONSIBILITIES

4.1 Complete Information. The City shall provide to the Contractor complete information regarding the City's requirements for the Project.

4.2 Requests for Information. The City shall examine requests for information/direction submitted by the Contractor and shall render decisions thereto promptly. The City shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work (A) in cooperation with the Contractor, (B) consistent with this Agreement and (C) in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the City.

4.3 Notice to Contractor of Defect. If the City observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the City shall give written notice thereof to the Contractor.

4.4 Copies of Contract Documents. At the request of the Contractor, sufficient copies of interim and final drawings, specifications and Contract Documents shall be furnished to the Contractor by the City at the City's expense.

4.5 Approvals. The City shall secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the Project.

4.6 Communication. The City, its representatives and consultants shall communicate with the Subcontractors only through the Contractor.

4.7 Notices. The City shall send to the Contractor, and shall require the Architect/Engineer to send to the Contractor, copies of all notices and communications sent to or received by the City relating to the Contractor's Services with respect to the Project.

4.8 Authorized Representatives. The City shall designate an officer, employee or other authorized representatives to act in the City's behalf with respect to the Project. The representatives shall have the authority allowed by law to approve minor changes in the scope of the Project and shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner.

4.9 Progress Payments. The City shall make payments to the Contractor on the basis of the Subcontractors' payment applications that are certified by the Contractor and on the basis of the Contractor's invoices for its services performed pursuant to the terms and conditions of this Agreement.

ARTICLE 5
CHANGES IN CONTRACTOR'S SERVICES

Changes in Contractor's Services shall only be made by a written amendment to this Agreement signed by the City and the Contractor. Changes involving (A) a change in the lump sum for the Services set forth in Sections 3.1, 3.2 and 3.3 above or (B) a change in the GMP, shall be approved by the City Council and executed by the City and the Contractor. The Contractor shall not (A) perform any additional services or (B) eliminate any duties included in the Services until a written amendment or change order has been properly approved and executed by both parties. The Contractor shall proceed to perform the Services required by the Amendment only after receiving written notice from the City directing the Contractor to proceed.

ARTICLE 6
CONTRACT TIME

6.1 Progress and Completion. The City and the Contractor agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are of the essence of this Agreement.

6.2 Commencement of the Work. The Work, except for the (A) Environmental investigation services set forth in Section 3.1 above, (B) Review of Design Documents and Design Remedies services set forth in Section 3.2 above, (C) Pre-Construction Phase General Services set forth in Section 3.3 above and (D) the GMP Proposal, if any, shall commence on or about the date of the GMP Amendment, and shall proceed in general accordance with the Schedule for the Work set forth therein.

6.3 Prosecution of the Work. The Contractor shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Master Schedule. If the delay is an Inexcusable Delay, as defined below, the Contractor shall prepare a recovery schedule for the City's review and approval, showing how the Contractor will compensate for the delays and achieve Substantial Completion by the date shown on the Master Schedule. If the Contractor is unable to demonstrate how it will overcome Inexcusable Delays, the City may order the Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the Substantial Completion date set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the City shall either (A) authorize an equitable extension in the Master Schedule to account for such delay, and equitably adjust the GMP on account of such delay or (B) request that the Contractor prepare a recovery schedule showing how (if possible) the Contractor can achieve Substantial Completion by the date shown on the Master Schedule, and equitably adjust the GMP in accordance with the Change Order provisions of this Agreement on account of any extraordinary activities required of the Contractor on account of such recovery schedule.

6.4 Critical Path Activities. To the extent the Contractor completes activities on the critical path earlier than scheduled, the savings in time on account thereof shall belong solely to the Contractor.

6.5 Construction Activities. At such time as the Construction Documents, or any portion thereof, are complete, the Contractor shall submit a revised Master Schedule to the City for incorporation into the Contract Documents, which will expand the Master Schedule approved to date, but which will not, in and of itself, change the date of Substantial Completion of the Project. This revised Master Schedule shall be based upon a Critical Path Method and shall show in complete detail starting and completion time of detail activities, the sequence of the Work and all significant activities.

6.6 Extensions of Time.

A. Limited to Excusable Delay. An extension in the scheduled date of Substantial Completion will only be granted in the event of Excusable Delays affecting Work activities on the critical path. The Contractor shall be entitled to general condition costs and extra costs related to the Excusable Delay for idle labor, equipment inefficiency and lost productivity of the performance of the Work. The Contractor must submit evidence reasonably satisfactory to the City substantiating such costs. Such adjustment to the contract sum and Substantial Completion date shall be issued in a Change Order.

B. Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting Work activities on the critical path, such shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay"):

1. Delays resulting from Force Majeure.

2. Differing, unusual or concealed site conditions that could not reasonably have been anticipated by the Contractor in preparing the Master Schedule, including,

without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned or not properly identified utility lines and water conditions.

3. Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the site by the Contractor.

4. Delays resulting from changes in Applicable Laws occurring after the date of execution of this Agreement.

5. Delays occurring due to the acts or omissions of the City and those within the control of the City.

6. Delays occurring due to the acts or omissions of a utility, so long as Contractor has coordinated with the utility causing the delay and the delay occurs despite reasonable steps taken by Contractor to avoid the delay.

7. Delays resulting from weather conditions which make it unreasonable to perform the Work in accordance with the Master Schedule.

C. Process for Requesting Extension of Time. In order to obtain an extension of time due to an Excusable Delay, the Contractor shall comply with the following requirements: The Contractor shall notify the City of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Contractor becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Contractor expects to be delayed. After the cessation of the Excusable Delay, the Contractor shall notify the City of the number of Days the Contractor believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the City, the request for an extension of time contained in the resulting Change Order proposal shall be deemed sufficient for purposes of this subsection.

D. City Determination. Within ten Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the parties as to the then current status of Excusable Delays and Inexcusable Delays, the City will provide the Contractor with written notice of City's determination of the number of Days of Excusable Delay and/or Inexcusable Delay within ten Days after receipt by the City of the Contractor's written request for such determination. The Contractor shall not, however, deem an issuance by the City of such a determination to be a concurrence of the matters set forth in the Contractor's request, and the Contractor may invoke the dispute resolution procedures set forth in Article 13 below with respect to such determination.

6.7 Concurrent Delays. To the extent the Contractor may be entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Contractor or by an Inexcusable

Delay, the Contractor shall not be entitled to any additional costs for the period of such concurrency.

6.8 Weather Delays. The Contractor shall include and clearly identify an appropriate number of Days of weather-related delays within the aggregate Master Schedule for the Work and within the portions of the Master Schedule submitted with each GMP Proposal relating to any phase of the Project. If the Contractor experiences additional weather-related delays beyond the number of Days set forth in the Master Schedule, the Contractor shall be entitled to commensurate extension of time and reimbursement of costs associated with such delay; provided such requests for extensions of time are submitted and approved according to the process set forth in Section 6.6 above. If the Contractor fails to include an appropriate number of Days of weather-related delays within the GMP Proposal for any portion of the Project, Contractor shall not be eligible for any extension of time or reimbursement of costs related to otherwise Excusable Delays relating to the applicable GMP Proposal.

6.9 Liquidated Damages.

A. Established. The Contractor and the City acknowledge that in the event that the Contractor fails to achieve Substantial Completion or Final Completion of the Project by the dates established therefore in the applicable GMP Amendment, as adjusted, the City will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the City would incur as a result of late Substantial Completion or Final Completion of the Project. Such liquidated damages shall be the sole and exclusive remedy of the City for late completion of the Project, and the City hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

B. Amount of Liquidated Damages.

1. If the Contractor fails to achieve Substantial Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the date of Substantial Completion set forth in the applicable GMP Proposal, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the City liquidated damages in the amount per Day as determined by Maricopa Association of Governments ("MAG") specifications for each Day the date of Substantial Completion is delayed beyond the date of Substantial Completion set forth in the applicable GMP Amendment.

2. If the Contractor fails to achieve Final Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the date of Final Completion, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the City liquidated damages in the amount per Day as determined by Maricopa Association of Governments ("MAG") specifications for each Day the date of Final Completion is delayed beyond the date of Final Completion.

3. In no case may the amount of liquidated damages due under this subsection 6.9(B) for any single Day of delay exceed the highest amount, as determined according to MAG specifications, that would be charged for any single Inexcusable Delay existing on such Day.

4. Payment of liquidated damages is to be made contemporaneously with any required payment to the Contractor, and such payments may be offset against each other.

ARTICLE 7
COMPENSATION FOR CONTRACTOR SERVICES

7.1 Pre-construction Phase Compensation.

A. Architect/Engineer's Services Included. The cost of services performed directly by the Architect/Engineer is not included in the Contractor's compensation as set forth below.

B. Amount. The City shall pay the Contractor an amount not to exceed $233,239.00 for services performed during the Pre-Construction Phase, as set forth in Sections 3.1, 3.2 and 3.3 above, and as more particularly described in Exhibit I, attached hereto and incorporated herein by reference, including all cost items, allowances and reimbursable expenses.

C. Equitable Adjustment. Compensation of Pre-Construction Phase Services shall be equitably adjusted if such services extend beyond November 1, 2007, for reasons beyond the reasonable control and not the fault or partial fault of the Contractor or as provided in Section 9.1 below. For changes in Pre-Construction Phase Services, compensation shall be adjusted as mutually agreed upon by the City and the Contractor at the time of such extended services.

D. Payments. Payments for Pre-Construction Phase Services shall be due and payable within 30 days following approval of the Contractor's monthly invoice by the City. Payments due the Contractor that are unpaid for more than 30 days from the due date of the invoice shall bear interest at the statutory rate.

7.2 Construction phase compensation.

A. Guaranteed Maximum Price. If the City and the Contractor agree upon a GMP, the City shall, up to the amount of the applicable GMP established in the GMP Amendment and as it may be adjusted under Article 9 below, compensate the Contractor for Work performed following the commencement of the construction phase as set forth in Article 8 below.

B. Adjustments; Savings. The compensation to be paid under this subsection 7.2(A) shall not exceed the GMP established in the GMP Amendment, as adjusted under Article 9 below. In the event the Cost of the Work is less than the GMP as adjusted by Change Orders, the City shall retain the resulting savings.

C. Payments. Payment for Construction Phase Services shall be as set forth in Article 10 below. Contractor shall be compensated for pre-construction services to be provided after construction has commenced in accordance with the Scope.

D. Construction Phase Fees. The Construction Phase Fee shall be itemized, in detail, as a part of the GMP and includes the following items, if directly related to the Work:

1. Salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in subsection 8.2(B).

2. General and administrative expenses of the Contractor's principal and branch offices other than the field office, except as may be expressly included in Article 8 below.

3. The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

4. Costs related to the Contractor's safety program.

5. Contractor's reasonable profit.

7.3 Adjustment in the Construction Phase Fee. Adjustment to the Construction Phase Fee shall be made as follows:

A. Changes in the Work. For changes in the Work as provided in Article 9 below, the Construction Phase Fee shall be adjusted as mutually agreed by the parties, in writing, prior to commencement of any work pursuant to such changes.

B. Delays in the Work. For delays in the Work not caused, in whole or in part, by the Contractor, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. There will be an equitable adjustment in the Construction Phase Fee to compensate the Contractor for increased expenses due to unforeseeable circumstances, subject to Article 6 above.

C. Replacement Work. If the Contractor is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Contractor or other parties identified in subsection 7.3(B) above, the Contractor shall be paid an additional fee in the same proportion that the Construction Phase Fee bears to the estimated Cost of the Work, or as otherwise agreed to by the parties.

ARTICLE 8
COST OF THE WORK

The City agrees to pay the Contractor for the Cost of the Work as defined in this Article 8. This payment shall be in addition to the Construction Phase Fee stipulated in Article 7 above. However, in no event shall the City pay the Contractor total compensation greater than the amount of the GMP established in the GMP Amendment, as it may be adjusted pursuant to Article 9 below.

8.1 Cost Items for Pre-Construction Phase Services. Compensation for cost items related to Pre-Construction Phase Services shall be as provided in Section 7.1 above.

8.2 Cost Items for Construction Phase Services.

A. Cost Defined. The phrase "Cost of the Work" or "Actual Cost of the Work" shall include all amounts paid by the City to the Contractor for payment to all separate Subcontractors, labor, equipment, material, suppliers and equipment lessors for all Work, material, and equipment supplied to the Project including:

1. Wages paid for labor in the direct employ of the Contractor in the performance of the Work.

2. Salaries of Contractor's (a) employees when (i) stationed at the field office located at the Project site and (ii) working on matters directly related to the Project, in whatever capacity employed, (b) employees engaged on the road expediting the production or transportation of material and equipment and (c) employees from the principal or branch office performing the functions listed below, if such functions are directly related to the Work.

3. Cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under this subsection 8.2(A).

4. Reasonable transportation, travel and hotel expenses of the Contractor's personnel incurred in connection with the Work.

5. Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.

6. Payments made by the Contractor to Subcontractors for Work performed under this Agreement.

7. Fees and expenses for design services procured by the Contractor.

8. Cost, including transportation and maintenance of all materials, supplies, equipment and temporary facilities that are consumed in the performance of the Work.

9. Rental charges paid by Contractor to third parties for all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Such rental charges shall be consistent with those prevailing in the Phoenix metropolitan area.

10. Cost of premiums for normal and customary Contractor's Subcontractor default insurance at the rate of 1.25% of the cost of subcontracts and Subcontractor's liability, workman's compensation and builders risk insurance as required pursuant to Article 11 below, which shall be identified as separate line items within the GMP.

11. Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.

12. Permits, fees, licenses and tests.

13. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office at the Project site.

14. Reproduction costs, photographs, long distance telephone calls and facsimiles, data processing services, postage, express delivery charges and telephone service at the Project site.

15. All water, power and fuel costs necessary for the Work.

16. Cost of removal of all non-hazardous substances, debris and waste materials.

17. Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Contractor or any person or entity for whom the Contractor is responsible.

18. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Construction Phase Fee as set forth in Article 7 above, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, subject to the maximum price limitation established by the GMP.

B. <u>Cost Exclusions</u>. The Cost of the Work shall not include the following:

1. All professional fees paid by the City to the Architect/Engineer or other consultants retained directly by the City.

2. All costs paid directly by the City to Subcontractors or suppliers retained directly by the City and outside the scope of the GMP.

3. All Additional Service costs as defined herein.

4. All other costs not within the control of the Contractor or identified as being not within the GMP.

5. All fees paid to the Contractor except those fees that may be paid to Contractor for Pre-Construction Phase Services above.

C. Determination of "Cost of the Work" or "Actual Cost of the Work"

1. The City and the Contractor understand and agree that the GMP agreed to under this Project will be administered as a Measured Quantity/Unit Price Guaranteed Not-to-Exceed Contract. This Not-to-Exceed amount is defined by the individual work items and their associated competitively bid and/or negotiated unit prices plus negotiated on-site general conditions, fee structures, markups and Contractor's Contingency. Final contract price/payout will be based on field measured final completed quantities, approved unit prices and approved change orders. Furthermore, the term "actual cost" is defined as the final negotiated unit prices (costs) mutually agreed to by the City and Contractor. The City and the Contractor understand and agree that individually priced, "self-performed" items may include the cost associated with the risk of delivering the work.

2. The City and the Contractor understand and agree that the City, its authorized representatives, and/or the appropriate federal or state agencies may audit the Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate any GMP, and including, but not limited to: self-performed items, qualifications-only selected Subcontractor items, Change Orders, use of Allowance funds and use of Contractor's Contingency funds. The City and its authorized representatives shall have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this subsection. The City shall give Contractor or Subcontractor reasonable advance notice of intended audits.

8.3 Discounts. All discounts for prompt payment shall accrue to the City to the extent such payments are made directly by the City. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9
CHANGES IN THE WORK

Changes in the Work that are within the general scope of this Agreement may be accomplished by Change Order without invalidating this Agreement; provided, however, that any change in the Work that will result in an increase to the GMP or extension of the date of Substantial Completion shall be approved by a written amendment to this Agreement.

9.1 Change Orders. A "Change Order" is a written instrument, issued after execution of this Agreement, signed by the City and Contractor, stating their agreement upon a change in

the Work. Each adjustment in the GMP resulting from a Change Order, which, if an increase, shall be adjusted by written amendment to this Agreement, shall clearly separate the amount attributable to compensation for the Construction Phase General Services, the Construction Services and other Cost of the Work.

9.2 Determination of Cost. An increase or decrease in the GMP resulting from a Change Order shall be determined by one or more of the following methods:

A. Unit prices set forth in this Agreement or as subsequently agreed.

B. Mutually accepted, itemized lump sum.

C. Costs determined as defined in Article 8 above.

D. If an increase or decrease cannot be agreed to as set forth in subsections 9.2(A) and (B) and the City issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

9.3 No Obligation to Perform. The Contractor shall not be obligated to perform changed Work until a Change Order or amendment to this Agreement, as applicable, has been executed by the City and the Contractor, except as provided in subsection 9.2(D) above.

9.4 Adjustment of Unit Prices. If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the City or the Contractor, the unit prices shall be equitably adjusted and, if the result is an increase to the GMP, an amendment to this Agreement shall be executed.

9.5. Unknown Conditions. If, in the performance of the Work, the Contractor or its Subcontractor finds latent, concealed or subsurface physical conditions that (A) differ from the conditions the Contractor or its Subcontractor should have reasonably anticipated, (B) differ substantially from available soils reports or (C) differ substantially and materially from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in the Project area), then the GMP compensation and/or the date of Substantial Completion may be equitably adjusted only if the Contractor notifies the City within seven days after the conditions are first observed, in accordance with Article 6 above.

9.6 Emergencies. In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in a GMP, compensation for Pre-Construction Phase Services, the Construction Phase Fee and/or extension of the date of Substantial Completion on account of emergency work shall be determined as provided in this Agreement.

ARTICLE 10
PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 Progress payments.

A. Submittal Process. On or before the 15th day of each month after the Construction Phase has commenced, the Contractor shall submit to the City an "Application for Payment" consisting of the Cost of the Work performed up to the end of the prior month, including the cost of material stored on the site or at other locations approved by the City, along with a proportionate share of the Construction Phase Fee. Prior to submission of the next Application for Payment, the Contractor shall make available at the request of the City a statement accounting for the disbursement of funds received under the previous Application for purposes of audit. The form and extent of such statement shall be as agreed upon between the City and Contractor.

B. City's Payment. Within seven days after approval of each monthly Application for Payment, the City shall pay directly to the Contractor the appropriate amount for which Application for Payment is made, less amounts (1) previously paid by the City, (2) sufficient to pay expenses the City reasonably expects to incur in correcting deficiencies which are set forth in writing and provided to the Contractor and (3) any retainage as set forth in Section 10.2 below.

C. No Liens. The Contractor warrants and guarantees that the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the City upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."

D. Non-Conforming Work. The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of this Agreement or the Contract Documents.

E. Unfinished Items. Upon Substantial Completion of the Work, the City shall pay the Contractor the unpaid balance of the Cost of the Work, compensation for Pre-Construction Phase Services and the Construction Phase Fee, less a sum equal to the Contractor's estimated cost of completing any unfinished items as agreed to between the City and the Contractor as to extent and time for completion. The City thereafter shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

10.2 Retainage.

A. Exemptions to Retainage Requirement. With respect to the Contractor's Fee, gross receipts tax, and premiums for bonds and insurance and payment for Pre-Construction Services, no Retainage shall be withheld.

B. Amount Retained. With respect to the Work, the City shall retain ten per cent (10%) of the amount of each estimate until Final Completion and acceptance of all material, equipment and work covered by the Contract Documents.

1. Any securities submitted by Contractor in lieu of retainage as may be allowed by law, shall be deposited in an escrow account by the City. The City shall be listed as Payee or Multiple Payee with Contractor on all such securities.

2. When the Work is fifty per cent (50%) completed, one-half of the amount retained including any securities substituted pursuant to subsection 10.2(B)(1) shall be paid to the Contractor on the Contractor's request, provided the Contractor is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After the construction Work is fifty per cent (50%) completed, no more than five per cent (5%) of the amount of any subsequent progress payments made under the Contract Documents may be retained, provided the Contractor is making satisfactory progress on the Project. If, at any time, the City determines satisfactory progress is not being made, ten per cent (10%) retention shall be reinstated for all progress payments made under the Contract Documents after the determination.

10.3 Payment for on-site and off-site stored materials. Payment shall be made on account of materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Contractor furnishing evidence to the Owner that (A) title to the materials and equipment will pass to the City upon payment therefore, (B) the materials and equipment are adequately insured and (C) such other matters as the City may reasonably request in order to protect its interests.

10.4 Title to construction work. The Contractor warrants that title to all Work covered by an Application for Payment shall pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the City shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

10.5 Substantial completion. When the Contractor considers that the Work is Substantially Complete, the Contractor shall prepare and submit to the City a comprehensive list of Punch List items, which the City may edit and supplement. The Contractor shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Punch List, the City will make an inspection to determine whether Substantial Completion has occurred and if so, a Certificate of Substantial Completion shall be issued stating the date of Substantial Completion; the City and the Contractor shall execute the Certificate of Substantial Completion. If the City and the Contractor cannot agree as to the appropriate date of Substantial Completion, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in Article 13 below. Notwithstanding such disagreement, the Contractor shall diligently proceed with completion of the Punch List items. Warranties required by the Contract Documents shall commence on the date of Substantial Completion or designated portion thereof unless otherwise provided in the Contract Documents.

10.6 Final payment.

A. Fully Completed Work. Final payment, consisting of the unpaid balance of (1) the Cost of the Work, (2) compensation for Pre-Construction Phase Services and (3) the Construction Phase Fee, shall be due and payable when the Work is fully completed and accepted by the City. Before issuance of final payment, the City may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

B. Waiver of Claims. In making final payment, the City waives all claims against the Contractor except for:

1. Outstanding liens.

2. Improper workmanship or defective materials.

3. Work not in conformance with the Contract Documents or work not completed.

4. Terms of any special warranties required by the Contract Documents.

5. Delivery to City of all warranties, operation and maintenance manuals, record drawings and other documents as required by the Contract Documents.

6. Right to audit Contractor records for a period of three years.

7. Claims previously made in writing and which remain unsettled.

C. Acceptance as Waiver. Acceptance of final payment by the Contractor shall constitute a waiver of affirmative claims by the Contractor against the City, its employees, elected officials and agents, except those previously made in writing and identified as unsettled at the time of final payment.

ARTICLE 11
INSURANCE AND BONDS

11.1 Insurance representations and requirements.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City.

Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Contractor. City reserves the right to review evidence of any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

3. Additional Insured. All insurance coverage and self insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of the work included in this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

4. Coverage Term. 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 are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

5. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of the work included in this Agreement and in the protection of City as an Additional Insured.

6. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the Work or services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

7. Waiver. All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

8. Policy Deductibles and or Self Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to City. Contractor shall be solely responsible for any such deductible or self-insured retention amount. City, at its option, may require Contractor to secure

payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

9. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreement with Subcontractor containing the indemnification provisions set forth in Section 11.2 below and insurance requirements set forth herein protecting the City and Contractor. At Contractor's option and at Contractor's sole risk, Contractor may, subject to the City's prior, written approval, which approval shall not be unreasonably withheld, allow subcontractors to deviate from these insurance requirements due to insurance market availability or affordability issues. Contractor shall be responsible for executing the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

10. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the term of this Agreement, it shall be Contractor's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Certificates of insurance shall specifically include the following provisions:

a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(i) Commercial General Liability - Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or more current edition.

(ii) Auto Liability - ISO Form CA 20 48 or equivalent.

(iii) Excess Liability - Follow Form to underlying insurance.

b. Contractor's insurance shall be primary insurance with respect to performance of the Work included in this Agreement.

c. All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

d. A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

B. Required Insurance Coverage.

1. Commercial General Liability. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $5,000,000 for each occurrence, $5,000,000 Products and Completed Operations Annual Aggregate and a $5,000,000 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 01 93 or more recent edition 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 this Agreement, 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 more recent edition thereof, which shall read "Who is an Insured 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.

2. Professional Liability. If this Agreement is the subject of any professional services or work, or if Contractor engages in any professional services or work adjunct or residual to performing the work under this Agreement, Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the work or services performed by Contractor, or anyone employed by Contractor, or anyone for whose negligent acts, mistakes, errors and omissions Contractor is legally liable, with an unimpaired liability insurance limit of $1,000,000 each claim and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of the work or services, and Contractor shall be required to submit certificates of insurance evidencing proper coverage is in effect as required above.

3. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of $5,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. 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 this Agreement, 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 then underlying insurance.

4. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Agreement 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.

5. Builder's Risk Insurance. The Contractor shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Contractor, the Contractor's Subcontractors and subsubcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days' prior, written notice to the City.

11.2 Indemnity. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the negligent or intentional acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of tangible real or personal property, including loss of use resulting therefrom, to the extent caused by any negligent or intentional acts, errors, mistakes, omissions, work or services in the performance of the work included in this Agreement of the Contractor's employee or any tier of subcontractor or any other person for whose negligent or intentional acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this subsection.

11.3 Performance and Payment bonds.

A. Performance Bond. After the City and the Contractor have agreed to a GMP but prior to commencing the Construction Phase attributable to such GMP, the Contractor shall be required to furnish the City with an irrevocable security binding the Contractor to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to the Construction Phase, payable to the City. Performance security shall be in the form of a performance bond, certified check or cashier's check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default and the Agreement, permitting the City to terminate this Agreement for cause as set forth in Section

12 below. In case of default the City reserves all rights. All performance bonds shall be executed on the form attached hereto as Exhibit J, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal and A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

B. Payment Bond. After the City and the Contractor have agreed to a GMP but prior to commencing the Construction Phase attributable to such GMP, the Contractor shall be required to furnish the City with an irrevocable security for the protection of all persons supplying labor and material to the Contractor or any subcontractor for the performance of any work related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to the Construction Phase and be payable to the City. Payment security shall be in the form of a payment bond, certified check or cashier's check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default and the Agreement, permitting the City to terminate this Agreement for cause as set forth in Section 12 below. All payment bonds shall be executed on a the form attached hereto as Exhibit K, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal and A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

ARTICLE 12
TERMINATION AND SUSPENSION

12.1 Termination by the Contractor.

A. Procedure. Upon 30 days' written notice to the City of one of the reasons set forth below, and if the City fails to cure or initiate reasonable action to cure within 30 Days of receipt of said notice, the Contractor may terminate this Agreement for any of the following:

1. If the Work has been stopped for a 60-day period:

a. Under court order or order of other governmental authorities having jurisdiction; or

b. As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available.

2. If the Work is suspended by the City for more than 60 days.

3. If the City materially delays the Contractor in the performance of the Work.

4. If the City otherwise materially breaches this Agreement.

B. Payment to Contractor. Upon termination by the Contractor in accordance with subsection 12.1(A) above, the Contractor shall be entitled to recover from the City payment for all Work completed to the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead, extended general conditions and profit on the Work performed. The City may subtract reasonable estimates of costs for deficient work from the payments noted above.

12.2 Termination by the City for Cause.

A. Contractor Default. If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for 15 Days after the Contractor receives written notice of such nonperformance or violation from the City, then the City may, without prejudice to any right or remedy otherwise available to the City, terminate this Agreement.

B. Set Off. Upon termination of this Agreement by the City, the City shall be entitled to furnish or have furnished the services to be performed hereunder by the Construction Manger by whatever method the City may deem expedient. Also, in such case, the Contractor shall not be entitled to receive any further payment until completion of the Work and the total compensation to the Contractor under this Agreement shall be the amount that is equitable under the circumstances. If the City and the Contractor are unable to agree on the amount to be paid under the foregoing sentence, the City shall fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Contractor may dispute the City's assessment of the termination amount by the method of dispute resolution permitted under Section 13 of this Agreement.

C. Contractor Insolvency. Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the City may terminate this Agreement, without prejudice to any right or remedy otherwise available to the City, upon giving three working days' written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the City may terminate this Agreement by giving three working days' written notice to the Contractor unless the Contractor or the trustee does all of the following:

1. Promptly cures all breaches within such three-day period.

2. Provides adequate assurances of future performance.

3. Compensates the City for actual pecuniary loss resulting from such breache(s).

4. Assumes the obligations of the Contractor within the established time limits.

12.3 Termination by the City for Convenience. The City may, upon 30 days' written notice to the Contractor, terminate this Agreement, in whole or in part, for the convenience of the City, without prejudice to any right or remedy otherwise available to the City. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the City, the Contractor's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Contractor shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination of convenience by the City.

12.4 Suspension by the City for Convenience.

A. Procedure. The City may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may determine to be appropriate for its convenience, but not in abrogation of the rights given Contractor in Section 12.1 above.

B. Adjustments to GMP and Schedule. Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP and/or the date of Substantial Completion. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 13
DISPUTE RESOLUTION

13.1 Scope. Notwithstanding anything to the contrary provided elsewhere in the Contract Documents, except for subsection 13.4 (G) below, the alternative dispute resolution ("ADR") process provided for herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon the Agreement, the interpretation thereof or the performance or breach by any party thereto, including but not limited to original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to agreements containing this ADR provision.

13.2 Neutral Evaluator, Arbitrators. The City will select a Neutral Evaluator to serve as set forth in this ADR process. The City and Contractor shall each select an arbitrator to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona and shall have experience in the field of construction law. None of the arbitrators nor any of the arbitrator's firms shall have presently, or in the past, represented any party to the arbitration.

13.3 Neutral Evaluation Process. If the parties have been unable to resolve the disputes after discussions and partnering, the following neutral evaluation process shall be used to resolve any such dispute.

A. Notification of Dispute. The City shall notify the Neutral Evaluator in writing of the existence of a dispute within ten days of the City or the Contractor declaring need to commence the neutral evaluation process.

B. Non-Binding Informal Hearing. The Neutral Evaluator shall schedule a non-binding informal hearing of the matter to be held within seven Days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such manner as he deems appropriate and shall notify each party of the hearing and of its opportunity to present evidence they believe will resolve the dispute. Each party to the dispute shall be notified by the Neutral Evaluator that they shall submit a written outline of the issues and evidence intended to be introduced at the hearing and their proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Arbitrators shall not participate in such informal hearing or proceedings process. The Neutral Evaluator is not bound by the rules of evidence when admitting evidence in the hearing and may limit the length of the hearing, the number of witnesses or any evidence introduced to the extent deemed relevant and efficient.

C. Non-Binding Decision. The Neutral Evaluator shall render a non-binding written decision as soon as possible, but not later than five calendar days after the hearing.

13.4 Binding Arbitration Procedure. The following binding arbitration procedure, except as provided in subsection 13.4 (G) below, shall serve as the exclusive method to resolve a dispute if any party chooses not to accept the decision of the Neutral Evaluator. The party requesting binding arbitration shall notify the Neutral Evaluator in writing within three working days of receipt of the Neutral Evaluator's decision of a request for arbitration. If the Contractor requests arbitration it shall post a cash bond with the Neutral Evaluator in an amount agreed upon by the parties or, in the event of no agreement, the Neutral Evaluator shall establish the amount of the cash bond to defray the cost of the arbitration as set forth in subsection 13.4 (M) and the proceeds from the bond shall be allocated in accordance with subsection 13.4 (M) by the Arbitration Panel.

A. Arbitration Panel. The Arbitration Panel shall consist of three arbitrators: the City's appointed arbitrator, the Contractor's appointed arbitrator and a third arbitrator (or "Neutral Arbitrator") who shall be selected by the parties' arbitrators as set forth in subsection 13.4(B) below. If one or more Subcontractor(s) is (are) involved in a dispute, the Subcontractors shall agree on an appointee to serve as arbitrator on behalf of all such Subcontractors. The Neutral Evaluator shall not participate in the proceedings.

B. Selection of Neutral Arbitrator. The parties' arbitrators shall choose the Neutral Arbitrator within five business days of receipt of notification of a dispute from the Neutral Evaluator. The Neutral Arbitrator shall have the same qualifications as those of the arbitrators set forth in Section 13.2 above. In the event that the selected arbitrators cannot agree on the Neutral Arbitrator as set forth above, the Neutral Arbitrator shall be the Default Neutral Arbitrator, a person or entity jointly selected by the City and the Contractor not later than 30

days of City and the Contractor reaching agreement upon the GMP. If the City and the Contractor cannot agree on a Default Neutral Arbitrator, the City and the Contractor shall each submit two names to the presiding judge of the Maricopa County Superior Court, who shall select one person to serve as the Neutral Arbitrator.

C. Expedited Hearing. The parties have structured this procedure with the goal of providing for the prompt, efficient and final resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Neutral Evaluator to set an expedited hearing. If the Neutral Evaluator determines that the circumstances justify it, the Neutral Evaluator shall contact the selected Arbitration Panel and arrange for scheduling of the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical but in no event later than 20 calendar days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitration Panel upon a showing of emergency circumstances.

D. Procedure. The Arbitration Panel will select a chairman and will conduct the hearing in such a manner that will resolve disputes in a prompt, cost efficient manner giving regard to the rights of all parties. Each party shall supply to the Arbitration Panel a written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitration Panel shall review and consider the Neutral Evaluator decision. The chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of any materials or information for which a privilege is recognized by Arizona law. The chairman, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to confirm such orders of the chairman.

E. Hearing Days. In order to effectuate parties' goals, the hearing once commenced, will proceed from working day to working day until concluded, absent a showing of emergency circumstances.

F. Award. The Arbitration Panel shall, within ten calendar days from the conclusion of any hearing, by majority vote issue its award. The award shall include an allocation of fees and costs pursuant to subsection 13.4(M) below. The award is to be rendered in accordance with this Agreement and the laws of the State of Arizona.

G. Scope of Award. The Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitration Panel shall be without any authority to issue an award against any individual party in excess of 20% of the original Agreement amount, but in no event shall any award exceed two million dollars ($2,000,000), exclusive of interest, arbitration fees, costs and attorneys' fees. If an award

is made against any individual party in excess of one hundred thousand dollars ($100,000), exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and a statement as to how damages were calculated. Any claim in excess of 20% of the original Agreement amount or in excess two million dollars ($2,000,000) shall be subject to the jurisdiction of the Superior Court of Arizona, Maricopa County. Any party may contest the validity of the amount claimed if an action is filed in the Superior Court.

H. Jurisdiction. The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.

I. Entry of Judgment. Any party can make application to the Maricopa County Superior Court for confirmation of an award, and for entry of judgment on it.

J. Severance and Joinder. To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the Arbitration Panel, may: (1) at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision and (2) the Neutral Evaluator, on his own authority, or the Arbitration Panel may, on its own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes; provided, however, that the Contractor, the Architect/Engineer and other Project professionals shall not be joined as a party to any claim made by a Subcontractor. Nothing herein shall create the right by any party to assert claims against another party not germane to the Agreement or not recognized under the substantive law applicable to the dispute. Neither the Neutral Evaluator nor the Arbitration Panel is authorized to join to the proceeding parties not in privity with the City. The Contractor cannot be joined to any pending arbitration proceeding, without the Contractor's express written consent, unless the Contractor is given the opportunity to participate in the selection of the non-City appointed arbitrator.

K. Appeal. Any party may appeal (1) errors of law by the Arbitration Panel if, but only if, the errors arise in an award in excess of $100,000, (2) the exercise by the chairman or Arbitration Panel of any powers contrary to or inconsistent with this Agreement or (3) on the basis of any of the grounds provided in ARIZ. REV. STAT. § 12-1512. Appeals shall be to the Maricopa County Superior Court within 15 calendar days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this Section, but not to conduct a trial, entertain the introduction of new evidence or conduct a hearing *de novo*.

L. Uniform Arbitration Act. Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as codified in Arizona in ARIZ. REV. STAT. § 12-1501, *et seq*.

M. Fees and Costs. Each party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator. All fees and costs associated with any

arbitration before the Arbitration Panel, including without limitation the Arbitration Panelists' fees, and the prevailing party's reasonable attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party, except as provided for herein. In no event shall any Arbitrator's hourly fees be awarded in an amount in excess of $200 per hour and (1) costs shall not include any travel expenses in excess of mileage at the rate paid by the City, not to exceed a one way trip of 150 miles, and (2) all travel expenses, including meals, shall be reimbursed pursuant to the travel policy of the City in effect at the time of the hearing. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitration Panel. Fees for the Neutral Evaluator shall be paid by the City.

N. Confidentiality. Any proceeding initiated under ADR shall be deemed confidential to the maximum extent allowed by Arizona law and no party shall, except for disclosures to a party's attorneys or accountants, make any disclosure related to the disputed matter or to the outcome of any proceeding except to the extent required by law, or to seek interim equitable relief, or to enforce an agreement reached by the parties or an award made hereunder.

O. Equitable Litigation. Notwithstanding any other provision of ADR to the contrary, any party can petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to the Project pending resolution of a dispute pursuant to ADR provided herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order entered by the Arbitration Panel. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

P. Change Order. Any award in favor of the Contractor against the City or in favor of the City against the Contractor shall be reduced to a Change Order or amendment to this Agreement, as applicable, and executed by the parties in accordance with the award and the provisions of this Agreement.

Q. Merger and Bar. Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of the Agreement performance period which reasonably should have or could have been brought against any party that was or could have been brought into this ADR process, with respect to the subject claim. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.

R. Inclusion in Other Contracts. The Contractor shall cooperate with the City in efforts to include this ADR provision in all other Project subcontracts. The Contractor agrees that any modification to this ADR provision that is included in the construction or other subcontracts shall also apply to the Contractor. It is the intent of the parties that any changes to this ADR provision in later contracts will be evolutionary and designed to incorporate the terms of this ADR provision without material changes to the substance or procedure of this ADR provision.

ARTICLE 14
ADDITIONAL PROVISIONS

14.1 Confidentiality. The Contractor shall not disclose or permit the disclosure of any confidential information except to its agents, employees and Subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement.

14.2 Limitation and Assignment. The City and the Contractor each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the City nor the Contractor shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Contractor may assign accounts receivable to a commercial bank for securing loans without approval of the City. Nothing contained in this subsection shall prevent the Contractor from employing such consultants, associates or Subcontractors as the Contractor may deem appropriate to assist in performance of the Services hereunder.

14.3 Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Contractor. Nothing contained in this Agreement is intended to benefit any third party. Subcontractors, if any and the Architect/Engineer are not intended third-party beneficiaries of this Agreement.

14.4 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be enforceable without such provision.

14.5 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

14.6 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (C) given to a recognized and reputable overnight delivery service, to the address set forth below or (D) delivered by facsimile transmission to the number set forth below:

If to the City:	City of Avondale 11465 West Civic Center Drive, Suite 220 Avondale, Arizona 85323 Facsimile: 623-333-0100 Attn: City Manager
With copy to:	GUST ROSENFELD, P.L.C. 201 East Washington, Suite 800 Phoenix, Arizona 85004-2327 Facsimile: 602-340-1538 Attn: Andrew J. McGuire, Esq.

If to Contractor: Hunter Contracting Co.
701 North Cooper Road
Gilbert, Arizona 85233
Facsimile: 480-892-4932
Attn: Keli Dobberstein

If to Architect/Engineer: _____
_____
_____
Facsimile:_____
Attn:_____

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.7 Governing Law. This Agreement shall be governed by the laws of the State of Arizona and venue shall be in Maricopa County.

14.8 No Waiver of Performance. The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition right with respect to further performance.

14.9 Headings. The headings given to any of the provisions of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.10 Asbestos Free Materials. The Project is to be constructed by the Contractor with asbestos free materials. A written, notarized statement on company letterhead shall be submitted to the City by the Contractor with the final payment request certifying that the Contractor has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted. The Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of it's Subcontractors or agents and were not specified in the design or required by the Contract Documents, the Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City not withstanding any statute of limitations or other legal bar to any claim by the City.

14.11 Cancellation. This Agreement may be cancelled by the City pursuant to ARIZ. REV. STAT. § 38-511.

14.12 Survival of Representations and Warranties. Notwithstanding any other provision of this Agreement, the representations, warranties and covenants herein shall survive termination of this Agreement.

14.13 Endangered Hardwoods Prohibited. Contractor shall ensure that products containing endangered wood species shall not be utilized in the construction of the Project unless exempted pursuant to ARIZ. REV. STAT. § 34-201(J).

14.14 Disadvantaged Business Enterprise Program. The Contractor shall implement the Subcontractor Selection Program in accordance with the City of Phoenix Disadvantaged Business Enterprise Program, in a manner set forth in Exhibit L, attached hereto and incorporated herein by reference. The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Agreement that may result in the termination of this Agreement or such other remedy as the City deems appropriate.

14.15 Non-Discrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000(d), section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other Federal Transit Authority ("FTA") implementing requirements.

14.16 Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Agreement and all subcontracts related hereto:

A. Race Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000(e), and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq*., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of

compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any FTA implementing requirements.

B. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any FTA implementing requirements.

C. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any FTA implementing requirements.

14.17 Davis-Bacon Requirements. This is a federal-aid project. The prevailing basic hourly wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act, specifically including, but not limited to, the provisions of 29 C.F.R. Part 3 and 29 C.F.R. Part 5, attached hereto as Exhibit M and incorporated herein by reference, shall be the minimum wages paid to the described classes of laborers and mechanics employed, or working on the site, to perform the construction Services under this Agreement.

A. Wage Determination. In the event that the wage determination decision of the Secretary of Labor, which is attached hereto as Exhibit N and incorporated herein by reference, has been superseded by any subsequent wage determination decision(s) published up to and including ten days prior to submittal of the GMP Proposal, the most recent applicable wage decision shall be incorporated by reference, and the Contractor agrees to be bound by it, regardless of what is contained in the specifications. State or local wage rates will not apply if the state or local wage rate exceeds the corresponding Federal Wage Determination rate.

B. Payment Withholding. To ensure compliance with the Davis-Bacon and related acts, the Contractor is responsible for the timely submittal of all required documentation from all contractors/companies who employ laborers and mechanics to perform work on this Project. Payrolls, including subcontractor's payrolls, must be submitted weekly no later than seven days after each pay period ending date. Payments may be withheld in part or in full until payrolls are received and reviewed to assure compliance with the Federal Labor Standards. Failure to clarify, when requested, discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the Federal Wage Decisions contained herein may also affect the complete or timely release of payments.

C. Labor Compliance Preconstruction Conference. A Labor Compliance Conference must be held after submittal of the GMP Proposal and prior to agreement upon a GMP for construction of the Project. This meeting is separate from and in addition to the pre-construction conference. The Contractor shall schedule the conference by calling Jess Segovia at 623-333-1030. Minimum attendance shall be a corporate officer who is authorized to execute

and sign documents for the Contractor and the payroll representative of the prime, sub and lower-tier contractors.

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

"**City**"	"**Contractor**"
CITY OF AVONDALE, an Arizona municipal corporation	HUNTER CONTRACTING CO., an Arizona corporation
_____	By:_____
Charles P. McClendon, City Manager	
ATTEST:	Name:_____
	Its:_____
_____	
Linda M. Farris, City Clerk	

(ACKNOWLEDGMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2007, by Charles P. McClendon, the 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

My Commission Expires:

_____

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2007, by _____, the _____ of Hunter Contracting Co., an Arizona corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

EXHIBIT A
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Amendments and Change Orders]

See following pages.

EXHIBIT B-1
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[GMP Proposal]

See following pages.

EXHIBIT B-2
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Scope]

See following pages.

EXHIBIT C-1
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[List of Schematic Design Documents]

See following pages.

EXHIBIT C-2
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[List of Design Development Documents]

See following pages.

EXHIBIT C-3
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[List of Construction Documents]

See following pages.

EXHIBIT D
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[City's Program]

See following pages.

EXHIBIT E
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[The City's RFQ]

See following pages.

AD 06-033

REQUEST FOR STATEMENTS OF QUALIFICATIONS

FOR

DESIGN/BUILD SERVICES EMCC MINI-BUS CENTER PROJECT

CITY OF AVONDALE

11465 W. Civic Center Drive
Avondale, AZ 85323

Release Date: November 7, 2006

Mandatory pre-submittal conference:
November 21, 2006, 10:00 a.m.

Location: Avondale Civic Center, Sonoran Conference Room
11465 W. Civic Center Drive
Avondale, Arizona 85323

Statement of Qualifications must be received no later than:
December 7, 2006, 3:00 P.M. (MST)

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I. Introduction

The City of Avondale (the "City") is seeking Statements of Qualification ("SOQ") from design/build teams interested in providing professional services for the design and construction of a Mini-Bus Center to be located at Estrella Mountain Community College ("EMCC"). The City has an Intergovernmental Agreement with EMCC that will allow for the project to be constructed on the EMCC site.

II. Purpose

The City was awarded LTAF II funds from the Arizona Lottery for which the City is obligated to design and construct a mini-bus center at EMCC. The project is scheduled to be completed by July 1, 2007. This target date is in compliance with the provisions outlined in the grant requirements. Anticipated project start date shall be no later than January 1, 2007.

The conceptual design for the project was completed by Smith Group, Inc. and shall be the utilized to develop the final design documents. Minor adjustments to the conceptual design shall be considered so long as they are approved by City staff.

Infrastructure for the project includes design and construction of streets, sidewalks, curb and gutter, and wireless internet services. The infrastructure features shall be agreed upon by the City in conjunction with EMCC. City staff will reserve the right to phase construction of the project if the cost supersedes the amount of available funding.

The selected design/build team shall provide all services necessary to obtain and verify existing conditions; review and verify the conceptual design; provide value engineering analysis and recommendations for facility shortfalls; provide final construction specifications for all proposed improvements including electrical fixtures and equipment; provide final construction plans through the use of computer-aided design and drafting (CADD); prepare all bid documents; provide permitting services; provide sound drainage design; estimate construction costs; assist with bidding and award activities; schedule and conduct at minimum bi-weekly meetings with the appropriate stakeholders; provide necessary construction administration; perform all construction activities; coordinate commissioning activities; and assist in the warranty review.

III. Objective

The City proposes to retain a highly qualified design/build team with experience in bus stop design and the services described herein. Those firms or joint ventures that participate in this RFQ process will be referred to as "Respondents." And "Team" refers to a collection of Construction Contractor, Designer and its sub consultants. The successful "Respondent" will be referred to, in the RFQ, as the "Design/Build Team."

IV. Project Description

This project shall consist of providing the final construction documents necessary for sound engineering design of the proposed bus center, the necessary value engineering to make this project a success, and the construction of the improvements in a timely manner. Minor revisions to the conceptual design may be necessary. The Design/Build Team shall comply with best practices for bus centers. All improvements must be ADA compatible.

The Design/Build Team shall be responsible for the review of the conceptual design documents provided by Smith Group, Inc. The design engineer shall provide full design and specifications for the purpose of constructing the project. Final design, in general, shall be consistent with the agreed upon conceptual design.

The following items have been identified as major items in the Scope of Work:

1. Sound Engineering Design.
2. Landscape Design and Provisions.
3. Street and Sidewalk.
4. Lighting and Wireless Internet.
5. Mini-Bus Center furniture and Signage.
6. Design and construction of parking lot addition adjacent to the bus center.
7. Design and construction of an entrance/exit from Thomas Road onto the campus in the area adjacent to the parking lot addition.

The majority of the project area is undeveloped. There will need to be provisions to accommodate the retention issues in this area. There may be special codes and ordinances that may affect this project. Compliance with any codes, ordinances, or law required to receive a building permit. The Contract Documents must comply with the City of Avondale's minimum standards.

V. Selection Process and Schedule

The City is seeking a highly qualified Design/Build Team for construction of the Project. The Design/Build Team must be experienced in providing the professional programming, planning, design, and construction services outlined in the Scope of Work. The required qualifications are to be demonstrated in the experience of the proposed Design/Build Team. A Selection Committee composed of representatives from the City, EMCC and other representatives as required by ARIZ. REV. STAT. § 34-601 *et seq.* will review the SOQs. The selection process will be conducted according to the following schedule:

RFQ Advertisement:	November 7, 2006
Pre-Submittal Conference:	November 21, 2006
SOQs Due:	December 7, 2006
Letters to Final Listed Firms:	December 22, 2006
Oral Discussions:	December 26-29, 2006
City Council Award	January 16, 2007

Upon receipt of a SOQ, each submittal will be reviewed for compliance with the submittal requirements. The Selection Committee will evaluate each SOQ according to the criteria outlined in this document and select at least three (3), but not more than five (5), finalists that will be invited for oral discussions with the Selection Committee regarding their qualifications. The City will conduct oral discussions with the selected firms and based on the discussions will create a final list, in order of preference, of the three (3) most qualified firms. Respondents may be given additional information for oral discussions. These discussions will relate less to the past experience and qualifications already detailed in the submittal and relate more to identification of the Respondent's program approach and to an appraisal of the people who would be directly involved in the project.

The City will enter into negotiations with the highest qualified firm from the final list. City Council approval is required. If the City is unsuccessful in negotiating a contract with the best-qualified firm, the City may then negotiate with the second, then third most qualified firm until a contract is executed. The City reserves the right to terminate the selection process at any time prior to agreeing to a guaranteed maximum price with any Design/Build Team.

VI. Pre-Submittal Conference

There shall be a **mandatory** pre-submittal conference for all Design/Build Teams interested in submitting a SOQ at the time and place listed below. Information vital to the understanding of the Project and the selection process will be discussed.

Time: 10:00 a.m. (MST)
Date: November 21, 2006

Location: Avondale Civic Center, Sonoran Conference Room
11465 W. Civic Center Drive
Avondale, Arizona 85323

VII. Submittal Requirements

Design/Build teams interested in this Project should submit a SOQ as follows:

1. One-page cover letter.
2. Maximum of twelve (12) pages to address the SOQ criteria (excluding resumes, but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams).
3. Adherence to the maximum page criteria is critical. Each page side (maximum 8 ½" x 11") with criteria information will be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 ½" x 11", showing a proposed project schedule or organizational chart and only having criteria information on one side. The City reserves the right to accept or reject any SOQ that exceeds the maximum page limit. The minimum allowable font size for the SOQ is 11.

4. Resumes for key personnel, limited to two pages per resume, should be attached as a separate appendix in the SOQ.
5. Cover, back, table of contents and tabs are not included in the page count, but should not include additional project-specific information or SOQ criteria responses.
6. The City reserves the right to reject any SOQ that (i) is not properly marked with the Project information set forth above, (ii) is submitted with fewer than the original plus eight (8) copies, (iii) exceeds the maximum page limit or utilizes a font size smaller than 11 or (iv) is submitted via email or facsimile. Failure to comply with the criteria set forth above and the requirements set forth below may be grounds for disqualification and will be strictly enforced:

   A. Qualifications must be submitted in a sealed envelope clearly marked on the outside with the Project name: "**EMCC Mini-Bus Center Project (AD 06-033)",** and name of firm submitting SOQ. The City is not responsible for the pre-opening of, post opening of, or the failure to open, a SOQ not properly addressed or identified.

   B. Provide one (1) clearly marked "original" and 8 (eight) copies **(total 9 submittals)** by **3:00 PM (MST) on December 7, 2006** to: City Clerk's Office, 11465 W. Civic Center Drive, Suite 200, Avondale, Arizona 85323.

   C. Email or facsimile submittals will not be accepted.

VIII. Statement of Qualifications Format

The Design/Build firm will be selected through a qualifications-based selection process. The SOQ shall include the following categories of information in the order shown below:

Section 1: General Information

1. Provide a general description of the firm and/or team proposing for Design/Build services for the EMCC Mini-Bus project. Explain the legal organization of the proposed firm or team.
2. Provide the Arizona professional license numbers held by the firm/team and the key personnel who will be assigned to this Project; please indicate if the individual or the firm holds the license.
3. Identify any contract or subcontract held by the firm or officers of the firm that has been terminated within the last five (5) years. Briefly describe the circumstances and outcomes.
4. Identify any claims arising from a contract that resulted in litigation or arbitration within the last three (3) years. Briefly describe the circumstances and outcomes.
5. Identify the location of the firm's principal office, and the location of local office, if different.

Section 2: Experience and Qualifications of the Firm/Team

1. The design/build team shall provide a description of projects in which the firm has served as Management Consultants on similar successful projects for organizations or municipalities of

the same size as, or larger than, the City of Avondale, completed within in the last three (3) years. For each project, provide, at a minimum, the following:

A. Project description. Include details about how your project is similar to the one described in this SOQ Name of company or organization
B. Role of the firm.
C. Organization name
D. Contact name
E. Contact address, telephone number, and email address

2. The above information must be current, as this will be used to verify references. Inability of the City to verify references may result in the proposer's disqualification.

Section 3: Key Personnel Experience

1. Provide an organizational chart showing key personnel to be involved in this project, and company affiliation.
2. Provide resumes for key personnel listed above, including experience in consulting projects, the home office location of key personnel and length of time with the firm. At a minimum, the listed projects should include two comparable projects, location, key person's role, reference information, and brief description of the work. Limit resumes to two pages.

Section 4: Project Understanding and Approach

1. Discuss your understanding of this Project. Include major issues your firm/team has identified, and how you intend to address those issues.
2. Discuss your proposed schedule for meeting the requirements of this Project.
3. Discuss your firm/team's approach, including the following processes:
   A. Planning.
   B. Estimating.
   C. Scheduling.
   D. Cost controls.
   E. Project management and team organization during design and construction phase services.
   F. Bid Package Management.
   G. Management of overhead costs.
   H. Managing subcontractors.
   I. Quality control.
   J. Safety.
   K. Dispute resolution.
4. Submit a Subcontractor selection plan that meets ARIZ. REV. STAT. § 34-601 *et seq.* requirements. Discuss the benefits that your selection plan provides to the Project.

Section 5: Overall Evaluation of Capability to Provide Required Services

Points will be determined by the selection panel members according to the scoring system set forth below. No response is required. However, the selection panel members may consider current capacity of the key personnel, size and complexity of similar projects, ability to maintain schedule and budget, and previous work performed for the City.

IX. SOQ and Oral Interview Scoring

SOQ

10	General Information
25	Experience and Qualifications of the Firm/Team
30	Key Personnel Experience
30	Project Understanding and Approach
5	Overall Evaluation of Capability to Provide Required Services
100	**Total Points**

Oral Interview

10	General Information
20	Experience and Qualifications of the Firm/Team
20	Key Personnel Experience
20	Project Understanding and Approach
25	Questions and Answers
5	Overall Evaluation of Capability to Provide Required Services
100	**Total Points**

X. General Information

1. **RFQ Holder Lists and Schedule:** This Design/Build RFQ shall be available on or after November 22, 2006, from the following location:

   City of Avondale Procurement Division
   11465 West Civic Center Drive, Suite 200
   Avondale, Arizona 85323

   RFQ shall also be available at www.avondale.org/procurement. Firms who pick up a copy of this RFQ packet from the City of Avondale office will be included in the RFQ Holder List.

2. **Instructions:** The City shall not be held responsible for any oral instructions. Any changes to the RFQ will be in the form of an addendum, which will be furnished to all registered RFQ holders.

3. **City Rights:** The City reserves the right to accept or reject any or all SOQ, to waive any informality or irregularity in any SOQ received, and to be the sole judge of the merits of the respective SOQs received and to reject all submittals and re-advertise or cancel the Project in its entirety, at its sole discretion.

4. **Contact with City Employees or Elected Officials:** All firms interested in this Project (including the firm's employees, representatives, agents, lobbyists, attorneys, and subconsultants) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the evaluation panel, elected officials, the City Manager, Assistant City Managers, Department Heads, and other staff. All

contact on this selection process must be addressed to the authorized representative identified below.

5. **Questions: Questions pertaining to this RFQ must be submitted IN WRITING,** by mail**,** facsimile or email to following address by November 27, 2006 at 5:00 P.M. MST, or submitted verbally at the Pre-Submittal Conference as a part of the public forum. Written questions will be read and answered at the Pre-Submittal Conference.

   Address Questions to:

   Janeen K. Gaskins
   Grants Administrator
   Facsimile: 623.478.3803
   Email: jgaskins@avondale.org

   and

   Peggy Wright
   Procurement Officer
   Facsimile: 623.478-3817
   Email: pwright@avondale.org

   Verbal or telephone inquiries directed to City staff prior to the Pre-Submittal Conference **will not be answered.** Within two (2) business days following the Pre-Submittal Conference, answers to all questions received in writing or verbally during the Pre-Submittal Conference will be mailed, sent via facsimile or emailed to all parties who obtained a RFQ package from the City and legibly provided their mailing address and facsimile numbers to the City. No questions, in any form, will be entertained after two (2) business days following the Pre-Submittal Conference.

6. **Gratuities:** Respondents shall not offer any gratuities, favors, or anything of monetary value to any official or employee of the City for the purposes of influencing this selection. Any attempt by the Respondent to influence the selection process by any means, other than disclosure of qualifications and credentials through the proper channels, shall be grounds for exclusion from the selection process.

7. **False/Misleading Information:** Respondents who provide false or misleading information, whether intentional or not, in any documents presented to the City for consideration in the selection process shall be excluded.

8. **Cost of Preparation**: The City shall not reimburse the cost of developing or presenting a response to this request. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a concise manner.

9. **Confidential Information: T**he City shall hold All responses confidential from other parties to the extent allowable by law until after the selection process is completed. Respondents

should be aware that at the completion of the selection process the contents of their SOQs are subject to the provisions of state and federal public records laws and may be made public. Confidential or sensitive information should not be included in the SOQ.

10. **City Policies & Ordinances:** Respondents should be aware of and therefore, familiar with, all pertinent City Ordinances and policies which relate to contracting with the City. More detailed guidance is available on request. The following is a partial list of relevant subjects:
    A. Equal Employment Opportunity
    B. MWBE Participation
    C. Mayor's Drug Detection and Deterrence Policy and Procedures
    D. City Contracts and Indebtedness to Taxing Authorities

XI. Scope of Work

1. **Design Build Process:**

The following services will be required:

A. **Phase I**- Pre-design Services

Initially, the design/build team will prepare project schedule showing the activities of the City, design/build team, and other project stakeholders, during the design and construction process. Schedule shall be done in Microsoft Project or compatible program. Design/Build Firm will update the schedule at each submittal point. Should the project fall behind schedule at any point, the design/build team shall provide a recovery plan to get back on schedule. In addition to preparing the schedule, the design build team shall perform a records investigation to gather all existing records (e.g. environmental assessments, drainage reports, traffic studies, etc.) and documents (e.g. record drawings, utility mapping, site surveys, etc.) that indicate existing conditions in the vicinity of the project area. The design/build team shall obtain sufficient topographic survey for sound design of the project. The design build team shall obtain and review a copy of the preliminary design concept by Smith Group, Inc. Once all records and topographic survey is evaluated the design build team will prepare a base map for the project, and provide some preliminary value engineering based on the conceptual design and how it relates to the existing conditions. Value engineering shall include but not be limited too drainage criteria, utility conflict criteria, traffic flow, pedestrian access, buss access, alternative materials, landscaping concept and minimizing overall cost of the project. The design/build team shall provide preliminary design recommendations through the value engineering process to the City and EMCC for their consideration.

Engineering services will include, but are not limited to, construction drawings using CADD and the Uniform Drawing System (UDS) distributed by the Construction Specifications Institute (CSI) with layering standards developed by the American Institute of Architects (AIA); CSI-style specifications; construction administration services; and post-construction services as determined by the parties, for a period following the completion of construction.

B. **Phase II**-Intermediate Design and GMP Development Services

60% Submittal

Pending the review of the preliminary value engineering recommendations, the design/build team shall proceed to prepare a 60% plan submittal. The 60% plans shall be reviewed by the City, and comments shall be provided within a two week time frame and returned to the consultant. A comment resolution meeting will then be set up to address all concerns.

Pre-final Submittal
Pending the comment resolution meeting for the 60% submittal, the design/build team shall proceed in preparation of the pre-final submittal. Pre-final submittal shall include revised plans and specifications.

Payment for all services Prior to Phase III shall be covered by a separate negotiated fixed fee amount; payment for services beyond Phase II shall be covered by a GMP.

C. **Phase III**-Final Design and Construction Services

2. Phase III services include development of the final Contract Documents (CD's). All permit and other discrepancies must be resolved and changes incorporated into the CD's before submitting them as 100% complete CDs to the City for final acceptance. The GMP must be established and accepted by the City as final prior to submittal of the final CD's. In addition, Phase III services shall include all necessary Construction Administration Services during the construction process. Also included in Phase III services is the Construction of the project. This includes all necessary labor, traffic control, materials, equipment and personnel necessary to complete the project.

3. **Landscape Design**
A Landscape Designer has been chosen by EMCC. This designer will be a member of the design/build team and shall be required to review the design and provide input for the types of trees, plants, shrubs, and ground cover in the project limits. They will provide suggestions for landscape furniture and amenities. The suggestions for the landscaping design shall be agreed upon by the City and then implemented by the design/build team. If the cost for the landscaping exceeds City expectations the City reserves the right to postpone/phase this portion of the project. The design/build team will continue to design and construct the project with grading and drainage to accommodate the agreed upon landscape design.

4. **Streets and Sidewalks**
The design/build team shall provide the pavement, sidewalk, curb and gutter design and construction for the project. All Avondale codes, ordinances, and standards shall be complied with. Further compliance shall accommodate best practices for bus centers and ADA compliance.

5. **Lighting and Wireless Internet**
The design/build team shall provide lighting and wireless internet connections that are consistent with the existing system at Estrella Mountain Community College.

6. **Mini-Bus Center furniture and Signage**
The design/build team shall provide furniture and signage that is as similar as possible to the conceptual design. The furniture shall be durable and easy to maintain.

7. **EMCC Parking Lot Addition**
   The design/build team shall provide parking lot design for a specific lot addition to the EMCC campus. Direction will be provided to the design/build team through EMCC. If the cost for the parking lot exceeds EMCC expectations the EMCC reserves the right to postpone/phase this portion of the project.

VENDOR INFORMATION

By signing this agreement the submitting firm certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the contract, agrees to be bound thereto.

FIRM SUBMITTING PROPOSAL	FEDERAL TAX ID NUMBER
PRINTED NAME AND TITLE	AUTHORIZED SIGNATURE
ADDRESS	TELEPHONE FAX #
CITY STATE ZIP	DATE
WEB SITE: _____	EMAIL ADDRESS: _____

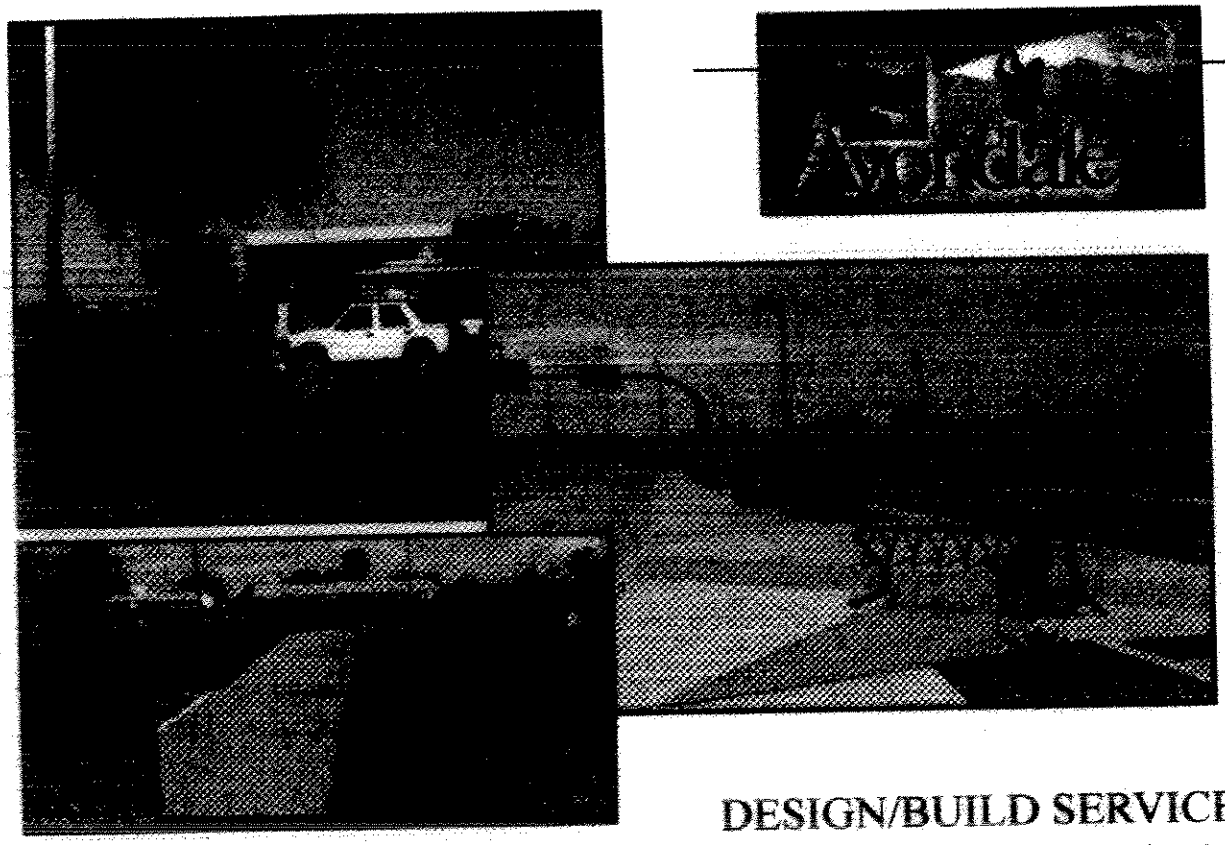
MINORITY/WOMEN-OWNED SMALL BUSINESSES (check appropriate item):

_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)
_____ Minority Business Enterprise (MBE)
_____ Small Business Enterprise (SBE)

EXHIBIT F
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Contractor's Response to the City's RFQ]

See following pages.



DESIGN/BUILD SERVICES
EMCC Mini-Bus Center Project
Project No. AD 06-033

Response to Request for Qualifications

December 7, 2006

Affirmative Action Date:
June 30, 2007

"Original"

Hunter Contracting Co. | A CORPORATION

December 7, 2006

CITY OF AVONDALE
11465 West Civic Center Drive, Suite 200
Avondale, Arizona 85323

Subject: Design Build Services
EMCC Mini-Bus Center Project
Project No.: AD 06-033

To Whom It May Concern:

On behalf of Hunter Contracting Co., I am pleased to present to you our proposal for providing Design/Build services for the EMCC Mini-Bus Center Project.

HCC has an experienced team available to provide design assistance and pre-construction services. Our Key Team members have worked together in designing and constructing various Park and Ride projects throughout the Phoenix area.

HCC is a highly competent General Contractor with experience in managing and constructing Alternative Delivery Method Projects (ADM). This includes Job Order Contracts, CM@Risk and Design/Build Services. HCC has had continued success in satisfying the Owner's needs in developing the Guaranteed Maximum Price.

HCC has over 44 years of industry experience in reconstructing roads with underground work. We will use this experience to provide sounds, alternative solutions for unexpected situations as they arise on the project. You can rely on Hunter Contracting Company to meet your expectations.

HCC looks forward to being a part of this project. I will be the primary contact for this statement of qualifications and can be reached at 480.892.0521; fax 480.892.4932.

Sincerely,
HUNTER CONTRACTING CO.

Keli Dobberstein
Director CM Services

701 North Cooper Road • Gilbert, Arizona 85233 • (480) 892-0521 • Fax (480) 892-4932
6930 North Camino Martin • Tucson, Arizona 85741 • (520) 744-0722 • Fax (520) 744-0847
ARIZONA - ROC070961 A GEN ENG • ROC067542 B GEN BLDG • ROC075851 B-01 GEN COM • ROC023057 B-04 GEN RES ENG **CALIFORNIA** - ROC851711 A GEN ENG

General Information

1. **Provide a general description of the firm and/or team proposing for Design/Build services for the EMCC Mini-Bus project. Explain the legal organization of the proposed firm or team.**

Hunter Contracting Co.

Hunter Contracting Co. (HCC) is a local general contractor with a substantial history of constructing efficient and well built Park and Ride, Transit Bus Bay, and Road Improvements with several Arizona municipalities.

Established in 1961 in Gilbert, Arizona, HCC has grown from a small family owned business to a booming enterprise producing over $200 million in revenue annually with projects ranging in size from $50,000 to $55 million.

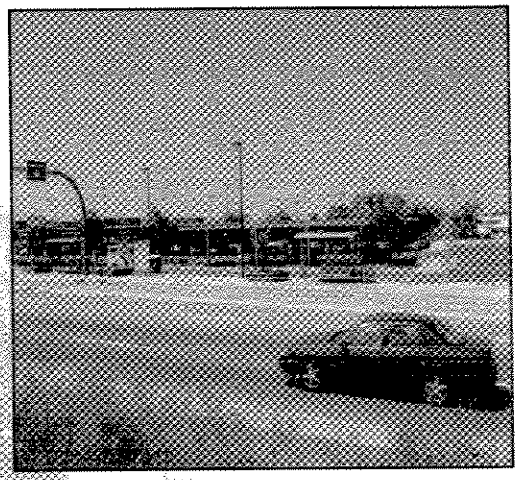
HCC has over 160 salaried management and supervisory personnel with an average tenure of twenty-three years in upper management. HCC employs over 490 highly skilled operators, carpenters, pipe layers and laborers who together are successfully competent in many disciplines of construction. Additionally, HCC owns a dependable, up-to-date fleet of more than 450 pieces of equipment.

These resources allow HCC to self-perform excavation, backfill, grading, water and sewer pipelines, mechanical piping, process equipment installations, yard piping, site grading and paving, curb and gutter, transmission lines, storm drain pipeline and structures and general building work.

TranSystems Corporation

TranSystems Corporation is a national engineering and architectural firm of nearly 1000 employees, recently ranked 20th for pure transportation design firms by ENR magazine. Headquartered in Kansas City, Missouri, TransSystems specializes in the rapid movement of people and products to market. We are particularly effective where different modes of transportation intersect. Since it's inception 30 years ago, the firm has expanded its transportation services to include: Freight Rail Centers; Passenger Rail and Transit; Ports and Maritime Carriers; Airports and Air Carriers; Shippers and Distributors; Trucking and Automotive Companies; Federal Government Agencies; Energy and Communication Carrier; Supply Chain Management/Logistics; Operating Modeling; Real Estate Services; Security; Climate Response.

TransSystems Corporation has local Arizona offices in both Phoenix and Tucson, have a 30 year history providing engineering services for transportation projects, concept and design, historic restoration and rehabilitation, bridge inspection, traffic operations and design, traffic impact studies and review, scour studies, hydraulics, flood control, and construction administration to agencies and municipalities throughout Arizona. Our firm has earned national recognition for innovative, quality design on high-profile projects. In 1996, 1998, and 2004, our Arizona projects received the Federal Highway Administration Biennial Award for Excellence including our Gilbert Heritage Park and Ride project, which received Valley Forwards award for environmental excellence.



Deer Valley Park and Ride

Peoria Park and Ride

In addition, the transportation design professionals proposed as your team in Avondale are currently or have recently design bus and transit shelters in Boston, Albany, Fort Worth, and Chicago and provided park and ride conceptual design for Mesa and Glendale.

TranSystems has unrivaled experience in all phases of the development of transit passenger facilities. From initial concept, through design, and construction our team of planners, architects, and engineers understand the nuances of these facilities creating projects of high value to their respective communities.

2. Provide the Arizona professional license numbers held by the firm/team and the key personnel who will be assigned to this Project; please indicate if the individual or the firm holds the license:

Hunter Contracting Co. - Firm Contracting Licenses:

ROC070961 A	Gen. Engineering
ROC067542 B	Gen. Building
ROC075851 B-01	Gen. Commercial
ROC023057 B-04	Gen. Residential Engineering

3. Identify any contract or subcontract held by the firm or officers of the firm that has been terminated within the last five (5) years. Briefly describe the cirumstances and the outcomes.

Hunter Contracting Co. or its officers has not had a contract or subcontract terminated within the last five years.

4. Identify any claims arising from a contract that resulted in litigation or arbitration within the last three (3) years. Briefly describe the circumstances and outcomes.

HCC has not had a claim arising from a contract that resulted in litigation or arbitration within the last three years.

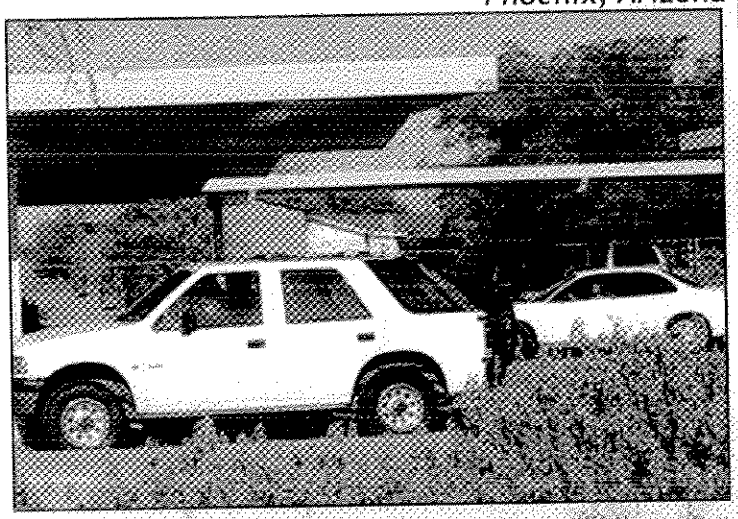
5. Identify the location of the firm's principal office, and the location of local office, if different.

Hunter Contracting Company's Principal Office Location is in Gilbert, Arizona and all team members are located at our Gilbert office. Our physical address is 701 N. Cooper Road, Gilbert, AZ 85233.

Section 2: Experience and Qualifications of the Firm/Team

1. The design/build team shall provide a description of projects in which the firm has served as Management Consultants on similar successful projects for organizations or municipalities of the same size as, or larger than, the City of Avondale, completed within the last three years.

79th Avenue Park and Ride, I-10 & 79th Avenue Canopy Improvements - Design/Build
Phoenix, Arizona



Description of Project:
Working with Inca Engineers Inc., HCC was able to design, engineer and install 300 lighted parking canopies in a fully operating ADOT permitted facility. HCC performed project phasing, adjusted work hours and minimized impact to traffic. Site improvements included: landscape restorations, canopy and site lighting were included.

Firm Role:
Design/Build Contractor

Construction Cost:
$556,129.00

Design and Construction Dates:
January 2005 - October 2005

Organization Name:
City of Phoenix Transit

Contact Name:
Kini Knudson, Owners Rep.

Contact address, telephone number, and email address:
200 W. Washington St., Phoenix, AZ 85003-1611; 602-262-7254; kini.knudson@phoenix.gov

Gilbert Heritage Park and Ride Design/Build
Gilbert, AZ
(Project picture is shown on page 11)

Description of Project:
This project involved extensive public participation and a demanding design review process. The area had a design theme and historic context which needed to be implemented. This project included ad ADOT partnering process. The shelters and car canopies were designed to capitalize on the forces of nature to maximize the comfort of people and protection for the vehicles. This project received and award for environmental excellence from Valley Forward. The demolished railroad station from which Gilbert got its name was used as a form generator. The arches and colors of the shelter came from the station. We designed tree grates with an alfalfa pattern to recall the early years of the Town. Shade trees and vines were used to provide shade. In addition, heat sinks were installed to keep people cool in the summer.

Firm Role:
Design/Build Engineer

Construction Cost:
$2,300,000

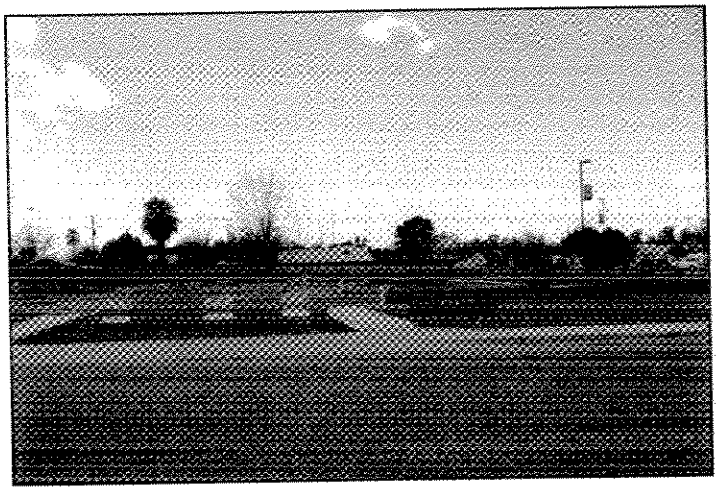
Design and Construction Dates:
January 2003 - May 2005

Organization Name:
Town of Gilbert

Contact Name:
Howard Hargis; Project Manager, Owners Rep.

Contact address, telephone number, and email address:
1025 S. Gilbert Road, Gilbert, AZ, 85296; 480-324-8395

Peoria Park and Ride
Peoria, AZ



Description of Project:
Small Park and Ride Facility located in downtown Peoria. Work elements included grading, paving, electrical, lighting, concrete curb and sidewalks, landscape & irrigation, platforms, road improvement, drainage pavement markings, well abandonment, monumentations, bus pullouts/transit stops, utility relocations and masonry walls.

Firm Role:
General Contractor

Construction Cost:
$365,322.00

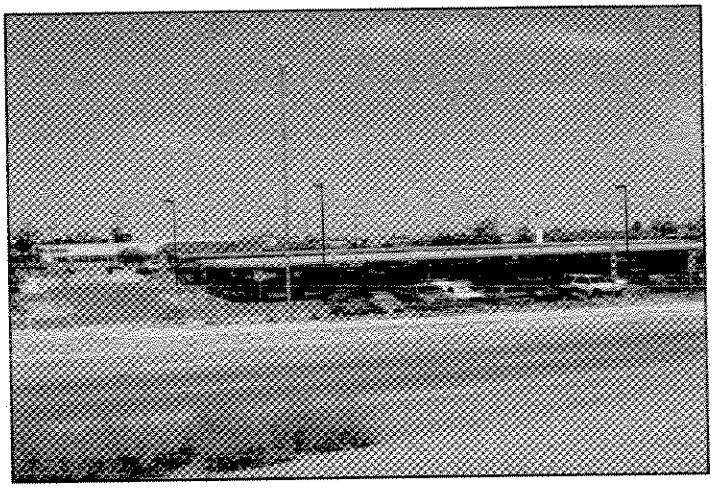
Completion Date:
October 2003

Organization Name:
City of Peoria

Contact Name:
Walt Begley; Transit Manager, Owners Rep.

Contact address, telephone number, and email address:
8401 W. Monroe Street, Peoria, AZ 85345;
623-773-7266; waltb@peoriaaz.com

Deer Valley Park and Ride
Phoenix, AZ



Description of Project:
Construct new Park and Ride Facility at I-17 and Bell Road for 250 vehicles on ADOT permitted site. Work included constructing concrete PCCP frontage road access for Transit Buses along the I-17 Freeway with overhead sign structure relocations. Site improvements included electrical, lighting, concrete curb and sidewalks, landscape and irrigation, bus bays, platforms, shelters, lighted canopies, and bridge structures.

Firm Role:
General Contractor

Construction Cost:
$1,475,817.00

Completion Date:
May 2002

Organization Name:
City of Phoenix Transit

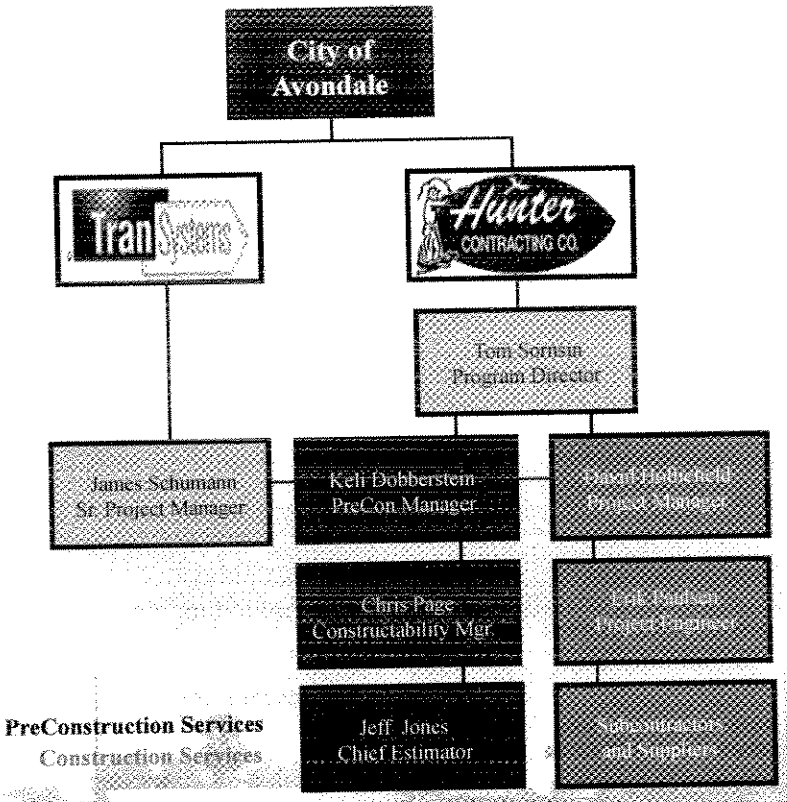
Contact Name:
Mike Bornhoeft; Project Manager, Owners Rep.

Contact address, telephone number, and email address:
200 W. Washington St., Phoenix, AZ 85003-1611;
602-262-6653; mike.bornhoeft@phoenix.gov

Section 3: Key Personnel Experience

1. **Provide an organizational chart showing key personnel to be involved in this project, and company affiliation.**

The organization chart presents the key personnel who will be responsible for completing the project for the Team. It defines protocol for communications with the City of Avondale and the project team for Construction activities. HCC's proposed PreConstruction Manager is Keli Dobberstein, Project Manager will be David Holliefield, James Schumann with TranSystems will also serve as a Senior Project Manager. Erik Paulsen will be our Project Engineer. Tom Sornsin will be serve as our Program Director.



2. **Provide resumes for key personnel listed above, including experience in consulting projects, the home office location of key personnel and length of time with the firm. At a minimum, the listed projects should include two comparable projects, location, key person's role, reference information, and brief description of the work. Limit resumes to two pages.**

Resumes are provided in the attachments section of this SOQ.

Section 4: Project Understanding and Approach

1. Discuss your understanding of this Project. Include major issues your firm/team has identified, and how much you intend to address those issues.

Deer Valley Park and Ride

Issue #1: The City of Avondale and EMCC have created a lovely shelter. It is graceful and captivating and fulfills many of the functional requirements of a transit shelter. Hunter Contracting and TranSystems are uniquely qualified to fully exploit the design concept and create and fully functioning, climate responsive shelter. We manipulate the forces of nature to make people comfortable out doors. We understand the science of human comfort and the patterns of your climate. Through the use of sun, shade, breeze and the radiant temperature of the shelter materials, in a temperature range from the low 40's to the mid 90's, we can make your transit riders just as comfortable waiting at the shelter as they are when sitting in the classroom. Beyond that temperature range, we can significantly mitigate their discomfort. Our extensive transit facility experience will bring added value to your project in the following ways:

Solution:

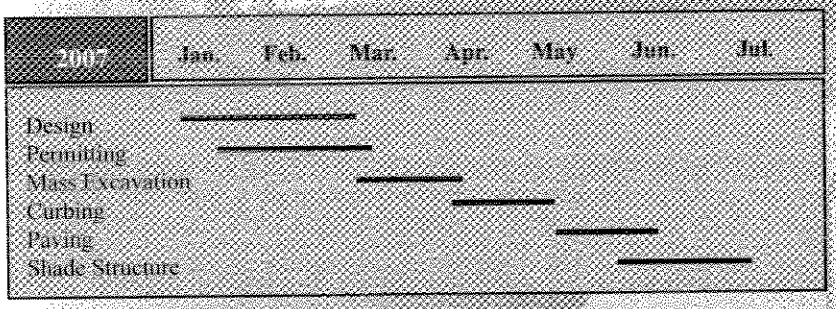
- Shade. Shade is the most urgent need at transit stops in our valley. The facility at its current level of development will be very effective at providing shade around the hours of 10 am until 2 pm and briefly when the sun is due east or due west. We can demonstrate several ways to add elements that are sympathetic to the design concept that will create shade during the morning and afternoon hours of the day, the hours when the shelter will see its greatest use.
- Radiant Heat. The second biggest problem at transit shelters in our valley is the heat of the surfaces surrounding a bus stop. It is common for the pavement to exceed 145 degrees. Concrete and steel will also reach those temperatures. We can demonstrate how to mitigate the high temperatures of those surfaces and create conditions over 20 degrees cooler than would be encountered otherwise.
- Lighting. It is common for shelters to experience glare or unsafe conditions by not taking full advantage of proper lighting options. We will demonstrate how to enhance the design concept while mitigating the pitfalls through lighting.
- Cool tower science. We know the science of cool towers, what is required to make them work now and in the long term, and how to capture the benefits they create.
- Durability/maintenance. Because we focus on transit projects, we are accustomed to designing and building facilities that can handle the abuse common to these applications.
- Rain. The butterfly wing will collect rain in the center, right over the passengers. We can offer alternatives in how to collect the rain and conduct it away from the passengers.
- Operations. TranSystems employees have operated bus systems. They will add the depth of their experience in curb heights and profiles, accessibility issues, signage, safety and security to the development of the final design.
- Public Art. We have been involved in $1,500,000 of public art projects associated with transportation projects in just the last 5 years and will demonstrate how to integrate artists into the process.

Issue #2: Long Lead Items

Solution: Some items may need to be considered quickly to ensure that the schedule does not become impacted. Items such as decorative light poles and perhaps the monumentations of specially designed, as well as, Bus Transit interactive boards and decorative seating and shelters.

2. Discuss your proposed schedule for meeting the requirements of this Project.

To aid the construction Hunter Contracting Co. will place an emphasis on the preconstruction phase. It is our understanding the Design/Build Team would join the project on or about January 1st. HCC will prepare a cost model to insure the project is within the owners budget expectations. Long lead items would be identified and ordered in this phase. Also in the preconstruction phase qualified subcontractors will be identified to participate in the bidding process. Construction to finish in early July 1 2007.



3. Discuss your firm/team's approach, including the following processes:

Planning; Estimating; Scheduling; Cost controls; Project Management and team organization during design and construction phase services; Bid Package Management; Management of overhead costs; Managing Subcontractors; Quality control; Safety; Dispute resolution.

Hunter Contracting's Project Management Approach includes control of the work, scheduling and schedule control, cost control, a QA/QC program, safety program and administration of the contract. Specific techniques include CPM scheduling, cost management, cost modeling, cost containment, and proactive quality assurance. HCC utilizes Project Management Software that can be accessed through the internet and accessible to all members of the project team.

Section 4: Project Understanding and Approach

HCC believes in the Partnering process. We have successfully partnered many large projects with the major municipalities. Our perspective on partnering is that it is the single best tool that the construction industry has accepted and implemented in many years.

Partnering is a benefit to not only the construction phase of a project but is also a very definite benefit and value to the PreConstruction Services phase of a Design/Build project. The design staff and construction management staff can resolve and budgetary and/or constructability issues in a partnering atmosphere that will benefit all parties and the project. Issues can be resolved early in the design of the project instead of during the construction of a project where issues are more time critical and expensive to resolve.

Planning:

Hunter Contracting Co. will approach the planning process of this project by identifying all phases required for the completion of the project. Our staff will coordinate the individual phases and all estimating, scheduling, and costing requirements will be established and completed for each specific phase. Early and complete planning is essential to achieve a completed project on time and with minimal disputes.

Estimating:

Jeff Jones is the Chief estimator for all HCC Industrial Division projects and has over 25 years in estimating experience. Jeff uses the Harddollar estimating software. Jeff has been involved in all HCC Design/Build PreConstruction cost analysis and models.

Scheduling:

Hunter Contracting Co. will utilize Primavera and Sure Track scheduling software for the scheduling of this project. Schedule preparation will begin immediately during the PreConstruction phase of this project. The schedule will be updated and completed as equipment delivery information is reviewed and construction activities defined. The project schedule will be updated weekly during the PreConstruction and Construction phases.

Cost Controls:

HCC always provides Cost Analysis for our projects. Our approach is to identify the needs to each project, being creative in offering options and developing the costs for the various alternatives. Evaluating each solution includes prioritizing the needs of the project, feasibility of the alternative proposal, and working with the Owner to determine which option to implement

Project Management and Team Organization during Design and Construction Phase Services:

The structure for managing projects at HCC is the primary function of the Project Manager. The Project Manager is responsible for staffing his project with well trained Project Engineers, Supervisors and Administrators.

Our team approach to the PreConstruction and/or Design Phase of a Design/Build project is based on our experience assisting the design engineers with constructability issues, cost analysis and models, establishing DIM's (Design Information Memorandum), value engineering and assisting with schedule development. We have successfully implemented this approach on all of our Design/Build projects. We have an "open book" approach to all cost analysis. This approach facilitates the review of all costs on all items including labor, labor burden, company equipment, rental equipment, material, subcontractor costs, bond, tax, overhead and profit. It is our opinion that "open book" costing is the intent of the Design/Build process.

Bid Package Management:

It is our opinion that "open book" costing is the intent of the CM@Risk method of bidding. We will solicit a minimum of three prices for all work and materials. We will ask for pricing only from subcontractors that are familiar and experienced with large treatment plant work and open all bids publicly. We have utilized this public bid opening process on all CM@Risk projects we have under construction and we are convinced that we receive the most competitive prices from subcontractors utilizing this open bid approach.

Management of Overhead Costs:

Hunter Contracting will purchase all major equipment packages for the project. The benefits of this is two-fold. It allows long lead time items to be ordered in the preconstruction phase as well as eliminates a double mark-up that would occur should a subcontractor order the equipment. This practice saves the owner substantial amount of money on a project of this size.

Managing Subcontractors:

All subcontractors, craftspeople, equipment providers and supervisors will be local. We have established relationships with many local subcontractors experienced in treatment plant work and do not employ out of town subcontracting firms to perform work on our projects, with very few exceptions.

Quality Control:

Construction quality control is the responsibility of the field foremen and project engineers who report directly to the project superintendent. The project superintendent reports QA/QC activities to the Project Manager. Field engineering and supervisory staff will perform a combination of quality surveillance activities and formal audits, including material testing, so that all construction and installations are completed in accordance with the contract documents.

Safety:

Safety is always a primary concern of Hunter Contracting. We employ a full time Safety Director HCC will perform regular jobsite inspections, conduct regular safety meetings, and provide ongoing safety training. Weekly

reports are prepared and sent to the division managers and officers of HCC. All subcontractors selected for this project are required to comply with our safety program. Continued incidents by an employee or subcontractor will warrant the removal of the employee and/or subcontractor from the jobsite. Keeping our employees safe is of utmost importance to the management and supervisory staff at HCC. This philosophy is backed up by our current EMOD rating of 0.84 well below the 1.0 average EMOD of the construction industry. Our EMOD of 0.84 is the result of the culture that exists among our craftsmen, supervisors, and subcontractors. Our number one safety goal is zero accidents. We are committed to a safe and secure job site.

Dispute Resolution:

This is one of the rewarding by-products of successful partnering. Utilizing the partnering charter, a QA/QC dispute, for example, can be resolved at the field level where the dispute originated. Partnering empowers field staff to represent their team members in a professional and open-minded environment and solve the issue at their level. If the dispute cannot be resolved at the field level after a predetermined time period, the dispute can be escalated to the next level of management and they can work toward a resolution. The automatic escalation process allows the field staff relationships to remain cooperative and open and still have disputes settled timely.

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4. Submit a Subcontractor selection plan that meets ARIZ. REV. STAT. § 34-601 *et seq.* requirements. Discuss the benefits that your selection plan provides to the Project.

Subcontractor Selection Plan:

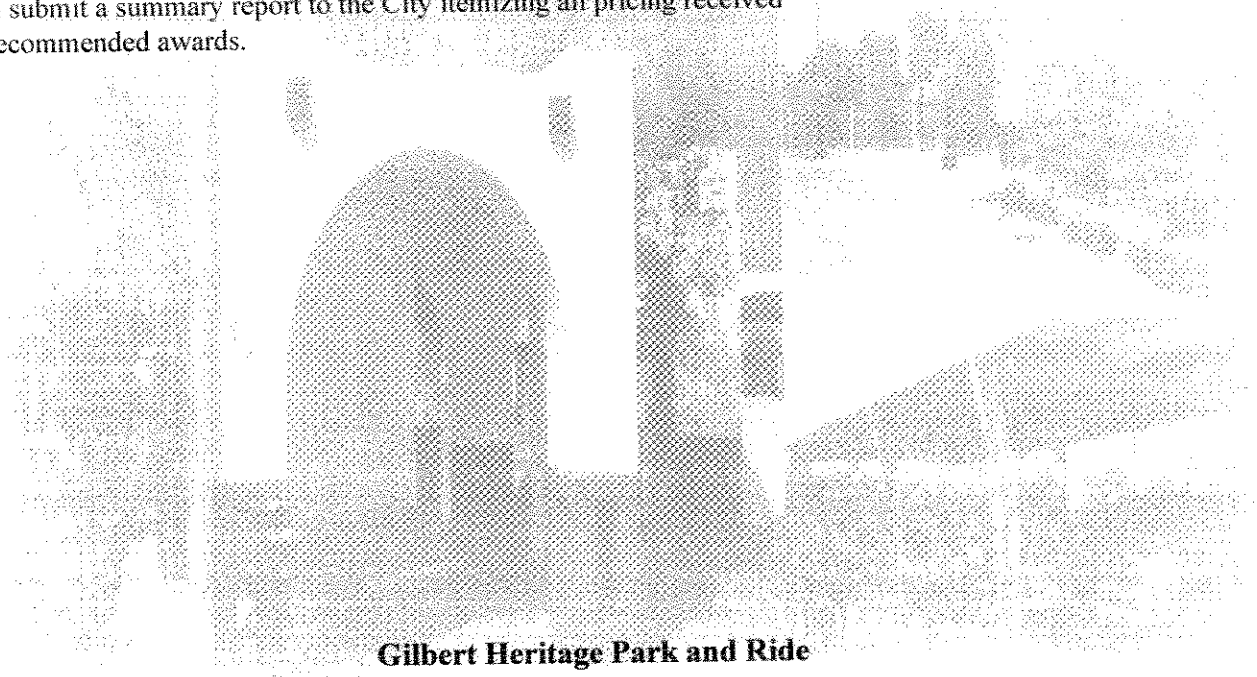
Hunter Contracting's subcontracting selection plan will be in compliance with the City of Avondale Design/Build Contract. Hunter Contracting will prepare a subcontractor selection plan and submit said plan to the City for approval. This plan shall identify those subcontractors selected by qualification only and those subcontractors selected by qualification and competitive bid.

Subcontractors selected during the design phase shall be selected by qualification only.

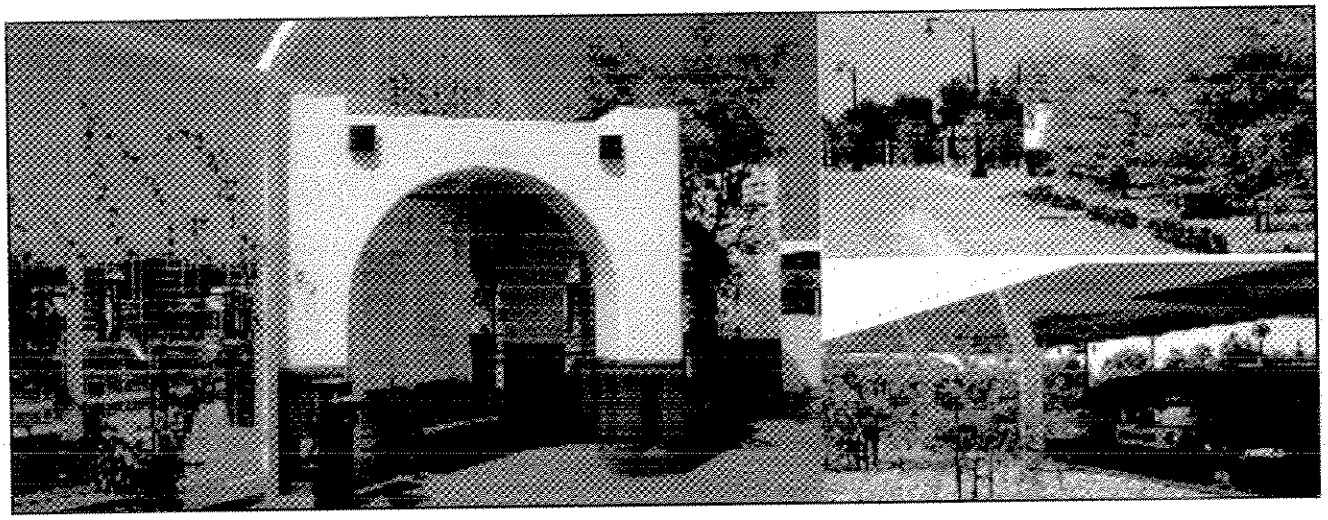
Selecting the majority of subcontractors by qualification and competitive bid is acceptable providing the subcontractors are prequalified and the City is kept informed on the progress of meeting the desired MBE/WBE or SBE goals. Each trade will have a minimum bid from three subcontractors or suppliers.

Subcontractor Selection Plan (continued :

Hunter Contracting is a self – performing contractor and will submit bids on certain portions of the work. We will be accountable to the same 'open rules as all subcontractors and must submit our bid at the bid opening attended by a representative of the City. If we are deemed the low and responsive bidder we will perform the work. Upon completion of the Subcontractor bidding process, HCC will submit a summary report to the City itemizing all pricing received and our recommended awards.



Gilbert Heritage Park and Ride



Finance and Budget Department
11465 W. Civic Center Drive, Suite 250
Avondale, Arizona 85323-6807
Phone: (623) 478-3200
Fax: (623) 478-3817
Website: www.avondale.org

REQUEST FOR STATEMENTS OF QUALIFICATIONS
DESIGN/BUILD SERVICES
EMCC MINI-BUS CENTER PROJECT
AD 06-033

Addendum No. 1

Date: November 21, 2006

From: Peggy Wright, Procurement Officer

Subject: Addendum No. 1 to the Contract Documents

Closing Date and Time:
Thursday, December 7, 2006
3:00 P.M. (MST)

I. SCOPE

This Addendum forms a part of the Contract and clarifies, corrects, or modifies the original Request for Proposals documents prepared by the City of Avondale. Acknowledge receipt of this addendum in the space provided on the attached form. This acknowledgement and addendum must accompany the submitted bid. Failure to do so may subject the bidder to disqualification.

This addendum No. 1 consists of changes in sections under section III: Objective

II. ADDENDUM

A. Objective:

Page 1 – Now reads

The project budget for this work is $850K.

Amend to read

The project budget for this work is $1.7 million.

Finance and Budget Department
11465 W. Civic Center Drive, Suite 250
Avondale, Arizona 85323-6807
Phone: (623) 478-3200
Fax: (623) 478-3817
Website: www.avondale.org

REQUEST FOR STATEMENTS OF QUALIFICATIONS
DESIGN/BUILD SERVICES
EMCC MINI-BUS CENTER PROJECT
AD 06-033

CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED

Hunter Contracting Co., affirms that ADDENDUM No. 1 has
(Name of Vendor/Designee)
been received and that the information contained in ADDENDUM No. 1 has been incorporated in formulating the Contractor's Offer.

[signature], December 7, 2006
Signed Date

Keli Dobberstein
Print Name

Hunter Contracting Co.
Company Name

701 N. Cooper Road
Address

Gilbert, AZ 85233
City, State Zip

END OF ADDENDUM No. 1

Tom C. Sornsin

Program Director

Home Office Location

Hunter Contracting Co.
701 N. Cooper Road
Gilbert, Arizona 85233

Time with Firm

18 years

Education

BS Construction Engineering, Arizona State University, 1973

Sergeant, 25th Infantry Division, South Vietnam, 1968-1970

Alternative Project Delivery Methods: How to use CM@Risk for public works projects, ACE-ASU, 2001

Professional Affiliations

NDAGC – CEC
Liaison Committee Member
1979-1981

NDAGC – CEC
Liaison Committee Chairman
1982-1983

American Water Works Association

Design Build Institute of America

Professional References

Ft. McDowell Yavapai Nation
Joe Kanovich
480-688-7658

City of Phoenix
Andy Brown
602-495-7683

Carollo Engineers
David Siebert
602-474-4104

City of Glendale
Craig Johnson
602-930-3631

Mr. Sornsin, a vice president with Hunter Contracting, joined the company in 1989 and has more than 34 years experience in construction management, construction supervision, estimating, cost control, field operations, scheduling, equipment requirements and claims analysis. Tom provides overall management of the Industrial Division at Hunter Contracting Co. His details of the division includes water and wastewater treatment plants, lift stations, reservoirs, underground and aboveground piping systems, recharge sites and pump stations. Tom also has the responsibility of program director for all Construction Manager at Risk and Design/Build projects.

Principal-in-charge, Lindsay 4-MG Reservoir & Pump Station

Mr. Sornsin served as Principal-in-charge for this Design/ Build project for the Town of Gilbert. Carollo Engineers served as lead design engineer. This project consisted of a 5400-gpm booster pump station with a 1-MG wet well and a 3-MG reservoir. The reservoir was configured as an inground structure with a reinforced concrete hopper bottom and a continuous seam aluminum roofing system. The project also included a tablet feed calcium hypochlorite disinfection system, instrumentation and controls (SCADA system), standby emergency power system, and additional security measures. This was a fast-track project with a total delivery time (design through construction) of only eight months. This facility was Gilbert's first design/build for a public works infrastructure project.

Principal-in-charge, Fort McDowell Wastewater Treatment Plant

This was a design/build project for the Fort McDowell Yavapai Nation that consisted of a new 0.5-MGD wastewater treatment plant which included 3,500 linear feet of 24-inch forcemain, influent pump station, SBR facility, administration building, backwash filters, headworks with screening facility, odor control facility, chemical feed facility and an effluent pump station. Tom has extensive experience working with Indian Communities throughout the state. He makes sure that Hunter Contracting Co. abides by the regulations and ordinances set forth by the Tribal Employment Rights Office and that HCC is in compliance with tribal office regulations.

Principal-in-charge, Union Hills WTP 160-MGD Improvements

Mr. Sornsin served as the Principal-in-charge for the design and construction management of this project. This was a Construction Manager at Risk (CMAR) project that was structured with multiple phases in order to fast-track the construction. The primary focus of this project was to increase the WTP's reliability to produce 160-MGD of deliverable capacity during raw water trubididty events. This $38-million project included the rehabilitation of 32 existing filters and construction of four new filters, new pretreatment facilities, new chemical feed facilities and new dewatering facilities. The project approach included involvement from the start of the project and continued through preliminary design and final construction. HCC worked with Carollo Engineers to address constructability issues and to develop project cost and schedule models.

Keli Dobberstein

Director CM Services

Home Office Location

Hunter Contracting Co.
701 N. Cooper Road
Gilbert, Arizona 85233

Time with Firm

18 years

Education

BS Construction Engineering, Arizona State University, 1985

Professional References:

City of Phoenix
Andy Brown
Project Manager, Water & Wastewater Division
602-495-7683

City of Chandler
Bob Upham
Construction Supervisor
480-782-3305

Wilson & Company
Ed McCurdy
CM Services
480-893-8860

City of Phoenix
Rick Shane
Project Manager, Water & Wastewater Division
602-495-7685

Carollo Engineers
Mark Gross
Preconstruction Engineer
623-287-0819

Mr. Dobberstein, Director for CM Services with Hunter Contracting, joined the company in 1989 and has more than 20 years experience in construction management, construction supervision, estimating, cost control, field operations, scheduling and equipment requirements. Keli provides overall management of the PreConstruction Phase for all ADM work for Hunter Contracting Co. Industrial Division. His details of the division includes water and wastewater treatment plants, lift stations, reservoirs, underground and aboveground piping systems, recharge sites and pump stations.

- PreConstruction Manager for the design and Project Manager for the construction of the Union Hills WTP 160-MGD Improvements project. This was a Construction Manager at Risk (CM@Risk) project that was structured with multiple phases in order to fast-track the construction. The primary focus of this project was to increase the WTP's reliability to produce 160-MGD of deliverable capacity during high raw water trubididty events. This $38-million project included the rehabilitation of 32 existing filters and construction of four new filters, new pretreatment facilities, new chemical feed facilities and new dewatering facilities. The project approach included involvement from the start of the project and continued through preliminary design and final construction. Hunter Contracting Co. worked with Carollo Engineers to address constructability issues and to develop project cost and schedule models.

- Senior Project Manager for the Deer Valley WTP Solids Handling Facility. This $29-million project consisted of Construction of a new Solids Handling Facility including three new wastewater clarifiers, three gravity thickeners, various pump station and a four-story Dewatering Building with centrifuges and conveyors. The project also included 8,900 lf of yard piping, mechanical and process equipment and piping, electrical and instrumentation, landscaping services and asphalt paving.

- Keli served as Senior Project Manager for the City of Chandler's Airport Water Reclamation Facility worth $23M.

Chris Page

Constructability Manager

Home Office Location

Hunter Contracting Co.
701 N. Cooper Road
Gilbert, Arizona 85233

Time with Firm

15 years

Education

Bachelor of Science
College of Engineering
Construction, Arizona State University

Mr. Page has served as the Constructability Manager for pre-construction work on all of Hunter Contracting Co.'s CM@Risk and design/ build projects. He has 20 years of experience in the construction industry, focusing on heavy civil construction and industrial construction. Mr. Page has worked for Hunter Contracting Co. for the past 10 years.

As project manager and general structural superintendent of Hunter Contracting Co.'s Industrial Division, Mr. Page is responsible for overseeing all concrete foremen, coordinating and scheduling with project superintendents, planning and scheduling, procurement of materials, management of equipment and personnel on various projects, and production reporting. He also has experience with various aspects of treatment plant management including mechanical/process work, building construction, and electrical and instrumentation systems. Mr. Page reviews and assists in estimating structural work.

Project Manager, Lindsay Road Reservoir and Pump Station Design/Build Project. Mr. Page served as project manager for the Lindsay Road Reservoir and Pump Station Design/Build Project for the Town of Gilbert, Arizona. This project entailed the construction of a 4 million-gallon concrete reservoir with hopper bottom and standing seam roof, booster pump station with a 1 million-gallon wet well, chlorine feed facility, instrumentation and SCADA system, yard piping, landscaping and asphalt roadway. This was a fast-track design/build project, which was designed and completed in 8 months.

Project Manager, Erie Well Upgrades. Mr. Page served as project manager for this project for the City of Chandler, Arizona. This project entailed the furnishing and installation of a new well pump, new chlorination system, desander equipment, acoustical enclosure, flanged aboveground piping, miscellaneous underground DIP, electrical and instrumentation systems.

Project Manager, Seville Water Campus Project. Mr. Page served as project manager for the Seville Water Campus Project for the City of Gilbert, Arizona. This project entailed the construction of a 2 million-gallon concrete reservoir with hopper bottom and standing seam roof, booster pump station, chlorine feed facility, instrumentation and SCADA system, yard piping, landscaping and asphalt roadway.

Concrete Superintendent, Granite Construction Company. As a concrete superintendent for Granite Construction Company, Mr. Page supervised the construction of many bridge, retaining wall, box culvert and various other concrete structures. He managed structural concrete projects statewide ranging in size from $500,000 to $5 million.

Before joining Granite Construction Company, Mr. Page worked as a finish carpenter while attending college and interned as a project engineer with Sundt Construction Building Division.

JEFF JONES, CHIEF ESTIMATOR

HOME OFFICE LOCATION:

Hunter Contracting Co.
701 N. Cooper Road
Gilbert, Arizona 85233

TIME WITH FIRM: 14 years

EDUCATION:

CENTRAL ARIZONA COLLEGE — Graduated 1974
Associate of Arts

LAMSON BUSINESS COLLEGE — Graduated 1980
Land Surveying Program

WORK EXPERIENCE:

HUNTER CONTRACTING CO. — **1992-present**
Industrial Division
Chief Estimator
Responsibilities: Estimating of water and wastewater facilities, and various other environmental improvements. Assists project managers in the development of budgets, progress schedules, change orders and pay estimates. Responsible for preConstruction costing for all CM@Risk, Design/Build, and JOC projects, including Preparation of all DIM's, Cost Models, and the final GMP.

SIERRA PAVING AND GRADING COMPANY — 1991-1992
Estimator/ Project Manager
Responsibilities: Review of plans and specifications and preparation of cost estimates for civil construction projects. Provided construction schedules, job costing and pay estimates.

C & F EQUIPMENT COMPANY — 1991-1991
Estimator/ Project Manager
Responsibilities: Review of plans and specifications and preparation of cost estimates for civil construction projects. Provided construction schedules, job costing and pay estimates.

SANNER CONTRACTING CO. — 1980-1990
Estimator/ Project Manager
Responsibilities: Review of plans and specifications and preparation of cost estimates for civil construction projects. Provided construction schedules, job costing and pay estimates.

STATE OF ARIZONA, DEPT. OF HEALTH. — 1974-1980
Behavioral Health Specialist
Responsibilities: Development and implementation of treatment programs for post-institutionalized clients.

REFERENCES:

DAN MEYER
Black & Veatch
602-381-4400

BOB MULVEY
City of Chandler
480-782-6234

David Holliefield

Project Manager

Home Office Location

Hunter Contracting Co.
701 N. Cooper Road
Gilbert, Arizona 85233

Time with Firm

6 years

Education

Bachelor of Science
Mid American Nazarene College
Olathe, Kansas

Professional References

Inca Engineering, Inc.
Mark Waverly
602-277-8161

City of Phoenix Transit
Kini Knudson
602-262-7254

Ed Striffler
City of Peoria
623-773-7721

Mr. Holliefield is a Project Manager for the Heavy Highway Division with HCC and has more than 16 years of experience in the construction industry.

Mr. Holliefield is responsible for overseeing all concrete foremen, coordinating and scheduling with project staff, planning and scheduling, procurement of materials, management of equipment and personnel on various projects, and production reporting.

Project Manager, 79th Avenue Park & Ride. Mr. Holliefield served as Project Manager on this Design/ Build project for the City of Phoenix Transit. During the Preconstruction and Construction phases of this $556,129 project HCC worked with Inca Engineers to design, engineer and install 300 lighted parking canopies in a fully operating ADOT permitted facility. Careful arrangements were made to eliminate overspray during painting to any existing cars nearby. Site improvements included: landscape restorations, canopy and site lighting.

Project Manager, North and South Transit Division. Mr. Holliefield served as project manager for the North & South Transit Division Project for the City of Phoenix Transit. This project entailed the replacement of 20,000 square yard of AC pavement with concrete pavement, striping of Transit Bus Bays including parking stalls for buses. In addition this project included circulation signage, landscaping, lighting, security and automatic gates. Hunter Contracting was able to self-perform 73% of this $1,575,651 project.

Project Manager, Peoria Park and Ride. Mr. Holliefield served as project manager for this project for the City of Peoria, Arizona. This was a small Park & Ride facility located in downtown Peoria. Work elements included grading, paving, electrical, lighting, concrete curb and sidewalks, landscaping and irrigation, platforms, road improvements, drainage, pavement markings, well abandonment, monumentations, bus pullouts/ transit stops, utility relocations and masonry walls.

Erik Paulsen

Project Engineer

Home Office Location

Hunter Contracting Co.
701 N. Cooper Road
Gilbert, Arizona 85233

Time with Firm

2 years

Education

Bachelor of Science
Construction Management – Heavy Construction
Arizona State University
Tempe, Kansas
Graduation expected 2008

Associates Degree
Electrical Construction and Maintenance
Hudson Valley Community College

Professional References

City of Phoenix
Pat Womack, Inspector
602-206-6075

Town of Gilbert
Ron Nadzieja
480-503-6179

Vanir CM
Rob Hildreth
480-921-0333

Mr. Paulsen is a Project Engineer for the Heavy Highway Division with HCC and is currently attending Arizona State University to obtain his Bachelor of Science in Construction Management.

Mr. Paulsen's responsibilities include overseeing project activities beginning with the Preconstruction Services to the daily general construction services. He ensures that adequate personnel and resources are committed to each project, works with the Project Manager and assumes the responsibility for providing and maintaining quality and timeline of all work. Mr. Paulsen is experienced in Value Engineering, Cost Estimating (Hard Dollar Software), Scheduling (Sure Trak) and Change Orders.

Project Engineer, Camelback Road Pedestrian Underpass - CMAR.

Mr. Paulsen served as Project Engineer on this $5.8 million Construction Manager at Risk project for the City of Phoenix. This project consisted of improving Camelback Road to accommodate the new construction of a pedestrian underpass on Camelback Road between 24th and 26th Streets. The Pedestrian Underpass provides a safer connection between the Biltmore Fashion Park and Camelback Esplanade Commercial areas. The Pedestrian Underpass was to be constructed to be functional and artistic and use Terrazzo tile artwork.

Project Engineer, Higley Road Transmission Main - CMAR.

Mr. Paulsen served as Project Engineer on this $3.8 million CM@Risk project for the Town of Gilbert. Hunter Contracting proudly self-performed 80% of this project with their own resources. This project entailed the construction of a total of 15,000 lf of three parallel water lines primarily through the Higley Road Corridor. The waterlines contained 16" to 42" potable and non-potable water mains.

Jeffrey Q. Jarvis, AIA

Education: B.A., Art and Design, Brigham Young University, 1979
M. of Architecture, University of Oregon, 1982

Registrations: Professional Architect: AZ #20128; NV #5284; WY #C-2164

Project Experience:

Mr. Jarvis has more than 24 years of experience in architectural design and project management. He has had particular success with transit projects that required functional sensitivity, customer service, safety, climate response, public involvement, and public art. Jeff has been an advocate of urban design and transit development through his previous membership on the Town of Gilbert Design Review Board and his current responsibilities as the Chairman of the City of Mesa Downtown Development Committee. He has served as a volunteer in several communities on committees given the task of incorporating public art in transportation projects and in making the design of transit facilities responsive to climate. Jeff has a unique ability to manipulate the forces of nature to make people comfortable out doors.

Nashville Music City Central Transit Station: Jeff is the architect of record and climate response specialist for the transit and public plaza portions of this $35,000,000 facility. The project includes 24 bus bays on two different levels, above ground and below grade parking structures, retail and office space, and a 35,000 sf plaza built at the base of the State Capitol.

Central Phoenix/East Valley Light Rail Line Section 4 Station Finshes: Jeff is the architect of record for this $3,200,000 project which includes four stations, a transit center with 5 bus bays and integration with the future Sky Harbor Airport Automated People Mover. Jeff has used shade, breezes and low mean radiant temperature materials to keep transit users comfortable.

Phoenix Sky Harbor Rental Car Center: Jeff is the Architect of Record for this $175,000,000 facility that includes 9 bus bays, accommodation for a future Automated People Mover System, satisfaction of extensive customer service/pedestrian requirements and the operational requirements of a rental car fleet of 40,000 vehicles.

Park and Ride Lots, Gilbert, Arizona, Project Manager: Jeff is the architect of record for this 250 car park and ride lot. Specific issues included maximum utilization of irregularly shaped lots, project phasing, integration into a historic downtown fabric, maximization of afternoon shade, use of low radiant temperature materials, public input and noise abatement.

New Phoenix Standard Bus Stop Shelter Design: Jeff is responsible for the design of new standard bus stop shelters for the City of Phoenix that will mitigate the climate extremes and maximize the comfort of bus patrons while fitting within the established right of way and construction budget.

Boston Silver Line Alternative: Jeff was the climate consultant and architect involved in the identification of multiple options for Bus Rapid Transit stations for the down town Boston Silver Line.

Park and Ride Lots, Mesa and Glendale, Arizona, Project Manger: Preliminary design for two park and ride lots. One will have 500 cars, the other 400. Specific issues include integration with freeway ramps, maximization of shade for vehicles and pedestrians and integration with adjacent commercial development.

Modification of Standard Bus Stop Shelter Design, Mesa, Arizona: Mesa's new standard bus stop shelter is effective at providing shade around noon but not at morning and afternoon rush hour when most bus ridership occurs. The shelters did not capitalize on the climate response strengths or mitigate the disadvantages of different bus stop orientations. Jeff modified the standard design to maximize the use of local sun and wind patterns were to increase the frequency and number of comfortable places to sit by a factor of 2 to 3.

Modification of Existing Bench Bus Stop Shelters, Mesa, Arizona: Mesa has many bus stops that are only a bench along the side of the road. Mr. Jarvis designed a shelter that consists of 3 independent elements that can be field or shop assembled and hung on a single pole. The parts can be placed in a left or right had configuration to account for different solar orientations. The shelter would provide the appropriate climate response during each season of the year at all times of the day.

Climate Response and City of Mesa Public Art Bus Stop Shelters: Jeff was the climate consultant and design professional involved in the selection of artists to create bus stop shelters.

Albany NY BRT Route 5: Mr. Jarvis is the lead architect and climate response specialist for the development of the Bus Rapid Transit route on State Route 5 in Albany, New York.

Cape Cod Transit: Jeff is the lead architect and climate response specialist for two transit centers on Cape Cod, MA.

Renovation of 8 city parks, Gilbert, Arizona, Project Manager/Architect: The typical park ramada in the valley leaves the picnic tables in the shade during winter lunch hour and in the full sun during spring and summer evenings. They create echoes and radiate heat and reflect glare as well. Jeff created ramadas and park environments that provided shade during the warm and hot times and allowed sunshine in the cold periods of the year while eliminating echoes and reducing radiated heat and glare.

Southeast Regional Library, Gilbert, Arizona, Project Manager: 66,000-sf public library joint project between the Town of Gilbert and Maricopa County. This project included extensive site development complete with fountains, paths, shaded colonnades, courtyards, outdoor reading areas and an interface between the library and an adjacent lake and wildlife refuge. The goal was to enhance the visual, acoustic and thermal pleasure of pedestrians.

Design / Build Services for Estrella Mountain Community College Mini-Bus Center Project

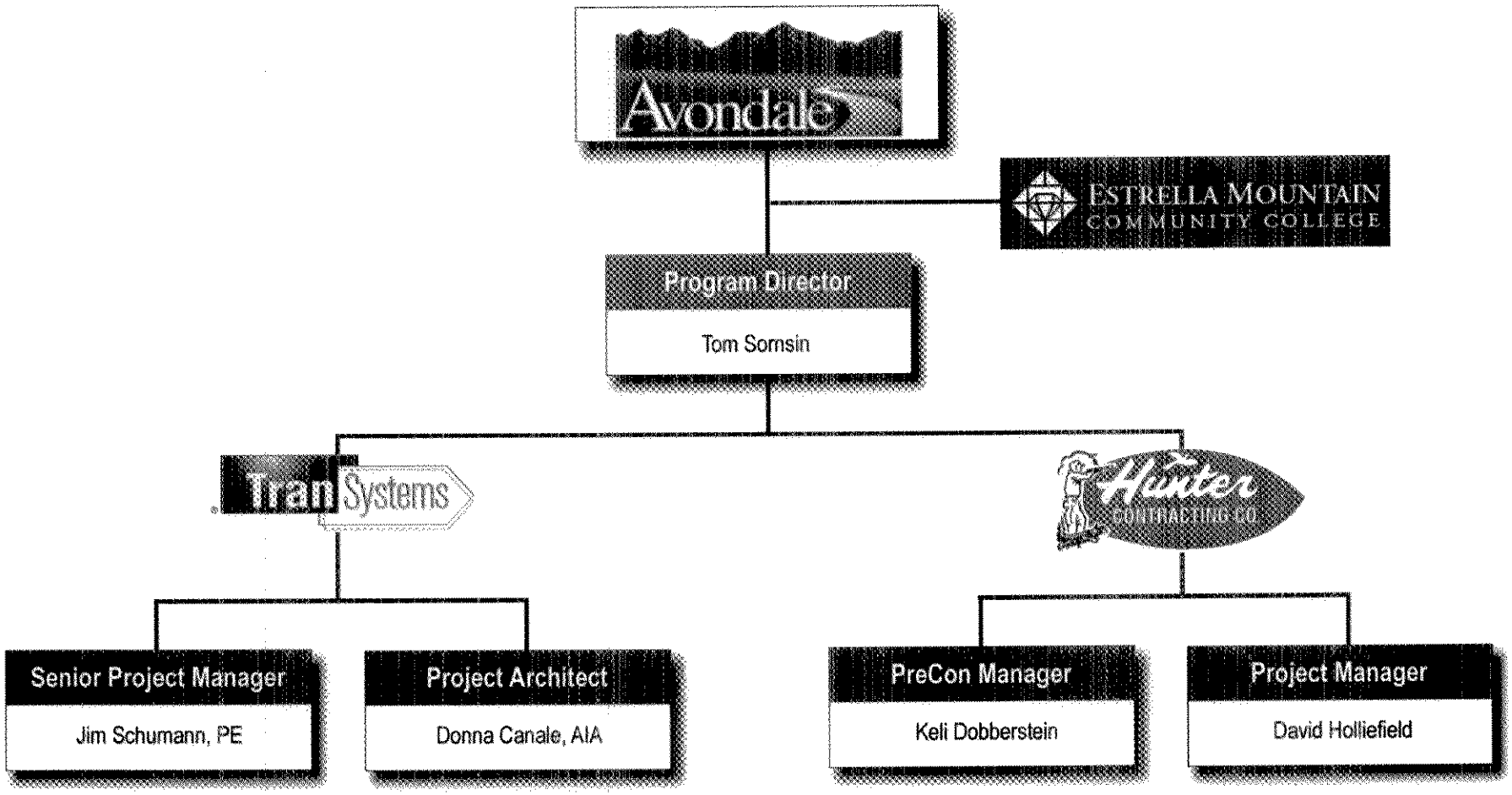
Presentation to the City of Avondale

January 23, 2007

Hunter CONTRACTING CO.

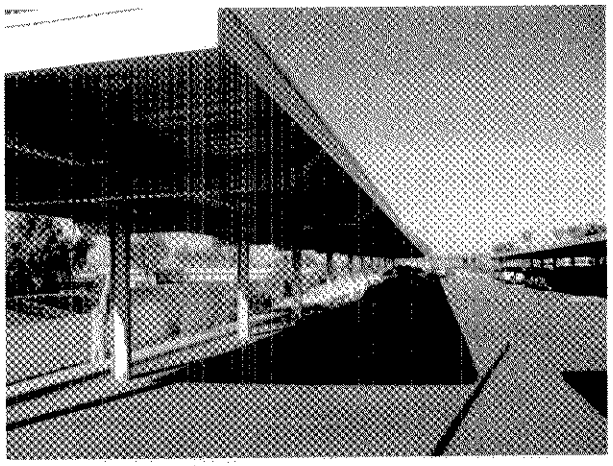
Tran Systems

EXPERIENCE | Transportation

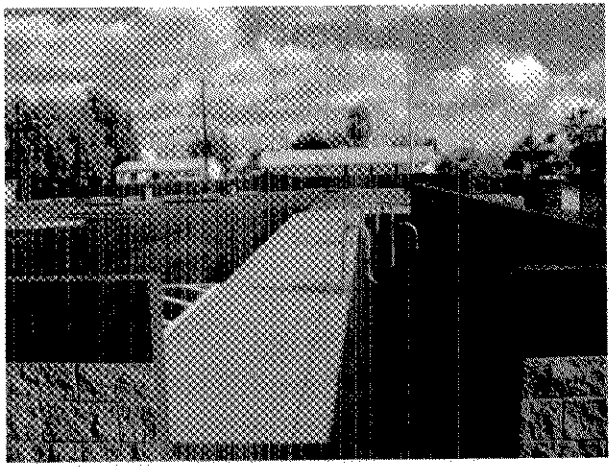

Avondale
Estrella Mountain Community College
Program Director
Tom Sornsin
Tran Systems
Hunter Contracting Co.
Senior Project Manager
Jim Schumann, PE
Project Architect
Donna Canale, AIA
PreCon Manager
Keli Dobberstein
Project Manager
David Holliefield

Hunter Contracting Overview

- Local general contractor
- Forty-five years experience
- 650 skilled employees
- 450 pieces of equipment
- $200 million annual revenue



79th Ave Park & Ride

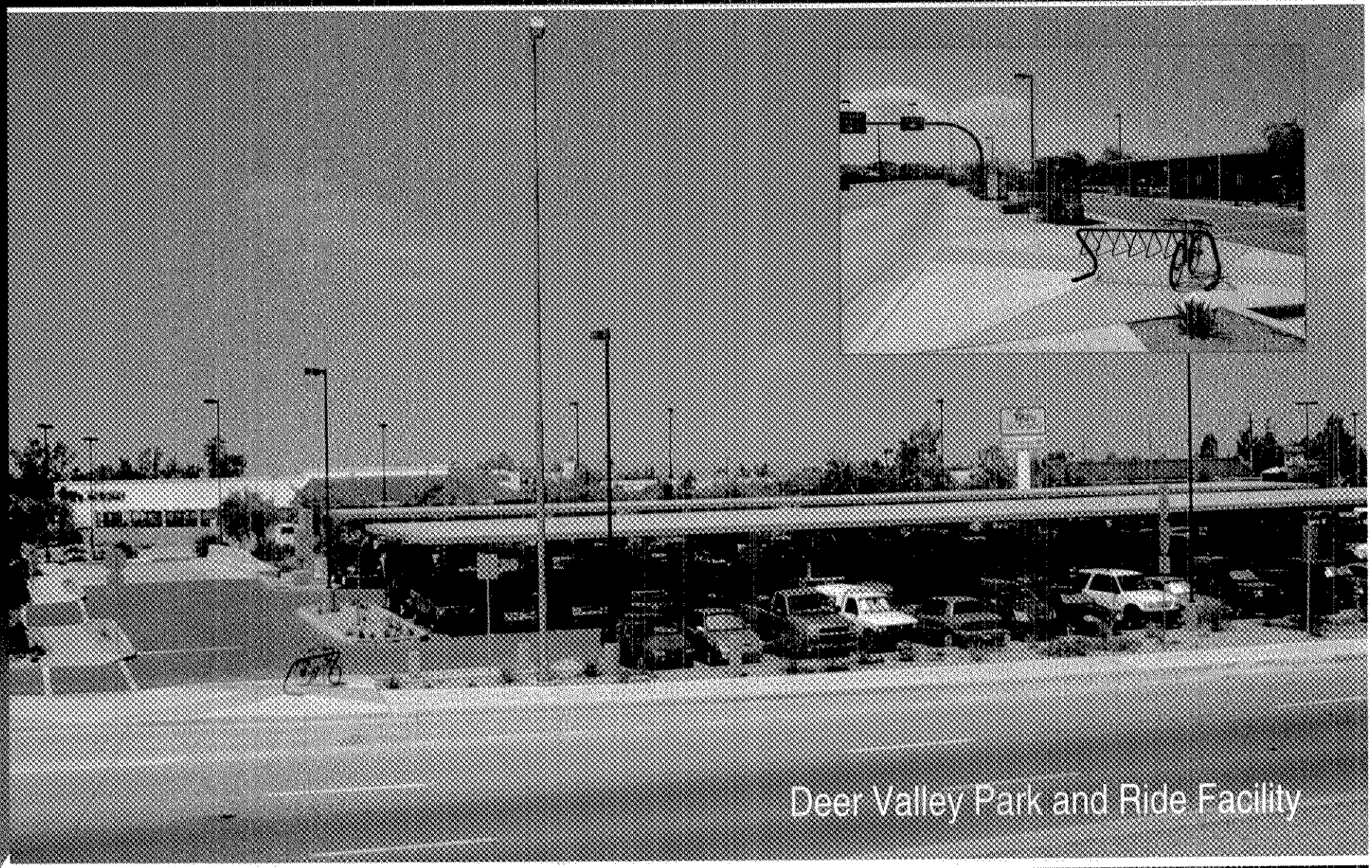


Peoria Park & Ride

Hunter Contracting Project

Hunter CONTRACTING CO

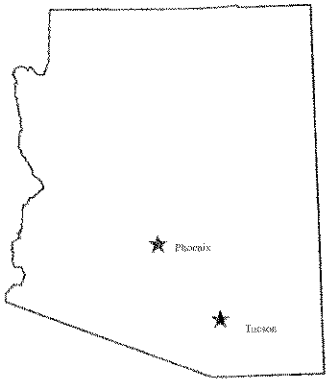
Tran Systems

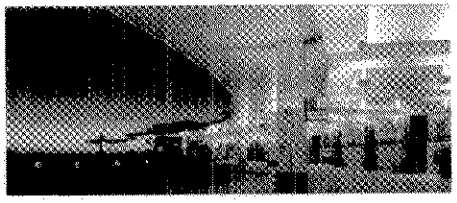
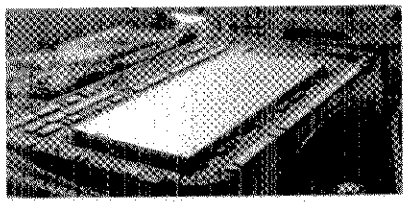
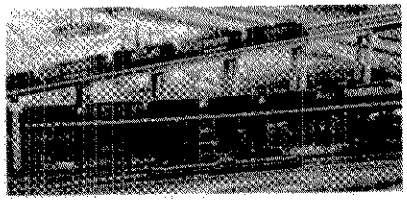
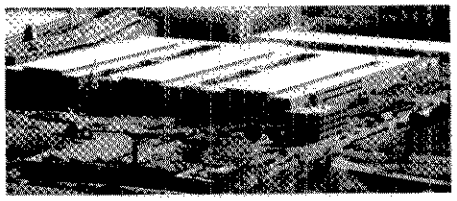
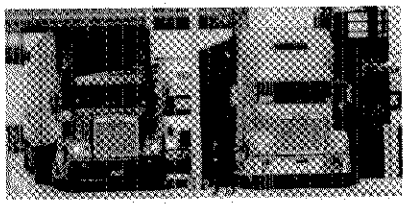
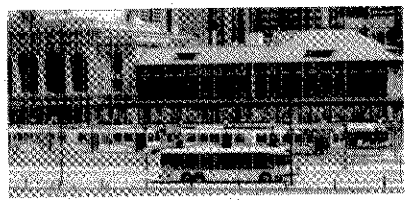


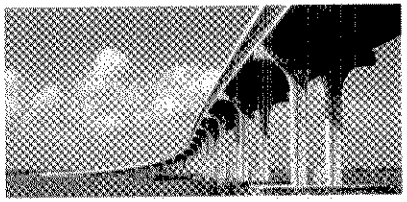
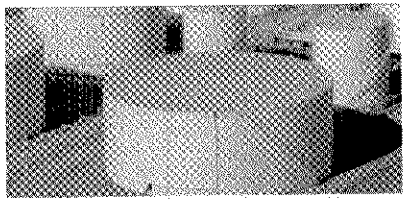
Design / Build Services for
Estrella Mountain Community College
Mini-Bus Center Project

TranSystems Overview

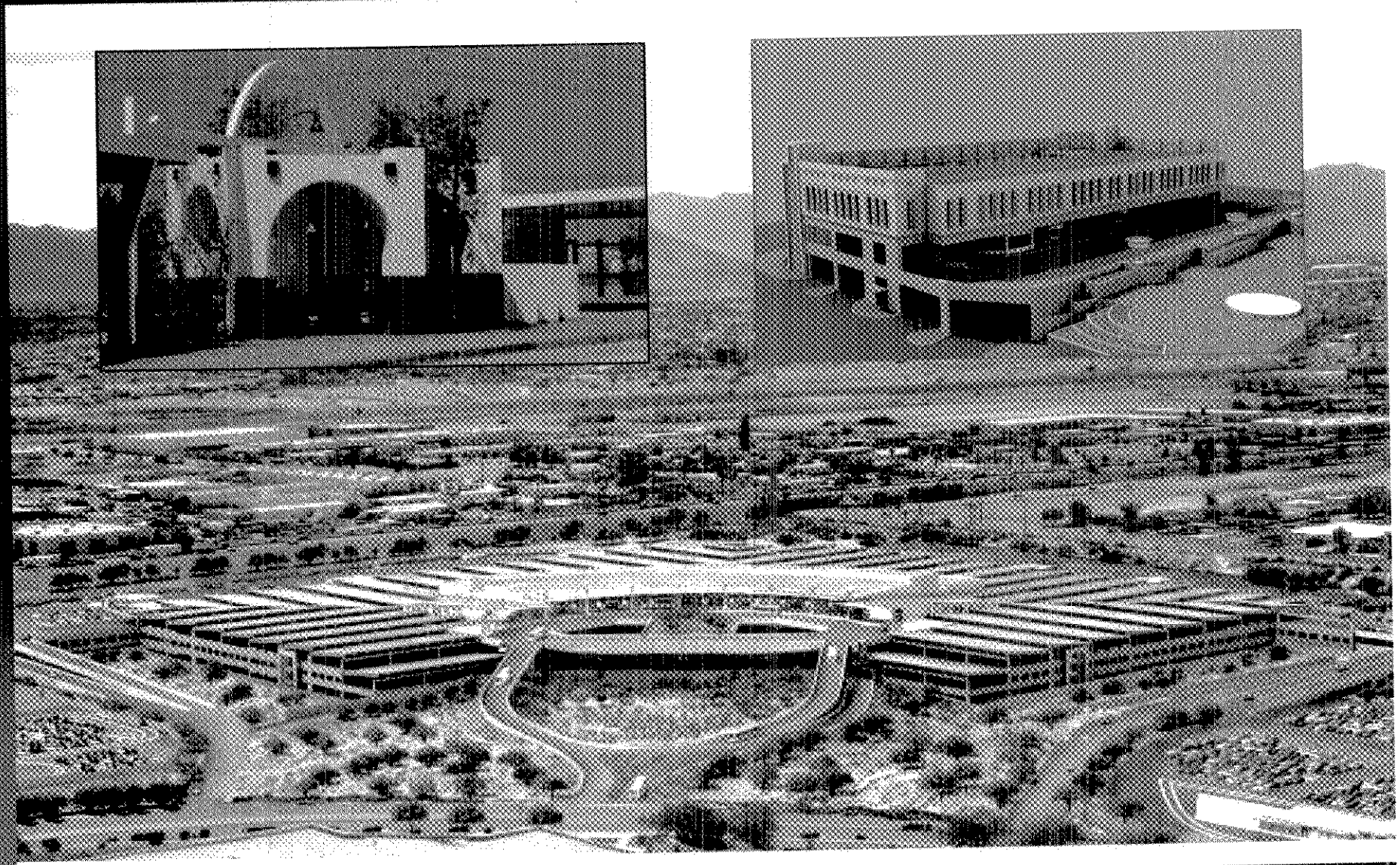
- Over 30 years in Arizona
- Local architecture and engineering
- Ranked 20th in Pure Transportation Design (ENR)
- Over 1000 people nationwide
- Intersections
- Experience of the end user
- National ADA Experience – 35 Major Public Transit Agencies



TranSystems Projects

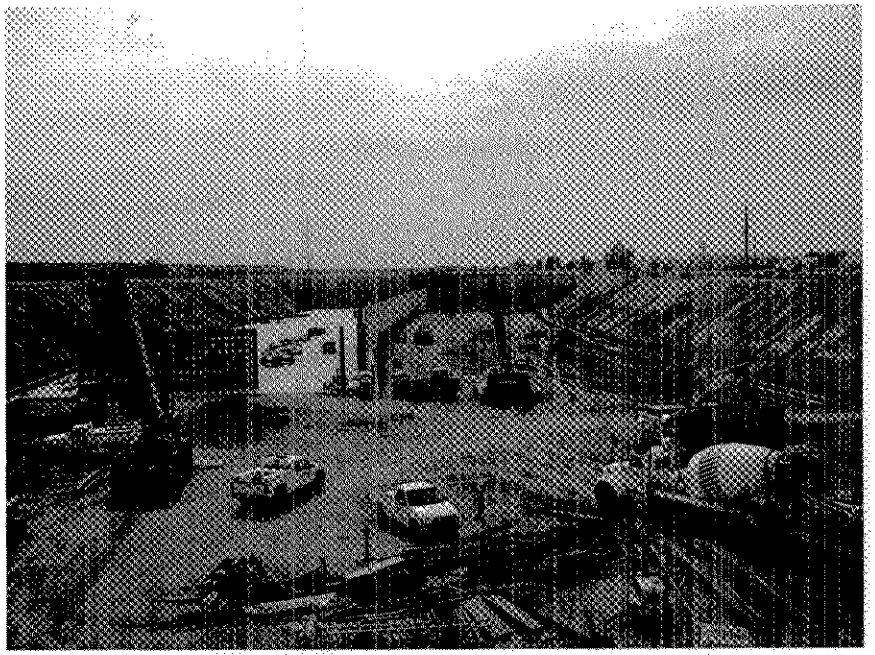


Design / Build Services for
Estrella Mountain Community College
Mini-Bus Center Project

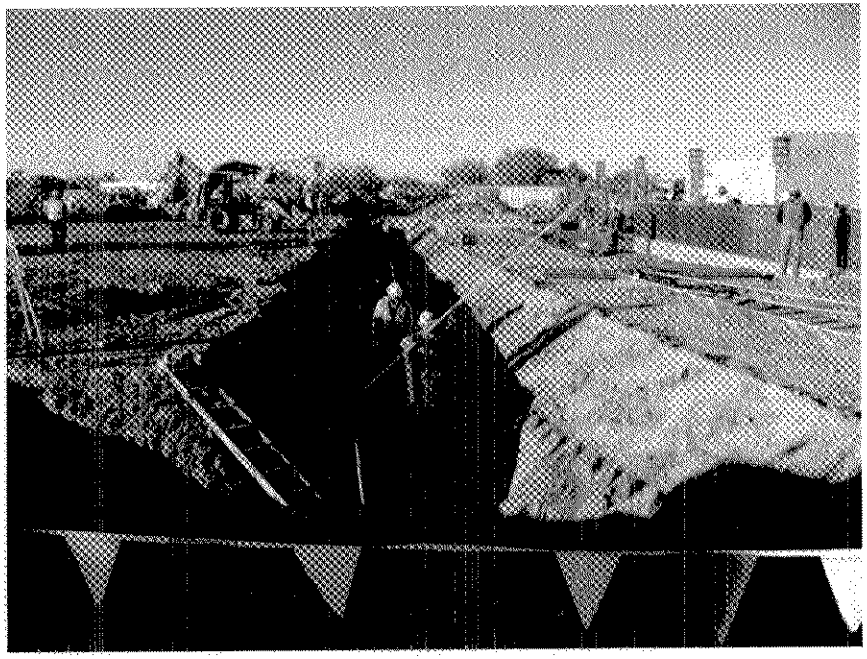
Key Personnel

Keli Dobberstein – Hunter Contracting

- 20 years experience
- Pre construction Services Manager - ADM



Union Hills Water Treatment Plant

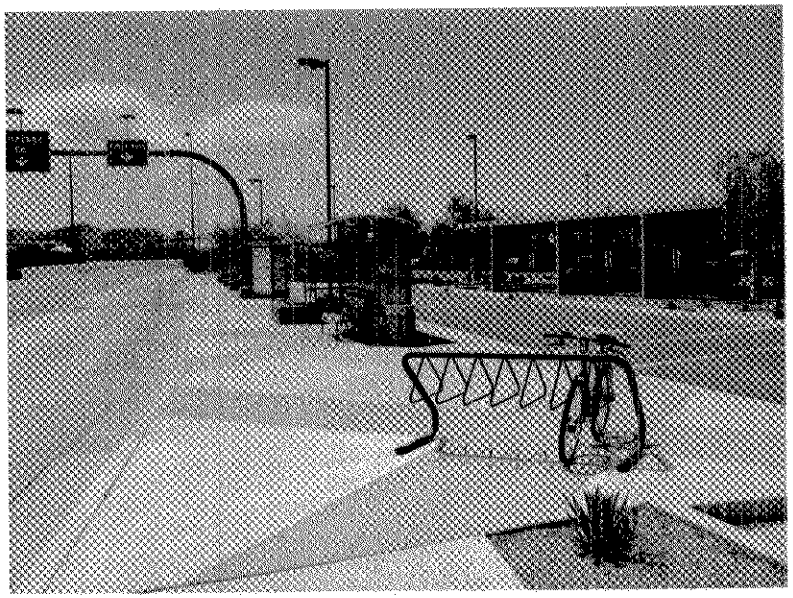


Chandler Surface Plant

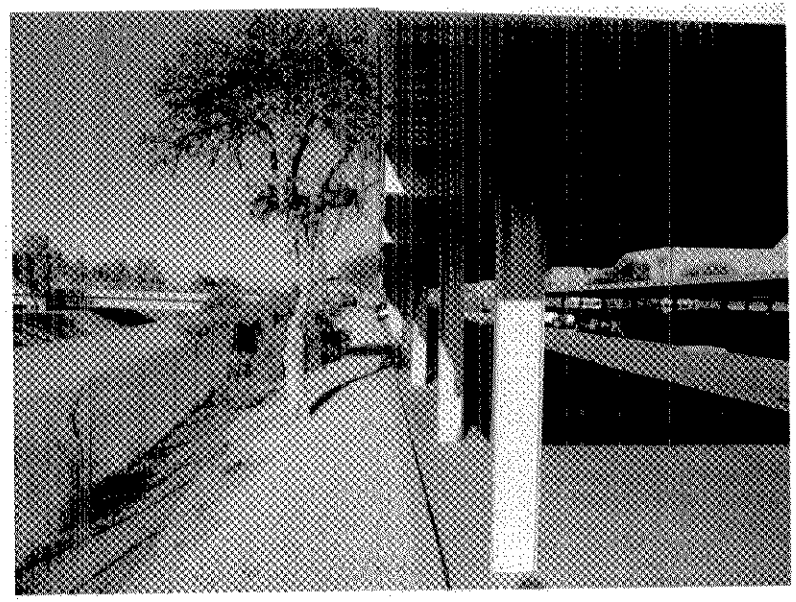
Key Personnel

David Holliefield – Hunter Contracting

- 16 years experience
- Extensive transit experience
- Previous ADM experience – Design Build / CMAR / JOC



Deer Valley Park & Ride

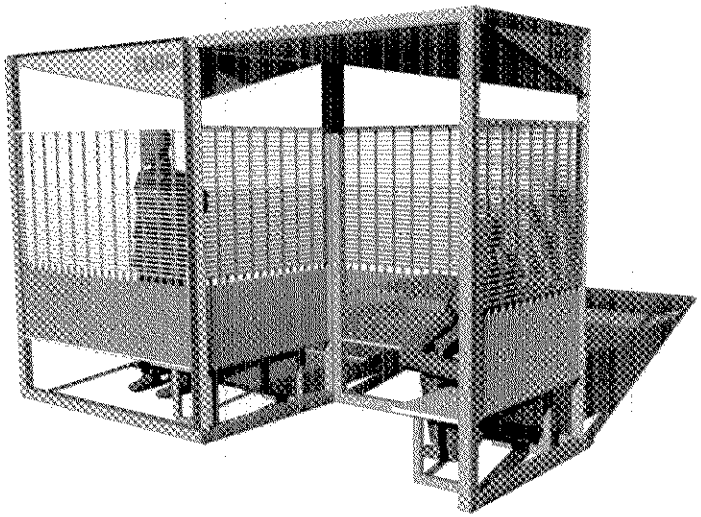


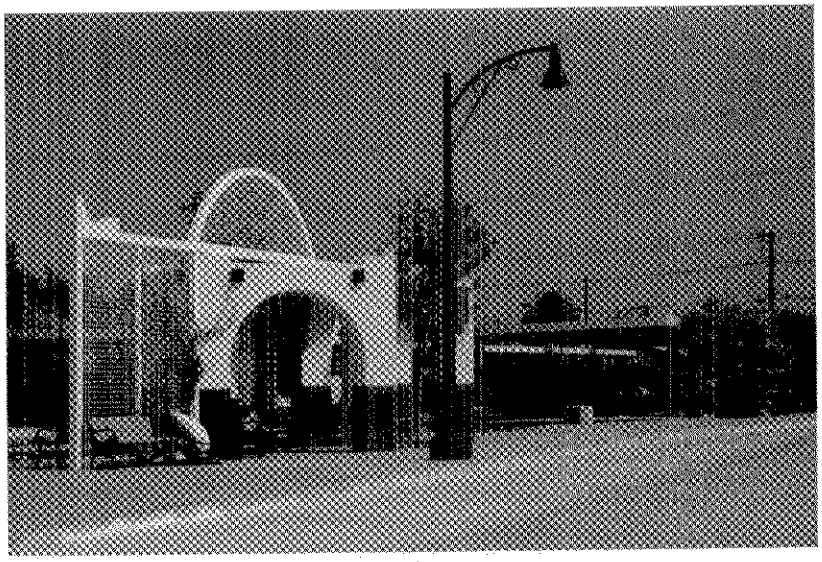
Design Build – 79th Ave Park & Ride

Key Personnel

Jim Schumann, PE - TranSystems

- Multiple local transit facilities
- PM on over $100 million study / design services
- Previous design build experience

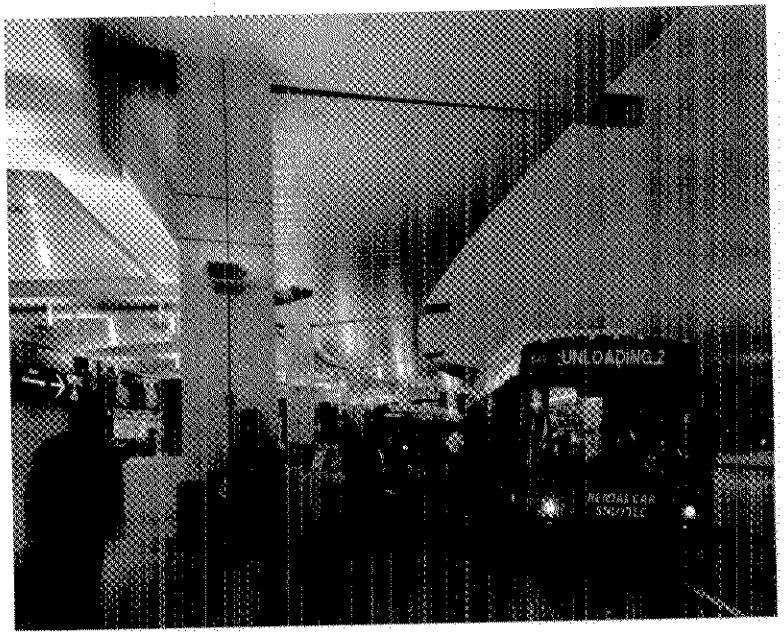


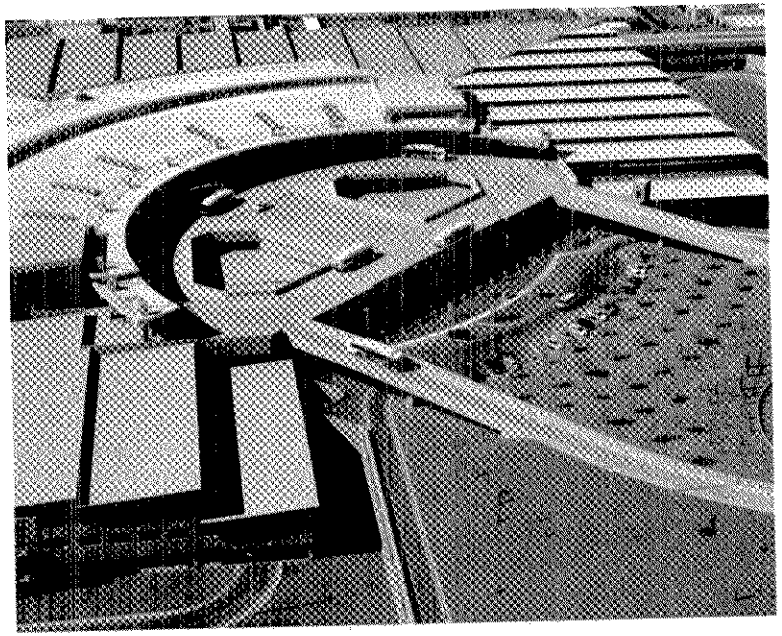


Key Personnel

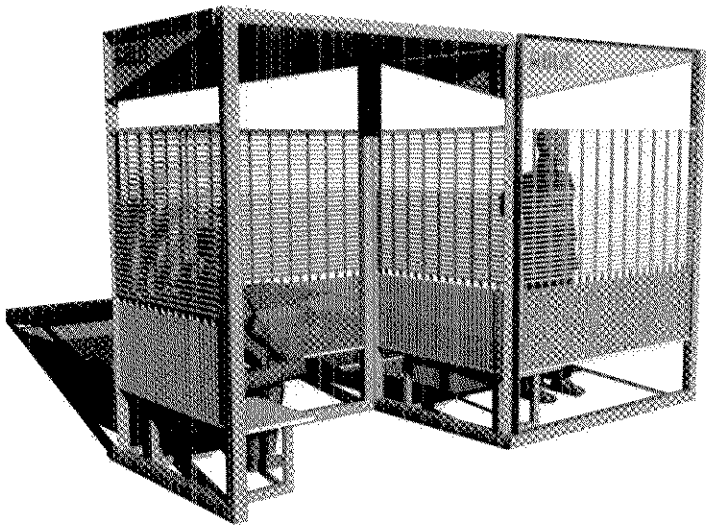
Donna Canale, AIA - TranSystems

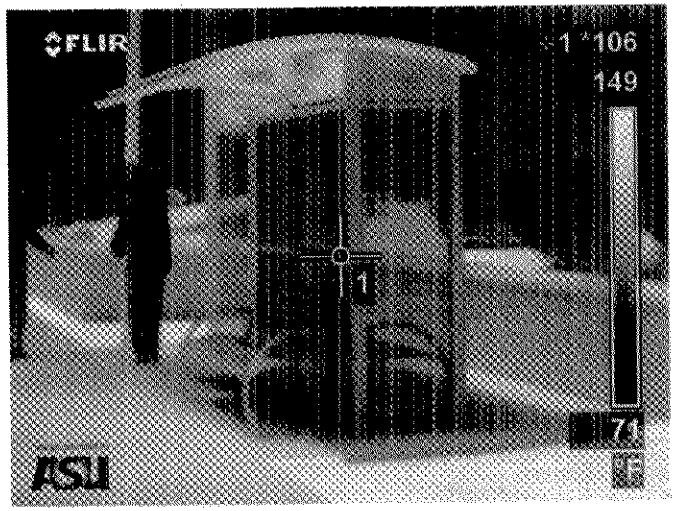
- 20 years experience
- Registered architect
- Construction Administration Manager





Major Concern – Customer Comfort

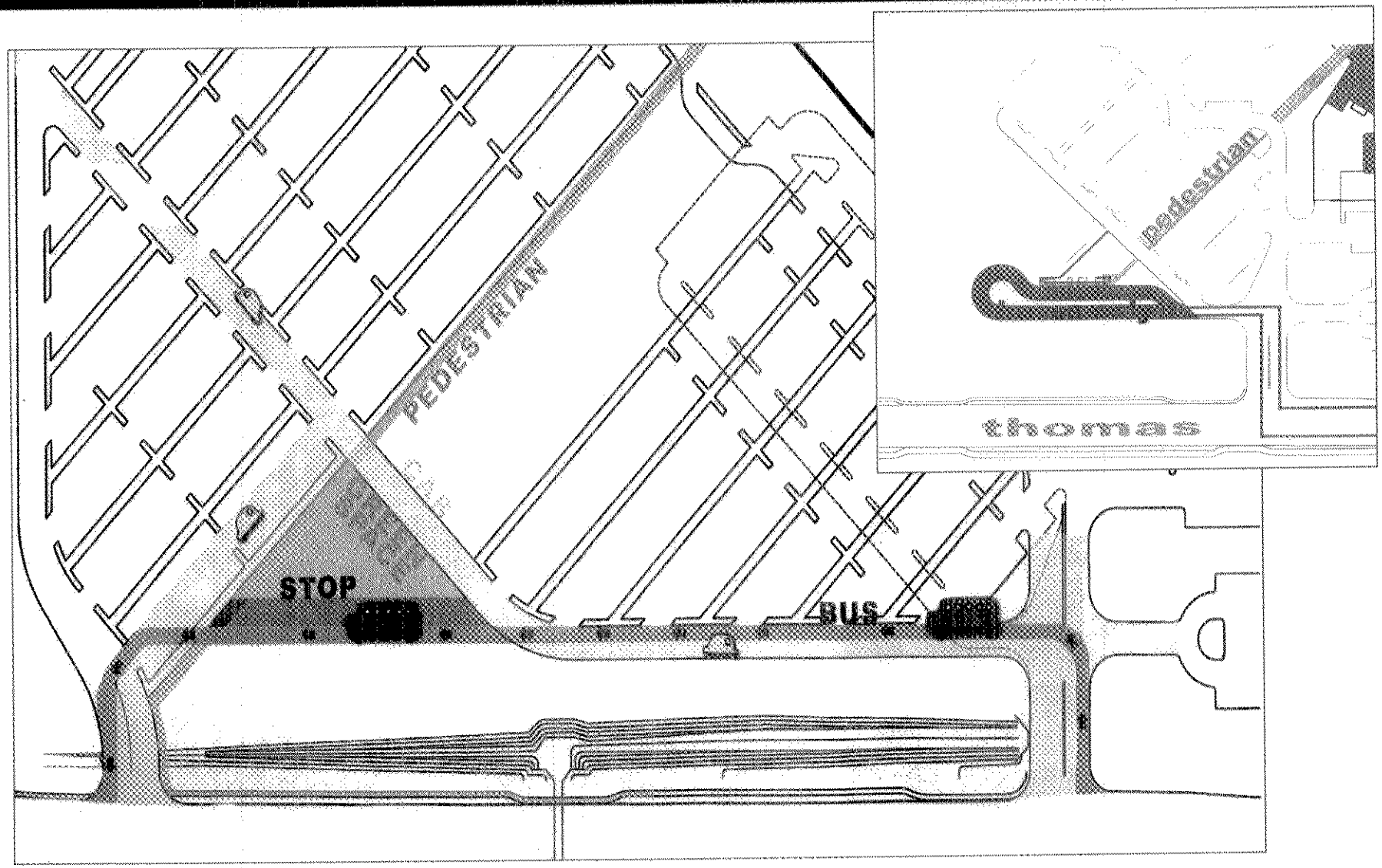




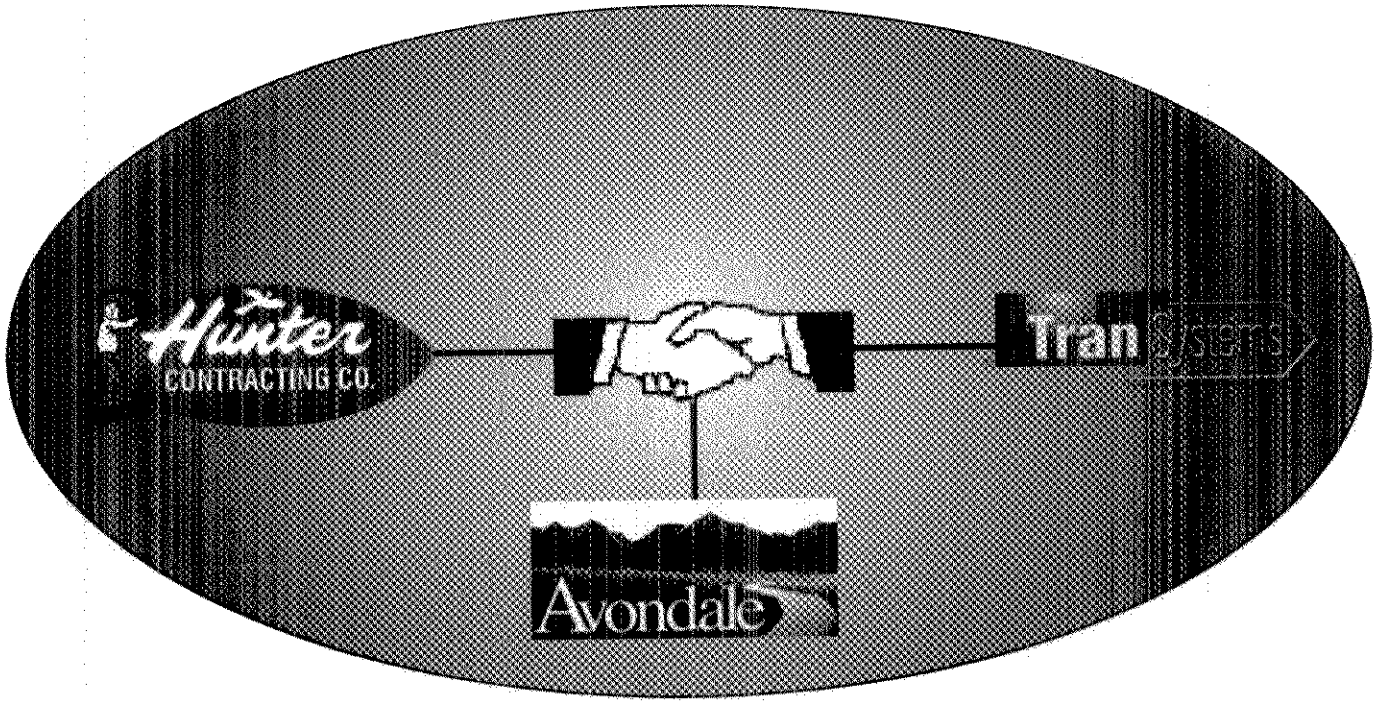
Key Project Similarities

- Customer Experience
  - Safety
  - Security
  - Accessibility
  - Human Comfort
- Modularity
- Economy
  - Fabrication
  - Installation
  - Maintenance
  - Energy

Mitigation Issues

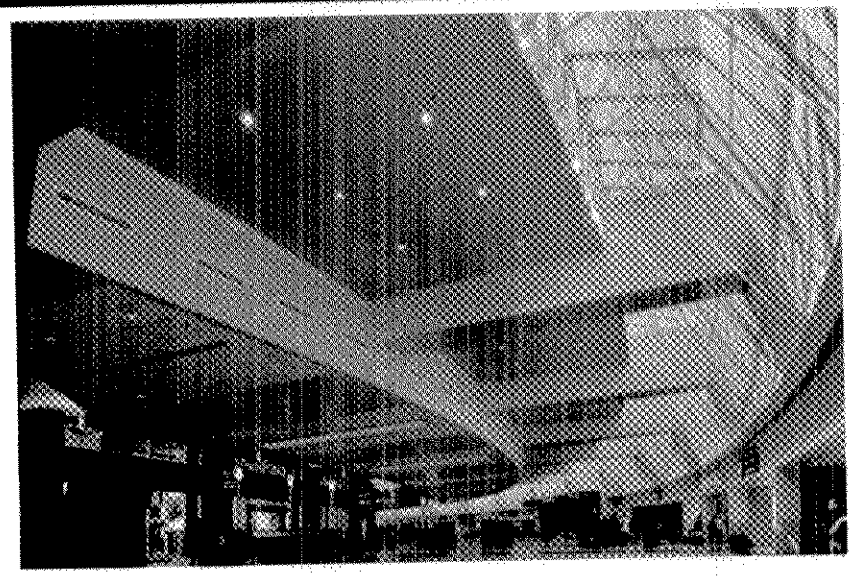


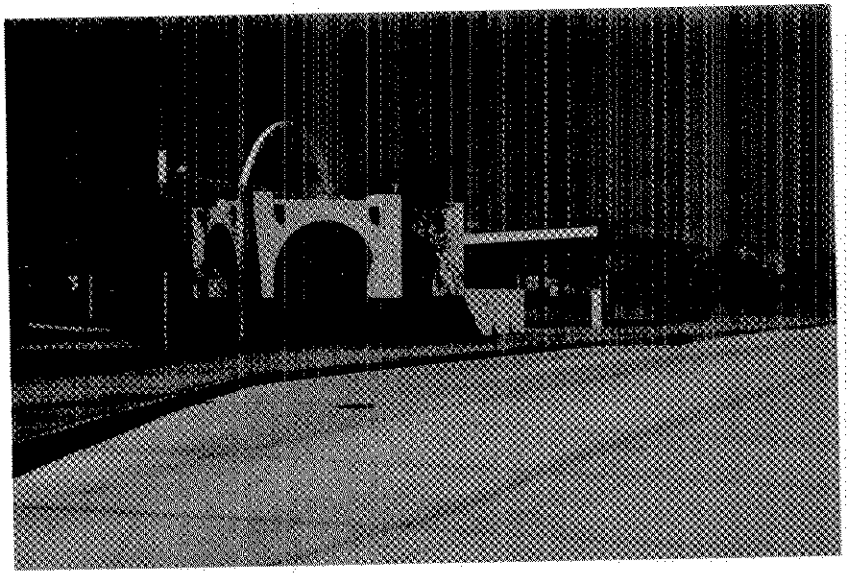
Design Build

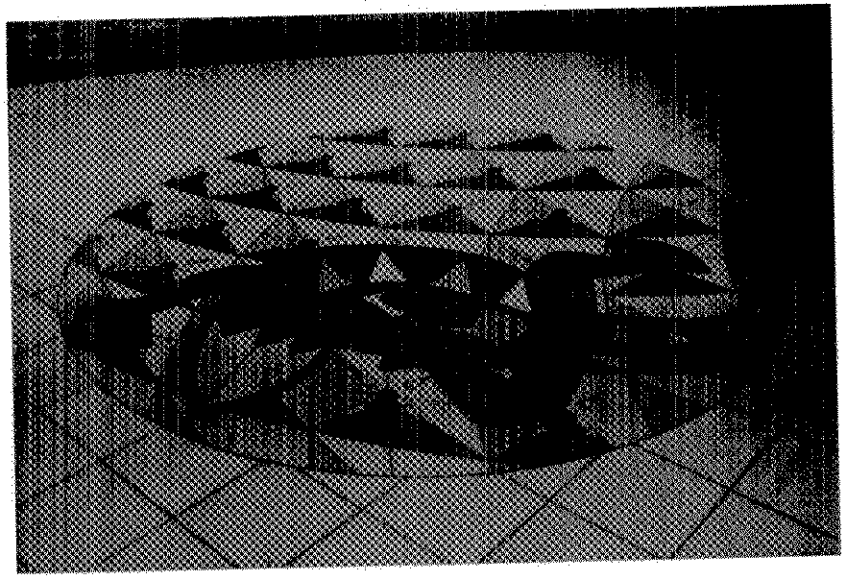


- Cost Savings / Value Enhancement
- Shorter Project Schedules
- Improved Construction Quality
- Early Knowledge of Firm Price
- Single Responsibility
- Establish Common Goals + Objectives

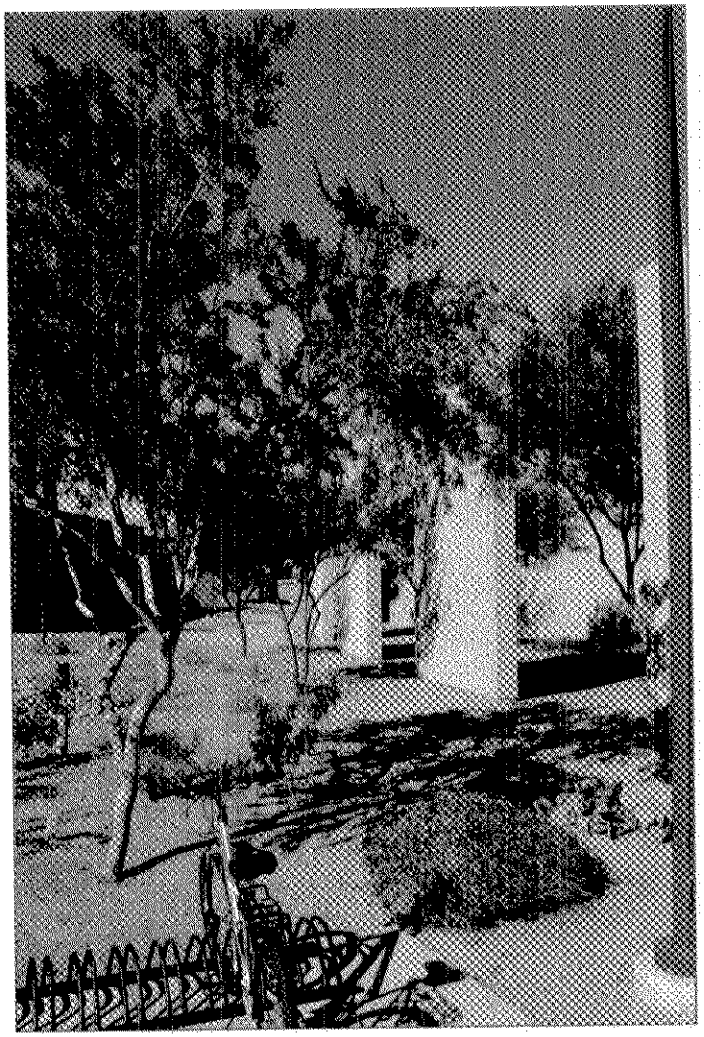
Design Theme

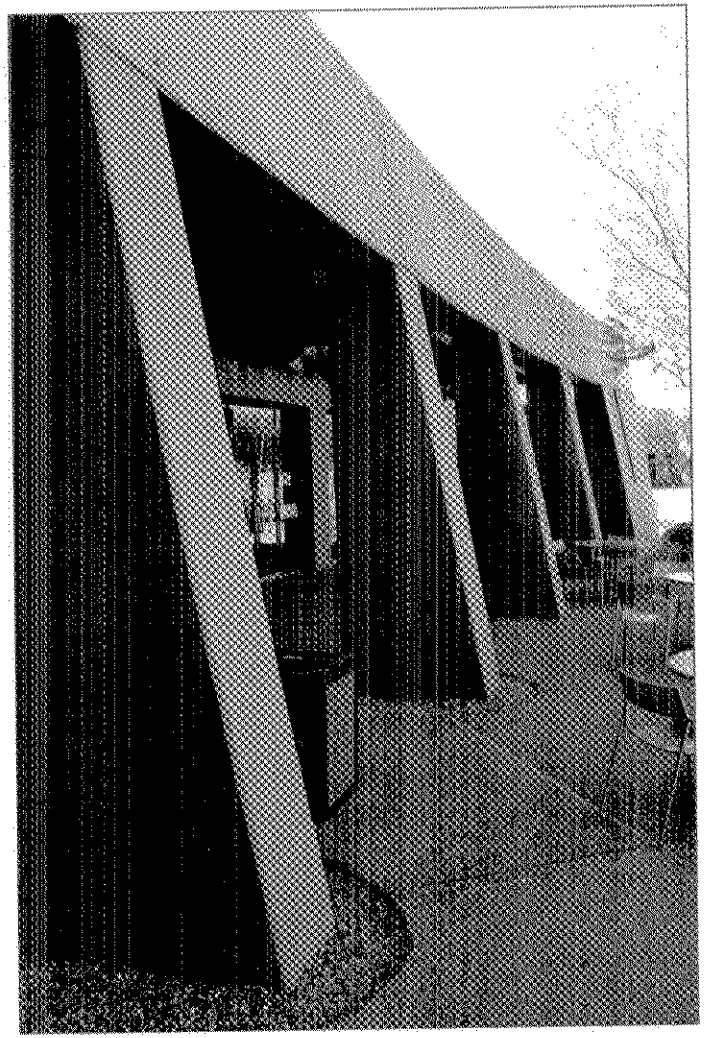






Design Theme

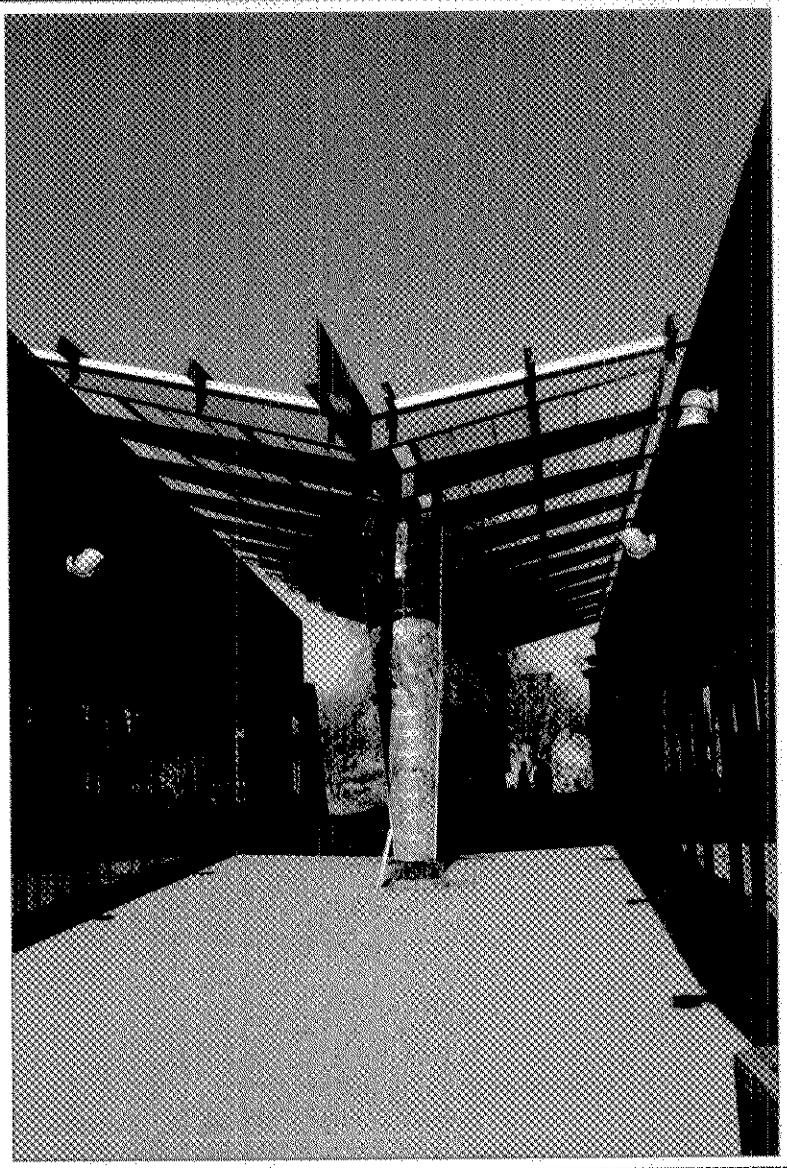


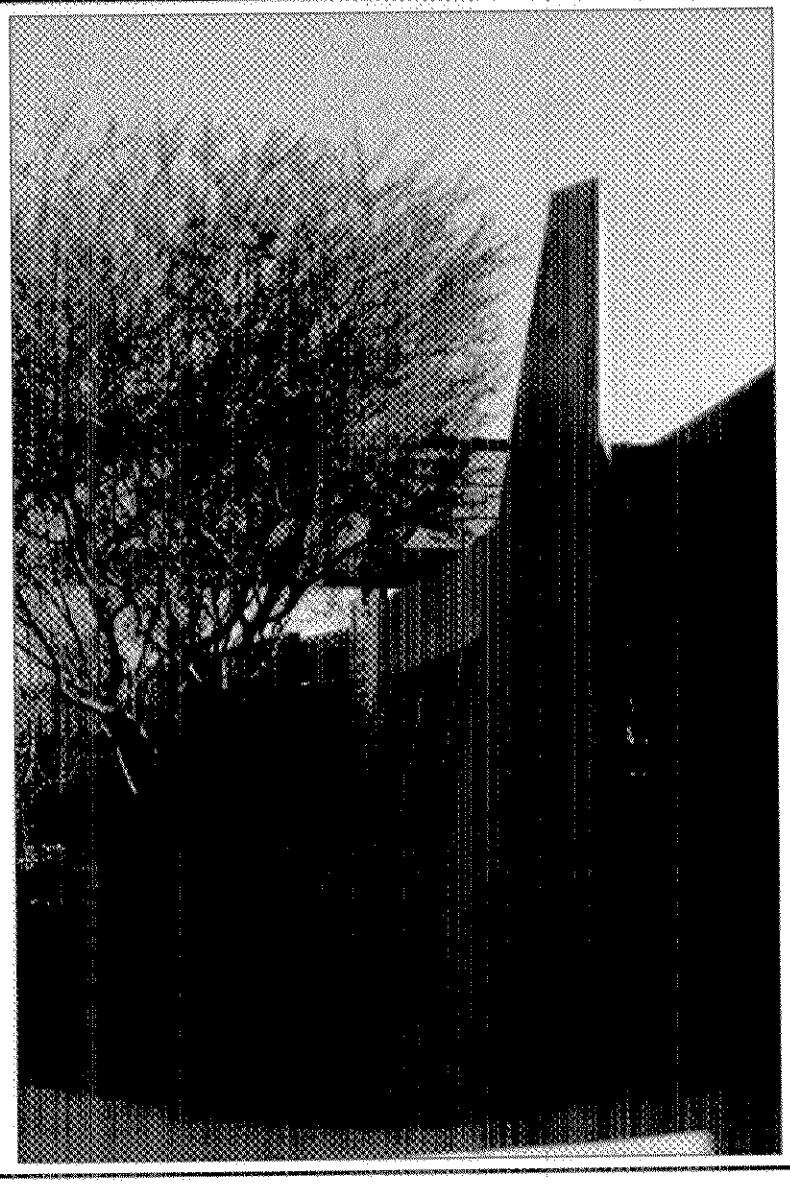


Design Theme

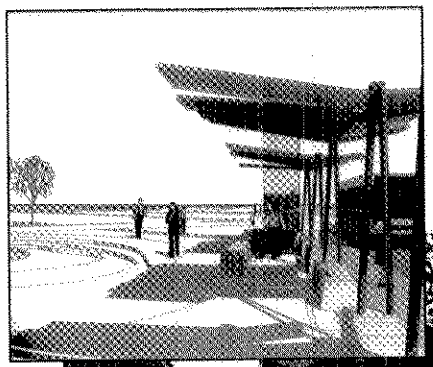
Hunter Contracting Co.

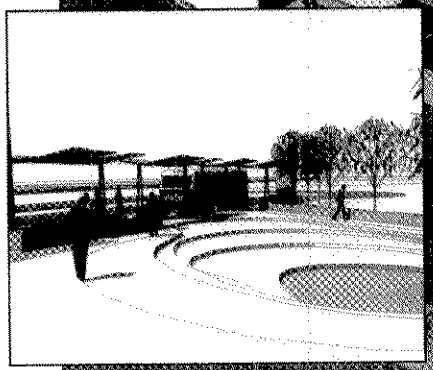
Tran Systems

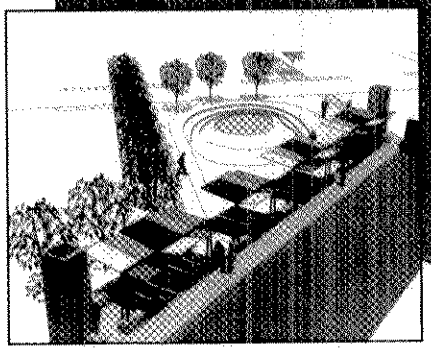


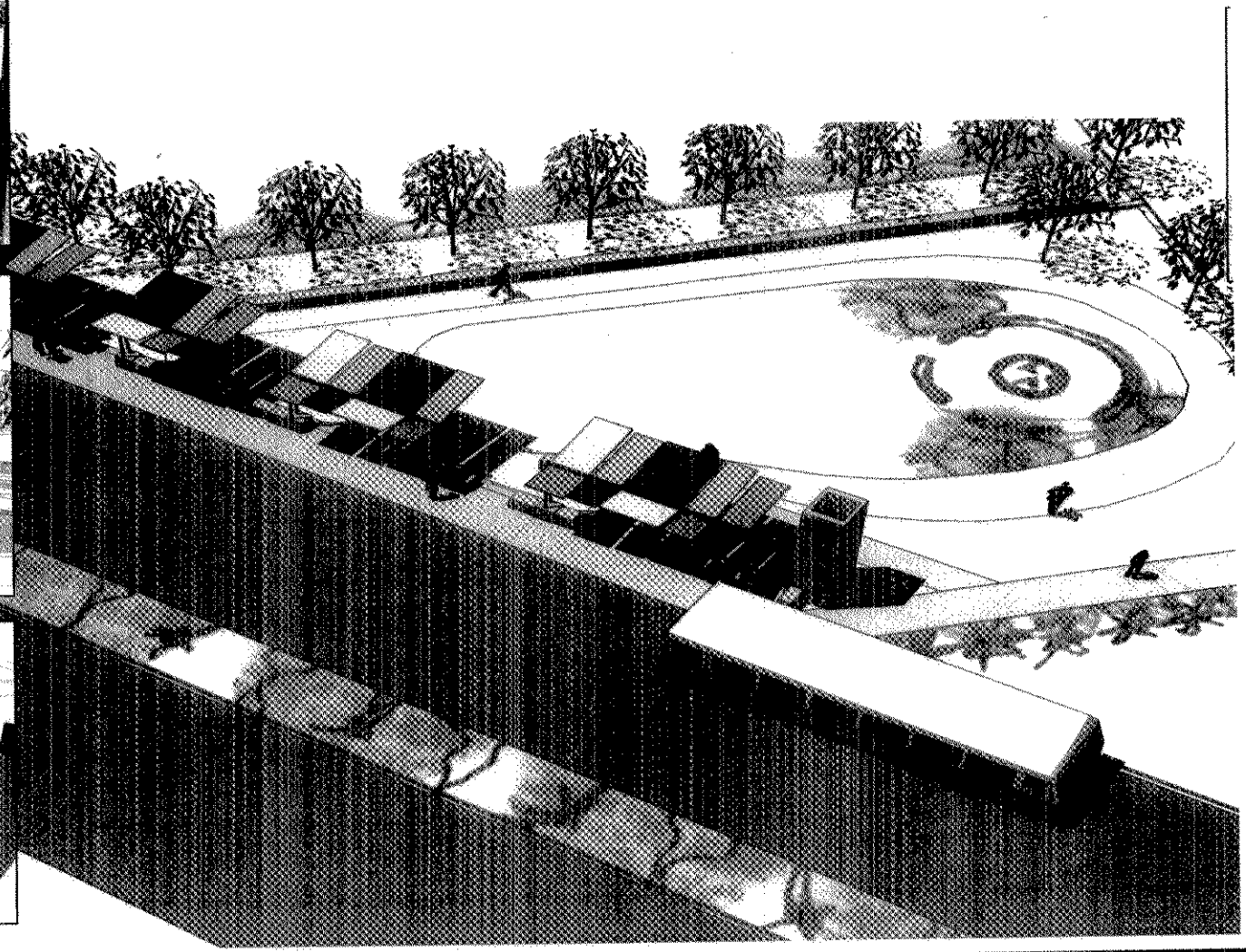


Butterfly Concept





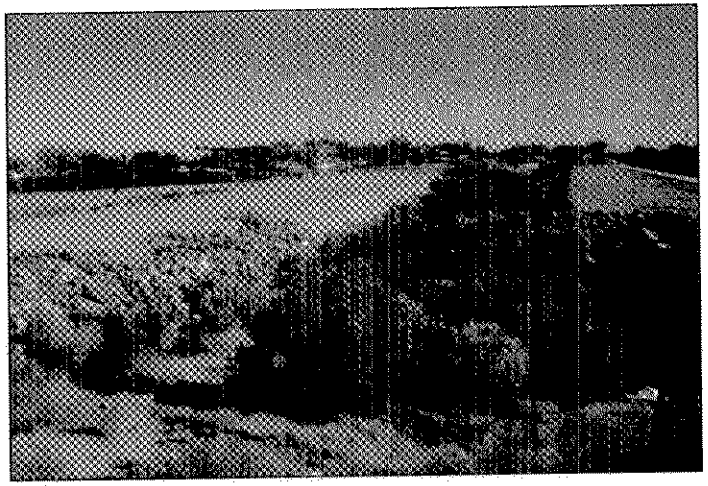




Drainage

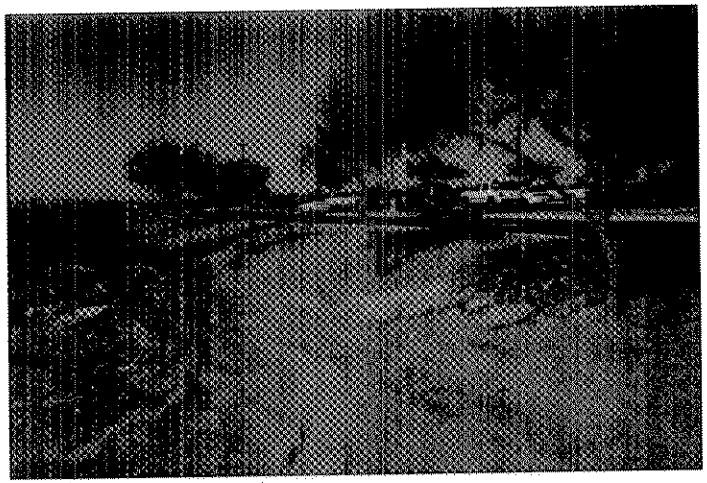
Site Conditions

- Site located in depression
- Parking lot drainage
- Major drainage ditch – CBC



Opportunities

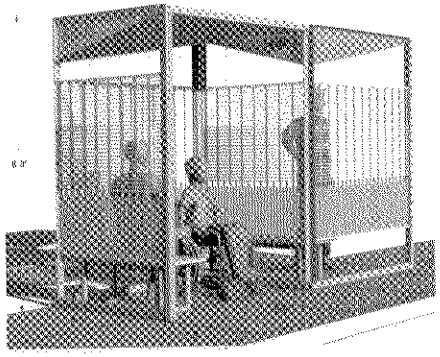
- Retention / Detention Basins
- Dry Wells
- Sump vs. Elevated
- Drainage Routing



ADA Experience

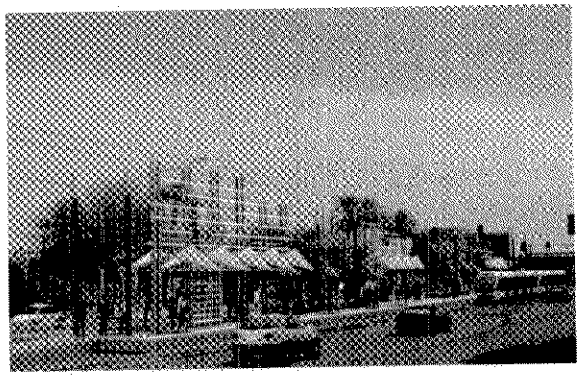
Design Consideration

- Accessible and Pathway
- Transit Area
- Load / Unloading Area

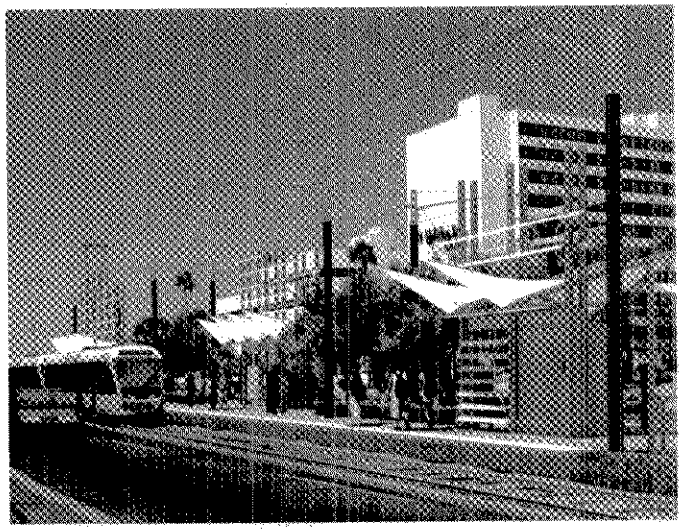


Local Experience

- Four Light Rail Stations
- Gilbert Park & Ride
- Chandler Transit Center Study
- City of Phoenix Bus Stop Shade Study



Questions & Answers



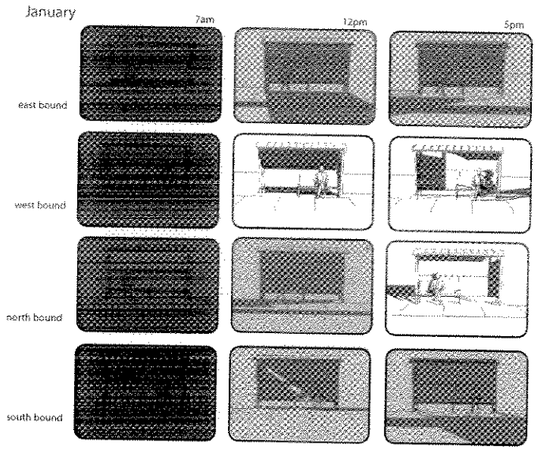
solar analysis: existing shelter

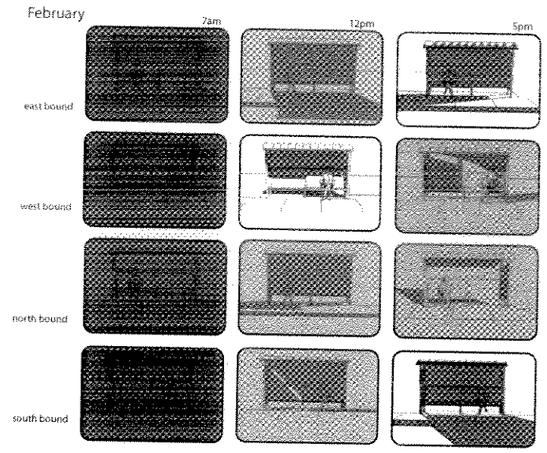
criteria for evaluation: does the shelter provide the proper solar condition (either shade or direct sunlight) to comfort 2 people seated and 1 person in a wheelchair?

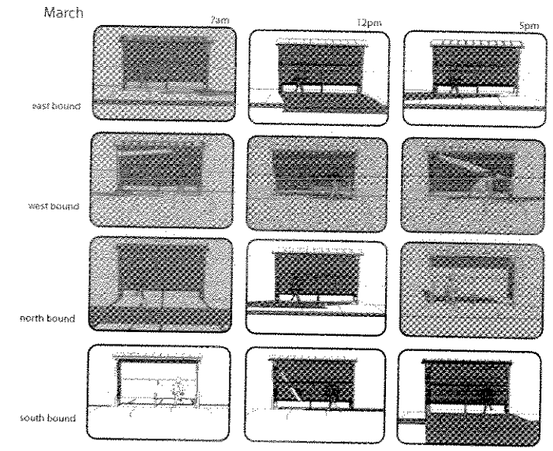
condition in which the shelter is providing the appropriate condition for comfort

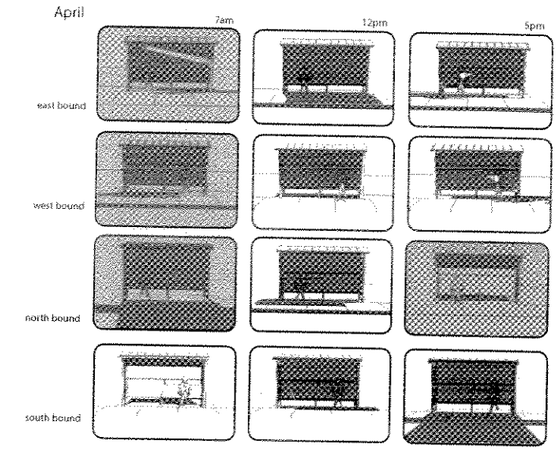
air temperature: hot
condition in which the shelter is not performing effectively. sufficient shade is not provided

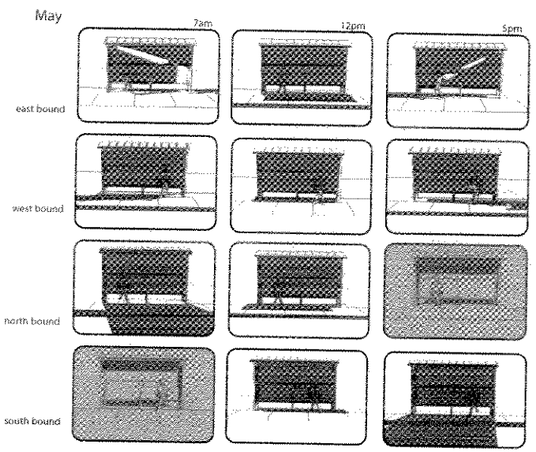
air temperature: cool
condition in which the shelter is not performing effectively. sufficient direct sunlight is not provided

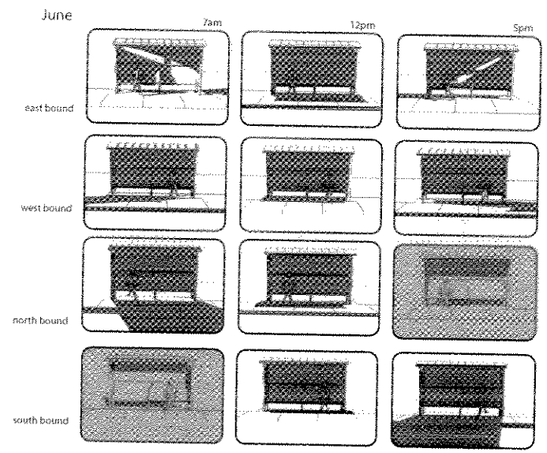


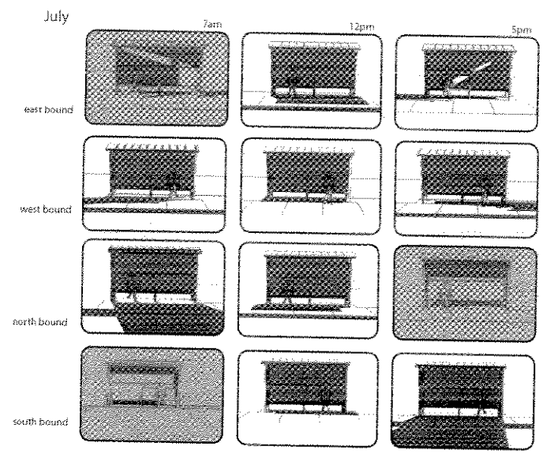


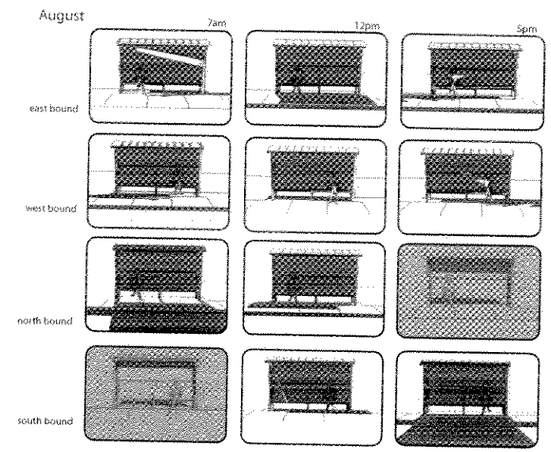


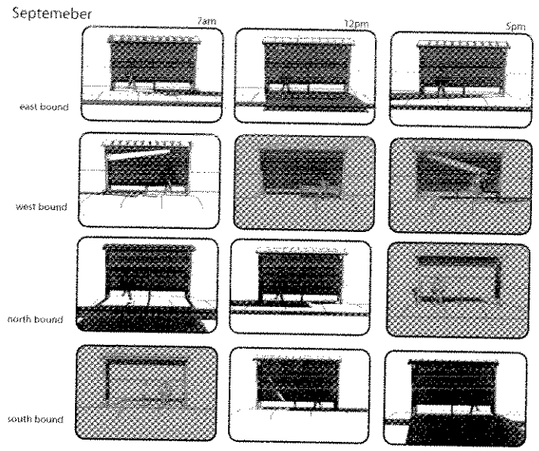


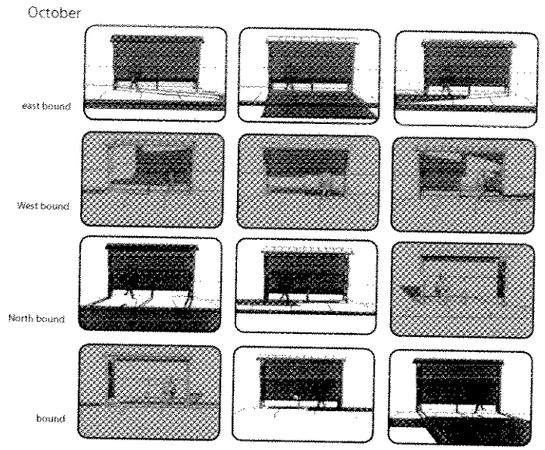


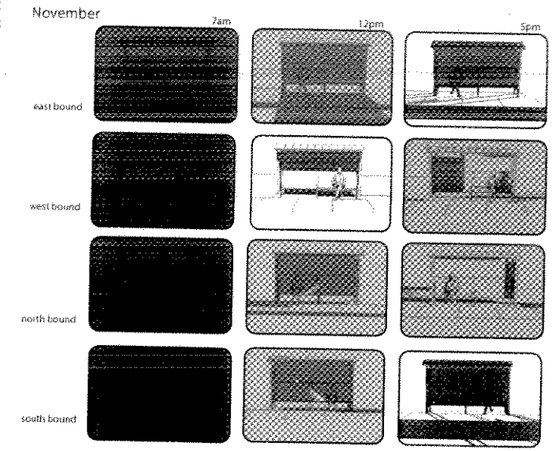


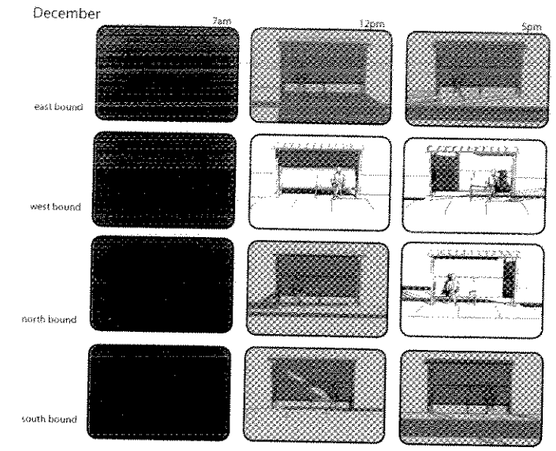












solar analysis: proposed shelter

criteria for evaluation: does the shelter provide the proper solar condition (either shade or direct sunlight) to comfort 2 people seated and 1 person in a wheelchair?

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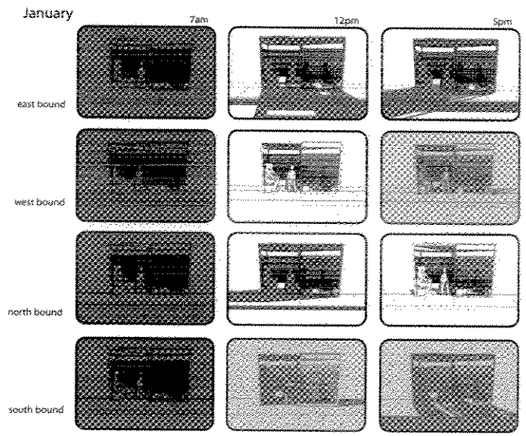
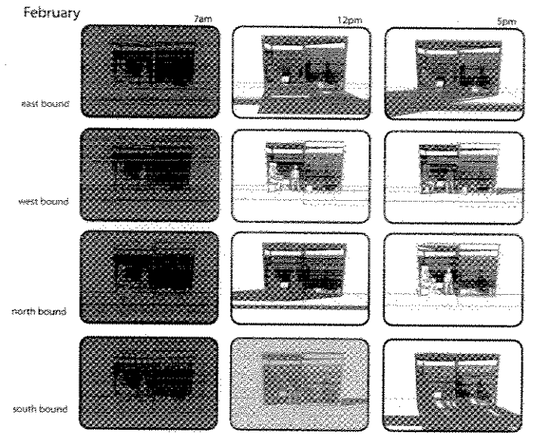
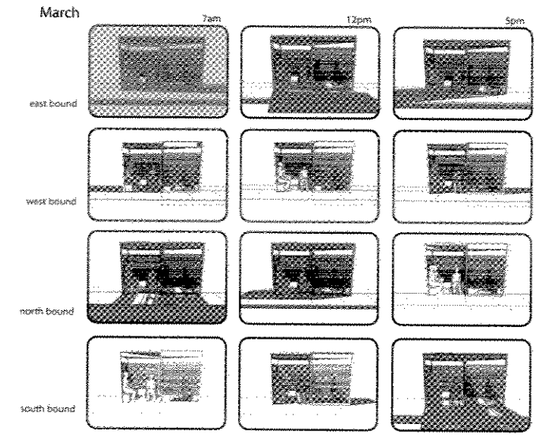
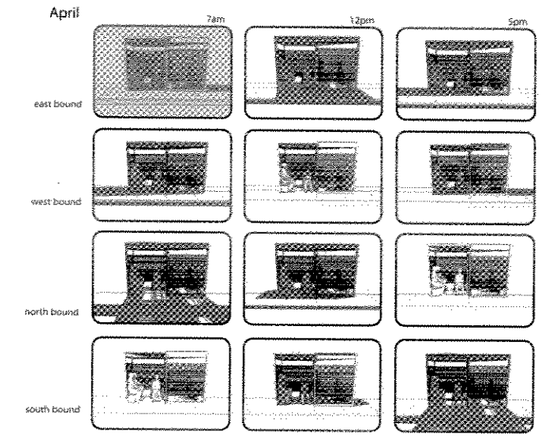
condition in which the shelter is not performing effectively. sufficient shade is not provided

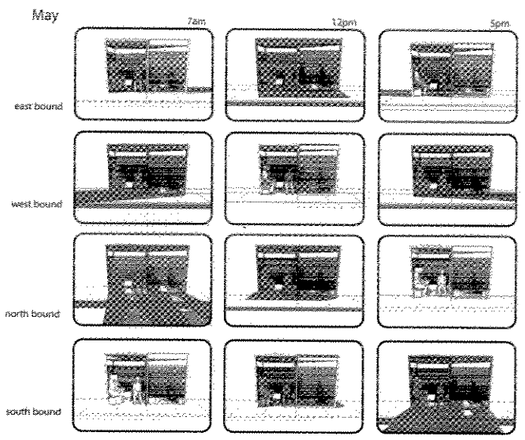
air temperature: cool
condition in which the shelter is not performing effectively. sufficient direct sunlight is not provided

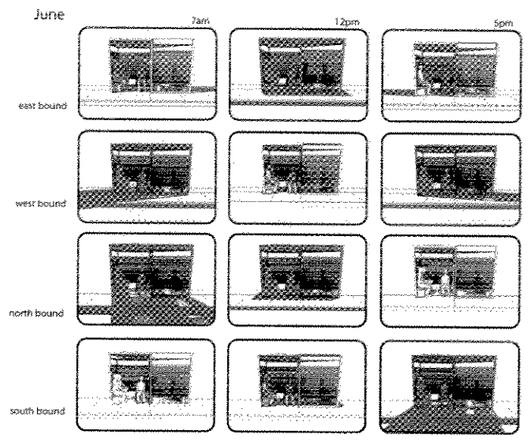


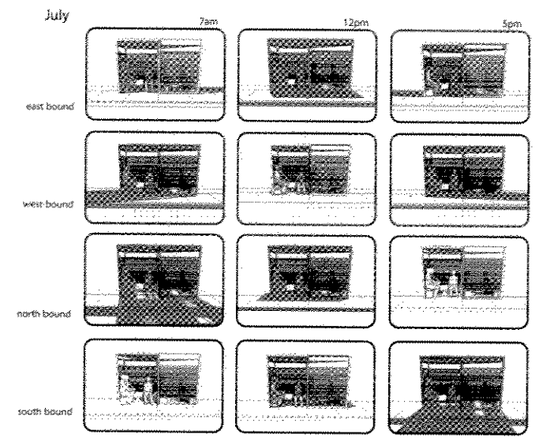


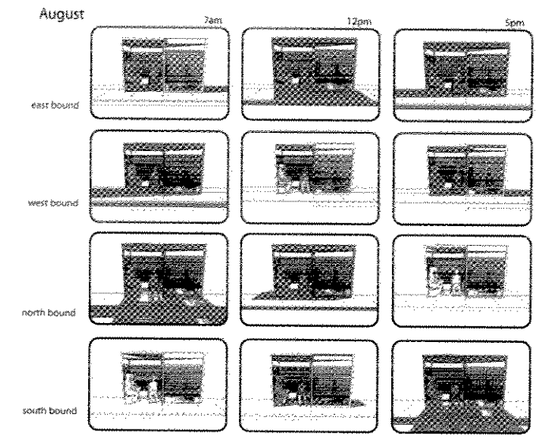


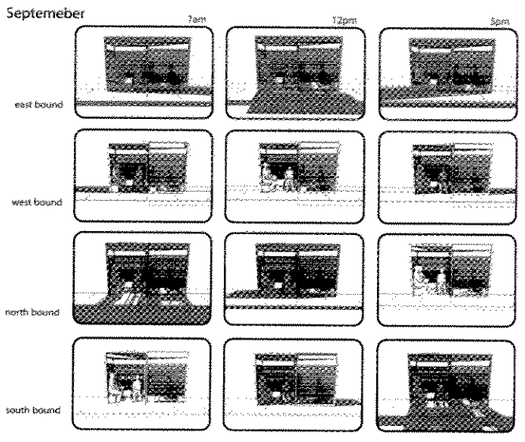


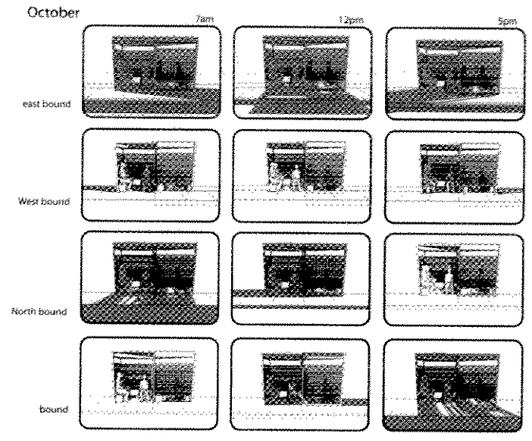


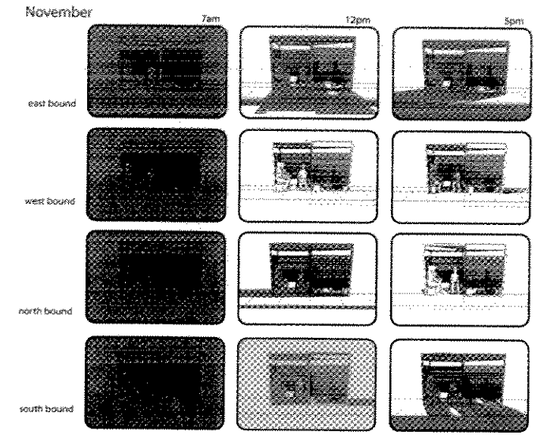












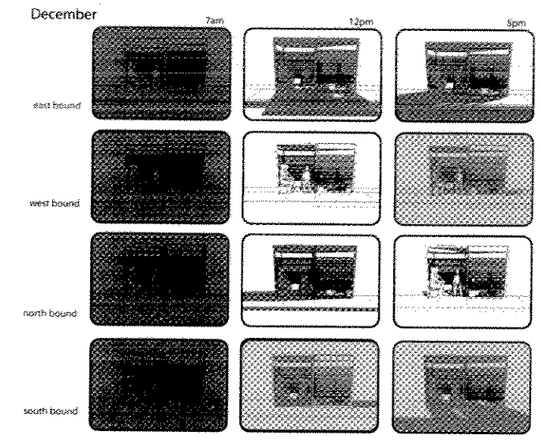


EXHIBIT G
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Subcontractor Selection Program]

See following pages.

SUBCONTRACTOR SELECTION PLAN
FOR
ESTRELLA MOUNTAIN COMMUNITY COLLEGE AVONDALE MINI-BUS CENTER PROJECT

Our subcontractor selection will select Subcontractors based on qualifications alone or on a combination of qualifications an price and shall not select subcontractors based on price alone and, will include, as a selection criteria under the request for qualification, an evaluation of each firm's proposed Subcontractor Selection Plan as referenced in The State of Arizona Statues, Title 34.

The Design-Builder and how its team qualifications are made up of and/or determined are as follows:

- Quality of Workmanship
- Design-Build Subcontractor Capabilities
- Workload/Manpower
- Scheduling
- Pricing

Our Design-Build Subcontractors Team that we have built over the years of constructing Design-Build projects have proven to fulfill all of the necessary requirements to make a Design-Build project come together under the Budget that are set forth.

EXHIBIT H
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Traffic Control/Construction Sequencing]

See following pages.

EXHIBIT I
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Pre-Construction Services]

See following pages.

Hunter Contracting Co. A CORPORATION

March 29, 2007

Peggy J. Wright
Procurement Officer
City of Avondale
Finance and Budget Department
11465 W. Civic Center Drive, Suite 250
Avondale, Arizona 85323-6807

RE: Estrella Mountain Community College Mini-Bus Center Project – Design/Build
Project No. AD 06-0333

Dear Ms. Wright:

Thank you for taking time out of your busy schedule last week to meet with our Hunter / TranSystems team. As discussed, we have separated the Pre-Construction fees as follows:

Bus Stop – Pre-Construction / Design Team
Parking Lot – Pre-Construction / Design Team
Landscaping – Pre-Construction / Design Team

Should you have any questions, please do not hesitate to contact me.

Sincerely,
HUNTER CONTRACTING CO.

Keli Dobberstein
Director CM Services

701 North Cooper Road • Gilbert, Arizona 85233 • (480) 892-0521 • Fax (480) 892-4932
6930 North Camino Martin • Tucson, Arizona 85741 • (520) 744-0722 • Fax (520) 744-0847
ARIZONA - ROC070961 A GEN ENG • ROC067542 B GEN BLDG • ROC075851 B-01 GEN COM • ROC023057 B-04 GEN RES ENG CALIFORNIA - ROC851711 A GEN ENG

City of Avondale – EMCC Mini-Bus Center Project
Project No. AD06-033
Combined Workhours Proposal and Fee – Scope of Work Phase I and II

March 29, 2007

Proposal

	Total Project	Transit Center	Parking Lot
PreConstruction Fees (Hunter Contracting)	$36,518	$18,259	$18,259
Design Professional (TranSystems)	$158,545	$109,355	$49,190
Direct Expenses (Split 70/30)	$643	$450	$193
GeoTech (Speedie) (Split 50/50)	$2,200	$1,100	$1,100
Landscape Architecture (Logan Simpson)	$21,896	$13,399	$8,498
Survey (Brooks) (Split 25/75)	$13,437	$3,359	$10,078
Total	$233,239	$145,922	$87,318

Note: Direct expenses, GeoTech and Survey were split Utilizing Percentages. These percentages are subject to review by the owner.

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Bus Stop PreConstruction) Project No. AD 06-033

March 27, 2007

Classification		Labor Hours	Hourly Rate	Cost
Hunter Constracting Company				
Program Manager		12	$125.06	$1,438.19
PreCon Manager		40	$108.01	$4,320.40
Chief Estimator		28	$96.66	$2,658.15
Structural Estimator		10	$60.61	$575.80
Architectural Estimator		2	$60.61	$121.22
Mechanical Estimator		12	$60.61	$697.02
Electrical & Insttrumentation Estimator		30	$73.91	$2,180.35
Project Manager		29	$96.66	$2,754.81
Project Engineer		5	$69.18	$311.31
General Superintendent		2	$96.66	$144.99
Project Administrator		12	$43.21	$496.92
	Total Hours	178		
				$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$109,805
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Ten Eyck)	$16,370
Survey (Brooks Engineers & Surveyors, Inc)	$3,359
Subconsultants Subtotal	**$130,634**
Allowance Subtotal	**$133,194**
Total Scope Amount	**$148,893**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks \ Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	1	1	1	0	1	5	1.5	0	0	0.5	**13.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	0	1	1	1	1.5	0.5	0	0.5	**8**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Recommends if Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

continued on next page

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks / Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP...Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	7
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	0
Submit Updated Project Schedule with GMP...Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	2.5
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	2.5
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	0
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	3
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	0
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	1	3	1.5	0.5	0	1	1.5	6	1.5	0	0.5	15
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	2.5
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	0.5
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	2
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	0
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	0
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	0.5	0.5	2	0	0	0	0	1.5	0	0	2	5
Total Hours w/o Allowances	10.5	38	27.5	9.5	2	12	29.5	28.5	4.5	1.5	9.5	10
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	0
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	0
CM@Risk/Engineer Interface							0	0	0	0	0	0
Outside Technical Services (Thames)							0	0	0	0	0	0
Travel Expenses							0	0	0	0	0	0
Long Distance Telephone & Fax Charges							0	0	0	0	0	0
Printing Expense							0	0	0	0	0	0
Subtotal Hours	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Total PreConstruction Hours	11	39	27.5	9.5	2	12	29.5	28.5	4.5	1.5	10.5	5
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	0	0	0	0	0	0	0	0	0	0	0	0
Total Hours for Allowances	0.5	1	0	0	0	0	0	0	0	0	1	2.5
TOTAL PROJECT MAN-HOURS	11.5	40	27.5	9.5	2	11.5	29.5	28.5	4.5	1.5	11.5	177.5

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Parking Lot PreConstruction) Project No. AD 06-033

March 27, 2007

Classification	Labor Hours	Hourly Rate	Cost
Hunter Constracting Company			
Program Manager	12	$125.06	$1,438.19
PreCon Manager	40	$108.01	$4,320.40
Chief Estimator	28	$96.66	$2,658.15
Structural Estimator	10	$60.61	$575.80
Architectural Estimator	2	$60.61	$121.22
Mechanical Estimator	12	$60.61	$697.02
Electrical & Insttrumentation Estimator	30	$73.91	$2,180.35
Project Manager	29	$96.66	$2,754.81
Project Engineer	5	$69.18	$311.31
General Superintendent	2	$96.66	$144.99
Project Administrator	12	$43.21	$496.92
Total Hours	178		
			$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$49,383
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Ten Eyck)	$13,485
Survey (Brooks Engineers & Surveyors, Inc)	$10,078
Subconsultants Subtotal	**$74,046**
Allowance Subtotal	**$76,606**

Total Scope Amount **$92,305**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Tasks \ Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	1	1.5	0.5	0	0.5	**8**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0	0	0	0	0	0	0	0	0	0	0	**0**
Recommends if Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

continued on next page

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Classification / Tasks	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP, Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	**7**
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	**0**
Submit Updated Project Schedule with GMP... Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	**2.5**
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	**2.5**
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	**0**
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	**3**
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	**0**
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1**	**3**	**1.5**	**0.5**	**0**	**1**	**1.5**	**6**	**1.5**	**0**	**0.5**	**15**
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	**2.5**
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	**0.5**
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	**2**
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	**0**
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	**0**
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	**0**
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**0.5**	**0.5**	**2**	**0**	**0**	**0**	**0**	**1.5**	**0**	**0**	**2**	**5**
Total Hours w/o Allowances	**10.5**	**38**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**9.5**	**10**
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	**2.5**
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	**0**
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	**0**
CM@Risk/Engineer Interface							0	0	0	0	0	**0**
Outside Technical Services (Thames)							0	0	0	0	0	**0**
Travel Expenses							0	0	0	0	0	**0**
Long Distance Telephone & Fax Charges							0	0	0	0	0	**0**
Printing Expense							0	0	0	0	0	**0**
Subtotal Hours	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
Total PreConstruction Hours	**11**	**39**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**10.5**	**5**
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Hours for Allowances	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
TOTAL PROJECT MAN-HOURS	**11.5**	**40**	**27.5**	**9.5**	**2**	**11.5**	**29.5**	**28.5**	**4.5**	**1.5**	**11.5**	**177.5**

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Bus Stop PreConstruction) Project No. AD 06-033

March 27, 2007

Classification		Labor Hours	Hourly Rate	Cost
Hunter Constracting Company				
Program Manager		12	$125.06	$1,438.19
PreCon Manager		40	$108.01	$4,320.40
Chief Estimator		28	$96.66	$2,658.15
Structural Estimator		10	$60.61	$575.80
Architectural Estimator		2	$60.61	$121.22
Mechanical Estimator		12	$60.61	$697.02
Electrical & Insttrumentation Estimator		30	$73.91	$2,180.35
Project Manager		29	$96.66	$2,754.81
Project Engineer		5	$69.18	$311.31
General Superintendent		2	$96.66	$144.99
Project Administrator		12	$43.21	$496.92
	Total Hours	178		
				$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$109,805
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Logan Simpson)	$13,399
Survey (Brooks Engineers & Surveyors, Inc)	$3,359
Subconsultants Subtotal	**$127,663**
Allowance Subtotal	**$130,223**
Total Scope Amount	**$145,922**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks \ Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	1	1.5	0.5	0	0.5	**8**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0	0	0	0	0	0	0	0	0	0	0	**0**
Recommends If Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

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HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks / Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP..Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	7
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	0
Submit Updated Project Schedule with GMP...Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	2.5
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	2.5
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	0
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	3
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	0
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**1**	**3**	**1.5**	**0.5**	**0**	**1**	**1.5**	**6**	**1.5**	**0**	**0.5**	**15**
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	2.5
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	0.5
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	2
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	0
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	0
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0.5**	**0.5**	**2**	**0**	**0**	**0**	**0**	**1.5**	**0**	**0**	**2**	**5**
Total Hours w/o Allowances	**10.5**	**38**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**9.5**	**10**
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	0
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	0
CM@Risk/Engineer interface							0	0	0	0	0	0
Outside Technical Services (Thames)							0	0	0	0	0	0
Travel Expenses							0	0	0	0	0	0
Long Distance Telephone & Fax Charges							0	0	0	0	0	0
Printing Expense							0	0	0	0	0	0
Subtotal Hours	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
Total PreConstruction Hours	**11**	**39**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**10.5**	**5**
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Hours for Allowances	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
TOTAL PROJECT MAN-HOURS	**11.5**	**40**	**27.5**	**9.5**	**2**	**11.5**	**29.5**	**28.5**	**4.5**	**1.5**	**11.5**	**177.5**

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Parking Lot PreConstruction) Project No. AD 06-033

March 27, 2007

Classification		Labor Hours	Hourly Rate	Cost
Hunter Constracting Company				
Program Manager		12	$125.06	$1,438.19
PreCon Manager		40	$108.01	$4,320.40
Chief Estimator		28	$96.66	$2,658.15
Structural Estimator		10	$60.61	$575.80
Architectural Estimator		2	$60.61	$121.22
Mechanical Estimator		12	$60.61	$697.02
Electrical & Insttrumentation Estimator		30	$73.91	$2,180.35
Project Manager		29	$96.66	$2,754.81
Project Engineer		5	$69.18	$311.31
General Superintendent		2	$96.66	$144.99
Project Administrator		12	$43.21	$496.92
	Total Hours	178		
				$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$49,383
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Logan Simpson)	$8,498
Survey (Brooks Engineers & Surveyors, Inc)	$10,078
Subconsultants Subtotal	**$69,059**
Allowance Subtotal	**$71,619**
Total Scope Amount	**$87,318**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Tasks / Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	1	0	1	1	1.5	0.5	0	0.5	**8**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Recommends If Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

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HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Classification / Tasks	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP...Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	7
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	0
Submit Updated Project Schedule with GMP...Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	2.5
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	2.5
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	0
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	3
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	0
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**1**	**3**	**1.5**	**0.5**	**0**	**1**	**1.5**	**6**	**1.5**	**0**	**0.5**	**15**
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	2.5
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	0.5
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	2
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	0
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	0
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0.5**	**0.5**	**2**	**0**	**0**	**0**	**0**	**1.5**	**0**	**0**	**2**	**5**
Total Hours w/o Allowances	**10.5**	**38**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**9.5**	**10**
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	0
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	0
CM@Risk/Engineer Interface							0	0	0	0	0	0
Outside Technical Services (Thames)							0	0	0	0	0	0
Travel Expenses							0	0	0	0	0	0
Long Distance Telephone & Fax Charges							0	0	0	0	0	0
Printing Expense							0	0	0	0	0	0
Subtotal Hours	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
Total PreConstruction Hours	**11**	**39**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**10.5**	**5**
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Hours for Allowances	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
TOTAL PROJECT MAN-HOURS	**11.5**	**40**	**27.5**	**9.5**	**2**	**11.5**	**29.5**	**28.5**	**4.5**	**1.5**	**11.5**	**177.5**

LOGAN SIMPSON
DESIGN INC.

March 22, 2007

Mr. Jim Schumann, PE
Senior Project Manager
TranSystems
120 North 44th Street
Suite 400
Phoenix, Arizona 85034

RE: Scope of Work & Fee Proposal
Estrella Mountain Community College Transit Center and Parking Lot
Landscape & Irrigation Design

Dear Jim:

Logan Simpson Design is pleased to submit the enclosed proposal for the above-mentioned project. We propose to complete the work outlined for each phase of the attached Scope of Work for a lump sum fee. The fee includes labor and general expenses..

The attached Scope of Work delineates the itemized tasks and the basis of fee for the work proposed. Please contact me if you wish to discuss this proposal or need additional information.

Sincerely,

Steve Lohide, RLA, ASLA
Vice President

51 West Third Street Suite 450 Tempe, AZ 85281 Phone: (480) 967-1343 Fax: (480) 966-9232 e-mail: lsd@lsdaz.com

ESTRELLA MOUNTAIN COMMUNITY COLLEGE
TRANSIT CENTER / PARKING LOT
LANDSCAPE & IRRIGATION DESIGN

SCOPE OF WORK

GENERAL

The intent of this contract is for Logan Simpson Design Inc. (LSD) to assist in the preparation of concepts and develop 95% construction documents for a new transit center and 400 space parking lot at Estrella Mountain Community College (EMCC) in Avondale, Arizona. The project will be developed in two phases and is a Design/Build project.

The project tasks include developing a plant palette for the parking lot and transit center; landscape and hardscape concepts for the 400 space parking lot; 60% and 95% landscape and irrigation construction documents for the parking lot; development of landscape and hardscape concepts for the transit center; and development of 30%, 60%, and 95% construction documents for the transit center.

Construction Documents for the project will be developed at a scale of 1" = 20'. The construction documents will be prepared in AutoCAD 2004. TranSystems will provide electronic base sheet information to LSD. TranSystems will also provide to LSD site plan information, including all applicable design or as-built plans for improvements in the vicinity of, or related to the project (i.e. Results of Survey, as-built plans, architectural designs, drainage plans, existing or proposed utilities, etc.).

400 SPACE PARKING LOT

PHASE I

Landscape/Hardscape Concept - LSD will assist the design team in the development of concepts for the parking lot. Specifically, LSD will develop hardscape concepts for the pedestrian walkway that links the future transit center to the campus.

LSD will develop a plant palette for the parking lot that incorporates plant material considered to be low water use, low maintenance, consistent with surrounding plantings on campus, and supports the 'Butterfly Concept' proposed for the adjacent transit center.

PHASE II

LSD will develop 60% and 95% landscape and irrigation construction documents for the parking lot based on the approved Phase I concept.

Project Meetings - LSD will attend four meetings with the design team over the course of the project design. It is anticipated that attendees at these meetings will include the design, Contractor, and City representatives.

Site Visit - LSD will identify existing conditions and become familiar with the surrounding area/development.

Landscape Design - LSD will prepare a landscape design for the parking lot and associated roadway. The areas identified for landscape include parking lot islands, pedestrian walkway and the adjacent roadway.

The landscape design will meet City of Avondale landscape requirements and will consist of plant materials that require low maintenance. The plant palette to be used on this project will be comprised mainly of trees and accent shrub plantings and will be consistent with adjacent plantings in the area.

Landscape plans will identify the locations of inert groundcover and plant material and will include a complete plant key and materials schedule. Plant material will be broken down by size and quantity. The landscape detail sheet will provide details for the installation of plant material and inert material.
LSD will prepare an irrigation design for the project site. The irrigation plans will identify all necessary piping and equipment required for a fully functioning automatic drip irrigation system. It is anticipated that the new irrigation components will be connected to the existing irrigation system located on campus. New irrigation components will be sized and the irrigation piping will be broken down by schedule and size. Details will also be provided for the proper installation of all irrigation components. A materials list will be included on each sheet.

Submittals - This scope of work and associated fee for the development of concepts, a plant palette, and 95% landscape and irrigation construction documents is based on three submittals. Project submittals are as follows.

Submittal #1: Plant Palette
Plant Palette

Submittal #2: 60% Construction Documents (24" x 36" bond prints)
Preliminary Landscape Plan and Details
Preliminary Irrigation Plan and Details
Preliminary Project Specifications (MAG format)

Submittal #3: 95% Construction Documents (24" x 36" bond prints)
Pre-Final Landscape Plan and Details
Pre-Final Irrigation Plan and Details
Pre-Final Project Specifications (MAG format)

TRANSIT CENTER

PHASE I

Project Meetings - LSD will attend four meetings with the design team over the course of the project design. It is anticipated that attendees at these meetings will include the design, Contractor, and City representatives.

Landscape/Hardscape Concept - LSD will assist the design team in the development of concepts for the transit center. LSD will develop hardscape concepts for the transit center that accent pedestrian spaces and provide connections to the campus and will develop a landscape concept that is consistent with the campus and continues the 'Butterfly Concept'.

LSD will develop 30% landscape and irrigation construction documents based on the approved transit center concept.

PHASE II

LSD will develop 60% and 95% landscape and irrigation construction documents for the parking lot based on the approved Phase I concept.

Landscape Design - LSD will prepare a landscape design for the transit center and associated roadway. The areas identified for landscape include the transit center deck area, open space around the transit center, and the transit center roadway.

The landscape design will meet City of Avondale landscape requirements and will consist of plant materials that require low maintenance. The plant palette to be used on this project will be comprised mainly of trees accent shrub plantings, shrub plantings that attract butterflys, and will be consistent with adjacent plantings in the area.

Landscape plans will identify the locations of inert groundcover and plant material and will include a complete plant key and materials schedule. Plant material will be broken down by size and quantity. The landscape detail sheet will provide details for the installation of plant material and inert material.

Irrigation Design - LSD will prepare an irrigation design for the project site. The irrigation plans will identify all necessary piping and equipment required for a fully functioning automatic drip irrigation system. It is anticipated that the new irrigation components will be connected to the existing irrigation system located on campus. New irrigation components will be sized and the irrigation piping will be broken down by schedule and size. Details will also be provided for the proper installation of all irrigation components. A materials list will be included on each sheet.

Submittals - This scope of work and associated fee for the development of concepts and 60% and 95% landscape and irrigation construction documents is based on three submittals. Project submittals are as follows.

Submittal #1: 30% Construction Documents (24" x 36" bond prints)
- Conceptual Landscape Plan

Submittal #2: 60% Construction Documents (24" x 36" bond prints)
- Preliminary Landscape Plan and Details
- Preliminary Irrigation Plan and Details
- Preliminary Project Specifications (MAG format)

Submittal #3: 95% Construction Documents (24" x 36" bond prints)
- Pre-Final Landscape Plan and Details
- Pre-Final Irrigation Plan and Details
- Pre-Final Project Specifications (MAG format)

FEE

LSD proposes to complete the work as described above for a lump sum fee of $21,896.40. The fee breaks down as follows.

400 Space Parking Lot	$8,497.59
Transit Center	$13,398.81

ASSUMPTIONS

No time or fee has been included for the following:

- Preparation of illustrative presentation graphics
- City of Avondale Review meetings
- Agronomic testing of the project site
- An irrigation pump station
- Design of site furnishings
- Development of 100% Construction Documents

TranSystems

120 North 44th Street
Suite 400
Phoenix, Arizona 85034
Tel 602 277 7800
Fax 602 277 6150
www.transystems.com

March 28, 2007

Mr. Keli Dobberstein
Hunter Contracting Company
701 North Cooper Road
Gilbert, Arizona 85299-0900

Re: ***Letter Agreement***
Architectural and Engineering Services – Scope of Services Phases I and II
Estrella Mountain Community College Mini-Bus Center AD 06-033

Dear Mr. Dobberstein:

We are pleased to provide this proposal to detail the services TranSystems intends to perform for Hunter Contracting Company (Client) in connection with the Estrella Mountain Community College Mini-Bus Center AD 06-033 for the City of Avondale (Owner). The pricing at which TranSystems proposes to perform these services, the schedule for completing these services and the assumptions upon which TranSystems has based this proposal. If the proposal outlined in this letter is acceptable, TranSystems would request that Client indicate its acceptance of this proposal by executing this letter agreement in the space provided below.

Project Understanding:

The new facility will be located at Estrella Community College Campus. The project will consist of a 400 car parking lot and a seating and shade structure with vertical elements at the bus stop as shown on the conceptual sketches that were included with the SOQ.

Basic Services:

Design Standardization, Permitting and Construction Documents Phase

1. Visit with the key regulatory agencies (e.g., planning, engineering, building code officials, fire chief, ADA compliance officer, etc.) to obtain necessary information and understand the requirements in order to expeditiously obtain a grading and building permit. We will assist the Client in submitting for site and building permit review as early in document preparation as regulators allow by providing the necessary drawings, and make necessary revisions and corrections in accordance with plan review comments. Review comments will be communicated with the Client and incorporated into any necessary revision as agreed upon by the Client.

2. Visit the site to evaluate surrounding operations and obstacles for development. We will make detailed observation as to the constructability of the desired new facility. Obtain information and implement a survey crew to gather information. Prepare sketches and diagrams for the Design Camp so the group can make informed decisions.

3. Conduct a Design Camp, which will be a consensus building process with all of the interested parties from the design-build team and the client. This will take place at TranSystems office and will last for 4 hours. At the end, we will have a decided design scheme to develop into working drawings.

4. Prepare construction documents and specifications for architectural, structural, electrical and civil work, in accordance with local, state and federal codes and regulations. TranSystems' CAD Drawing standards will be used, including sheet sizes (24x36), legends, symbols, pen tables, line weights etc.

5. Develop a project schedule, including review, design and construction document preparation time and time required to obtain grading and building permits.

6. Submit progress drawings to Client for review at 60% and pre-final submittal. Submit them for permitting.

7. Services include: Surveying, geotechnical investigations and testing, Storm water management practices and the SWPP report and landscape, architectural, structural, civil, electrical and telecommunication design.

8. Services not included: Environmental, biological, archeological, historic studies and endangered species removal. Construction Administration will be a separate proposal.

Assumptions:

a. The intended use for the property is currently a listed permitted use within the City's zoning ordinance.
b. Preparation and recordation of easement documents and modification to existing easement documents are not included.
c. Traffic study is assumed to not be required, but will be provided as an additional service if assumed to be needed.
d. For storm drainage and sanitary sewer design we have assumed no pump stations or associated facilities and no on-site water treatment will be required.
e. Water pressure and flow is adequate and no pumping is required.
f. Master plan and previous project hydrology and hydraulic will be provide for use.
g. Drainage will be sheet flow to the detention/conveyance channels.
h. Hydrology and hydraulic studies will be limited to the new improvements
i. Storm drainage will be designed to meet master plan requirements.
j. Pipe profiles will not be required for on-site work.
k. Signage design and submittal of sign programs and sign applications are not required. No special signing is included.
l. Architectural models are not required.
m. Building security system design is assumed to not be required.
n. Any client and owner initiated changes affecting scope, extent or character of the building are not included in scope and can be provided as additional services.
o. One construction document packages is assumed with separate plans for the parking lot and the transit center.
p. Owner will pay for all permit and application fees. Two permits, Fire Marshall and the City of Avondale for the new street access, are the only permits anticipated for this project.
q. Specification books are not required. Notes on drawings will be provided.
r. Owner will furnish electronic drawings and as-built drawings of the site.
s. Light poles and fixtures will match existing. Power will be supplied by EMCC.
t. This does not include special architectural lighting.

u. Cooling tower design is not included in the contract. Alternative vertical features and materials will be investigated to provide desired comfort.
v. One new entrance will be provided onto Thomas Road. No monuments or special signing is included.
w. Parking lot design and landscaping treatments are to match existing contiguous to the project.
x. Seating capacity for the transit center will be 30 persons including wheelchair seating.

Compensation:

For the above Services, TranSystems will be reimbursed by Client, for a lump sum fee of $159,188 unless modified by a written and executed contract modification. In addition, TranSystems will be reimbursed by Client by payment at our standard hourly rates for the actual time expended on Additional Service items, actual costs of sub-consultants outside the basic services and reimbursable expense items such as travel, out of office printing, mailings and submittal fees. Invoices will be sent monthly and will be based on TranSystems' percentage of work completed during the previous month plus reimbursable expenses at the time of billing. Our fees include in-house reproduction supplies, computer usage and long distance phone calls.

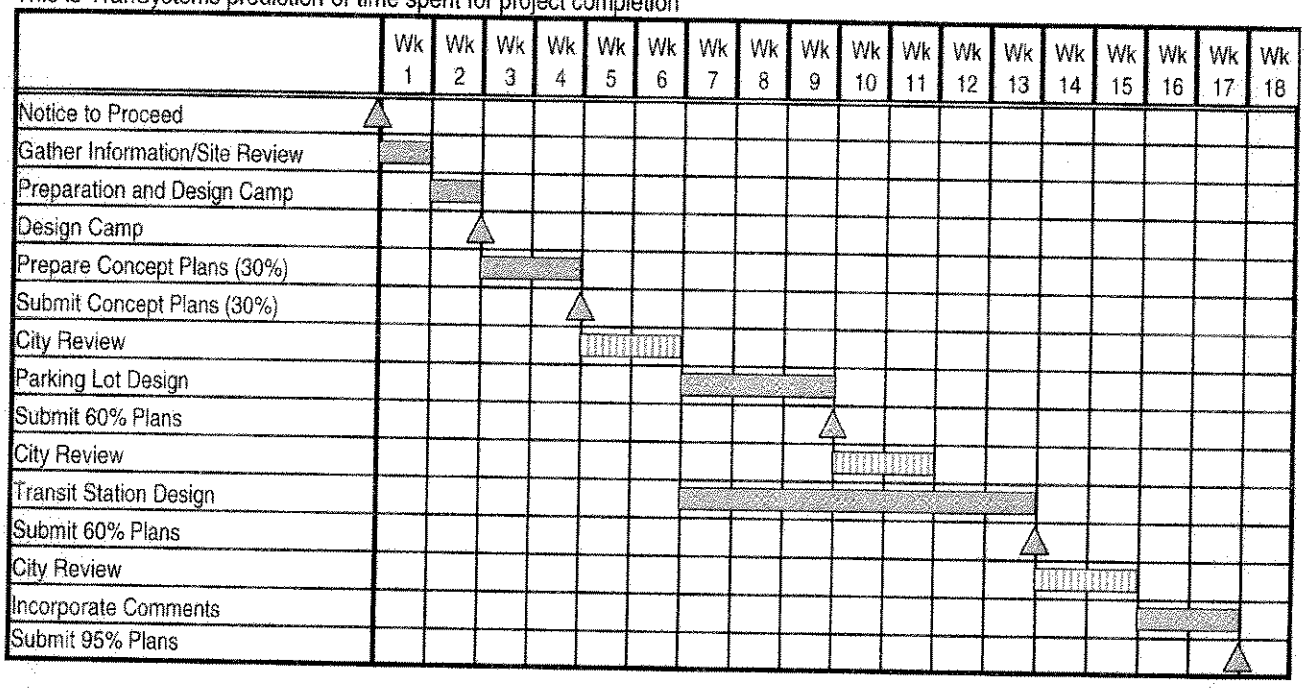
Rate Schedule:

Rates apply through 2007.

Civil Engineer 4	$165
Civil Engineer 3	$125
Electrical Engineer 3	$120
Architect 5	$235
Architect 4	$130
Architect 3	$120
Architect 1	$75
Technician 3	$80
Technician 2	$70
Admin	$40

Schedule

This is TranSystems prediction of time spent for project completion



General Provisions

Attached to and made a part of this Letter Agreement is a copy of TranSystems' General Provisions. The Client and TranSystems understand and agree that the General Provisions are a part of this Letter Agreement and that each is bound by terms and conditions set forth the General Provisions. In the event that there is any inconsistency or conflict between the terms and conditions set forth in this Letter Agreement and the General Provisions, the terms and conditions set forth in this Letter Agreement shall control.

We sincerely appreciate the opportunity to work with you on this Project. If you concur with the proposal outlined in this Letter of Agreement, please execute the enclosed extra copy and return it to TranSystems. Unless otherwise instructed in writing at the time you return the executed copy of this Letter Agreement, TranSystems will consider the executed Letter Agreement as our notice to proceed. Please let us know if you have any questions or need any further information.

Sincerely,

Donna Canale R. A.
Vice President

Acceptance:

Client hereby accepts the proposal outlined above and does hereby engage TranSystems to perform the Services described above, on the terms and conditions set forth in the forgoing Letter Agreement. Client accepts and agrees to the terms and conditions of the foregoing Letter Agreement.

Hunter Contracting Co._____

By:_____

Printed Name:_____

Title:_____

Date: _____

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the LETTER AGREEMENT, dated March 28, 2007 between Hunter Contracting Company ("CLIENT") and TRANSYSTEMS CORPORATION ("TRANSYSTEMS") in respect of the Project described in the Letter Agreement. For purposes hereof, the Letter Agreement, these General Provisions and any attachments to the Letter Agreement or these General Provisions shall sometimes be collectively referred to as the "Agreement". In consideration of the mutual covenants contained in the Letter Agreement and these General Provisions, CLIENT and TRANSYSTEMS herein agree with respect of the performance of the Services (as described in the foregoing by Letter Agreement), as follows:

1. BASIC SERVICES OF TRANSYSTEMS

a. Basic Services. TRANSYSTEMS shall provide CLIENT the professional services described in the Scope of Services section of the Letter Agreement (collectively the "Basic Services").

b. TRANSYSTEMS' Duties. In addition to the general duties, obligations and responsibilities set forth elsewhere in this Agreement, the specific duties and responsibilities of TRANSYSTEMS in performing the Basic Services under this Agreement are set forth in the Scope of Services section of the Letter Agreement.

2. ADDITIONAL SERVICES OF TRANSYSTEMS

2.1 Additional Services. In connection with the Project, TRANSYSTEMS may be called on to perform, provide, furnish or obtain from others services or work which are not part of, or are in addition to, the Basic Services ("Additional Services"). If authorized in writing by CLIENT and agreed to by TRANSYSTEMS, TRANSYSTEMS shall perform, provide, furnish or obtain from others the agreed upon Additional Services. TRANSYSTEMS shall not be obligated to perform, provide, furnish or obtain any Additional Services without the prior written authorization of CLIENT. Except to the extent expressly provided otherwise in the Letter Agreement or as otherwise agreed in writing by the parties hereto, compensation to TRANSYSTEMS for Additional Services will be paid for by CLIENT as indicated in Section 5. Notwithstanding the foregoing, when required by this Agreement in circumstances beyond TRANSYSTEMS control, TRANSYSTEMS shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from CLIENT, and TRANSYSTEMS will be paid therefore as provided in Section 5: Services in connection with Contract Amendments or work directives, drawing or specification revisions required by substitutions or field changes, services resulting from delays due to work damage, defective or neglected work, default by any contractor, or other third party or contractor delays. Additional Services may be any service or work not included as part of the Basic Services and may include, but are not limited to, services or work in connection with environmental or funding assistance, investigations not specifically required herein, services resulting from changes in the scope, extent or character of the project providing renderings or computer models, services to develop alternate bids or sequencing of work, outside consultant services not specifically required herein, out-of-town travel, and preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding. "Basic Services" and "Additional Services" are sometimes collectively referred to herein as "Services".

3. CLIENT'S RESPONSIBILITIES

CLIENT will perform the duties identified in the Letter Agreement, if any, and in addition will at all times cooperate with TRANSYSTEMS in the performance of the Services and CLIENT shall perform such other duties as are reasonable requested by TRANSYSTEMS to assist in the timely and efficient performance by TRANSYSTEMS of the Services. Unless otherwise provided in the Letter Agreement, CLIENT shall do the following in a timely manner so as not to delay the performance of the Services by TRANSYSTEMS:

a. Client Representative. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to TRANSYSTEMS services for the Project.

b. Project Information. Provide all criteria, all available information pertinent to the Project and full information as to CLIENT's requirements for the Project. If not specifically required to be provided by TRANSYSTEMS as part of the Basic Services, CLIENT shall furnish to TRANSYSTEMS any bores, probes and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property boundary, easements, right-of-way, topographic and utility surveys; property descriptions; zoning and deed restrictions; and such other information which may be necessary for TRANSYSTEMS to perform its services under this Agreement. CLIENT agrees that TRANSYSTEMS shall be entitled to rely upon all such information and the accuracy thereof.

c. Project Access. Arrange for access to and make all provisions for TRANSYSTEMS to enter upon public and private property as required for TRANSYSTEMS to perform services under this Agreement.

d. Client Participation. Examine all studies, reports, sketches, drawings, specification, proposals, and other documents presented by TRANSYSTEMS, obtain advice of an attorney, insurance counselor and other consultants as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of TRANSYSTEMS.

e. **Notices.** Give prompt written notice to TRANSYSTEMS whenever CLIENT observes or other wise becomes aware of any development that affects the scope or timing of TRANSYSTEMS' Services, or any defect or non-conformance in the Services by TRANSYSTEMS (or its independent professional associates or consultants) or in the work of any contractor or other party performing or providing work or services in connection with the Project.

f. **Additional Services.** Furnish or direct TRANSYSTEMS to provide additional services as stipulated in Section 2 of these General Provisions or other services as required.

g. **Licenses, Permits, etc.** Provide TRANSYSTEMS with any necessary governmental allocations or priorities, obtain all permits and licenses required to be taken out in the name of CLIENT which are necessary for the performance of the Services and, except where such permits, processes or licenses are by the terms of the Letter Agreement the responsibility of TRANSYSTEMS to obtain any permits, processes and other licenses which are required for the Project or the Services;

h. **Other Duties.** Perform any other duties, obligations or responsibilities of the CLIENT set forth elsewhere in this Agreement, including, but not limited to, the obligation to make the payments called for under the Compensation section of the Letter Agreement and Section 5 of these General Provisions and perform any responsibilities and duties of the Client which may identified in the Letter Agreement, if any.

i. **Taxes.** Pay for and be responsible for all taxes incurred in connection with the Project, regardless of whether such taxes are assessed against CLIENT, TRANSYSTEMS or others.

j. **Costs.** Bear all costs incident to compliance with the requirements of this Section 3.

4. PERIODS OF SERVICE

4.1 Period of Service. The provisions of this Section 4 and the various rates of compensation for TRANSYSTEMS' Services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. TRANSYSTEMS' obligation to render Basic Services hereunder will extend for a period which may reasonably be required for the Project including any Additional Services, extra or changed work and required extensions thereto.

4.2 Completion Date. If an anticipated date for the completion of the Basic Services is set forth in the Schedule section of the Letter Agreement (the "Completion Date"), such a Completion Date is estimated, but not guaranteed, to be the date that the Basic Services will be completed. If the Completion Date is exceeded through no fault of TRANSYSTEMS, all rates, measures and compensation provided for under the Agreement shall be subject to equitable adjustment. The Completion Date (and TRANSYSTEMS' obligation to complete the Basic Services by such date) is subject to reasonable extensions for the performance of Additional Services, constructive changes or other extra work and is subject to reasonable extensions for a Force Majeure Event.

4.3 Force Majeure. For purposes hereof, a "Force Majeure Event" shall mean the occurrence of a failure or delay due to circumstances beyond TRANSYSTEMS' control including, without limitation, acts of God, acts of a public enemy, fires, floods, earthquakes, wars, civil disturbances, sabotage, accidents, insurrection, blockages, embargoes, storms, explosions, catastrophes, epidemics, damage to the Project, lack of access to Project, unavailable utilities and power, water, labor disputes, CLIENT's failure to timely perform its obligations under this Agreement or other causes beyond TRANSYSTEMS' control.

5. PAYMENTS TO TRANSYSTEMS

a. Methods of Payment for Services and Expenses of TRANSYSTEMS

i. For Basic Services. CLIENT shall pay TRANSYSTEMS the fee(s) and/or the amounts set forth in the Compensation section of the Letter Agreement for TRANSYSTEMS' performance of the Basic Services rendered pursuant to this Agreement.

ii. For Additional Services. CLIENT shall pay for Additional Services rendered under Section 2 of these General Provisions as follows: Additional Services of TRANSYSTEMS principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of TRANSYSTEMS Schedule of Rates and Expenses in effect at the time the Additional Services are provided.

iii. For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.a.i. and 5.a.ii., CLIENT shall also pay TRANSYSTEMS the actual costs of all Reimbursable Expenses incurred in connection with all Additional Services. For purposes hereof, "Reimbursable Expenses" are those costs and expenses incurred by TRANSYSTEMS in connection with the performance of the Additional Services under this Agreement, including, but not limited to, the actual costs and expenses incurred by TRANSYSTEMS for travel, out of office reproduction, mailing costs, supplies and materials, taxes, transportation, independent professional associates and consultants and subconsultants and any other expense items which are described on TRANSYSTEMS' Schedule of Rates and Expenses in effect at the time the Additional Services are provided.

b. **Monthly Invoices**. TRANSYSTEMS shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon TRANSYSTEMS actual hours expended on the project multiplied by TRANSYSTEMS hourly rates and cost incurred by TRANSYSTEMS at the time of billing. CLIENT shall make prompt monthly payments in response to TRANSYSTEMS monthly statements.

c. **Other Provisions Concerning Payments.**

i. Interest, Suspension of Services. If CLIENT fails to make any payment due TRANSYSTEMS for services and expenses within thirty (30) days after receipt of TRANSYSTEMS' statement therefor, TRANSYSTEMS shall be entitled interest on the unpaid amounts due TRANSYSTEMS at the lesser of: i) 1.5 % per month; or, ii) the highest rate of interest allowed under applicable law. The entire unpaid balance due TRANSYSTEMS shall bear said rate of interest from the thirtieth day after CLIENT's receipt of TRANSYSTEMS' statement, until the entire unpaid balance has been paid to TRANSYSTEMS. In addition to being entitled to interest, TRANSYSTEMS may, after giving seven (7) days written notice to CLIENT, suspend services under this Agreement until TRANSYSTEMS has been paid in full all amounts due for Services, expenses, and charges.

ii. Payments after Termination by CLIENT. In the event of termination by CLIENT under paragraph 7.a. upon the completion of any phase of the Basic Services, progress payments due TRANSYSTEMS for Services rendered through such phase shall constitute total payment for such Basic Services. In the event of such termination by CLIENT during any phase of the Basic Services, TRANSYSTEMS will be paid for Services rendered and expenses incurred during that phase through the date of termination on the basis of TRANSYSTEMS' Schedule of Rates and Expenses for Services. In the event of any such termination(whether at the completion of a phase or otherwise), TRANSYSTEMS shall also be reimbursed for the charges of independent professional associates and consultants employed by TRANSYSTEMS to render Basic Services or Additional Services and all reasonable demobilization costs incurred by TRANSYSTEMS, including any cancellation charges by independent professional associates, consultants and others performing or furnishing Services on the Project through TRANSYSTEMS, and TRANSYSTEMS shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

iii. Payments after Termination by TRANSYSTEMS. In the event of termination by TRANSYSTEMS under paragraph 7.a., TRANSYSTEMS will be paid for Services rendered and expenses incurred during that phase through the date of termination on the basis of TRANSYSTEMS' Schedule of Rates and Expenses for Services. In addition, TRANSYSTEMS shall also be reimbursed for the charges of independent professional associates and consultants employed by TRANSYSTEMS to render Basic Services or Additional Services and all reasonable demobilization costs incurred by TRANSYSTEMS, including any cancellation charges by independent professional associates, consultants and others performing or furnishing Services on the Project through TRANSYSTEMS, and TRANSYSTEMS shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

iv. Records. Records of TRANSYSTEMS' salary costs pertinent to TRANSYSTEMS' compensation under this Agreement will be kept in accordance with generally accepted accounting practices. If Client desires to have copies of such records, copies will be made available to CLIENT upon Client's request prior to final payment for TRANSYSTEMS' services. TRANSYSTEMS shall be reimbursed the cost of any such copies by CLIENT.

v. Cost Factors. Whenever a factor is applied to salary costs or other expenses in determining compensation payable to TRANSYSTEMS that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by TRANSYSTEMS and consistent with TRANSYSTEMS' overall compensation practices and procedures.

6. OPINIONS OF COST AND SCHEDULE

a. Opinions of Cost and Schedule. Since TRANSYSTEMS has no control over the cost of labor, materials, equipment or services furnished by others, or over the resources provided by others to meet construction or other Project schedules, or over the methods of others in determining prices, or over competitive bidding or market conditions, TRANSYSTEMS' opinions of probable costs (including probable Total Project Costs and Construction Cost) and of Project schedules shall be made on the basis of TRANSYSTEMS' experience and qualifications and represent TRANSYSTEMS' best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but TRANSYSTEMS cannot and does not guarantee that proposals, bids or actual Project costs (including Total Project Costs or Construction Costs) will not vary from opinions of probable cost prepared by TRANSYSTEMS or that actual schedules will not vary from the projected schedules prepared by TRANSYSTEMS.

7. GENERAL CONSIDERATIONS

a. Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice to the other party in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. Reuse of Documents. All documents, drawings, sketches, studies, analysis, information, schedules, estimates, reports and other items prepared or furnished by TRANSYSTEMS (or TRANSYSTEMS' independent professional associates and consultants) pursuant to this Agreement, including, but not limited to Drawings and Specifications, are instruments of service in respect of the Project and TRANSYSTEMS shall retain an ownership and property interest therein whether or not the Project is completed. Provided, however, that such documents, drawings, sketches, studies, analysis, information, schedules, estimates, reports and other items are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by TRANSYSTEMS for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to TRANSYSTEMS, or to TRANSYSTEMS' independent professional associates or consultants, and CLIENT does hereby, to the fullest extent permitted by law, indemnify and hold harmless TRANSYSTEMS, TRANSYSTEMS' officer, employees and agents and TRANSYSTEMS' independent professional associates and consultants from all claims, suits, demands, damages, liabilities, losses, expenses and costs, including but not limited to reasonable attorney's fees and other costs of defense, arising out of or resulting therefrom. The provisions of this Section 7 shall survive the termination of this Agreement.

c. Use of Electronic Media. Original drawings of the information contained on the electronic media are available, and their use is recommended. Use of the electronic media at the CLIENT's election shall be at the sole risk of the CLIENT and without liability or legal exposure to TRANSYSTEMS, and CLIENT does hereby, to the fullest extent permitted by law, indemnify and hold harmless TRANSYSTEMS, TRANSYSTEMS' officers, employees and agents and TRANSYSTEMS' independent professional associates and consultants from and against any and all claims suits, demands, damages, liabilities, losses, expenses and costs, including but not limited to reasonable attorney's fees and other costs of defense, arising out of or resulting from any use, misuse, alternation, or modification of TRANSYSTEMS' instruments of professional service delivered to the CLIENT in electronic media form.

d. Standard of Practice, Warranties. Services performed by the TRANSYSTEMS under this Agreement will be conducted in a manner consistent with the level of care, diligence and skill ordinarily possessed and exercised by members of the profession currently practicing in the same locality under similar conditions. Except as expressly set forth above, no other representations, expressed or implied, and no warranty or guarantee is included in this Agreement, or in any document, drawing, sketch, study, analysis, schedule, estimate, report, opinion, specification and other item prepared or furnished by TRANSYSTEMS (or TRANSYSTEMS' independent professional associates and consultants) pursuant to this Agreement.

e. Limitation of Responsibility, Jobsite Safety/Techniques. TRANSYSTEMS shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project or any contractor, subcontractor, vendor or other Project participant, not under contract to TRANSYSTEMS (collectively the "Other Project Parties"). In addition, TRANSYSTEMS shall not be responsible for: i) the failure of any of the Other Project Parties to fulfill their respective contractual responsibilities and obligations to CLIENT or to comply with federal, state or local laws, rules, regulations or codes; ii) for the schedules of any of the Other Project Parties or the failure of any of the Other Project Parties to carry out their work in accordance with their respective agreements. TRANSYSTEMS shall not have control over or charge of and shall not be responsible for acts or omissions of the Other Project Parties, or their agents or employees, or of any other persons performing portions of the work on the Project.

f. Insurance. TRANSYSTEMS shall maintain throughout the duration of this Agreement insurance for Worker's Compensation and Employer's Liability, Comprehensive Automobile Liability, Comprehensive General Liability, and Professional Liability. TRANSYSTEMS shall furnish CLIENT a copy of certifications upon request.

7.1 Liability and Indemnification. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and TRANSYSTEMS' Compensation for the performance of the Services, and in consideration of the promises contained in this Agreement, CLIENT and TRANSYSTEMS agree to allocate and limit such liabilities in accordance with the provisions of this Section 7.6.

7.2 TRANSYSTEMS Indemnification. In addition to its other indemnification obligations under this Agreement, TRANSYSTEMS hereby agrees to indemnify and hold harmless the CLIENT and any of its officers or employees from all loss, damage, cost or expense arising out of (and to the extent caused by):

a. TRANSYSTEMS' negligent performance of Services under this Agreement;

b. Claims, suits or actions of every kind and description when such suits or actions are caused by negligent acts, errors or omissions of TRANSYSTEMS, its employees or subcontractors; or

c. Injury or damages received or sustained by any party because of the negligent acts, errors or omissions of TRANSYSTEMS, its employees or subcontractors.

d. In the event losses, damages, costs or expenses are caused by the joint or concurrent negligence of TRANSYSTEMS and CLIENT, such losses, damages, costs and expenses shall be borne by each party in proportion to its own negligence.

7.3 CLIENT Indemnification. In addition to its other indemnification obligations under this Agreement, CLIENT hereby agrees to indemnify and hold harmless TRANSYSTEMS and any of its officers or employees from all loss, damage, cost or expense arising out of (and to the extent caused by):

a. CLIENT's negligent acts, errors or omissions of CLIENT, its employees or contractors; or

b. Injury or damages received or sustained by any party because of the negligent acts, errors or omissions of CLIENT, its employees or contractors.

c. In the event losses, damages, costs or expenses are caused by the joint or concurrent negligence of TRANSYSTEMS and CLIENT, such losses, damages, costs and expenses shall be borne by each party in proportion to its own negligence.

7.4 Employee Claims. TRANSYSTEMS shall indemnify CLIENT against any loss, damage, cost or expense arising out of claims by TRANSYSTEMS' employees (unless such claim arises out of or as a result of the negligence of CLIENT, its employees, agents or contractors). CLIENT shall indemnify TRANSYSTEMS against any loss, damage, cost or expense arising out of claims by CLIENT'S employees (unless such claim arises out of or as a result of the negligence of TRANSYSTEMS, its employees, agents or subcontractors).

7.5 Consequential Damages. To the fullest extent permitted by law, TRANSYSTEMS shall not, in any event, be liable to CLIENT for any special, indirect, incidental or consequential damages, including, but not limited to, damages from delay, distribution, loss of product, loss of use, loss of profits or revenue or increased cost of operation, the cost of capital or the cost of purchased or replacement equipment, systems or power.

7.6 Limitation of Liability. To the fullest extent permitted by law, TRANSYSTEMS' total liability to CLIENT for all claims, losses, damages and expenses resulting or arising in any way from the performance of the Services (including TRANSYSTEMS' indemnity obligations hereunder) shall not exceed $1,000,000.

7.7 Survival. The terms and conditions of this Section 7 shall survive the termination of this Agreement and/or the completion of the Services.

8. SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

a. Special Provisions. This Agreement is subject to no special provisions.

b. Contract Documents. The Letter Agreement, together with these General Provisions and with the Exhibits, schedules and other attachments identified in the Letter Agreement constitute the entire agreement between CLIENT and TRANSYSTEMS and supersede all prior written or oral understandings. The Letter Agreement, these General Provisions and said Exhibits, schedules and attachments may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

c. Hazardous Materials. Unless otherwise provided in this Agreement, TRANSYSTEMS shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site. However, TRANSYSTEMS shall report to CLIENT the presence and location of any hazardous material which it notices or which an engineer of similar skill and experience should have noticed.

d. Attorneys Fees. In the event that either party hereto employs an attorney to enforce any provision of this Agreement or to collect damages for default or breach of this Agreement, or pursue claims in litigation or arbitration, the prevailing party in any such action shall be entitled to recover from the other such attorneys' fees and costs of collection as the prevailing party may expend or incur with respect thereto. In the event that a settlement is reached between the parties before a final decision in any such litigation or arbitration, then neither party shall be entitled to recover its attorneys fees or costs from the other and neither party shall be responsible for the other party's attorney's fees or costs, unless otherwise agreed by the parties.

e. Disputes. In the event a dispute arises between TRANSYSTEMS and CLIENT regarding the application or interpretation of any provision of this Agreement, or quality of Services by TRANSYSTEMS, the aggrieved party shall promptly notify the other party to this Agreement of the dispute, but in no event more than 20 days after such dispute arises. If the parties fail to resolve the dispute within 20 days after receipt of such notice, each party shall, within five days thereafter, proceed to non-binding mediation, with each party to bear its own costs and attorneys' fees (except as otherwise provided in Section 8.d. above) and the parties shall share equally in the cost of the mediator. In the event that the mediation is unsuccessful, the aggrieved party may elect to litigate its dispute with the other party. All disputes shall be governed by the laws of the State of Arizona and the jurisdiction and venue for litigation between the parties shall be solely and exclusively in Maricopa County, Arizona.

f. Independent Contractor. TRANSYSTEMS shall be an independent contractor with respect to the Services to be performed hereunder. Neither TRANSYSTEMS, nor its independent professional associates, consultants or subcontractors, nor the employees of any of the foregoing, shall be deemed to be the servants, employees or agents of CLIENT.

g. Representations and Remedies. TRANSYSTEMS makes no representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth herein. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED. The parties' rights, liabilities, responsibilities and remedies with respect to the Services, whether in contract or otherwise, shall be exclusively those expressly set forth in this Agreement.

h. Assignment, Subcontractors. This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party, or to a person, firm or corporation acquiring all or substantially all of the business assets of such party or to a wholly owned subsidiary of either party, but such assignment shall not relieve the assigning party of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the assignee. This Agreement shall be binding upon and shall inure to the benefit of the TRANSYSTEMS' and CLIENT's respective successors and assigns. Nothing in this Section 8.h. shall prevent or be deemed to prevent TRANSYSTEMS from employing, contracting with or engaging independent professional associates, consultants and other subcontractors to perform or assist in the performance of the Services.

i. Interpretation.

i. This Agreement shall be governed by and interpreted in accordance with the laws of Arizona.

ii. Headings and titles of sections, paragraphs and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

iii. Unless specifically stated to the contrary therein, indemnities against, releases from and limitations on liability expressed in this Agreement shall apply even in the event of the fault, negligence or strict liability of the party indemnified or released or whose liability is limited and shall extend to the officers, directors, employees, agents, licensors and related entities of such party.

iv. In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall effect the intent of the parties as set forth in this Agreement.

v. The parties agree to look solely to each other with respect to the performance of this Agreement and the Services to be provided hereunder. This Agreement and each and every provision hereof is for the exclusive benefit of CLIENT and TRANSYSTEMS and not for the benefit of any third party, and no third party shall be entitled to rely upon or enforce the terms of this Agreement, or to be a third party beneficiary thereof.

vi. No failure by either party to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Agreement, and no waiver of any breach shall constitute a waiver of any other or subsequent term, condition, instruction, breach, right or privilege.

vii. The parties acknowledge and agree that the terms and conditions of this Agreement, including but not limited to those relating to allocations and assumptions of, releases from, exclusions against and limitations of liability, have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement they have relied solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statements made by any other party or its counsel. No provision in this Agreement is to be interpreted for or against any party because that party or its counsel drafted such provision.

Accepted:

_____ **CLIENT's Initials**

_____ **TRANSYSTEMS' Initials**

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Combined Workhour Proposal and Fee - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Phase I - Pre-Design Services												
Field Review/Document Review												
Civil		16	0	0	0	0	0	0	0	0	1	17
Drainage		0	16	0	0	0	0	0	0	0	1	17
Electrical		0	0	8	0	0	0	0	0	0	1	9
Architectural		0	0	0	0	8	0	0	0	0	1	9
Project Meetings	(2 Mtgs @ 2 Persons - 3 Hrs. Ea)	12	0	0	0	12	0	0	0	0	4	28
Concept Development	(3 Concepts Max)											
Civil		14	0	0	0	0	0	0	30	0	0	44
Drainage		0	30	0	0	0	0	0	0	8	0	38
Electrical		0	0	4	0	0	0	0	0	0	0	4
Architectural		0	0	0	10	24	0	20	0	0	0	54
Shade Study		0	0	0	5	0	0	30	0	0	0	35
Structural		6	0	0	0	0	0	0	0	0	0	6
Design Camp Meeting and Prep		8	12	6	6	12	0	18	0	0	0	62
Concept Plans (30%)												
Civil	6 Shts - 1"=20'	8	20	0	0	0	0	0	0	32	0	60
Drainage		0	24	0	0	0	0	0	0	0	0	24
Electrical	1 Shts - 1"=40'	0	0	8	0	0	0	0	8	0	0	16
Architectural		0	0	0	4	8	16	16	18	0	0	62
Shade Study		0	0	0	5	0	0	20	0	0	0	25
Structural		6	0	0	0	0	0	0	8	0	0	14
Subtotal Hours		**70**	**102**	**26**	**30**	**64**	**16**	**104**	**64**	**40**	**8**	**524**
Phase II - Intermediate Design and GMP Development												
Prepare 60% and Pre-final (95%) Construction Documents												
Paving Plans												
Cover Sheet	1 Sht - No Scale	1	4	0	0	0	0	0	0	12	0	17
General Notes/Typical Sections	1 Sht - No Scale	1	6	0	0	0	0	0	0	10	0	17
Detail Sheet	2 Sht - No Scale	2	18	0	0	0	0	0	0	26	0	46
Demolition Plan	1 Sht - 1"=40' Scale	1	4	0	0	0	0	0	0	12	0	17
Parking Paving/Grading Plans	6 Sht - 1"=20' (No Profile Shts)	2	26	0	0	0	0	0	0	60	0	88
Transit Center Plans	1 Sht - 1"=10'	2	8	0	0	0	0	0	0	16	0	26
Drainage Plans												
Pipe Profiles (4 pipes/50' Length)	2 Sht - 1"=20' Scale	0	8	0	0	0	0	0	0	16	0	24
Detention Basin	2 Sht - 1"=20' Scale	0	8	0	0	0	0	0	0	16	0	24
SWPP Plans												
Detail Sheet	1 Sht - No Scale	0	8	0	0	0	0	0	0	16	0	24
Plan Sheet	1 Sht - 1"=40' Scale	0	12	0	0	0	0	0	0	16	0	28
Lighting Plans												
Legend and Notes	1 Sht - No Scale	0	0	6	0	0	0	0	8	0	0	14
Electrical Panel/Details	1 Sht - No Scale	0	0	10	0	0	0	0	8	0	0	18
Security/Video Details	1 Sht - No Scale	0	0	16	0	0	0	0	20	0	0	36

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Combined Workhour Proposal and Fee - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Plan Sheet	1 Sht - 1"=40' Scale	0	0	24	0	0	0	0	20	0	0	44
Lighting Calculations		0	0	8	0	0	0	0	4	0	2	14
Structural Plans												
Shade Structure	4 Sht	16	48	0	0	0	0	0	56	0	0	120
Structural Calculations		10	70	0	0	0	0	0	0	0	4	84
Architectural Plans												
Shade Structure	4 Sht	0	0	0	4	18	40	0	80	0	0	142
ADA Review		16	0	0	0	0	0	0	0	0	0	16
Specification		0	0	0	0	0	40	0	0	0	0	40
Quantities/Bid Tab		0	24	0	0	0	0	16	0	0	0	40
60% Comment Resolution/Meeting												
Project Meetings	(2 Mtgs @ 2 Persons - 3 Hrs. Ea)	8	4	0	0	8	4	0	0	0	4	28
		12	0	0	0	12	0	0	0	0	4	28
Subtotal Hours		**71**	**248**	**64**	**4**	**38**	**84**	**16**	**196**	**200**	**14**	**935**
TOTAL PROJECT WORK-HOURS		**141**	**350**	**90**	**34**	**102**	**100**	**120**	**260**	**240**	**22**	**1,459**
Hourly Rate		**$165**	**$125**	**$120**	**$235**	**$130**	**$120**	**$75**	**$80**	**$70**	**$40**	
Hourly Rate * Work-hours		**$23,265**	**$43,750**	**$10,800**	**$7,990**	**$13,260**	**$12,000**	**$9,000**	**$20,800**	**$16,800**	**$880**	**$158,545**

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
EMCC Parking Lot Design - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Phase I - Pre-Design Services												
Field Review/Document Review												
Civil		8	0	0	0	0	0	0	0	0	1	9
Drainage		0	8	0	0	0	0	0	0	0	0	8
Electrical		0	0	4	0	0	0	0	0	0	1	5
Architectural		0	0	0	0	4	0	0	0	0	0	4
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Concept Development	(3 Concepts Max)											
Civil		7	0	0	0	0	0	0	15	0	0	22
Drainage		0	15	0	0	0	0	0	0	4	0	19
Electrical		0	0	2	0	0	0	0	0	0	0	2
Architectural		0	0	0	4	4	0	0	0	0	0	8
Shade Study		0	0	0	0	0	0	0	0	0	0	0
Structural		0	0	0	0	0	0	0	0	0	0	0
Design Camp Meeting and Prep		2	4	2	2	3	0	4	0	0	0	17
Concept Plans (30%)												
Civil	4 Shts - 1"=20'	4	14	0	0	0	0	0	0	20	0	38
Drainage		0	16	0	0	0	0	0	0	0	0	16
Electrical	1 Shts - 1"=40'	0	0	4	0	0	0	0	6	0	0	10
Architectural		0	0	0	0	0	0	0	0	0	0	0
Shade Study		0	0	0	0	0	0	0	0	0	0	0
Structural		0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours		**27**	**57**	**12**	**6**	**17**	**0**	**4**	**21**	**24**	**4**	**172**
Phase II - Intermediate Design and GMP Development												
Prepare 60% and Pre-final (95%) Construction Documents												
Paving Plans												
Cover Sheet	1 Sht - No Scale	0	2	0	0	0	0	0	0	6	0	8
General Notes/Typical Sections	1 Sht - No Scale	1	3	0	0	0	0	0	0	5	0	9
Detail Sheet	2 Sht - No Scale	1	8	0	0	0	0	0	0	14	0	23
Demolition Plan	1 Sht - 1"=40' Scale	0	2	0	0	0	0	0	0	6	0	8
Parking Paving/Grading Plans	4 Sht - 1"=20'	1	16	0	0	0	0	0	0	38	0	55
Transit Center Plans	2 Sht - 1"=20'	0	0	0	0	0	0	0	0	0	0	0
Drainage Plans												
Pipe Profiles (4 pipes/50' Length)	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
Detention Basin	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
SWPP Plans												
Detail Sheet	1 Sht - No Scale	0	4	0	0	0	0	0	0	8	0	12
Plan Sheet	1 Sht - 1"=40' Scale	0	6	0	0	0	0	0	0	8	0	14
Lighting Plans												

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
EMCC Parking Lot Design - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Legend and Notes	1 Sht - No Scale	0	0	3	0	0	0	0	4	0	0	7
Electrical Panel/Details	1 Sht - No Scale	0	0	5	0	0	0	0	4	0	0	9
Security/Video Details	1 Sht - No Scale	0	0	8	0	0	0	0	10	0	0	18
Plan Sheet	1 Sht - 1"=40' Scale	0	0	12	0	0	0	0	10	0	0	22
Lighting Calculations		0	0	4	0	0	0	0	2	0	1	7
Structural Plans												0
Shade Structure	4 Sht	0	0	0	0	0	0	0	0	0	0	0
Structural Calculations		0	0	0	0	0	0	0	0	0	0	0
Architectural Plans												0
Shade Structure	4 Sht	0	0	0	0	0	0	0	0	0	0	0
ADA Review		4	0	0	0	0	0	0	0	0	0	4
Specification		0	0	0	0	0	20	0	0	0	0	20
Quantities/Bid Tab		0	12	0	0	0	0	8	0	0	0	20
										0		0
60% Comment Resolution/Meeting		4	2	0	0	4	2	0	0	0	2	14
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Subtotal Hours		17	63	32	0	10	22	8	30	101	5	288
TOTAL PROJECT WORK-HOURS		44	120	44	6	27	22	12	51	125	9	460
Hourly Rate		$165.0	$125.0	$120.0	$235.0	$130	$120	$75	$80	$70	$40	
Hourly Rate * Work-hours		$7,260.0	$15,000.0	$5,280.0	$1,410.0	$3,510	$2,640	$900	$4,080	$8,750	$360	$49,190

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Mini-Bus Transit Center - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks / Classification		TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Phase I - Pre-Design Services												
Field Review/Document Review												
Civil		8	0	0	0	0	0	0	0	0	0	8
Drainage		0	8	0	0	0	0	0	0	0	1	9
Electrical		0	0	4	0	0	0	0	0	0	0	4
Architectural		0	0	0	0	4	0	0	0	0	1	5
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Concept Development	(3 Concepts Max)											
Civil		7	0	0	0	0	0	0	15	0	0	22
Drainage		0	15	0	0	0	0	0	0	4	0	19
Electrical		0	0	2	0	0	0	0	0	0	0	2
Architectural		0	0	0	6	20	0	20	0	0	0	46
Shade Study		0	0	0	5	0	0	30	0	0	0	35
Structural		6	0	0	0	0	0	0	0	0	0	6
Design Camp Meeting and Prep		6	8	4	4	9	0	14	0	0	0	45
Concept Plans (30%)												
Civil	2 Shts - 1"=20'	4	6	0	0	0	0	0	0	12	0	22
Drainage		0	8	0	0	0	0	0	0	0	0	8
Electrical	1 Shts - 1"=40'	0	0	4	0	0	0	0	2	0	0	6
Architectural		0	0	0	4	8	16	16	18	0	0	62
Shade Study		0	0	0	5	0	0	20	0	0	0	25
Structural		6	0	0	0	0	0	0	8	0	0	14
Subtotal Hours		**43**	**45**	**14**	**24**	**47**	**16**	**100**	**43**	**16**	**4**	**352**
Phase II - Intermediate Design and GMP Development												
Prepare 60% and Pre-final (95%) Construction Documents												
Paving Plans												
Cover Sheet	1 Sht - No Scale	1	2	0	0	0	0	0	0	6	0	9
General Notes/Typical Sections	1 Sht - No Scale	0	3	0	0	0	0	0	0	5	0	8
Detail Sheet	2 Sht - No Scale	1	10	0	0	0	0	0	0	12	0	23
Demolition Plan	1 Sht - 1"=40' Scale	1	2	0	0	0	0	0	0	6	0	9
Paving/Grading Plans	2 Sht - 1"=20' (No Profile Shts)	1	10	0	0	0	0	0	0	22	0	33
Transit Center Plans	1 Sht - 1"=10'	2	8	0	0	0	0	0	0	16	0	26
Drainage Plans												
Pipe Profiles (4 pipes/50' Length)	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
Detention Basin	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
SWPP Plans												
Detail Sheet	1 Sht - No Scale	0	4	0	0	0	0	0	0	8	0	12
Plan Sheet	1 Sht - 1"=40' Scale	0	6	0	0	0	0	0	0	8	0	14
Lighting Plans												

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Mini-Bus Transit Center - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Legend and Notes	1 Sht - No Scale	0	0	3	0	0	0	0	4	0	0	7
Electrical Panel/Details	1 Sht - No Scale	0	0	5	0	0	0	0	4	0	0	9
Security/Video Details	1 Sht - No Scale	0	0	8	0	0	0	0	10	0	0	18
Plan Sheet	1 Sht - 1"=40' Scale	0	0	12	0	0	0	0	10	0	0	22
Lighting Calculations		0	0	4	0	0	0	0	2	0	1	7
Structural Plans										0		0
Shade Structure	4 Sht	16	48	0	0	0	0	0	56	0	0	120
Structural Calculations		10	70	0	0	0	0	0	0	0	4	84
Architectural Plans												0
Shade Structure	4 Sht	0	0	0	4	18	40	0	80	0	0	142
ADA Review		12	0	0	0	0	0	0	0	0	0	12
Specification		0	0	0	0	0	20	0	0	0	0	20
Quantities/Bid Tab		0	12	0	0	0	0	8	0	0	0	20
										0		0
60% Comment Resolution/Meeting		4	2	0	0	4	2	0	0	0	2	14
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Subtotal Hours		**54**	**185**	**32**	**4**	**28**	**62**	**8**	**166**	**99**	**9**	**647**
TOTAL PROJECT WORK-HOURS		**97**	**230**	**46**	**28**	**75**	**78**	**108**	**209**	**115**	**13**	**999**
Hourly Rate		**$165**	**$125**	**$120**	**$235**	**$130**	**$120**	**$75**	**$80**	**$70**	**$40**	
Hourly Rate * Work-hours		**$16,005**	**$28,750**	**$5,520**	**$6,580**	**$9,750**	**$9,360**	**$8,100**	**$16,720**	**$8,050**	**$520**	**$109,355**

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Scope of Work Phase I and II

March 14, 2007

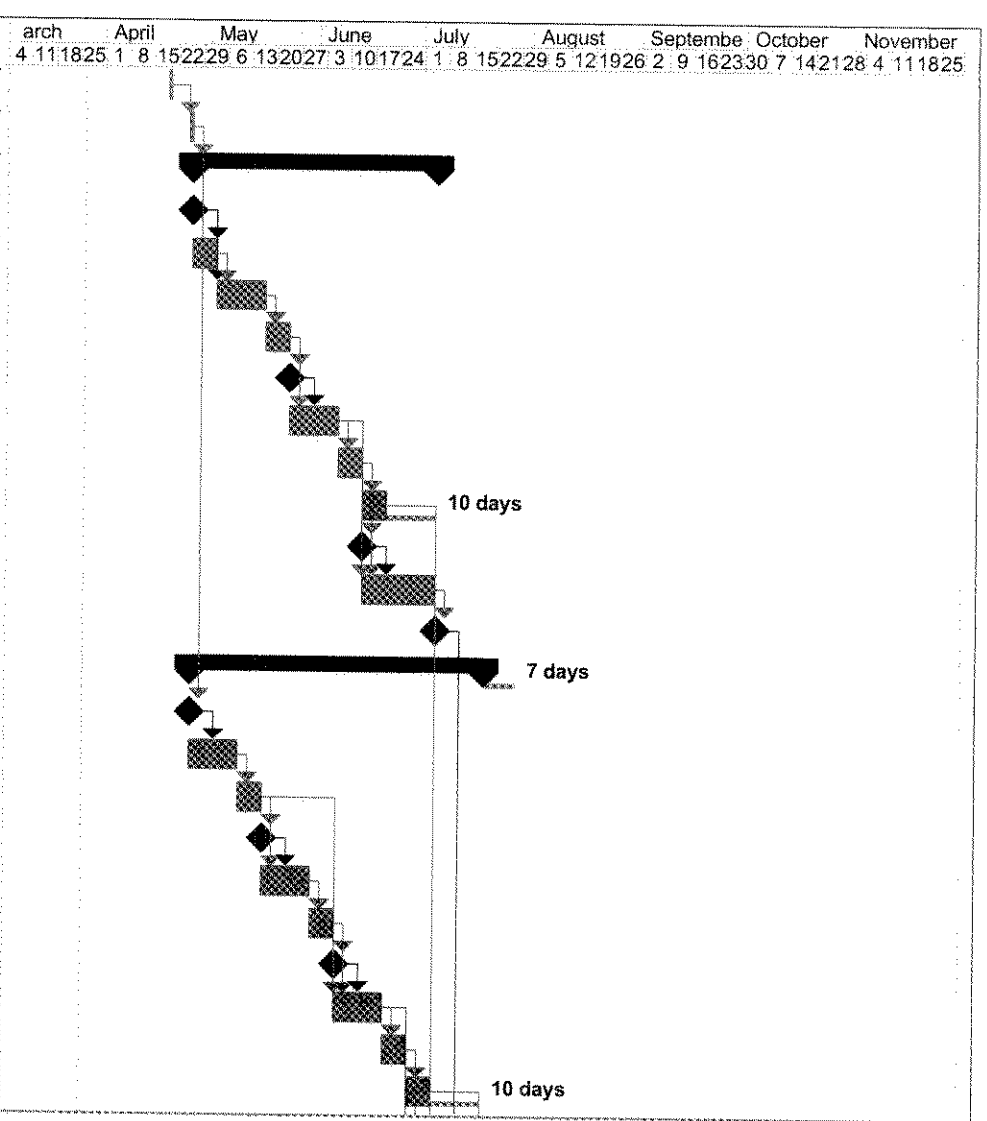
TranSystems

Direct Expenses

Mileage			
	12 Trips @ 44 Miles	$0.48 per mile	$253
Printing			
	Design Camp		$50
	30% Submittal (10 Shts)		
		15 Half Size Sets (11x17)	$23
		5 Full Size Sets (24x36)	$20
	60% Submittal (30 Shts)		
		15 Half Size Sets (11x17)	$68
		5 Full Size Sets (24x36)	$60
	95% Submittal (40 Shts)		
		15 Half Size Sets (11x17)	$90
		5 Full Size Sets (24x36)	$80
		Total	$643

11x17 - $0.15 per sheet
24x36 - $0.40 per sheet

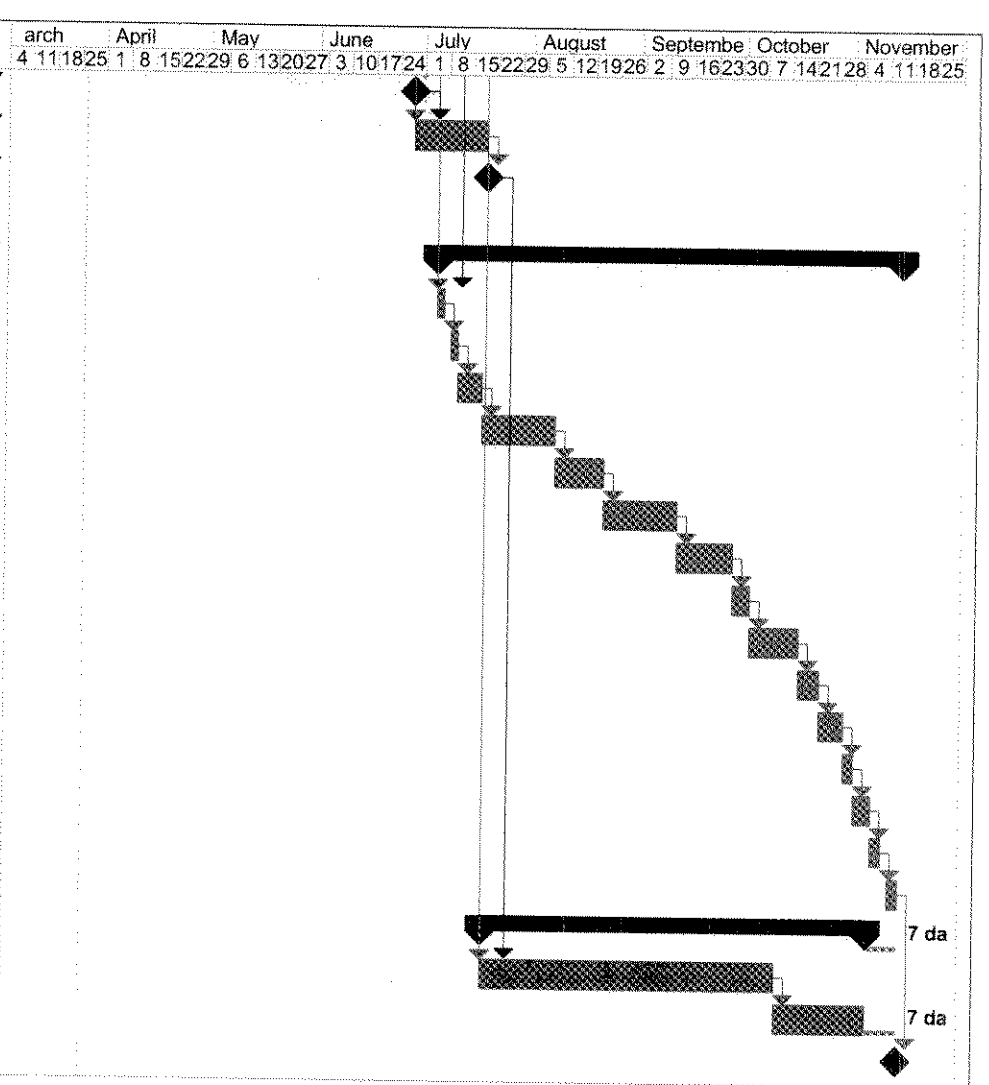
ID	Task Name	Duration	Start
1	COUNCIL APPROVAL	1 day	4/19/07
2	KICK OFF MEETING	1 day	4/25/07
3	**PARKING LOT DESIGN**	**50 days**	**4/25/07**
4	DESIGN CAMP	0 days	4/25/07
5	DUST & SWRPP PERMITS	5 days	4/26/07
6	30% PLANS SUBMITTAL	10 days	5/3/07
7	30% CITY REVIEW & COMMENTS	5 days	5/17/07
8	COST MODEL @ 30%	0 days	5/23/07
9	100% PLANS SUBMITTAL	10 days	5/24/07
10	100% CITY REVIEW & COMMENTS	5 days	6/7/07
11	CONSTRUCTION PERMIT	5 days	6/14/07
12	SUBMITT GMP 1	0 days	6/13/07
13	COUNCIL APPROVAL GMP1	15 days	6/14/07
14	NOTICE TO PROCEED	0 days	7/4/07
15	**BUS STOP DESIGN**	**60 days**	**4/25/07**
16	DESIGN CAMP	0 days	4/25/07
17	30% PLANS SUBMITTAL	10 days	4/26/07
18	30% CITY REVIEW & COMMENTS	5 days	5/10/07
19	COST MODEL @ 30%	0 days	5/16/07
20	60% PLANS SUBMITTAL	10 days	5/17/07
21	60% CITY REVIEW & COMMENTS	5 days	5/31/07
22	COST MODEL @ 60%	0 days	6/6/07
23	100% PLANS SUBMITTAL	10 days	6/7/07
24	100% CITY REVIEW & COMMENTS	5 days	6/21/07
25	BUILDING PERMIT	5 days	6/28/07



Estrella Mountain College
Mini-Bus Center Project
Hunter Contracting / Tran Systems

Critical		Milestone		Rolled Up Critical	
Critical Split		Slack		Rolled Up Critical Split	
Task		Slippage		External Tasks	
Split		Summary		External Milestone	
Progress		Project Summary		Deadline	

ID	Task Name	Duration	Start
26	SUBMITT GMP 2	0 days	6/27/07
27	COUNCIL APPROVAL GMP2	15 days	6/28/07
28	NOTICE TO PROCEED	0 days	7/18/07
29			
30	**PARKING LOT CONSTRUCTION**	**95 days**	**7/5/07**
31	SURVEY	2 days	7/5/07
32	POTHOLE	2 days	7/9/07
33	CLEAR & GRUB	5 days	7/11/07
34	MASS GRADING	15 days	7/18/07
35	PIPING - ELEC./CONC./SLEEVES	10 days	8/8/07
36	CONCRETE WORK	15 days	8/22/07
37	LANDSCAPE	12 days	9/12/07
38	HEADWALLS & RIPRAP	3 days	9/28/07
39	SUBGRADE PREP	10 days	10/3/07
40	FINISH SUBGRADE	4 days	10/17/07
41	PLACE & FINISH ABC	5 days	10/23/07
42	PLACE ASPHALT	3 days	10/30/07
43	STRIPE	3 days	11/2/07
44	SET LIGHT POLES	3 days	11/7/07
45	PUNCH LIST	3 days	11/12/07
46	**BUS SHELTER CONSTRUCTION**	**78 days**	**7/19/07**
47	FABRICATION	60 days	7/19/07
48	INSTALLATION	18 days	10/11/07
49	FINAL COMPLETION	0 days	11/14/07



Estrella Mountain College
Mini-Bus Center Project
Hunter Contracting / Tran Systems

Critical		Milestone		Rolled Up Critical	
Critical Split		Slack		Rolled Up Critical Split	
Task		Slippage		External Tasks	
Split		Summary		External Milestone	
Progress		Project Summary		Deadline	

EXHIBIT J
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Performance Bond]

See following pages.

EXHIBIT K
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Payment Bond]

See following pages.

EXHIBIT L
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[DBE Program]

See following pages.

EXHIBIT J
TO THE
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[Performance Bond]

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[Payment Bond]

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EXHIBIT L
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[DBE Program]

See following pages.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE Program)

Section I. Definitions

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies (City of Phoenix, City of Tucson, Arizona Department of Transportation) organized to provide reciprocal DBE certification within Arizona pursuant to 49 CFR Part 26. The Arizona Unified Certification Program maintains the official DBE database containing DBE Firms certified by the consortium. The database can be accessed at the following website address: http://www.azdbe.org.

Contract is that certain design-build agreement entered into by the Prime Contractor and the Purchaser, dated _____.

DBE Firm means a sole proprietorship, corporation, partnership or other entity that has been granted DBE status and which meets the following criteria:

1. Corporation is a DBE, for purposes of this Contract, if the ownership, operation, and control of the business is conditioned upon the control of its shares of stock or other equitable securities, at least 51 percent of which (of all shares) is legally and equitably owned by socially and economically disadvantaged individuals, as determined by the City of Phoenix or Arizona Unified Certification Program in the DBE certification process.

2. Partnership is a DBE, for purposes of this contract, if more than 51 percent of the assets or interest in the partnership's property is owned by one or more socially and economically disadvantaged individuals, as determined by the City of Phoenix or Arizona Unified Certification Program in the DBE certification process.

3. Sole Proprietorship is a DBE for purposes of this Contract, if it is 100 percent owned, operated, and controlled by a socially and economically disadvantaged individual as determined by the City of Phoenix or Arizona Unified Certification Program in the DBE certification process.

DBE Joint Venture is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. One participant in the joint venture arrangement must hold DBE status with the City of Phoenix or Arizona Unified Certification Program. The joint venture is limited in scope and duration to this contract, the resources, assets and labor of the participants must be combined in an effort to accrue profit.

Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed the DBE certification process and been granted DBE status by the City of Phoenix Equal Opportunity Department or Arizona Unified Certification Program pursuant to the criteria contained in 49 CFR Part 26.

Small Business Concern means a small business as defined in the U.S. Department of Transportation 49 CFR Part 26. A small business concern shall not include any concern or group of concerns

controlled by the same socially and economically disadvantaged individual(s) that has annual average gross receipts in excess of the cap established by federal regulation.

Socially and Economically Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above-mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed a DBE certification process and been granted DBE status by the City of Phoenix or Arizona Unified Certification Program shall be considered socially and economically disadvantaged individuals for purposes of this Contract.

Prime Contractor, for the purposes of this DBE Program, is Hunter Contracting Co., which has entered into the Contract with the City of Avondale.

Purchaser, for purposes of this DBE Program, means the City of Avondale.

Subcontract is any contract at any tier below the prime Contract, including purchase orders.

Supplier is a business enterprise that manufactures the goods or materials it sells, as defined by 49 CFR Part 26.

Wholesaler, Distributor, Broker, or Jobber is a business enterprise that does not manufacture the goods or materials it sells, or does not perform the essential work of the Contract. Example: 1) A trucking company that does not own or operate the trucks necessary to perform the work, but which brokers the work to another trucking firm; 2) A distributor who supplies goods or materials as a pass through from the manufacturer, without substantial alteration of the goods or materials; or 3) A sub-tier bidder who purchases and supplies the goods and materials on behalf of the Prime Contractor, and delivers the goods and materials to the Prime Contractor without substantial alteration of the goods and materials.

Section II. DBE Utilization

A. **Obligation** - Prime Contractors are required to meet the DBE Program bid requirements detailed herein and, by the acceptance of the Contract, agree to provide opportunities for the fair and full utilization of DBEs by complying with the DBE document submittal and post-award requirements herein. Nothing in this DBE Program shall be construed to require the utilization of DBE firms that are not qualified or available to perform work.

B. **Established DBE Requirement** - For this project, the City of Phoenix Public Transit Department has established the following goal for the utilization of DBE firms:

Disadvantaged Business Enterprises (DBEs) shall participate in not less than _____% of the Contract dollar amount relating solely to the construction portion of the Project; these DBE requirements shall not be applicable to the design services portion of the Contract. In determining whether a Prime Contractor has met this requirement, rounding up of DBE subcontract bid amounts shall not be allowed.

Section III. Degrees of DBE Percentage Attainment

A. **<u>Subcontracts with DBE Firms</u>** - All DBE Firms proposed to participate in this Contract opportunity must be DBE certified by the City of Phoenix or Arizona Unified Certification Program prior to submission of the final DBE documentation by the Prime Contractor.

Expenditures to a DBE Firm can be counted toward DBE goals only if the DBE is performing a commercially useful function on the Contract. In order to meet this commercially useful function standard, the DBE Firm must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce.

Provided the DBE Firm meets the commercially useful function standard as described above, participation on the Contract will be calculated based on that portion (dollar value) of the Contract that DBEs actually perform with their own forces. This includes the cost of supplies and materials obtained by the DBE for the work on the contract, **except** when supplies and/or equipment is purchased or leased from the Prime Contractor or its affiliate. Special emphasis and care should be taken to ensure that the following types of participation are handled properly:

1. **Fees & Commissions**: DBE Firms that supply a bona fide service for a fee or commission may be counted only to the extent of the fees or commissions charged by the DBE. This includes, but is not limited to, providing professional, technical, consultant, or managerial services, and bonds or insurance specifically required for the performance of a DOT-assisted contract. The fees must be reasonable and not excessive as compared with fees customarily allowed for similar services. **Example**: *A DBE firm that supplies uniformed officers for security or traffic control may count only the amounts charged as a commission. The hourly amount paid to the officers may not be counted. If the "per hour" bid amount to the Prime Contractor is $30, and $21 per hour will be paid to the officers, only $9 per hour can be counted towards achieving the DBE goal. If the firm estimates that there will be 200 hours of work bid at a rate of $30 per hour, only $1,800 of the total $6,000 bid could be counted.*

2. **Trucking & Hauling**: The amount of a trucking/hauling subcontract that may be counted towards the DBE utilization requirement may be limited. A DBE must itself own and operate at least one fully licensed, insured, and operational truck that will be used on the Contract. The DBE subcontractor may lease trucks from another DBE firm and receive full credit for the services of those leased vehicles. Non-DBE owned trucks may be leased to perform work on the contract, but non-DBE leased trucks may only be credited for the fees or commissions the DBE subcontractor retains over and above the cost of the lease arrangement. **Example**: *A DBE trucking firm uses seven trucks on a job. Two are owned by the DBE and one is leased from another certified DBE firm. Four trucks are leased from a non-DBE. The full value of the services provided by the three DBE owned trucks may be credited to the goal. However, only the brokerage fee that the DBE subcontractor receives for leasing the four non-DBE trucks may be counted as DBE utilization.*

B. **<u>DBE Prime Contractor</u>** - A DBE Prime Contractor that has obtained DBE status with the City of Phoenix or Arizona Unified Certification Program will be credited with DBE participation for that portion of the Contract that they themselves perform, only if the DBE Prime

Contractor performs a commercially useful function on that Contract. In order to meet the commercially useful function standard, a DBE Prime Contractor must perform or exercise responsibility for at least **30 percent** of the total cost of its contract with its own workforce. A DBE Prime Contractor that has not been granted DBE status by the City of Phoenix or Arizona Unified Certification Program cannot count its participation. In addition, any portion of the contract that is subcontracted and performed by an eligible DBE subcontractor may also be counted. **Example**: *If a DBE prime contractor proposes to perform 60 percent of the contract with the firm's equipment and workforce, and subcontracts 20 percent to a DBE firm and 20 percent to a non-DBE firm, DBE participation will be credited as being 80 percent.*

C. **DBE /Non-DBE Joint Ventures** - A DBE/non-DBE joint venture, functioning as the Prime Contractor or as a subcontractor on a City project will be credited with DBE participation on the basis of the percentage of profit accruing to the DBE Firm. The DBE participant in the DBE Joint Venture must have been granted DBE status by the City of Phoenix or Arizona Unified Certification Program. **Example**: *A joint venture made up of one DBE and one non-DBE proposes to perform 60 percent of a project quoted at $400,000. A total of 50 percent of the profits for performing the work will go to the DBE partner in the joint venture. DBE participation will be credited at 30 percent or $120,000.*

D. **Lower Tier Non-DBE Participation** - Subcontract dollars paid by DBE Prime Contractor and/or qualifying DBE Joint Ventures to non-DBE subcontractors will not be considered when determining the percentage of DBE participation on this contract. Amounts subcontracted to a non-DBE by a DBE subcontractor (2nd tier or lower) may not be counted.

E. **DBE Suppliers** - Purchases from DBE Suppliers who have been granted DBE status by the City of Phoenix or Arizona Unified Certification Program may be counted towards the goals as follows:

1. Manufacturers - Amounts paid to a DBE Supplier that manufactures or substantially alters the material or product it supplies will be credited at 100% of the expenditure when determining the percentage of DBE participation.

2. Regular Dealer - Purchases from a DBE Firm that is an established, regular business that engages, as its principal business, in the purchase, sale, or lease of the products being supplied **may be credited towards the DBE goal at sixty percent (60%) of the sale price** when determining the percentage of DBE participation.

3. Packagers, Brokers, Manufacturers' Representatives - Purchases from a DBE Firm that arranges or expedites transactions not as regular dealers **may not be counted** in full when determining DBE participation. Only the fees or commissions charged in the procurement of the materials or supplies, or fees/transportation charges for the delivery of the materials or supplies, may be credited towards achievement of the DBE goal.

Section IV. Determination of Responsiveness to DBE Requirements

A. **Prime Contractors Declaring They Will Meet the DBE Requirements** - The Prime Contractor shall provide all required DBE validating information **once contract negotiations with the City of Avondale have been completed and prior to the construction contract award**. Failure to submit the DBE Program documentation, in completed form, will result in a determination by the City that the Prime Contractor is non-responsive to the DBE requirements. For purposes of this requirement, other documentation that may, on its face, provide the same information contained on the required forms, shall not be sufficient to meet this requirement. The submittal of the required documentation shall be a "matter of responsibility" as such term is used in 49 CFR Part 26.

All required information should be submitted for verification once contract negotiations have been completed. At a minimum, the documentation demonstrating compliance with the DBE requirements shall contain:

1. Attachment A - "Letter of Intent to Perform as a Subcontractor/Supplier"

The dollar value and the scope of work the DBE subcontractor is bidding to perform must be completed in full on the form. All DBE Firms listed on Attachment A must have been granted DBE status by the City of Phoenix or Arizona Unified Certification Program. DBE Firms that have not completed the certification process with the City or Arizona Unified Certification Program will not be eligible to meet goals on this project.

The Prime Contractor may not make alterations to the information on the form. Any negotiations with the DBE as to a reduced or increased scope of work or bid amount must be completed after contract negotiations with the City of Avondale have been completed and prior to contract award and must be accurately reflected on Attachment A.

For scopes of work where a total contract amount cannot be determined, the *Letter of Intent to Perform as a Subcontractor/Supplier* should reflect the minimum amount that will be paid to the DBE. When the form contains scopes of work where all of the dollars that will be paid to the DBE cannot be counted towards achieving the DBE goal, the form should also reflect the amount that is applicable to the goal. This includes the fees and commissions for non-DBE leased trucks as cited in Section III (A)(2) and/or for other professional, technical, consultant, or managerial services as cited in Section lll (A)(1). **Example**: *A DBE firm will provide uniformed officers on the job. The DBE pays the officers $21 per hour but has bid the contract to the prime contractor at $30 per hour. Only the $9 per hour that the DBE maintains as a fee/commission should be reflected on Parts 2, 3, and 4 of Attachment A.*

2. Attachment B – "Proposed DBE Bid Participation"

The Prime Contractor's Proposed DBE Participation form (Attachment B) must reflect the same scope of work and bid amount attested to by the DBE subcontractor on the Attachment A submitted to the Prime Contractor. **Note**: It is the responsibility of the Prime Contractor to ensure that the DBE has been certified by the City of Phoenix or Arizona Unified Certification Program in the scope of work to be performed by the DBE. **DBE scopes of work listed on the form that fall outside the trade or performance area in which the DBE has been granted certification by the Arizona Unified Certification Program shall not be counted in determining if the Prime Contractor has met the DBE goal requirements**. If there are questions, the Prime Contractor should contact the City of Phoenix Public Transit Department for verification. The City of Avondale reserves the right to validate information on the form with the DBE subcontractor or licensing agents as part of the verification process. Intentionally inflating the amount of such work in order to meet the DBE bid requirements shall constitute a lack of good faith on behalf of the Prime Contractor.

Where DBE subcontracting is proposed on a Prime Contractor's Attachment B in scopes of work where a final contract amount cannot readily be determined (trucking, hauling, security officers, etc.), **the minimum bid amount agreed upon between the Prime Contractor and DBE subcontractor that can be counted towards meeting the DBE goal** should be reflected on Attachment B. The City will not release the Prime Contractor from the obligation to meet the DBE requirements of the contract based on a failure to utilize DBEs in these areas of work to the extent reflected on Attachment B.

3. Attachment C (Where Applicable) – "Identification Statement for Disadvantaged Business Enterprises"

The following form is not required if the DBE Firm(s) listed in Attachments A & B is/are certified by the City of Phoenix. The form is required if the DBE Firm(s) has been granted DBE status by a member of the Arizona Unified Certification Program other than the City of Phoenix. This would include firms granted DBE status by the Arizona Department of Transportation or the City of Tucson.

B. **Petitioning For Full or Partial Relief From DBE Requirements** – If the Prime Contractor fails to identify DBE participation that is equal to, or greater than, the DBE requirement in Section II (B) of this document, it shall petition for grant of relief from the portion of the requirement that has not been met. Such petition must state the specific portion of the goal for which relief is requested. The petition and all supporting documentation **must be submitted as soon as possible after Contract negotiations have been completed with the City of Avondale and prior to Contract award.**

The request for relief from a portion of the established DBE goal does not relieve the Prime Contractor from the requirement to submit the documentation listed in Part A of this document (Attachments A, B, and C where applicable) for that portion of the DBE goal that will be met. The submittal shall include all reasonable good faith efforts made by the prime contractor towards fulfilling the DBE requirement. The petition must (i) be executed in affidavit format and be duly

signed by an authorized representative of the Prime Contractor and (ii) substantiate the actions taken to meet the good faith requirements by written documentation and proof. A mere declaration that good faith efforts were made will not be sufficient to meet the burden of proof required. Failure of the Prime Contractor to provide sufficient evidence to show good faith efforts made to obtain DBE participation shall result in a determination that the Prime Contractor was non-responsive to the DBE requirements of this Agreement. The City of Phoenix Public Transit Department's decision as to whether or not good faith efforts have been made is final and conclusive.

The following factors, as set forth in 49 CFR Part 26 Appendix A – Guidance Concerning Good Faith Efforts, are illustrative of matters, which the City of Phoenix Public Transit Department will consider in judging whether the Prime Contractor made good faith efforts:

1. Whether the Prime Contractor attended pre-bid or pre-solicitation meetings that were scheduled by the City of Avondale. The City of Avondale will verify attendance through the "Sign-In Log" maintained for each pre-bid and pre-solicitation meeting.

2. Whether the Prime Contractor advertised in general-circulation trade association and DBE-focused media concerning the subcontracting opportunities. Prime Contractors should have allowed a reasonable period of time for DBEs to participate in subcontracting negotiations when advertising. Prime Contractors should allow 20 calendar days in instances where the actual bid cycle is sufficient to allow this period of time. The Prime Contractor should provide copies of all advertisements, depicting the publication date of the notice.

3. Whether the Prime Contractor solicited interest from a reasonable number of DBE firms. The notices should be in written format and should show that sufficient time was allowed for DBEs to participate effectively.

4. Whether the Prime Contractor followed up on initial solicitations by contacting DBEs to determine with certainty whether the DBEs were interested.

5. Whether the Prime Contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals. This includes, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation.

6. Whether the Prime Contractor provided adequate information about the plans, specifications, and requirements of the contract to interested DBEs.

7. Whether the Prime Contractor negotiated in good faith with interested DBEs and did not reject a DBE's bid as unqualified without sound reasons, based on a thorough investigation of their capabilities.

8. Whether the Prime Contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or any insurance required by the City of Avondale or Prime Contractor.

9. Whether the Prime Contractor effectively used the services of available DBE community organizations, DBE contractors groups, local, state and Federal DBE assistance offices, and other organizations that provide assistance in the recruitment and placement of DBEs.

C. **Direct Negotiations With DBE Firms** - Where direct negotiation with DBEs for sub-bids was made, the actions taken must be reported in such a fashion as to include the following terms:

1. A detailed statement of the efforts made to negotiate with DBEs including, at a minimum, the names, addresses and telephone numbers of DBEs contacted and the date(s) of all contact.

2. A description of the plans and specifications information provided to DBEs regarding the portions of the work to be performed.

3. A detailed statement of the reasons why additional prospective agreements with DBEs, if needed to meet the stated goal, were not achieved.

4. A detailed statement of the efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood of achieving the stated goal.

5. For each DBE contacted who is subsequently considered to be unavailable, the Prime Contractor must submit an Unavailability Certificate signed by the DBE. If the DBE refuses to provide the certification, the Prime Contractor must submit a statement to that effect along with a detailed statement of the reasons for his conclusion of unavailability.

D. **DBE Prime Contractors Who Are Distributors or Manufacturers** - If the Prime Contractor is a distributor or a manufacturer, and it can be shown that the opportunity for DBE utilization does not exist, good faith efforts must include research into the potential for DBE participation in the roles of sub-supplier, transporter, engineering, distribution, or other roles contributing to the performance of the contract. Information must be submitted, in affidavit form, stating the researched reasons why DBE participation will not be practical to the extent of the contract's DBE goal.

E. **Assistance** - A representative of the Phoenix Public Transit Department may, upon written notice to the Prime Contractor, meet with the Prime Contractor to discuss their evidence of good faith efforts to contact and negotiate with DBEs, and/or their inability to achieve the established DBE requirement.

F. **Failure of Prime Contractor to Make a Good Faith Effort** - In the event that the City of Phoenix Public Transit Department determines that the Prime Contractor has not made good faith efforts to meet the established requirement, the City of Avondale may consider the Prime Contractor as non-responsive.

G. **Administrative Reconsideration** - If the City of Phoenix Public Transit Department determines that the Prime Contractor failed to meet the good faith effort requirements, an

opportunity for administrative reconsideration will be provided prior to awarding the Contract. The Prime Contractor will be informed in writing, by facsimile or U.S. Mail, of the determination. Within three working days of being informed by the City of Phoenix Public Transit Department of an insufficient good faith effort, a Prime Contractor may request administrative reconsideration. The Prime Contractor should make this request in writing to:

Public Transit Department
Facilities Division
Civil Rights Manager
301 North First Avenue, Suite 900
Phoenix, AZ 85003

Section V. Requirements and Procedures Subsequent to Contract Award

A. **DBE Subcontracting Obligation** - Upon approval of the required DBE utilization documentation, the contractor receiving award of the Contract shall enter into a subcontract with each approved DBE subcontractor listed in their bid submittal. The contract shall be for the scope of work and amount stated in the bid documents. DBE subcontracts shall not be terminated, nor shall the scope of work or the amount to be paid to the DBE be altered by the Prime Contractor without the written approval of the City of Phoenix Public Transit Department; provided, however, that any change in the amount to be paid to a DBE that would result in an increase to the amount to be paid by the City of Avondale under this Agreement shall require the prior, written approval of the City of Avondale. Any petition to alter the original subcontract with a DBE must be submitted in writing to the City of Avondale prior to such change occurring. Failure to do so may result in the Prime Contractor being declared in breach of the Contract.

B. **DBE Substitutions** - The Contractor must notify the City of Phoenix Public Transit Department in writing of the necessity to substitute a new DBE in order to fulfill the DBE requirements. Actual substitution or replacement of DBEs to fulfill DBE Contract requirements shall not be made before the City of Phoenix Public Transit Department's approval is given as to the acceptability of the substitute DBE. The letter requesting approval of a substitution must provide specific reasons for justifying release by the City of a DBE that was listed in the Contractor's bid.

C. **Failure to Meet DBE Contract Requirements** - Failure to utilize DBEs as stated in the Contractor's assurances constitutes breach of contract and may lead to the cancellation or termination of the Contract.

D. **Relief From DBE Requirements** - After award of the Contract, no relief of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial waiver of the DBE requirements of this Contract must be submitted in writing to the City of Phoenix Public Transit Department. The request for relief must contain details of the request, the circumstances that make the request necessary, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Prime Contractor to contract with the DBEs listed in the bid submittal documents, locate and solicit replacement or substitute DBEs, and seek assistance from the City of Phoenix Public Transit Department.

In cases where an enterprise previously verified to be a DBE allows their DBE status to expire prior to completion of their contract, the City of Phoenix Public Transit Department shall consider all work performed by the DBE as being eligible to meet the utilization requirements of the contract. The Prime Contractor will not be penalized for this occurrence as it is outside of its control.

In instances where a firm was considered to be a bona fide DBE by the City of Phoenix or Arizona Unified Certification Program and is subsequently found not to be bona fide, the City of Phoenix Public Transit Department will consider the following special criteria in evaluating a request for relief of the DBE requirements of the Contract:

1. Whether the Prime Contractor was reasonable in believing the enterprise to be a bona fide DBE; and

2. Whether efforts were taken to substitute the firm with a valid DBE.

Section VI. Reporting Requirements and Post Award Compliance

A. **Attempts to Evade DBE Requirements** - Any Prime Contractor found to have knowingly engaged or participated in any direct or indirect attempt to evade the requirements of this DBE Program may be declared ineligible for future contracts with the City of Avondale that contain federal assistance. The Prime Contractor may be held liable to the City of Avondale for any forfeiture of funds or damages caused by delay in the award or performance of the contract resulting from the Contractor's non-compliance.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use false, fraudulent or deceitful statements or representations, the City of Phoenix reserves the right under the provisions of 49 CFR Part 26.107(b) to report such actions to the USDOT. The USDOT may, at its discretion, initiate suspension or debarment proceedings against the firm.

B. **Records Requirements** - During the performance of the work under this Contract, the Prime Contractor shall keep such records as are necessary to determine compliance with its DBE utilization obligations. Records to be kept by the Prime Contractor will include an up-to-date listing of all DBE and non-DBE contractors, the type of work being performed by subcontractors, and the actual dollar value of such work, services and procurement.

Notice shall be made in writing to the City of Phoenix Public Transit Department at any time during the Contract period that the Prime Contractor anticipates that the DBE requirements on the Contract will not be achieved. The notice shall also include: (1) the progress and efforts being made to seek out DBEs for work under the Contract and, (2) documentation of all correspondence, contacts, telephone calls, etc., made to obtain the services of DBEs on the project.

C. **Subcontracts** - The Prime Contractor shall enter into, or make good faith efforts to enter into, a contracting arrangement with each DBE firm listed on Attachment B of their bid submittal. Copies of all DBE subcontracts shall be submitted to the City of Phoenix Public Transit Department as a matter of compliance.

D. **Timely Reporting** - During the Contract period, the Prime Contractor shall submit timely reports related to DBE subcontracts and other business transactions executed with DBEs with respect to the Contract. The reports shall be in such a form, manner, and content as prescribed by the City of Phoenix. These reports shall be submitted with each request for payment, and/or by the 10th of each month. Reports should be submitted to the City of Avondale. The monthly report refers to Attachment D and any other document that the City of Phoenix may request related to the DBE subcontracts and utilization.

E. **Certificate of Payment to DBE Firms** - Upon completion of the Contract, the Prime Contractor shall submit a "Certification of Payment to DBE Firms" form (Attachment E) to the City of Phoenix Public Transit Department. This form is to be completed and signed by a duly authorized agent of the Prime Contractor and by all DBE subcontractors, and must verify that the DBE(s) has been paid in full.

Section VII. Required Assurances

The City of Avondale has agreed to abide by the assurance found in 49 CFR Part 26.13(a) as required by the U. S. Department of Transportation. As a condition of this agreement, the City of Avondale shall require each contract signed by the City with contractors, and each subcontract signed by the contractor with a subcontractor, to include the following assurance:

"The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the City of Avondale deems appropriate."

ATTACHMENT A

LETTER OF INTENT TO PERFORM AS A SUBCONSULTANT/SUBCONTRACTOR/SUPPLIER

(TO BE COMPLETED BY THE DBE SUBCONTRACTOR/SUPPLIER)

PROJECT DESCRIPTION: **PROJECT NUMBER:**

TO: _____
(Insert name of prime contractor or general bidder)

1. The undersigned is certified as a DBE as of the date of this bid with the following agency:

   ___ City of Phoenix Equal Opportunity Dept.

   ___ Arizona Unified Certification Program (please provide agency name and complete Attachment C)

2. The undersigned is prepared to perform the following scope(s) of work on the above referenced project:

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY UNIT PRICE OR HOURLY RATE (TRUCKING, HAULING, UNIFORMED OFFICERS, ETC.)			
Description	**Unit/Hour Estimate**	**Unit/Hourly Price**	**Total Minimum Contract Amount**
			$

COMPLETE THIS PORTION IF SCOPE OF WORK IS NOT BID BY UNIT PRICE OR HOURLY RATE	
Description	**Total Bid Amount**
	$

3. The undersigned affirms that of the trucking/hauling work quoted above, the following applies:

   Total Minimum Contract Amount $_____
   Percentage Subcontracted to Non-DBE Trucking Firms %____
   Brokerage Fee Charged to Non-DBE Trucking Firms %____

4. The undersigned affirms the amount of fees and commissions for work quoted above is as follows:

   Unit Price Bid $_____ Fees/Commissions Portion of Bid $_____

5. The undersigned will sublet and/or award $_____ of work bid to a non-DBE firm

6. The undersigned will sublet and/or award $ _____ of work bid to another certified DBE firm

On the _____ day of _____, 200____, by signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the prime contractor receive award of this contract from the City of Avondale.

_____ _____
(Print DBE Firm Name) (Phone Number)

_____ _____
(Authorized Signature) (Print Name and Title)

ATTACHMENT B
PROPOSED DBE PARTICIPATION
(TO BE COMPLETED BY THE PRIME CONTRACTOR/CONSULTANT)

NAME OF BIDDER _____ **PROJECT DESCRIPTION** _____

DBE FIRM NAME	PRINCIPAL CONTACT	ADDRESS/PHONE	SCOPE OF WORK	$ VALUE OF WORK	$ VALUE OF DBE UTILIZATION APPLIED TOWARD GOAL
				TOTAL	

NOTE: IF LISTING TRUCKING/HAULING, UNIFORMED POLICE OFFICERS, SUPPLIERS, OR OTHER SCOPES OF WORK THAT MAY BE SUBJECT TO DBE UTILIZATION LIMITATIONS, PLEASE REFER TO THE SPECIFICATION DOCUMENTS FOR INSTRUCTIONS

THE TOTAL PROPOSED DBE UTILIZATION LISTED ABOVE IS $_____ OR _____ % OF THE BASE BID AMOUNT $_____.

THE UNDERSIGNED HEREIN AFFIRMS THAT THE PRIME CONTRACTOR WILL ENTER INTO A FORMAL AGREEMENT WITH THE DBE CONSULTANTS/CONTRACTORS/SUPPLIERS LISTED HEREIN CONDITIONED UPON THE EXECUTION OF A CONTRACT WITH THE CITY OF AVONDALE.

Signed By _____ Title _____ Date _____

ATTACHMENT C

IDENTIFICATION STATEMENT FOR DISADVANTAGED BUSINESS ENTERPRISES

(TO BE COMPLETED BY ANY DBE CERTIFIED BY A MEMBER OF THE ARIZONA UNIFIED CERTIFICATION PROGRAM OTHER THAN THE CITY OF PHOENIX)

The undersigned herein affirms that the firm submitting this statement has qualified as a Disadvantaged Business Enterprise and holds a current DBE certification from a member of the Arizona Unified Certification Program other than the City of Phoenix as follows:

DBE CERTIFYING AGENCY: _____ PHONE #: _____

EXPIRATION DATE OF CURRENT DBE CERTIFICATION: _____, 200____

DBE BUSINESS NAME: _____

DBE PRINCIPAL BUSINESS ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ PHONE #: (____)_____

DBE QUALIFYING OWNER: _____ TITLE _____

LICENSES HELD BY DBE FIRM: _____

ISSUED BY: _____

SERVICES/WORK/PRODUCTS PROVIDED: _____

SIGNED AND DATED this _____ day of _____, 200_____

_____ _____

Authorized Signature Print Name and Title

FOR ADDITIONAL INFORMATION ON THE COMPLETION OF THIS FORM, PLEASE CONTACT THE CITY OF PHOENIX PUBLIC TRANSIT DEPARTMENT AT (602) 534-6284

ATTACHMENT D

CITY OF PHOENIX PUBLIC TRANSIT DEPARTMENT
COMPLIANCE AND CONTRACTS DIVISION
CONTRACTOR'S STATEMENT OF DBE UTILIZATION

SHEET ____ OF ____

(1) PAY REQUEST NO._____ (2) REPORT PERIOD FROM _____ TO _____

(3) PROJECT NAME _____ (4) PROJECT NO. _____ (5) BASE BID $_____

(6) CONTRACT NO. _____ (7) REQUIRED DBE UTILIZATION _____% (8) PROPOSED DBE UTILIZATION_____%

(9) DBE NAME REPRESENTATIVE NAME & TELEPHONE NUMBER	(10) CLASS OF WORK	(11) CONTRACT AMOUNT	(12) CONTRACT ADJUSTMENTS	(13) REVISED CONTRACT AMOUNT	(14) AMOUNT EARNED THIS PERIOD	(15) AMOUNT EARNED TO DATE	(16) AMOUNT RETAINED THIS PERIOD	(17) AMOUNT RETAINED TO DATE	(18) AMOUNT PAID TO DBE THIS PERIOD	(19) AMOUNT PAID TO DBE TO DATE	(20) % OF CONTRACT COMPLETE TO DATE
(21) DBE TOTALS											

(22) CONTRACTOR _____ (23) AUTHORIZED SIGNATURE _____ (24) DATE _____

(25) PERCENTAGE OF TOTAL CONTRACT COMPLETED TO DATE _____%

ATTACHMENT E
CITY OF PHOENIX CERTIFICATION OF PAYMENT TO DBE FIRMS
(TO BE COMPLETED BY THE PRIME CONTRACTOR AND DBE SUBCONTRACTOR)

PRIME CONTRACTOR AFFIDAVIT:

The undersigned, having contracted as the prime contractor on Project # _____, hereby certifies that full payment has been made to the DBE subcontractor cited below. The total value of all payments made to the DBE firm for materials and/or work performed on this project contract is as follows:

DBE Subcontractor: _____ Total Amount Paid: $ _____

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three (3) years from the project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the prime contractor, all documentation supporting the contractor's position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By: _____ _____

Authorized Agent for Prime Contractor (Print Name and Title)

Date: _____

DBE SUBCONTRACTOR AFFIDAVIT:

The undersigned DBE subcontractor/supplier/manufacturer hereby certifies that a contract was entered into with the above named prime contractor to perform work or provide materials on the project cited in this document. I further certify that the total amount of payments received as provided herein by the prime contract is accurate and unchallenged.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OF FEDERAL LAWS, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By: _____ _____

Authorized Agent for DBE Subcontractor (Print Name and Title)

Date: _____

FOR ADDITIONAL INFORMATION ON THE COMPLETION OF THIS FORM, PLEASE CONTACT THE CITY OF PHOENIX PUBLIC TRANSIT DEPARTMENT AT (602) 534-6284

EXHIBIT M
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Davis-Bacon Provisions]

See following pages.

Regulations, Part 3: Payment and Reporting of Wages Applicable to Federally Financed and Assisted Construction Contracts

Title 29, Part 3 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1243
(Reissued March 1981)
(Reprinted December 1986)

Part 3 Contractors and Subcontractors on Public Building or Public Work Financed In Whole or In Part by Loans or Grants from the United States

Sec.	Name
3.1	Purpose and scope.
3.2	Definitions.
3.3	Weekly statement with respect to payment of wages.
3.4	Submission of weekly statements and the preservation and inspection of weekly payroll records.
3.5	Payroll deductions permissible without application to or approval of the Secretary of Labor.
3.6	Payroll deductions permissible with the approval of the Secretary of Labor.
3.7	Applications for the approval of the Secretary of Labor.
3.8	Action by the Secretary of Labor upon applications.
3.9	Prohibited payroll deductions.
3.10	Methods of payment of wages.
3.11	Regulations part of contract.

Authority: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14, of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 276c.

Source: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

29 CFR 3.1 - Purpose and scope.

- **Section Number:** 3.1
- **Section Name:** Purpose and scope.

This part prescribes ``anti-kickback'' regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

29 CFR 3.2 - Definitions.

- **Section Number:** 3.2
- **Section Name:** Definitions.

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.
[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

29 CFR 3.3 - Weekly statement with respect to payment of wages.

- **Section Number:** 3.3
- **Section Name:** Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, ``Statement of Compliance'', or on an identical form on the back of WH 347, ``Payroll (For Contractors Optional Use)'' or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.
[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982]

29 CFR 3.4 - Submission of weekly statements and the preservation and inspection of weekly payroll records.

- **Section Number:** 3.4
- **Section Name:** Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under Sec. 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

29 CFR 3.5 - Payroll deductions permissible without application to or approval of the Secretary of Labor.

- **Section Number:** 3.5
- **Section Name:** Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit of other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the ``reasonable cost'' of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under Sec. 516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

29 CFR 3.6 - Payroll deductions permissible with the approval of the Secretary of Labor.

- **Section Number:** 3.6
- **Section Name:** Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Sec. 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

29 CFR 3.7 - Applications for the approval of the Secretary of Labor.

- **Section Number:** 3.7
- **Section Name:** Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under Sec. 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of Sec. 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Sec. 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

29 CFR 3.8 - Action by the Secretary of Labor upon applications.

- **Section Number:** 3.8
- **Section Name:** Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of Sec. 3.6; and shall notify the applicant in writing of his decision.

29 CFR 3.9 - Prohibited payroll deductions.

- **Section Number:** 3.9
- **Section Name:** Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under Sec. 3.6 are prohibited.

29 CFR 3.10 - Methods of payment of wages.

- **Section Number:** 3.10
- **Section Name:** Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

29 CFR 3.11 - Regulations part of contract.

- **Section Number:** 3.11
- **Section Name:** Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see Sec. 5.5(a) of this subtitle.

S:\LC\PART 3\Part 3

Federal Regulations: Part 5

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction

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Title 29, Part 5 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH – 1244
(Revised October 1986)

Part 5 Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act.

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Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

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Subpart A-Davis-Bacon and Related Acts Provisions and Procedures

29 CFR 5.1 - Purpose and scope.

- **Section Number:** 5.1
- **Section Name:** Purpose and scope.

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to Subpart A appear at 61 FR 19984, May 3, 1996.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).

2. Copeland Act (40 U.S.C. 276c).

3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).

5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).

6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).

7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the

amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 .S.C. 450e). 14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

14. Indian Health Care Improvement Act (sec. 303 (b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also ec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110,

802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec.126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). Note.-- Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

29 CFR 5.2 - Definitions.

- **Section Number:** 5.2
- **Section Name:** Definitions.

(a) The term Secretary includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term Federal agency means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in Sec. 5.1.

(d) The term Agency Head means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term labor standards as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in Sec. 5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term United States or the District of Columbia means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term contract means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in Sec. 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms construction, prosecution, completion, or repair mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation--

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv) (A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not ``construction, prosecution, completion, or repair'' (see Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.), 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term public building or public work includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term site of the work is defined as follows:

(1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work as defined in paragraph (l)(1) of this section;

(3) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as

stated in paragraph (l)(1) of this section, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) Apprentice means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of ``helper'' will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A ``helper'' classification will be added to wage determinations pursuant to Sec. 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide

any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term wage determination includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of Sec. 1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69674, Nov. 20, 2000; 65 FR 80267, Dec. 20, 2000]

29 CFR 5.5 - Contract provisions and related matters.

- **Section Number:** 5.5
- **Section Name:** Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-

Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the

full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a ``Statement of Compliance,'' signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under Sec. 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the ``Statement of Compliance'' required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits

for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the conract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the

District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140, 1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140, 1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69674, Nov. 20, 2000]

29 CFR 5.6 - Enforcement.

- **Section Number:** 5.6
- **Section Name:** Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by Sec. 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in Sec. 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of Sec. 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by Sec. 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of Sec. 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to Sec. 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by Sec. 5.5 and the applicable statutes listed in Sec. 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the ``Freedom of Information Act'' (5 U.S.C. 552, see 29 CFR part 70) and the ``Privacy Act of 1974'' (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in Sec. 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in Sec. 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers,

and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

29 CFR 5.7 - Reports to the Secretary of Labor.

- **Section Number:** 5.7
- **Section Name:** Reports to the Secretary of Labor.

(a) Enforcement reports. (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as ``letters of notice''), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under Sec. 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) Semi-annual enforcement reports. To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) Additional information. Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) Contract termination. Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in Sec. 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

29 CFR 5.8 - Liquidated damages under the Contract Work Hours and Safety Standards Act.

- **Section Number:** 5.8

  Section Name: Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor of subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) Findings and recommendations of the Agency Head. The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986]

29 CFR 5.9 - Suspension of funds.

- **Section Number:** 5.9
- **Section Name:** Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in Sec. 5.5 and the applicable statutes listed in Sec. 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

29 CFR 5.10 - Restitution, criminal action.

- **Section Number:** 5.10
- **Section Name:** Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in Sec. 5.5 and the applicable statutes listed in Sec. 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

29 CFR 5.11 - Disputes concerning payment of wages.

- **Section Number:** 5.11
- **Section Name:** Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to Sec. 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or Sec. 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefore, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the

letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under Sec. 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with Sec. 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

29 CFR 5.12 - Debarment proceedings.

- **Section Number:** 5.12
- **Section Name:** Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in Sec. 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in Sec. 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor

standards provisions of the statutes listed in Sec. 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to Sec. 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in Sec. 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefore, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in Sec. 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under Sec. 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in Sec. 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in Sec. 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no

contract shall be awarded to ``any firm, corporation, partnership, or association in which such persons or firms have an interest.'' Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in Sec. 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to ``any firm, corporation, partnership, or association'' in which such contractor or subcontractor has a ``substantial interest.'' A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefore, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in Sec. 5.1. No particular form is prescribed for the submission of a request under this section.

(4) Referral to the Chief Administrative Law Judge. The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(5) Referral to the Administrative Review Board. If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

29 CFR 5.13 - Rulings and interpretations.

- **Section Number:** 5.13
- **Section Name:** Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in Sec. 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

29 CFR 5.14 - Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

- **Section Number:** 5.14

  Section Name: Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in Sec. 5.1 unless the statute specifically provides such authority.

29 CFR 5.15 - Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

- **Section Number:** 5.15

  Section Name: Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) General. Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) Exemptions. Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) Tolerances. (1) The ``basic rate of pay'' under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and Sec. 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the ``regular rate'' under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the ``basic rate'' under the Contract Work Hours and Safety Standards Act.

(3) See Sec. 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in Sec. 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) Variations. (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1\1/2\ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1215-0140 and 1215-0017. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1215-0017)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996]

29 CFR 5.16 - Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

- **Section Number:** 5.16
- **Section Name:** Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of Sec. 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of Sec. 5.5(a)(4)(ii)--including those relating to registration of trainees, permissible ratios, and wage rates to be paid--shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or

approved and certified by ETA pursuant to Sec. 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

29 CFR 5.17 - Withdrawal of approval of a training program.

- **Section Number:** 5.17
- **Section Name:** Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Subpart B Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

29 CFR 5.20 - Scope and significance of this subpart.

- **Section Number:** 5.20
- **Section Name:** Scope and significance of this subpart.

Source: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in Sec. 5.12.

29 CFR 5.22 - Effect of the Davis-Bacon fringe benefits provisions.

- **Section Number:** 5.22
- **Section Name:** Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in Sec. 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of Sec. 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms ``wages'', ``scale of wages'', ``wage rates'', ``minimum wages'' and ``prevailing wages'', as used in the Davis-Bacon Act.

29 CFR 5.23 - The statutory provisions.

- **Section Number:** 5.23
- **Section Name:** The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term ``wages'', ``scale of wages'', ``wage rates'', ``minimum wages'', and ``prevailing wages'' shall include--
(1) The basic hourly rate of pay; and
(2) The amount of--
(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and
(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits *

29 CFR 5.24 - The basic hourly rate of pay.

- **Section Number:** 5.24
- **Section Name:** The basic hourly rate of pay.

The basic hourly rate of pay'' is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

29 CFR 5.25 - Rate of contribution or cost for fringe benefits.

- **Section Number:** 5.25
- **Section Name:** Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See Sec. 5.5(a)(1)(i) and (iii).

29 CFR 5.26 - ``* * * contribution irrevocably made * * * to a trustee or to a third person''.

- **Section Number:** 5.26
- **Section Name:** ``* * * contribution irrevocably made * * * to a trustee or to a third person''.

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The ``third person'' must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

29 CFR 5.27 - ``* * * fund, plan, or program''.

- **Section Number:** 5.27
- **Section Name:** ``* * * fund, plan, or program''.

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase ``fund, plan, or program'' is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

29 CFR 5.28 - Unfunded plans.

- **Section Number:** 5.28
- **Section Name:** Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;
(2) It represents a commitment that can be legally enforced;
(3) It is carried out under a financially responsible plan or program; and
(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words ``reasonably anticipated'' are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be ``bona fide'' and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by Sec. 5.5(a)(1)(iv).

29 CFR 5.29 - Specific fringe benefits.

- **Section Number:** 5.29
- **Section Name:** Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with

requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term ``other bona fide fringe benefits'' is the so-called ``open end'' provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be ``bona fide'' (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is ``bona fide'' in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under Sec. 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are ``bona fide'' in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under Sec. 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

29 CFR 5.30 - Types of wage determinations.

- **Section Number:** 5.30
- **Section Name:** Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

Classes	Basic hourly rates	Fringe benefits payments: Health and welfare	Pensions	Vacations	Apprenticeship program	Others
Laborers	$3.25	.....	.....	.....	.....	.....
Carpenters	4.00	$0.15	.....	.....	.....	.....
Painters	3.90	.15	$0.10	$0.20	.....	.....
Electricians	4.85	.10	.15	.....	.....	.....
Plumbers	4.95	.15	.20	.....	$0.05	.....
Ironworkers	4.60	.....	.....	.10	.....	.....

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

29 CFR 5.31 - Meeting wage determination obligations.

- **Section Number:** 5.31
- **Section Name:** Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for ``bona fide'' fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of Sec. 5.30, the obligations for ``painters'' will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for ``bona fide'' fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for ``painters'' in the illustration in paragraph (c) of Sec. 5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for ``bona fide'' fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for ``painters'' in the illustration in paragraph (c) of Sec. 5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for ``painters'' may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

29 CFR 5.32 - Overtime payments.

- **Section Number:** 5.32
- **Section Name:** Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase ``contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program'' was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit

contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

EXHIBIT N
TO THE
DESIGN-BUILD AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
HUNTER CONTRACTING CO.

[Wage Determination]

See following pages.

GENERAL DECISION: AZ20070002 03/09/2007 AZ2

Date: March 9, 2007
General Decision Number: AZ20070002 03/09/2007

Superseded General Decision Number: AZ20030002

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal and Yuma Counties in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	02/09/2007
1	02/23/2007
2	03/09/2007

CARP0408-003 07/01/2005

	Rates	Fringes
Carpenters: (Including Cement Form Work)		
Carpenter.....	$ 21.10	5.17
Piledrivermen.....	$ 21.23	5.17

ELEC0570-001 12/01/2006

PIMA, PINAL [Remaining Southern Area], and YUMA COUNTIES

	Rates	Fringes
Electrician/Wireman		
Zone 1 (Base Rate).....	$ 20.20	16.5%+4.50

ZONE DEFINITIONS:

Zone 1: 0 to 29 miles radius from City Hall in the following cities: Tucson, Benson, Bisbee, Clifton, Douglas, Morenci, Nogales, Parker, Safford, Sierra Vista, Wilcox & Yuma

Zone 2: More than 29 miles to 46 miles - add $1.25 to Zone 1 rate

Zone 3: More than 46 miles - add $3.75 to Zone 1 rate

FRINGES:
The fringe of 14.4% is figured on the base amount of $19.15 excluding any additional zone pay.

ELEC0640-001 06/01/2005

COCONINO; MARICOPA; MOHAVE COUNTIES; and the following portion of PINAL COUNTY (Area lying North andWest of the boundary line beginning at a point where Papago Indian Reservation Road No.15 crosses the Pima-Pinal County line, then extending in a Northeasterly direction on Papago Indian Reservation Road No. 15 to the intersection with Highway FAS-267, extending North on Highway FAS-267 to the intersection with the Florence Canal, North and East on the Florence Canal to the intersection of the line "Second Guide Meridian East" then North to the Pinal-Maricopa County lines)

	Rates	Fringes
Electrician/Wireman.....	$ 22.50	3%+6.04

ELEC0769-001 05/01/2006

	Rates	Fringes
Line Construction:		
Cable Splicer.....	$ 33.11	19%+4.78
Groundman.....	$ 19.26	19%+4.78
Lineman.....	$ 33.21	19%+4.78
Powderman.....	$ 23.42	19%+4.78
Technician, Crane 80 Ton & over, Pilot.....	$ 32.27	19%+4.78

Equipment Operator: 75% of Lineman rate.
HD Equipment Operator: 85% of Lineman rate.
Mechanic: 75% of Lineman rate.

ENGI0428-011 06/01/2006

	Rates	Fringes
Power Equipment Operator		
Group 1.....	$ 18.15	8.24
Group 2.....	$ 21.42	8.24
Group 3.....	$ 22.50	8.24
Group 4.....	$ 23.53	8.24

GROUP 1: Forklift; Oiler; Roller (Dirt); Small self-propelled Compactor; Tractor (wheel type and D-5 & under).

GROUP 2: Backhoe under 1 cu yd; Crane under 15 tons; Drilling Machine (including water wells); Pneumatic-Tired Scraper; Roller (asphalt); Self-propelled compactor; Skip Loader over 3cu yd to 6 cu yd.

GROUP 3: backhoe over 1 cu yd to 10 cu yd; Boring Machine; Crane over 15 tons to 100 tons; Motor Grader; Overhead Crane; Skip Loader 6 to 10 cu yd; Paving Machine; Tower Crane.

GROUP 4: Crane 100 tons and over; Skip Loader 10 cu yd or more Multiple-Unit Earth Equipment (Holland Loader etc), Tractor (track or tired type) Two Units - $0.50 per hour over base rate, and $1.00 per hour for each additional unit.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive $0.01 per foot per hour over 80 ft in addition to regular rate of pay.

Premium pay for performing hazardous waste removal $0.50 per hour over base rate.

IRON0075-006 08/01/2006

	Rates	Fringes
Ironworker, Rebar		
Zone 1.....	$ 23.00	14.80

ZONE 1: 0 to 50 miles from City Hall in Phoenix or Tucson
ZONE 2: 50 to 100 miles -add $1.50 to basic hourly rate
ZONE 3: 100 to 150 miles - add $2.75
ZONE 4: Over 150 miles - add $4.00

LABO0383-006 06/01/2006

	Rates	Fringes
Laborers		
(1) General Laborer;		
Cleanup Laborer.....	$ 14.26	4.10
(4) Asphalt Raker/Ironer;		
Jackhammer.....	$ 16.73	4.10
(5) Form Setter.....	$ 17.57	4.10

$0.50 per hour premiuim for performing hazardous waste removal

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SUAZ2004-009 03/11/2004

	Rates	Fringes
Cement Mason/Finisher.....	$ 17.88	2.24
Laborers		
Concrete Worker.....	$ 12.22	2.86
Concrete/Asphalt Saw.....	$ 14.27	0.74
Fence Erector, Chain Link...	$ 10.27	2.85
Flagger.....	$ 12.48	0.00
Grade Checker.....	$ 12.45	0.00
Guard Rail Installer.....	$ 13.97	0.00
Pipelayer.....	$ 13.72	2.88
Power Equipment Operator		
Bulldozer.....	$ 17.35	4.18
Gradall.....	$ 23.02	1.97
Grade Checker/Setter.....	$ 15.00	4.17
Guard Rail Punch.....	$ 18.61	3.68
Heavy Duty Repairman /		
Welder.....	$ 21.79	4.31
Screedman.....	$ 14.50	4.15

Truck Driver
Belly Dump..... $ 13.00 0.00
---
* TEAM0104-005 06/01/2006

	Rates	Fringes
Truck Driver		
(2) 2-3 Axle dump; Water Truck under 2500 gallons....	$ 16.58	3.30+a
(3) 4 axle dump.....	$ 16.96	3.30+a
(4) 5 axle dump; Water Trucks 2500 gal to 3900 gal.	$ 17.56	3.30+a
(5) 6-axle dump; Water Trucks 3900 gal and over....	$ 17.79	3.30+a
(6) 7 axle dump.....	$ 18.34	3.30+a

FOOTNOTE:
a. Health & Welfare $586.36 per month.

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

12042e

OFFICIAL RECORDS OF THE
MARICOPA COUNTY RECORDER
HELEN PURCELL
20060448385,04/04/2006 08:48,

ELECTRONIC RECORDING
IGAMCTRANSIT-8-1-1--,N

When recorded mail to:

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

INTERGOVERNMETAL AGREEMENT

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT
ON BEHALF OF
ESTRELLA MOUNTAIN COMMUNITY COLLEGE

RELATING TO THE
DESIGN, CONSTRUCTION AND OPERATION OF A TRANSIT CENTER

RESOLUTION NO 2520-05

Passed and Adopted by the Mayor and Council of the City of Avondale
the 24th day of October, 2005

12042C
OFFICE OF GENERAL COUNSEL
RECEIVED

NOV 04 2005

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into on October 24, 2005, by and between the City of Avondale, an Arizona municipal corporation (the "City") and Maricopa County Community College District (the "District"), on behalf of Estrella Mountain Community College (the "College"). The City and the District are referred to herein collectively as the "Parties" and individually as a "Party".

RECITALS

A. The City has received funding in 2004 and 2005 for the development of transit centers from the Arizona Department of Transportation under the Local Transportation Assistance Fund II (the "LTAF II") program.

B. The City and the District have identified a need to enhance mass transit opportunities at the College by creating a bus transit facility (the "Facility") on real property owned by the District at the College (the "Project Site"), as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by reference.

C. The City and the District desire to jointly develop the Facility on the Project Site whereby the City will be responsible for the design and construction of the Facility.

D. The City and the District are authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-951 *et seq.*

E. The Parties desire to define the terms and conditions under which the Facility is to be designed, constructed, financed, operated and maintained.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the promises and covenants set forth below, the Parties agree as follows:

1. Development of the Facility.

A. Ownership of the Property. The District shall retain ownership of the Project Site. No course of conduct or actions by the City will entitle the City to any ownership, title, or interest in any of the real property associated with the Project Site. On completion of the Facility, the District shall own it.

B. Grant of Perpetual Licenses. The District hereby grants to the City, its employees, agents, guests, customers, invitees and licensees, a perpetual license in, on, over, and across the Project Site and the District property adjacent to the Facility, for design and construction of the Facility and thereafter the use of it by the City, and its employees, agents,

guests, customers, invitees and licensees, in accordance with and subject to the terms of this Agreement. This license will cease if, after the District gives the City 60 days' written notice, the City continues to use the Project Site and the District property for something other than a bus transit facility.

C. Architectural Review Procedures. The Parties shall jointly prepare the master development plan for the Facility consistent with the master plan for the College. The City shall be responsible for the selection of the design and engineering firms and be responsible for providing the design. The plans, specifications, and other construction documents for the Facility shall be subject to joint review and approval by the Parties. The City shall provide the District the opportunity to comment on all items that affect the design of the Facility. Coordination shall include meetings and information exchanges between corresponding personnel at all levels. The Parties shall jointly review and comment on all engineering studies, technical data, and specifications provided for the design and construction of the Project under a schedule determined by the parties to ensure timely progress on and completion of improvements in accordance with the terms herein. If the City receives no comments on construction drawings and specifications within thirty (30) days following delivery to the District, the District will be deemed to have approved the construction drawings and specifications (such approved construction drawings and specifications are referred to herein as the "Construction Plans").

D. Contractor Selection. The work and improvements within the Facility shall be completed in accordance with applicable law. The City shall administer the construction contract(s) necessary for the Facility. The City shall have the usual rights of the owner of a public construction contract, including the authority to approve changes (subject to the District's approval with respect to the Facility) and make payments. The City shall enter into all construction, supply and other contracts for the work to be performed and materials to be supplied in connection with the Facility.

E. Construction. The Facility shall be constructed by the City in substantial conformity with the Construction Plans; provided, however that the total cost of the Facility shall not exceed $190,000.00, unless modified at the District's sole cost and expense as set forth below. If the cost of construction based on the City's Construction Plans exceeds $190,000, the City shall be solely responsible for those additional costs. The District shall have the right to require and pay for enhancements and upgrades to the Facility. If reasonably feasible, any such enhancements and/or upgrades required by the District shall be constructed or installed as "add-ons" or "change orders" to existing contracts for the Facility. The City shall furnish a representative to perform the usual and customary functions of a Project Manager.

F. Inspection and Acceptance of Facility. The City shall be responsible for conducting all mandated inspections of the Facility.

2. Facility Use. The City, the District and the public shall be entitled to use the Facility. The District specifically agrees and understands that such use by the City will include access to the Facility by vehicles, including buses, owned and operated by entities with which the City contracts for mass transit services.

3. Operation, Maintenance and Repair.

A. Facilities Inspection, Repairs and Planned Maintenance Needs. The District shall bear all costs necessary for preventative maintenance, required maintenance and repairs to the Facility. The District shall, not less than quarterly, and more often as needed, review planned maintenance, conduct inspections of the Facility and develop preventative maintenance plans, as well as identify any maintenance needs, repairs and associated costs. All work associated with any and all repairs and maintenance needs for the Facility shall be completed and/or coordinated by the District, through its usual and customary procurement process. In the event that the District fails to meet its maintenance obligations as set forth herein, the City may, in its sole discretion, complete, or cause to be completed, such maintenance and repairs, the cost of which shall be reimbursed to the City by the District within 30 days of notice thereof from the City. If the Facility is damaged, and the District believes that the damage is due to the acts or omissions of the City or its contractors, the District shall provide prompt written notice to the City. The parties shall meet within five working days of the date of the notice to discuss liability and repair issues. If the parties are unable to agree on those issues, and it is determined through an administrative or judicial proceeding that the damage was caused by the acts or omissions of the City or its employees, officers, officials, agents or contractors, the City shall reimburse the District for the reasonable costs of repairs or reconstruction of the Facility.

B. Custodial Services. The District shall bear all costs necessary for custodial services needed for the Facility. In the event that the District fails to meet its maintenance obligations as set forth herein, the City may, in its sole discretion, complete, or cause to be completed, such maintenance and repairs, the cost of which shall be reimbursed to the City by the District within 30 days of notice thereof from the City.

C. Utilities. The District shall bear all costs necessary for all utility services for the Facility including, but not limited to, electrical, gas, water and phone services, as applicable.

4. Indemnification and Insurance.

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

B. Insurance. The City shall require, as a part of any contract for construction of the Facility, that builder's risk insurance is maintained in the amount of 100% of the replacement cost of the Facility at all times during the construction thereof. Thereafter, the District shall maintain in full force and effect for the entire term of this Agreement such policies of insurance as necessary to cover the full replacement cost of the Facility and both parties shall maintain in full force and effect for the entire term of this Agreement commercial liability insurance from a reliable insurance company authorized to transact business in Arizona in the amount of not less than $1,000,000 per occurrence for bodily injury or death.

5. Miscellaneous.

A. Term. The term of this Agreement shall be five years (commencing on the date hereof), unless it is sooner terminated (i) in accordance with subsection 5(B) below, or (ii) by mutual written consent of the Parties. This Agreement shall thereafter automatically renew for successive one-year terms, unless either Party gives notice to the other not less than 30 days prior to the end of the then-current term that it does not wish to renew this Agreement.

B. Termination.

(1) Default. In addition to any lawfully available remedies for breach of this Agreement, this Agreement may be terminated by either Party for material cause 60 days after written notice is given to the defaulting Party specifying the cause of the breach if such default is either not cured within said 60-day period or the cure thereof is not commenced within such 60 day period and thereafter continuously and diligently pursued to conclusion. In no event shall such cure period extend longer than 120 days.

(2) Cancellation. Each Party reserves all rights that it may have to cancel this Agreement for possible conflicts of interest under ARIZ. REV. STAT. § 38-511, as amended.

C. Assignment. Neither Party may assign, sublet, mortgage or encumber any right or interest under this Agreement without the prior written consent of the other Party, which consent may be withheld by the other Party in its absolute and sole discretion.

D. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the Party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

If to the City:
City of Avondale
11465 West Civic Center Drive, Suite 220
Avondale, Arizona 85323-6809
Facsimile: 623-478-3802
Attn: Charles P. McClendon, City Manager

With copy to:
GUST ROSENFELD, P.L.C.
201 E. Washington, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: 602-254-4878
Attn: Andrew J. McGuire, Esq.

If to the District:
Randy Mauldin
Director of College Facilities Planning and Development
3000 North Dysart Road
Avondale, AZ 85323
Phone: 623-935-8483

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

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

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

G. Attorneys' Fees. In the event of any litigation or arbitration arising out of this Agreement, the substantially prevailing Party in such litigation or arbitration shall be entitled to recover its attorneys' fees, expert witness fees and other costs of litigation.

H. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

I. Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to the subjects hereof and supersedes all prior negotiations and agreement.

J. Amendments. This Agreement may be amended only by an instrument in writing signed by the Parties.

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

L. Headings. Headings of this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

M. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

N. Recordation of Agreement: Effective Date. This Agreement shall be filed with the Maricopa County Recorder pursuant to ARIZ. REV. STAT. § 11-952(G) upon its

execution. This Agreement shall be effective as of the later to occur of the date first set forth above and the date of filing of this Agreement as provided in this Section.

O. Time of Essence. Time is of the essence with respect to the performance of each and every term, condition, and obligation of this Agreement

P. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

Q. Nondiscrimination. Neither party shall illegally discriminate in either the provision of services, or in employment, against any person because of sex, race, disability, national origin, veteran's status, sexual preference or religion. Each party agrees to comply with all applicable federal and state laws, rules, regulations, and executive orders relating to non-discrimination, affirmative action and equal employment opportunity.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

Charles P. McClendon, City Manager

"**District**"

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

Margaret E. McConnell
Assistant General Counsel 11-28-05

ATTEST:

Linda M. Farris, City Clerk

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

Andrew McGuire
Avondale City Attorney

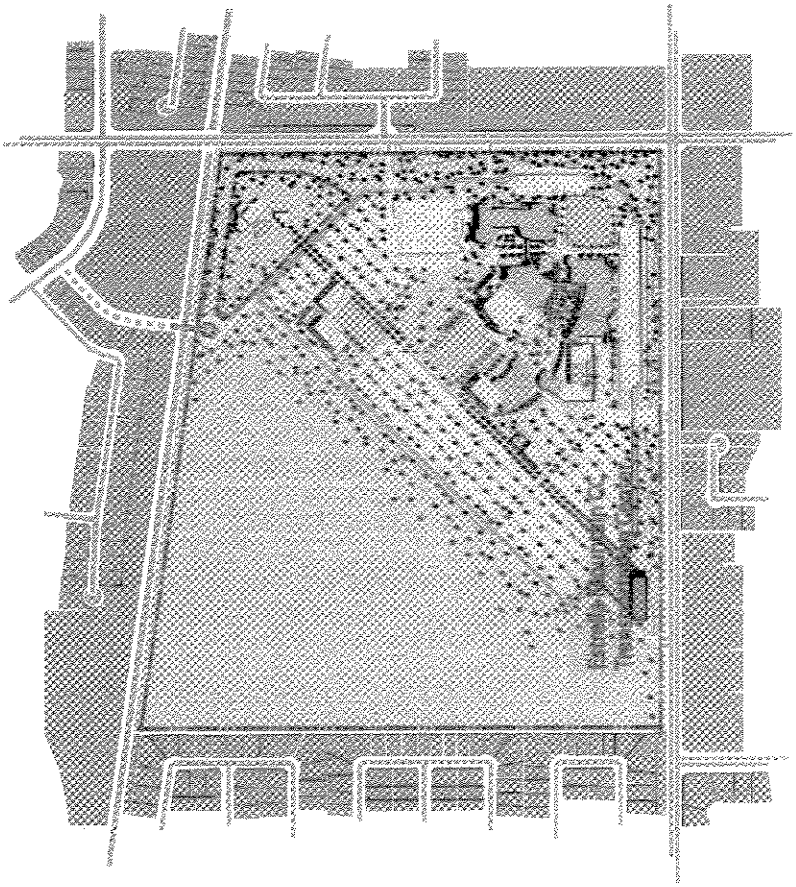
Pete Kushibab
General Counsel
Maricopa Community Colleges

12642C

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
MARICOPA COMMUNITY COLLEGE DISTRICT

[Project Site]

See following pages.



RENDERINGS

As you can see in the following renderings, the Butterfly Transit Center makes a bold statement while simultaneously being sensitive to its surrounding conditions.

The earth bound elements of the site seem just that - solid and extruded from the natural landscape. In initial conversations it was also discussed that these elements might also be constructed by means of rammed earth salvaged from site work on the EMCC campus. Though it was concluded that integrally colored concrete may be the more financially viable alternative.

The shade structures, with their colorful panels, are definitely the most energetic elements of the Butterfly Stop. Their random positioning gives a very organic and natural quality to the site.

AERIAL VIEW FROM THE SOUTHWEST

PRELIMINARY BUTTERFLY CONCEPT

SMITHGROUP
architecture engineering interiors planning

ESTRELLA MOUNTAIN COMMUNITY COLLEGE
MINI BUS CENTER
DESIGN CONSTRUCTION ESTIMATE
AVONDALE ENGINEERING DEPARTMENT

ITEM DESCRIPTION	UNIT	QUAN.	UNIT PRICE	TOTAL
STAGE I – SCOPING (15% Preliminary Design)				
SCOPING COSTS				
SITE TOPOGRAPHIC SURVEY (2%-5% of constr. cost) ***(Enter $0 in Unit Price column if none required)***	LS	1	$10,000.00	$10,000.00
SCOPING DOCUMENT (Scoping Letter, Project Assessment or DCR)	LS	1	$5,000.00	$5,000.00
ENVIRONMENTAL DETERMINATION (Including technical supporting documents)	LS	1	$5,000.00	$5,000.00
HAZARDOUS MATERIALS ASSESSMENT Including heavy metals & asbestos (If an assessment is necessary, anticipate $1,500. ***Enter $0 in Unit Price column if none required)***	LS	1	$0.00	$0.00
SUBTOTAL – PROJECT SCOPING COSTS				$ 20,000
STAGES II, III, IV - DESIGN				
DESIGN COSTS				
PS&E's - Plans, Special Provisions, Cost Estimates & Schedules (10%-20% of construction cost.) (Shall be refunded if project is not constructed)	LS	1	$ 125,000	$125,000.00
GEOTECHNICAL INVESTIGATION (If a report is necessary, anticipate 5% of construction cost) Includes testing, Geotech Report, Materials & Pavement Design Report) ***Enter $0 in Unit Price column if none required.***	LS	1	$5,000.00	$5,000.00
DRAINAGE REPORT (If a report is necessary, anticipate 5% of construction cost) ***Enter $0 in Unit Price column if none required)***	LS	1	$15,000.00	$15,000.00
STORM WATER POLLUTION PREVENTION PLAN (Required if there is over 1 acre of total disturbance, 1% of construction cost) ***Enter $0 in Unit Price column if none required.***	LS	1	$4,000.00	$4,000.00
SUBTOTAL – PROJECT DESIGN COSTS				$ 149,000
STAGE V – CONSTRUCTION				
SITE ACQUISITION & HARDSCAPE CONSTRUCTION				
RIGHT-OF-WAY ACQUISITION (if necessary)	LS	1		$0.00
INSTALLATION OF STORMWATER POLLUTION PREVENTION MEASURES (If over 1 acre of disturbance, 5% of constr. costs) ***Enter $0 in Unit Price column if area of disturbance is less than one acre.***	LS	1	$5,000.00	$5,000.00
SITE PREPARATION (Clearing and grubbing, plant salvage)	LS	1	$20,000.00	$20,000.00
DEMOLITION				
Sawcut	LF			$0.00
Remove Structures and Obstructions	LS	1	$5,000.00	$5,000.00
Remove Fencing	LF			$0.00

ESTRELLA MOUNTAIN COMMUNITY COLLEGE
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Remove Structural Concrete	CY			$0.00
Remove Asphaltic Concrete Pavement	CY	1,750	$6.00	$10,500.00
Remove Concrete Sidewalks, Slabs	CY	250	$10.00	$2,500.00
HAZARDOUS MATERIALS ABATEMENT (If applicable; include heavy metals & asbestos; 5% of construction cost) ***Enter $0 in Unit Price column if none required.***	LS	1		$0.00
UTILITY RELOCATION (If necessary) Only the cost of utilities needing relocation as a direct result of the enhancement project are eligible for federal reimbursement. Because of the costs involved, the undergrounding of overhead utilities is not eligible	LS	1		$0.00
RETAINING WALL (Concrete; SF of face above the footing)	SFF			$0.00
EARTHWORK				
General Excavation	CY	2,700	$10.50	$28,350.00
Drainage Excavation				$0.00
Structural Excavation				$0.00
Structural Backfill				$0.00
Borrow (In Place)				$0.00
CURB & GUTTER	LF	935	$15.00	$14,025.00
AGGREGATE BASE	CY	1,050	$30.00	$31,500.00
PATHWAY OR SIDEWALK MATERIALS				
Concrete	SF	2,000	$7.00	$14,000.00
Colored Concrete		140	$85.00	$11,900.00
Stamped Color Concrete		180	$200.00	$36,000.00
Precast Concrete Pavers				$0.00
Asphaltic Concrete	Ton			$0.00
CROSSWALK ENHANCEMENT				
Concrete Pavers	SF			$0.00
Stamped Asphalt				$0.00
Stamped Concrete				$0.00
Concrete				$0.00
Integral Color Concrete				$0.00
PEDESTRIAN ADA RAMP	SF	1	$2,500.00	$2,500.00
CULVERT EXTENSIONS	LF			$0.00
PEDESTRIAN LIGHTING (Includes conduit and trenching) Street lighting is not eligible for federal reimbursement.	Each	5	$1,200.00	$6,000.00
HANDRAIL				
Standard	LF			$0.00
Decorative				$0.00
SUBTOTAL - SITE ACQUISITION & HARDSCAPE CONSTRUCTION				$ 187,275
LANDSCAPING & IRRIGATION ITEMS				
TREES (Above 15 gallon in size as required per local code or special design requirements)	Each			$0.00
TREES (15 GALLON SIZE)	Each	3	$3,000.00	$9,000.00
TREES (5 GALLON SIZE)	Each			$0.00

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SHRUBS (5 GALLON SIZE)	Each			$0.00
SHRUBS (1 GALLON SIZE)	Each			$0.00
CACTUS (5 GALLON SIZE)	Each			$0.00
MULCH				
Decomposed Granite	CY			$0.00
Organic				$0.00
TOPSOIL	CY			$0.00
SEEDING	Acre			$0.00
TURF SOD	SY			$0.00
BOULDERS	Each			$0.00
IRRIGATION SYSTEM				
Drip	SF	16	$500.00	$8,000.00
Turf		35	$75.00	$2,625.00
SLEEVING FOR IRRIGATION SYSTEM				
Directional Bore	LF	50	$25.00	$1,250.00
Cut and Patch				$0.00
LANDSCAPE HEADER CURB	LF			$0.00
LANDSCAPE ESTABLISHMENT (Typically 4.5% of the cost of landscaping)	LS	1	$30,000.00	$30,000.00
SUBTOTAL – LANDSCAPING & IRRIGATION ITEMS				$ 50,875
SITE FURNISHINGS				
BENCHES	Each			$0.00
SEATWALLS	LF	70	$175.00	$12,250.00
BIKE RACKS	Each			$0.00
TRASH RECEPTACLES	Each	3	$400.00	$1,200.00
DRINKING FOUNTAINS	Each			$0.00
SIGNAGE (Standard Traffic Control)	Each	1	$1,500.00	$1,500.00
TREE GRATES	Each			$0.00
SUBTOTAL – SITE FURNISHINGS				$ 14,950
OTHER CONSTRUCTION ITEMS (List line items)				
1.5" AC Surface Course	ton	225	$100.00	$22,500.00
2" AC Base Course	ton	300	$100.00	$30,000.00
Median Curb & Gutter	lf	640	$20.00	$12,800.00
Bus Shelter	sf	480	$15.00	$7,200.00
Cool Tower	ea	2	$17,500.00	$35,000.00
Cool Tower equipment	ls	1	$20,000.00	$20,000.00
solar lighting	ls	1	$30,000.00	$30,000.00
Shade fixtures	ls	1	$78,000.00	$78,000.00
SUBTOTAL - OTHER CONSTRUCTION LINE ITEMS				$ 235,500
MOBILIZATION AND ADMINISTRATION COSTS				
CONTRACTOR MOBILIZATION (Typically 8% of construction cost)	LS	1	$40,000.00	$40,000.00
TRAFFIC CONTROL (0-8% of construction cost)	LS	1	$8,000.00	$8,000.00
CONSTRUCTION SURVEY & LAYOUT (Typically 1% of construction cost)	LS	1	$25,000.00	$25,000.00

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CONSTRUCTION CONTINGENCIES (Typically 5% of construction cost)	LS	1	$30,000.00	$30,000.00
CONSTRUCTION ADMINISTRATION (Averaging 18% of construction cost)	LS	1	$50,000.00	$50,000.00
SUBTOTAL – MOBILIZATION & ADMINISTRATION COSTS				$ 153,000
TOTAL STAGE V COSTS (CONSTRUCTION)				$ 641,600
ADOT REVIEW FEES	LS	1	$5,000.00	$5,000.00
Contingency Fund = 4% (potential increases in the cost of building materials, etc.)	LS	1	$34,400.00	$34,400.00
TOTAL PROJECT COST (All subtotals + ADOT review fee + Continguency Fund)				$ 850,000

CITY COUNCIL REPORT

SUBJECT:
Resolution 2645-507 - amending the Intergovernmental Agreement with Maricopa County Community College District

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Jess Segovia, Transit Administrator (623)333-1030

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt an amendment to the Intergovernmental Agreement with Maricopa County Community College District (Attachment A) for the design and construction of a Mini Bus Center on the Estrella Mountain Community College (EMCC) campus. The amendment will also allow for the design and construction of a parking lot adjacent to the Mini Bus Center; to be paid for by Maricopa County Community College District.

BACKGROUND:

In 2005, the City of Avondale approached Maricopa County Community College District to install a bus stop shelter on the EMCC campus. On November 24, 2005, City Council approved an amount not to exceed $190,000 for this project (Attachment B). Maricopa County Community College District was unable to contribute any funding to the project at that time. In August 2006, Staff completed a conceptual design that was consistent with the existing artistic design elements on campus (Attachment C). This design incorporated a butterfly theme, which included colorful shade features and contemporary seating. The design and construction cost of the Mini Bus Center, estimated at $850,000 (Attachment D), can be attributed to the conceptual design and rising construction costs.

Maricopa County Community College District then committed $850,000 for the design and construction of a parking lot adjacent to the Mini Bus Center.

DISCUSSION:

Under the terms of the proposed amendment, the City of Avondale would be responsible for providing the bid process and securing and managing the design-build contract with a qualified vendor. The City will contribute no more than $850,000 to the design and construction of the Mini Bus Center and landscaping. Maricopa County Community College District will be responsible for any and all costs associated with the design and construction of the adjacent parking lot. The City will invoice Maricopa County Community College District for all parking lot design and construction costs immediately upon receipt of invoices from the selected vendor. The total estimated cost of this project is $1.7 million.

Estrella Mountain Community College will be responsible for maintaining the site once the project is complete. Bus Service will continue to be provided by the City of Avondale through an Intergovernmental Agreement with the City of Phoenix. There are currently two transit routes that serve EMCC; Route 41 (Indian School Road) and Route 131 (START).

BUDGETARY IMPACT:

The City of Avondale has been awarded $400,000 in Federal Transit Administration (FTA) Capital Assistance Grants to be used on this project. In addition, the City has received over $450,000 in Local Transportation

Assistance Funds (LTAF I and II), which will be used as the local match requirement to the FTA Federal funding. The City is obligated to spend these funds in a timely manner.

	City of Avondale	**Maricopa County Community College District**
	Mini Bus Center & Landscaping	Parking Lot
FTA Grant	$400,000	
LTAF II Grant	$225,000	
LTAF I Grant	$225,000	
Subtotal	**$850,000**	
EMCC		**$850,000**
Project Total	***$1,700,000***	

RECOMENDATION:

Staff recommends that the City Council approve an amendment to the Intergovernmental Agreement with Maricopa County Community College District for the design and construction of a Mini Bus Center on the EMCC campus for an amount not to exceed $850,000 and allow the design and construction of an adjacent parking lot for an amount not to exceed $850,000; to be paid for by Maricopa County Community College District.

ATTACHMENTS:

Click to download

- Mini Bus Center Rendering
- Mini Bus Center Estimate
- RES

RENDERINGS

As you can see in the following renderings, the Butterfly Transit Center makes a bold statement while simultaneously being sensitive to its surrounding conditions.

The earth bound elements of the site seem just that - solid and extruded from the natural landscape. In initial conversations it was also discussed that these elements might also be constructed by means of rammed earth salvaged from site work on the EMCC campus. Though it was concluded that integrally colored concrete may be the more financially viable alternative.

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Stamped Asphalt				$0.00
Stamped Concrete				$0.00
Concrete				$0.00
Integral Color Concrete				$0.00
PEDESTRIAN ADA RAMP	SF	1	$2,500.00	$2,500.00
CULVERT EXTENSIONS	LF			$0.00
PEDESTRIAN LIGHTING (Includes conduit and trenching) Street lighting is not eligible for federal reimbursement.	Each	5	$1,200.00	$6,000.00
HANDRAIL				
Standard	LF			$0.00
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MULCH				
Decomposed Granite	CY			$0.00
Organic				$0.00
TOPSOIL	CY			$0.00
SEEDING	Acre			$0.00
TURF SOD	SY			$0.00
BOULDERS	Each			$0.00
IRRIGATION SYSTEM				
Drip	SF	16	$500.00	$8,000.00
Turf		35	$75.00	$2,625.00
SLEEVING FOR IRRIGATION SYSTEM				
Directional Bore	LF	50	$25.00	$1,250.00
Cut and Patch				$0.00
LANDSCAPE HEADER CURB	LF			$0.00
LANDSCAPE ESTABLISHMENT (Typically 4.5% of the cost of landscaping)	LS	1	$30,000.00	$30,000.00
SUBTOTAL – LANDSCAPING & IRRIGATION ITEMS				$ 50,875
SITE FURNISHINGS				
BENCHES	Each			$0.00
SEATWALLS	LF	70	$175.00	$12,250.00
BIKE RACKS	Each			$0.00
TRASH RECEPTACLES	Each	3	$400.00	$1,200.00
DRINKING FOUNTAINS	Each			$0.00
SIGNAGE (Standard Traffic Control)	Each	1	$1,500.00	$1,500.00
TREE GRATES	Each			$0.00
SUBTOTAL – SITE FURNISHINGS				$ 14,950
OTHER CONSTRUCTION ITEMS (List line items)				
1.5" AC Surface Course	ton	225	$100.00	$22,500.00
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Median Curb & Gutter	lf	640	$20.00	$12,800.00
Bus Shelter	sf	480	$15.00	$7,200.00
Cool Tower	ea	2	$17,500.00	$35,000.00
Cool Tower equipment	ls	1	$20,000.00	$20,000.00
solar lighting	ls	1	$30,000.00	$30,000.00
Shade fixtures	ls	1	$78,000.00	$78,000.00
SUBTOTAL - OTHER CONSTRUCTION LINE ITEMS				$ 235,500
MOBILIZATION AND ADMINISTRATION COSTS				
CONTRACTOR MOBILIZATION (Typically 8% of construction cost)	LS	1	$40,000.00	$40,000.00
TRAFFIC CONTROL (0-8% of construction cost)	LS	1	$8,000.00	$8,000.00
CONSTRUCTION SURVEY & LAYOUT (Typically 1% of construction cost)	LS	1	$25,000.00	$25,000.00

ESTRELLA MOUNTAIN COMMUNITY COLLEGE
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SUBTOTAL – MOBILIZATION & ADMINISTRATION COSTS				$ 153,000
TOTAL STAGE V COSTS (CONSTRUCTION)				$ 641,600
ADOT REVIEW FEES	LS	1	$5,000.00	$5,000.00
Contingency Fund = 4% (potential increases in the cost of building materials, etc.)	LS	1	$34,400.00	$34,400.00
TOTAL PROJECT COST (All subtotals + ADOT review fee + Continguency Fund)				$ 850,000

RESOLUTION NO. 2645-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT RELATING TO THE DESIGN, CONSTRUCTION AND OPERATION OF A TRANSIT CENTER.

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

SECTION 1. That the First Amendment to the intergovernmental agreement between the City of Avondale and the Maricopa County Community College District on behalf of Estrella Mountain Community College (the "College") with respect to the design, construction and operation of a transit center at the College (the "Amendment") is hereby approved in the form attached hereto as Exhibit A.

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

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2645-507

[First Amendment]

See following pages.

FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (this "First Amendment") is made and entered into on _____, 2007, by and between the City of Avondale, an Arizona municipal corporation (the "City") and Maricopa County Community College District (the "District"), on behalf of Estrella Mountain Community College (the "College"). The City and the District are referred to herein collectively as the "Parties" and individually as a "Party".

RECITALS

A. The City and the District entered into that certain intergovernmental agreement for the design and construction of a mini bus transit facility (the "Facility") recorded in the Official Records of the Maricopa County Recorder as Document Number 2006-0448385 on April 4, 2006 (the "Original Agreement").

B. Under the terms of the Original Agreement, the City is responsible for design and construction of the Facility (at a cost not to exceed $190,000) and the District is responsible for maintaining the Facility upon completion.

C. Since execution of the Original Agreement, the (i) City has determined that it is in the City's best interests to increase the scope of work for the Facility and (ii) the District has determined that it is in the District's best interests to complete certain parking improvements and a new campus entry/exit to Thomas Road (the "District Improvements") near the Facility at the same time as the Facility is constructed. The Facility and the District Improvements are collectively referred to herein as the "Project."

D. The City issued a Request for Qualifications on November 7, 2006, requesting statements of qualifications from qualified contractors to enter into a design-build agreement with the City for the purpose of constructing the Project. The City and the District conducted a review of the submittals and the City has selected Hunter Construction Co. ("Hunter") as the contractor for the Project.

E. As part of the design-build process, Hunter will be required to enter into a design-build agreement with the City (the "Design-Build Agreement"), the first portion of which is related only to design services. In conjunction therewith, Hunter has submitted to the City a scope of work and fee proposal for the pre-construction (design) portion of the Project, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference. As part of the pre-construction proposal, the City requested that Hunter bifurcate the pre-construction services fees and costs into separate portions for the Facility and the District Improvements; the cost related to District's portion of the pre-construction services (those costs

directly related to the District Improvements and the District's pro-rata share of common expenses and costs) equals $87,318.

F. At a time during the pre-construction services as deemed appropriate by the City, Hunter will be requested to submit a guaranteed maximum price proposal (the "GMP Proposal") for construction of the Project. The GMP Proposal will be bifurcated into a portion for the Facility and portion for the District Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the promises and covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. District Payment for Pre-Construction Services. The District agrees to negotiate in good faith to reach agreement with the City on the District's share of pre-construction portion of the Design-Build Agreement (the "District Pre-Construction Amount") and, upon the City's execution of the Design-Build Agreement, to pay to the City, within 30 days of invoice, the full amount owing for the portion of the District Pre-construction Amount applicable to work completed as of the date of each such invoice; provided, however, that the aggregate total of such payments shall not exceed $87,318 without the prior, written approval of the District. If the District and the City cannot agree as to the District Pre-Construction Amount, the City may execute the Design-Build Agreement without the District Improvements and complete design of the Facility independently.

2. District Payment for Construction Services. The District agrees to negotiate in good faith to reach agreement with the City on the GMP Proposal portions related to the District Improvements (the "District Construction Amount") and, upon the City's execution of the amendment(s) to the Design-Build Agreement establishing a guaranteed maximum price for the Project, shall pay the City, within 30 days of invoice, the full amount owing for the portion of the District Construction Amount applicable to work completed as of the date of each such invoice; provided, however, that the aggregate total of such payments shall not exceed $850,000 without the prior, written approval of the District. If the District and the City cannot agree as to the District Construction Amount, the City may execute the amendment(s) to the Design-Build Agreement to approve the guaranteed maximum price of the Project without the District Improvements and complete construction of the Facility independently. In the event the City moves forward with construction of the Facility independently, the District shall pay all reasonable termination costs associated with the District Improvements and, upon City's receipt of payment for any such termination costs, the City shall cause Hunter to deliver to the District any and all design document relating solely to the District Improvements.

3. Effect of Amendment. In all other respects, the Original Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Original Agreement shall remain in full force and effect.

4. Non-Default. By executing this First Amendment, the City and the District affirmatively assert that the other is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Original Agreement.

5. Conflict of Interest. This First Amendment may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

_____

Charles P. McClendon, City Manager

"**District**"

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

_____

Margaret E. McConnell
Assistant General Counsel

ATTEST:

_____

Linda M. Farris, City Clerk

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

_____

Andrew McGuire
Avondale City Attorney

_____

Pete Kushibab
General Counsel
Maricopa Community Colleges

EXHIBIT A
TO FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
MARICOPA COMMUNITY COLLEGE DISTRICT

[Pre-Construction Services Proposal]

See following pages.

Hunter Contracting Co. A CORPORATION

March 29, 2007

Peggy J. Wright
Procurement Officer
City of Avondale
Finance and Budget Department
11465 W. Civic Center Drive, Suite 250
Avondale, Arizona 85323-6807

RE: Estrella Mountain Community College Mini-Bus Center Project – Design/Build
Project No. AD 06-0333

Dear Ms. Wright:

Thank you for taking time out of your busy schedule last week to meet with our Hunter / TranSystems team. As discussed, we have separated the Pre-Construction fees as follows:

Bus Stop – Pre-Construction / Design Team
Parking Lot – Pre-Construction / Design Team
Landscaping – Pre-Construction / Design Team

Should you have any questions, please do not hesitate to contact me.

Sincerely,
HUNTER CONTRACTING CO.

Keli Dobberstein
Director CM Services

701 North Cooper Road • Gilbert, Arizona 85233 • (480) 892-0521 • Fax (480) 892-4932
6930 North Camino Martin • Tucson, Arizona 85741 • (520) 744-0722 • Fax (520) 744-0847
ARIZONA - ROC070961 A GEN ENG • ROC067542 B GEN BLDG • ROC075851 B-01 GEN COM • ROC023057 B-04 GEN RES ENG CALIFORNIA - ROC851711 A GEN ENG

City of Avondale – EMCC Mini-Bus Center Project
Project No. AD06-033
Combined Workhours Proposal and Fee – Scope of Work Phase I and II

March 29, 2007

Proposal

	Total Project	Transit Center	Parking Lot
PreConstruction Fees (Hunter Contracting)	$36,518	$18,259	$18,259
Design Professional (TranSystems)	$158,545	$109,355	$49,190
Direct Expenses (Split 70/30)	$643	$450	$193
GeoTech (Speedie) (Split 50/50)	$2,200	$1,100	$1,100
Landscape Architecture (Logan Simpson)	$21,896	$13,399	$8,498
Survey (Brooks) (Split 25/75)	$13,437	$3,359	$10,078
Total	$233,239	$145,922	$87,318

Note: Direct expenses, GeoTech and Survey were split Utilizing Percentages. These percentages are subject to review by the owner.

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Bus Stop PreConstruction) Project No. AD 06-033

March 27, 2007

Classification		Labor Hours	Hourly Rate	Cost
Hunter Constracting Company				
Program Manager		12	$125.06	$1,438.19
PreCon Manager		40	$108.01	$4,320.40
Chief Estimator		28	$96.66	$2,658.15
Structural Estimator		10	$60.61	$575.80
Architectural Estimator		2	$60.61	$121.22
Mechanical Estimator		12	$60.61	$697.02
Electrical & Insttrumentation Estimator		30	$73.91	$2,180.35
Project Manager		29	$96.66	$2,754.81
Project Engineer		5	$69.18	$311.31
General Superintendent		2	$96.66	$144.99
Project Administrator		12	$43.21	$496.92
	Total Hours	178		
				$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$109,805
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Ten Eyck)	$16,370
Survey (Brooks Engineers & Surveyors, Inc)	$3,359
Subconsultants Subtotal	**$130,634**
Allowance Subtotal	**$133,194**
Total Scope Amount	**$148,893**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks \ Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	1	1	1	0	1	5	1.5	0	0	0.5	**13.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	0	1	1	1	1.5	0.5	0	0.5	**8**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Recommends if Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

continued on next page

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks / Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP...Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	7
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	0
Submit Updated Project Schedule with GMP...Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	2.5
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	2.5
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	0
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	3
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	0
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	1	3	1.5	0.5	0	1	1.5	6	1.5	0	0.5	15
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	2.5
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	0.5
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	2
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	0
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	0
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	0.5	0.5	2	0	0	0	0	1.5	0	0	2	5
Total Hours w/o Allowances	10.5	38	27.5	9.5	2	12	29.5	28.5	4.5	1.5	9.5	10
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	0
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	0
CM@Risk/Engineer Interface							0	0	0	0	0	0
Outside Technical Services (Thames)							0	0	0	0	0	0
Travel Expenses							0	0	0	0	0	0
Long Distance Telephone & Fax Charges							0	0	0	0	0	0
Printing Expense							0	0	0	0	0	0
Subtotal Hours	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Total PreConstruction Hours	11	39	27.5	9.5	2	12	29.5	28.5	4.5	1.5	10.5	5
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	0	0	0	0	0	0	0	0	0	0	0	0
Total Hours for Allowances	0.5	1	0	0	0	0	0	0	0	0	1	2.5
TOTAL PROJECT MAN-HOURS	11.5	40	27.5	9.5	2	11.5	29.5	28.5	4.5	1.5	11.5	177.5

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Parking Lot PreConstruction) Project No. AD 06-033

March 27, 2007

Classification	Labor Hours	Hourly Rate	Cost
Hunter Constracting Company			
Program Manager	12	$125.06	$1,438.19
PreCon Manager	40	$108.01	$4,320.40
Chief Estimator	28	$96.66	$2,658.15
Structural Estimator	10	$60.61	$575.80
Architectural Estimator	2	$60.61	$121.22
Mechanical Estimator	12	$60.61	$697.02
Electrical & Insttrumentation Estimator	30	$73.91	$2,180.35
Project Manager	29	$96.66	$2,754.81
Project Engineer	5	$69.18	$311.31
General Superintendent	2	$96.66	$144.99
Project Administrator	12	$43.21	$496.92
Total Hours	178		
			$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$49,383
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Ten Eyck)	$13,485
Survey (Brooks Engineers & Surveyors, Inc)	$10,078
Subconsultants Subtotal	**$74,046**
Allowance Subtotal	**$76,606**

Total Scope Amount **$92,305**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Tasks \ Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	1	1.5	0.5	0	0.5	**8**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0	0	0	0	0	0	0	0	0	0	0	**0**
Recommends if Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

continued on next page

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Classification / Tasks	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP, Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	**7**
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	**0**
Submit Updated Project Schedule with GMP... Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	**2.5**
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	**2.5**
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	**0**
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	**3**
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	**0**
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1**	**3**	**1.5**	**0.5**	**0**	**1**	**1.5**	**6**	**1.5**	**0**	**0.5**	**15**
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	**2.5**
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	**0.5**
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	**2**
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	**0**
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	**0**
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	**0**
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**0.5**	**0.5**	**2**	**0**	**0**	**0**	**0**	**1.5**	**0**	**0**	**2**	**5**
Total Hours w/o Allowances	**10.5**	**38**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**9.5**	**10**
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	**2.5**
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	**0**
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	**0**
CM@Risk/Engineer Interface							0	0	0	0	0	**0**
Outside Technical Services (Thames)							0	0	0	0	0	**0**
Travel Expenses							0	0	0	0	0	**0**
Long Distance Telephone & Fax Charges							0	0	0	0	0	**0**
Printing Expense							0	0	0	0	0	**0**
Subtotal Hours	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
Total PreConstruction Hours	**11**	**39**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**10.5**	**5**
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Hours for Allowances	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
TOTAL PROJECT MAN-HOURS	**11.5**	**40**	**27.5**	**9.5**	**2**	**11.5**	**29.5**	**28.5**	**4.5**	**1.5**	**11.5**	**177.5**

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Bus Stop PreConstruction) Project No. AD 06-033

March 27, 2007

Classification		Labor Hours	Hourly Rate	Cost
Hunter Constracting Company				
Program Manager		12	$125.06	$1,438.19
PreCon Manager		40	$108.01	$4,320.40
Chief Estimator		28	$96.66	$2,658.15
Structural Estimator		10	$60.61	$575.80
Architectural Estimator		2	$60.61	$121.22
Mechanical Estimator		12	$60.61	$697.02
Electrical & Insttrumentation Estimator		30	$73.91	$2,180.35
Project Manager		29	$96.66	$2,754.81
Project Engineer		5	$69.18	$311.31
General Superintendent		2	$96.66	$144.99
Project Administrator		12	$43.21	$496.92
	Total Hours	178		
				$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$109,805
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Logan Simpson)	$13,399
Survey (Brooks Engineers & Surveyors, Inc)	$3,359
Subconsultants Subtotal	**$127,663**
Allowance Subtotal	**$130,223**
Total Scope Amount	**$145,922**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks \ Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	1	1.5	0.5	0	0.5	**8**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0	0	0	0	0	0	0	0	0	0	0	**0**
Recommends If Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

continued on next page

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Bus Stop PreConstruction Fees and Services

March 27, 2007

Tasks / Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP..Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	7
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	0
Submit Updated Project Schedule with GMP...Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	2.5
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	2.5
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	0
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	3
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	0
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**1**	**3**	**1.5**	**0.5**	**0**	**1**	**1.5**	**6**	**1.5**	**0**	**0.5**	**15**
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	2.5
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	0.5
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	2
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	0
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	0
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0.5**	**0.5**	**2**	**0**	**0**	**0**	**0**	**1.5**	**0**	**0**	**2**	**5**
Total Hours w/o Allowances	**10.5**	**38**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**9.5**	**10**
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	0
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	0
CM@Risk/Engineer interface							0	0	0	0	0	0
Outside Technical Services (Thames)							0	0	0	0	0	0
Travel Expenses							0	0	0	0	0	0
Long Distance Telephone & Fax Charges							0	0	0	0	0	0
Printing Expense							0	0	0	0	0	0
Subtotal Hours	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
Total PreConstruction Hours	**11**	**39**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**10.5**	**5**
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Hours for Allowances	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
TOTAL PROJECT MAN-HOURS	**11.5**	**40**	**27.5**	**9.5**	**2**	**11.5**	**29.5**	**28.5**	**4.5**	**1.5**	**11.5**	**177.5**

Fee Proposal

City of Avondale - EMCC Mini-Bus Center Project (Parking Lot PreConstruction) Project No. AD 06-033

March 27, 2007

Classification		Labor Hours	Hourly Rate	Cost
Hunter Constracting Company				
Program Manager		12	$125.06	$1,438.19
PreCon Manager		40	$108.01	$4,320.40
Chief Estimator		28	$96.66	$2,658.15
Structural Estimator		10	$60.61	$575.80
Architectural Estimator		2	$60.61	$121.22
Mechanical Estimator		12	$60.61	$697.02
Electrical & Insttrumentation Estimator		30	$73.91	$2,180.35
Project Manager		29	$96.66	$2,754.81
Project Engineer		5	$69.18	$311.31
General Superintendent		2	$96.66	$144.99
Project Administrator		12	$43.21	$496.92
	Total Hours	178		
				$15,699

Allowances

Hunter Expenses	
Potholing with Vac Truck	$2,560
Hunter Expenses Subtotal	**$2,560**

Subconsultants	**Total $**
Design Professional (TranSystems)	$49,383
GeoTech (Speedie and Associates)	$1,100
Landscape Architecture (Logan Simpson)	$8,498
Survey (Brooks Engineers & Surveyors, Inc)	$10,078
Subconsultants Subtotal	**$69,059**
Allowance Subtotal	**$71,619**
Total Scope Amount	**$87,318**

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Tasks / Classification	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.1 General Services												
Program Evaluation	0.5	1	0	0	0	0	0	0	0	0	0.5	**2**
Project Meetings	1	5	0	0	0	0	0	0.5	0	0	0	**6.5**
Program Management & Status Meetings	0.5	1	0	0	0	0	0	0.5	0	0	0	**1.5**
Project Framework Development Workshop	0.5	2	2	0	0	0	2	0.5	0	0	0.5	**7.5**
Requisite & Executive Meetings	0.5	2.5	0	0	0	0	1	0.5	0	0	0	**4.5**
Partnering Workshop & Meetings	0.5	0.5	0.5	0	0	0	0	0.5	0.5	0.5	0	**3**
Subtotal Hours	**3.5**	**12**	**2.5**	**0**	**0**	**0**	**3**	**2.5**	**0.5**	**0.5**	**1**	**25**
2.3 Project Schedule												
Develop Project Schedule	0.5	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2.5**
Update Schedule	0	0.5	0	0	0	0	0	0.5	0.5	0	0.5	**2**
Establish Phased Schedule	0	1	0.5	0	0	0	0	0.5	0	0	0	**2**
List of Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0	**1**
CM @ Risk Procures Long Lead Time Items	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
CM@Risk Notifies Long Lead Time Suppliers	0	0.5	0	0	0	0	0	0.5	0	0	0.5	**1.5**
Subtotal Hours	**0.5**	**3.5**	**0.5**	**0**	**0**	**0**	**0**	**3**	**1**	**0**	**2**	**10.5**
2.4 Design Document Reviews												
Constructability & Biddability Reviews	0.5	2	1	0	0	0	0	1	0	0.5	0.5	**5.5**
Constructability Reviews	0.5	5	5	1	1	1	2	1	1	0	0	**17.5**
Biddability Reviews	0.5	1	1	1	0	1	2	0	0	0.5	0	**7**
Formal Written Reports of Reviews	0	0	0	0	0	0	0	0	0	0	0	**0**
Alternate Systems Evaluations	0	0	0	0	0	0	0	0	0	0	0	**0**
Subtotal Hours	**1.5**	**8**	**7**	**2**	**1**	**2**	**4**	**2**	**1**	**1**	**0.5**	**30**
2.6 Cost Model, Estimates, & Schedule of Values												
Conceptual Design Phase Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Preliminary Design Cost Model	0	0	0	0	0	0	0	0	0	0	0	**0**
Detailed Design @ 30%	0.5	2	5	2	0	3	5	1.5	0	0	0.5	**19.5**
Detailed Design @ 60%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 90%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Detailed Design @ 100%	0.5	2	2	1	0	1	5	1.5	0	0	0.5	**13.5**
Bid Package #2 (Earthwork, Yard Piping, Concrete Work, Steel & Metals)	0.5	1	1	1	0	1	0	1.5	0	0	0.5	**6.5**
Bid Package #3 (Masonry, Mechanical, and Electrical & Instrumentation)	0.5	1	1	1	0	1	1	1.5	0.5	0	0.5	**8**
Bod Package #4 (Site Work, Specifications #6 thru #10)	0.5	1	1	0	1	1	0	1.5	0	0	0.5	**6.5**
Recommends If Budget is Exceeded	0	0	0	0	0	0	0	0	0	0	0	**0**
Schedule of Values @ 60% design	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Schedule of Values @ 100%	0	0	0	0	0	0	0	1.5	0	0	0	**1.5**
Subtotal Hours	**3.5**	**11**	**14**	**7**	**1**	**9**	**21**	**13.5**	**0.5**	**0**	**3.5**	**84**

continued on next page

HUNTER CONTRACTING CO

Project Manhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033

Parking Lot PreConstruction Fees and Services

March 27, 2007

Classification / Tasks	Hunter Contracting Co.											
	Program Manager	PreCon Manager	Chief Estimator	Structural Estimator	Architectural Estimator	Mechanical Estimator	Elec. & Instr. Estimator	Project Manager	Project Engineer	General Sup't	Project Admin.	TOTAL
2.7 Guarenteed Maximum Price (GMP) Proposal												
Submit GMP...Total Project or Phased	0.5	2	1	0.5	0	0.5	1	1.5	0	0	0.5	7
Distribute "Marked Documents" at GMP Submittal	0	0	0	0	0	0	0	0	0	0	0	0
Submit Updated Project Schedule with GMP...Total or Phased	0.5	0.5	0	0	0	0	0	1.5	0.5	0	0	2.5
Establish Construction Contingency Allowance	0	0	0	0	0	0	0	1.5	1	0	0	2.5
GMP Proposal(s) Review and Approval	0	0	0	0	0	0	0	0	0	0	0	0
Meet with City to Review GMP	0	0.5	0.5	0	0	0	0.5	1.5	0	0	0	3
Review GMP with Third Party or Engineer	0	0	0	0	0	0	0	0	0	0	0	0
Review Design Changes & Revise GMP	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**1**	**3**	**1.5**	**0.5**	**0**	**1**	**1.5**	**6**	**1.5**	**0**	**0.5**	**15**
2.8 Competive Bidding and Sub Bids												
Submit List of SubContractors	0.5	0.5	0	0	0	0	0	1.5	0	0	0.5	2.5
Distribute Drawings & Specs to Subs & conduct PreBid	0	0	0	0	0	0	0	0	0	0	0.5	0.5
Bid HCC Self-Performed Work	0	0	2	0	0	0	0	0	0	0	0.5	2
Collect Bids, Open, and Prepare List of Sub Bids to City	0	0	0	0	0	0	0	0	0	0	0	0
Evaluate Sub Bids	0	0	0	0	0	0	0	0	0	0	0.5	0
Submit Written Notice of Award for Sub & Suppliers	0	0	0	0	0	0	0	0	0	0	0	0
Pre-Award Conference	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0.5**	**0.5**	**2**	**0**	**0**	**0**	**0**	**1.5**	**0**	**0**	**2**	**5**
Total Hours w/o Allowances	**10.5**	**38**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**9.5**	**10**
4.3 Additional Services												
Progress Payments	0.5	1	0	0	0	0	0	0	0	0	1	2.5
Design Proffessional to Review Contract Documents												
Qualified Cost Estimator	0	0	0	0	0	0	0	0	0	0	0	0
Geotechnical Services	0	0	0	0	0	0	0	0	0	0	0	0
CM@Risk/Engineer Interface							0	0	0	0	0	0
Outside Technical Services (Thames)							0	0	0	0	0	0
Travel Expenses							0	0	0	0	0	0
Long Distance Telephone & Fax Charges							0	0	0	0	0	0
Printing Expense							0	0	0	0	0	0
Subtotal Hours	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
Total PreConstruction Hours	**11**	**39**	**27.5**	**9.5**	**2**	**12**	**29.5**	**28.5**	**4.5**	**1.5**	**10.5**	**5**
700 - Supplemental Services (Allowance)												
Potholing with Vac Truck (32 hrs @ $160.00 per hour)	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
Total Hours for Allowances	**0.5**	**1**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**1**	**2.5**
TOTAL PROJECT MAN-HOURS	**11.5**	**40**	**27.5**	**9.5**	**2**	**11.5**	**29.5**	**28.5**	**4.5**	**1.5**	**11.5**	**177.5**

LOGAN SIMPSON
DESIGN INC.

March 22, 2007

Mr. Jim Schumann, PE
Senior Project Manager
TranSystems
120 North 44th Street
Suite 400
Phoenix, Arizona 85034

RE: Scope of Work & Fee Proposal
Estrella Mountain Community College Transit Center and Parking Lot
Landscape & Irrigation Design

Dear Jim:

Logan Simpson Design is pleased to submit the enclosed proposal for the above-mentioned project. We propose to complete the work outlined for each phase of the attached Scope of Work for a lump sum fee. The fee includes labor and general expenses..

The attached Scope of Work delineates the itemized tasks and the basis of fee for the work proposed. Please contact me if you wish to discuss this proposal or need additional information.

Sincerely,

Steve Lohide, RLA, ASLA
Vice President

51 West Third Street Suite 450 Tempe, AZ 85281 Phone: (480) 967-1343 Fax: (480) 966-9232 e-mail: lsd@lsdaz.com

ESTRELLA MOUNTAIN COMMUNITY COLLEGE
TRANSIT CENTER / PARKING LOT
LANDSCAPE & IRRIGATION DESIGN

SCOPE OF WORK

GENERAL

The intent of this contract is for Logan Simpson Design Inc. (LSD) to assist in the preparation of concepts and develop 95% construction documents for a new transit center and 400 space parking lot at Estrella Mountain Community College (EMCC) in Avondale, Arizona. The project will be developed in two phases and is a Design/Build project.

The project tasks include developing a plant palette for the parking lot and transit center; landscape and hardscape concepts for the 400 space parking lot; 60% and 95% landscape and irrigation construction documents for the parking lot; development of landscape and hardscape concepts for the transit center; and development of 30%, 60%, and 95% construction documents for the transit center.

Construction Documents for the project will be developed at a scale of 1" = 20'. The construction documents will be prepared in AutoCAD 2004. TranSystems will provide electronic base sheet information to LSD. TranSystems will also provide to LSD site plan information, including all applicable design or as-built plans for improvements in the vicinity of, or related to the project (i.e. Results of Survey, as-built plans, architectural designs, drainage plans, existing or proposed utilities, etc.).

400 SPACE PARKING LOT

PHASE I

Landscape/Hardscape Concept - LSD will assist the design team in the development of concepts for the parking lot. Specifically, LSD will develop hardscape concepts for the pedestrian walkway that links the future transit center to the campus.

LSD will develop a plant palette for the parking lot that incorporates plant material considered to be low water use, low maintenance, consistent with surrounding plantings on campus, and supports the 'Butterfly Concept' proposed for the adjacent transit center.

PHASE II

LSD will develop 60% and 95% landscape and irrigation construction documents for the parking lot based on the approved Phase I concept.

Project Meetings - LSD will attend four meetings with the design team over the course of the project design. It is anticipated that attendees at these meetings will include the design, Contractor, and City representatives.

Site Visit - LSD will identify existing conditions and become familiar with the surrounding area/development.

Landscape Design - LSD will prepare a landscape design for the parking lot and associated roadway. The areas identified for landscape include parking lot islands, pedestrian walkway and the adjacent roadway.

The landscape design will meet City of Avondale landscape requirements and will consist of plant materials that require low maintenance. The plant palette to be used on this project will be comprised mainly of trees and accent shrub plantings and will be consistent with adjacent plantings in the area.

Landscape plans will identify the locations of inert groundcover and plant material and will include a complete plant key and materials schedule. Plant material will be broken down by size and quantity. The landscape detail sheet will provide details for the installation of plant material and inert material.
LSD will prepare an irrigation design for the project site. The irrigation plans will identify all necessary piping and equipment required for a fully functioning automatic drip irrigation system. It is anticipated that the new irrigation components will be connected to the existing irrigation system located on campus. New irrigation components will be sized and the irrigation piping will be broken down by schedule and size. Details will also be provided for the proper installation of all irrigation components. A materials list will be included on each sheet.

Submittals - This scope of work and associated fee for the development of concepts, a plant palette, and 95% landscape and irrigation construction documents is based on three submittals. Project submittals are as follows.

Submittal #1: Plant Palette
Plant Palette

Submittal #2: 60% Construction Documents (24" x 36" bond prints)
Preliminary Landscape Plan and Details
Preliminary Irrigation Plan and Details
Preliminary Project Specifications (MAG format)

Submittal #3: 95% Construction Documents (24" x 36" bond prints)
Pre-Final Landscape Plan and Details
Pre-Final Irrigation Plan and Details
Pre-Final Project Specifications (MAG format)

TRANSIT CENTER

PHASE I

Project Meetings - LSD will attend four meetings with the design team over the course of the project design. It is anticipated that attendees at these meetings will include the design, Contractor, and City representatives.

Landscape/Hardscape Concept - LSD will assist the design team in the development of concepts for the transit center. LSD will develop hardscape concepts for the transit center that accent pedestrian spaces and provide connections to the campus and will develop a landscape concept that is consistent with the campus and continues the 'Butterfly Concept'.

LSD will develop 30% landscape and irrigation construction documents based on the approved transit center concept.

PHASE II

LSD will develop 60% and 95% landscape and irrigation construction documents for the parking lot based on the approved Phase I concept.

Landscape Design - LSD will prepare a landscape design for the transit center and associated roadway. The areas identified for landscape include the transit center deck area, open space around the transit center, and the transit center roadway.

The landscape design will meet City of Avondale landscape requirements and will consist of plant materials that require low maintenance. The plant palette to be used on this project will be comprised mainly of trees accent shrub plantings, shrub plantings that attract butterflys, and will be consistent with adjacent plantings in the area.

Landscape plans will identify the locations of inert groundcover and plant material and will include a complete plant key and materials schedule. Plant material will be broken down by size and quantity. The landscape detail sheet will provide details for the installation of plant material and inert material.

Irrigation Design - LSD will prepare an irrigation design for the project site. The irrigation plans will identify all necessary piping and equipment required for a fully functioning automatic drip irrigation system. It is anticipated that the new irrigation components will be connected to the existing irrigation system located on campus. New irrigation components will be sized and the irrigation piping will be broken down by schedule and size. Details will also be provided for the proper installation of all irrigation components. A materials list will be included on each sheet.

Submittals - This scope of work and associated fee for the development of concepts and 60% and 95% landscape and irrigation construction documents is based on three submittals. Project submittals are as follows.

Submittal #1: 30% Construction Documents (24" x 36" bond prints)
- Conceptual Landscape Plan

Submittal #2: 60% Construction Documents (24" x 36" bond prints)
- Preliminary Landscape Plan and Details
- Preliminary Irrigation Plan and Details
- Preliminary Project Specifications (MAG format)

Submittal #3: 95% Construction Documents (24" x 36" bond prints)
- Pre-Final Landscape Plan and Details
- Pre-Final Irrigation Plan and Details
- Pre-Final Project Specifications (MAG format)

FEE

LSD proposes to complete the work as described above for a lump sum fee of $21,896.40. The fee breaks down as follows.

400 Space Parking Lot	$8,497.59
Transit Center	$13,398.81

ASSUMPTIONS

No time or fee has been included for the following:

- Preparation of illustrative presentation graphics
- City of Avondale Review meetings
- Agronomic testing of the project site
- An irrigation pump station
- Design of site furnishings
- Development of 100% Construction Documents

TranSystems

120 North 44th Street
Suite 400
Phoenix, Arizona 85034
Tel 602 277 7800
Fax 602 277 6150
www.transystems.com

March 28, 2007

Mr. Keli Dobberstein
Hunter Contracting Company
701 North Cooper Road
Gilbert, Arizona 85299-0900

Re: ***Letter Agreement***
Architectural and Engineering Services – Scope of Services Phases I and II
Estrella Mountain Community College Mini-Bus Center AD 06-033

Dear Mr. Dobberstein:

We are pleased to provide this proposal to detail the services TranSystems intends to perform for Hunter Contracting Company (Client) in connection with the Estrella Mountain Community College Mini-Bus Center AD 06-033 for the City of Avondale (Owner). The pricing at which TranSystems proposes to perform these services, the schedule for completing these services and the assumptions upon which TranSystems has based this proposal. If the proposal outlined in this letter is acceptable, TranSystems would request that Client indicate its acceptance of this proposal by executing this letter agreement in the space provided below.

Project Understanding:

The new facility will be located at Estrella Community College Campus. The project will consist of a 400 car parking lot and a seating and shade structure with vertical elements at the bus stop as shown on the conceptual sketches that were included with the SOQ.

Basic Services:

Design Standardization, Permitting and Construction Documents Phase

1. Visit with the key regulatory agencies (e.g., planning, engineering, building code officials, fire chief, ADA compliance officer, etc.) to obtain necessary information and understand the requirements in order to expeditiously obtain a grading and building permit. We will assist the Client in submitting for site and building permit review as early in document preparation as regulators allow by providing the necessary drawings, and make necessary revisions and corrections in accordance with plan review comments. Review comments will be communicated with the Client and incorporated into any necessary revision as agreed upon by the Client.

2. Visit the site to evaluate surrounding operations and obstacles for development. We will make detailed observation as to the constructability of the desired new facility. Obtain information and implement a survey crew to gather information. Prepare sketches and diagrams for the Design Camp so the group can make informed decisions.

3. Conduct a Design Camp, which will be a consensus building process with all of the interested parties from the design-build team and the client. This will take place at TranSystems office and will last for 4 hours. At the end, we will have a decided design scheme to develop into working drawings.

4. Prepare construction documents and specifications for architectural, structural, electrical and civil work, in accordance with local, state and federal codes and regulations. TranSystems' CAD Drawing standards will be used, including sheet sizes (24x36), legends, symbols, pen tables, line weights etc.

5. Develop a project schedule, including review, design and construction document preparation time and time required to obtain grading and building permits.

6. Submit progress drawings to Client for review at 60% and pre-final submittal. Submit them for permitting.

7. Services include: Surveying, geotechnical investigations and testing, Storm water management practices and the SWPP report and landscape, architectural, structural, civil, electrical and telecommunication design.

8. Services not included: Environmental, biological, archeological, historic studies and endangered species removal. Construction Administration will be a separate proposal.

Assumptions:

a. The intended use for the property is currently a listed permitted use within the City's zoning ordinance.
b. Preparation and recordation of easement documents and modification to existing easement documents are not included.
c. Traffic study is assumed to not be required, but will be provided as an additional service if assumed to be needed.
d. For storm drainage and sanitary sewer design we have assumed no pump stations or associated facilities and no on-site water treatment will be required.
e. Water pressure and flow is adequate and no pumping is required.
f. Master plan and previous project hydrology and hydraulic will be provide for use.
g. Drainage will be sheet flow to the detention/conveyance channels.
h. Hydrology and hydraulic studies will be limited to the new improvements
i. Storm drainage will be designed to meet master plan requirements.
j. Pipe profiles will not be required for on-site work.
k. Signage design and submittal of sign programs and sign applications are not required. No special signing is included.
l. Architectural models are not required.
m. Building security system design is assumed to not be required.
n. Any client and owner initiated changes affecting scope, extent or character of the building are not included in scope and can be provided as additional services.
o. One construction document packages is assumed with separate plans for the parking lot and the transit center.
p. Owner will pay for all permit and application fees. Two permits, Fire Marshall and the City of Avondale for the new street access, are the only permits anticipated for this project.
q. Specification books are not required. Notes on drawings will be provided.
r. Owner will furnish electronic drawings and as-built drawings of the site.
s. Light poles and fixtures will match existing. Power will be supplied by EMCC.
t. This does not include special architectural lighting.

u. Cooling tower design is not included in the contract. Alternative vertical features and materials will be investigated to provide desired comfort.
v. One new entrance will be provided onto Thomas Road. No monuments or special signing is included.
w. Parking lot design and landscaping treatments are to match existing contiguous to the project.
x. Seating capacity for the transit center will be 30 persons including wheelchair seating.

Compensation:

For the above Services, TranSystems will be reimbursed by Client, for a lump sum fee of $159,188 unless modified by a written and executed contract modification. In addition, TranSystems will be reimbursed by Client by payment at our standard hourly rates for the actual time expended on Additional Service items, actual costs of sub-consultants outside the basic services and reimbursable expense items such as travel, out of office printing, mailings and submittal fees. Invoices will be sent monthly and will be based on TranSystems' percentage of work completed during the previous month plus reimbursable expenses at the time of billing. Our fees include in-house reproduction supplies, computer usage and long distance phone calls.

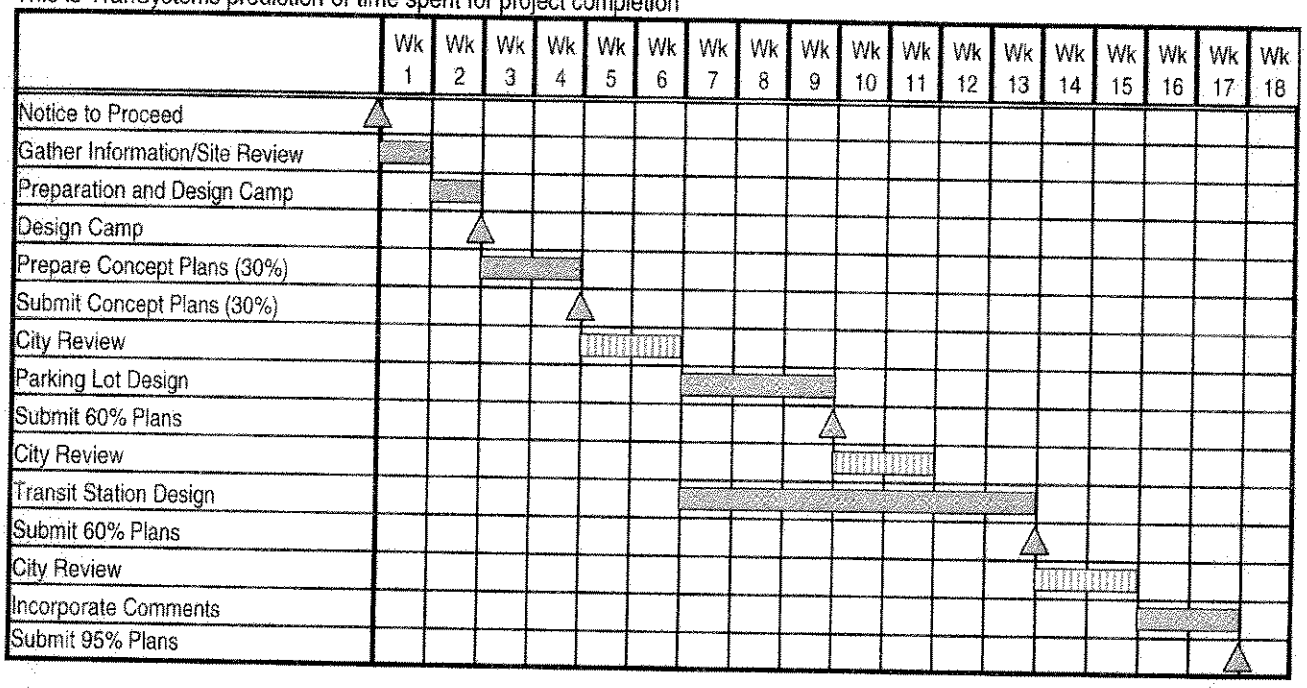
Rate Schedule:

Rates apply through 2007.

Civil Engineer 4	$165
Civil Engineer 3	$125
Electrical Engineer 3	$120
Architect 5	$235
Architect 4	$130
Architect 3	$120
Architect 1	$75
Technician 3	$80
Technician 2	$70
Admin	$40

Schedule

This is TranSystems prediction of time spent for project completion



General Provisions

Attached to and made a part of this Letter Agreement is a copy of TranSystems' General Provisions. The Client and TranSystems understand and agree that the General Provisions are a part of this Letter Agreement and that each is bound by terms and conditions set forth the General Provisions. In the event that there is any inconsistency or conflict between the terms and conditions set forth in this Letter Agreement and the General Provisions, the terms and conditions set forth in this Letter Agreement shall control.

We sincerely appreciate the opportunity to work with you on this Project. If you concur with the proposal outlined in this Letter of Agreement, please execute the enclosed extra copy and return it to TranSystems. Unless otherwise instructed in writing at the time you return the executed copy of this Letter Agreement, TranSystems will consider the executed Letter Agreement as our notice to proceed. Please let us know if you have any questions or need any further information.

Sincerely,

Donna Canale R. A.
Vice President

Acceptance:

Client hereby accepts the proposal outlined above and does hereby engage TranSystems to perform the Services described above, on the terms and conditions set forth in the forgoing Letter Agreement. Client accepts and agrees to the terms and conditions of the foregoing Letter Agreement.

Hunter Contracting Co._____

By:_____

Printed Name:_____

Title:_____

Date: _____

GENERAL PROVISIONS

These General Provisions are attached to and made a part of the LETTER AGREEMENT, dated March 28, 2007 between Hunter Contracting Company ("CLIENT") and TRANSYSTEMS CORPORATION ("TRANSYSTEMS") in respect of the Project described in the Letter Agreement. For purposes hereof, the Letter Agreement, these General Provisions and any attachments to the Letter Agreement or these General Provisions shall sometimes be collectively referred to as the "Agreement". In consideration of the mutual covenants contained in the Letter Agreement and these General Provisions, CLIENT and TRANSYSTEMS herein agree with respect of the performance of the Services (as described in the foregoing by Letter Agreement), as follows:

1. BASIC SERVICES OF TRANSYSTEMS

a. Basic Services. TRANSYSTEMS shall provide CLIENT the professional services described in the Scope of Services section of the Letter Agreement (collectively the "Basic Services").

b. TRANSYSTEMS' Duties. In addition to the general duties, obligations and responsibilities set forth elsewhere in this Agreement, the specific duties and responsibilities of TRANSYSTEMS in performing the Basic Services under this Agreement are set forth in the Scope of Services section of the Letter Agreement.

2. ADDITIONAL SERVICES OF TRANSYSTEMS

2.1 Additional Services. In connection with the Project, TRANSYSTEMS may be called on to perform, provide, furnish or obtain from others services or work which are not part of, or are in addition to, the Basic Services ("Additional Services"). If authorized in writing by CLIENT and agreed to by TRANSYSTEMS, TRANSYSTEMS shall perform, provide, furnish or obtain from others the agreed upon Additional Services. TRANSYSTEMS shall not be obligated to perform, provide, furnish or obtain any Additional Services without the prior written authorization of CLIENT. Except to the extent expressly provided otherwise in the Letter Agreement or as otherwise agreed in writing by the parties hereto, compensation to TRANSYSTEMS for Additional Services will be paid for by CLIENT as indicated in Section 5. Notwithstanding the foregoing, when required by this Agreement in circumstances beyond TRANSYSTEMS control, TRANSYSTEMS shall perform or obtain from others any of the following Additional Services as circumstances require during construction and without waiting for specific instructions from CLIENT, and TRANSYSTEMS will be paid therefore as provided in Section 5: Services in connection with Contract Amendments or work directives, drawing or specification revisions required by substitutions or field changes, services resulting from delays due to work damage, defective or neglected work, default by any contractor, or other third party or contractor delays. Additional Services may be any service or work not included as part of the Basic Services and may include, but are not limited to, services or work in connection with environmental or funding assistance, investigations not specifically required herein, services resulting from changes in the scope, extent or character of the project providing renderings or computer models, services to develop alternate bids or sequencing of work, outside consultant services not specifically required herein, out-of-town travel, and preparing to serve or serving as a consultant or witness in any litigation, arbitration or other legal or administrative proceeding. "Basic Services" and "Additional Services" are sometimes collectively referred to herein as "Services".

3. CLIENT'S RESPONSIBILITIES

CLIENT will perform the duties identified in the Letter Agreement, if any, and in addition will at all times cooperate with TRANSYSTEMS in the performance of the Services and CLIENT shall perform such other duties as are reasonable requested by TRANSYSTEMS to assist in the timely and efficient performance by TRANSYSTEMS of the Services. Unless otherwise provided in the Letter Agreement, CLIENT shall do the following in a timely manner so as not to delay the performance of the Services by TRANSYSTEMS:

a. Client Representative. Designate a person to act as CLIENT's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CLIENT's policies and decisions with respect to TRANSYSTEMS services for the Project.

b. Project Information. Provide all criteria, all available information pertinent to the Project and full information as to CLIENT's requirements for the Project. If not specifically required to be provided by TRANSYSTEMS as part of the Basic Services, CLIENT shall furnish to TRANSYSTEMS any bores, probes and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property boundary, easements, right-of-way, topographic and utility surveys; property descriptions; zoning and deed restrictions; and such other information which may be necessary for TRANSYSTEMS to perform its services under this Agreement. CLIENT agrees that TRANSYSTEMS shall be entitled to rely upon all such information and the accuracy thereof.

c. Project Access. Arrange for access to and make all provisions for TRANSYSTEMS to enter upon public and private property as required for TRANSYSTEMS to perform services under this Agreement.

d. Client Participation. Examine all studies, reports, sketches, drawings, specification, proposals, and other documents presented by TRANSYSTEMS, obtain advice of an attorney, insurance counselor and other consultants as CLIENT deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of TRANSYSTEMS.

e. **Notices.** Give prompt written notice to TRANSYSTEMS whenever CLIENT observes or other wise becomes aware of any development that affects the scope or timing of TRANSYSTEMS' Services, or any defect or non-conformance in the Services by TRANSYSTEMS (or its independent professional associates or consultants) or in the work of any contractor or other party performing or providing work or services in connection with the Project.

f. **Additional Services.** Furnish or direct TRANSYSTEMS to provide additional services as stipulated in Section 2 of these General Provisions or other services as required.

g. **Licenses, Permits, etc.** Provide TRANSYSTEMS with any necessary governmental allocations or priorities, obtain all permits and licenses required to be taken out in the name of CLIENT which are necessary for the performance of the Services and, except where such permits, processes or licenses are by the terms of the Letter Agreement the responsibility of TRANSYSTEMS to obtain any permits, processes and other licenses which are required for the Project or the Services;

h. **Other Duties.** Perform any other duties, obligations or responsibilities of the CLIENT set forth elsewhere in this Agreement, including, but not limited to, the obligation to make the payments called for under the Compensation section of the Letter Agreement and Section 5 of these General Provisions and perform any responsibilities and duties of the Client which may identified in the Letter Agreement, if any.

i. **Taxes.** Pay for and be responsible for all taxes incurred in connection with the Project, regardless of whether such taxes are assessed against CLIENT, TRANSYSTEMS or others.

j. **Costs.** Bear all costs incident to compliance with the requirements of this Section 3.

4. PERIODS OF SERVICE

4.1 Period of Service. The provisions of this Section 4 and the various rates of compensation for TRANSYSTEMS' Services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. TRANSYSTEMS' obligation to render Basic Services hereunder will extend for a period which may reasonably be required for the Project including any Additional Services, extra or changed work and required extensions thereto.

4.2 Completion Date. If an anticipated date for the completion of the Basic Services is set forth in the Schedule section of the Letter Agreement (the "Completion Date"), such a Completion Date is estimated, but not guaranteed, to be the date that the Basic Services will be completed. If the Completion Date is exceeded through no fault of TRANSYSTEMS, all rates, measures and compensation provided for under the Agreement shall be subject to equitable adjustment. The Completion Date (and TRANSYSTEMS' obligation to complete the Basic Services by such date) is subject to reasonable extensions for the performance of Additional Services, constructive changes or other extra work and is subject to reasonable extensions for a Force Majeure Event.

4.3 Force Majeure. For purposes hereof, a "Force Majeure Event" shall mean the occurrence of a failure or delay due to circumstances beyond TRANSYSTEMS' control including, without limitation, acts of God, acts of a public enemy, fires, floods, earthquakes, wars, civil disturbances, sabotage, accidents, insurrection, blockages, embargoes, storms, explosions, catastrophes, epidemics, damage to the Project, lack of access to Project, unavailable utilities and power, water, labor disputes, CLIENT's failure to timely perform its obligations under this Agreement or other causes beyond TRANSYSTEMS' control.

5. PAYMENTS TO TRANSYSTEMS

a. Methods of Payment for Services and Expenses of TRANSYSTEMS

i. For Basic Services. CLIENT shall pay TRANSYSTEMS the fee(s) and/or the amounts set forth in the Compensation section of the Letter Agreement for TRANSYSTEMS' performance of the Basic Services rendered pursuant to this Agreement.

ii. For Additional Services. CLIENT shall pay for Additional Services rendered under Section 2 of these General Provisions as follows: Additional Services of TRANSYSTEMS principals and employees engaged directly on the Project and rendered pursuant to Section 2, on the basis of TRANSYSTEMS Schedule of Rates and Expenses in effect at the time the Additional Services are provided.

iii. For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.a.i. and 5.a.ii., CLIENT shall also pay TRANSYSTEMS the actual costs of all Reimbursable Expenses incurred in connection with all Additional Services. For purposes hereof, "Reimbursable Expenses" are those costs and expenses incurred by TRANSYSTEMS in connection with the performance of the Additional Services under this Agreement, including, but not limited to, the actual costs and expenses incurred by TRANSYSTEMS for travel, out of office reproduction, mailing costs, supplies and materials, taxes, transportation, independent professional associates and consultants and subconsultants and any other expense items which are described on TRANSYSTEMS' Schedule of Rates and Expenses in effect at the time the Additional Services are provided.

b. **Monthly Invoices**. TRANSYSTEMS shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon TRANSYSTEMS actual hours expended on the project multiplied by TRANSYSTEMS hourly rates and cost incurred by TRANSYSTEMS at the time of billing. CLIENT shall make prompt monthly payments in response to TRANSYSTEMS monthly statements.

c. **Other Provisions Concerning Payments.**

i. Interest, Suspension of Services. If CLIENT fails to make any payment due TRANSYSTEMS for services and expenses within thirty (30) days after receipt of TRANSYSTEMS' statement therefor, TRANSYSTEMS shall be entitled interest on the unpaid amounts due TRANSYSTEMS at the lesser of: i) 1.5 % per month; or, ii) the highest rate of interest allowed under applicable law. The entire unpaid balance due TRANSYSTEMS shall bear said rate of interest from the thirtieth day after CLIENT's receipt of TRANSYSTEMS' statement, until the entire unpaid balance has been paid to TRANSYSTEMS. In addition to being entitled to interest, TRANSYSTEMS may, after giving seven (7) days written notice to CLIENT, suspend services under this Agreement until TRANSYSTEMS has been paid in full all amounts due for Services, expenses, and charges.

ii. Payments after Termination by CLIENT. In the event of termination by CLIENT under paragraph 7.a. upon the completion of any phase of the Basic Services, progress payments due TRANSYSTEMS for Services rendered through such phase shall constitute total payment for such Basic Services. In the event of such termination by CLIENT during any phase of the Basic Services, TRANSYSTEMS will be paid for Services rendered and expenses incurred during that phase through the date of termination on the basis of TRANSYSTEMS' Schedule of Rates and Expenses for Services. In the event of any such termination(whether at the completion of a phase or otherwise), TRANSYSTEMS shall also be reimbursed for the charges of independent professional associates and consultants employed by TRANSYSTEMS to render Basic Services or Additional Services and all reasonable demobilization costs incurred by TRANSYSTEMS, including any cancellation charges by independent professional associates, consultants and others performing or furnishing Services on the Project through TRANSYSTEMS, and TRANSYSTEMS shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

iii. Payments after Termination by TRANSYSTEMS. In the event of termination by TRANSYSTEMS under paragraph 7.a., TRANSYSTEMS will be paid for Services rendered and expenses incurred during that phase through the date of termination on the basis of TRANSYSTEMS' Schedule of Rates and Expenses for Services. In addition, TRANSYSTEMS shall also be reimbursed for the charges of independent professional associates and consultants employed by TRANSYSTEMS to render Basic Services or Additional Services and all reasonable demobilization costs incurred by TRANSYSTEMS, including any cancellation charges by independent professional associates, consultants and others performing or furnishing Services on the Project through TRANSYSTEMS, and TRANSYSTEMS shall be paid for all Additional Services performed and unpaid Reimbursable Expenses incurred through the date of the termination.

iv. Records. Records of TRANSYSTEMS' salary costs pertinent to TRANSYSTEMS' compensation under this Agreement will be kept in accordance with generally accepted accounting practices. If Client desires to have copies of such records, copies will be made available to CLIENT upon Client's request prior to final payment for TRANSYSTEMS' services. TRANSYSTEMS shall be reimbursed the cost of any such copies by CLIENT.

v. Cost Factors. Whenever a factor is applied to salary costs or other expenses in determining compensation payable to TRANSYSTEMS that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied on a consistent basis by TRANSYSTEMS and consistent with TRANSYSTEMS' overall compensation practices and procedures.

6. OPINIONS OF COST AND SCHEDULE

a. Opinions of Cost and Schedule. Since TRANSYSTEMS has no control over the cost of labor, materials, equipment or services furnished by others, or over the resources provided by others to meet construction or other Project schedules, or over the methods of others in determining prices, or over competitive bidding or market conditions, TRANSYSTEMS' opinions of probable costs (including probable Total Project Costs and Construction Cost) and of Project schedules shall be made on the basis of TRANSYSTEMS' experience and qualifications and represent TRANSYSTEMS' best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but TRANSYSTEMS cannot and does not guarantee that proposals, bids or actual Project costs (including Total Project Costs or Construction Costs) will not vary from opinions of probable cost prepared by TRANSYSTEMS or that actual schedules will not vary from the projected schedules prepared by TRANSYSTEMS.

7. GENERAL CONSIDERATIONS

a. Termination. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days' written notice to the other party in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. Reuse of Documents. All documents, drawings, sketches, studies, analysis, information, schedules, estimates, reports and other items prepared or furnished by TRANSYSTEMS (or TRANSYSTEMS' independent professional associates and consultants) pursuant to this Agreement, including, but not limited to Drawings and Specifications, are instruments of service in respect of the Project and TRANSYSTEMS shall retain an ownership and property interest therein whether or not the Project is completed. Provided, however, that such documents, drawings, sketches, studies, analysis, information, schedules, estimates, reports and other items are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by TRANSYSTEMS for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to TRANSYSTEMS, or to TRANSYSTEMS' independent professional associates or consultants, and CLIENT does hereby, to the fullest extent permitted by law, indemnify and hold harmless TRANSYSTEMS, TRANSYSTEMS' officer, employees and agents and TRANSYSTEMS' independent professional associates and consultants from all claims, suits, demands, damages, liabilities, losses, expenses and costs, including but not limited to reasonable attorney's fees and other costs of defense, arising out of or resulting therefrom. The provisions of this Section 7 shall survive the termination of this Agreement.

c. Use of Electronic Media. Original drawings of the information contained on the electronic media are available, and their use is recommended. Use of the electronic media at the CLIENT's election shall be at the sole risk of the CLIENT and without liability or legal exposure to TRANSYSTEMS, and CLIENT does hereby, to the fullest extent permitted by law, indemnify and hold harmless TRANSYSTEMS, TRANSYSTEMS' officers, employees and agents and TRANSYSTEMS' independent professional associates and consultants from and against any and all claims suits, demands, damages, liabilities, losses, expenses and costs, including but not limited to reasonable attorney's fees and other costs of defense, arising out of or resulting from any use, misuse, alternation, or modification of TRANSYSTEMS' instruments of professional service delivered to the CLIENT in electronic media form.

d. Standard of Practice, Warranties. Services performed by the TRANSYSTEMS under this Agreement will be conducted in a manner consistent with the level of care, diligence and skill ordinarily possessed and exercised by members of the profession currently practicing in the same locality under similar conditions. Except as expressly set forth above, no other representations, expressed or implied, and no warranty or guarantee is included in this Agreement, or in any document, drawing, sketch, study, analysis, schedule, estimate, report, opinion, specification and other item prepared or furnished by TRANSYSTEMS (or TRANSYSTEMS' independent professional associates and consultants) pursuant to this Agreement.

e. Limitation of Responsibility, Jobsite Safety/Techniques. TRANSYSTEMS shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project or any contractor, subcontractor, vendor or other Project participant, not under contract to TRANSYSTEMS (collectively the "Other Project Parties"). In addition, TRANSYSTEMS shall not be responsible for: i) the failure of any of the Other Project Parties to fulfill their respective contractual responsibilities and obligations to CLIENT or to comply with federal, state or local laws, rules, regulations or codes; ii) for the schedules of any of the Other Project Parties or the failure of any of the Other Project Parties to carry out their work in accordance with their respective agreements. TRANSYSTEMS shall not have control over or charge of and shall not be responsible for acts or omissions of the Other Project Parties, or their agents or employees, or of any other persons performing portions of the work on the Project.

f. Insurance. TRANSYSTEMS shall maintain throughout the duration of this Agreement insurance for Worker's Compensation and Employer's Liability, Comprehensive Automobile Liability, Comprehensive General Liability, and Professional Liability. TRANSYSTEMS shall furnish CLIENT a copy of certifications upon request.

7.1 Liability and Indemnification. Having considered the potential liabilities that may exist during the performance of the Services, the benefits of the Project, and TRANSYSTEMS' Compensation for the performance of the Services, and in consideration of the promises contained in this Agreement, CLIENT and TRANSYSTEMS agree to allocate and limit such liabilities in accordance with the provisions of this Section 7.6.

7.2 TRANSYSTEMS Indemnification. In addition to its other indemnification obligations under this Agreement, TRANSYSTEMS hereby agrees to indemnify and hold harmless the CLIENT and any of its officers or employees from all loss, damage, cost or expense arising out of (and to the extent caused by):

a. TRANSYSTEMS' negligent performance of Services under this Agreement;

b. Claims, suits or actions of every kind and description when such suits or actions are caused by negligent acts, errors or omissions of TRANSYSTEMS, its employees or subcontractors; or

c. Injury or damages received or sustained by any party because of the negligent acts, errors or omissions of TRANSYSTEMS, its employees or subcontractors.

d. In the event losses, damages, costs or expenses are caused by the joint or concurrent negligence of TRANSYSTEMS and CLIENT, such losses, damages, costs and expenses shall be borne by each party in proportion to its own negligence.

7.3 CLIENT Indemnification. In addition to its other indemnification obligations under this Agreement, CLIENT hereby agrees to indemnify and hold harmless TRANSYSTEMS and any of its officers or employees from all loss, damage, cost or expense arising out of (and to the extent caused by):

a. CLIENT's negligent acts, errors or omissions of CLIENT, its employees or contractors; or

b. Injury or damages received or sustained by any party because of the negligent acts, errors or omissions of CLIENT, its employees or contractors.

c. In the event losses, damages, costs or expenses are caused by the joint or concurrent negligence of TRANSYSTEMS and CLIENT, such losses, damages, costs and expenses shall be borne by each party in proportion to its own negligence.

7.4 Employee Claims. TRANSYSTEMS shall indemnify CLIENT against any loss, damage, cost or expense arising out of claims by TRANSYSTEMS' employees (unless such claim arises out of or as a result of the negligence of CLIENT, its employees, agents or contractors). CLIENT shall indemnify TRANSYSTEMS against any loss, damage, cost or expense arising out of claims by CLIENT'S employees (unless such claim arises out of or as a result of the negligence of TRANSYSTEMS, its employees, agents or subcontractors).

7.5 Consequential Damages. To the fullest extent permitted by law, TRANSYSTEMS shall not, in any event, be liable to CLIENT for any special, indirect, incidental or consequential damages, including, but not limited to, damages from delay, distribution, loss of product, loss of use, loss of profits or revenue or increased cost of operation, the cost of capital or the cost of purchased or replacement equipment, systems or power.

7.6 Limitation of Liability. To the fullest extent permitted by law, TRANSYSTEMS' total liability to CLIENT for all claims, losses, damages and expenses resulting or arising in any way from the performance of the Services (including TRANSYSTEMS' indemnity obligations hereunder) shall not exceed $1,000,000.

7.7 Survival. The terms and conditions of this Section 7 shall survive the termination of this Agreement and/or the completion of the Services.

8. SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

a. Special Provisions. This Agreement is subject to no special provisions.

b. Contract Documents. The Letter Agreement, together with these General Provisions and with the Exhibits, schedules and other attachments identified in the Letter Agreement constitute the entire agreement between CLIENT and TRANSYSTEMS and supersede all prior written or oral understandings. The Letter Agreement, these General Provisions and said Exhibits, schedules and attachments may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

c. Hazardous Materials. Unless otherwise provided in this Agreement, TRANSYSTEMS shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site. However, TRANSYSTEMS shall report to CLIENT the presence and location of any hazardous material which it notices or which an engineer of similar skill and experience should have noticed.

d. Attorneys Fees. In the event that either party hereto employs an attorney to enforce any provision of this Agreement or to collect damages for default or breach of this Agreement, or pursue claims in litigation or arbitration, the prevailing party in any such action shall be entitled to recover from the other such attorneys' fees and costs of collection as the prevailing party may expend or incur with respect thereto. In the event that a settlement is reached between the parties before a final decision in any such litigation or arbitration, then neither party shall be entitled to recover its attorneys fees or costs from the other and neither party shall be responsible for the other party's attorney's fees or costs, unless otherwise agreed by the parties.

e. Disputes. In the event a dispute arises between TRANSYSTEMS and CLIENT regarding the application or interpretation of any provision of this Agreement, or quality of Services by TRANSYSTEMS, the aggrieved party shall promptly notify the other party to this Agreement of the dispute, but in no event more than 20 days after such dispute arises. If the parties fail to resolve the dispute within 20 days after receipt of such notice, each party shall, within five days thereafter, proceed to non-binding mediation, with each party to bear its own costs and attorneys' fees (except as otherwise provided in Section 8.d. above) and the parties shall share equally in the cost of the mediator. In the event that the mediation is unsuccessful, the aggrieved party may elect to litigate its dispute with the other party. All disputes shall be governed by the laws of the State of Arizona and the jurisdiction and venue for litigation between the parties shall be solely and exclusively in Maricopa County, Arizona.

f. Independent Contractor. TRANSYSTEMS shall be an independent contractor with respect to the Services to be performed hereunder. Neither TRANSYSTEMS, nor its independent professional associates, consultants or subcontractors, nor the employees of any of the foregoing, shall be deemed to be the servants, employees or agents of CLIENT.

g. Representations and Remedies. TRANSYSTEMS makes no representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth herein. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE SPECIFICALLY EXCLUDED. The parties' rights, liabilities, responsibilities and remedies with respect to the Services, whether in contract or otherwise, shall be exclusively those expressly set forth in this Agreement.

h. Assignment, Subcontractors. This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party, or to a person, firm or corporation acquiring all or substantially all of the business assets of such party or to a wholly owned subsidiary of either party, but such assignment shall not relieve the assigning party of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the assignee. This Agreement shall be binding upon and shall inure to the benefit of the TRANSYSTEMS' and CLIENT's respective successors and assigns. Nothing in this Section 8.h. shall prevent or be deemed to prevent TRANSYSTEMS from employing, contracting with or engaging independent professional associates, consultants and other subcontractors to perform or assist in the performance of the Services.

i. Interpretation.

i. This Agreement shall be governed by and interpreted in accordance with the laws of Arizona.

ii. Headings and titles of sections, paragraphs and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

iii. Unless specifically stated to the contrary therein, indemnities against, releases from and limitations on liability expressed in this Agreement shall apply even in the event of the fault, negligence or strict liability of the party indemnified or released or whose liability is limited and shall extend to the officers, directors, employees, agents, licensors and related entities of such party.

iv. In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall effect the intent of the parties as set forth in this Agreement.

v. The parties agree to look solely to each other with respect to the performance of this Agreement and the Services to be provided hereunder. This Agreement and each and every provision hereof is for the exclusive benefit of CLIENT and TRANSYSTEMS and not for the benefit of any third party, and no third party shall be entitled to rely upon or enforce the terms of this Agreement, or to be a third party beneficiary thereof.

vi. No failure by either party to insist on performance of any term, condition, or instruction, or to exercise any right or privilege included in this Agreement, and no waiver of any breach shall constitute a waiver of any other or subsequent term, condition, instruction, breach, right or privilege.

vii. The parties acknowledge and agree that the terms and conditions of this Agreement, including but not limited to those relating to allocations and assumptions of, releases from, exclusions against and limitations of liability, have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement they have relied solely on their own judgment, belief, and knowledge, and such advice as they may have received from their own counsel, and they have not been influenced by any representation or statements made by any other party or its counsel. No provision in this Agreement is to be interpreted for or against any party because that party or its counsel drafted such provision.

Accepted:

_____ **CLIENT's Initials**

_____ **TRANSYSTEMS' Initials**

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Combined Workhour Proposal and Fee - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Phase I - Pre-Design Services												
Field Review/Document Review												
Civil		16	0	0	0	0	0	0	0	0	1	17
Drainage		0	16	0	0	0	0	0	0	0	1	17
Electrical		0	0	8	0	0	0	0	0	0	1	9
Architectural		0	0	0	0	8	0	0	0	0	1	9
Project Meetings	(2 Mtgs @ 2 Persons - 3 Hrs. Ea)	12	0	0	0	12	0	0	0	0	4	28
Concept Development	(3 Concepts Max)											
Civil		14	0	0	0	0	0	0	30	0	0	44
Drainage		0	30	0	0	0	0	0	0	8	0	38
Electrical		0	0	4	0	0	0	0	0	0	0	4
Architectural		0	0	0	10	24	0	20	0	0	0	54
Shade Study		0	0	0	5	0	0	30	0	0	0	35
Structural		6	0	0	0	0	0	0	0	0	0	6
Design Camp Meeting and Prep		8	12	6	6	12	0	18	0	0	0	62
Concept Plans (30%)												
Civil	6 Shts - 1"=20'	8	20	0	0	0	0	0	0	32	0	60
Drainage		0	24	0	0	0	0	0	0	0	0	24
Electrical	1 Shts - 1"=40'	0	0	8	0	0	0	0	8	0	0	16
Architectural		0	0	0	4	8	16	16	18	0	0	62
Shade Study		0	0	0	5	0	0	20	0	0	0	25
Structural		6	0	0	0	0	0	0	8	0	0	14
Subtotal Hours		**70**	**102**	**26**	**30**	**64**	**16**	**104**	**64**	**40**	**8**	**524**
Phase II - Intermediate Design and GMP Development												
Prepare 60% and Pre-final (95%) Construction Documents												
Paving Plans												
Cover Sheet	1 Sht - No Scale	1	4	0	0	0	0	0	0	12	0	17
General Notes/Typical Sections	1 Sht - No Scale	1	6	0	0	0	0	0	0	10	0	17
Detail Sheet	2 Sht - No Scale	2	18	0	0	0	0	0	0	26	0	46
Demolition Plan	1 Sht - 1"=40' Scale	1	4	0	0	0	0	0	0	12	0	17
Parking Paving/Grading Plans	6 Sht - 1"=20' (No Profile Shts)	2	26	0	0	0	0	0	0	60	0	88
Transit Center Plans	1 Sht - 1"=10'	2	8	0	0	0	0	0	0	16	0	26
Drainage Plans												
Pipe Profiles (4 pipes/50' Length)	2 Sht - 1"=20' Scale	0	8	0	0	0	0	0	0	16	0	24
Detention Basin	2 Sht - 1"=20' Scale	0	8	0	0	0	0	0	0	16	0	24
SWPP Plans												
Detail Sheet	1 Sht - No Scale	0	8	0	0	0	0	0	0	16	0	24
Plan Sheet	1 Sht - 1"=40' Scale	0	12	0	0	0	0	0	0	16	0	28
Lighting Plans												
Legend and Notes	1 Sht - No Scale	0	0	6	0	0	0	0	8	0	0	14
Electrical Panel/Details	1 Sht - No Scale	0	0	10	0	0	0	0	8	0	0	18
Security/Video Details	1 Sht - No Scale	0	0	16	0	0	0	0	20	0	0	36

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Combined Workhour Proposal and Fee - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Plan Sheet	1 Sht - 1"=40' Scale	0	0	24	0	0	0	0	20	0	0	44
Lighting Calculations		0	0	8	0	0	0	0	4	0	2	14
Structural Plans												
Shade Structure	4 Sht	16	48	0	0	0	0	0	56	0	0	120
Structural Calculations		10	70	0	0	0	0	0	0	0	4	84
Architectural Plans												
Shade Structure	4 Sht	0	0	0	4	18	40	0	80	0	0	142
ADA Review		16	0	0	0	0	0	0	0	0	0	16
Specification		0	0	0	0	0	40	0	0	0	0	40
Quantities/Bid Tab		0	24	0	0	0	0	16	0	0	0	40
60% Comment Resolution/Meeting												
Project Meetings	(2 Mtgs @ 2 Persons - 3 Hrs. Ea)	8	4	0	0	8	4	0	0	0	4	28
		12	0	0	0	12	0	0	0	0	4	28
Subtotal Hours		**71**	**248**	**64**	**4**	**38**	**84**	**16**	**196**	**200**	**14**	**935**
TOTAL PROJECT WORK-HOURS		**141**	**350**	**90**	**34**	**102**	**100**	**120**	**260**	**240**	**22**	**1,459**
Hourly Rate		**$165**	**$125**	**$120**	**$235**	**$130**	**$120**	**$75**	**$80**	**$70**	**$40**	
Hourly Rate * Work-hours		**$23,265**	**$43,750**	**$10,800**	**$7,990**	**$13,260**	**$12,000**	**$9,000**	**$20,800**	**$16,800**	**$880**	**$158,545**

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
EMCC Parking Lot Design - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Phase I - Pre-Design Services												
Field Review/Document Review												
Civil		8	0	0	0	0	0	0	0	0	1	9
Drainage		0	8	0	0	0	0	0	0	0	0	8
Electrical		0	0	4	0	0	0	0	0	0	1	5
Architectural		0	0	0	0	4	0	0	0	0	0	4
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Concept Development	(3 Concepts Max)											
Civil		7	0	0	0	0	0	0	15	0	0	22
Drainage		0	15	0	0	0	0	0	0	4	0	19
Electrical		0	0	2	0	0	0	0	0	0	0	2
Architectural		0	0	0	4	4	0	0	0	0	0	8
Shade Study		0	0	0	0	0	0	0	0	0	0	0
Structural		0	0	0	0	0	0	0	0	0	0	0
Design Camp Meeting and Prep		2	4	2	2	3	0	4	0	0	0	17
Concept Plans (30%)												
Civil	4 Shts - 1"=20'	4	14	0	0	0	0	0	0	20	0	38
Drainage		0	16	0	0	0	0	0	0	0	0	16
Electrical	1 Shts - 1"=40'	0	0	4	0	0	0	0	6	0	0	10
Architectural		0	0	0	0	0	0	0	0	0	0	0
Shade Study		0	0	0	0	0	0	0	0	0	0	0
Structural		0	0	0	0	0	0	0	0	0	0	0
Subtotal Hours		**27**	**57**	**12**	**6**	**17**	**0**	**4**	**21**	**24**	**4**	**172**
Phase II - Intermediate Design and GMP Development												
Prepare 60% and Pre-final (95%) Construction Documents												
Paving Plans												
Cover Sheet	1 Sht - No Scale	0	2	0	0	0	0	0	0	6	0	8
General Notes/Typical Sections	1 Sht - No Scale	1	3	0	0	0	0	0	0	5	0	9
Detail Sheet	2 Sht - No Scale	1	8	0	0	0	0	0	0	14	0	23
Demolition Plan	1 Sht - 1"=40' Scale	0	2	0	0	0	0	0	0	6	0	8
Parking Paving/Grading Plans	4 Sht - 1"=20'	1	16	0	0	0	0	0	0	38	0	55
Transit Center Plans	2 Sht - 1"=20'	0	0	0	0	0	0	0	0	0	0	0
Drainage Plans												
Pipe Profiles (4 pipes/50' Length)	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
Detention Basin	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
SWPP Plans												
Detail Sheet	1 Sht - No Scale	0	4	0	0	0	0	0	0	8	0	12
Plan Sheet	1 Sht - 1"=40' Scale	0	6	0	0	0	0	0	0	8	0	14
Lighting Plans												

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
EMCC Parking Lot Design - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Legend and Notes	1 Sht - No Scale	0	0	3	0	0	0	0	4	0	0	7
Electrical Panel/Details	1 Sht - No Scale	0	0	5	0	0	0	0	4	0	0	9
Security/Video Details	1 Sht - No Scale	0	0	8	0	0	0	0	10	0	0	18
Plan Sheet	1 Sht - 1"=40' Scale	0	0	12	0	0	0	0	10	0	0	22
Lighting Calculations		0	0	4	0	0	0	0	2	0	1	7
Structural Plans												0
Shade Structure	4 Sht	0	0	0	0	0	0	0	0	0	0	0
Structural Calculations		0	0	0	0	0	0	0	0	0	0	0
Architectural Plans												0
Shade Structure	4 Sht	0	0	0	0	0	0	0	0	0	0	0
ADA Review		4	0	0	0	0	0	0	0	0	0	4
Specification		0	0	0	0	0	20	0	0	0	0	20
Quantities/Bid Tab		0	12	0	0	0	0	8	0	0	0	20
										0		0
60% Comment Resolution/Meeting		4	2	0	0	4	2	0	0	0	2	14
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Subtotal Hours		17	63	32	0	10	22	8	30	101	5	288
TOTAL PROJECT WORK-HOURS		44	120	44	6	27	22	12	51	125	9	460
Hourly Rate		$165.0	$125.0	$120.0	$235.0	$130	$120	$75	$80	$70	$40	
Hourly Rate * Work-hours		$7,260.0	$15,000.0	$5,280.0	$1,410.0	$3,510	$2,640	$900	$4,080	$8,750	$360	$49,190

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Mini-Bus Transit Center - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks / Classification		TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Phase I - Pre-Design Services												
Field Review/Document Review												
Civil		8	0	0	0	0	0	0	0	0	0	8
Drainage		0	8	0	0	0	0	0	0	0	1	9
Electrical		0	0	4	0	0	0	0	0	0	0	4
Architectural		0	0	0	0	4	0	0	0	0	1	5
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Concept Development	(3 Concepts Max)											
Civil		7	0	0	0	0	0	0	15	0	0	22
Drainage		0	15	0	0	0	0	0	0	4	0	19
Electrical		0	0	2	0	0	0	0	0	0	0	2
Architectural		0	0	0	6	20	0	20	0	0	0	46
Shade Study		0	0	0	5	0	0	30	0	0	0	35
Structural		6	0	0	0	0	0	0	0	0	0	6
Design Camp Meeting and Prep		6	8	4	4	9	0	14	0	0	0	45
Concept Plans (30%)												
Civil	2 Shts - 1"=20'	4	6	0	0	0	0	0	0	12	0	22
Drainage		0	8	0	0	0	0	0	0	0	0	8
Electrical	1 Shts - 1"=40'	0	0	4	0	0	0	0	2	0	0	6
Architectural		0	0	0	4	8	16	16	18	0	0	62
Shade Study		0	0	0	5	0	0	20	0	0	0	25
Structural		6	0	0	0	0	0	0	8	0	0	14
Subtotal Hours		**43**	**45**	**14**	**24**	**47**	**16**	**100**	**43**	**16**	**4**	**352**
Phase II - Intermediate Design and GMP Development												
Prepare 60% and Pre-final (95%) Construction Documents												
Paving Plans												
Cover Sheet	1 Sht - No Scale	1	2	0	0	0	0	0	0	6	0	9
General Notes/Typical Sections	1 Sht - No Scale	0	3	0	0	0	0	0	0	5	0	8
Detail Sheet	2 Sht - No Scale	1	10	0	0	0	0	0	0	12	0	23
Demolition Plan	1 Sht - 1"=40' Scale	1	2	0	0	0	0	0	0	6	0	9
Paving/Grading Plans	2 Sht - 1"=20' (No Profile Shts)	1	10	0	0	0	0	0	0	22	0	33
Transit Center Plans	1 Sht - 1"=10'	2	8	0	0	0	0	0	0	16	0	26
Drainage Plans												
Pipe Profiles (4 pipes/50' Length)	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
Detention Basin	2 Sht - 1"=20' Scale	0	4	0	0	0	0	0	0	8	0	12
SWPP Plans												
Detail Sheet	1 Sht - No Scale	0	4	0	0	0	0	0	0	8	0	12
Plan Sheet	1 Sht - 1"=40' Scale	0	6	0	0	0	0	0	0	8	0	14
Lighting Plans												

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Mini-Bus Transit Center - Scope of Work Phase I and II

March 28, 2007

TranSystems

Tasks	Classification	TranSystems										
		Civil Engineer 4	Civil Engineer 3	Electrical Engineer 3	Architect 5	Architect 4	Architect 3	Architect 1	Technician 3	Technician 2	Admin	Total
Legend and Notes	1 Sht - No Scale	0	0	3	0	0	0	0	4	0	0	7
Electrical Panel/Details	1 Sht - No Scale	0	0	5	0	0	0	0	4	0	0	9
Security/Video Details	1 Sht - No Scale	0	0	8	0	0	0	0	10	0	0	18
Plan Sheet	1 Sht - 1"=40' Scale	0	0	12	0	0	0	0	10	0	0	22
Lighting Calculations		0	0	4	0	0	0	0	2	0	1	7
Structural Plans										0		0
Shade Structure	4 Sht	16	48	0	0	0	0	0	56	0	0	120
Structural Calculations		10	70	0	0	0	0	0	0	0	4	84
Architectural Plans												0
Shade Structure	4 Sht	0	0	0	4	18	40	0	80	0	0	142
ADA Review		12	0	0	0	0	0	0	0	0	0	12
Specification		0	0	0	0	0	20	0	0	0	0	20
Quantities/Bid Tab		0	12	0	0	0	0	8	0	0	0	20
										0		0
60% Comment Resolution/Meeting		4	2	0	0	4	2	0	0	0	2	14
Project Meetings	(1 Mtgs @ 2 Persons - 3 Hrs. Ea)	6	0	0	0	6	0	0	0	0	2	14
Subtotal Hours		**54**	**185**	**32**	**4**	**28**	**62**	**8**	**166**	**99**	**9**	**647**
TOTAL PROJECT WORK-HOURS		**97**	**230**	**46**	**28**	**75**	**78**	**108**	**209**	**115**	**13**	**999**
Hourly Rate		**$165**	**$125**	**$120**	**$235**	**$130**	**$120**	**$75**	**$80**	**$70**	**$40**	
Hourly Rate * Work-hours		**$16,005**	**$28,750**	**$5,520**	**$6,580**	**$9,750**	**$9,360**	**$8,100**	**$16,720**	**$8,050**	**$520**	**$109,355**

TranSystems Workhours

City of Avondale - EMCC Mini-Bus Center Project
Project No. AD 06-033
Scope of Work Phase I and II

March 14, 2007

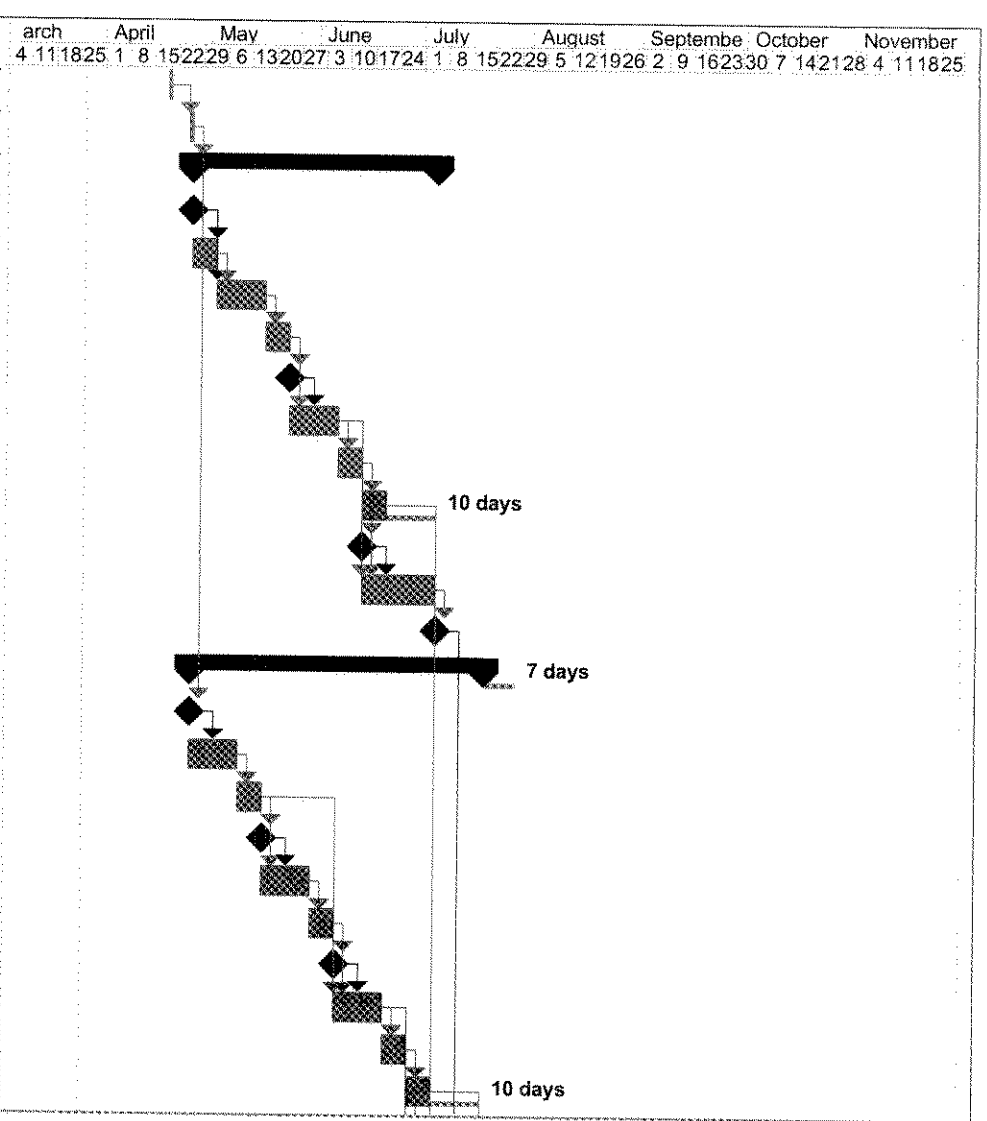
TranSystems

Direct Expenses

Mileage			
	12 Trips @ 44 Miles	$0.48 per mile	$253
Printing			
	Design Camp		$50
	30% Submittal (10 Shts)		
		15 Half Size Sets (11x17)	$23
		5 Full Size Sets (24x36)	$20
	60% Submittal (30 Shts)		
		15 Half Size Sets (11x17)	$68
		5 Full Size Sets (24x36)	$60
	95% Submittal (40 Shts)		
		15 Half Size Sets (11x17)	$90
		5 Full Size Sets (24x36)	$80
		Total	$643

11x17 - $0.15 per sheet
24x36 - $0.40 per sheet

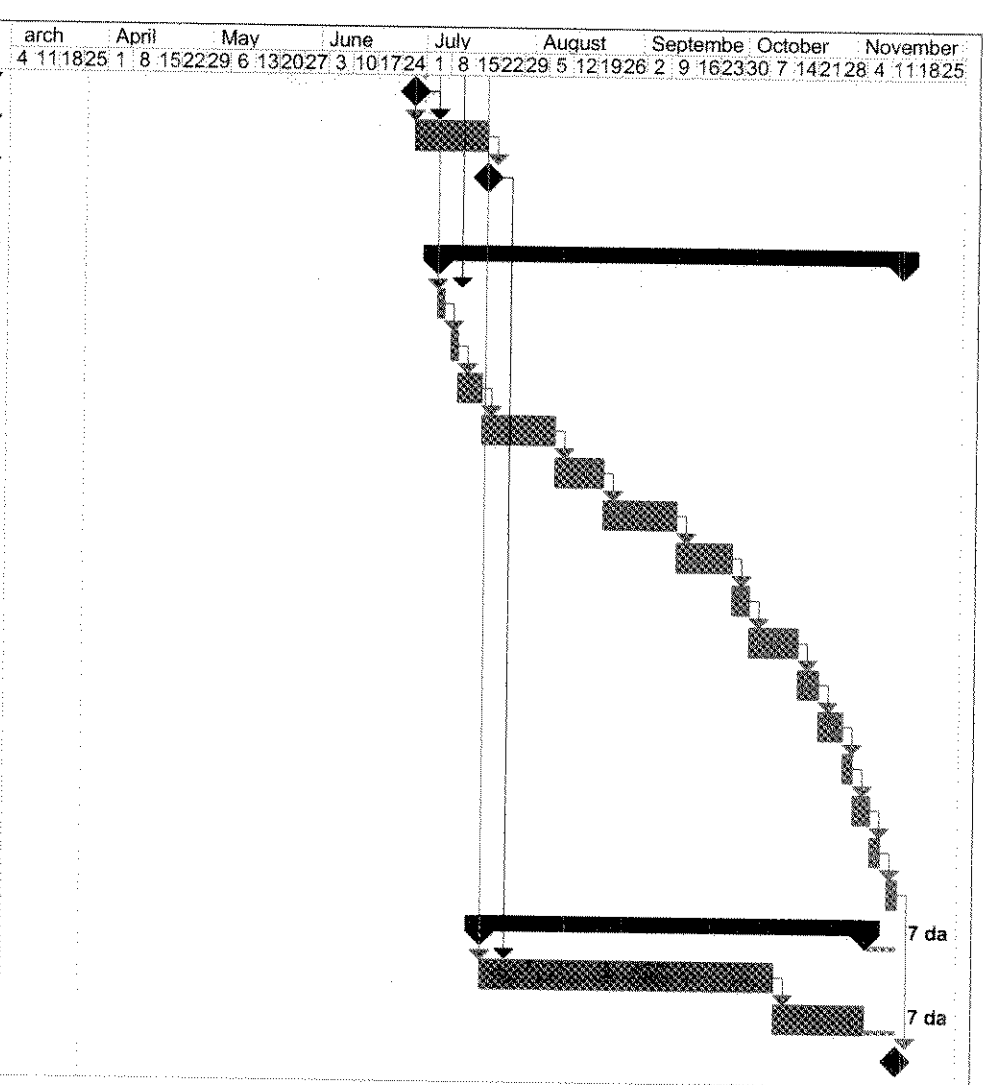
ID	Task Name	Duration	Start
1	COUNCIL APPROVAL	1 day	4/19/07
2	KICK OFF MEETING	1 day	4/25/07
3	**PARKING LOT DESIGN**	**50 days**	**4/25/07**
4	DESIGN CAMP	0 days	4/25/07
5	DUST & SWRPP PERMITS	5 days	4/26/07
6	30% PLANS SUBMITTAL	10 days	5/3/07
7	30% CITY REVIEW & COMMENTS	5 days	5/17/07
8	COST MODEL @ 30%	0 days	5/23/07
9	100% PLANS SUBMITTAL	10 days	5/24/07
10	100% CITY REVIEW & COMMENTS	5 days	6/7/07
11	CONSTRUCTION PERMIT	5 days	6/14/07
12	SUBMITT GMP 1	0 days	6/13/07
13	COUNCIL APPROVAL GMP1	15 days	6/14/07
14	NOTICE TO PROCEED	0 days	7/4/07
15	**BUS STOP DESIGN**	**60 days**	**4/25/07**
16	DESIGN CAMP	0 days	4/25/07
17	30% PLANS SUBMITTAL	10 days	4/26/07
18	30% CITY REVIEW & COMMENTS	5 days	5/10/07
19	COST MODEL @ 30%	0 days	5/16/07
20	60% PLANS SUBMITTAL	10 days	5/17/07
21	60% CITY REVIEW & COMMENTS	5 days	5/31/07
22	COST MODEL @ 60%	0 days	6/6/07
23	100% PLANS SUBMITTAL	10 days	6/7/07
24	100% CITY REVIEW & COMMENTS	5 days	6/21/07
25	BUILDING PERMIT	5 days	6/28/07



Estrella Mountain College
Mini-Bus Center Project
Hunter Contracting / Tran Systems

Critical		Milestone		Rolled Up Critical	
Critical Split		Slack		Rolled Up Critical Split	
Task		Slippage		External Tasks	
Split		Summary		External Milestone	
Progress		Project Summary		Deadline	

ID	Task Name	Duration	Start
26	SUBMITT GMP 2	0 days	6/27/07
27	COUNCIL APPROVAL GMP2	15 days	6/28/07
28	NOTICE TO PROCEED	0 days	7/18/07
29			
30	**PARKING LOT CONSTRUCTION**	**95 days**	**7/5/07**
31	SURVEY	2 days	7/5/07
32	POTHOLE	2 days	7/9/07
33	CLEAR & GRUB	5 days	7/11/07
34	MASS GRADING	15 days	7/18/07
35	PIPING - ELEC./CONC./SLEEVES	10 days	8/8/07
36	CONCRETE WORK	15 days	8/22/07
37	LANDSCAPE	12 days	9/12/07
38	HEADWALLS & RIPRAP	3 days	9/28/07
39	SUBGRADE PREP	10 days	10/3/07
40	FINISH SUBGRADE	4 days	10/17/07
41	PLACE & FINISH ABC	5 days	10/23/07
42	PLACE ASPHALT	3 days	10/30/07
43	STRIPE	3 days	11/2/07
44	SET LIGHT POLES	3 days	11/7/07
45	PUNCH LIST	3 days	11/12/07
46	**BUS SHELTER CONSTRUCTION**	**78 days**	**7/19/07**
47	FABRICATION	60 days	7/19/07
48	INSTALLATION	18 days	10/11/07
49	FINAL COMPLETION	0 days	11/14/07



Estrella Mountain College
Mini-Bus Center Project
Hunter Contracting / Tran Systems

Critical		Milestone		Rolled Up Critical	
Critical Split		Slack		Rolled Up Critical Split	
Task		Slippage		External Tasks	
Split		Summary		External Milestone	
Progress		Project Summary		Deadline	

CITY COUNCIL REPORT

SUBJECT:
Resolution 2643-507 Authorizing an application to the Governor's Office of Highway Safety - Fire Department - Child Safety Seats

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Janeen Gaskins, Grants Administrator (623)333-1025

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting City Council approval of a resolution authorizing the City of Avondale Fire-Rescue Department to submit an application to the Governor's Office of Highway Safety (GOHS) for $3,500 to purchase 50 child safety seats and provide funding for overtime pay associated with corresponding public education events.

BACKGROUND:

Over the past several years the City of Avondale Fire Rescue Department has been able to conduct successful child safety seat training. At least 100 training appointments are held each year. During 2004, 169 seats were inspected and 41 were provided to residents. In 2005, 89 seats were inspected and 18 were provided to the residents, In 2006, 105 seats were inspected and 29 were provided (these inspections do not include the special events). Special events such as the Channel 12 event and local community activities have provided over 600 one-on-one educational demonstrations to families along with the distribution of 100 free child safety seats.

The Avondale Fire-Rescue Education Division currently has five staff members that are dedicated to providing child safety seat education to residents in Avondale and surrounding cities. The division has one certified child safety seat instructor and five child safety seat technicians, all of whom have received the appropriate certifications to properly implement the child safety seat initiative.

DISCUSSION:

The Fire-Rescue Department has demonstrated a successful rate of participation at child safety seat events. This can be attributed to the Avondale Fire-Rescue Department's presence at cultural events hosted by the city and other private and local organizations. Although high participation is the goal, the result has been a difficulty in meeting the demand for child safety seat distribution. City staff has found that population growth and the demographic make up of the city has resulted in an increased need for car safety seats and training. Avondale is requesting $3,500 to purchase 50 child safety seats and to provide overtime pay for the certified staff. City staff believes that the availability of free child safety seats coupled with proper training can save the lives of children. Avondale staff has the appropriate training to continue to train residents.

In the past Avondale Fire-Rescue has held classes to educate residents about the proper usage of child safety seats and to provide participants with a voucher to receive the child safety seat. Once the resident receives the child safety seat he or she would receive another educational component explaining how to correctly secure a child in the seat and how to install the child safety in their vehicle.

The Governor's Office of Highway Safety Grants is designed to eliminate a deficiency in an applicant agency's program and to expand existing programs. Child safety seats are one of the primary objectives for this grant source. GOHS requires that municipal governments pass a resolution authorizing the city to submit an application and enter into an agreement with the Governor's Office of Highway Safety if and when the grant is

awarded.

BUDGETARY IMPACT:

The Governor's Office of Highway Safety Grants does not require any matching funds.

RECOMENDATION:

Staff recommends that the City Council approve a resolution authorizing the City of Avondale Fire-Rescue Department to submit an application to the Governor's Office of Highway Safety (GOHS) for $3,500 to purchase 50 child safety seats and provide funding for overtime pay associated with corresponding events.

ATTACHMENTS:

Click to download

- RES - 2643-507

RESOLUTION NO. 2643-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR CHILD SAFETY SEATS AND OVERTIME EXPENSE FUNDING.

WHEREAS, the Governor's Office of Highway Safety (the "GOHS") is seeking proposals from state and local agencies for funding relating to public safety education events and related overtime pay; and

WHEREAS, the Council of the City of Avondale (the "City Council") desires to submit a grant application to be considered by the GOHS for funding in the form of a reimbursable grant.

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

SECTION 1. That the City Council hereby approves the submission of a grant application for child safety seats and related public safety education event overtime expense funding to the GOHS for consideration (the "Grant Application").

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit all documents and any other necessary or desirable instruments in connection with the Grant Application and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON THE FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
Resolution 2641-507 authorizing an Intergovernmental Agreement with Littleton Elementary School District

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Christopher Reams, Acting Director of Parks, Recreation and Libraries (623)333-2412

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a resolution authorizing an intergovernmental agreement between the Littleton Elementary School District #65 and the City of Avondale for the purpose of offering a Summer Recreation Program for 2007.

BACKGROUND:

DISCUSSION:

The City of Avondale, in conjunction with the Littleton Elementary School District has offered the Summer Recreation Program for the past nine years. The Summer Recreation Program is offered to Avondale children who attend school within the the Littleton Elementary School District. The program uses certified teachers from the Littleton School District and City staff approved coordinators. The number of certified teachers is based on program participation. The program is offered for children ages 7-14 years old, Monday thru Friday from 8am-5pm. The program will operate from June 4, 2007 to July 20, 2007, but will not meet Wednesday, July 4th due to the Independence Day holiday. The Summer Program offers field trips, arts and crafts, educational guest speakers, computer lab, sports, interactive games, breakfast, and lunch.

Avondale residents are informed about the program by school fliers, web page, cable TV, City Page, newsletter, email list, and the West Valley View. The Littleton School District provides facilities, certified teachers, food service, and transportation. The City's program cost will reimburse Littleton School District #65 for part of the cost of staff, supplies, transportation and guest speakers.

The 2007 Summer Program will operate at two facilities:
Underdown Junior High School
Country Place Elementary School

BUDGETARY IMPACT:

The budget will include the following fulltime positions: (3) Program Specialists, (8) Recreation Instructors and (8) Recreation Aides. Staff members may be added to maintain adequate adult to student ratios. Staff will also continue the "Leader in Training" volunteer program for 15 – 16 year olds to assist the teachers with staffing for the Summer Program. The volunteer leaders will assist in arts and crafts, field trip supervision and organization of games and sports. The "Leaders in Training" program will provide these individuals with work skill development, self-esteem and provide needed staff support in the delivery of this program. In addition, the training program will enhance the ability to provide staff for this program and other recreational activities in the future.

The total cost of the program is budgeted at $80,700, with the City funding $20,175, the LittletonSchool

District contributing $20,175, and the remaining $40,350 provided through participation fees, supplemented with City of Avondale Youth Program Voucher funds. The participation fee will be $150.00 per child for the seven week program or children may register on a weekly basis for a fee of $30.00 per child.

Revenue

City of Avondale	$20,175 (Voucher Program)
LittletonElementarySchool District	$20,175 (in kind)
Program User Fee	$40,350
Total	$80,700

Expenses

City of Avondale	$40,350
Staff, supplies, equipment, guest speakers and special programs, advertising, printing	
LittletonElementarySchool District	$40,350 (in kind)
Facilities, staff, supplies, bus, bus driver, daily nutritional snacks	
Total	$80,700

The program will not utilize City of Avondale supplemental funding. The program is administered as a cost recovery program. However, funds from the Voucher program will be used to maintain the advertised cost for participants.

The Recreation Division has ten (10) partial scholarships available for Avondale and Littleton School District families unable to pay the program fees. Staff from PRLD will review the scholarship applications, and funding will be based on the Federal eligibility guidelines, which are used in City Social Services programs. Applications are available online at the Avondale web page, Littleton District Office, or at the Parks and Recreation office in City Hall.

RECOMENDATION:

Staff recommends that City Council approve a resolution authorizing an Intergovernmental Agreement between the City of Avondale and the Littleton Elementary School District #65 for the purpose of offering a 2007 Summer Recreation Program.

ATTACHMENTS:

Click to download

- RES 2641-507

RESOLUTION NO. 2641-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH LITTLETON SCHOOL DISTRICT NO. 65 FOR A YOUTH SUMMER PROGRAM.

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

SECTION 1. That the Intergovernmental Agreement with Littleton Elementary School District No. 65 for a youth summer program (the "Agreement") is hereby approved in the form attached hereto as Exhibit A and incorporated herein by this reference.

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

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2641-507

[Intergovernmental Agreement]

See following pages.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
LITTLETON ELEMENTARY SCHOOL DISTRICT #65
FOR
A YOUTH SUMMER PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of May 7, 2007, between the City of Avondale, an Arizona municipal corporation (the "City") and Littleton Elementary School District #65, an Arizona school district (the "District"). The City and District are sometimes collectively referred to in this Agreement as the "Parties" and each individually as a "Party".

RECITALS

A. The City and District desire to provide a summer program for Avondale youth (the "Program") at two sites owned by the District and determined to be suitable by both parties.

B. The Council of the City of Avondale (the "City Council") has budgeted $26,000 to assist the Program.

C. The City and District are authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. § 11-951.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties hereby agree as follows:

1. The District shall employ teachers and program support staff that shall be responsible for agreed-upon duties and responsibilities of the Program as directed by the City and the District. All teachers used to implement the Program shall be District employees. The City shall employ program staff that shall be responsible for agreed-upon duties and responsibilities of the Program as directed by the City and the District.

2. The teachers and program staff shall begin implementing the Program on June 4, 2007, and will continue until July 20, 2007, unless otherwise agreed by the Parties.

3. All expenses, costs and supplies associated with the teachers and District Program support staff shall be the responsibility of the District; provided, however, that the City shall reimburse the District for a portion of the cost of the teachers' salaries and supplies associated with the Program, up to $26,000.

4. The District shall request reimbursement from the City for costs associated with the Program. Each reimbursement request shall be verified by appropriate documentation. This

documentation shall consist of District payroll records, purchase orders for materials, and other appropriate documentation for expenses associated with implementing the Program. The District shall issue the first invoice for reimbursement of Program costs by July 1, 2007, and the second invoice for reimbursement of Program costs by September 5, 2007, unless otherwise agreed by the Parties.

5. The City's financial contribution to the Program shall not exceed $26,000.

6. The City shall provide access to guest speakers for certain activities during the Program.

7. The District shall provide (a) the appropriate facilities and transportation for conducting the Program and (b) sufficient insurance (i) covering such facilities, transportation, and all of the Program participants and (ii) naming the City as additional insured and loss payee, as appropriate.

8. To the fullest extent permitted by law, the District shall indemnify, and hold harmless the City, its agents, representatives, officers, officials and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes in conducting the Program. The District's duty to indemnify and hold harmless the City, its agents, representatives, officers, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes, related to the Program.

9. The Parties understand and specifically agree that the terms of this Agreement may be amended from time to time only upon written agreement by each Party.

10. The Parties understand and specifically agree that the Program and Program activities will be coordinated and modified by both Parties before the start of each Program year and that the City will act as the overall Program coordinator unless amended upon written agreement of the Parties.

11. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona.

12. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

13. This Agreement may be terminated under any of the following conditions:

a. Either Party may terminate this Agreement with or without cause upon giving the other party 60 days written notice of such termination.

b. The provisions of this Agreement for payment of funds by the Parties shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Parties shall each be the sole judge and authority in determining the availability of funds under this Agreement and each Party shall keep the other fully informed as to the availability of funds for the Program. The obligation of the Parties to make any payment pursuant to this Agreement is a current expense of the Parties, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Parties. If the City Council/District Board fail to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Parties shall relieved of any subsequent obligation under this Agreement.

14. This Agreement shall become effective after it is (a) approved by the City Council and the District Board, (b) executed by both parties and (c) recorded with the Maricopa County Recorder and shall continue in effect until March 31, 2008.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the last signature set forth below.

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

By:_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda Farris, City Clerk

"**District**"

LITTLETON ELEMENTARY SCHOOL DISTRICT # 65, an Arizona school district

By:_____
Kelli Watson, Board President

ATTEST:

_____
Dr. Roger Freeman, Superintendent

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

_____
Andrew J. McGuire
Avondale City Attorney

_____
Attorney for Littleton Elementary School

726866.2

CITY COUNCIL REPORT

SUBJECT:
Resolution 2639-507 supporting Job Access and Reverse Commute Transportation Program grant funds for START route 131

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Janeen Gaskins, Grants Administrator (623)333-1025

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution supporting the submittal of a grant proposal to the Arizona Department of Transportation, Public Transportation Division for the Rural and Small Urban Application Section 5316, Job Access and Reverse Commute Transportation Program; to provide funding to support transit operations for START Route 131, in the amount of $130,000 with a 50% match requirement.

BACKGROUND:

The City of Avondale previously received Job Access Reverse Commute Grant funding through a formula grant administered by the City of Phoenix. This fiscal year the Federal Government changed the application process from formula based to competitive. Avondale is now eligible to apply for the grant on behalf of the Avondale Urbanized Area, which includes the cities of Tolleson, Litchfield Park and Goodyear.

DISCUSSION:

The Arizona Department of Transportation is responsible for administering the Job Access and Reverse Commute Transportation Program. This new grant process is competitive and Avondale will be competing with Flagstaff, Prescott and other rural and small urbanized areas.

The City of Avondale would like to submit an application on behalf of the Avondale Urbanized Area, which includes Tolleson, Litchfield Park and Goodyear. Avondale is requesting $130,000 for the operations of the START route 131. This route is eligible for JARC funding because it provides low to moderate income areas with a public transportation option to employment hubs in Phoenix. The ridership on Avondale Urbanized Area bus routes has increased by 35% from 103,818 in FY05 to 140,285 in FY06. A 15-20% increase is expected in FY07.

Avondale must have authorization from the City Council to enter into an agreement with ADOT. The application submittal requires assurances and signatures of approval in order to review the application. Avondale staff will work with the City of Phoenix to ensure that the assurances are met and will document all necessary requirements if and when the grant is awarded.

BUDGETARY IMPACT:

The Avondale Urbanized Area is requesting $130,000 with a 50% match requirement. Match funding will be provided through the Transit Budget. The Transit Program Administrator has verified that match funding will come from the LTAF grant funds.

RECOMENDATION:

Staff recommends that the City Council adopt a resolution supporting the submittal of a grant proposal to the Arizona Department of Transportation, Public Transportation Division for the Rural and Small Urban

Application Section 5316, Job Access and Reverse Commute Transportation Program; to provide funding to support transit operations for the START Route 131, in the amount of $130,000 with a 50% match requirement.

ATTACHMENTS:

Click to download

- RES - 2639-507

RESOLUTION NO. 2639-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING SUBMITTAL OF AN APPLICATION FOR JOB ACCESS AND REVERSE COMMUTE TRANSPORTATION PROGRAM FUNDING FROM THE ARIZONA DEPARTMENT OF TRANSPORTATION.

WHEREAS, as designated by the Governor of the State of Arizona, the Arizona Department of Transportation ("ADOT") administers Job Access and Reverse Commute Program ("JARC") funding for all rural and small urbanized areas for the State; and

WHEREAS, ADOT is seeking proposals for JARC grant funding from local agencies for projects relating to all aspects of transportation services; and

WHEREAS, the Council of the City of Avondale desires to submit an application for the JARC funding for the operation of the START 131 bus route (the "Application").

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

SECTION 1. That the submittal of the Application to ADOT for $130,000.00 in JARC funds is hereby authorized.

SECTION 2. That the expenditure of 50% in matching funds is hereby authorized and officially designated to be used in conjunction with the JARC funds.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit all documents and any other necessary or desirable instruments in connection with the Application 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, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
Resolution 2644-507 - Memorandum of Understanding for the Implementation of the El Rio Watercourse Master Plan

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Director of Parks, Recreation and Libraries (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution approving a Memorandum of Understanding for the implementation of the El Rio Watercourse Master Plan.

BACKGROUND:

The Maricopa County Flood Control District, in cooperation with the City of Avondale, City of Goodyear, and the Town of Buckeye initiated the El Rio Watercourse Master Plan project. The study area includes a 17.5 mile reach of the Gila River from the Agua Fria River in Avondale, west to the SR 85 Bridge in Buckeye. The purpose of the El Rio Watercourse Master Plan is to examine the benefits, opportunities, and impacts of flood control management in the study area and to recommend a preferred design alternative. The District's goal is to provide a flood protection strategy that preserves the cultural and archaeological heritage of the river that is consistent with a long-term multi-use vision of the river corridor. The plan was developed based upon public coordination: hydrologic, hydraulic and sediment analyses, geomorphic evaluations and environmental and visual resource investigation. Flood control management alternatives developed and evaluated for the El Rio Watercourse Master Plan included structural, soft structural, non-structural, and no-action alternatives. The recommended alternative is a combination of the soft structural and non-structural alternatives and resource vegetation management. The alignment of the soft structural element closely follows the 100-year floodway alignment. The non-structural alternative will apply to river segments where flow-resistant geologic formations occur. On February 13, 2006, staff from Maricopa County Flood Control District and their Engineering Design Team presented the recommended El Rio Watercourse Master Plan to City Council.

DISCUSSION:

On April 3, 2006 City Council adopted a resolution approving the El Rio Watercourse Master Plan. Staff from the respective municipalities and agencies collaborated in developing a Memorandum of Understanding (MOU) for the implementation of the El Rio Watercourse Plan. The purpose of the MOU is to establish the framework for cooperation between the project partners for the development of the Watercourse Master Plan implementation strategy. The implementation strategy will include funding options, programs and policies, maintenance, liability, regulatory compliance and community outreach. The MOU establishes the creation of Four (4) committees; Steering Committee, Administrative Committee, Citizen Advisory Committee, and Technical Committee. Each committee will be responsible for specific tasks that will assist the project partners in fulfilling the implementation of the El Rio Watercourse Master Plan.

RECOMENDATION:

Staff recommends that the City Council adopt a resolution approving a Memorandum of Understanding for the implementation of the El Rio Watercourse Master Plan.

ATTACHMENTS:

Click to download

- RES 2644-507

RESOLUTION NO. 2644-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE CITY OF GOODYEAR, THE TOWN OF BUCKEYE AND MARICOPA COUNTY RELATING TO THE EL RIO WATERCOURSE MASTER PLAN.

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

SECTION 1. That the Memorandum of Understanding with the City of Goodyear, the Town of Buckeye and Maricopa County relating to the El Rio Watercourse Master Plan (the "Agreement") is hereby approved in the form attached hereto as Exhibit A.

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

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2644-507

[Memorandum of Understanding]

See following pages.

When Recorded Return to:
Contracts Branch
Flood Control District of Maricopa County
2801 West Durango Street
Phoenix, AZ 85009-6399

Memorandum of Understanding for the
Implementation of the El Rio Watercourse Master Plan

MOU FCD2007U002

This Memorandum of Understanding ("MOU") is entered into as of the date of the last signature set forth below, by and between the following parties, hereinafter called the PROJECT PARTNERS: City of Avondale ("AVONDALE"); Town of Buckeye ("BUCKEYE"); Flood Control District of Maricopa County ("DISTRICT"); City of Goodyear ("GOODYEAR"); and Maricopa County ("COUNTY") acting by and through Maricopa County Parks and Recreation Department ("MCPARKS") and Maricopa County Planning and Development ("MCP&D").

RECITALS

A. The DISTRICT, in cooperation with the PROJECT PARTNERS, has developed the El Rio Watercourse Master Plan (the "WCMP").

B. Features of the WCMP include flood hazard mitigation; a landscaped, buried levee; recommendations for land-use regulations; vegetation management; opportunities for open water and marsh creation; and development of regional multi-use recreation amenities.

C. Implementation of the WCMP will benefit the PROJECT PARTNERS as follows:

- Protection of the public from flood events;
- Protection of future and existing development and infrastructure from flood hazards;
- Increased economic benefits and development opportunities, including potential reclamation of 3,000 acres from the floodplain;
- Enhancement of multi-use recreational amenities for residents and tourists;
- Environmental benefits through preservation and restoration of the river's natural function and native riparian habitat; and
- Increased educational benefits for schools, community groups and other organizations.

D. The purpose of this MOU is to establish the framework of cooperation between the PROJECT PARTNERS for the development of a WCMP implementation strategy. The implementation strategy shall include the following components: funding options; programs and policies, including governance, management, maintenance and liability; regulatory compliance; and community outreach.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals, which are incorporated herein by reference, and the covenants, promises, terms and conditions set forth herein the PROJECT PARTNERS agree as follows:

1. **Cooperation framework**: Four (4) implementation committees shall be formed for the purposes set forth below and organized as set forth on Exhibit A, attached hereto and incorporated herein by reference.

1.1 WCMP Steering Committee.

A. A WCMP Steering Committee (the "Steering Committee") shall be formed to establish policy to govern the implementation process. The Steering Committee shall consist of (i) one elected official each for AVONDALE, BUCKEYE, GOODYEAR and the COUNTY and (ii) the chairperson of the Administrative Committee, as defined below.

B. Members of the Steering Committee may designate an alternate(s), who, in the absence of the member, may attend meetings and perform all of the duties and have all of the rights of the member.

C. The Steering Committee shall establish priorities; provide direction and general guidance for the development of an implementation and funding framework for the WCMP; correspond and meet with other governments, agencies and organizations; receive and consider input from the Administrative Committee and Citizen Committee (each as defined below); and, if deemed appropriate by the Steering Committee, take action on the recommendations of the Administrative Committee.

1.2 WCMP Administrative Committee.

A. A WCMP Administrative Committee (the "Administrative Committee") shall be formed to develop the implementation strategy and recommend the appropriate implementation and funding mechanism to the Steering Committee. The Administrative Committee shall consist of the following members: City Manager of Avondale; Town Manager of Buckeye; City Manager of Goodyear; Director of Maricopa County Parks and Recreation; Director of Maricopa County Planning and Development; and Chairperson of the Technical Committee (as defined below).

B. Members of the Administrative Committee may designate an alternate, who, in the absence of the member, may attend meetings and perform all of the duties and have all of the rights of the member.

C. The Administrative Committee shall: Serve as a forum for consideration, study and recommendation of data developed and gathered by the Technical Committee (as defined below); serve as the communication channel for activities impacting the WCMP project area prior to the adoption of a formal implementation mechanism and plan; make recommendations to the Steering Committee; and solicit and consider input from the Citizen Advisory Committee (as defined below).

1.3 WCMP Citizen Advisory Committee. A WCMP Citizen Advisory Committee (the "Citizen Committee") consisting of business leaders, large landowners, representatives of special interest groups, local residents and other interested citizens shall be established to provide input to the Steering Committee and the Administrative Committee. The members of the Citizen Committee will be appointed by the Steering Committee, and shall consist of three (3) members each from AVONDALE, BUCKEYE and GOODYEAR, and at least three (3) members at-large or representing special interest groups; not to exceed a total of fifteen (15) members.

1.4 WCMP Technical Committee.

A. A WCMP Technical Committee (the "Technical Committee") shall be formed to explore and design the implementation strategy and to provide technical assistance to the Administrative Committee. The Technical Committee shall consist of not more than three representatives from each PROJECT PARTNER. The Administrative Committee will designate the representatives within one (1) month of the execution of this MOU.

B. The Technical Committee shall perform those duties designated by the Administrative Committee, including, but not limited to, researching and providing technical information and analysis on implementation, funding and policy issues; research and design of the implementation mechanism; and development of the implementation plan.

C. Advisory or *ex officio* members may be designated to participate in the Technical Committee as deemed necessary by the Technical Committee or the Administrative Committee.

2. **Deliverables:** The Administrative Committee is responsible for the development and subsequent approval of the following deliverables: a formal governance mechanism and structure; identification of potential funding mechanisms; and an implementation plan that identifies a timetable and projects. Approval of the deliverable documents does not bind the PROJECT PARTNERS in any way.

3. **Timeframe:** The first meeting of the Steering Committee shall be held within 30 days of the execution of this MOU by all parties. The committees shall collectively meet at least annually to provide a report on the status of the deliverables and committee progress.

4. **Initial Meeting Tasks:** The following tasks need to be completed at the first meeting of the Administrative Committee: Establish procedures; set a calendar; and identify key issues affecting the implementation of the WCMP. A chair for each committee shall be determined at the first meeting of each committee.

5. **No Cost Reimbursements/Obligations:** The PROJECT PARTNERS will not be reimbursed for internal personnel or administrative costs expended for the development of a WCMP implementation strategy. Participation in this MOU does not imply any financial obligation or commitment on behalf of the PROJECT PARTNERS.

6. **Non-Binding Effect of MOU:** The PROJECT PARTNERS acknowledge and understand that this document is a non-binding statement of intention and shall not in any way limit the legislative discretion of the Board of Supervisors of Maricopa County, the councils of Avondale, Buckeye, and Goodyear or the Board of Directors of the Flood Control District of Maricopa County.

7. **Term; Termination:** This MOU shall be effective when executed by all parties hereto and shall remain in effect until terminated by any party, with or without cause, at any time upon written notice to the other parties.

8. **Program Continuation Subject to Appropriation:** The provisions of this MOU for the PROJECT PARTNERS to their respective costs of implementing this Memorandum of understanding shall be effective when funds are appropriated for purposes of this MOU and are actually available. Each of the PROJECT PARTNERS shall be the sole judge and authority in determining the availability of funds under this MOU and shall keep the other PROJECT PARTNERS fully informed as to the availability of funds for its program. The obligation of any of the PROJECT PARTNERS to pay its own costs pursuant to this MOU is a current expense of each PROJECT PARTNER, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of that PROJECT PARTNER. If any of the PROJECT PARTNERS fails to appropriate money sufficient to pay for its own cost associated with this MOU during any immediately succeeding fiscal year, this MOU shall terminate at the end of then-current fiscal year and the PROJECT PARTNERS shall be relieved of any subsequent obligations under this MOU.

9. **Cancellation:** The parties hereto acknowledge that this Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. § 38-511.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the dates set forth below:

CITY OF AVONDALE

_____

Mayor Date

ATTEST:

_____

City Clerk Date

TOWN OF BUCKEYE

_____

Mayor Date

ATTEST:

_____

City Clerk Date

CITY OF GOODYEAR

_____

Mayor Date

ATTEST:

_____

City Clerk Date

MARICOPA COUNTY BOARD OF SUPERVISORS

_____

Chairman Date

ATTEST:

_____

Clerk of the Board Date

ATTEST as to FORM:

_____

County Attorney Date

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY BOARD OF DIRECTORS

_____

Chairman Date

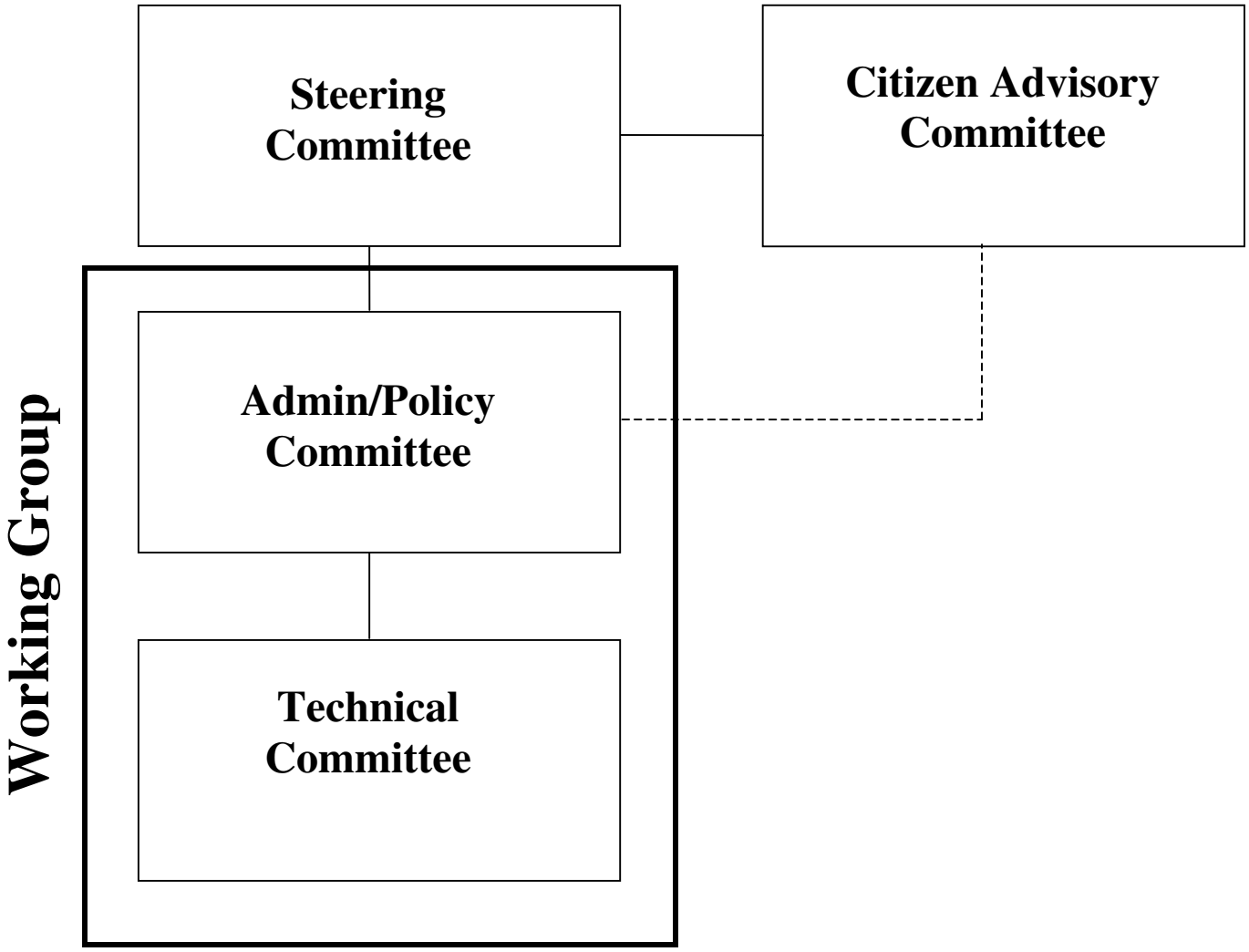
ATTEST:

_____

Clerk of the Board Date

Exhibit A

El Rio WCMP Implementation Committees
Organizational Chart



CITY COUNCIL REPORT

SUBJECT:
Resolution 2642-507 - adopting the Agua Fria Watercourse Master Plan and Channelization Alternative

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Director of Parks, Recreation and Libraries (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution approving the Agua Fria Watercourse Master Plan (WCMP) and Channelization Alternative.

BACKGROUND:

In 2001, the Maricopa County Flood Control District, in cooperation with the Cities of Avondale, Surprise, Phoenix, Glendale, Peoria, and the Towns of El Mirage and Youngtown conducted the Agua Fria Watercourse Master Plan project. The study area includes a 32 mile reach of the Lower Agua Fria River from the Gila River in Avondale, north to the New Waddell Dam. The purpose of the Agua Fria Watercourse Master Plan was to examine the benefits, opportunities, and impacts of flood control management in the study area and to recommend a preferred design alternative. The District's goal is to provide a flood protection strategy that preserves the cultural and archaeological heritage of the river that is consistent with a long-term multi-use vision of the river corridor.

The plan was developed based upon public input and includes: hydrologic, hydraulic and sediment analyses, geomorphic evaluations and environmental and visual resource investigation. Flood control management alternatives developed and evaluated for the Agua Fria Watercourse Master Plan included full structural, partial structural, low impact structural and non-structural approach to flood and erosion hazard mitigation.

The recommended plan for the water course-based flood control management for the Agua Fria Watercourse Maser Plan study area is the non-structural alternative which defines a corridor and allows the watercourse to function naturally and is defined by the 100 year floodplain, erosion hazard zone and a buffer between human activity and the channel corridor.

The Maricopa County Flood Control District, in cooperation with the participating municipalities and other stakeholders, conducted the Agua Fria Watercourse Master Plan Channelization Addendum to analyze and develop the Channelization Alternative. The Channelization Alternative was issued in January 2005, and included a low-flow channel with armored banks to contain the 10-year flood, a raised terrace and a high-flow channel to accommodate the 100-year flood and the Standard Project Flood (SPF, and drop structures) and grade control structures at specific locations.

DISCUSSION:

Staff from Maricopa County Flood Control District and their Engineering Design Team previously presented updates regarding the Agua Fria Watercourse Master Plan to City Council as it was being developed from 2001-2005. It was discovered that the City of Avondale never took formal action in the adoption of the Watercourse Master Plan or the Channelization Alternative. The City of Avondale has used the Agua Fria WCMP and Channelization Alternative as the planning guideline for the implementation of the West Valley Recreation Corridor and the Army Corp of Engineers Riparian Habitat Restoration Project. The Flood Control

District and representatives from the Friends of the West Valley Recreation Corridor have requested that the City of Avondale take formal action to adopt the WCMP and Channelization Alternative.

RECOMENDATION:

Staff recommends that City Council adopt a resolution approving the Agua Fria Watercourse Master Plan and Channelization Alternative.

ATTACHMENTS:

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- RES 2642-507

RESOLUTION NO. 2642-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ADOPTING THE AGUA FRIA WATERCOURSE MASTER PLAN AND AGUA FRIA WATERCOURSE MASTER PLAN ADDENDUM CHANNELIZATION ALTERNATIVE.

WHEREAS, the Avondale City Charter, Article I, Section 3, allows the City of Avondale ("Avondale") to cooperate with counties, other municipalities, and other political subdivisions regarding matters and problems which are common or impacting upon such jurisdictions; and

WHEREAS, ARIZ. REV. STAT. Title 48, Chapter 21 requires the Board of Directors of the Flood Control District of Maricopa County (the "District") to identify flood problems and prepare plans such as the Agua Fria Watercourse Master Plan (the "Agua Fria WCMP") to eliminate or minimize flooding problems by implementing flood hazard mitigation programs within Maricopa County; and

WHEREAS, impending development adjacent to the Agua Fria River, sand and gravel mining operations within the river, the record of historic flood events, and the increasing need to protect public safety and infrastructure from flood hazards and accommodating the economic and social needs of the greater community, necessitated timely development of a comprehensive watercourse management strategy; and

WHEREAS, the District and the City of Surprise, City of Peoria, City of Glendale, Town of Youngtown, Town of El Mirage, City of Phoenix, and City of Avondale conducted the Agua Fria WCMP to identify and address flood and erosion hazards in a 32-mile reach of the Lower Agua Fria River from the Gila River to the New Waddell Dam, and the study included public participation, hydrologic, hydraulic, sedimentation, floodplain delineations, geomorphic evaluations, environmental, visual, and recreational analyses and transportation analysis; and

WHEREAS, the Agua Fria WCMP study identified flood control and erosion hazard impacts of varying intensities in the study area by evaluating the benefits and opportunities of a full structural, partial structural, low impact structural, and non-structural approach to flood and erosion hazard mitigation; and

WHEREAS, the District issued the Final Recommended Plan Report (Final Report) for the Agua Fria WCMP in November, 2001; and

WHEREAS, the recommended plan for the watercourse-based flood control management for the Agua Fria WCMP study area is the Non-Structural Alternative which defines a corridor (non-encroachment area) that allows the watercourse to function naturally and is defined by the 100-year floodplain, erosion hazard zone and a buffer between human activity and the channel corridor; and

WHEREAS, the Agua Fria WCMP recognizes that there may be situations in which development activities may be required or desired within the erosion hazard zone and has, therefore, identified a Low Impact Structural Alternative primarily for mining extraction activities within the floodway; and

WHEREAS, the Agua Fria WCMP considered structural improvements for channelization and levee protection but the Final Report did not include this alternative due to the cost and lack of apparent cost-share partners; and

WHEREAS, prior to consideration of the Final Report for adoption by the District's Board of Directors and the City Councils of partner cities, property owners and other interested parties approached the District for reconsideration of a channelization alternative from New Waddell Dam downstream to Indian School Road; and

WHEREAS, the District, in cooperation with neighboring municipalities and other stakeholders, conducted the Agua Fria Watercourse Master Plan Channelization Addendum (the "Addendum") to analyze and develop the Channelization Alternative; and

WHEREAS, the final reports on the Channelization Alternative was issued in January 2005, and outline a low-flow channel with armored banks to contain the 10-year flood, a raised terrace and high-flow channel to accommodate the 100-year flood and the Standard Project Flood (the "SPF"), and drop structures and grade control structures at specific locations; and

WHEREAS, the raised terrace and high-flow channel is compatible with proposed recreational facilities such as parks and trail systems for the Maricopa County Parks and Recreation Department and the adjacent cities; and

WHEREAS, several sand and gravel mining companies have approached the District desiring to incorporate portions of the Channelization Alternative on their respective sites as part of their mine plans as required under the terms of their Floodplain Use Permits for activities within the 100-year floodplain; and

WHEREAS, others have expressed support for implementing the Channelization Alternative through the establishment of a Recreational Corridor Channelization District as authorized under ARIZ. REV. STAT., Title 48, Chapter 35.

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

SECTION 1. That the City of Avondale hereby adopts the recommendations of the Agua Fria WCMP, Non-Structural Alternative for watercourse-based flood control management which

defines a corridor (non-encroachment area) that allows the watercourse to function naturally and is defined by the 100-year floodplain and erosion hazard zone, and authorizes and directs City staff to regulate to these standards, where deemed necessary, within Avondale's jurisdiction.

SECTION 2. That the City of Avondale hereby adopts the recommendations of the Agua Fria WCMP Addendum Channelization Alternative as an alternative watercourse-based flood management plan which defines the general alignment and configuration of the low flow channel with armored banks to contain the 10-year flood and a raised terrace and high-flow channel to accommodate the 100-year flood and the SPF from the New Waddell Dam, and drop structures and grade control structures at specific locations in accordance with the Channelization Alternative or as approved in final construction plans.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution, including (i) continuing to coordinate with the District, municipalities, government entities, property owners and mining interests to implement the Channelization Alternative; (ii) to negotiate and enter into cooperative agreements for the implementation of the Channelization Alternative; and (iii) amend regulatory guidelines, ordinances, comprehensive plans and other documents to be consistent with the Agua Fria WCMP and the Channelization Alternative.

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
Resolution 2640-507 for a Police Department Grant Application to fund D.U.I. overtime.

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Janeen Gaskins, Grants Administrator (623)333-1025

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution authorizing the submittal of a grant in the amount of $80,000 for the Avondale Police Department's Driving Under the Influence Task Force overtime through the Governor's Office of Highway Safety Program. The Highway Safety Grant requires that all application submittals be approved through City Council resolutions.

BACKGROUND:

During the time from July 1, 2006 to March 31, 2007, the Avondale Police Department has investigated 931 reportable collisions, 14 were alcohol related non injury, 2 were alcohol related with injuries, and 6 collisions resulted in fatalities. During the same time frame, the Avondale Police Department arrested approximately 315 drivers for D.U.I. related offenses. The Avondale Police Department is committed to keeping Avondale residents safe and has no tolerance for impaired diving and will strive to remove those impaired drivers from the road.

DISCUSSION:

Without further funding Avondale Police Officers will be extremely limited in the amount of dedicated enforcement that can be conducted for the next fiscal year. This grant request will help support the need for dedicated enforcement during D.U.I. enforcement activities.

The Avondale Police Department intends to deplete $80,000 in grant money for equipment and overtime, which was awarded by the Governor's Office of Highway Safety prior to October 31, 2006. In addition to the funds received from the Governor's Office of Highway Safety, a grant was obtained from the Oversight Council in the amount of $30,001. This money is being used to conduct dedicated D.U.I/ Traffic enforcement within the city of Avondale, but funding through this grant will be depleted by June 30, 2007.

BUDGETARY IMPACT:

The City of Avondale Police Department is requesting permission to submit an application for $80,000 in grant funds to provide for D.U.I. related overtime. There are no match requirements for this grant. The Police Department has received internal approval for submitting this grant from the Risk Management Division, Finance Department and Police Chief Kotsur.

RECOMENDATION:

Staff recommends that the City Council adopt a resolution authorizing the submittal of a grant in the amount of $80,000, for the Avondale Police Department's Driving Under the Influence Task Force overtime through the Governor's Office of Highway Safety Program.

ATTACHMENTS:

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RES 2640-507

RESOLUTION NO. 2640-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION TO THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR OVERTIME EXPENSE FUNDING.

WHEREAS, the Governor's Office of Highway Safety (the "GOHS") is seeking proposals from state and local agencies for overtime funding relating to participation in the Driving Under the Influence Task Force; and

WHEREAS, the Council of the City of Avondale (the "City Council") desires to submit a grant application to be considered by the GOHS for funding in the form of a reimbursement grant.

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

SECTION 1. That the City Council hereby approves the submission of a grant application for overtime expense funding to the GOHS for consideration (the "Grant Application").

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit all documents and any other necessary or desirable instruments in connection with the Grant Application and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON THE FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
Ordinance 1258-507 revising Chapter 24 waste of water

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Daniel Davis, Acting Water Resources Director (623)333-2411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt an ordinance revising Chapter 24 of the City of Avondale Municipal Code regarding the waste of water.

BACKGROUND:

During the April 9, 2007, Council Work Session, staff presented the proposed revisions to Chapter 24 of the City Code for discussion and direction. The revised language includes a comprehensive discussion and definition for Waste of Water including notification procedures and penalties for violation. The revisions have been reviewed and unanimously approved by the Water and Wastewater Advisory Board during their March Board meeting. The revised ordinance also includes the changes that were recommended by Council during the April work session.

The revised ordinance will help ensure that the water resources of Avondale are utilized in an optimal and beneficial manner, and will assist the City towards achieving its water conservation goals.

DISCUSSION:

Waste of Water Ordinance – Chapter 24, Article II, §24-34

The revised Ordinance, as presented, will replace §24-34 of the current Code. Ordinance highlights include:

Definition of "Waste of Water." This includes water overflowing landscaped areas and emitters spraying into the street. A violation exists when the wasted water causes erosion damage, interferes with traffic, causes long-term damage, ponds, or flows down the gutter.

Exceptions. These include fire fighting, storm run-off, water used for routine inspections, and other uses approved by the City.

Written Notice and Civil Citation. This provision requires the City to provide the customer with a written notice prior to issuing a civil citation. The written notice would provide information regarding water waste and water conservation, recommendations for abatement of the water waste, and a time frame within which the customer must cease the water wasting activity. If this educational phase is unsuccessful, the City then has the authority to issue a civil citation.

Penalties. This includes a civil fine of $250.00.

This ordinance provides staff with a clear enforcement option for those Waste of Water cases that cannot be resolved via our educational efforts.

RECOMENDATION:

Staff recommends that the City Council adopt an Ordinance revising Chapter 24 of the City of Avondale Municipal Code regarding the waste of water.

ATTACHMENTS:

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- ORD - 1258-507

ORDINANCE NO. 1258-507

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 24, WATER, SEWER AND SEWAGE DISPOSAL, ARTICLE II, MUNICIPAL WATER SYSTEM, SECTION 24-34, WASTE OF WATER PROHIBITED.

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

SECTION 1. That the Avondale City Code, Chapter 24, Water, Sewer and Sewage Disposal is hereby deleted in its entirety and replaced with the following:

24-34 Waste of water prohibited.

Consumers shall prevent unnecessary waste of water and keep all water outlets closed when not in actual use. All water outlets, including those used in conjunction with hydrants, urinals, water closets, bathtubs and other fixtures, shall not be left running for any purpose other than the use for which they were intended.

(1) *Definition.* For the purposes of this article, "waste of water" shall mean to use, consume or expend water in sufficient quantity and/or at such a rate that it overflows the basin or object into which it flows, including the landscaped area of any premises, or sprays from a permanently installed irrigation system with a broken head or emitter, or sprays more than ten (10) percent of the spray from a misdirected emitter, onto the area surrounding the basin or object, onto public property or into the public right-of-way including gutters, storm drains, ditches or other drainage conveyances.

(2) *Violations.*

(a) No residential, commercial or industrial facility or operation that is served water by the City, or is served flood irrigation waters by an irrigation district, shall cause or permit to occur any waste of water.

(b) It shall be unlawful for any owner, occupant, lessee, agent, manager or responsible person to willfully or negligently cause the waste of water such that the overflow or spray:

(i) causes erosion damage to the public property or public right-of-way;

(ii) interferes with pedestrian or automobile traffic;

(iii) causes long-term damage due to chronic wastefulness;

(iv) ponds over a cumulative surface area greater than one-hundred fifty (150) square feet; or

(v) discharges with a depth greater than one-quarter (¼) of an inch into a gutter, storm drain, ditch or other drainage conveyance.

(c) It shall be unlawful for any owner, occupant, lessee, agent, manager or responsible person to willfully or negligently permit or cause the escape or flow of flood irrigation water in such quantity as to cause waste of water through the failure or neglect to properly operate or maintain any irrigation structure, delivery ditch, or waste ditch or maintain any irrigation structure, delivery ditch, or waste ditch in which said person has a vested right or interest or through the willful or negligent failure of said person to accept flood irrigation water after it has been ordered by him.

(3) *Automatic Shut-off Nozzles.* The washing of automobiles, trucks, trailers, boats, and other types of mobile equipment shall be done only with a hand held hose equipped with an automatic shut-off nozzle that completely shuts off the flow of water, even if left unattended.

(4) *Exceptions.* Waste of Water shall not include:

(a) Flow resulting from fire fighting or routine inspection of fire hydrants or from fire training activities.

(b) Water applied to abate spills of flammable or otherwise hazardous materials.

(c) Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available.

(d) Water that reaches or flows onto adjacent property, public rights-of-way or easements or private easements when caused by vandalism, wind, emergencies, or natural disasters.

(e) Flow resulting from a routine inspection or maintenance of the City water utility system.

(f) Water used by the City in installation, maintenance, repair, or replacement of public facilities and structures including, but not limited to, traffic control devices, storm and sanitary sewer structures, and road or street improvements.

Water used by contractors or utilities including, but not limited to, saw cutting of pavement, dust control, compaction, or other uses required under the terms of their contract.

(g) Storm run-off.

(h) Flow resulting from City water utility system failures or malfunctions.

(i) The uses of water which are necessary to protect public health and safety for essential governmental services such as police, fire, and other similar emergencies.

(5) *Unlawful Acts.*

(a) An owner, occupant, lessee, agent, manager or responsible person found to be in conflict with this code or in violation of any provisions of this code may be issued a written notice and/or a civil citation and is liable for all costs which may be assessed pursuant to this code for enjoining the violation.

(b) The owners, occupants, lessees, agents, managers or responsible persons in violation of this ordinance may be held individually and jointly responsible for the violation, the prescribed civil penalties and for abating the violation.

(6) *Enforcement Authority.* A written notice and/or civil citation may be issued for a violation of this ordinance by the Code Compliance Manager, a Code Compliance Officer, the Water Conservation Coordinator, a Water Conservation Specialist, or the City Manager or authorized designee. The enforcing official is authorized to make inspections in the normal course of job duties, in response to a complaint that an alleged violation of the provisions of this code may exist, or when there is reason to believe that a violation of this code has been or is being committed.

(7) *Written Notice.*

(a) Notwithstanding an enforcement action, any owner, occupant, lessee, agent, manager or responsible person who violates any provision of this article shall first receive a written notice. The written notice shall include, at a minimum:

(i) the date and location of the violation,

(ii) a reference to the city code provision or ordinance violated,

(iii) recommendations as to how the waste of water can be abated and the timeframe within which the waste of water must be abated. The time provided to cease waste of water may range from a requirement for immediate compliance to thirty (30) days, at the discretion of the City Manager, or his designee, depending upon the facts and circumstances of the case,

(iv) a warning that a civil citation may be issued unless the waste of water ceases within the time provided,

(v) the name, address, phone number, and email address of the official who issued the written notice, and

(vi) the procedure for compliance with the written notice including a re-inspection by the issuing official.

(b) The time period for compliance may be extended if the official issuing the written notice determines that the owner, occupant, lessee, agent, manager or responsible person is making reasonable progress toward compliance. All extensions shall be made in writing.

(c) If, upon re-inspection of the site of the violation by the issuing official, the official is satisfied that the activity previously found to be in violation of this code has been abated, the waste of water case will be closed and no further action will be required of the recipient of the written notice.

(8) *Written Notice Service.* Service of the written notice may be accomplished and will be deemed proper and complete if a copy thereof is delivered personally serving the owner, occupant, lessee, agent, manager or responsible person, or is posted in a conspicuous place in or about the property affected by such notice.

(9) *Civil Citation.* After receipt of a written notice, any owner, occupant, lessee, agent, manager or responsible person who remains in violation of any provision of this article after the time provided to cease waste of water may also be subject to a civil citation. The civil citation shall include:

(a) Directions to the defendant to appear in municipal court within ten (10) days of the issuance of the citation or pay the fine imposed pursuant to this Section of the code.

(b) The date and location of the violation.

(c) A reference to the city code provision or ordinance violated.

(d) The name, address, phone number, and email address of the issuing official.

(e) A notice that if the defendant fails to appear as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation charged, in addition to a fine for failure to appear as set forth further in this Section of the code.

(10) *Citation Service.* Service of the citation may be accomplished and will be deemed proper and complete if a copy thereof is delivered personally serving the owner, occupant, lessee, agent, manager or responsible person, or sent by certified or first-class mail addressed to the property owner's last known address, or if the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the property affected by such notice.

(11) *Civil Fines Imposed.* The civil fine penalty for a violation of this code shall be $250.00 per violation, and all penalties are subject to all surcharges and fees imposed by state law. The court shall have the authority to suspend any portion of the civil penalty provided the defendant ceases the waste of water activity found to be in violation of this code.

(12) *Appearance.* Within ten (10) days of the issuance of the citation, the defendant shall appear in person or through his attorney in municipal court and shall either admit or deny the

allegations contained in the complaint or the defendant may proceed to make Payment by Mail as provided in this code. If the defendant admits the allegations, the court shall immediately enter judgment against the defendant in the amount of the fine for the violation charged and shall require that the defendant immediately cease the waste of water activity. If the defendant denies the allegations contained in the citation(s), the court shall set a hearing date for the trial of the matter.

(13) *Rules of Procedure*. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Avondale City Court for civil violations of this section, except as modified or where inconsistent with the provisions of this code, local rules of the municipal court or rules of the Arizona Supreme Court.

(14) *Penalty for Failure to Appear.* If the defendant fails to appear as directed on the citation, the court, upon request by the code official or authorized designee, shall enter a default judgment for the amount of the fine indicated for the violation charged. Additionally, the defendant may be fined up to $100.00 for failure to appear at the time and place set for any trial of a matter arising under this code.

(15) *Payment by Mail.* The defendant may admit the allegations in the citation and pay the fine indicated by mailing the citation, together with a check for the amount of the fine to and made payable to the Avondale City Court.

(16) *Recidivist Properties/Persons.* A recidivist case is a newly opened case for violation of any provision of this section where the same responsible party has been issued a written notice and/or civil citation two (2) or more times in the last twelve (12) months. In cases designated as recidivist the code official or authorized designee will issue an immediate civil citation for the violation and may order, at the discretion of the City Manager or his designee, the installation of flow reduction devices and/or discontinuation of service.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct, and independent of all other provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
Ordinance: Correcting a scrivener's error in Ordinance 1242-107 and exhibit for Public Rights-of-Way for Lower Buckeye Road at Avondale Boulevard.

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Brian O. Berndt, Development Services Director (623)333-4011

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the Council approve a new ordinance correcting a scrivener's error in Ordinance 1242-107 and exhibit for Public Rights-of-Way for Lower Buckeye Road at Avondale Boulevard.

DISCUSSION:

On January 2, 2007 Council approved Ordinance No. 1242-107 accepting the dedication of real property for use of public right-of-way on Lower Buckeye Road at Avondale Boulevard. It has been discovered that there was a scrivener's error in the ordinance and attached exhibit referencing incorrect parcel numbers. Council is requested to approve a corrected ordinance and exhibit.

BUDGETARY IMPACT:

Additional back taxes and interest have been discovered due for these parcels since the original request to Council to accept this right-of-way. The entity that originally owned the parcels is no longer in existence, so the City will need to pay these fees to claim title to the parcels. Total back taxes due on these parcels are $852.51. This will be paid from developer reimbursement line item 304-1001-00-8420.

RECOMENDATION:

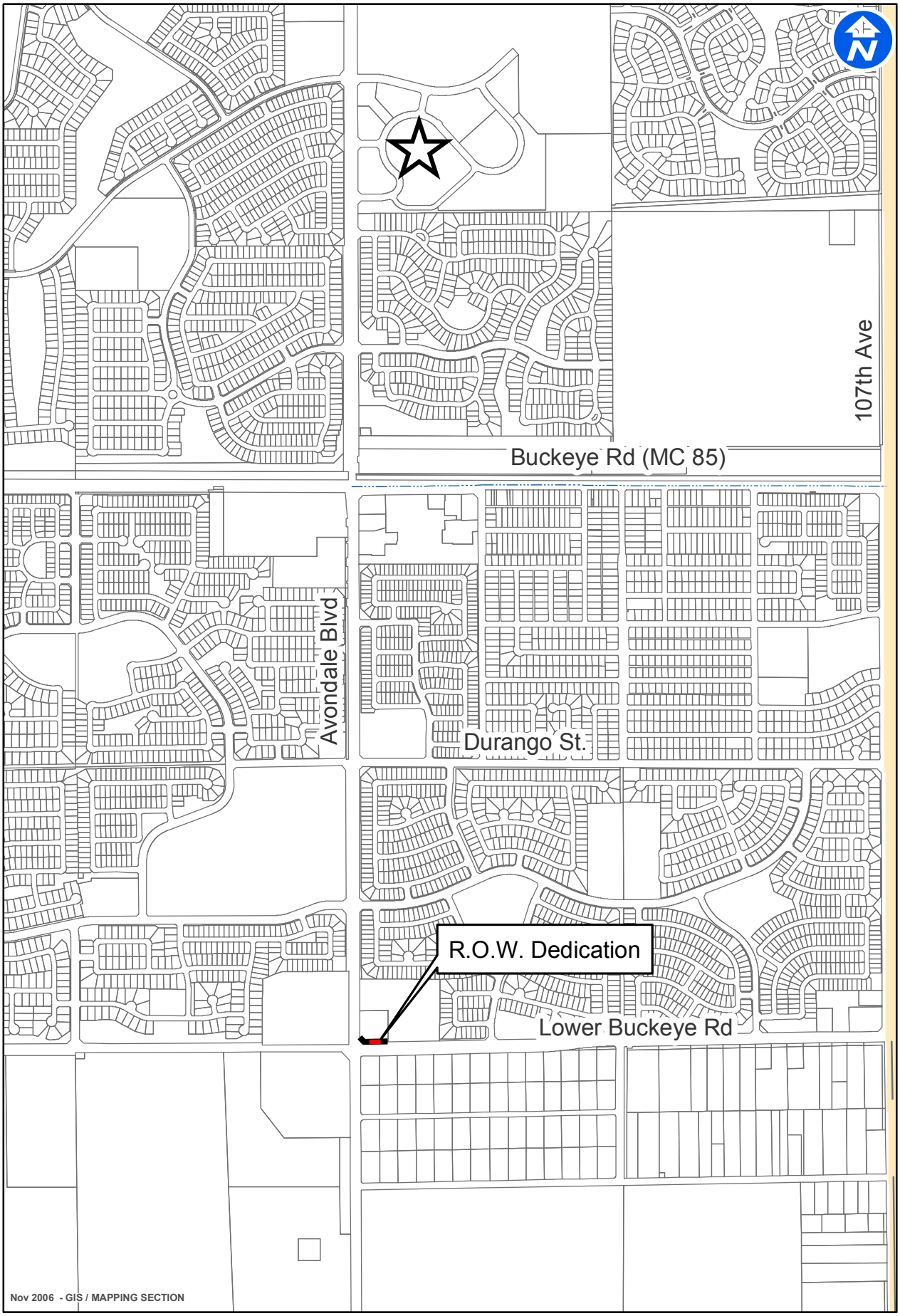
Staff recommends that the City Council adopt an ordinance authorizing the Mayor, City Manager, City Clerk, and City Attorney to take all steps necessary to execute a new ordinance correcting a scrivener's error in the ordinance and exhibit for Public Rights-of-Way for Lower Buckeye at Avondale Boulevard and authorize the Mayor and City Clerk to execute said documents.

ATTACHMENTS:

Click to download

- Vicinity Map

VICINITY MAP



Future R.O.W. Dedication

City of Avondale

CITY COUNCIL REPORT

SUBJECT:
Resolution No. 2638-507 Approving the 2007/2008 Annual Action Plan

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Andrew Rael, CDBG Program Manager (623)333-2715

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Council approval is sought for Resolution No. 2638-507 which approves the 2007/2008 Annual Action Plan and authorizes its submission to the U.S. Department of Housing and Urban Development (HUD). The Annual Action Plan updates the 2006-2009 Consolidated Plan and contains recommended allocations for 2007/2008 CDBG and HOME funds. The 2007/2008 Annual Action Plan Executive Summary is attached.

BACKGROUND:

HUD has allocated approximately $488,357 in Community Development Block Grant (CDBG) funds and $184,037 in Home Investment Partnership (HOME) funds to the City of Avondale for fiscal year 2008 which begins on July 1, 2007 and extends through June 30, 2008. To be eligible to receive the funds the City of Avondale must complete the Annual Action Plan, which is an update of the Consolidated Plan. Staff is seeking council approval of the 2007/2008 Annual Action Plan, which contains a recommended budget for allocating CDBG and HOME funds by activity.

DISCUSSION:

The City of Avondale receives annual allocations of HOME and CDBG funds from HUD. The purpose of CDBG is to "develop viable urban communities by providing decent housing, a suitable living environment and economic opportunities for low- and moderate-income persons." The purpose of HOME is to "create affordable housing opportunities for low-income persons." To be eligible to receive CDBG and HOME funds the city must submit to HUD a Consolidated Plan every 3 to 5 years and an Annual Action Plan every year. The Annual Action Plan contains amendments to the Consolidated Plan as well as a budget for the use of the funds that will be made available in the coming year. City Council approved Avondale's four-year 2006/2009 Consolidated Plan and 2006/2007 Annual Action Plan on May 1, 2006. Staff has prepared a 2007/2008 Annual Action Plan for City Council approval.

The Consolidated Plan identifies the housing, economic and social development needs of low-income and special needs persons and prescribes strategies to address them. HUD requires that local governments involve the public in completing their Annual Action Plans. The Neighborhood and Family Services (NFS) Department held a public hearing on January 17, 2007 to collect input on the plan. Comments from the meeting were considered in writing the draft 2007/2008 Annual Action Plan which was made available for public comment for a 30 day period beginning March 1, 2007 and ending April 1, 2007. Comments from the 30-day review period were incorporated, as applicable, in writing the final 2007/2008 Annual Action Plan. Staff presented the 2007/2008 Annual Action Plan to the Neighborhood and Family Services Commission for review and discussion on March 28, 2007. The Commission requested no significant changes and voted to forward the 2007/2008 Annual Action Plan to City Council with a recommendation for approval. Staff received no opposition from the public regarding current strategies or allocations.

No substantive changes changes are proposed in the 2007/2008 Consolidated Plan Update. Staff recommends that the City continue with current activities but that CDBG and HOME allocation amounts change to ensure

that each activity is funded sufficiently to operate through June 2008. The following changes are proposed with details in the attached chart:

1) Reduce the Housing Rehabilitation allocation: This activity was substantially funded in 2006-07, which will allow the program to continue into the following program year.
2) Increase Infrastructure Allocation: The street reconstruction project will cost more than originally anticipated and will require phasing over multiple years.
3) Increase Homebuyer Assistance Allocation: This activity requires additional funding above the $3,773 allocation to create a meaningful program.

Approved allocations for 2006/2007 were included in the attached chart to show the full program funding over two years. The total 2007/2008 CDBG allocation is $488,354, and the recommended distribution is in the areas of street reconstruction ($300,000), public services ($40,000), housing rehabilitation ($50,683) and administration ($97,671). The total 2007/2008 HOME allocation is $149,457, and the recommended HOME distribution is in the areas of homebuyer assistance ($142,177) and administration($7,280). The required HOME match ($34,580) would be applied toward the Individual Development Account (IDA) homebuyer asistance program. Detailed project descriptions are attached.

BUDGETARY IMPACT:

The use of $149,457 in HOME funds will require a 25% non-federal match of $34,580 from the City of Avondale. The match amount is not exactly 25% because the American Dream Down Payment and Administration portion of the HOME grant does not require a match. CDBG funds do not require a city match.

RECOMENDATION:

Staff recommends that the City Council adopt Resolution No. 2638-507approving the 2007/2008 Annual Action Plan and authorizing its submission to HUD.

ATTACHMENTS:

Click to download

- Recommended CDBG and HOME Allocations Chart
- 2007/2008 Annual Action Plan Project Descriptions
- 2007-2008 Annual Action Plan Executive Summary
- RES - 2638-507

Recommended CDBG and HOME Allocations

Project/Service	Fund Source	2006-07 Current Amount	2007-08 Recommended Amount	Combined Activity Totals
Street Reconstruction – The City of Avondale will engage in a 7 year project to reconstruct streets, upgrade water lines, install additional fire hydrants and repair sidewalks on the streets south of Main Street to Harrison Drive between 7th Street and 4th Street. This project will require the allocation of $300,000 of the approximately $488,000 CDBG allocation each of the 7 years.	CDBG	$200,000	$300,000	$500,000
Public Service – The City NFS Department will partner with Call-A-Teen to provide 20 "out of school" teens ages 16-20 with work force skills and on the job work experience.	CDBG	$40,000		$40,000
Public Service – Receive proposals from community organizations including city departments to provide public services to low-income and special needs persons in Avondale.			$40,000	$40,000
Housing Rehabilitation – Contract with one or more non-profit organizations to conduct emergency and substantial owner-occupied housing rehabilitation in the corporate limits of the City of Avondale with emphasis in the neighborhoods of Old Town, Cashion, Las Ligas and Rio Vista.	CDBG	$138,863	$50,683	$189,546
CDBG Administration	CDBG	$94,716	$97,671	$192,387
	CDBG Totals	$473,579	$488,354	$961,933
Housing Rehabilitation – Contract with one or more non-profit organizations to conduct substantial owner-occupied housing rehabilitation in the corporate limits of the City of Avondale with emphasis in the neighborhoods of Old Town, Cashion, Las Ligas and Rio Vista.	HOME	$170,772 Includes City Match	$0	$170,772
Homebuyer Assistance – Contract with one or more non-profit organizations to conduct a homebuyer assistance program for low income homebuyers. The program will provide loans for down-payment and grants for closing costs and will include a homebuyer education component.	HOME	$3,773	$138,320 HOME $3,857 ADDI	$145,950
Match for IDA Homebuyer Assistance – The City NFSD will implement the Individual Development Account (IDA) Program which matches participant savings account 3 to 1 toward the purchase of a new home. The IDA provides a homebuyer education and counseling component.	HOME		$34,580 City Match	$34,580
HOME Administration	HOME	$7,190	$7,280	$14,470
	HOME Totals	$181,735	$184,037	$365,772

2007/2008 CDBG and HOME Project Summaries

Old Town Street Reconstruction and Water Line Replacement/Upgrade Doris Street Area

This project will use approximately $2.1 million federal CDBG funds to reconstruct streets, upgrade water lines, install additional fire hydrants and repair sidewalks south of Main Street between 7th Street and 4th Street. The project will be phased over an approximately seven year period using approximately $300,000 of a $475,000 CDBG allocation each year. The project consists of the following streets located in Census Tract 061400.1: Harrison Drive, Randy Street, Dee Street, Doris Street, Corral Street, Aqua Fria Lane and 6th Street between 4th Street and 7th Street and 4th Street and 7th Street between Harrison Drive and Main Street (see attached map).

The project will reconstruct the streets including the installation of a new 9" Aggregate Base Course and 2.5" Asphalt Concrete street surface. The project will replace the existing 4" cement water pipe with 8" Iron Ductile Pipe. Additional fire hydrants will be installed as necessary to comply with city fire code. Existing sidewalks, curbs and gutters will be repaired as necessary. All work will be conducted in accordance with city code and engineering standards.

2007/2008 CDBG Project Summary Public Services Teen Job Training Program

The City of Avondale Neighborhood and Family Services Department will partner with Call-A-Teen Resources Inc. to implement the Summer Teen Employment Program (STEP). The Next STEP program will provide fifteen "out of school" Avondale teens ages, 16-21, with an opportunity to develop valuable workforce skills through basic work forces skills training, vocational education, vocational certification and a paid summer work experience. The workforce skill training will be provided by Estrella Mountain Community College through which participants will receive college credit and trade certifications. It is anticipated that some of the participants will enjoy the college experience and wish to continue toward a degree.

2007/2008 CDBG Project Summary Owner Occupied Housing Rehabilitation
The City of Avondale will contract a non-profit organization to conduct a single family owner occupied housing rehabilitation program in Avondale. The program will provide loans and grants to approximately 15 low income homeowners to conduct repairs to their homes. The type of housing rehabilitation services to be provided will range from emergency repair, such as the replacement of an air conditioner or water heater to substantial rehabilitation whereby all substandard conditions and code violations in a home are alleviated. The project will be conducted in the corporate limits of the City of Avondale with emphasis in the neighborhoods of Old Town, Cashion, Las Ligas and Rio Vista.

2007/2008 CDBG Project Summary First Time Homebuyer Down Payment and Closing Costs Assistance Program
The City of Avondale will contract with a non-profit organization to provide a homebuyer assistance program in Avondale whereby loans are provided for a down payment and grants are provided for closing costs. The Homebuyer assistance program is designed to assist approximately 5 low-income homebuyers who are able to purchase a home based on income, credit and job history but lack the savings to pay the down payment and closing costs. The program will include a comprehensive homebuyer education program which educates the homebuyer on all aspects of mortgage financing, the title process, property taxes and budgeting. The program includes an education aspect on homeowner maintenance responsibilities as well.

2007/2008 CDBG Project Summary IDA Down Payment and Closing Costs Assistance Program
The City NFSD currently implements the Individual Development Account (IDA) Program which matches participant savings account 3 to 1 toward the purchase of a new home. HOME funds will be used to provide some of the match for 5 program participants. The IDA provides a homebuyer education and counseling component.

City of Avondale
2007-2008 Annual Action Plan Executive Summary

Purpose. The 2007-2008 Annual Action Plan (the Plan) is the required annual update to the City of Avondale's 2006-2009 Consolidated Plan. The Plan provides strategies, activities, funding sources and outputs for the following community issues: Lead Paint Abatement, Housing, Barriers to Affordable Housing, Homelessness, Community Development and Non-homeless Special Needs.

Geographic Allocation and Priorities. The U.S. Department of Housing and Urban Development (HUD) has allocated approximately $488,357 in CDBG funds and $184,037 in HOME funds (through the Maricopa County HOME Consortia) to the City of Avondale for fiscal year 2007 which begins on July 1, 2007 and extends through June 30, 2008. Avondale is targeting its funds to its low-income neighborhoods of Old Town, Cashion, Las Ligas and Rio Vista. Activities identified as priorities are infrastructure in low-income neighborhoods, public services for special needs population, owner occupied housing rehabilitation, increasing homeownership opportunities and increasing the City's affordable single-family housing stock.

Institutional Structure and Enhancing Coordination. The City of Avondale Neighborhood and Family Services (NFS) Department coordinates the development of the Plan. The Plan is reviewed by the NFS Commission and input is sought from the general public and a variety of non-profit, business, governmental, professional and citizen organizations. The City of Avondale enhances the coordination between public and private housing, health and social service agencies by maintaining active involvement in the activities of the local non-profit service providers, local advisory boards and commissions, other government agencies and professional associations especially through planning forums and community events. Some of these organizations are listed below.

- City of Avondale Neighborhood and Family Services Commission
- City of Avondale Social Services Advisory Board
- Arizona Department of Housing
- Neighborhood Housing Services of Southwest Maricopa County
- Community Services of Arizona
- Local Initiatives Support Corporation Phoenix
- Foundation for Senior Living
- Habitat for Humanity of the West Valley
- Arizona Multi-Housing Association
- Maricopa County Community Development
- Maricopa County Human Services Coordinating Committee
- Maricopa Association of Governments
- Maricopa County HOME Consortia

- Maricopa County Regional Homeless Board
- The Arizona Fair Housing Partnership

Public Participation. NFS staff held a public hearing on January 17, 2007 to collect input on the plan. Comments from the meeting were considered in writing the draft Plan which was made available for a 30 day public comment period beginning March 1, 2007 and extending through April 1, 2007. Comments from the 30-day review period were incorporated, as applicable, in writing the final draft of the Plan. The NFS Commission reviewed and approved the Plan on March 29, 2007. The City Council is scheduled to review the Plan on April 16, 2007 and vote on the Plan on May 7, 2007.

Annual Action Plan Strategies, Activities, Funding Sources and Outputs. The City of Avondale will undertake the following actions with respect to addressing needs in lead paint reduction, housing, homeless, community development and non-homeless special needs.

City of Avondale 2007-2008 Annual Action Plan			
Lead Paint Reduction			
Strategy	**Activity**	**Source**	**Output**
1. Reduce the number of housing units containing lead-paint hazards.	The City will contract with non-profit organizations to conduct owner-occupied housing rehabilitation projects in low-income neighborhoods.	06 CDBG 138,863 07CDBG $50,683 06HOME $170,772 Total Funding $360,318	15 Housing Rehabilitation Projects
2. Use City of Avondale social service activities to disseminate information and identify hazards related to lead-paint.	Through Healthy Avondale disseminate information.	Gen Funds: 70,000; Private Contributions: $345,000.	Disseminate information to 3,594 homes.
	Through the Community Action Program identify lead pant hazards.	Maricopa County Human Services: $444,383	Disseminate information to 1,200 homes. Refer 5 homes for housing rehabilitation.

Housing			
Strategy	**Activity**	**Source**	**Output**
3. Improve the condition of housing owned by low-income and special needs persons targeting the Old Town, Cashion, Las Ligas and Old Town neighborhoods.	The City will contract with non-profit organizations to conduct owner-occupied housing rehabilitation projects in low-income neighborhoods.	06CDBG $138,863 07/CDBG $50,683 06HOME $170,772 Total Funding $360,318	15 Housing Rehabilitation Projects
4. Increase homeownership within Avondale.	The City will contract with non-profit organizations to conduct homebuyer assistance program.	07 HOME$138,320; 06ADDI: $3,773 07 ADDI: $3,857 Total Funding: $145,950	Assist 5 new homebuyers
	The City will administer the IDA program matching participants savings account 3 to 1 toward the purchase of a new home.	Federal Home Loan Bank: $100,000, 07HOME: $34,580.	Assist 5 new homebuyers
5. Support non-profit housing builders in the acquisition, construction and sale of homes affordable to low-income homebuyers.	Develop a program to provide assistance to non-profit housing builders to construct homes affordable to low income families	CDBG Administration Funds	Obtain Council Approval of Program Design

Barriers to Affordable Housing			
Strategy	**Activity**	**Source**	**Output**
6. Provide incentives in the City Zoning Ordinance and Subdivision Regulations to promote the production of affordable housing by the private sector.	Promote the City of Avondale Residential Infill Incentive Plan, which provides a waiver of 50 percent of the building permit and plan review fees and priority plan review and	City of Avondale Economic Development Department; Planning Department.	Obtain 50 users of the Residential Incentive Infill Program.
7. Provide information to residents and housing industry professionals about Fair Housing Laws and resources available to enforce the laws.	The City will implement the following workshops: " A Landlords Guide to Responsible Ownership" " Fair Housing in the Trenches"; The Avondale Health Fair.	Neighborhood and Family Services Department; Arizona Multi-Housing Association;	Hold workshops and publish notices.
	The City will publish Display Notices in the Newspaper	Neighborhood and Family Services Department;	Publish Three Notices
	The City will disseminate information in English and Spanish	Neighborhood and Family Services Department;	Publish 2000 flyers.

Homeless			
Strategy	**Activity**	**Source**	**Output**
8. Prevent homelessness through the provision of utility assistance, social services and health services.	The City of Avondale will provide homeless prevention through the Community Action Program.	Maricopa County Human Services: $153,324. Gen Funds: $225,655.	Assist 1200 families
	The City of Avondale will provide homeless prevention assistance to assist 2,300 families through the Contributions Assistance Program.	Gen Funds: $100,000	Assist 2300 families
	The City of Avondale will sustain the health of 250 persons avoiding catastrophic illness that leads to homelessness through the Healthy Avondale program.	Gen Funds: 70,000; Private Contributions: $345,000	Assist 250 families
9. Prevent homeless victims of Domestic Violence.	Provide assistance to New Life Shelter for victims of domestic violence	Gen Funds $3,500	Assist 50 families
	Participate in the construction of the Family Advocacy Center to assist victims of sexual assault, child abuse and domestic violence.	Gen Funds $108,330	Assist 1,500 persons.
10. Prevent homelessness by ensuring homes owned by low-income persons are maintained and repaired to prevent catastrophic damage.	The City will contract with non-profit organizations to conduct owner-occupied housing rehabilitation projects in low-income neighborhoods.	06 CDBG 138,863 07CDBG $50,683 06HOME $170,772 Total Funding $360,318	Assist 5 new homebuyers
11. Prevent Homelessness by assisting low-income people purchase homes and stabilized their financial circumstance	The City will contract with non-profit organizations to conduct homebuyer assistance program.	07 HOME$138,320 06ADDI: $3,773 07 ADDI: $3,857 Total Funding: $145,950.	Assist 5 new homebuyers
12. Provide housing for homeless families and individuals and chronic homeless individuals.	Provide assistance to Central Arizona Shelter Services.	Gen Funds $3,500	Assist 100 homeless.

Community Development			
Strategy	**Activity**	**Source**	**Output**
13. Improve infrastructure in low-income neighborhoods.	The City will reconstruct streets, upgrade water lines, install additional fire hydrants and repair sidewalks on the streets south of Main Street to Harrison Drive between 7th Street and 4th Street.	06 CDBG $200,000 07 CDBG $300,000	Complete new infrastructure on 9 streets.
14. Provide job training and educational opportunities to low-income persons and neighborhoods	The City will use CDBG funds to partner with Call-A-Teen to provide "out of school" teens ages 15-20 with work force skills and on the job work experience	06 CDBG $40,000	Assist 20 kids.
15. Revitalize Old Town Avondale by preserving and enhancing the historic nature of Western Ave. and promoting new commercial activity through public and private investments in business, housing, recreation , public infrastructure human service capital.	Hire a full time City of Avondale Redevelopment Specialist to focus on the revitalizing of the Western Avenue business corridor.	City of Avondale Redevelopment Department	Hire 1 staff
	Contract with a planning consulting firm to develop a Specific Area Plan for Old Town Avondale along Western from Dysart Road to Litchfield Park Road.	City of Avondale Redevelopment Department	Hire Consultant
	The City of Avondale will build a new public library on Fifth Street and Western Avenue (south side).	City of Avondale	New Building
	The City of Avondale will work with a private company to develop the Old Town Business Center on the corner of Fifth Street and Western Avenue..	City of Avondale Redevelopment Department	New Business Center
16. Expand recreational opportunities for low income persons by building new recreational centers and funding a variety of services to promote healthy lifestyles and excellent educational opportunities.	Include long range recreation capital projects in the CIP.	City of Avondale	Program funding in CIP

Non-Homeless Special Needs			
Strategy	**Activity**	**Source**	**Output**
17. Support organizations that assist the City's special needs populations.	The City of Avondale will operate the Contributions Assistance Program.	Gen Funds $100,000	Assist 3,500 persons
	The City of Avondale will implement the Community Action Program providing emergency rental and utility assistance.	Maricopa County Human Services: $443,383	Assist 1,200 persons
	The City of Avondale will provide education to pregnant teens to prepare them for delivery and after delivery family health care and life skills.	Neighborhood and Family Services Department	Assist 50 Pregnant Teens
	The City NFS Department will partner with Call-A-Teen to provide "out of school" teens ages 16-20 with work force skills and on the job work experience.	Neighborhood and Family Services Department	Assist 20 kids.
18. The City will provide meals, services and recreation for Seniors.	The City of Avondale will provide congregate and in-home delivered meals daily.	City of Avondale Cashion and Avondale Community/Senior Centers	Provide 200 meals to seniors daily on weekdays.
	The City of Avondale will serve seniors with recreational activities daily.	City of Avondale Cashion and Avondale Community/Senior Centers.	Serve 200 seniors daily on weekdays
19. The City will provide meals, services and recreational activities for low-income youth to promote positive behavior.	The City of Avondale will provide free supervised after school programs for Kindergarten through 8th grade students	City of Avondale Cashion and Avondale Community/Senior Centers.	Serve 3,500 Youth annually
	The City of Avondale will partner with the Litchfield Elementary School District to offer free the Summer Food Service Program. (SFSP) at the Avondale Community Center.	City of Avondale Cashion and Avondale Community/Senior Centers.	Serve 200 kids daily on weekdays

City of Avondale CDBG and HOME Allocations for 2006/2007 and Recommended Allocations for 2007/2008 are as follows.

RECOMMENDED CDBG AND HOME ALLOCATIONS				
Project	**Fund Source**	**2006/2007 Amount**	**2007/2008 Recom-mended**	**Combined Activity Totals**
Street Reconstruction – The City of Avondale will engage in a 7 year project to reconstruct streets, upgrade water lines, install additional fire hydrants and repair sidewalks on the streets south of Main Street to Harrison Drive between 7th Street and 4th Street. This project will require the allocation of $300,000 of the approximately $488,000 CDBG allocation each of the 7 years.	CDBG	$200,000	$300,000	$500,000
Public Service – The City NFS Department will partner with Call-A-Teen to provide 20 "out of school" teens ages 16-20 with work force skills and on the job work experience.	CDBG	$40,000		$40,000
Public Service – Receive proposals from community organizations including city departments to provide public services to low-income and special needs persons in Avondale.	CDBG		$40,000	$40,000
Housing Rehabilitation – Contract with one or more non-profit organizations to conduct emergency and substantial owner-occupied housing rehabilitation in the corporate limits of the City of Avondale with emphasis in the neighborhoods of Old Town, Cashion, Las Ligas and Rio Vista.	CDBG	$138,863	$50,683	$189,546
CDBG Administration	CDBG	$94,716	$97,671	$192,387
CDBG Totals		$473,579	$488,354	$961,933
Housing Rehabilitation – Contract with one or more non-profit organizations to conduct substantial owner-occupied housing rehabilitation in the corporate limits of the City of Avondale with emphasis in the neighborhoods of Old Town, Cashion, Las Ligas and Rio Vista.	HOME	$170,772 Includes City Match	$0	$170,772
Homebuyer Assistance – Contract with one or more non-profit organizations to conduct a homebuyer assistance program for low income homebuyers. The program will provide loans for down-payment and grants for closing costs and will include a homebuyer education component.	HOME	$3,773	$138,320 HOME $3,857 ADDI	$145,950
Match for IDA Homebuyer Assistance – The City NFSD will implement the Individual Development Account (IDA) Program which matches participant savings account 3 to 1 toward the purchase of a new home. The IDA provides a homebuyer education and counseling component.	HOME		$34,580 Match	$34,580
HOME Administration	HOME	$7,190	$7,280	$14,470
HOME Totals		$181,735	$184,037	$365,772

RESOLUTION NO. 2638-507

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE 2007/2008 ANNUAL ACTION PLAN PORTION OF THE 2006-2009 CONSOLIDATED PLAN AND AUTHORIZING ITS SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR RECEIPT OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS.

WHEREAS, Title 1 of the Housing and Community Development Act of 1974, as amended, establishes a Community Development Block Grant ("CDBG") program for the purpose of developing viable urban communities by providing decent housing and suitable living environment and expanding economic opportunities and preventing and/or eliminating conditions of slum and blight, principally for persons of low and moderate income; and

WHEREAS, the City of Avondale (the "City") desires to receive CDBG funds and continue to carry out CDBG-funded programs; and

WHERAS, the U.S. Department of Housing and Urban Development ("HUD") is prepared to provide $488,354 in CDBG funds to the City for Fiscal Year 2007/2008; and

WHEREAS, the Code of Federal Regulations, 24 CFR Part 91, issued by HUD requires the submission to HUD and subsequent approval by HUD of a multi-year Consolidated Plan and an Annual Action Plan as a condition of receiving CDBG funds; and

WHEREAS, the City of Avondale 2006-2009 Consolidated Plan (the "Consolidated Plan") was approved by Council of the City of Avondale (the "City Council") on May 1, 2006 and by HUD in June 2006; and

WHEREAS, an updated 2007/2008 Annual Action Plan element of the Consolidated Plan listing activities to be funded in the 2007/2008 program year has been prepared by the City; and

WHEREAS, the City has completed public participation requirements in accordance with 24 CFR Part 91, including a public hearing held on January 17, 2007 and a 30 day comment period beginning March 1, 2007 and extending through April 1, 2007, from which comments were received from City residents and incorporated into the 2007/2008 Annual Action Plan.

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

SECTION 1. That the 2007/2008 Annual Action Plan portion of the 2006-2009 Consolidated Plan and the allocation of funding to the activities to be undertaken described below are hereby approved and authorized for submission to HUD.

CDBG Activity	**2007/2008 CDBG Allocation**
Infrastructure	$300,000
Owner Occupied Housing Rehabilitation	$50, 683
Public Services	$40,000
CDBG Administration	$97,671
CDBG Totals	$488,354

SECTION 2. That the City Council hereby finds that expenditures as set forth in the 2007/2008 Annual Action Plan are necessary and appropriate and further, that said expenditures for the CDBG program will serve to assist low- and moderate-income individuals/families (no less than 70 percent as described in federal regulations) and/or serve to prevent or eliminate conditions of slum or blight in the community.

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

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

718537.1

CITY COUNCIL REPORT

SUBJECT:
Contract Award Employee Wellness Program

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Cherlene Penilla, Human Resources Director (623)333-2218

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council award a contract to Kronos Optimal Health Company for an employee wellness program and authorize the Mayor, City Manager, and City Clerk to execute the necessary documents.

BACKGROUND:

The Human Resources Department, along with our consultant, Benefit Intelligence, prepared and announced a Request for Proposal (RFP) to solicit bids from providers for an employee wellness program. The RFP was released on November 14, 2006 and proposals were due December 7, 2006.

The following vendors responded to the RFP as listed below:

Kronos Optimal Health Company
Location: Phoenix, AZ

Matria Healthcare
Location: Dallas, TX

Wellness Council of Arizona
Location: Tucson, AZ

Erin P. Collins and Associates
Location: Kingman, AZ

The City's consultant, Benefit Intelligence, reviewed all proposals that were submitted. Benefit Intelligence prepared a detailed analysis of the information that was received. This information was discussed in a series of meetings with the Employee Benefit Team and senior staff from the Finance and Budget Department. Each of the companies then made presentations to the Benefits Team and answered questions about their proposals.

The Employee Benefit Team, working with our consultant, finalized their recommendation that Kronos Optimal Health Company provide services for the Employee Wellness Program.

DISCUSSION:

The employee wellness program supports the council goal to: "Encourage recruitment and retention of quality and diverse staff and improve administrative capacity."

Wellness programs are designed to reduce health care costs, attract good workers in a competitive market, improve productivity, benefit employee health, and improve employee morale.

The following is a brief summary of the services to be provided by the Employee Wellness Program:

- On site biometric assessments;
- Feedback and site based health coaching;
- On line tools;
- Health risk assessments;
- Personalized health coaching and education, individualized motivation, and targeted interventions based on each individual's learning style, readiness to change, and health status, as measured by biometric assessments.

BUDGETARY IMPACT:

Funds totaling $72,000.00 are available in the Human Resources budget for the Employee Wellness Program for fiscal year 06/07.

RECOMENDATION:

Staff recommends that the City Council approve the award of a contract to Kronos Optimal Health Company for an employee wellnes program and authorize the Mayor, City Manager, and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- PSA - Kronos

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KRONOS OPTIMAL HEALTH COMPANY

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of May 7, 2007, between the CITY OF AVONDALE, an Arizona municipal corporation (the "City") and KRONOS OPTIMAL HEALTH COMPANY, an Arizona corporation (the "Contractor").

RECITALS

A. The City issued a Request for Proposals (the "RFP") seeking statements of Proposals from Contractors for Wellness Services (the "Services").

B. The Contractor responded to the RFP and the City desires to enter into an Agreement with the Contractor for the Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the following mutual covenants and conditions, the City and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall continue for a period of three years thereafter. At the discretion of the City, and with the agreement of Contractor, this Agreement may be extended for a maximum of two one-year periods, with no material changes to the terms and conditions unless agreed upon by mutual agreement of the Contractor and the City.

2. Scope of Work. Contractor shall provide the Services as set forth in the RFP Scope of Work, attached hereto as Exhibit A and incorporated herein by reference, and the Contractor Proposal, attached hereto as Exhibit B and incorporated herein by reference.

3. Compensation. The City shall pay Contractor for the Services at hourly billing fees as more particularly set forth in the Price Sheet attached hereto as Exhibit C and incorporated herein by reference.

4. Payments. The City shall pay the Contractor 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. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Documents. All documents prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

6. Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Contractor agrees to assign specific individuals to key positions. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced prior without written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the City.

8. Licenses. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor.

9. Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

10. Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the cost of appellate proceedings) relating to, arising out of, or caused by the negligent, willful, wrongful or intentional acts of the Contractor, its employees, agents or any tier subcontractors, or the negligent acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of the Contractor or any tier of subcontractor or any other person for whose negligent acts, errors, mistakes, omissions, work or services the Contractor may be legally liable. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A- or above with policies and forms

satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. 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 are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

e. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

f. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

g. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

h. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

i. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreement with Subcontractor containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing the agreement with Subcontractor and obtaining certificates of insurance verifying the insurance requirements.

j. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor shall furnish the City with certificate(s) of insurance, or formal endorsements as required by this Agreement, issued by Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a certificate of insurance is submitted as verification of coverage, the City shall reasonably rely upon the certificate of insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the above-cited policies expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates within ten days after the renewal date containing all the aforementioned insurance provisions. Additionally certificates of insurance submitted without referencing a contract number will be subject to rejection and returned or discarded. Certificates of insurance shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(b) Auto Liability - Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability - Follow Form to underlying insurance.

(2) Contractor's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no

obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

a. Commercial General Liability. Contractor 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 this Agreement, 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 then underlying insurance.

b. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. 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 this Agreement, 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 then underlying insurance.

c. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of $2,000,000 each claim and $2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three years past completion and acceptance of the Services, and the Project Manager shall be required to submit certificates of insurance evidencing proper coverage is in effect as required above.

d. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this Agreement 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.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days prior written notice to the City.

12. Applicable Law; Venue. In the performance of this Agreement, Contractor shall abide by and conform to any and all laws of the United States, State of Arizona and City of Avondale, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

13. Termination; Cancellation.

13.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Contractor of written notice by the City. Upon termination for convenience, Contractor shall be paid for all undisputed services performed to the termination date.

13.2 For Cause. This Agreement may be terminated be either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

13.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

13.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party of the Agreement with respect to the Agreement's subject.

13.5 Gratuities. The City may, by written notice to the Contractor, cancel this Agreement if it is found by the City that gratuities, in the form of entertainment, gifts or

otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor an amount equal to 150% of the gratuity.

14. Miscellaneous.

14.1 Independent Contractor. The Contractor acknowledges that the Services provided under this Agreement are being provided as an independent Contractor, not as an employee or agent of the City. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere.

14.2 Laws and Regulations. The Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible remains in compliance with of all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (i) existing and future City and County ordinances and regulations, (ii) state and federal laws and (iii) Occupational Safety and Health Administration ("OSHA") standards.

14.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.

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

14.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

14.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.

14.7 Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by

any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement.

14.8 Assignment. No right or interest in this Agreement shall be assigned by Contractor without prior, written permission of the City and no delegation of any duty of Contractor shall be made without prior, written permission of the City.

14.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Contractor is responsible for performance under this Agreement whether or not subcontractors are used.

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

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

14.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

14.13 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: 623-333-0100
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
201 East Washington, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: 602-340-1538
Attn: Andrew J. McGuire, Esq.

If to Contractor: Kronos Optimal Health Company
2390 East Camelback Road, Suite 440
Phoenix, Arizona 85016
Facsimile: 602-667-7772
Attn: General Counsel

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.14 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the duties under this Agreement. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

14.15 Conflicting Terms. In the event of a conflict between this Agreement, the RFP and the Contractor Proposal, this Agreement shall govern over the RFP and the Contractor Proposal and the RFP shall govern over the Contractor Proposal.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

_____
Charles P. McClendon, City Manager

ATTEST:

_____
Linda M. Farris, City Clerk

"**Contractor**"

KRONOS OPTIMAL HEALTH COMPANY, an Arizona corporation

By:_____
Andrea Lazar, President and CEO

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2007, by Andrea Lazar as President and Chief Executive Officer of KRONOS OPTIMAL HEALTH COMPANY, an Arizona corporation, on behalf of such corporation.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2007, by Charles P. McClendon, the 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

My Commission Expires:

_____

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KRONOS OPTIMAL HEALTH COMPANY

[Scope of Work]

See following pages.

SCOPE OF SERVICES

These following services are representative of the requirements of this program, and include, but may not be limited to the following.

1.0 Contractor shall provide to the City and its employees:

1.1 Periodic Wellness Survey of employee's interest in health related issues/activities.

1.2 Periodic management meetings.

1.3 Periodic participation with Wellness Committee.

1.4 Baseline data collection through Health Risk Assessments and Bio-metric Testing to include but not limited to; blood chemistry, cholesterol and triglycerides, blood pressure, height, weight and BMI, etc.

1.5 Annual health fairs conducted in a constructive forum with a potential speaker.

1.6 Performance information as it pertains to the program, (this may include specific data and or analysis on a periodic basis or as requested.

1.7 Interventions and education, Health Coaching, and a health improvement program. An example of these types of programs may include screening tests and follow up with a patient counselor, including nutrition, weight management, smoking cessation, integration with a person's primary care.

1.8 Specific programs for conditions such as diabetes, hypertension, allergies and asthma, maternity, etc.

1.9 Depending on The City of Avondale's interest, suggest incentive based programs that are voluntary in nature such as exercise programs, walking, jogging, cycling events, and weight loss programs. etc.

1.10 Develop a database sufficient to track progress for all employees that is transferable if requested.

1.10.1 Enter appropriate data to track individual assessments and provide results to individuals confidentially.
1.10.2 Enter appropriate data to track program-wide progress from year-to-year.

1.11 A Certified Wellness Assessment Testing Coordinator assigned to work with Avondale Human Resources to conduct testing, deliver results and update database; not to exceed cost allocated. The City of Avondale shall have the opportunity for review and approval of the job description for this position; and selection of the coordinator shall be reviewed with The City of Avondale.

SCOPE OF SERVICES

1.12 Bio-Metric Testing

1.12.1 Using contractor supplied equipment and health risk assessment, provide an annual comprehensive bio-metric assessment to all employees over a 1 to 2 month period. Also to perform 1 interim testing for new employees who wish to join.

1.12.2 Provide a questionnaire to screen employees who may have possible health risks and provide a Health Risk Appraisal to each participating employee.

1.12.3 Provide specific equipment needed to conduct the testing protocols.

1.13 Provide a quarterly and yearly summary of results of health risk assessments and total fitness.

Please note: The description above is not complete representation of the scope of services requested by The City of Avondale and only serves as an overview to assist in preparing your presentation. All of the services or any additional services described above may be directly contracted by The City of Avondale if any are deemed to be in the best interest of The City of Avondale contractually, financially and improved service performance.

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KRONOS OPTIMAL HEALTH COMPANY

[Contractor Proposal]

See following pages.

KRONOS AT WORK

KRONOS®
optimal health company

Description of Services
Kronos at Work Program

Planning

Prepare and Launch Year One

- Kronos will help Employer form an Optimal Health Team. Kronos will work with the Optimal Health Team for logistic planning
- The Kronos Health Educator(s), Customer Care Manager, and other members of the Kronos team will collaborate with the Optimal Health Team to:
  - Plan and implement an awareness campaign to introduce the program
  - Assist with designing of program activities and yearly calendar of events
- Kronos will provide participation incentives
- Employer will need to provide incentives for program completion

Assessing Risk

Conduct Individual Health Risk Assessments

- Kronos will facilitate the assessments - online and on-site.
- The online portion includes:
  - Kronos questionnaire that captures demographics, health history, preferences
  - Lifestyle—Attitude towards healthcare and readiness-to-change
  - Self-scheduling for physical assessments
- Kronos will also administer the follow-up indices. The Productivity Assessment will be given as a baseline measurement to all employees at the beginning of the program and again at year two. The Lifestyle Assessment will be given to all employees, one time only, upon enrollment.
  - Productivity Assessment – Measures "presenteeism" at the workplace
  - Lifestyle Assessment – Profiles and attitudes towards health care
- Kronos will administer an advanced on-site health screening—with all clinical components of this process administered by Kronos trained healthcare professionals and independent contractors.

Biometric Testing	Vitals	Fitness Assessment
➢ Lipid Risk Profile: • Total Cholesterol • LDL – Cholesterol • HDL – Cholesterol • Triglycerides ➢ Blood Glucose, Fasting ➢ HDL/TC Ratio ➢ Metabolic Syndrome	➢ Blood Pressure ➢ Weight ➢ Height ➢ Waist Circumference ➢ Resting Pulse ➢ Body Mass Index ➢ Body Fat %	➢ Cardio endurance ➢ Flexibility ➢ Core Strength ➢ Upper Body Strength ➢ Lower Body Strength

- All employees will proceed through three sections of the physical assessment and then receive their results plus 5-10 minutes counseling with a Kronos health educator who will explain their results and then prepare them to receive their final Results and Recommendations reports on the portal.
- All participants leave with biometric, vital and fitness results, coupled with Kronos educational materials and handouts.
- Kronos will store all biometric testing results, vitals and fitness assessment outcomes in a HIPAA compliant secure database.
- Participates will then be offered a Health Risk Behavior Assessment (HRBA) from HealthMedia Inc. that measures behavioral readiness to change as well as additional health risk information (skin cancer, safety, stress, etc.).
- Participates will also be offered lifestyle management online courses from HealthMedia Inc. including:
    - Stress Management
    - Nutrition
    - Weight Management – Physical Activity
    - Smoking Cessation
- If a company already uses an existing HRA, such as through their carrier, Kronos can direct participants to that HRA as well by means of the task list.

Reporting Results

Provide Individual and Aggregate Reports

- All participant specific data is owned by the employees.
- Within 48 hours after the Physical Assessment, Kronos will email to all participants a message that will enable them to access their Kronos Results and Recommendations (R&R) reports.
- Kronos will make the R&R Reports available on the employees "My Health" page in their secure portal.
- All employees will receive:
    - Kronos Lab, Vitals and Fitness Results
    - Kronos Optimal Health Recommendations
    - Kronos Nutrition Recommendations
    - Kronos Fitness Recommendations
    - Kronos Cardiovascular Periodized Program
        - Cardiovascular interactive tool—calculates maximum heart rate based on key vitals and customizes 12-week cardio program.
    - Health Risk Behavioral Assessment (HRBA) Guide
        - Personalized messaging based on readiness to change
- After all employee results are tabulated, the Employer will receive side by side aggregate reports. The first report will be the initial Actual Results Baseline Aggregate report, followed by updated reports at program re-test.

Taking Action

Intervene, Engage, and Effect Behavioral Change

- Participating employees will have access to various engagement and behavioral change programs or activities between 20 and 50 hours per month, based on company size. Engagement will include, among other things:
  - Seminars
  - Lunch and Learns
  - Corporate wide activities
  - Contests
  - 1 on 1 Health Coaching
  - Group Coaching
- Each participating employee will experience customized engagement—which is primarily due to the processes we employ to address change management and personalized intervention:
  - Identify risk and level of readiness-to-change
  - Identify learning style
  - Differentiate between risk populations
  - Customize engagement and intervention including:
    - On-site
    - Online
    - Telephonic (where necessary)
- **Telephonic** – Kronos will engage with selected individualized via a telephonic outreach program. The individuals will be selected and invited to participate based on risk stratification.
  - Scheduled outbound calls to employees at a phone number of their choice
  - Availability of health coaches for inbound calls from employees
- **On-site** - The Kronos Health Educator(s) will offer on-site engagement targeted and personalized to the participant and/or group based on the overall indices of the health risk assessment.
  - 1:1 personalized, targeted Health Coaching
  - Group Health Coaching (20-30 per group) based on health risk assessment outcomes
  - Activities and Contests
  - Fitness Classes
  - Customer Care Manager to support participation and offer customer service assistance
- **Online** - The Kronos proprietary portal will support online interventions and provide each participant with a secure and simple-to-navigate resource for:
  - Nutritional section and tools
  - Fitness section and tools
  - On-going chronological personal assessment results
  - Demonstration videos

- Current program activities
- Educational material
- Interactive "ask the experts" feature—supported by physicians, exercise physiologists, and dietitians
- Personalized e-mails and newsletters

➢ Kronos will offer four online lifestyle management programs that will offer self-paced behavioral change support:
- Weight Management / Physical Activity
- Nutrition
- Stress Management
- Smoking Cessation

Following Through

Re-test, Report Outcomes and ROI

➢ Kronos will administer a re-test for participating population one-year after initial testing. Additionally, the assessment will be available for:
- New hires
- Current non-participating employees would now like to participate

➢ Company will receive customized aggregate outcome reports after each biometric testing

➢ Company will receive quarterly customized reports outlining behavioral change for those participating in:
- Online behavioral change classes
- On-site behavioral change activities

➢ Lastly, Kronos will document results in the following categories:
- Full Participants
- Partial Participants
- Limited Participants
- Non-Participants

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KRONOS OPTIMAL HEALTH COMPANY

[Price Sheet]

See following pages.

Exhibit B
Corporate Wellness Pricing & Fees

Kronos Corporate & Community Wellness

At Kronos Optimal Health Company, we leverage our expertise in science, medicine and behavior management to deliver preventive health programs and services. We help healthcare plans, hospitals, providers, employers, and communities combat rising health care costs through proactive management of their populations' potential or known health risks.

Kronos offers a variety of affordable and flexible solutions, administered by Kronos-trained professionals with the highest level of clinical excellence and customer service.

Kronos at Work Program

Pricing - Client shall pay Kronos $155 per participant during year one and $200 per continuing participant during year two. Client will also pay Kronos $200 per participant for any additional or "new" participants during year two (new participants will be confirmed after year two biometric assessments). This includes the Health Management Program with on-site, online and telephonic support and one biometric testing period at launch and biometric re-testing at the start of year two, as well as all follow-up reporting and engagement. In addition, City of Avondale will guarantee payment of the appropriate fee as set forth in this Section for a minimum of 150 persons.

Payment- The start date for billable services under this Agreement begins with the planning of program launch by Kronos. On site biometric and fitness assessments ("the assessments") will occur no later than 90 days from the start date. From the program start date through the completion of the assessments, Kronos will invoice Client monthly an amount equal to 30% of total employee participation. Once the assessments are completed, Kronos will invoice Client based upon the total number of actual participants that completed the biometric and/or fitness assessments. In addition, Kronos will adjust the billings from the program start date through the completion of the assessments to reflect actual participation levels above the 30% estimate. Kronos will invoice Client monthly through the term of this Agreement.

Minimum Payment Requirements- Kronos will invoice the Client a minimum annual fee of $23,250.00. The Client will have the option to pay the minimum fee in one lump sum, monthly or quarterly. The per participant cost for any new participants, after the effective date, will be paid by the Client. In that regard, after year two assessments are completed and total participation rates are confirmed, the annual fee shall increase accordingly. Any increases or decreases in the annual fee due to increase or decrease in participation shall be reviewed and calculated on a quarterly basis. In no event will the fee for services payable to Kronos drop below the minimum fee of $23,250.00

Program Locations – Kronos will provide 30 on-site hours of wellness programming per month. The hours will be allotted accordingly at City of Avondale sites as agreed to between the City of Avondale and Kronos.

Incentive Program - Incentive programs for participation and ongoing involvement are the direct responsibility of Client.

DEVELOPMENT SERVICES

SUBJECT:
DR-06-34 Master Site Plan for Trinity Lutheran and Final Site Plan for Phase IV

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Brian Berndt, Development Services Director (623)333-4011

THROUGH: Charlie McClendon, City Manager

REQUEST: 1. Master Site Plan approval for Trinity Lutheran

2. Final Site Plan approval for Phase IV

PARCEL SIZE: 21 acre site

LOCATION: SWC of Indian School Road and Dysart Road, 830 Plaza Circle
Exhibits A and B

APPLICANT: Patrick McGee, SSPW Architects

OWNER: Trinity Lutheran Church and School

BACKGROUND:

A portion of the existing Trinity Lutheran Church property, the Baptist Church, and the property located at the southwest corner of Dysart Road and Indian School By-pass have been zoned C-2 (Community Commercial) since 1990. The remainder of the site is part of the Palm Valley PAD that was approved by the City Council in 1994. The Palm Valley PAD includes 770 acres of mixed use development consisting predominantly of residential with commercial placed along arterial street frontages. A church is a permitted use in the C-2 district and the PAD. The site is developed with a sanctuary, administrative building and various classrooms.

On March 4, 2004 staff administratively approved a site plan for the addition of 14,700 square feet of space for a school administrative office and 13 new classrooms. A stipulation required master site plan approval and for any future phase to be approved by the Council. Street improvements for Dysart Road were also stipulated to be completed during the next phase of development. A stipulation also required Trinity Lutheran to submit for final plat approval. The final plat was approved by City Council on September 7, 2004. Currently, Indian School Road is under the jurisdiction of Maricopa County. The owner is voluntarily dedicating an additional 30 feet of right-of-way to accommodate the future widening of Indian School Road. The County is not requiring street improvements in-lieu-of the right-of-way dedication.

SUMMARY OF REQUEST:

1. The applicant is requesting master site plan approval for a multi-purpose building, additional classrooms, worship center, and administration building. Master site plan approval is requested for the entire site to establish circulation, architecture, access, and building placement.

2. The development will occur in phases. The applicant has requested final site plan approval for Phase IV

which includes the multi-purpose building, pre-school classrooms, and parking lot. Phase V, the worship center, administrative building and additional screen wall adjacent to Baptist Church property, will require separate administrative review and approval to ensure conformance with the master site plan, Zoning Ordinance, and C-2 and PAD zoning.

3. The 17,290 square foot multi-purpose building will house a gymnasium, school kitchen, toilets, one 1,800 square foot youth group assembly room, one standard size classroom and storage space. The 5,214 square foot preschool classroom building will house six new classrooms and supporting toilets.

4. Vehicle access will be provided by right-in/right-out driveways on Indian School Road and Dysart Road, and one full access driveway on 132nd Avenue. Cross access will be provided between the existing Trinity Lutheran development. Future deceleration lanes will be included at entrances to Dysart Road concurrent with the development of Phase V.

5. The proposed architecture is a modern, southwest style comprised of stucco and concrete roof tile. The buildings have cornices and wainscot that add visual interest. All buildings include architecture treatment on all four sides. The buildings include prominent entrances and dominant colors of natural, earth tones complementary to the existing Trinity Lutheran development.

PARTICIPATION:

A letter of notification and a copy of the site plan were mailed on November 6, 2006 to 185 property owners within 500 feet of the property. The Litchfield Elementary School District and Agua Fria Union High School District were also notified of the application. No comments have been received to date.

PLANNING COMMISSION ACTION:

The Planning Commission considered this item at their meeting on April 19, 2007 (Exhibit H). Following discussion, the Commission voted 6-0 to forward a recommendation of approval with the following stipulations:

1. The development shall conform to the master site plan date stamped April 12, 2007, master landscape plan date stamped April 12, 2007; the project narrative dated February 23, 2007, and the elevations dated April 12, 2007, except as modified by these stipulations.

2. In accordance with Section 106.C.4 of the City of Avondale Zoning Ordinance the approval of the Master Site Plan and Final Site Plan for Phase IV shall expire within one year of approval if a building permit has not been issued.

3. Final landscape plans shall be approved prior to issuance of a building permit.

4. All proposed buildings, including those of franchise users, shall substantially conform to the architectural theme of the conceptual elevation plan date stamped April 12, 2007 and the materials and color selections board date stamped April 12, 2007.

5. Phase V shall be treated with decomposed granite ground cover until development of those areas occur unless developed concurrently with Phase IV.

6. Final site plans for Phase V shall be submitted to the Planning Division for administrative approval prior to construction plan review.

7. Signage standards for the center shall comply with the City of Avondale Zoning Ordinance. All signage shall require separate review and approval through the sign permitting process.

8. The drainage report and water & sewer report shall be revised as determined by the City Engineer prior to Final Civil Plan approval.

9. The landscape plan shall be revised to meet AASHTO standards for all sight visibility triangles.

10. Concurrent with Phase V of the development, the developer is required to dedicate 65-feet of ROW on Dysart Road, additional ROW at the intersection of Dysart Road and Indian School Road, deceleration lanes and additional ROW on Dysart Road for southbound traffic, and a traffic plan for Sunday traffic, as determined by the Traffic Engineer.

ANALYSIS:

General Plan and Specific Plan

The site is identified as Commercial and Medium Density Residential (2.5-4 dwelling units per acre) on the General Plan and North Avondale Specific Plan. The existing C-2 and PAD zoning is consistent with the General Plan and North Avondale Specific Plan.

Compatibility with Surrounding Land Uses

The Dysart Ranch subdivision is adjacent to the south and west of the site. Commercial sites, Coldwater Station and Litchfield Park Plaza, are located farther west of the site. Across Indian School Road, is an existing subdivision in the City of Goodyear. Across Dysart Road, there is vacant land designated Community Commercial and the existing LPSCO Treatment Facility.

The applicant is proposing new 3' screen walls along the west and south property lines adjacent to 132nd Avenue and the residential development to conceal parking lots. A 6' screen wall is proposed along 132nd Avenue to block views of truck deliveries to the multi-purpose building.

Along the south side of the property, 15 foot tall pole-mounted lighting will be used to illuminate the parking lot. The lighting will be fully shielded and directed downward. Lighting will not exceed 1.0 foot candle at the property line; a 0.0 – foot candle maximum is shown on the photometric plan adjacent to the residential development.

Refuse containers are internalized on the property as to not affect the neighboring residences to the south.

Building Materials, Colors and Design

A modern southwest style of architecture was chosen for the center. The colors of the proposed center are desert earth tones of white, brown, tan, and rusty red. The buildings have cornices and wainscot that add visual interest. All buildings will feature four-sided architecture. The color and materials complement the existing Trinity Lutheran development.

The multi-purpose building has a height of 29'-8" to the top of the gymnasium parapet. The preschool building height is 23'-0" to the highest roof ridgeline. This is less than the maximum height allowed by the Zoning Ordinance of 30 feet.

Access, Circulation, and Parking

The existing and proposed entrances will provide adequate access to the site. Cross access will be provided between the existing Trinity Lutheran development and Phase IV and Phase V developments.

The developer will be responsible for completing the deceleration lanes, sidewalks, streetlights, and landscaping in the right-of-way along Dysart Road as part of Phase V development. No roadway improvements will be required with Phase IV development, however, these improvements will be required with Phase V.

The traffic study calls for an additional right-of-way dedication for the Dysart Road improvements. The traffic study also determined the need for a traffic plan for Sunday traffic. Stipulations have been added to address these issues.

The Zoning Ordinance requires one parking space for every 160 square feet of gross floor area for a multi-purpose building and requires one space per classroom plus one. Based on the gross floor area designated for multi-purpose building (17,290 square feet with 12,802 square feet of occupancy area), classrooms for Phase IV (5,214 square feet) and the existing Trinity Lutheran development, a total of 199 spaces are required. The applicant is providing a total of 218 parking spaces. Per Americans with Disability Act (ADA) requirements, the site is required to have 7 parking spaces, however, the applicant has included 13 handicapped accessible spaces. The development exceeds the number of parking spaces required by the Zoning Ordinance and ADA.

The site provides adequate pedestrian access across drive aisles and safe internal access throughout the site. Pedestrian connections through parking areas are clearly denoted by striping, paving treatments, or a combination thereof.

Landscaping

A landscape plan has been provided (Exhibit F). Right-of-way landscaping is included in the preliminary landscape plan and is required as part of the development of the site. Final landscape plans will be submitted and approved by staff prior to the issuance of a building permit.

The Zoning Ordinance requires a landscape buffer with a minimum width of 10 feet adjacent to single-family zoning. A 10 foot landscape buffer is proposed within the required 25 foot building setback along the south boundary of the site. In Phase V, the applicant will provide a mix of 15-gallon and 24-inch box trees to buffer the existing residential development. The applicant proposes landscaping along Indian School Road and 132nd Avenue to complement the existing landscaping. Due to previous stipulations, the applicant is required and has provided improvements along Dysart Road.

The landscape plan is proposed to be a xeriscape theme using plants from the Arizona Department of Water Resources list. The landscape plan meets City Standards and will compliment the adjacent property and further the character of the development.

Signage

No free-standing signs or building signs are being proposed with this phase of development, however, a monument type sign may be pursued in the future for the main entry off of Indian School Road. The applicant will be required to submit and secure a sign permit.

All new signs proposed for this development are required for parking and building accessibility, traffic, and by the fire department.

FINDINGS:

The proposed site plan meets the following findings:

- It meets the objectives of the General Plan and North Avondale Specific Plan.
- It meets the requirements of the C-2 and PAD Zoning.
- It meets the requirements of the City of Avondale Zoning Ordinance.

RECOMMENDATION:

Staff recommends that the City Council **APPROVE** application DR-06-34,a request for Master Site Plan approval and Final Site Plan approval for Phase IV subject to the ten stipulations recommended by the Planning Commission with Stipulation #5 revised as follows as recommended by staff:

5. Any undeveloped portions of the master site plan that are disturbed during construction shall be covered with decomposed granite for dust control until such time that those portions are developed.

PROPOSED MOTION:

I move that the City Council accept the findings and **APPROVE** application DR-06-34, a request for Master

Site Plan approval for Trinity Lutheran and Final Site Plan approval for Phase IV,subject to the ten stipulations recommended by the Planning Commission with stipulation #5 revised as recommended by staff.

ATTACHMENTS:

Click to download

- Exhibits A-G
- Exhibit H

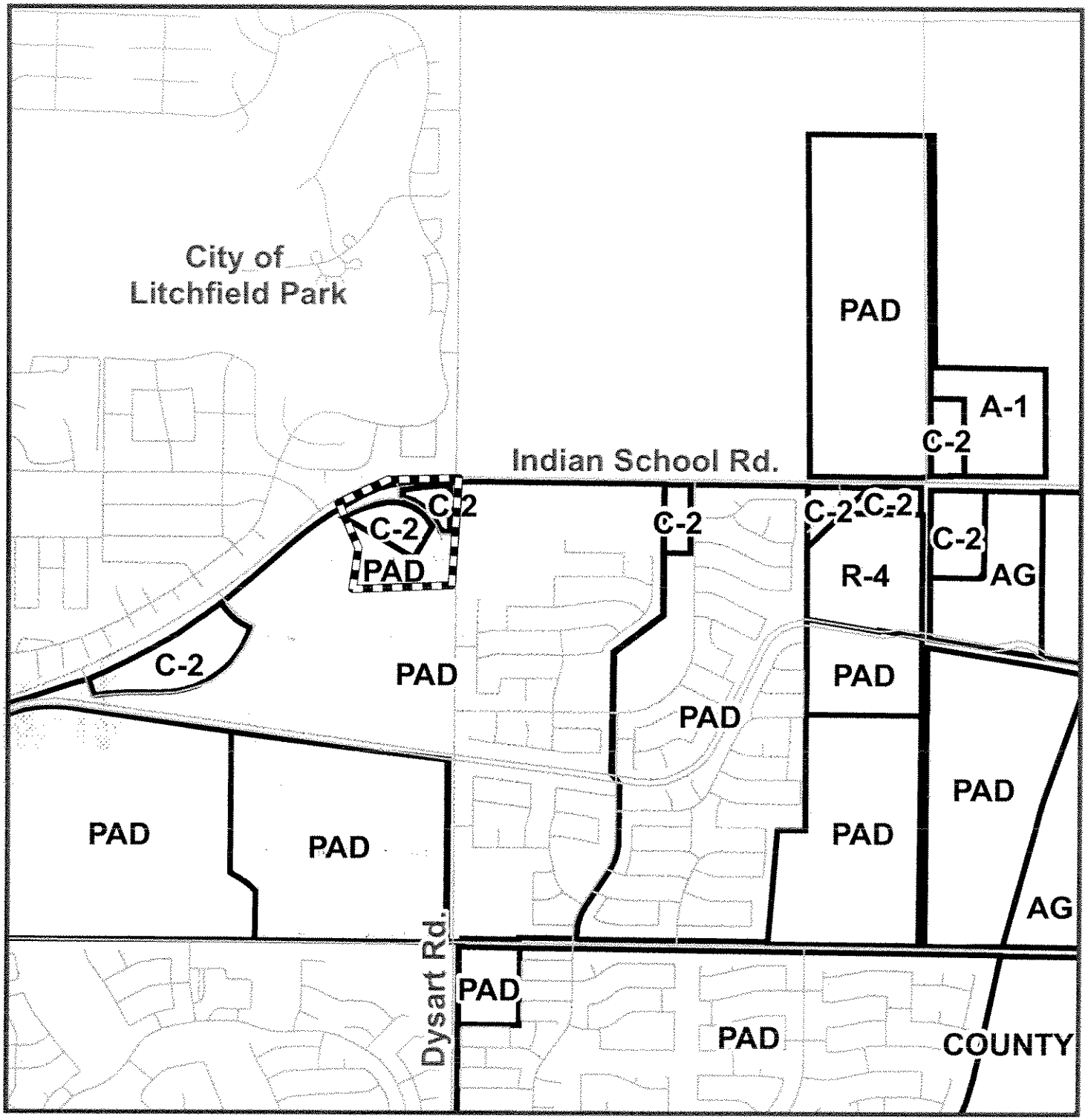
FULL SIZE COPIES (Council Only):

Master Site Plan dated April 12, 2007 (24x36),Landscape Plan (Phase IV) dated April 12, 2007 (24x36), Color Building Elevations (Phase IV) dated April 12, 2007 (24x36)

PROJECT MANAGER:

Megan Neal, Planner II (623) 333-4018

Exhibit A

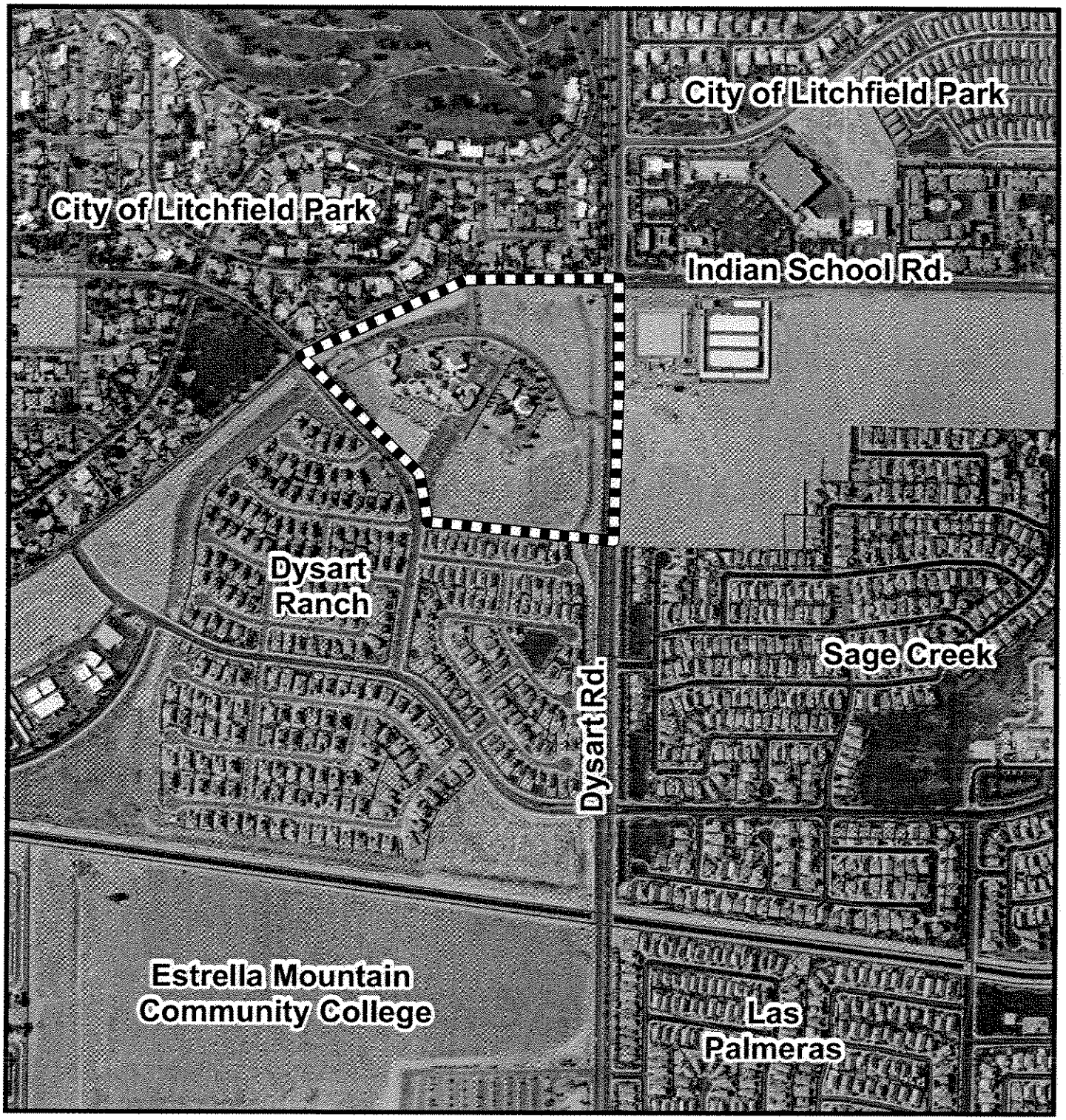


Zoning Vicinity Map
Trinity Lutheran

Avondale

Subject Site

Exhibit B



Aerial Photo
DR-06-34

Avondale

Subject Property

Exhibit C

SUMMARY OF RELATED FACTS
APPLICATION DR-06-34

THE PROPERTY	
PARCEL SIZE	21 acres
LOCATION	Southwest corner of Dysart Road and Indian School Road
PHYSICAL CHARACTERISTICS	The site is relatively flat.
EXISTING LAND USE	Trinity Lutheran church/school
EXISTING ZONING	PAD (Palm Valley Planned Area Development)
ZONING HISTORY	The site was zoned PAD in 1994.
DEVELOPMENT AGREEMENT	The City and SunCor Development entered into a development agreement in 1993. The development agreement was amended in 1997, 1998, and 2002. There are no outstanding issues.

SURROUNDING ZONING AND LAND USE	
NORTH	City of Litchfield Park, Residential, zoned
EAST	Single-Family Residential, zoned PAD (Sage Creek subdivision)
SOUTH	Single-Family Residential, zoned PAD (Dysart Ranch subdivision)
WEST	Single-Family Residential, zoned PAD (Dysart Ranch subdivision)

GENERAL PLAN
The subject property is designated as Commercial and Medium Density Residential (2.5 – 4 dwelling units per acre) on the General Plan Land Use Map.

PUBLIC SCHOOLS	
SCHOOL DISTRICT(S)	Litchfield Elementary and Agua Fria Union High School
ELEMENTARY SCHOOL	Palm Valley Elementary School
HIGH SCHOOL	Agua Fria Union High School

STREETS	
Dysart Road	
Classification	Major Arterial
Existing half street ROW	65 feet
Standard half street ROW	65 feet
Existing half street improvements	2 traffic lanes, ½ center turn lane, and streetlights.

Standard half street improvements	3 traffic lanes, ½ center turn lane with median, curb, gutter, sidewalk, landscaping, bike lane, and street lights.
Indian School Road	
Classification	Major Arterial
Existing half street ROW	55 feet
Standard half street ROW	65 feet
Existing half street improvements	2 traffic lanes and ½ center turn lane, and streetlights.
Standard half street improvements	3 traffic lanes, ½ center turn lane with median, curb, gutter, sidewalk, landscaping, bike lane, and street lights. (per Maricopa County improvements)

Utilities
There are 16" waterline in Dysart Road and 12" waterline in Indian School Road. There is an existing 15" sewer line in Dysart Road and a 21" line in Indian School Road.

EXHIBIT D

ARCHITECTS

Schneider Shay Pian Worcester Architects
8681 East Via de Negocio
Scottsdale, Arizona 85258-3330
Phone: (480) 991-0800 Facsimile: (480) 991-2623
e-mail: pmcgee@sspwarchitects.com

PROJECT NARRATIVE
City of Avondale
Site Plan Submittal
TRINITY LUTHERAN CHURCH & SCHOOL
TLC – PHASE IV
NEW MULTIPURPOSE & CLASSROOM ADDITIONS
SSPW Architects Project No. 0321D
Submittal date November 3, 2006
2nd Submittal date February 23, 2007

PLANNING RECEIVED FEB 2007 DIVISION DR-06-34 2nd

FACILITY MISSION:
Trinity Lutheran Church's mission is to *Share the Living Water of Jesus Christ with a Thirsty World.* The school plays a great part in this mission. Many families come to Trinity by starting their children out in the preschool. As their involvement in their children's education grows, so does their church involvement.

HISTORY:
Trinity Lutheran Church was started with just four families. The attendance at Trinity now is approximately 1,150 and they have a total of five services every Sunday. Although multiple services have helped Trinity's worship dilemma, they are still in need of new space.

As with the Church, Trinity Lutheran School has grown at a phenomenal rate. Starting out as a preschool, they now have preschool through grade 8. Just this year enrollment has grown to 651 students. The younger households moving into the area have created a demand at Trinity Lutheran Church for increasing preschool facilities. But as seen in the figures below, enrollment per grade appears to diminish as the older children move on to other schools.

PROPOSED DEVELOPMENT:
As mentioned previously, the student enrollment for the 2006/2007 school year is 651 students. Current enrolled students are of preschool age through 8th grade. The school does not plan to expand their education program beyond the 8th grade. There are currently 90 church and school staff members. The school maintains maximum student capacity per classroom as follows:

- Preschool 3 year olds — 16 per classroom
- Preschool 4 year olds — 18 per classroom
- Kindergarten — 22 per classroom
- Elementary grades 1-6 — 25 per classroom
- Intermediate grades 7-8 — 25 per classroom

It is important to know that the preschool programs are one-half day. When the proposed preschool classrooms are complete, preschool enrollment is expected to reach capacity at 548 within 1 to 2 years. The "Trinity Twos" is more of a Day Care than a Preschool. One classroom will have 23 children and the other will have 16. The smaller class is for "transitional" children who have turned 3 but are not quite ready for the 3-year old preschool program. The overall school enrollment numbers can be broken down as follows:

- "Trinity-Twos" 2 year olds — 39 students
- Preschool 3 year olds — 224 students
- Preschool 4 year olds — 324 students
- Kindergarten — 66 students
- Elementary grades 1-6 — 258 students
- Intermediate grades 7-8 — 54 students
- Totals — 965 students

Trinity is currently proposing to add two (2) buildings totaling 22,504 square feet of space. The new 17,290 square foot Multipurpose Building will house a gymnasium, school kitchen, toilets, one 1,800 SF youth group assembly room, one standard size classroom and storage space. Student dining will occur within the gymnasium and an exterior covered patio space. The kitchen is being designed to warm and serve lunches catered by the local Litchfield Park Public School. Participation in the lunch program is limited to grades K-8. The new 5,214 square foot preschool classroom building will house six (6) new classrooms and supporting toilets.

Both of these new buildings are currently proposed to be constructed of steel with EIFS finishes to match the existing facility. High walls of the new gymnasium will be constructed of CMU with an EIFS finish. These structures will be fire-sprinklered.

An additional masonry screen wall is proposed adjacent to the 275.26' southern-most boundary with the Baptist property. Additional screening of the Baptist property will be unlikely this Phase IV due to constraints on the budget. Additional parking, landscaping and off-site improvements are also proposed and are discussed in more detail later in this narrative. The new preschool classroom building is proposed to be completed in September 2007.

SCHEDULE:

A revised planning and development schedule is as follows:

1. Preapplication Meeting	September 6, 2006
2. Site Plan 1st Application	November 3, 2006
3. City Issues 1st Review Comments	January 10, 2007
4. Required Corrections 2nd Application	February 23, 2007
5. Submit for Building Permit – Preschool Building	Late February, 2007
6. Staff Recommendation to City Council	Mid March, 2007
7. Pull Permit – Preschool Building	Mid March, 2007
8. Submit for Building Permit – Multipurpose Building	Mid March, 2007
9. Pull Permit – Multipurpose Building	Mid May, 2007
10. Owner Occupancy – Preschool Building	September 15, 2007
11. Owner Occupancy – Multipurpose Building	November 15, 2007

Despite recent planning and design revisions requested by the Trinity Lutheran Church, they have expressed an urgent need to open doors and occupy the preschool building as early in September as is possible. The Multipurpose Building does not have as much an urgency to be completed.

FIRE:

The proposed buildings will be fully sprinklered. One (1) new private fire hydrant is proposed with Phase IV. This will be connected to a new looped water line extended from the existing LPSCO water service under Plaza Circle. Proposed location is southeast of the new preschool classroom building as indicated. Two (2) parking spaces will be eliminated to provide required access to the hydrant. This campus is served by a fire alarm system which has the capacity to be expanded to both proposed Phase IV buildings.

PHASE IV PARKING IMPROVEMENTS:
There are currently 220 parking spaces as striped for this facility. Fifty-one (51) spaces will be lost to the new development design. More detailed parking calculations have been included on the site plan and as follows:

Per City of Avondale Zoning Ordinance:

Section 804-B		
Existing Church Main Assembly	6,144 SF/100	= 62 spaces
Existing Admin/Office	4,243 SF/200	= 22 spaces
Existing and New Classrooms (34 Classrooms)	33+1	= 34 spaces
Section 804-C		
Multipurpose	12,810 SF Assembly Occupancy areas (74% of building)/160 = 12,810 SF/160	
Total Required Parking		81 spaces

Total Required Parking Phase IV	199 spaces
Current Parking	220 spaces
Spaces Lost	-51 spaces
New Spaces Added Phase IV	49 spaces
Total Proposed Parking	218 spaces

New parking lot will utilize 3'-0" high masonry parking screen walls as indicated on the plan.

PHASE V PARKING IMPROVEMENTS:
At this time the Trinity Lutheran Church is planning for a 23,521 SF sanctuary (assembly occupancy) and 9,828 SF of church administrative offices (business occupancy). We feel these programmed areas are fairly firm and will likely stay the same or decrease somewhat as plans become fully defined and developed. Proposed future parking calculations are as follows:

Section 804-B		
Phase V Church Main Assembly	23,521 SF/100	= 236 spaces
Phase V Admin/Office	9,828 SF/200	= 50 spaces
Total Proposed and Provided Phase V Parking		286 spaces

LANDSCAPING:
Newly developed school grounds will be landscaped similar to existing in compliance with City of Avondale standards. The new retention basin is proposed to be decomposed granite. At this time, the new basin is not dedicated to serve as playground areas and thus, will not be landscaped with turf. R.O.W. frontages along Indian School and Dysart Roads will be landscaped according to City of Avondale standards. R.O.W. frontages along the new 132nd Avenue were landscaped in the last phase of development. Undeveloped future building sites are proposed to be devegetated of unsightly weeds and properly maintained until such time of the future development.

OFF-SITE DYSART ROAD IMPROVEMENTS:
As per previous agreement in City of Avondale letter dated March 3, 2004, under Phase IV, Trinity Lutheran Church will provide for improvements in the Dysart Road R.O.W. along the property frontage. These improvements include one (1) additional traffic lane, curb and gutter, sidewalk, streetlights, and landscape improvements within the R.O.W. between the street and the drainage channel. Additionally, all electric lines less than 69-kv will need to be placed underground.

OFF-SITE INDIAN SCHOOL ROAD IMPROVEMENTS:
MCDOT is currently planning to move forward with the widening of Indian School Road. They have approached Trinity Lutheran Church with a monetary offer for a portion of land that would provide for a 150' R.O.W. MCDOT plans to provide the road and sidewalks, relocate utilities and other miscellaneous improvements. The MCDOT offer was rejected by Trinity Lutheran Church.

On September 7, 2004, the Avondale City Council approved a final plat prepared by Trinity Lutheran Church's consultant. As required by the City, this final plat will be promptly dedicated to the City of Avondale and recorded.

HANDICAPPED ACCESSIBILITY:
Proposed are new accessible sidewalks to the two new buildings. A new crosswalk is proposed to bisect the north-south fire lane/drive for pedestrian safety and accessibility to the new parking lot. There are 49 new parking spaces proposed with this development. (See Phase IV Parking Improvements.) Because of the remoteness of the new parking lot, existing areas closer to the proposed buildings will be restriped for accessibility. Per the A.D.A. 4.1.2, seven (7) accessible parking spaces are required upon completion of Phase IV. Thirteen (13) accessible spaces will be provided. From any accessible parking space we have flush, accessible sidewalks to every door in the facility with the exception of maintenance/mechanical type rooms. This is a relatively flat site. There are no existing/new sidewalks with a slope steeper than 1:20.

As required by the City of Avondale Planning comments, two (2) sidewalks and associated accessible ramps have been added to tie the property with the adjacent neighborhoods. One (1) sidewalk is indicated at the main entry off Indian School Road connecting to a proposed MCDOT sidewalk. Another is indicated connecting to an existing R.O.W. sidewalk at the southwest 132nd Avenue entry.

All of the new toilet rooms in the proposed buildings will provide for a 5' turning radius and will all be designed with accessible plumbing fixtures. Required clearances on both sides of all new doorways will be provided. All new countertop heights will be at 34" above finished floor. The heights of all lighting/mechanical and systems controls will be designed within A.D.A. recommended guidelines.

SIGNAGE:
No new major signage locations are currently being proposed under this development contract. A monument type entry sign may be pursued by the Trinity Lutheran Church and School for the main entry off of Indian School once those road improvements are complete. A separate signage permit will be secured. The only new signage being proposed for this development are those required for parking and building accessibility, traffic and by the fire department.

GRADING AND DRAINAGE:
On-site storm water retention is required. Two (2) existing retention basins that also serve as school playgrounds will remain. The proposed drainage concept indicates the smaller of these playfields be regraded to accommodate underground storm water retention. One (1) new retention basin is proposed in the southern portion of the site for the Phase IV development to handle storm water run-off from the newly developed parking lot. Please reference the submitted Drainage Report for a more detailed description.

WATER:
The existing LPSCO water service below Plaza Circle currently serves the buildings of the north half of the Trinity Lutheran Church and School site. As per recommendations by the Fire Department, a looped water line is proposed for better hydrant pressure. This new line will loop around the Baptist property connecting to Plaza Circle on both ends. A meter will be installed for domestic use by the new Phase IV and Phase V buildings. Please reference the submitted Water Report for a more detailed description.

SEWER:
THE existing LPSCO sewer service below Plaza Circle currently serves the buildings of the north half of the Trinity Lutheran Church and School site. LPSCO sewer service under Plaza Circle is too shallow and too far to serve the two new buildings without the use of a private underground sewage lift station. Please reference the submitted Sewer Report for a more detailed description.

ELECTRICAL:
Current 600 amp APS service to the existing preschool building will be extended to serve the new 8-classroom building. However, new service will probably need to be acquired for the new Multipurpose Building. A new transformer can be connected to the existing APS switching cabinet across 132nd Avenue by way of the empty conduits sleeved under the road during the previous phase.

COMMUNICATIONS:
All low-voltage telephone and computer data systems will be extended and connected to the existing. These systems will be installed by the Owner's systems vendor(s).

FUTURE DEVELOPMENTS – PHASE IV NEW WORSHIP CENTER:
As previously mentioned, future plans include a New Worship Center with an 800-seat sanctuary, a bell tower, church administration building and required parking. This will be the final phase to fully develop this site and complete the Trinity Master Plan. The projections for this phase of construction have not yet been determined, but the Church hopes to begin the New Worship Center within the next three to four years.

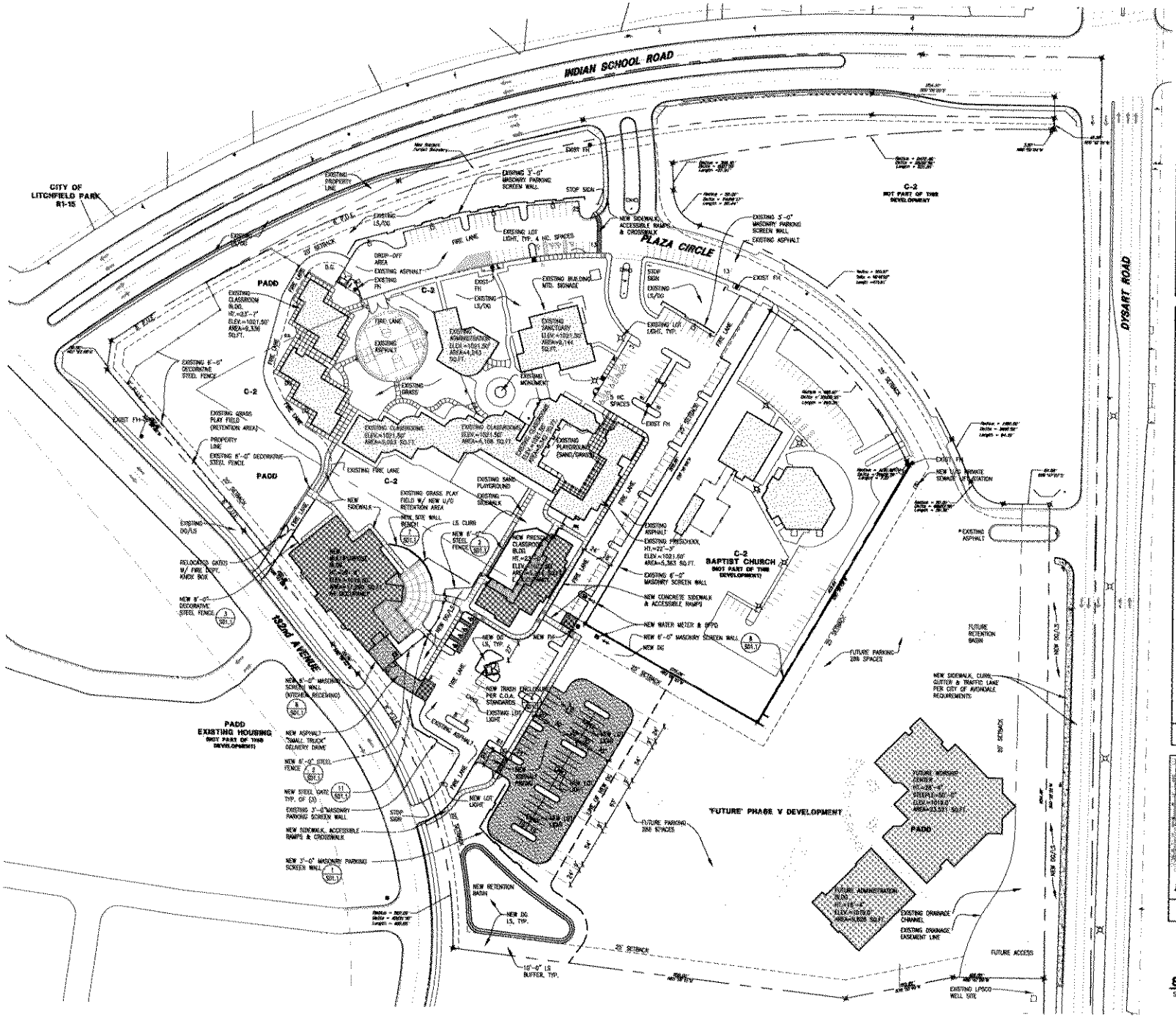
Prepared by,

SCHNEIDER SHAY PIAN WORCESTER ARCHITECTS

Patrick S. McGee, AIA, LEED AP
Architect

PSM/sl

cc: Terry Worcester



SIGNAGE NOTES:

1. ALL SIGNAGE REQUIRES SEPARATE PERMIT.
2. "FIRE LANE" SIGNS WILL BE INSTALLED AT REQUIRED INTERVALS ALONG ALL NEW FIRE LANES IN ACCORDANCE WITH THE FIRE DEPARTMENT.
3. "ACCESSIBLE PARKING" SIGNS WILL BE INSTALLED AT ALL ACCESSIBLE PARKING SPACES.
4. TRAFFIC CONTROL "STOP" SIGNAGE WILL BE INSTALLED AT LOCATIONS INDICATED.
5. ROOM SIGNAGE WILL BE INSTALLED AT ALL TOILET FACILITIES IN ACCORDANCE WITH THE A.D.A.

DEVELOPMENT:
PHASE V ADDITIONS TO THE TRINITY LUTHERAN CHURCH AND SCHOOL
830 PLAZA CIRCLE
AVONDALE, AZ 85340
PHONE: (623)-932-4600

OWNER:
TRINITY LUTHERAN CHURCH AND SCHOOL
830 PLAZA CIRCLE
AVONDALE, AZ 85340
PHONE: (623)-535-4005

ARCHITECT:
SSPW ARCHITECTS
8681 EAST VIA DE NEGOCIO
SCOTTSDALE, AZ 85258
PHONE: (480)-991-0800

PROJECT:

New Phase V Construction:
Multipurpose = 17,250 s.f.
Preschool Building = 5,214 s.f.
Education - E, Assembly A4 22,904 s.f.
One Story
Type VB
Fully Sprinklered.

Future Phase V Construction:
Sanctuary, Administration = 33,349 s.f.
Assembly - A4, Business - B
One Story
Type VB
Fully Sprinklered.

Building Areas
TOTAL EXISTING BUILDING AREA: = 40,107 s.f.
TOTAL NEW BUILDING AREA: = 22,904 s.f.
TOTALS: = 62,611 s.f.

Site Area
Site Parcel Area = 21.04 acres (Gross Area)
Buildable Area = 19.8 acres (Net Area)
62,611 S.F. / 867,105 s.f. (19.8 acres) = 7.22 % Site Coverage

Site Zoning
Combined C2 & PADD

Parking Spaces
Per City of Avondale Zoning Ordinance

Section 924-B:
Existing Church Main Assembly 6,146 s.f./100 = 62 spaces
Existing Admin/Office 4,063 s.f./200 = 22 spaces
Existing/New Classrooms (33 CR's) 33x1 = 34 spaces

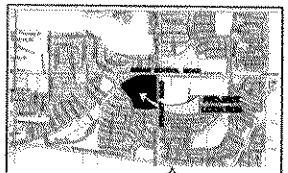
Section 924-D:
Multipurpose 12,810 s.f. Assembly Occupancy area(75% of building)
12,810 s.f./100 = 81 spaces
Total Required Parking(This Phase) = 219 spaces
Current Parking = 235 spaces
Spaces Lost = -31 spaces
New Spaces Added This Phase = +42 spaces
Total Proposed Parking(This Phase) = 246 Spaces

Future Phase V parking
33,321 / 300 = 111 Spaces
6,858 / 200 = 34 Spaces
Required = 256 Spaces
Provided = 280 Spaces

Handicapped Parking Spaces Required:
Per A.D.A. 4.1.2 201-300: required = 7 spaces
(6% minimum required, 12 spaces provided)

CITY OF AVONDALE CODES:
2003 International Building Code
2003 International Mechanical Code
2002 NEC
2003 International Fire Code
Arizona State Plumbing Code (1994 UPC)

SITE DATA TABLE



LOCATION MAP
NOT TO SCALE

VICINITY MAP

PRELIMINARY
NOT FOR CONSTRUCTION

SITE PLAN
SCALE: 1"=60'-0"

NORTH

SCHNEIDER SHAY PLAN WORCESTER ARCHITECTS

SCHNEIDER SHAY PLAN WORCESTER ARCHITECTS L.L.P.
8681 E. VIA DE NEGOCIO
SCOTTSDALE, AZ 85258
TEL: (480) 991-0800
FAX: (480) 991-8823
WEB: sspwarchitects.com

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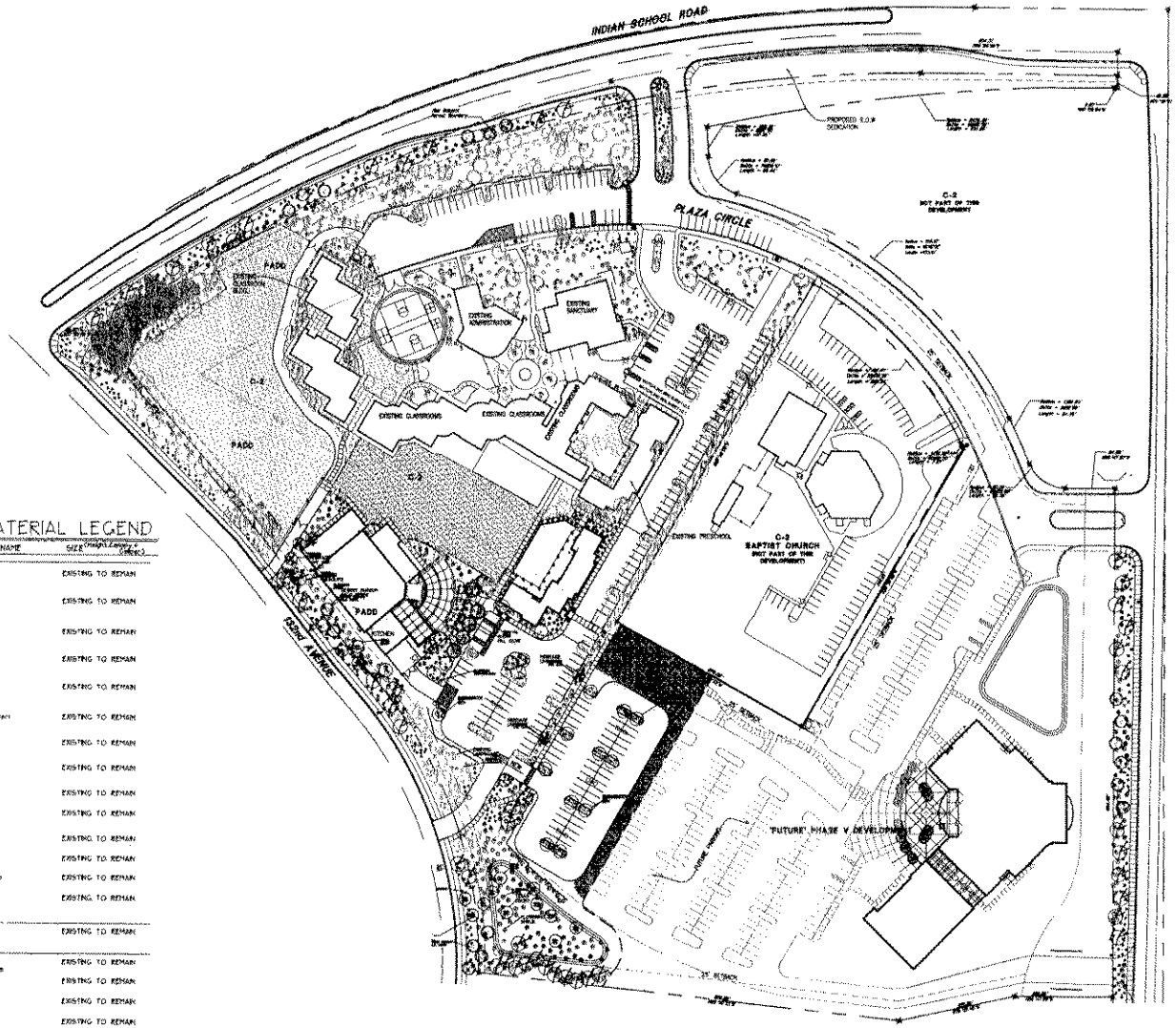
TRINITY LUTHERAN CHURCH & SCHOOL
830 Plaza Circle, Litchfield Park, Arizona 85340
"Sharing the Living Water of Jesus Christ"
PHASE V New Multipurpose & Preschool Expansion
SITE PLAN

DATE: 2-22-07
JOB NO.: 0645
SHEET:
SP1.1

EXHIBIT F



OVERALL LANDSCAPE PLAN

SCALE 1"=80'-0"

0 80 160 320

NORTH

PLANT MATERIAL LEGEND

KEY	SYMBOL	BOTANICAL/COMMON NAME	SIZE (Height, Caliper, Spread)
TREES			
1		Cercidium F. Desert Museum / Desert Museum Palo Verde	15 Gal 6' 2" 75" / 24" Box 10' 4 1/2" Double-Staked Typ.
3		Prosopis hybrid phoenis / South American Hybrid Mesquite	15 Gal 6' 2" 75" / 24" Box 8' 4 1/2" Double-Staked Typ.
5		Ulmus parvifolia / Evergreen Elm	24" Box 8' 3" 125" Double-Staked Typ.
4		Quercus virginia / Heritage Live Oak	24" Box 9' 4" 125" Double-Staked Typ.
6		Pithecellobium flexicaule / Texas Ebony	24" Box 9' 4" 125" Double-Staked Typ.
6		Olea europaea 'Swan Hill' / Swan Hill Olive	24" Box 8 5.5 1.5" 36" Box 12 10 3" Double-Staked Typ.
LARGE SHRUBS			
7		Bougainvillea 'San Diego' / San Diego Red Bougainvillea	5 Gallon
8		Calliandra californica / Baja Red Fairy Duster	5 Gallon
9		Nerium o. 'Petite Pink' / Petite Pink Oleander	5 Gallon
10		Leucophyllum candidum / Thunder Cloud Ranger	5 Gallon
11		Leucophyllum frutescens / Green Cloud Texas Ranger	5 Gallon
12		Rosmarinus officinalis 'Prostratus' / Dwarf Rosemary	5 Gallon
13		Fremontia 'Valentine' / Valentine Bush	5 Gallon
14		Muhlenbergia capillaris 'Regal Mist' / Regal Mist Deer Grass	5 Gallon
GROUNDCOVERS			
15		Lantana m. 'New Gold' / New Gold Lantana	1 Gallon
16		Lantana montevidensis / Purple Lantana	1 Gallon
17		Trachelospermum jasminoides / Star Jasmine	1 Gallon
ACCENTS			
18		Hesperaloe parviflora / Red Yucca	5 Gallon
19		Caesalpinia pulcherrima / Red Bird of Paradise	5 Gallon
20		Dasylirion wheeleri / Desert Spoon	5 Gallon
23		Acacia redolens 'Desert Carpet' / Desert Carpet Trailing Acacia	5 Gallon
LANDSCAPE MATERIALS			
22		Decomposed Granite / Jessie Red	1/2" size screened 2" Deep 3/4" Minus w/ ROW
23		Concrete Header	4" x 6", Curbstyle 2" Deep
24		Midiron Bermuda	Sod
25		River Rock	3" to 9" round, 6" deep
26		Decomposed Granite / Desert Gold	1/4" minus, 2" deep for finishes 1/4" minus, 1" deep for future pad 3/4" minus, 2" deep in ROW

NOTE:
QUANTITIES SHOWN FOR CITY APPROVAL ONLY. LANDSCAPE CONTRACTOR TO INSTALL QUANTITIES AS SHOWN ON PLAN, NOT ON LEGEND

DECOMPOSED GRANITE TO OCCUR IN ALL AREAS EXCEPT TURF, RIVER ROCK, AND HARDSCAPE UNLESS NOTED ON PLANS.

SMALLER TREE SIZE TO TAKE PRECEDENCE UNLESS NOTED ON PLANS

EXISTING PLANT MATERIAL LEGEND

KEY	SYMBOL	BOTANICAL/COMMON NAME	SIZE (Height, Caliper, Spread)
EXISTING TREES			
A		Pinus eldarica / Mondel Pine	EXISTING TO REMAIN
B		Cercidium praecox / Palo Brea	EXISTING TO REMAIN
C		Prosopis chilensis / Chilean Mesquite	EXISTING TO REMAIN
D		Ulmus parvifolia / Evergreen Elm	EXISTING TO REMAIN
E		Quercus virginiana / Heritage Live Oak	EXISTING TO REMAIN
F		Lysiloma microphylla thornberi / Lysiloma	EXISTING TO REMAIN
G		Olea europaea 'Swan Hill' / Swan Hill Olive	EXISTING TO REMAIN
H		Chaya tacota / Ironwood	EXISTING TO REMAIN
I		Pithecellobium flexicaule / Texas Ebony	EXISTING TO REMAIN
J		Prunus varibus / Purple Plums	EXISTING TO REMAIN
K		Citrus varibus / Citrus	EXISTING TO REMAIN
L		Acacia saligna / Willow Acacia	EXISTING TO REMAIN
M		Arecastrum romanoffianum / Queen Palm	EXISTING TO REMAIN
N		Washingtonia robusta / Mexican Fan Palm	EXISTING TO REMAIN
EXISTING CACTI/SMALL PALMS			
O		Carnegiea gigantea / Saguaro	EXISTING TO REMAIN
EXISTING LARGE SHRUBS			
P		Bougainvillea 'San Diego' / San Diego Red Bougainvillea	EXISTING TO REMAIN
Q		Calliandra californica / Baja Red Fairy Duster	EXISTING TO REMAIN
R		Nerium o. 'Petite Pink' / Petite Pink Oleander	EXISTING TO REMAIN
S		Leucophyllum candidum / Thunder Cloud Ranger	EXISTING TO REMAIN
T		Leucophyllum frutescens / Green Cloud Texas Ranger	EXISTING TO REMAIN
U		Rosmarinus officinalis 'Prostratus' / Dwarf Rosemary	EXISTING TO REMAIN
EXISTING GROUNDCOVERS			
V		Lantana m. 'New Gold' / New Gold Lantana	EXISTING TO REMAIN
W		Lantana montevidensis / Purple Lantana	EXISTING TO REMAIN
X		Trachelospermum jasminoides / Star Jasmine	EXISTING TO REMAIN
EXISTING ACCENTS			
Y		Hesperaloe parviflora / Red Yucca	EXISTING TO REMAIN
Z		Caesalpinia pulcherrima / Red Bird of Paradise	EXISTING TO REMAIN
AA		Dasylirion wheeleri / Desert Spoon	EXISTING TO REMAIN

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(602) 864-1044 Fax: (602) 864-1107

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CHECKED BY: DRC

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TRINITY LUTHERAN CHURCH & SCHOOL
820 Plaza Circle, Litchfield Park, Arizona 85340
"Sharing the Living Water of Jesus Christ"
PHASE IV New Multipurpose & Classroom Building

TRINITY LUTHERAN CHURCH & SCHOOL

DATE: 2-26-07

JOB NO.: 69210

SHEET: L1.0

Exhibit F

PLANT MATERIAL LEGEND

KEY	SYMBOL	BOTANICAL/COMMON NAME	SIZE (Height x Spread x Caliper)	Quantity
TREES				
1		Caesalpinia p. 'Desert Museum' Desert Museum Palo Verde	15' Box 6' x 5' x .75" Double-Staked Typ.	
2		Prosopis hybrid 'phoenix' South American Hybrid Mesquite	15' Box 6' x 5' x .75" Double-Staked Typ.	
3		Ulmus parvifolia Evergreen Elm	24" Box 8' x 5' x 1.25" Double-Staked Typ.	
4		Quercus virginiana Heritage Live Oak	24" Box 8' x 6' x 1.25" Double-Staked Typ.	
5		Fitzecedrus fitzecedrus Texas Ebony	24" Box 8' x 6' x 1.25" Double-Staked Typ.	
6		Olea europaea 'Swan Hill' Swan Hill Olive	24" Box 8' x 6' x 1.25" Double-Staked Typ.	
LARGE SHRUBS				
7		Bougainvillea 'San Diego' San Diego Red Bougainvillea	5 Gallon	
8		Calliandra californica Baja Red Fairy Duster	5 Gallon	
9		Nerium o. 'Petite Pink' Petite Pink Oleander	5 Gallon	
10		Leucophyllum candidum Thunder Cloud Ranger	5 Gallon	
11		Leucophyllum frutescens Green Cloud Texas Ranger	5 Gallon	
12		Rosmarinus officinalis 'Prostratus' Dwarf Rosemary	5 Gallon	
13		Eremophila 'Valentine' Valentine Bush	5 Gallon	
14		Muhlenbergia capillaris 'Regal Mist' Regal Mist Deer Grass	5 Gallon	
GROUNDCOVERS				
15		Lantana m. 'New Gold' New Gold Lantana	1 Gallon	
16		Lantana montevidensis Purple Lantana	1 Gallon	
17		Trachelospermum jasminoides Star Jasmine	1 Gallon	
ACCENTS				
18		Hesperaloe parviflora Red Yucca	5 Gallon	
19		Caesalpinia pulcherrima Red Bird of Paradise	5 Gallon	
20		Dasylirion wheeleri Desert Spoon	5 Gallon	
21		Aloe barbadensis 'Desert Carpet' Desert Carpet Trailing Aloe	5 Gallon	
LANDSCAPE MATERIALS				
22		Decomposed Granite, Jewel Red	1/4" minus screened 2" Deep	
23		Concrete Header	3/4" thick x 6" Deep 6" x 6" Cantilever	
24		Mulch: Barkwoods	Typ.	
25		River Rock	3" to 6" round, 6" deep	
26		Decomposed Granite Desert Gold	1/4" minus 2" deep for firezone 1/4" minus 1" deep for future pad 3/4" minus 2" deep in ROW	

NOTE:

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DECOMPOSED GRANITE TO COVER IN ALL AREAS EXCEPT TURF, RIVER ROCK, AND HARDSCAPE UNLESS NOTED ON PLANS

SMALLER TREE SIZE TO TAKE PRECEDENCE UNLESS NOTED ON PLANS.

SITE PLAN PLANTING DATA

	LANDSCAPE AREAS	REQUIRED	PROVIDED
A	ON SITE LANDSCAPE AREA Commercial 10% of net site area Industrial 5% of net site area	43,250 SQ. FT.	170,966 SQ. FT.
B	RESIDENTIAL BUFFER LANDSCAPE AREA 10' free of residential boundaries.	NA	NA
C	PARKING LANDSCAPE AREA Minimum of 5%.	5%	0%
D	PARKING ISLANDS 1 per 12 consecutive parking spaces. Minimum 5' wide and 50 sq. ft.	Existing	Existing
E	FOUNDATION PLANTING 50% of building frontage for buildings fronting on public streets. 3' minimum width.	30%	46%
	LANDSCAPE PLANTINGS	**REQUIRED**	**PROVIDED**
	R.O.W./Street Frontage Landscape Plantings		
F	Trees: 1 per 30 ft. of street frontage	88 Trees	88 Trees
G	Shrubs: 3 per 30 ft. of street frontage	44 Shrubs	280 Shrubs
H	Shrub/Groundcover Area: 20%	2,000 SQ. FT.	3,400 SQ. FT.
	PARKING SPACE PLANTINGS		
I	Trees: 1 per 8 parking spaces	Existing	Existing
	RESIDENTIAL BUFFER PLANTINGS		
J	Trees: 1 per 30' of residential boundaries	NA	NA
	Special Planting Rights. (PAD, Zoning, etc.)		
	TOTALS	**REQUIRED**	**PROVIDED**
	Total Landscape Areas (A + B)	43,250 SQ. FT.	170,966 SQ. FT.
	Total Usable Open Space Percent (P.A.D. Only)		
	Total Trees (F + I + J)	41 Trees	53 Trees
	Total 24" Box Trees (25% of total trees)	10 Trees	14 Trees
	Total Shrubs (G)	44 Shrubs	280 Shrubs
	Total Groundcover (sq. ft.)	2,000 SQ. FT.	3,400 SQ. FT.

GENERAL NOTES

1. No turf shall be permitted within the R.O.W.
2. The Property Owner and/or Lessee shall be responsible to install/maintain all landscaping within the R.O.W.
3. A 2 foot clear space is required around all fire suppression equipment. No plants may be installed that will encroach when mature.

EXISTING PLANT MATERIAL LEGEND

KEY	SYMBOL	BOTANICAL/COMMON NAME	SIZE (Height x Spread x Caliper)	Quantity
EXISTING TREES				
A		Pinus elderica Honduras Pine	EXISTING TO REMAIN	
B		Caesalpinia pulcherrima Palo Brea	EXISTING TO REMAIN	
C		Prosopis chilensis Chilean Mesquite	EXISTING TO REMAIN	
D		Ulmus parvifolia Evergreen Elm	EXISTING TO REMAIN	
E		Quercus virginiana Heritage Live Oak	EXISTING TO REMAIN	
F		Lysiloma microphylla thornberi Lysiloma	EXISTING TO REMAIN	
G		Olea europaea 'Swan Hill' Swan Hill Olive	EXISTING TO REMAIN	
H		Olneya tesota Ironwood	EXISTING TO REMAIN	
I		Fitzecedrus fitzecedrus Texas Ebony	EXISTING TO REMAIN	
J		Prunus cerifera Purple Plums	EXISTING TO REMAIN	
K		Citrus varitiea Citrus	EXISTING TO REMAIN	
L		Acacia salicina Willow Acacia	EXISTING TO REMAIN	
M		Arecastrum romanzoffianum Queen Palm	EXISTING TO REMAIN	
N		Washingtonia robusta Mexican Fan Palm	EXISTING TO REMAIN	
EXISTING CACTI/SMALL PALMS				
O		Carnegiea gigantea Saguaro	EXISTING TO REMAIN	
EXISTING LARGE SHRUBS				
P		Bougainvillea 'San Diego' San Diego Red Bougainvillea	EXISTING TO REMAIN	
Q		Calliandra californica Baja Red Fairy Duster	EXISTING TO REMAIN	
R		Nerium o. 'Petite Pink' Petite Pink Oleander	EXISTING TO REMAIN	
S		Leucophyllum candidum Thunder Cloud Ranger	EXISTING TO REMAIN	
T		Leucophyllum frutescens Green Cloud Texas Ranger	EXISTING TO REMAIN	
U		Rosmarinus officinalis 'Prostratus' Dwarf Rosemary	EXISTING TO REMAIN	
EXISTING GROUNDCOVERS				
V		Lantana c. 'New Gold' New Gold Lantana	EXISTING TO REMAIN	
W		Lantana montevidensis Purple Lantana	EXISTING TO REMAIN	
X		Trachelospermum jasminoides Star Jasmine	EXISTING TO REMAIN	
EXISTING ACCENTS				
Y		Hesperaloe parviflora Red Yucca	EXISTING TO REMAIN	
Z		Caesalpinia pulcherrima Red Bird of Paradise	EXISTING TO REMAIN	
AA		Dasylirion wheeleri Desert Spoon	EXISTING TO REMAIN	

OVERALL LANDSCAPE PLAN

SCALE 1"=60'-0"

0 60 120 240

NORTH

SCHNEIDER SHAY PLAN WORCESTER
ARCHITECTS
SCHNEIDER SHAY PLAN WORCESTER ARCHITECTS L.L.P.
8681 E. VIA DE NEGOCIO
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"Sharing the Living Water of Jesus Christ"
PHASE IV New Multipurpose & Classroom Building

TRINITY LUTHERAN CHURCH & SCHOOL

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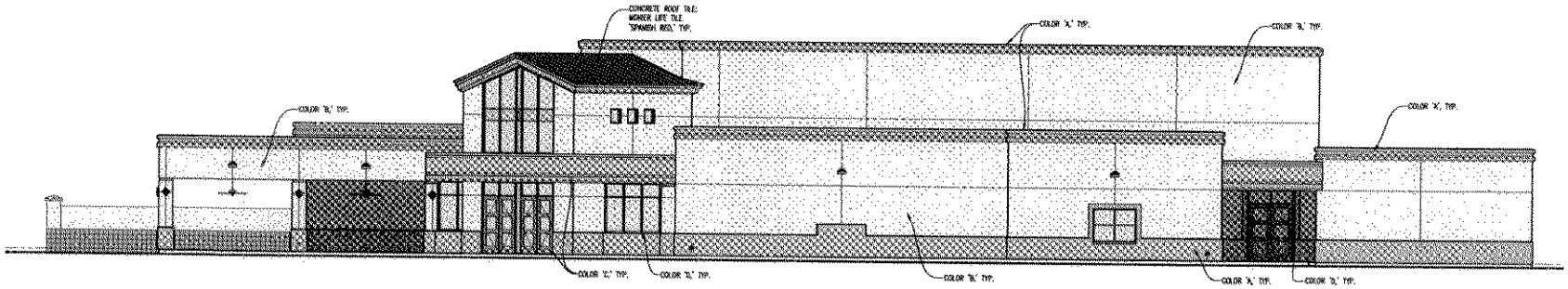
The Campbell Collaborative
Landscape Architects and Planners
3747 E. Morten, Suite 201
Phoenix, Arizona 85028
(602) 996-1944 Fax: (602) 996-4497

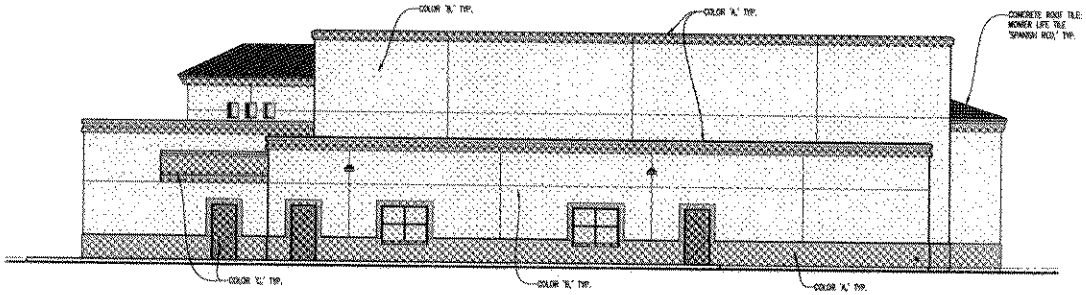
DATE: 02-20-07

JOB NO.: 0301D

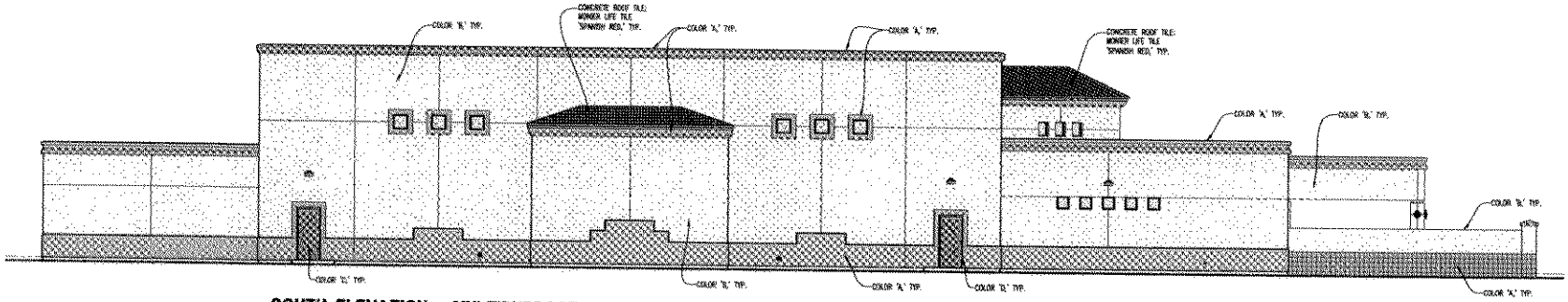
SHEET: L1.1



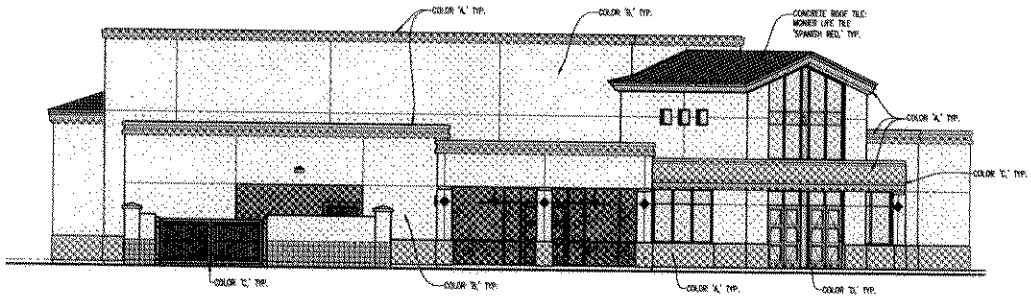
NORTH ELEVATION - MULTIPURPOSE
SCALE: 1/8"=1'-0"



WEST ELEVATION - MULTIPURPOSE
SCALE: 1/8"=1'-0"



SOUTH ELEVATION - MULTIPURPOSE
SCALE: 1/8"=1'-0"



EAST ELEVATION - MULTIPURPOSE
SCALE: 1/8"=1'-0"

PAINT COLOR SCHEDULE

A	WAINSCOT, CORNICES, DOOR & WINDOW SURROUNDS	DUNN EDWARDS: DE1052 "HEDGEHOG"
B	FIELD COLOR	DUNN EDWARDS: SP 4007 "GLORY WHITE"
C	DOORS & TRIM	DUNN EDWARDS: DE977 "CEDAR RUST"
D	EXTERIOR DOOR & WINDOW FRAMES:	DUNN EDWARDS: 520.7 DARK GRANITE

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ARCHITECTS
SCHNEIDER SHAY PIAN WORCESTER ARCHITECTS L.L.P.
9801 E. VIA DE NEGOCIO
SCOTTSDALE, AZ 85258
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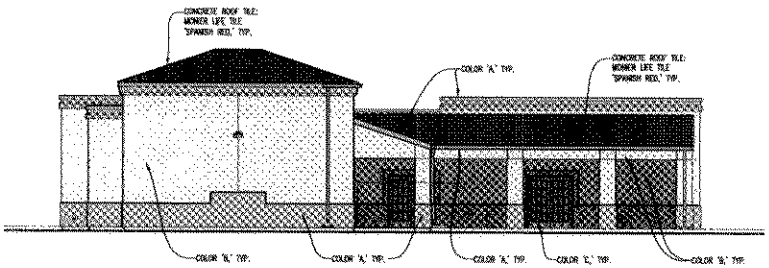
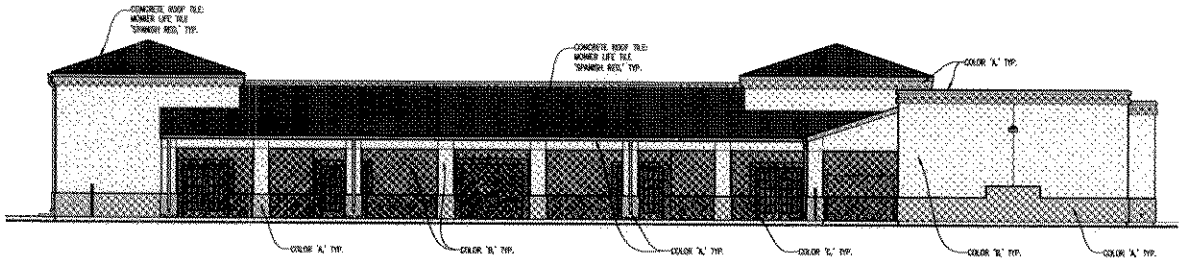
TRINITY LUTHERAN CHURCH & SCHOOL
838 Plaza Circle, Litchfield Park, Arizona 85340
"Sharing the Living Water of Jesus Christ"
TRINITY LUTHERAN CHURCH & SCHOOL
PHASE IV New Multipurpose & Preschool Expansion
NEW MULTIPURPOSE BUILDING

DATE: 2-22-07
JOB NO.: 0918
SHEET:
CMP

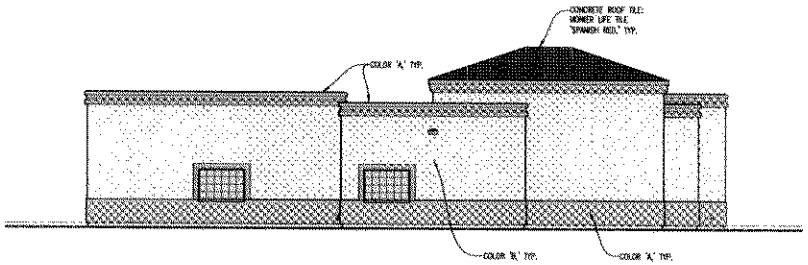
Exhibit G



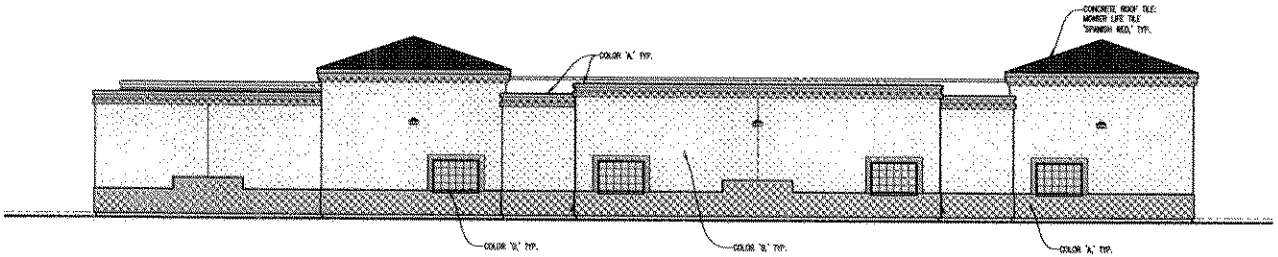
NORTH ELEVATION - CLASSROOM BUILDING
SCALE: 1/8"=1'-0"



WEST ELEVATION - CLASSROOM BUILDING
SCALE: 1/8"=1'-0"



SOUTH ELEVATION - CLASSROOM BUILDING
SCALE: 1/8"=1'-0"



EAST ELEVATION - CLASSROOM BUILDING
SCALE: 1/8"=1'-0"

PAINT COLOR SCHEDULE

A	WAINSCOT, CORNICES, DOOR & WINDOW SURROUNDS	DUNN EDWARDS: DE1052 "HEDGEHOG"
B	FIELD COLOR	DUNN EDWARDS: SP 4007 "GLORY WHITE"
C	DOORS	PELLA FACTORY FINISH: MATCH EXISTING
D	EXTERIOR DOOR & WINDOW FRAMES, DOWNSPOUTS	DUNN EDWARDS: S20.7 DARK GRANITE

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TRINITY LUTHERAN CHURCH & SCHOOL
8515 Pinnacle Peak Rd., Littleton Ranch, Arizona 85340
"Sharing the Living Water of Jesus Christ"
TRINITY LUTHERAN CHURCH & SCHOOL
PHASE IV New Multipurpose & Preschool Expansion
NEW PRESCHOOL BUILDING

DATE: 2-22-07
JOB NO.: 0645
SHEET:
CPS

draft

Minutes
City Of Avondale
Planning Commission
Regular Meeting
City Council Chambers
11465 W. Civic Center Dr.
Avondale, AZ 85323
Thursday, April 19, 2007
7:00 P.M.

I. CALL TO ORDER

The regular meeting was called to order at approximately 7:00 p.m. by Chairperson Lageschulte.

II. ROLL CALL

The following members and representatives present:

COMMISSIONERS PRESENT

Alan Lageschulte, Chairperson
Edward Meringer, Vice Chairperson
Linda Webster, Commissioner
Kevin Grimsley, Commissioner
David Iwanski, Commissioner
Michael Alcorn, Commissioner
Lisa Copeland, Commissioner (arrived at 7:09pm)

CITY STAFF PRESENT

Mr. Brian Berndt, Development Services Director
Mr. Scott Wilken, Senior Planner
Ms. Megan Neal, Planner II
Mr. Ken Galica, Planner II
Mr. Dean Svoboda, Long Range Planning Director

III. APPROVAL OF MINUTES

Commissioner Iwanski MADE a MOTION to APPROVE the March 15, 2007 Work Session minutes and the March 15, 2007 Regular Meeting minutes. Commissioner Webster SECONDED the MOTION. The motion passed unanimously.

IV. BUSINESS FROM THE FLOOR

Chairperson Lageschulte called for any Business from the Floor. There was none.

V. OPENING STATEMENT

Chairperson Lageschulte read the Opening Statement.

VI. WITHDRAWALS AND CONTINUANCES

There were none.

VII. PUBLIC HEARING ITEMS

1. APPLICATION NO.: CU-06-9

APPLICANT: Ms. Teresa Tafoya
2812 West Lamar Road
Phoenix, Arizona 85017

REQUEST: This is a request for a conditional use permit to operate a truck and trailer rent and moving center. The property is north of Van Buren and west of Eliseo C. Felix Jr. Way. Staff Contact: Megan Neal (623) 333-4018.

Ms. Neal presented the staff report for CU-06-9 to the Planning Commission. She stated this is a request for conditional use permit approval, which will allow the operation of a truck and trailer rent and moving center. Staff is recommending approval of this application.

Chairperson Lageschulte opened the public hearing.

No one wished to address the Commission.

Chairperson Lageschulte closed the public hearing.

Commissioner Webster MADE a MOTION to recommend approval of CU-06-9 subject to the stipulations noted in the staff report: 1) The development shall conform to the site plan date stamped March 29, 2007 and the project narrative dated March 29, 2007. 2) In accordance with Section 108 of the City of Avondale Zoning Ordinance the conditional use permit expire within two years from two years from the date of approval if the use has not commenced. 3) All signage shall require separate review and approval through the sign permitting process.

Commissioner Alcorn seconded the motion.

Chairperson Lageschulte called for a roll call vote and the motion PASSED by a vote of 7 to 0.

2. APPLICATION NO.: Z-05-12

APPLICANT: Dustin Jones
Tiffany & Bosco P.A.
Third Floor Camelback Esplanade II
2525 East Camelback Road
Phoenix, AZ 85016

REQUEST: This is a request to rezone 60 acres from R1-6 (Single-Family Residential) to PAD (Planned Area Development District). The property is located west of 99th Avenue, north and south of the Encanto Boulevard alignment. Staff Contact: Scott Wilken (623) 333-4016.

Mr. Wilken presented the staff report for Z-05-12 to the Planning Commission. He stated this is a request to rezone 60 acres from R1-6 (Single-Family Residential) to PAD (Planned Area Development District). Mr. Wilken stated the property is located west of 99th Avenue, north and south of the Encanto Boulevard alignment. Staff recommends that the Planning Commission recommend approval of this application.

Commissioner Alcorn asked who owns the property across from Holy Cross. Mr. Wilken said that he was unaware of who owns that strip, but does know that the applicant tried to buy the property and incorporate it into PAD and was unsuccessful. Commissioner Alcorn expressed his concern stating this strip may be a problem for the City in the future.

Commissioner Alcorn stated better monitoring of the traffic lights is needed especially at the intersection of 107th Avenue and Thomas Road. Mr. Wilken stated he would work with Traffic regarding this concern.

Commissioner Iwanski stated there was no city staff at the neighborhood meeting by the applicant. He encouraged staff to be present at these meetings. Mr. Wilken explained staff's practice is not to attend the meeting in order to provide the developer an opportunity to present their case to the neighbors. Staff requires a meeting summary submitted after the meeting. Commissioner Iwanski thanked Mr. Wilken for the explanation of the standard practice and stated that he was unaware that the staff's standard practice was to not attend the neighborhood meetings, and that he would like to withdraw his comment.

Chairperson Lageschulte asked if apartments are included in this proposal. Mr. Wilken suggested the applicant address this question.

Commissioner Copeland asked if the applicant could propose a condominium and then at a later date convert to apartments. Mr. Wilken stated that is correct, that the PAD does not prohibit apartments but that the developer's intent is to do owner-occupied units.

Mr. Dustin Jones, Tiffany & Bosco P.A., made a brief presentation. Mr. Jones provided some background information to the Commission. Mr. Jones introduced Mr. Barry Berkus, Berkus Design Studio. Mr. Berkus provided displays of his company's projects, which are located throughout the country.

Commissioner Meringer asked if a hotel is proposed for the property. Mr. Berkus stated any proposed hotel would be constructed along 99th Avenue.

Commissioner Copeland questioned the approximate price of the condominiums. Mr. Berkus stated the pricing would be equal to the wages of those employed in the office buildings. He added it is not Section 8, meaning there is no government funding for construction of the condominiums.

Chairperson Lageschulte confirmed that no apartments are planned. Mr. Jones explained that a condominium plat will be submitted with these condominiums being for sale.

Commissioner Iwanski felt there were not many active onsite recreation sites. Mr. Berkus described the location of the pool, ramadas, walking trails, and biking trails.

Commissioner Grimsley asked if there are any playground areas. Mr. Berkus referred to the map and indicated to the Commission where the playground area would be located. Mr. Wilken explained that at the time of Master Site Plan approval, all playground areas would be identified.

Commissioner Alcorn suggested deed restrictions, which would eliminate the possibility of buyers renting the units.

Commissioner Webster expressed her concern with the possibility of overloading the nearby schools. Mr. Wilken explained the school district has been made aware of the request and they had no concerns.

Commissioner Grimsley was also concerned about the district being able to accommodate the potential of more children in their classes due to this development being constructed.

Mr. Berkus stated that 28% of the units are one bedroom, 55% are two bedrooms with a split floor plan, with only 17% being three bedrooms. Mr. Jones stated the school superintendent not only attended the neighborhood meeting but also submitted a letter in support.

Commissioner Copeland asked if anyone from the City staff had addressed Mr. and Mrs. DeGraff's letter. Mr. Wilken stated that he believed that someone from the City Manager's office had communicated with the DeGraffs, but he did not know that for sure. He stated that the Planning Division staff had received a copy of the letter but had not responded to the DeGraffs.

Commissioner Webster stated she would also prefer not to see Encanto Boulevard as a through street. Mr. Wilken stated that was recommended by the city traffic engineers based on the traffic analysis for the project and on the City's Transportation Plan.

Chairperson Lageschulte opened the public hearing.

No one wished to address the Commission.

Commissioner Copeland verified that the DeGraffs did not wish to address the Commission further.

Chairperson Lageschulte closed the public hearing.

Commissioner Grimsley MADE a MOTION to recommend approval of Z-05-12 subject to the stipulations noted in the staff report 1) Development shall be in substantial conformance with the development plan and narrative dated April 10, 2007. 2) Master site plans shall generally conform to the conceptual site plan presented in the PAD narrative dated April 10, 2007, except as modified by the results of the traffic studies and any other stipulations. 3) The required development standards shall be as shown in the narrative request dated April 10, 2007. 4) Final driveway locations, curb cuts, and street cross-sections shall be finalized at the time of master site plan approval, as determined by the City Engineer. 5) Prior to the issuance of a building permit, the developer shall contribute towards the cost of the design, purchase, and installation of new traffic signals warranted by this development, as determined by the City Engineer during the master site plan review and approval process. This contribution will include no more than 50% of the cost of design, purchase, and installation of a new traffic signal at the intersection of 99th Avenue and Encanto Boulevard. 6) To the extent allowed by law, all Type 1 and Irrigation Grandfathered Groundwater Rights appurtenant to the property shall be properly extinguished and the resulting Assured Water Supply credits pledged to the City of Avondale's account at the Arizona Department of Water Resources prior to recordation of the final plat. 7) The developer will allocate any SRP surface water rights or any other surface water rights to the City prior to recordation of the final plat. 8) The developer will abandon any existing registered or unregistered wells using ADWR's well

abandonment rules prior to recordation of the final plat. 9) A traffic study shall be submitted for review as a part of each master site plan. Additional improvements, both on and off site, shall be incorporated into the site plan based on the results of the traffic studies, as determined by the City Engineer. 10) The developer shall dedicate 65' of right-of-way for 99th Avenue prior to the issuance of a building permit. The developer shall dedicate additional right-of-way for any required turn lanes to be determined per the traffic study requirements. 11) Bus pull-out bay and concrete pad for transit stops and additional necessary right-of-way will be required as part of the master site plan review and approval process. 12) All drive-thru uses shall be designed to maintain the pedestrian-friendly urban character of the PAD and the development plan, as determined by the Planning Division during the review and approval process for any conditional use permits for drive-thru uses. 13) Raceway mounted wall signs shall be prohibited. 14) A Comprehensive Sign Package shall be submitted with the first master site plan, and shall apply to the entire development. 15) The master site plans shall be designed to provide sufficient buffering between the development and adjacent residential uses, as determined by the Planning Division at the time of review and approval of the master site plans. 16) All building plans will conform to the current building codes in effect at the time of development. 17) As part of the first phase of development, the developer shall relocate the existing SRP irrigation ditch along 99th Avenue per SRP requirements. This shall include, but not be limited to, the construction of the new pipe and the recording of any necessary easements. Commissioner Webster SECONDED the MOTION.

Chairperson Lageschulte providing some closing comments and stated he is not in favor of apartments and added that he is concerned with overcrowding in the schools.

Commissioner Meringer hoped that amenities, which would attract buyers, will be provided in this development.

Chairperson Lageschulte called for a roll call vote and the motion PASSED by a vote of 7 to 0.

3. APPLICATION NO.: CU-06-10

APPLICANT: Mr. Declan Murphy, T-Mobile
2601 West Broadway Road
Tempe, AZ 85282

REQUEST: This is a request for a conditional use permit for a wireless communications "monopalm" within the Universal Technical Institute site. The property is located on the southeast corner of 107th Avenue and Pierce Street. Staff Contact: Ken Galica (623) 333-4019.

Mr. Galica presented the staff report for CU-06-10 to the Planning Commission. He stated this is a request for conditional use permit approval for a wireless communications "monopalm" within the Universal Technical Institute (UTI) site. Staff is recommending approval of this application subject to three stipulations noted in the staff report.

Commissioner Iwanski stated he was pleased with the additional landscaping proposed.

Commissioner Webster asked if the adjacent palm trees could potentially damage the monopalm in the event of a strong wind. Mr. Galica stated he did not believe so as similar landscaping has been proposed and constructed elsewhere with no problems.

Chairperson Lageschulte opened the public hearing.

No one wished to address the Commission.

Chairperson Lageschulte closed the public hearing.

Commissioner Alcorn MADE a MOTION to recommend approval of CU-06-10 subject to the three stipulations noted in the staff report 1) The development of the site shall conform to the project narrative and site plan date stamped march 8, 2007. 2) In accordance with Section 108 of the Zoning Ordinance, the Conditional Use Permit shall expire within two years from the date of approval if the use has not commenced. 3) An amendment to the Conditional use Permit shall be required to the addition of any further antennae to the cell tower. Commissioner Grimsley SECONDED the MOTION.

Chairperson Lageschulte called for a roll call vote and the motion PASSED by a vote of 7 to 0.

4. APPLICATION NO.: TA-07-01

APPLICANT: City Council Initiative

REQUEST: This is a City Council initiative to amend the City of Avondale Zoning Ordinance to restrict the overnight parking of vehicles in commercial and industrial districts. Staff Contact: Dean Svoboda (623) 333-1035.

Mr. Svoboda presented the staff report for TA-07-01 to the Planning Commission. He stated this is a request for a zoning ordinance text amendment to restrict the overnight parking of vehicles in commercial and industrial zoning districts. It is related to the recently adopted City Code Amendment. Staff is recommending approval of this application.

Commissioner Meringer asked how this Ordinance would be enforced. Mr. Svoboda stated that it would be enforced on a complaint basis by the City's Code Enforcement Officers and Police Officers. He explained that the amendment will not have an impact on any primary land use such as PIR. This text amendment is targeted for commercial parking lots to restrict trespassers and repeat offenders.

Commissioner Copeland wanted to ensure the visitors to the City of Avondale were not being encouraged to leave the city. Mr. Svoboda stated they are not trying to discourage anyone from visiting and added the intent is to handle the volume in an appropriate manner. He continued to say when the races are taking place at P.I.R. this is not an issue as the track can accommodate RVs.

Commissioner Iwanski questioned if commercial property owners could lease or rent out space for commercial vehicles to allow them to park overnight. Mr. Svoboda stated a warning would be issued to that property owner with citations to follow if the activity continued.

Commissioner Alcorn stated this issue has been a concern of his for some time. He suggested the length of the vehicle be shortened to 16 feet which would include RVs. He added this is long over due. Mr. Svoboda clarified that all RVs are covered and that the 21 foot length referenced in the amendment applies to various combinations of vehicles and trailers.

Commissioner Meringer questioned if all business owners would be required to place signs on their property indicating this change. Mr. Svoboda stated that this is not required by the zoning amendment, but is required by the recently adopted City Code Amendment.

Chairperson Lageschulte opened the public hearing.

No one wished to address the Commission.

Chairperson Lageschulte closed the public hearing.

Commissioner Meringer MADE a MOTION to recommend approval of TA-07-01, a request to restrict overnight parking in commercial and industrial zoning districts. Commissioner Alcorn SECONDED the MOTION.

Chairperson Lageschulte called for a roll call vote and the motion PASSED by a vote of 7 to 0.

5. APPLICATION NO.: TA-07-2

APPLICANT: City Council Initiative

REQUEST: This is a City Council initiative to amend the City of Avondale Zoning Ordinance to amend Section 9, Sign Ordinance to allow changeable message signs. Staff Contact: Dean Svoboda (623) 333-1035.

Mr. Svoboda presented the staff report for TA-07-2 to the Planning Commission. He stated this is a request to amend the Zoning Ordinance to allow the limited use of variable message signs for specified land uses. Staff is recommending approval of this application.

Chairperson Lageschulte questioned the requirement of the variable message sign changing more than once each hour. Mr. Svoboda clarified that the amendment would restrict message changes to once each hour except for time and temperature signs. He said this may be a discussion point for the Commission.

Commissioner Copeland asked if each store would be allowed to have a sign. Mr. Svoboda clarified that commercial establishments with the exception of fuel sales and theaters will not be allowed to have these signs.

Commissioner Copeland recommended that an exception be made regarding an Amber Alert. She explained that Walgreen's will replace their advertisements with any Amber Alerts. Mr. Svoboda stated that the amendment will not prevent Walgreen's from continuing to do this where a sign already exists.

Commissioner Grimsley verified that any existing variable signs would not have to conform to this proposed text amendment. Mr. Svoboda explained that any sign that is legally established with non-conforming rights may exist as they always have.

Commissioner Iwanski asked his fellow commissioners not to vote in favor of this text amendment. He stated he needs more information as to what some of the potential impacts could be if this were approved. He needs a much more detailed analysis from staff including the city attorney. In response, Mr. Svoboda reviewed the use's that would be allowed to have variable message signs and those that would not. He said if the Commission believes the text amendment should be more defined or broader, then that is what should be recommended to City Council.

Chairperson Lageschulte asked if the American Legion initiated this text amendment. Mr. Svoboda explained the Council decided to review not only the needs of the Legion but to review the demand for variable messages signs throughout the city.

Commissioner Alcorn asked if commercial properties would feel they too were in need and should be granted variable message signs. Mr. Svoboda stated he has worked closely with the city attorney and staff is confident that the City can require different standards for different land uses.

Commissioner Copeland asked if a conditional use permit could be granted to the American Legion for the sign they are requesting. Mr. Svoboda said this could not be done under the existing ordinance and he would not recommend it as a solution for any sign issue.

Chairperson Lageschulte asked staff for more information and suggested this item be continued to the next meeting. Mr. Svoboda suggested that the Chairman open the public hearing.

Chairperson Lageschulte opened the public hearing.

Mr. Ron Quillen, 13396 West Virginia Avenue, Goodyear, Arizona, stated he has been trying to get a sign approved for the legion since 2003. He said the purpose of the sign they are requesting is to notify the community of events such as free Thanksgiving Day dinners and those types of events. He felt staff did a great job of composing this text amendment. He would appreciate the Commission's approval.

Commissioner Meringer stated this issue with the American Legion needs to be resolved. He also asked if staff could present all ordinance amendments to the Commission at one time so they would not have to keep reviewing new amendments.

Mr. Svoboda stated that the City Council has directed staff to continue to bring forth text amendments on an ongoing basis as needed.

Commissioner Grimsley stated there will always be a need for ongoing ordinance amendments as the community continues to grow and evolve.

Commissioner Alcorn suggested that text amendments be addressed at workshops rather than the public hearing. Mr. Svoboda stated that would be at the Commission's discretion.

Chairperson Lageschulte closed the public hearing and stated that to wait four years for a sign approval is ridiculous.

Commissioner Grimsley MADE a MOTION to recommend approval of TA-07-2. Commissioner Webster SECONDED the MOTION.

Chairperson Lageschulte called for a roll call vote and the motion PASSED by a vote of 5 to 2 (with Commissioners Iwanski and Copeland voting nay).

VIII. OTHER BUSINESS

6. APPLICATION NO.: DR-06-34

APPLICANT: Mr. Patrick McGee, SSPW Architects
8681 E Via de Negacio
Scottsdale, Arizona 85258

REQUEST: The applicant is requesting Master Site Plan and Final Site Plan for Phase IV for Trinity Lutheran Church. The property is located at 830 Plaza Circle. Staff Contact: Megan Neal (623) 333-4018.

Ms. Neal presented the staff report for DR-06-34 to the Planning Commission. She stated this is a request for Master Site Plan and Final Site Plan approval for Phase IV for Trinity Lutheran church. The property is located at 830 Plaza Circle. Staff is recommending approval of this proposal.

Commissioner Iwanski asked if the landscape requirement could be used in other instances as he felt this landscaping was very impressive.

Chairperson Lageschulte opened the public hearing.

No one wished to address the Commission.

Chairperson Lageschulte closed the public hearing.

Commissioner Grimsley MADE a MOTION to recommend approval of the Master Site Plan and Final Site Plan subject to the stipulations noted in the staff report 1) The development shall conform to the master site plan date stamped April 12, 2007, master landscape plan date stamped April 12, 2007; the project narrative dated February 23, 2007, and the elevations dated April 12, 2007, except as modified by these stipulations. 2) In accordance with Section 106.C.4 of the City of Avondale Zoning Ordinance the approval of the Master Site Plan and Final Site Plan for Phase IV shall expire within one year of approval if a building permit has not been issued. 3) Final landscape plans shall be approved prior to issuance of a building permit. 4) All proposed buildings, including those of franchise users, shall substantially conform to the architectural theme of the Conceptual Elevation Plan date stamped April 12, 2007, and the Materials and Color Selections Board date stamped April 12, 2007. 5) Phase V shall be treated with decomposed granite ground cover until development of those areas occur unless developed concurrently with Phase IV. 6) Final site plans for Phase V shall be submitted to the Planning Division for administrative approval prior to construction plan review. 7) Signage standards for the center shall comply with the City of Avondale Zoning Ordinance. All signage shall require separate review and approval through the sign permitting process. 8) The Drainage Report and Water & Sewer Report shall be revised as determined by the City Engineer prior to Final Civil Plan approval. 9) The Landscape Plan shall be revised to meet AASHTO standards for all sight visibility triangles. 10)

Concurrent with Phase V of the development, the developer is required to dedicate 65-feet of ROW of Dysart Road, additional Row at the intersection of Dysart Road and Indian School Road, deceleration lanes and additional ROW on Dysart road for southbound traffic, and a traffic plan for Sunday traffic, as determined by the Traffic Engineer. Commissioner Iwanski SECONDED the MOTION.

Chairperson Lageschulte called for a roll call vote and the motion passed by a vote of 7 to 0.

XI. PLANNING STAFF REPORT

There was none.

X. COMMISSION COMMENTS AND SUGGESTIONS:

Chairperson Lageschulte asked for Comments and Suggestions. There were none. He thanked the Commission and Staff for their attendance.

XI. ADJOURNMENT:

With no further business, the meeting concluded at approximately 9:33 P.M.

NEXT MEETINGS: May 17, 2007 – Council Chambers
May 24, 2007 – Off-site

FOR SPECIAL ACCOMMODATIONS

Any individual with a qualified disability may request a reasonable accommodation by contacting the City Clerk at (623) 478-3030 at least 48 hours prior to the Commission meeting.

_____
Staff Signature

(Rev 4/9/04)

Commission Secretary
Approved by the Commission on _May 17, 2007_____

CITY COUNCIL REPORT

SUBJECT:
Master Site Plan for Coldwater Springs Promenade and Final Site Plan for Major A, Shops B-D, Pad 1, Pad 6, and Office A-G (DR-06-8)

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Scott Wilken, Senior Planner (623) 333-4016

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff requests that the City Council approve application DR-06-8, Coldwater Springs Promenade Master Site Plan.

BACKGROUND:

On April 16, 2007, the City Council reviewed application DR-06-8, master site plan for Coldwater Springs Promenade. With a number of issues yet to be worked out with regard to final design of the site, the Council instructed the applicant and City staff to work together to find acceptable solutions and finalize the design of the master site plan. The Council voted 7-0 to continue the item to the May 7, 2007, regular Council agenda (Exhibit H). A copy of the staff report from the April 16, 2007 meeting is attached (Exhibit I).

The Council listed nine stipulations designed to modify, replace, or add to the 22 stipulations of approval recommended by the Planning Commission and City staff. These nine stipulations are summarized as follows:

1. Require coordination with the property owner to the south and staff as necessary to incorporate one cross access strip
2. Developer will be required to contribute 50% of the cost of the traffic signal at Van Buren and 117th.
3. The hours of delivery and sanitation pick-up shall not impact normal business hours.
4. The final elevations of the office buildings shall match the elevations presented at Council on April 16, 2007.
5. Prior to the issuance of building permits, Access E shall be modified with input from staff and the property owner to the south, and a sealed letter from the developer's traffic engineer stating that the entrance will work for the uses of the project
6. All final site plans will be reviewed and approved by the Planning Commission and City Council.
7. Modify staff's stipulation number 12 to read "If a final site plan has not been approved for pad 5 before the adoption of the Avondale City Center Area Plan, pad 5 shall be subject to the design guidelines of the Area Plan."
8. Developer shall work with the Arts Commission to incorporate public art as part of the development
9. Internal traffic will be operationally controlled by the shopping center owner if the approved striping and delivery times do not adequately work.

DISCUSSION:

Staff met with the applicant on April 20, 2007, to discuss the above stipulations and to work out a compromise to address Council's stipulations and some of the remaining staff concerns:

Stipulation 1: The project is proposed to have a cross access agreement with the proposed development to the south (currently under review). The previously submitted plan showed two cross access points, one on either side of Shops F. One of the concerns with this design was that the cross access driveway on the east side of Shops F was too close to the right-in/right-out/left-in driveway from Avondale Boulevard. The site plan has been modified to show Shops F approximately 55' east of its previous location, and cross access only on the west side of Shops F. This design eliminates some of the traffic conflicts from the previous cross access driveway location, while still providing cross access to the property to the south.

Stipulation 2: The applicant has stated that they are in agreement with this stipulation

Stipulation 3: During discussion, the Council expressed a desire to keep delivery and sanitation pick-up restrictions consistent with other recent approvals, specifically the conditional use permit approved for Gold's Gym (CU-05-1). Stipulation 4 of CU-05-1 limited sanitation pick-up and service deliveries to between the hours of permitted between the hours of 7 a.m. and 7 p.m. However, this main issue with that application was limiting the adverse effects on neighboring residents. For the current application, the concern also has to do with the internal operations of the site. Large delivery and/or sanitation trucks driving through the site during peak times for customer traffic will cause conflicts. To help alleviate this, staff is recommending that sanitation pick-up and service deliveries be limited to weekdays, during hours that have less customer traffic than peak times.

Stipulation 4: This will be included in the recommendation of approval.

Stipulation 5: As discussed as part of Stipulation 1, the area around Access E has been modified to address the staff's traffic concerns.

Stipulation 6: This will be included in the recommendation of approval.

Stipulation 7: This modification will be included in the recommendation of approval.

Stipulation 8: The proposed development is in the area of the Avondale City Center Area Plan, which is currently being written. Staff believes that incorporation of the increased landscaping requirements along Avondale Boulevard will help create some consistency along the Avondale Boulevard corridor, and will have a more noticeable effect on the surrounding area than inclusion of public art into the project. Staff is recommending a stipulation to this effect.

Stipulation 9: This will be included in the recommendation of approval.

In addition to Council's nine stipulations, staff and the applicant discussed ways to redesign the site to help alleviate staff's remaining traffic safety concerns. The following are additional modifications made to address staff's remaining traffic safety concerns:

- Access A has been modified to include a median separating northbound traffic exiting the development from southbound traffic entering the development. This is designed to eliminate the conflict of drivers turning into the site off of Van Buren Street and being blocked by queuing traffic from making an immediate left turn into Pad 1. Additionally, Pad 1 has been modified to add a new driveway beyond the queuing length south of the building, while making the access point north of the building an exit-only driveway. However, staff is still concerned that the design of the median might not fully address the issue. Further examination of this driveway is needed to ensure that the signalized intersection operates in a safe manner. Staff believes that the median needs to be extended to the north (towards Van Buren Street) to help separate southbound traffic from traffic in the north-to-west left turn lane.

- The drive-thru lane at Pad 4 was modified to wrap around the building and direct exiting traffic away from the driveway onto Van Buren Street.

- As noted above, Shops F was relocated approximately 55' east of its previous location to improve circulation in the area surrounding the building. Additionally, the drive-thru lane for Shops F was redesigned to wrap around three sides of the building, to help keep drive-thru traffic separated from thru traffic in more locations. Staff is still concerned about the area around the cross access driveway and has asked the applicant to remove four parking spaces along the west side of Shops F to eliminate potential conflicts with cross access and cars leaving the parking spaces. However, the applicant has stated that these parking spaces are needed by Shops F and has chosen not to remove the parking spaces. Please note that the overall site is overparked per Zoning Ordinance requirements, and the removal of the four parking spaces would not be in conflict with any City standards.

CONCLUSION:

Staff believes that the changes incorporated into the site plan adequately address many of staff's and Council's remaining concerns. The remaining concerns can be addressed through stipulations of approval and at the final plan review stage if necessary.

RECOMENDATION:

Staff recommends that the City Council **Approve** application DR-06-8 with the following stipulations:

1. The development shall conform to the master site plan date stamped April 30, 2007 and the master landscape plan date stamped April 30, 2007, except as modified by these stipulations.
2. The final site plans for Major A; Shops B, C, and D; Pad 1; and Pad 6 shall all conform to the elevations date stamped April 4, 2007; except as modified by these stipulations. The final site plans for Office Buildings A-G shall conform to the elevations date stamped April 30, 2007, except as modified by these stipulations.
3. In accordance with Section 106.C.4 of the City of Avondale Zoning Ordinance the approval of the site plan shall expire within one year if a building permit has not been issued.
4. Prior to the issuance of a building permit, a cross access easement shall be recorded for the commercial property to the south.
5. All undeveloped portions of the development shall be treated with decomposed granite for dust control until such time that those portions are developed.
6. Final site plan for Pads 2-5 and Shops F shall be reviewed by the Planning Division and Planning Commission, and shall be reviewed and approved by the City Council prior to the issuance of a building permit.
7. All water rights on the property shall be conveyed to the City of Avondale prior to recordation of the final plat.
8. The developer shall transfer ownership of the existing agricultural well to the City of Avondale prior to the issuance of a building permit.
9. Prior to the issuance of a building permit, the developer shall finalize a purchase agreement for the new well location and well maintenance easement based on the terms that were previously negotiated between the developer and the City of Avondale Water Resources Department.
10. Prior to or concurrent with recordation of a minor land division or final plat, covenants, conditions and restrictions (CC&Rs) shall be recorded for the site. These CC&Rs shall address design standards for architecture, landscaping, maintenance, and cross access and shall be reviewed and approved by the Planning Division prior to recordation. A copy of the recorded CC&Rs shall be submitted to the Planning Division.
11. All future buildings shall conform to the color palette, materials, and architectural theme established by this master site plan.
12. Final landscape plans for each building shall be reviewed and approved by the Planning Division prior to the issuance of any building permits for those buildings.
13. If a final site plan has not been approved for pad 5 before the adoption of the Avondale City Center Area Plan, pad 5 shall be subject to the design guidelines of the Area Plan.

14. The developer shall be responsible for one half of the costs associated with the design and construction of a traffic signal at the intersection of Van Buren Street and the 117th Avenue alignment prior to issuance of a building permit.
15. All driveways and off-site improvements, including deceleration lanes, bus bays, landscaping, and center medians, shall be constructed during the first phase of construction.
16. The water feature at the northeast corner of the site shall be constructed as part of the first phase of development. The design of the water feature shall be reviewed and approved as part of the initial set of final landscape plans.
17. All signs for the shopping center shall comply with the City of Avondale Sign Ordinance. Monument signs shall conform to the architectural theme established by this master site plan.
18. All parking screen walls shall be approved at the time of final landscape plan review and shall conform to the architectural theme established by this master site plan.
19. In lieu the developer providing funding for public art, the final landscape plans shall incorporate landscaping consistent with the requirements of the Avondale City Center Area Plan for landscaped areas along Avondale Boulevard.
20. As part of the first phase of development, the developer shall dedicate and construct 80-feet of half-street right-of-way for Avondale Boulevard for the first 250 feet south of Van Buren Street.
21. During the final civil plan, final landscape plan, and construction document review, the median at Access A shall be redesigned to satisfy safe traffic control concerns and provide efficient vehicular channelization as determined by the City Engineer.
22. Final civil plans, final landscape plans, and construction documents shall show the removal of the four parking spaces on the west side of Shops F.
23. Final design of the median in Van Buren shall be reviewed and approved during the final civil plan review, as determined by the City Engineer.
24. Internal traffic shall be operationally controlled by the shopping center owner if the approved striping and delivery times do not adequately work.
25. Prior to the issuance of a building permit, the developer's traffic engineer shall submit to the City a signed and sealed letter stating that the driveways and internal circulation of the shopping center will operate safely.
26. Sanitation and service delivery times shall be limited to weekdays as follows:

- Trash pickup shall occur between 6am – 10am
- Deliveries shall not be made before 6am or after 10pm
- Delivery trucks over 40' shall not deliver after 10:30am

PROPOSED MOTION: I move that the City Council **APPROVE** application number DR-06-8, a request for master site plan approval for Coldwater Springs Promenade, and final site plan approval for Major A, Shops B-D, Pad 1, Pad 6, and Office A-G subject to the 26 stipulations recommended by staff

ATTACHMENTS:

Click to download

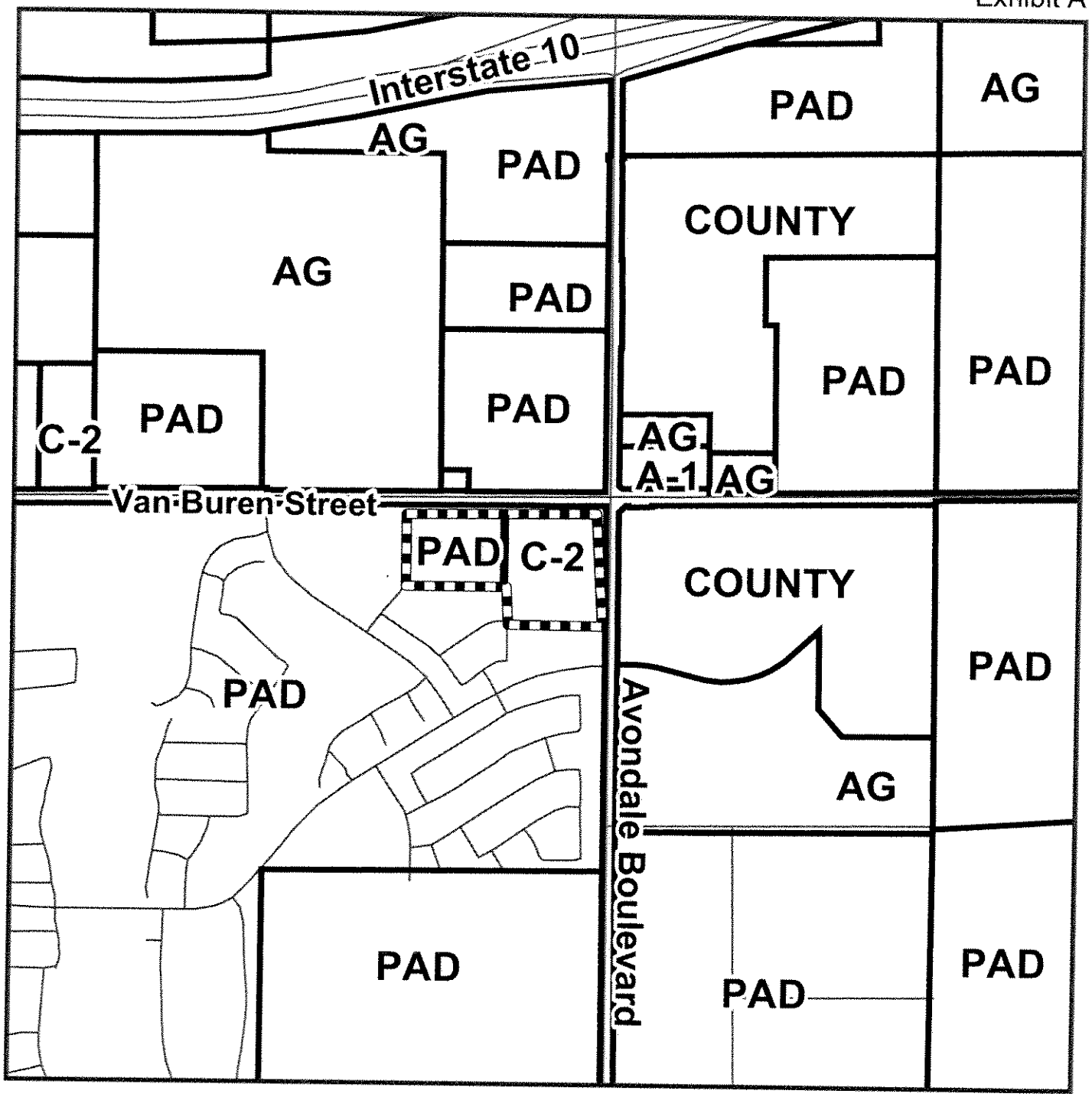
- DR-06-8 Exhibits A-J

DR-06-8
Coldwater Springs Promenade master site plan
City Council meeting 5/7/07

Attachments

Exhibit A - Zoning Vicinity Map
Exhibit B - Aerial Photo 2006
Exhibit C - Summary of Related Facts
Exhibit D - Master site plan date stamped April 30, 2007
Exhibit E - Preliminary Landscape Plan date stamped April 30, 2007
Exhibit F - Neighboring resident letter dated March 15, 2006
Exhibit G - Draft Minutes of the Planning Commission meeting of March 15, 2007
Exhibit H - Draft Minutes of the City Council meeting of April 19, 2007
Exhibit I - Staff report for application DR-06-8 from 4/16/07 City Council Meeting
Exhibit J - Timeline of review for Coldwater Springs Promenade

Exhibit A

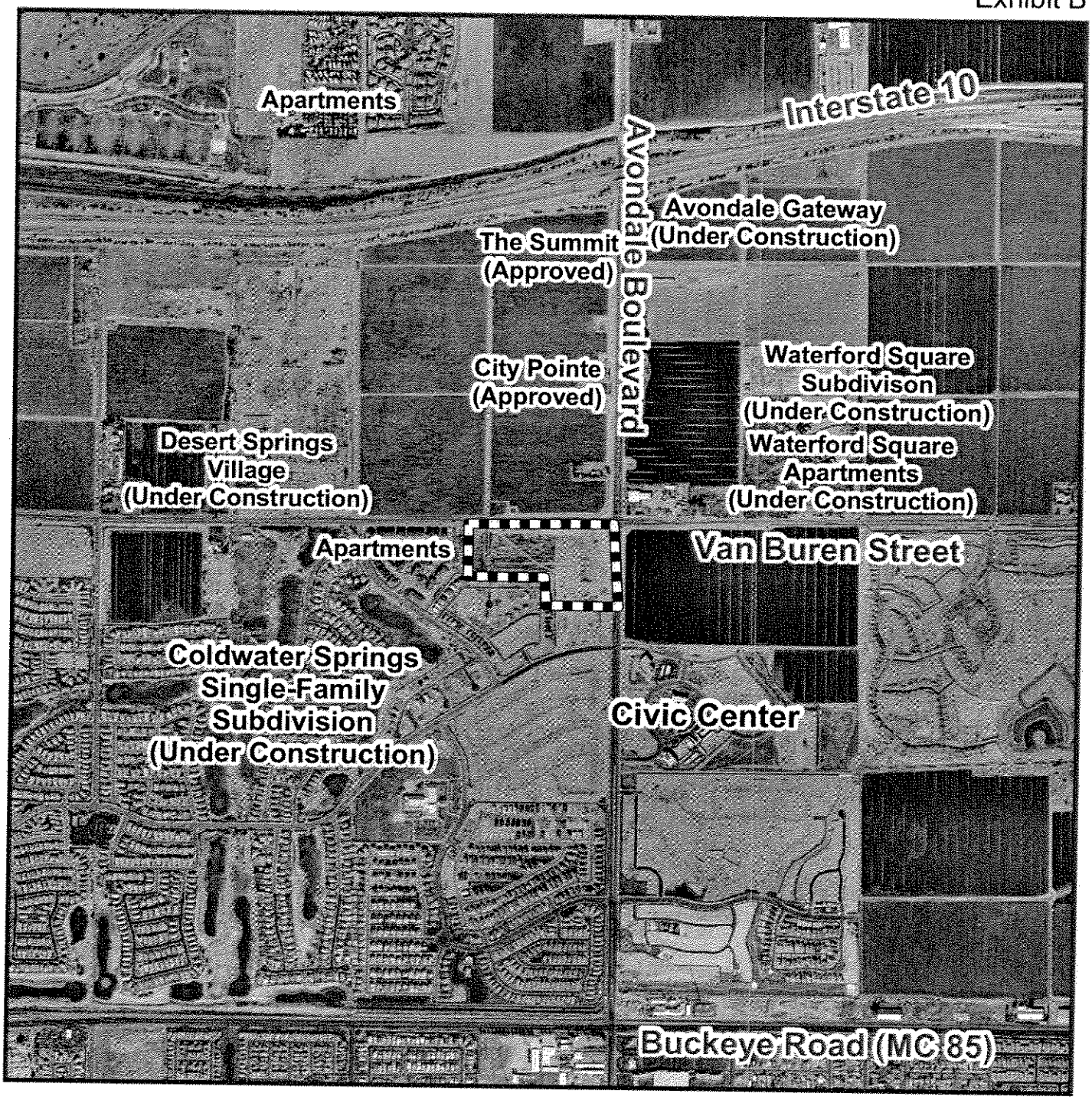


Zoning Vicinity Map
DR-06-8

Avondale

Subject Site

Exhibit B



Air Photo 2005
DR-06-8

Avondale

Subject Site

Exhibit C

SUMMARY OF RELATED FACTS

APPLICATION DR-06-8

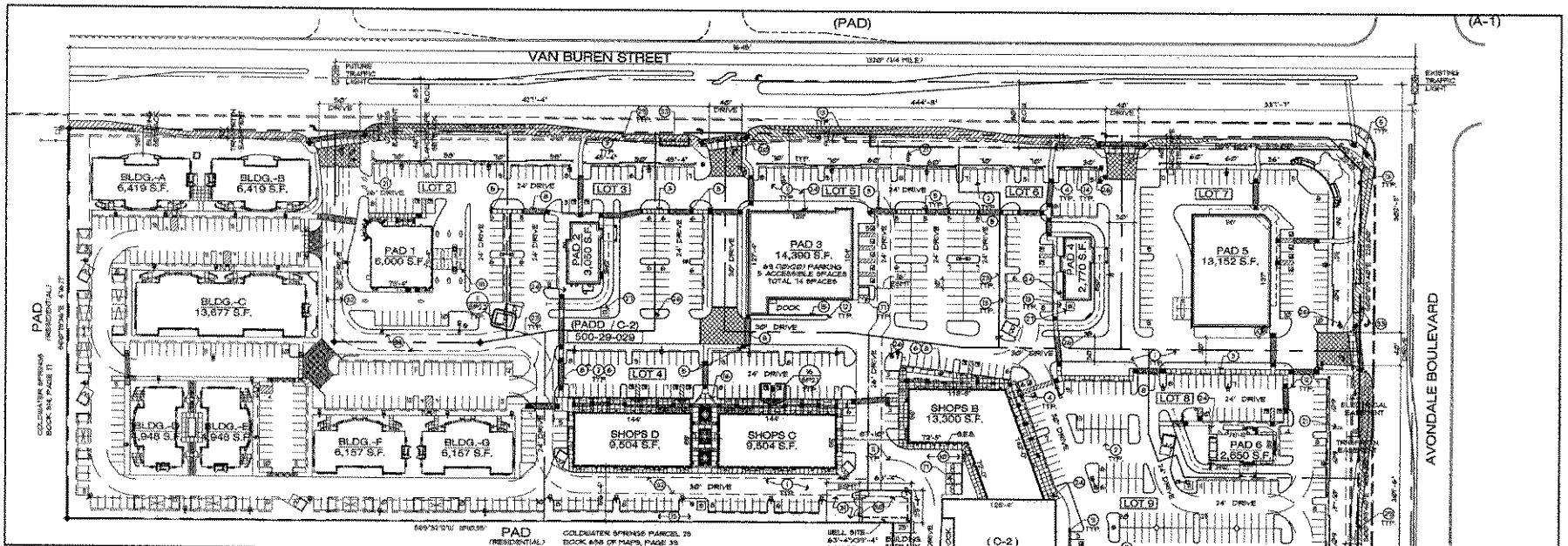
THE PROPERTY	
PARCEL SIZE	19.97 acres
LOCATION	Southwest Corner of Avondale Boulevard and Van Buren Street
PHYSICAL CHARACTERISTICS	Site is relatively flat
EXISTING LAND USE	Vacant
EXISTING ZONING	Planned Area Development District (PAD) and Community Commercial (C-2)
ZONING HISTORY	The western parcel was rezoned from Agricultural (AG) to Planned Area Development (PAD) on March 17, 1997; the eastern parcel was rezoned from Agricultural (AG) to Community Commercial (C-2) on October 2, 2000
DEVELOPMENT AGREEMENT	The Development Agreement for the western portion of this property was approved in 1997. There are no outstanding issues affecting this proposal.

SURROUNDING ZONING AND LAND USE	
NORTH	Vacant, zoned PAD (Avondale Towne Center)
EAST	Agricultural , Maricopa County
SOUTH	Vacant, zoned PAD (Coldwater Springs)
WEST	Multi-family residential, zoned PAD (Coldwater Springs)
GENERAL PLAN	
The subject property is designated as Commercial on the General Plan Land Use Map.	

PUBLIC SCHOOLS	
SCHOOL DISTRICT(S)	Littleton and Tolleson Union Schools
ELEMENTARY SCHOOLS	Collier Elementary (K-8)
HIGH SCHOOL	La Joya Community High School

STREETS	
Van Buren Street	
Classification	Arterial
Existing half street ROW	65 feet
Standard half street ROW	65 feet
Existing half street improvements	One travel lane and ½ center turn lane.
Standard half street improvements	Three travel lanes, bike lane, curb and gutter, detached sidewalk, street lights, and landscaping.
Avondale Boulevard	
Classification	Arterial
Existing half street ROW	65 feet
Standard half street ROW	65 feet
Existing half street improvements	2.5 paved travel lanes, curb, gutter, and partial sidewalk.
Standard half street improvements	2.5 paved travel lanes, bike lane, curb, gutter, sidewalk, street lights and landscaping.

UTILITIES
Water connection will be provided to existing a 16-inch water line in Van Buren Street and a 24-inch water line in Avondale Boulevard. Wastewater will be connected to an existing 18-inch sewer line in Avondale Boulevard.



1 SITE PLAN
SCALE: 1" = 60'-0"

PROJECT DATA

MASTER DEVELOPMENT PLAN
ADDRESS: S.W.C. OF VAN BUREN STREET AND 115TH AVENUE (AVONDALE BOULEVARD) AVONDALE, ARIZONA

PROPOSED USE: RETAIL / RESTAURANT / OFFICE
EXISTING ZONING: PADD C-2
MAX. BUILDING HEIGHT: 199'-0"
CONSTRUCTION TYPE: VB (FULLY FIRE SPRINKLED)
GROSS SITE AREA (23.47 AC) 1,022,815 S.F.
NET SITE AREA (19.07 AC) 830,776 S.F.
TOTAL SQUARE FEET 181,417 S.F.
% COVERAGE 17.4%
PARKING REQUIRED 941 SPACES
PARKING PROVIDED 921 SPACES
ACCESSIBLE REQUIRED 39 SPACES
ACCESSIBLE PROVIDED 42 SPACES
LANDSCAPE AREA 15%
USEABLE OPEN SPACE 6.3%

LOT 1 - (OFFICE)
GROSS SITE AREA (5.33 AC) 232,268 S.F.
NET SITE AREA (4.85 AC) 211,270 S.F.
BUILDING A 6,419 S.F.
BUILDING B 6,419 S.F.
BUILDING C 13,877 S.F.
BUILDING D 9,948 S.F.
BUILDING E 9,948 S.F.
BUILDING F 6,157 S.F.
BUILDING G 6,157 S.F.
TOTAL 48,738 S.F.
PARKING REQUIRED (48,312 S.F. / 350) 138 SPACES
PARKING PROVIDED 140 SPACES
ACCESSIBLE REQUIRED 6 SPACES
ACCESSIBLE PROVIDED 7 SPACES

LOT 2 - (BANK)
GROSS SITE AREA (1.66 AC) 69,000 S.F.
NET SITE AREA (1.39 AC) 54,200 S.F.
PAD 1 6,000 S.F.
PARKING REQUIRED (6,000 S.F. / 150) 40 SPACES
PARKING PROVIDED 48 SPACES
ACCESSIBLE REQUIRED 2 SPACES
ACCESSIBLE PROVIDED 2 SPACES

LOT 3 - (FAST FOOD)
GROSS SITE AREA (1.28 AC) 55,896 S.F.
NET SITE AREA (1.01 AC) 44,100 S.F.
PAD 2 3,050 S.F.
PARKING REQUIRED (3,050 S.F. * 65% / 50) 40 SPACES
PARKING PROVIDED 51 SPACES
ACCESSIBLE REQUIRED 2 SPACES
ACCESSIBLE PROVIDED 2 SPACES

LOT 4 - (RETAIL)
GROSS SITE AREA (2.70 AC) 117,741 S.F.
NET SITE AREA (2.57 AC) 112,183 S.F.
SHOPS C 9,504 S.F.
SHOPS D 9,504 S.F.
TOTAL 19,008 S.F.
PARKING REQUIRED (19,008 S.F. / 300) 64 SPACES
PARKING PROVIDED 104 SPACES
ACCESSIBLE REQUIRED 5 SPACES
ACCESSIBLE PROVIDED 6 SPACES

LOT 5 - (RETAIL)
GROSS SITE AREA (2.25 AC) 98,256 S.F.
NET SITE AREA (1.79 AC) 78,078 S.F.
PAD 3 14,300 S.F.
PARKING REQUIRED (14,300 S.F. / 300) 48 SPACES
PARKING PROVIDED 77 SPACES
ACCESSIBLE REQUIRED 4 SPACES
ACCESSIBLE PROVIDED 5 SPACES

LOT 6 - (FAST FOOD)
GROSS SITE AREA (1.26 AC) 55,166 S.F.
NET SITE AREA (0.90 AC) 39,216 S.F.
PAD 4 2,770 S.F.
PARKING REQUIRED (2,770 S.F. * 65% / 50) 37 SPACES
PARKING PROVIDED 43 SPACES
ACCESSIBLE REQUIRED 2 SPACES
ACCESSIBLE PROVIDED 2 SPACES

LOT 7 - (RETAIL)
GROSS SITE AREA (2.66 AC) 115,169 S.F.
NET SITE AREA (1.83 AC) 79,200 S.F.
PAD 5 13,152 S.F.
PARKING REQUIRED (13,152 S.F. / 300) 44 SPACES
PARKING PROVIDED 61 SPACES
ACCESSIBLE REQUIRED 3 SPACES
ACCESSIBLE PROVIDED 4 SPACES

LOT 8 - (FAST FOOD)
GROSS SITE AREA (1.12 AC) 49,074 S.F.
NET SITE AREA (0.88 AC) 38,355 S.F.
PAD 6 2,650 S.F.
PARKING REQUIRED (2,650 S.F. * 65% / 50) 35 SPACES
PARKING PROVIDED 41 SPACES
ACCESSIBLE REQUIRED 2 SPACES
ACCESSIBLE PROVIDED 2 SPACES

LOT 9 - (RETAIL)
GROSS SITE AREA (4.23 AC) 184,062 S.F.
NET SITE AREA (3.96 AC) 172,414 S.F.
SHOPS B 13,300 S.F.
MAJOR A 20,288 S.F.
TOTAL 33,588 S.F.
PARKING REQUIRED (33,300 S.F. / 300) 111 SPACES
PARKING PROVIDED 167 SPACES
ACCESSIBLE REQUIRED 7 SPACES
ACCESSIBLE PROVIDED 10 SPACES

LOT 10 - (RETAIL)
GROSS SITE AREA (0.99 AC) 43,179 S.F.
NET SITE AREA (0.85 AC) 37,411 S.F.
SHOPS F 6,418 S.F.
OUTDOOR SEATING 1,000 S.F.
TOTAL 7,418 S.F.
PARKING REQUIRED (6,418 S.F. / 300) +5 27 SPACES
PARKING PROVIDED 27 SPACES
ACCESSIBLE REQUIRED 2 SPACES
ACCESSIBLE PROVIDED 2 SPACES

WELL SITE - CITY OF AVONDALE
(NOT INCLUDED IN TOTAL SITE AREA)
GROSS SITE AREA (.57 AC) 2,491 S.F.

KEYNOTES

1. ASPHALT PAVING - SEE CIVIL DWG'S.
2. 4" WIDE WHITE PAINTED PARKING STRIPE - TYP. U.N.O.
3. 5' WIDE ACCESSIBLE CONCRETE SIDEWALK (5% MAX. RUNNING SLOPE AND 2% MAX. CROSS SLOPE)
4. ACCESSIBLE RAMP - SEE DETAIL 8 / SP2.1
5. 3' DEEP TACTILE WARNING - TYP. AT FLUSH WALK ADJACENT TO DRIVE.
6. HARDSCAPE - SEE HARDSCAPE PLAN FOR COLOR TEXTURE AND MATERIAL. SLOPES TO COMPLY ADA. (SEE NOTE 3 ABOVE)
7. ENHANCED PAVING - INTEGRAL COLORED CONCRETE WITH 5'X5' DIA. SCORE JOINT PATTERN, MEDIUM BROOM FINISH.
8. ACCESSIBLE ROUTE - 4" WIDE PAINTED BORDER WITH 4" WIDE DIAGONAL PAINTED STRIPING AT 3'-0" O.C. - PAINTED TRAFFIC YELLOW.
9. LINE OF VEHICULAR OVERHANG.
10. LOADING ZONE - 12'X30' MIN. - PROVIDE DIAGONAL STRIPING AT 36" O.C.
11. TRUCK TURNING RADII - 39' INTERIOR RADIUS & 69' EXTERIOR RADIUS.
12. CONCRETE CURB - SEE CIVIL DWG'S.
13. LANDSCAPING MATERIAL - SEE LANDSCAPE DWG'S.
14. 3'-6" MIN. 4'-6" MAX. MASONRY PARKING SCREEN WALL - SEE 3 / SP2.2
15. 6'-6" HIGH MASONRY DOCK SCREEN WALL - SEE 5 / SP2.2
16. RAISED MASONRY PLANTER SEAT WALL
17. GATED REFUSE ENCLOSURE - SEE 6 / SP2.2
18. LINE OF CANOPY ABOVE.
19. RETENTION / LANDSCAPING - SEE CIVIL & LANDSCAPE DWG'S.
20. SITE VISIBILITY TRIANGLE PER A.A.S.H.T.O. STANDARDS
21. MONUMENT SIGN - UNDER SEPARATE REVIEW AND PERMIT.
22. PAD SIGN - UNDER SEPARATE REVIEW AND PERMIT
23. IMAGINARY PROPERTY LINES (LEASE LINES)
24. BIKE RACK - 20 / SP2.1
25. EXISTING 6'-0" HIGH MASONRY SCREEN WALL TO REMAIN.
26. FIRE HYDRANT - SEE CIVIL DRAWINGS
27. LOCATION OF ELECTRICAL COMPANY TRANSFORMER ON CONCRETE PAD - COORDINATE LOCATION WITH UTILITY COMPANY
28. SITE LIGHTING POLE - SEE ELECTRICAL DRAWINGS
29. 6' WIDE ACCESSIBLE CONCRETE SIDEWALK (5% MAX. RUNNING SLOPE AND 2% MAX. CROSS SLOPE)
30. TWO (2) 30' WIDE, SOLID SLIDING METAL GATES AT NORTH SIDE AND TWO (2) 30' WIDE, SOLID METAL SWINGING GATE AT WEST SIDE.
31. 40' WIDE MAINTENANCE EASEMENT
32. 20' WIDE ACCESS EASEMENT.
33. TRANSIT STOP PER CITY OF PHOENIX STANDARD DETAILS.

PROJECT TEAM

OWNER / DEVELOPER
COLDWATER SPRINGS PROMENADE INC.
8617 N. SCOTTSDALE ROAD
SUITE 101
SCOTTSDALE, ARIZONA 85250
PHONE: 480.951.5002
FAX: 480.222.3696
CONTACT: GEOFFREY JACOBS

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K&I ARCHITECTS & INTERIORS, L.L.C.
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PHOENIX, ARIZONA 85004
PHONE: 602.262.3810
FAX: 602.262.3810
CONTACT: DAN JOLLEY

CIVIL ENGINEER
METRO LAND CONSULTANTS, L.L.C.
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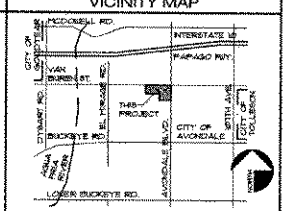
SUITE 525
PHOENIX, ARIZONA 85004
PHONE: 602.393.2030 EXT. 221
FAX: 602.393.2031
CONTACT: CHRIS WILSON

LANDSCAPE ARCHITECT
TJ McQUEEN & ASSOCIATES
1121 E. MISSOURI
SUITE 218
PHOENIX, ARIZONA 85014
PHONE: 602.265.0320
FAX: 602.265.0610
CONTACT: TIM McQUEEN

SHEET INDEX

MSP	MASTER SITE PLAN
SP1.1	PHASING SITE PLAN
SP2.1	SITE DETAILS
SP2.2	SITE DETAILS
A2.1	EXTERIOR ELEVATIONS (MAJOR - A)
A2.2	EXTERIOR ELEVATIONS (MAJOR - A)
B2.1	EXTERIOR ELEVATIONS (SHOPS B)
C2.1	EXTERIOR ELEVATIONS (SHOPS C)
D2.1	EXTERIOR ELEVATIONS (SHOPS D)
L1	LANDSCAPE PLAN
L2	LANDSCAPE SCHEDULES & DETAILS

VICINITY MAP



CITY APPROVAL STAMP

K & I ARCHITECTS INTERIORS
1850 N. CENTRAL AVE. SUITE 200 PHOENIX, AZ 85004
PH: 602.262.3810
FAX: 602.262.6602

EMPIRE

COLDWATER SPRINGS PROMENADE

S.W.C. OF VAN BUREN STREET AND AVONDALE BOULEVARD
AVONDALE, ARIZONA

REVISIONS

NO.	DESCRIPTION	DATE

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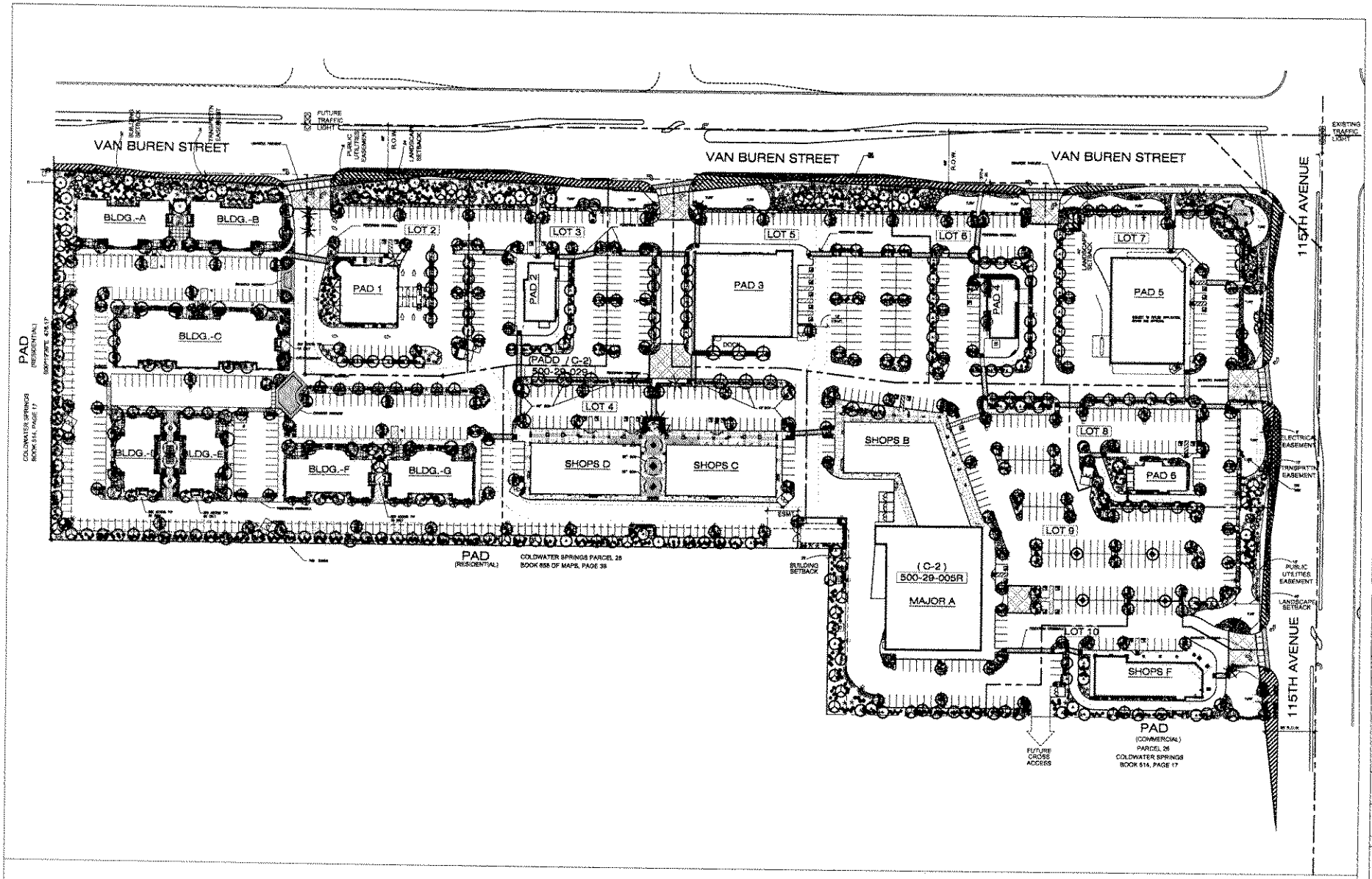
DRAWINGS AND SPECIFICATIONS AS INSTRUMENTS OF SERVICE ARE AND SHALL REMAIN THE PROPERTY OF THE ARCHITECT WHETHER THE PROJECT FOR WHICH THEY WERE PREPARED IS EXECUTED OR NOT. THEY ARE NOT TO BE USED ON OTHER PROJECTS OR EXTENSIONS TO THIS PROJECT EXCEPT BY AGREEMENT IN WRITING AND WITH APPROPRIATE COMPENSATION TO K & I ARCHITECTS AND INTERIORS.

SHEET TITLE: MASTER SITE PLAN

JOB NUMBER: 0512303
DRAWN BY: PRITI M.
CHECKED BY: KS / DJ
ISSUE DATE: 04-30-07

SHEET NUMBER: MSP

EXHIBIT D



T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
1121 East Missouri Ave., Suite 218
Phoenix, Arizona 85014
(602) 265-0320

TJ&M ASSOCIATES

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K & I
ARCHITECTS INTERIORS
1950 N. CENTRAL AVE.
SUITE 200
PHOENIX, AZ 85004
Ph. 602.263.8203
FAX 602.263.8202

EMPIRE

115th Avenue and Van Buren Street

S.W.C. OF VAN BUREN STREET AND
115TH AVENUE (AVONDALE BOULEVARD)
AVONDALE, ARIZONA

REVISIONS

NO.	DESCRIPTION	DATE

OWNERSHIP OF DOCUMENTS

DRAWINGS AND SPECIFICATIONS AS INSTRUMENTS OF SERVICE ARE AND SHALL REMAIN THE PROPERTY OF THE ARCHITECT WHETHER THE PROJECT FOR WHICH THEY WERE PREPARED IS EXECUTED OR NOT. THEY ARE NOT TO BE USED ON OTHER PROJECTS OR EXTENSIONS TO THIS PROJECT EXCEPT BY AGREEMENT IN WRITING AND WITH APPROPRIATE COMPENSATION TO K & I ARCHITECTS AND INTERIORS

SHEET TITLE:
LANDSCAPE PLAN

JOB NUMBER: 052302
DRAWN BY: RMD
CHECKED BY: TJM
ISSUE DATE: 1-26-06

SHEET NUMBER:

L-0

OF 10

EXHIBIT E

Exhibit F

March 15, 2006

CITY OF AVONDALE
PLANNING AND
MAR 21 2006
BUILDING SERVICES
DEPARTMENT

City of Avondale
Planning and Building Services
11465 W. Civic Center Dr., Ste. 110
Avondale, AZ 85323

To Whom It May Concern:

I am writing today with reference to the site plan I received for Case # DR-06-8, Coldwater Springs Promenade.

I have concerns due to the fact that my home backs up to the major anchor for the development, Lot 9, Major A. The rear drive for this shop will run fairly close to my back yard. Since I, and my eastern-most neighbor, have two-story homes, we would be privy to the trash dumpsters and delivery sites for these shops. My concern is a noise issue – early morning or late night deliveries that would disturb my household and that of my neighbors. Perhaps a stipulation could be added to the development plans that would limit the times during which trash pick up and deliveries are scheduled so as to be considerate of the residents nearest this development.

Thank you for informing us of the plans for this site and allowing me to voice my concerns.

Sincerely,

David W. Smith
11601 W. Washington St.
Avondale, AZ 85323

EXHIBIT G

Excerpt of the Draft Minutes of the regular Planning Commission meeting held March 15, 2007 at 7:00 p.m. in the Council Chambers.

COMMISSIONERS PRESENT

Alan Lageschulte, Chairperson
Ed Meringer, Vice Chairperson
Michael Alcorn, Commissioner
Kevin Grimsley, Commissioner
David Iwanski, Commissioner
Linda Webster, Commissioner

COMMISSIONER ABSENT

Lisa Copeland, Commissioner (EXCUSED)

CITY STAFF PRESENT

Brian Berndt, Director of Development Services
Dean Svoboda, Director of Long Range Planning
Ken Galica, Zoning Specialist
Eric Morgan, Planner II
Scott Wilken, Acting Senior Planner

APPLICATION DR-06-8

APPLICANT Mr. Daniel Jolley, K&I Architects
1850 N. Central, Suite 200, Phoenix, Arizona 85004

REQUEST The applicant is requesting master site plan approval for Coldwater Springs Promenade. This property is located at the southwest corner of Avondale Boulevard and Van Buren Street. Staff Contact: Scott Wilken (623) 333-4016.

Mr. Wilken presented the staff report for DR-06-8 to the Planning Commission. He stated this is a request for master site plan approval for 19.97 acres located at the southwest corner or Avondale Boulevard and Van Buren Street. Staff is recommending denial of this proposed site plan.

Commissioner Meringer questioned Staff's recommendation of denial. He asked how the applicant could receive a recommendation of approval from staff. Mr. Wilken stated the applicant requested this item be placed on the agenda to allow the Planning Commission and City Council to make the determination. If the Planning Commission would like to table the request, that is possible.

Commissioner Alcorn stated this request does not fit the Avondale Corridor lifestyle. Mr. Wilken stated Staff believes this shopping center cannot operate fully based upon the recommendation of the traffic study. In addition, it does not meet the findings in the Zoning Ordinance.

Chairperson Lageschulte asked why Staff prefers to have this area resemble the office space portion. Mr. Wilken explained the Zoning Ordinance requires that developments share architectural elements within the development. Staff believes this does not fulfill that requirement. Staff is not advocating identical structures, only changes to make them similar.

Mr. Wilken reviewed some of the major traffic concerns of the Transportation Department.

Chairperson Lageschulte asked how soon a median would be constructed down Van Buren Street. Mr. Wilken stated that would be part of the development of this site.

Mr. Paul Gilbert, applicant, stated he is representing the Empire Group, owners of the property. Mr. Gilbert stated on tonight's agenda is site plan approval only. He stated they have been working with staff for 18 months attempting to resolve these issues that Staff has mentioned. Mr. Gilbert introduced Felipe Zubia with his firm and owners Jeff Jacobs, Bill Oliver, and Mike Wolfe. He stated they disagree with Staff related to the zoning, however, the zoning isn't relevant tonight so he stated he would move forward. He stated the only applicable part of the Specific Plan that applies to this property is 5B3 as he indicated on the illustration for the Planning Commission. Mr. Gilbert continued by explaining the well site would be relocated to the back of the site. He stated they have attempted to accommodate major requests on behalf of the Staff. He explained pedestrian friendly walkways have been included. He said in addition to the changes made to date, access point two was a full movement, but they have agreed to restrict the left-out movement. This should address the Staff's concern. Mr. Gilbert explained that cross access and decal lanes would be provided. He said they had met with Staff regarding the elevation stipulations and to date, no comments have been received from Staff. Mr. Gilbert reviewed the changes they proposed. Mr. Gilbert explained there were four discretionary measures proposed by Staff. He said three of the four have been met. Mr. Gilbert stated he was available for questions.

Commissioner Grimsley asked the applicant for a copy of the responses provided to Staff. Mr. Gilbert supplied the Commissioners with copies.

Ms. Dawn Cartier, 8590 East Shea Boulevard, stated they did the traffic study for the proposed project. Ms. Cartier addressed each Staff concern as it relates to the traffic study.

Commissioner Iwanski asked where product would be unloaded on the property. Ms. Cartier stated the main entry access points would be access C, which is full access. She indicated where this access is located. He said 18 months of working with Staff is unacceptable and he hopes to get this project moving.

Commissioner Alcorn stated he was concerned about the existing traffic. He was concerned with the restrictions placed on those delivering product stating the turns through the parking lot may be difficult.

Mr. Dan Jolly, K&I Architects, explained the delivery truck movement stating they would access the site from Van Buren Street. He indicated the truck path.

Commissioner Meringer stated he is familiar with the property and likes the proposal. He feels this is appropriate and needed in the City of Avondale.

Commissioner Alcorn stated he also likes the proposal.

Commissioner Iwanski clarified the applicant is requesting site plan approval. Mr. Gilbert stated yes.

Chairperson Lageschulte questioned what type of business would be located on the corner property. Mr. Gilbert stated the tenant has not yet been determined and he added they must return before the Planning Commission on issues related to that particular corner.

Ms. Linda Page Hanna, 12201 South 122nd Drive, Coldwater Springs, stated she has a solution to the office area not conforming with the remainder of the property. Ms. Hanna added she is an interior design and owns her own business. She provided the Planning commission with her ideas of color.

Commissioner Iwanski asked for Staff guidance. Mr. Wilken explained Staff would need ample time to create stipulations for the Planning Commission's recommendation.

Mr. Gilbert stated there is ample time to work out the items of concern prior to City Council hearing.

Chairperson Lageschulte closed the public hearing.

Commissioner Iwanski MADE a MOTION to recommend approval of the Site Plan subject to Staff and the Applicant agreeing to stipulations prior to City Council hearing. Commissioner Meringer SECONDED the MOTION.

Commissioner Iwanski was hopeful that staff and the applicant could work out all of the concerns discussed this evening.

Commissioner Grimsley asked if the motion was too vague. Mr. Wilken said yes. Staff would need more clarification from the Commission.

Commissioner Webster felt 18 months was quite a long time for this item to be brought before the Planning Commission; however, approval and construction of a project will last a lifetime.

Chairperson Lageschulte was concerned of losing the proposal entirely.

Commissioner Iwanski AMENDED HIS MOTION that Staff approve the Site Plan with the exception of the Lot 7 parcel and that at a minimum the following stipulations be included: 1) that sufficient turning radius for trucks be provided; 2) that on site striping and signage to enhance traffic flow be required; 3) with regard to the Jack in the Box restaurant the off set 140 feet; 4) that the relocation of the well be no more than 660 from the existing site; 5) the architecture for the commercial portion of the project be similar but not identical to the architecture required for the office component of the project; and 6) that the traffic engineering concerns will be adequately addressed.

Mr. Gilbert stated he was agreeable to the previous stipulation regarding the traffic issue and felt it was adequately addressed. He said the City staff has not responded to their letter of concern.

Commissioner Iwanski withdrew stipulation #6. Mr. Gilbert stated he agreed to work with city staff related to these issues.

Commissioner Meringer SECONDED the MOTION.

Chairperson Lageschulte called for a roll call vote and the motion passed by a vote of 5 to 1 with Commissioner Webster voting nay.

EXHIBIT H

Excerpt of the Draft Minutes of the regular City Council meeting held April 16, 2007 at 7:00 p.m. in the Council Chambers.

MEMBERS PRESENT

Mayor Lopez-Rogers and Council Members

Chuck Wolf, Vice Mayor
Jim Buster
Frank Scott
Ken Weise
Jason Earp
Betty Lynch

ALSO PRESENT

Charlie McClendon, City Manager
Andrew McGuire, City Attorney
David Fitzhugh, Assistant City Manager
Pastor Jim Richard, New Day Worship Services
Ken Galica, Planner II, Development Services Department
Brian Berndt, Development Services Director
Paul Gilbert, Beus Gilbert
Dawn Cartier, Civtech Traffic Engineers
Eric Morgan, Planner II, Development Services
Scott Wilken, Senior Planner, Development Services
Linda Farris, City Clerk

APPLICATION DR-06-8

APPLICANT Mr. Daniel Jolley, K&I Architects
1850 N. Central, Suite 200, Phoenix, Arizona 85004

REQUEST The applicant is requesting master site plan approval for Coldwater Springs Promenade. This property is located at the southwest corner of Avondale Boulevard and Van Buren Street. Staff Contact: Scott Wilken (623) 333-4016.

The Council will consider a request for Master Site plan approval for Coldwater Springs Promenade and Final Site Plan approval for Major A, Shops B-D, Pad 1, Pad 6, and Office A-G. The Council will take appropriate action.

Charlie McClendon, City Manager, introduced Brian Berndt, Development Services Director, to present the item.

Brian Berndt, Development Services Director, described the property as the southwest corner of Avondale Boulevard and Van Buren Street and he pointed out the zoning categories and described the land uses of the area. Mr. Berndt then showed the site plan and the landscaping plan to Council and described them in detail. He then described the architectural details of the proposed buildings in the plan. Mr. Berndt relayed to the Council that this plan had struggled from its inception with City Staff and has had three complete reviews, and the applicant has requested that this plan be placed on the agenda to be heard without full Staff support. He covered the outstanding issues for Council to include: Unresolved traffic life/safety comments; PAD 5 (Lot 7) is not shown as part of this proposal; Zoning Ordinance allows for additional requirements for projects at major intersections to include wider setbacks, unique building orientation and building design, and buildings along the streets need to be revised to meet these requirements; and the office buildings are required to use the same architectural style as the rest of the shopping center, and that Staff feels that the office buildings proposed fail in comparison to the other proposed retail buildings in the plan and that more attention needs to be paid to detail in the proposed office buildings. Mr. Berndt stated the findings by Staff were that it does meet the objectives of the General Plan; it is in conformance with the Coldwater Springs PAD zoning, and based on the unresolved traffic and zoning issues, it is not in conformance with the City of Avondale Zoning Ordinance. He informed Council that Staff recommends denial of the proposed site plan for Coldwater Springs Promenade; however, the Planning Commission approved the site plan with the exception of PAD 5 (Lot 7) with the following stipulations: Sufficient turning radii for trucks be provided; on-site striping and signage shall be provided; Jack-in-the-Box offset shall be 140'; relocation of the well site shall be within 660' of the site; and the architecture of the office shall be similar, but not identical, to the commercial portions of the project. Mr. Berndt explained that due to the fact that Staff presented this plan to the Planning Commission with the recommendation of denial, Staff did not prepare any formal stipulations, but is introducing 17 stipulations, three of which he outlined for Council: The final site plan for PADS 2-5 and Shops F shall be reviewed and approved by the Planning Division prior to the issuance of a building permit; if a building permit has not been issued for PAD 5 before the adoption of the Avondale City Center Area Plan, PAD 5 shall be subject to the design guidelines of the Area Plan; and the water feature at the northeast corner of the site shall be constructed as part of the first phase of development. He revealed that Staff had two further stipulations to introduce tonight to include cross access for the driveways to the south of the property, and that the project will be required to contribute 50 percent towards the cost of a proposed traffic signal at Access A.

Council Member Weise asked had there been any discussion of a sit-down restaurant in the Plan.

Mr. Berndt responded there was no discussion of a sit-down restaurant in the Plan.

Council Member Weise stated he had asked because there is no sit-down, family restaurant in the area and he wondered if the thought was that the area would not support a sit-down restaurant.

Mr. Berndt replied the beauty of the plan was there was an opportunity for a sit-down family restaurant, as the final site plan on a number of the sites could still be designed to accommodate a use of that nature.

Council Member Lynch stated she is uncomfortable with Administrative Approval, as the staff is fairly new in the Planning Department and Council needs to get used to them before they move for Administrative Approval. Council Member Lynch stated, if Council agrees with her, she would like an additional stipulation so that the site plans come back to Council for approval. She then inquired what the developer's plans were for public art at the site.

Mr. Berndt stated when Paul Gilbert, Beus Gilbert, spoke to Council, he would answer that question.

Mayor Lopez-Rogers stated she had a request to speak from Benton Gaines.

Mr. Benton Gaines, 4234 E. Shangri-La, Phoenix, Arizona, stated he would like to commend the Staff, City Council, and the applicant on the project submittal. He stated he is the adjacent property owner to the south of the site and he is concerned with access and safety. Mr. Gaines suggested an Amendment to Stipulation 4 of Agenda Item 6 to remove ambiguity and address a potential public safety issue. Mr. Gaines stated he would like the stipulation to read that the 'Final site plan approval for PADS 2-5, Shops F, and the driveway curb cut east of Shops F and the cross access easements between Coldwater Springs Promenade and the property to the south shall be subject to review by the Planning Commission, the Planning Division, and final approval by City Council prior to issuance of the building permit.' Mr. Gaines stated the reasons for the change in language from the Staff report are that: 1) The cross access easements are not yet documented, and the curb cut access point east of Shop F he believes is unsafe, as it does not approve enough room for stacking of cars entering and exiting the Coldwater Springs Promenade development via Avondale Blvd. 2) The traffic pattern per the design creates a conflict with cars turning into the property from Avondale Blvd. with cars wishing to proceed south along the cross access easement. 3) The western most southern cross access point, moving along the rear of Major A heading north-south, is unacceptable.

Paul Gilbert, Beus Gilbert, 4800 N. Scottsdale Road, stated Felipe Zubia would be assisting him with the presentation. Mr. Gilbert stated his firm had been working on the project for 18 months and were very frustrated. He stated his firm owns two parcels and recognizes these are strategic parcels for development for Avondale. Mr. Gilbert stated they have tried to work with the City Staff and want to be good neighbors. He then introduced the team, Jeff from Empire Commercial and Residential Realty; the architect, Dan Jolley with K&I Architects; and the traffic engineer, Dawn Cartier with Civtech Traffic Engineers. He reminded Council that they are in compliance with the General Plan, they are in conformance with the Specific Plan, and are in compliance with the PAD zoning. He stated almost every disagreement tonight is not an Ordinance

requirement, but an opinion where there is a disagreement between their traffic engineer, Dawn Cartier, and the City traffic engineers. He stated Staff has pointed out they are not in conformance with the Ordinance in two sections, the first being that the project shall accommodate the necessary adjacent rights-of-way as determined by the City Engineer. Mr. Gilbert stated they disagree with Staff on this issue and it is only a point that only zoning attorneys would quibble over and it is their view that the immediate corner is Zone C-3 rather than C-2. He stated the major tenants thus far are Staples, Jack-in-the-Box, M&I Bank, Tesco Fresh & Easy and over 40,000 square feet of office space. Mr. Gilbert stated Staff is criticizing the applicant for not including the PAD 5 (Lot 7), and stated they do not have a current user for that PAD because the user they had, Circle K, Council did not want, and they will bring that site plan before Council when they have a user. Mr. Gilbert stated they have made many changes to accommodate the City and listed those changes for Council. He added they had made the property very pedestrian friendly as well and stated a corner monument planned had been greatly enhanced with regard to the inclusion of public art in development. Mr. Gilbert stated architectural treatment is present on all sides of the buildings and he described the architectural features of the development. He then discussed the fact that the Planning Commission has recommended approval with five stipulations, and they are in agreement with all five stipulations, and he described their efforts to conform to the Planning Commission's stipulations. He then described the traffic circulation of the site plan for Council and stated they agree to the additional stipulations presented tonight on traffic circulation and will conform. Mr. Gilbert pointed out Zoning Ordinance Section 106.C.2 and stated they take vigorous umbrage that their site plan does not conform to this Zoning Ordinance as their proposed circulation does not conflict with any Ordinance requirement and presents no health or safety issues. He then turned the presentation over to Dawn Cartier, Traffic Engineer of Civtech.

Dawn Cartier, Traffic Engineer with Civtech Traffic Engineers, covered the history of the traffic engineering site plan.

Paul Gilbert, Beus Gilbert, interjected that there was no reference in the Staff report to Council of the latest detailed response from Civtech Traffic Engineers.

Dawn Cartier continued her presentation, stating their detailed response to Staff on the disagreement with traffic engineering aspects of the project was included in a packet provided to Council tonight and she is available for questions.

Mayor Lopez-Rogers interjected that Council would take a few minutes to read the detailed response to City Staff from Civtech Traffic Engineers. She asked if the City's traffic engineer, Kelly La Rosa, Traffic Engineering Department, had seen this latest report.

Charlie McClendon, City Manager, reported that Kelly La Rosa was on vacation at the time the report had been submitted.

Mayor Lopez-Rogers inquired if Dave Fitzhugh had a copy of the report from Civtech Traffic Engineers.

Dave Fitzhugh, Interim Development Services Director, Assistant City Manager, stated he had reviewed the report from Civtech Traffic Engineers.

Mayor Lopez-Rogers asked if Mr. Fitzhugh had any comments about the report from Civtech.

Mr. Fitzhugh responded that based on his review of Ms. La Rosa's comments dated March 20, 2007 and the response dated April 3, 2007, he did not know if the difference in opinion between the two professional traffic engineers had been resolved. He further stated his interpretation of the response from Civtech stated a revision of the required storage lane and various location and access points on the property, but did not change the fact that there are intersecting access points within the storage lane on site, and Civtech's advice was that they add signage or paint advisories on the pavement to address the concerns about conflicting traffic movements. Mr. Fitzhugh revealed his interpretation of this response from Civtech was that it was no different from their previous response.

Vice Mayor Wolf stated with respect to peak hour, it was his understanding that it needs to work under peak hour conditions and he is confused with the calculations and the responses given that it is an acceptable design condition because we only fail at peak hours. He asked for an explanation of that statement.

Ms. Cartier responded in these cases the plan does not fail at peak hour and that's where the difference of opinion comes in. She stated the opinion of the City Engineer is that by having the drive aisles within the stacking distance, it null and voids the stacking distance, and in their opinion that because drive aisles intersect does not mean that cars cannot stack there. She added the concern on the City's side was that cars would block the intersection preventing vehicles from turning in as they ingress, so they had requested the side access points be sealed off. Ms. Cartier stated they proposed to paint and sign with "Do Not Block Intersection" and that should adequately perform.

Vice Mayor Wolf asked if such markings were enforceable by the police department.

Ms. Cartier responded she could not answer that question, but it was on private property.

Vice Mayor Wolf asked Chief Kotsur, Avondale Police Department, if the Police Department could enforce no blocking aisles on private property.

Chief Kotsur responded no, they could not enforce the no blocking of aisles on private property.

Mr. Gilbert interjected they would have Covenants, Conditions, and Restrictions (CC&Rs) on the property with strict enforcement provisions to make sure the no blocking of aisles was enforced. He added it was in the tenants' interest to make the traffic flow.

Vice Mayor Wolf asked how would the CC&Rs be enforced and who would be penalized.

Mr. Gilbert responded that if necessary they could hire an off duty policeman or a security guard to control the traffic. He added all of the tenants have signed off and agreed with the site plan. He stated they will have an association of property owners who will be the ones to enforce the no blocking of aisles.

Vice Mayor Wolf asked if Staff was to add a stipulation that would require the use of traffic control via a security guard or other method, would Mr. Gilbert be fine with that.

Mr. Gilbert responded he would be cheerfully willing to accept that stipulation.

Vice Mayor Wolf stated if one could avoid something and not make it an operational issue, that seemed to be the best way to do it. He stated he has not heard tonight that there are physical constraints on the site that could be re-worked or modified to avoid the physical constraints at the intersections. He asked what is the actual creation of the physical constraint that gives the plan a less than desirable condition if ultimately there would be people controlling traffic on the site.

Mr. Gilbert stated the reason he would cheerfully accept a stipulation that would require the use of traffic control via a security guard or other method is because he does not think it will ever be necessary. He stated he has full confidence in Dawn Cartier, Traffic Engineer.

Ms. Cartier stated before they made the recommendation they had visited a couple of sites that have the stripes and, "Do Not Block Intersection" painted, and they were impressed with the level of compliance they saw. She then responded to Vice Mayor Wolf's question regarding the physical constraints on the property, stating that one constraint was the shape of the property and another was that they had been asked to eliminate many of their full access points and now had full access only at access Point A. Ms. Cartier stated if they are restricted in the connections they can provide elsewhere, they put all of the traffic from the PADs into one aisle and one location right in front of the building right where pedestrians would cross, and she would like to keep them further away from there.

Council Member Weise stated Ms. Cartier had mentioned MUTCD (Manuel on Uniform Traffic Control Devices) as the guidepost for the traffic control systems they intend to put into place on this private piece of property. He asked if MUTCD was designed for public roads and highways and not private property.

Ms. Cartier confirmed the MUTCD was for public roads and streets. She stated there is no compliance document for private development or private streets, so the MUTCD was often used for private and public roads and highways.

Council Member Weise inquired if the MUTCD allowed for an official interpretation from a governing body.

Ms. Cartier stated she has never had to write the Federal Highway Administration for specific guidance and she is not sure if they had someone available to answer specific questions.

Council Member Weise gave an example from the MUTCD web site which states an interpretation may be sought as a free service.

Council Member Lynch stated she agrees with Vice Mayor Wolf. She inquired what was the difference between Points, A, B, and E.

Ms. Cartier replied Points A, B, and E were in the exhibit handed to Council tonight, which contained an exhibit of the site plan and shows the distances between all of the access points. She clarified there was currently 478 feet between Access Point A and Access Point B.

Council Member Lynch asked if when they had studied other locations with signs that said "Do Not Block Driveway," had those locations been in Avondale.

Ms. Cartier replied the study was not performed in Avondale.

Council Member Lynch commented that Van Buren was a busy street in Avondale and because it has a problem with vehicles blocking the driveway, the City has put up signs that say "Please Do Not Block Driveway," and she can guarantee those signs are never complied with. Council Member Lynch continued, stating traffic was three lanes wide there and someone in the third lane could not see the sign if a truck was in the way, and the truck driver would say he did not have time to worry about not blocking the driveway. She stated the merchants in that location say they do not want to upset their customers by telling them not to block the driveway, and the traffic coming out of that location cannot get out because the sign is not working. Council Member Lynch asked why the sign would work in this location on Van Buren when a mile down the road it is not working.

Ms. Cartier asked for clarification that there was a specific sign on Van Buren that said "Do Not Block Driveway," and on receiving clarification she responded there was only one lane, so there were no concerns about traffic seeing the signage from either direction. Ms. Cartier stated she would need to look at the area Council Member Lynch had commented on.

Council Member Lynch stated there was a large, legal sign stating "Do Not Block the Driveway."

Ms. Cartier inquired if such directions were painted on the pavement indicating the area to not block.

Council Member Lynch replied, no, the street was not painted with directions, and there was also a question of enforceability.

Ms. Cartier pointed out another exhibit in the package that shows the MUTCD guidance on providing the striping and indicated it would be a big white box that would line up in front of the driveway.

Council Member Lynch responded it seemed that the applicant was spending a lot of time and effort to get around doing what the City's traffic engineer is asking for and inquired why they were taking that approach.

Mr. Gilbert responded that the changes he had articulated before showed their willingness to work with the City and it seems to him that working with the City is two-sided. He declared that working with the City does not mean accepting everything that the City's traffic engineer says when it differs from what their own traffic engineers says. Mr. Gilbert added that the tenants have reviewed the site plan and stated they are comfortable with the plan.

Council Member Lynch stated she agrees that working with the City's traffic engineer does not mean having to agree with everything the traffic engineer puts forth, but they were proposing to paint up the whole street just to avoid doing what the City's traffic engineer was asking them to do. She inquired who would maintain the striping and continued on that she did not believe the consumer in general would pay attention to the striping directions. She added that having the expense of security people to maintain control of the traffic did not make sense to her.

Mr. Gilbert stated they would hire the security people if their traffic engineer's plan does not work, but they are not planning on doing that because they have an opinion of a very experienced traffic engineer, and the tenants say it will work.

Ms. Cartier clarified the striping would be on the driveway on the private property only and there would be no restriction in the street area, as it would not go past the signalized area at Van Buren and Avondale and they were not trying to do anything within the public right-of-way.

Council Member Lynch replied that was the point she had wanted Ms. Cartier to make, that the applicant was not putting any traffic directions on the street, and the City had tried putting signage on the street and the public was not paying attention to it. She reiterated that Chief Kotsur had stated the Police Department cannot enforce traffic

control on private property; therefore, the street and the entrance would be blocked by the cars trying to pass by, and the cars coming out would not be able to exit.

Ms. Cartier replied there were several other patterns for vehicles to take should they wish to exit and she believes the City will have a higher level of compliance in this location because this was a single road intersection. She stated she would understand if Staff made stipulations on maintenance of the paint.

Council Member Lynch stated if someone wanted to leave the site and go east on Van Buren, they would have to make sure they were at the right driveway, and there were so many limitations on traffic she did not see the traffic plan working. She suggested Ms. Cartier visit the intersection of Dysart Road and Van Buren by the Walgreen's.

Ms. Cartier replied she would visit that intersection.

Council Member Scott stated his main concern was the practical use. He stated he has a parking lot as a business and his patrons did not follow instructions, and in his opinion, people would not comply at this location either. He commented the City has red light cameras because people do not stop at red lights, and he asked if Ms. Cartier thought people would pay attention to a white stripe on the pavement with no penalty for not complying. He added the business across the street from his business has the same problem as this location would have, and that business has a problem with cars backing up onto Van Buren. Council Member Scott stated he believed this was a valid concern regardless of the MUTCD manual guidance. He reiterated he could not see public compliance occurring on private property.

Vice Mayor Wolf stated he had noticed on Exhibit 1 in the packet handout that trucks were depicted utilizing the entirety of the usable drive aisle space. He stated this condition would create a significant problem at peak hour and there were already a couple of shopping centers in the area that prove this on a daily basis. Vice Mayor Wolf stated it almost seemed there were too many PADs on the site and removing one or two of them from the site plan would have given more flexibility from a traffic engineering perspective. He stated he believed there would be health and safety problems if there were truck deliveries during business hours. He then added that another reasonable stipulation would be that deliveries are required to be before or after business hours, but not be in the middle of the night.

Mr. Gilbert responded they had considered that alternative themselves, but they do not think it is necessary. However, he added if Council thought such a stipulation was necessary, they would be willing to agree to restrictive delivery times.

Vice Mayor Wolf continued, stating that the one turning movement off of Point A into the main drive aisle really bothers him, especially since it was landscaped on both sides.

Ms. Cartier added the study was done with a WB-65 vehicle, a very large truck not typical for deliveries, but they had wanted to make sure that should something that big come into the site, that it would work.

Council Member Weise asked if Shop F would have outside seating.

Mr. Gilbert confirmed that Shop F would have outside seating.

Council Member Weise asked would that be a coffee shop or something along that line, or outside seating for the sake of having it.

Mr. Gilbert replied it was not a coffee shop, but they were providing outside dining; although, they did not have a tenant currently. He reminded Council that they own the property to the north and that is where they will really be providing outside dining.

Council Member Weise stated he was looking forward to a shopping center on this parcel. He stated he would like to see a sit-down restaurant in this shopping center and asked again if thought was put into having a sit-down restaurant on this site.

Mr. Gilbert replied they were working on getting a sit-down restaurant now and if they do not get it on this site, they are going to have it in perfusion on the site to the north. He added there was no gas station for a mile and a half and a lot of citizens were commenting they would like a gas station there.

Council Member Weise replied there was a gas station on Avondale Blvd. and McDowell, a mile from the site, and that was okay with him because he eats more often than he buys gas.

Council Member Lynch asked Chief Adams, Avondale Fire Department, if he had studied the turning pattern for the site because she would like to know if there was a fire in the south area of the parcel during rush hour, could the Fire Department get their trucks into the area. She continued, stating she would like to see a stipulation with regard to the times sanitation and delivery trucks can enter the property. Council Member Lynch asked Brian Berndt, Development Services Director, if he was comfortable with 12 feet of landscaping between the parking area and the homes in the area.

Brian Berndt, Development Services Director, stated with the six foot wall that exists, Staff would be satisfied with the 12 feet of landscaping.

Council Member Lynch inquired where a Tesco Fresh & Easy was open in Arizona.

Mr. Gilbert responded he knew how nice they were inside because he had seen the complete layout and the pictures, which he has used at hearings.

Council Member Earp commented he was glad to hear that the office architecture would be changed to match the commercial architecture. He asked if Council approved the site plan, but later on the applicant came in with an undesirable business for Avondale Blvd., how would that work. He stated Council had been working to make Avondale Blvd. higher than high quality for the future. He asked Andrew McGuire, City Attorney, what was his legal advice for PAD 5.

Andrew McGuire, City Attorney, responded that currently the way the Staff stipulations are written, it is required that PAD 5, along with PADs 2, 3, and 4 and Shops F, all come back for Planning Division review and approval and then bring the site plans back to Council, as Council Member Lynch had suggested, which probably would solve Council Member Earp's concern about future use of PAD 5. Mr. McGuire stated that if Council Member Lynch moves an amendment to that effect regarding Stipulation No. 4, that would alleviate that problem; however, another stipulation has been recommended for No. 4 that may or may not impact that and they would have to be careful with the wording.

Mr. Gilbert responded they are willing to accept such a stipulation and with having the site plan come back before Council when the future use of PAD 5, PADs 2, 3, and 4, and Shop F is determined. He stated to not let the Master Site Plan go forward would be a vindication of his classic statement when dealing with zoning cases, that no good deed goes unpunished. Mr. Gilbert reminded Council the applicant had lost their tenant for PAD 5, and to hold up the whole project while there is no legal restriction on a gas station at that location, he does not believe is fair.

Council Member Earp responded he understood Mr. Gilbert's point, but he does not think a gas station is a higher than high quality tenant.

Mr. Gilbert responded it was a design stipulation, not a use stipulation, and the applicant could have come in with a very high quality Circle K design and such use was permitted at that corner.

Council Member Earp reiterated that his point was high quality and he did not think a gas station is high quality, even if it was an allowed use.

Vice Mayor Wolf stated most of what he had heard this evening is that the standard of care is a pretty, but minimum, standard to comply with the law, and when Council had discussed this with the applicant over a year ago, it was made clear that a minimum standard of compliance was not the target of the City. He stated he appreciates that Circle K has been removed from consideration because it does not fit the Council's vision. Vice Mayor Wolf reiterated his concern that the focus of the applicant was the minimum standard allowed by the law, and his expectation from what he saw in the site plan proposal was higher than what he had seen tonight. He commented he had a higher expectation of certain firms than others and he did not consider the applicant in the lower tier of the firms, and from that perspective, his expectations had not been met. He stated

there were items in the presentation that showed exquisite renderings of what the property could look like, and they should have been in the packet provided to Council. Vice Mayor Wolf continued, stating more thought should have been given to how the site would work as a whole and how the buildings would be laid out. He voiced his concern the City would take a great detriment in terms of their future plans for the City if Council cannot finalize items that should have been in the packet provided to Council this evening. He continued on with his concern about the office buildings, that the updated plans shown in the presentation were not the ones in the packet given to Council and they were no where near meeting the level of expectation. Vice Mayor Wolf stated his expectations were that Council should have an opportunity to see the actual site plan proposal in its entirety.

Mr. Gilbert responded they had provided the additional plans to City Staff on April 3, 2007.

Vice Mayor Wolf, upon viewing the exhibit left out of his packet, stated it was closer to his expectations on the office buildings. He asked if the architect for the building was still Smith Group or was it K&I.

Mr. Gilbert responded the architect was still Smith Group.

Vice Mayor Wolf inquired if the color palettes would be fully coordinated.

Mr. Gilbert responded the color palettes would be identical.

Vice Mayor Wolf asked Ms. Cartier if she was comfortable that the turning movement at Point E allows for proper left-hand turning movements. He stated his concern was that left-hand turn vehicles would have to cross three lanes of traffic to enter the property, as it appears the distance between Shop F and entrance Access E puts the left-hand turning movements into a bind.

Ms. Cartier responded it was their desire to continue the drive aisle straight in front of Shop F and intersect with 115th Avenue or Avondale Blvd.; however, City Staff restricted them from doing that because they wanted this access point at 660'. She stated there was also a desire to have cross access to the south, but the property owner to the south had requested additional stipulations. She further commented the eastern most cross access point they could take or leave. Ms. Cartier finished, stating that they were working within the constraints they had been given.

Vice Mayor Wolf asked Brian Berndt, Development Services Director, if the cross access aisles were more dictated by the orientation and location of Shop F or was there a burning desire with respect to the east access aisle that it be located at that particular spot.

Mr. Berndt, Development Services Director, responded it was primarily the location of Shop F.

Vice Mayor Wolf stated that entrance was weird to him and asked if the developers were to rebuild the median break, was there a legal restraint that would preclude the City from moving the median 40 feet. He also commented he would remove some of the parking spaces, as they made it very dangerous for the turning movements.

Dave Fitzhugh, Interim Development Services Director, Assistant City Manager, stated that he was uncomfortable with traffic engineering off the cuff in terms of geometric design. He stated he was reluctant to shorten the storage for future development to properties to the east, and that by moving the median 40 feet north, it would impact the storage capacity of the southbound to eastbound left turn. Mr. Fitzhugh stated what he could tell Council was that in the future that particular property to the east intends to have some form of commercial development and he did not think it was a good idea to minimize or restrict the capacity of that left turn. He stated from a Staff perspective, it was a very convoluted intersection. Mr. Fitzhugh stated that at best regarding truck entrance, trucks enter at Point A and wind behind the shops, go between Shop F and exit onto Avondale Blvd. as a route, so with a WB-65 truck wanting to make a left turn, there would be a lot of activity going on.

Vice Mayor Wolf asked what could be done to fix the problem.

Mr. Fitzhugh responded there was the option of moving some PADs around, changing the parking field, etc. He deferred to Brian Berndt and his staff to work with the applicant to try to improve that access point.

Vice Mayor Wolf stated they could probably overcome other points of differences via stipulations of access and maintenance, but Point E is problematic for him and he believes the City can figure out something better than the current plan. He stated access Point B in essence precludes any additional access to the north parcel of property and asked would that create negative impact on that development.

Ms. Cartier responded they had done trip generation for the parcel to the north and assumed the entire property was a shopping center, and their study shows that the stacking length does work because this is a bigger parcel than the one to the south. She continued on, stating that access Point A with the signalized intersection and the left-in at that location would be higher use because it would be the first left that people will approach. Ms. Cartier explained on their traffic analysis of vehicles entering the property, they had split the traffic 50-50 between the two properties to make sure stacking lengths were adequate. She commented they had also looked at what happens when they tie signals A and the signal at Avondale Blvd. and Van Buren together, and the timing of the signals would be synchronized and interconnected, which would provide nice gaps for traffic to turn left at access Point B, which should eliminate concern about customers turning left into the site.

Vice Mayor Wolf asked if Mr. Gilbert would like approval tonight.

Mr. Gilbert responded yes, the applicant would like approval tonight, but would like approval with stipulations they can live with as well.

Vice Mayor Wolf stated as a professional civil engineer he is uncomfortable with entry E and the only way he could approve the plan this evening is if there was at the least a stipulation that would say that there be modifications made to that entrance suitable to the City and the owner, and/or the City should have a sealed letter on file from Ms. Cartier stating she believes that the entrance is acceptable and will perform as necessary for use of the shopping center.

Ms. Cartier stated they could write that letter as she is comfortable that entry E will work in its current state. It stated her first option was to reconstruct the median and she would be happier with that stipulation.

Vice Mayor Wolf replied that stipulation would be one of the recommendations he makes to Council tonight.

Council Member Lynch asked Chief Adams, Avondale Fire Department, if he had a chance to review the traffic pattern.

Chief Adams stated that shopping centers of this type were difficult for fire departments on the best of days. He stated it appeared that the turning radii configurations planned would work. Chief Adams stated the practical problem he sees is the site is very confusing as the access lines do not line up, and getting from point A to point B he believes will be a very confusing process for the Fire Department, as well as for the customers.

Council Member Lynch stated her concern was if the Fire Department was trying to access the property, customers would be confused.

Chief Adams responded that was his concern, just briefly looking at the layout of the plan, was the flow was not a straight line type of configuration and could prove challenging.

Council Member Lynch asked Mr. Gilbert if the Planning Commission had seen this latest design submitted.

Mr. Gilbert stated he assumed the Planning Commission had seen the design.

Council Member Lynch asked if the Planning Commission had seen the design, why did they ask for Stipulation No. 5, "The architecture of the commercial shall be similar, but not identical, to the office," and Mr. Gilbert had not objected to that stipulation.

Mr. Gilbert responded he had misunderstood, the Planning Commission had not seen the latest design drawings. He clarified they had submitted the drawing in satisfaction of Stipulation No. 5 of the Planning Commission.

Council Member Weise asked how many parking spaces were required for the development.

Mr. Berndt responded approximately 640, and there were 919.

Council Member Weise asked why there were so many more spaces added to the parcel, and if some parking spaces could be eliminated, would that not help traffic flow.

Mr. Gilbert responded that Tesco Fresh & Easy requires 75 parking spaces and Staples requires 100, and they are focused on providing some restaurants which will also require additional parking, and that is why they have 919 parking spaces. Mr. Gilbert stated they are concerned with Stipulation No. 12, which states that if a building permit has not been issued for PAD 5 before the adoption of the Avondale City Center Area Plan, PAD 5 shall be subject to the design guidelines of the Area Plan. Mr. Gilbert stated they would like to modify that slightly to say if they do not have site plan approval before the City Center Area Plan, then PAD 5 will be subject to the design guidelines of the Area Plan. He stated it would be difficult for them to come in and process a site plan and attain all the approvals, then have the City change the plan, and then they would have to comply with the new plan. He stated they are in full agreement with the other 16 stipulations.

Vice Mayor Wolf stated he felt there was not that significant an issue with Stipulation No. 12 since the City Center Specific Plan is going to deal with site utilization, site use and site planning on Avondale Blvd., and then the building performance guidelines falling within that. He asked for Council's opinion on changing the wording in Stipulation No. 12 from "building permit" to "site plan."

Mr. Berndt stated Staff had wanted a timing stipulation that would be an incentive to create follow-through; however, with the way the City Center is progressing, it would be a logical extension of PAD 5 to be designed in accordance with the City Center. He stated whichever way the City Council felt more comfortable, Staff could agree to either. He stated the site plan being revised prior to issuance of a building permit was just a matter of preference for Staff.

Council Member Lynch stated she agrees with Staff on Stipulation No. 12 as it is the only hope the City has for the project to be what the City is looking for in the gateway to Avondale. She stated 18 months working with Staff on a development of this type and size was not a long time. Council Member Lynch stated nice developments had already been approved to the north and she would not like to see that lost because this development does not tie in with the Council's vision on that stretch of roadway. She stated for her approval she needed to see Stipulation No. 12 left as is.

Mr. Gilbert responded that 18 months for a 20 acre parcel is a long time. He stated the City controls the site plan on PAD 5, so if the City approves something, they ought to stick with it. Mr. Gilbert stated they have agreed to bring it back to the City Council, and it would be unfair for Council to come back a few months later with a changed mind after they have gone through the entire approval process.

Vice Mayor Wolf suggested in an effort to have everybody on the same page, that when the PAD 5 plan comes back in, if the City is utilizing a standard it knows will be put in force, there is agreement that is the standard the City will be using. He continued on stating the discussion tonight has focused on what is the current standard of care. Vice Mayor Wolf stated it should be on the record that everyone is in agreement that all will deal with what the City is trying to accomplish, as opposed to what was put in place 10 or 15 years ago.

Mr. Gilbert declared that was all the more reason why Stipulation No. 12 needed to be changed.

Vice Mayor Wolf asked if it was correct that Council is still considering incorporation of the Planning Commission's recommended 5 stipulations, plus the 17 stipulations discussed by Staff tonight as amended, however they are amended.

Mr. Berndt responded that is correct, with the addition of the two stipulations introduced tonight, the cross access and the traffic signal split payment.

Mr. Gilbert interjected they were in agreement with the cross access and traffic signal payment stipulations.

Vice Mayor Wolf then proposed for Council consideration of additional stipulations added to the 17 stipulations presented by Staff: No. 18. Coordination with the property owner to the south and Staff as necessary to incorporate at least one cross access point. No. 19. That the applicant would share 50 percent of the cost for the stop light at access Point A. No. 20. Hours of delivery and sanitation pickup would be restricted. No. 21. Office buildings will be of the character presented in the packet given to Council tonight. No. 22. Entrance E be modified in accordance with Staff input, input from the property owner to the south, and a sealed letter from the transportation engineer, Ms. Cartier, stating that the entrance will work for the use of the project before building permits are approved. He further recommended that Council modify any language in the stipulations that states "Staff approval" to state "Council approval" instead. He stated Stipulation No. 4 could remain as is if okay with the other property owner.

Mr. Benton Gaines stated as long as there are two portions of access, it was okay with him.

Vice Mayor Wolf then stated Stipulation No. 4 should require a minimum of two access points. He further recommended modifying Stipulation 12 to state "site plan approval" instead of "building permit."

Mr. Berndt added that Staff wants to make sure that on Stipulation 10, (final landscape plans shall be reviewed and approved by the Planning Division), that they still be reviewed by the Planning Division and not be included in the site plan review.

Council Member Lynch brought up another stipulation, that being the developer work with the Art Commission to provide a piece of public art for the site per the City Ordinance.

Vice Mayor Wolf agreed and stated those were all his additional recommendations and modifications.

Mr. Fitzhugh stated there are different business hours amongst the difference users in the project and he was not sure how to approach that from a Staff point of view as far as what to do regarding truck deliveries after business hours.

Vice Mayor Wolf stated Council needed discussion on what those hours should be. He suggested sanitation pickups could be 6 a.m. to 9 a.m. in the morning and 9 p.m. to 11 p.m. in the evenings.

Mr. Gilbert stated the stipulation was worded without reference to the size of the delivery trucks and he would like a definition of what is a semi-truck versus a 6 wheeler.

Mr. Berndt responded there was a consideration for a stipulation on the length of truck. He cautioned the Council that looking at where the service areas are, they are adjacent to the single family homes and Staff should be cognizant of the effects on their properties.

Vice Mayor Wolf suggested sanitation could be restricted to certain hours, but only restrict large delivery vehicles to other hours. He asked Ms. Cartier what recommendation she would make on the size of trucks to restrict to certain hours.

Ms. Cartier recommended anything 50 feet and larger be restricted and anything under that, the next lowest being 40 feet, could deliver during regular business hours.

Vice Mayor Wolf asked if 40 foot trucks could make the turning movements.

Ms. Cartier responded they have a dual axle and can turn easily.

Council Member Weise responded that to get a commercial driver's license, it was for a truck over 25,000 pounds and that is akin to 26 to 32 foot truck, such as a Staples delivery truck, and these trucks would be idling right behind residents' homes.

Vice Mayor Wolf asked if Mr. Berndt would be opposed to a stipulation that restricted delivery trucks larger than 30 feet in length from delivering between certain hours.

Mr. Berndt stated the issue was just enforceability.

Vice Mayor Wolf then recommended adding an enforcement stipulation stating that traffic will be operationally controlled if striping and/or delivery controls do not work.

Council Member Earp stated he did not want to go too small on the size of delivery trucks allowed.

Council Member Buster asked how close the residential homes were to the development.

Mr. Berndt responded there was a 66' setback of the commercials buildings from the residential buildings.

Council Member Buster asked if hours of delivery were restricted in other shopping centers in the area, and if so, what those hours were.

Charlie McClendon, City Manager, stated he needed more research before answering.

Council Member Buster stated he would like to know those hours and how close those facilities were to residential homes, and that Council needed to know for consistency purposes.

Mr. McClendon stated the City had placed restrictions on shopping centers regarding delivery times and sanitation service as a means to protect adjacent neighborhoods.

Council Member Buster stated Staff needed to be very consistent with the other areas.

Council Member Lynch asked for feedback on modeling the delivery hours after the Gold's Gym Shopping Center.

Mr. McClendon replied that for consistency purposes they could use the Gold's Gym model, but if those hours did not work, they would be stuck with them.

Vice Mayor Wolf asked how much time was needed to get numbers on the stipulations.

Mr. McClendon stated it was a question of Staff digging out the Gold's Gym file and finding the numbers, and that it should not be difficult.

Vice Mayor Wolf asked Mr. Gilbert if he would be comfortable with a stipulation on the size of trucks.

Mr. Gilbert responded that would be a difficult standard for the applicant to agree to tonight. He suggested Council could take a stab at it, and if it did not work, they could come back and ask for a modification.

Vice Mayor Wolf asked if this issue could be addressed at the Council Meeting on May 7, 2007.

Mr. Gilbert interjected they were in agreement with all the additional stipulations, except he was confused on the matter of Stipulation No. 11 and wanted to know if it stays in, as Stipulation No. 11 incorporates all eight requirements of the traffic engineer and 80 percent of the evening had been spent discussing No. 11.

Vice Mayor Wolf stated his personal opinion was if Staff has the stipulations that there will be traffic control provided and stipulations on the timing of deliveries, that then Stipulation No. 11 is somewhat adequately addressed. He stated this was another matter where the City should have a sealed letter on file from the traffic engineer, Ms. Cartier.

Mr. Gilbert stated they were fine with that. He added that Stipulation No. 1 says 80' of half street right-of-way is needed for Avondale Blvd. and they propose that 15 feet of that be in the landscaping.

Vice Mayor Wolf asked Brian Berndt, Development Services Director, what he thought about the 15' being in the landscaping. He asked if the City was looking at making Avondale Blvd. eight lanes.

Mr. Berndt responded the plan is that all major mile intersections include dual left lanes, a right turn lane and have a bus stop, and all of that totals about 160'.

Vice Mayor Wolf asked when this comment on item No. 1 had been submitted to Staff.

Mr. Berndt responded 3/20/07 was the last set of comments sent out and he does not see that 80' comment in the January comments.

Vice Mayor Wolf asked when Staff gave this comment.

Mr. Berndt responded the only information he has is that what Council sees in the packet is what was submitted April 3, 2007. He stated a lot of dates were floating around that did not correspond to what has happened, so he thinks it is unfair to answer the question without the City's traffic engineer present.

Mr. Fitzhugh added he thought the earliest date this particular traffic requirement was known to the developers was the date the traffic study was adopted, November 6, 2006, which implemented the wider intersection, dual left turn lanes and right turn lanes and bus stop. He stated the traffic engineer did require 65' of right-of-way on Avondale Blvd. and Van Buren to accommodate three through lanes in each direction, bike lanes and 8'

detached sidewalks, with the comment added that additional right-of-way will be needed for any turn lanes, deceleration lanes, transit stops, etc.

Vice Mayor Wolf asked if an additional 15' were taken out of the right-of-way, was the 65' incorporated.

Mr. Berndt stated the 65' was incorporated, and they had the deceleration lanes, and that they had dated that letter the very first date they were asked to provide the additional 15' in the memorandum of March 20, 2007.

Vice Mayor Wolf asked how much landscape buffer was left with 15' taken out.

Mr. Berndt replied there was 25' left of landscape buffer.

Vice Mayor Wolf stated he is not convinced that he has enough information tonight to be able to say that Council can confidently set stipulations, and he believes Council needs another week or two to work on the matter. He asked Mr. Gilbert what his thoughts were for meeting at the May 7, 2007 City Council meeting with stipulations in hand that Council can approve in relatively short order.

Mr. Berndt interjected that the stipulation for the delivery timing for Gold's Gym had been found and reads "Refuse pickup and service delivery shall be not permitted between the hours of 7 p.m. and 7 a.m." He stated if that was agreeable, Staff would incorporate that exact language.

Vice Mayor Wolf stated that would work for him because the deliveries were what concerned him.

Mr. Gilbert responded that the service deliveries may include small trucks, which would be precluded when they do not present a problem.

Vice Mayor Wolf clarified what Mr. Berndt was putting forth was simply the nighttime window to protect the neighbors.

Council Member Earp stated the delivery issue would require more discussion because sanitation could only pickup from 7 a.m. to 7 p.m., which would cause traffic problems.

Ms. Cartier stated there were times in the day when the shopping center was not operating at peak, and that might be the right time to specify sanitation pickup.

Vice Mayor Wolf asked if Mr. Gilbert would be willing to work with Council for another two weeks.

Mr. Gilbert responded yes, the applicant would be willing to work with Council for another two weeks.

Vice Mayor Wolf moved to continue the request for Master Site plan approval for Coldwater Springs Promenade and Final Site Plan approval for Major A, Shops B-D, PAD 1, PAD 6, and Office A-G to the Regular City Council meeting of May 7, 2007, with a focus back to Staff and the applicant to work on the stipulations discussed tonight, with a primary focus on traffic issues on Avondale Blvd. and the landscaping plan stipulation under debate, as well as on PAD 5, and at that time remove the office buildings included in the packet for review that evening. Council Member Weise seconded the motion.

Mr. Gilbert stated he was assuming that the new substitute stipulations are designed to replace the eight stipulations in the March 20, 2007 memo.

Vice Mayor Wolf responded that was his intent, if they get to the point where there was a professional engineer from the applicant's team providing a sealed document saying the traffic scheme would work.

Mr. Gilbert stated the applicant would provide that after giving Ms. Cartier a couple of weeks to think about it.

Vice Mayor Wolf added he wanted to hear from Kelly La Rosa, Traffic Engineering Department, as well.

Mayor Lopez-Rogers asked for further discussion.

Council Member Scott asked Mr. Gilbert if Stipulation No. 15 was an issue.

Mr. Gilbert responded Stipulation No. 15 was not an issue for the applicant.

ROLL CALL VOTE AS FOLLOWS:

Council Member Earp	Aye
Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Wolf	Aye
Council Member Lynch	Aye
Council Member Weise	Aye

Motion carried unanimously.

Mr. Gilbert thanked the Council for their patience and added he believed they could work through the matter at the next meeting.

DEVELOPMENT SERVICES

Exhibit I

SUBJECT:
Master Site Plan for Coldwater Springs Promenade and Final Site Plan for Major A, Shops B-D, Pad 1, Pad 6, and Office A-G (DR-06-8)

MEETING DATE:
April 16, 2007

TO: Mayor and Council

FROM: Brian Berndt, Development Services Director 623-333-4011

THROUGH: Charlie McClendon, City Manager

REQUEST: Master Site Plan for Coldwater Springs Promenade

PARCEL SIZE: 19.97 acres

LOCATION: Southwest corner of Avondale Boulevard and Van Buren Street (Exhibits A and B)

APPLICANT: Dan Jolley, K&I Architects

OWNER: Empire Commercial and Residential Realty

BACKGROUND:

The subject property is made up of two parcels. The west 11 acres is Parcel 24 of the Coldwater Springs Planned Area Development (PAD). Parcel 24 was designated for C-2 uses by the PAD. The subject property was annexed in 1997 and zoned AG (Agriculture). It was rezoned to PAD on March 17, 1997.
The eastern 8.95 acres was annexed into the city in 1999 and zoned AG (Agriculture). It was rezoned from AG to C-2 (Community Commercial) on October 2nd, 2000. Among the 6 stipulations of approval were the following:

- Project shall accommodate the necessary adjacent rights-of-way as determined by the City Engineer
- All development shall meet the design requirements as provided for in the City of Avondale Zoning Ordinance and the Freeway Corridor Specific Plan.

A development agreement was signed in 1997 for the Coldwater Springs PAD. There are no outstanding issues related to this proposed development agreement. During review, staff outlined a number of concerns with the proposed development. Despite some outstanding staff concerns, the applicant requested that this project be taken to the Planning Commission at their March 15, 2007 meeting.

SUMMARY OF REQUEST:

1. The applicant is requesting approval of a master site plan for the entire subject property (Exhibit D). The master site plan shows 7 office buildings, 4 multi-tenant shops buildings, one single-tenant major, and 6 single-tenant pads.
2. The applicant has requested Final Site Plan approval for the following: a 20,288 square foot single-tenant major building (Major A); a 13,300 square foot multi-tenant shops building (Shops B); two 9,504 square foot multi-tenant shops buildings (Shops C and D); a 2,650 square foot drive-thru restaurant building (Pad 6); a 6,000 square foot bank building (Pad 1); and seven multi-tenant office condo buildings with a total square footage of 42,725. The remaining buildings will require separate administrative review and

approval to ensure conformance with the master site plan, Zoning Ordinance, and PAD zoning.

3. Vehicle access will be provided by two driveways on Avondale Boulevard, and three driveways on Van Buren Street. The northern driveway on Avondale Boulevard will be right-in/right-out only, while the southern driveway will be right-in/left-in/right-out. On Van Buren Street, the western driveway will be full access and will include a future traffic signal at the 117th Avenue alignment; the center driveway will be right-in/left-in/right-out; the easternmost driveway will be right-in/right-out. Cross access will be provided throughout the site. Deceleration lanes will be included at all driveways.
4. The proposed architecture is a contemporary southwest style. All buildings include architectural treatment on all four sides of the building. The architecture contains variations in the roofline, stone columns, brick planters and trellises, changes in colors throughout, and green metal roofs and canopies. Colors are earth tones on the walls and green for the metal roof features. The materials are stucco, glass, masonry, stone, and metal.
5. The future pads will be treated with a decomposed granite ground cover for dust control until development of those areas occurs.
6. Off-site improvements will be constructed as part of the first phase of development.

PARTICIPATION:

A letter of notification and a copy of the site plan were mailed on March 8, 2006 to 98 property owners within 500 feet of the subject property. Notices were mailed to the Littleton School District superintendent and the Tolleson High School District director of facilities. Staff received a letter of concern from a neighboring resident on March 15, 2006 (Exhibit I).

PLANNING COMMISSION ACTION:

After three reviews by the Planning Division and site plan committee, staff had outstanding issues remaining, including issues regarding traffic safety (Exhibit G). The applicant requested that the site plan be placed on the Planning Commission's March 15, 2007, agenda despite the remaining staff comments.

Staff believes that amending the site plan to comply with the remaining traffic safety comments would so substantially change the site plan from what was presented to the Planning Commission, that it was not appropriate to recommend approval of the site plan with the stipulation that the site plan be amended to comply with the traffic safety comments. Based on this, the Planning Division staff recommended to the Planning Commission that the site plan be denied.

The Planning Commission considered this item at their meeting on March 15, 2007 (Exhibit J). Following discussion, the Commission voted 5-1 to forward a recommendation of approval with the following conditions:

1. Sufficient turning radii for trucks shall be provided;
2. On-site striping and signage shall be provided;
3. Jack in the Box offset shall be 140';
4. Relocation of the well shall be within 660' of the site;
5. The architecture of the commercial shall be similar, but not identical, to the office.

ANALYSIS:

General Plan

The site is designated Commercial in the General Plan. The existing PAD zoning is consistent with these plans. The type and scale of development is consistent with the General Plan.

Access, Circulation, and Parking

Section 106.C.2 of the Zoning Ordinance states the following: "The site plan review committee shall have the authority to request modifications to the site plan and may approve conditions consistent with this ordinance deemed necessary to protect the public health, safety, and welfare." The site plan review committee includes, among others, the Planning Staff and the City's Traffic Engineer.

During review, the Engineering Department identified a number of concerns with the internal circulation of the site. The majority of these traffic safety concerns were recommendations of the City's Traffic Engineer based on analysis of the applicant's traffic impact analysis. The applicant has submitted a response letter indicating that the City's traffic concerns would be addressed. This letter was discussed at the Planning Commission meeting (Exhibit J). However, the site plan has not been revised to address these traffic safety issues. Staff believes that the site plan needs to be revised to comply with the traffic comments prior to approval. A summary memo of the Traffic Engineer's third review comments is attached (Exhibit G).

Based on the proposed uses for all the buildings, the shopping center will be required to have 647 parking spaces. The applicant is proposing a total of 919.

Zoning Ordinance Compliance

Section 1203.A.2.a of the Zoning Ordinance discusses the importance of intersections of arterial streets. This section says that additional design features may be imposed on the property at arterial intersections at the time of site plan approval, including unique building orientation and design (Exhibit H). Staff does not believe that, as currently presented, the development displays unique building orientation or design.

City staff is currently drafting the Avondale City Center Area Plan. This plan will include the intersection of Avondale Boulevard and Van Buren. Staff believes that application of the design standards included in the City Center Area Plan would bring Pad 5 into compliance with Section 1203.A.2.a of the Zoning Ordinance. If the City Center Area Plan is adopted prior to final site plan approval for Pad 5, the design standards should apply to Pad 5.

Compatibility with Surrounding Land Uses

The Coldwater Springs single-family residential subdivision is adjacent to the subject property to the south and west. The buildings will be a minimum of 66' from the property line adjacent to the residences.

There is an existing 6' screen wall along the north and east property lines. The proposed development will have a landscape buffer along the south property line a minimum of 12' wide and along the west property line a minimum of 25'. The landscape buffer will contain mostly 24" box trees planted approximately 20' on center.

Refuse containers have been placed to be at least 60' from the residential property lines to minimize the impact on the surrounding properties.

Landscaping and Screening

A master landscape plan has been provided (Exhibit E). Right-of-way landscaping is included in the preliminary landscape plan and is required as part of the development of the site. Final landscape plans will be submitted and approved by staff prior to the issuance of a building permit.

The master landscape plan is proposed to be a xeriscape theme using plants from the Arizona Department of Water Resources list. The landscape plan meets City Standards and will compliment the adjacent property and further the character of the development.

The applicant is proposing 3 foot screen walls to screen the parking. The screen walls are will be required to match the building colors and materials to maintain a consistent architectural theme.

The developer is proposing a water feature/shopping center monument sign at the northeast corner of the site, at the intersection of Avondale Boulevard and Van Buren Street. The final design of this water feature will be approved as part of the final landscape plans.

Building Elevations

The architecture, materials and colors for the proposed Pad 1 (bank), Pad 6 (fast food restaurant), Major A, and

Shops B-D are complementary to one another. The architecture of the office buildings does not fit with the proposed architectural theme. Before this development can be approved, the office building architecture must be revised to be consistent with the architecture of the remainder of the shopping center.

All future buildings will be required to go through the administrative final site plan review and approval process. These buildings will be required to conform to the architectural theme established by this first set of final site plans when approved.

Signage

All signage for this development will be required to conform to the City's sign ordinance. The design of the monument signs will be required to conform to the architectural theme established by this first set of final site plans when approved.

Existing Well

The subject property contains an existing agricultural well. The well needs to be relocated to within 660' of the existing location. As a part of the development of this property, the City of Avondale will acquire and relocate the well. The Water Resources Department has negotiated with the developer the location and size of the new well, as well as a purchase price satisfactory to both parties. At the time of the writing of this staff report, transfer of ownership of the well has not occurred, and a purchase agreement has not been finalized. Two stipulations have been included below regarding this.

Conclusion

The Planning Commission recommended approval of DR-06-8 with five stipulations. Staff believes that if the master site plan is approved, there are a number of standard stipulations that need to be added. Staff also believes that additional stipulations are needed in order to address the remaining issues cited above.

Staff believes that if the project is approved, the following stipulations need to be added to the five stipulations recommended by the Planning Commission:

1. The development shall conform to the master site plan date stamped April 4, 2007; the master landscape plan date stamped April 4, 2007; and the elevations dated April 4, 2007; except as modified by these stipulations.
2. In accordance with Section 106.C.4 of the City of Avondale Zoning Ordinance the approval of the site plan shall expire within one year if a building permit has not been issued.
3. All undeveloped portions of the development shall be treated with decomposed granite for dust control until such time that those portions are developed.
4. Final site plan for pads 2-5 and shops F shall be reviewed and approved by the Planning Division prior to the issuance of a building permit.
5. All water rights on the property shall be conveyed to the City of Avondale prior to recordation of the final plat.
6. The developer shall transfer ownership of the existing agricultural well to the City of Avondale prior to the issuance of a building permit.
7. Prior to the issuance of a building permit, the developer shall finalize a purchase agreement for the new well location and well maintenance easement based on the terms that were previously negotiated between the developer and the City of Avondale Water Resources Department.
8. Prior to or concurrent with recordation of a minor land division or final plat, covenants, conditions and restrictions (CC&Rs) shall be recorded for the site. These CC&Rs shall address design standards for architecture, landscaping, maintenance, and cross access and shall be reviewed and approved by the Planning Division prior to recordation. A copy of the recorded CC&Rs shall be submitted to the Planning Division.
9. All future buildings shall conform to the color palette, materials, and architectural theme established by this master site plan.
10. Final landscape plans for each building shall be reviewed and approved by the Planning Division prior to

the issuance of any building permits for those buildings.

11. Prior to the issuance of a building permit, the site plan shall be revised to adequately address the 8 comments in the Engineering Department memorandum dated March 20, 2007 (Exhibit G). Staff shall review and administratively approve the site plan revision.
12. If a building permit has not been issued for pad 5 before the adoption of the Avondale City Center Area Plan, pad 5 shall be subject to the design guidelines of the Area Plan.
13. The developer shall be responsible for one half of the costs associated with the design and construction of a traffic signal at the intersection of Van Buren Street and the 117th Avenue alignment prior to issuance of a building permit.
14. All driveways and off-site improvements, including deceleration lanes, bus bays, landscaping, and center medians, shall be constructed during the first phase of construction.
15. The water feature at the northeast corner of the site shall be constructed as part of the first phase of development. The design of the water feature shall be reviewed and approved as part of the initial set of final landscape plans.
16. All signs for the shopping center shall comply with the City of Avondale Sign Ordinance. Monument signs shall conform to the architectural theme established by this master site plan.
17. All parking screen walls shall be approved at the time of final landscape plan review and shall conform to the architectural theme established by this master site plan.

FINDINGS:

- The proposed site plan meets the land use and design objectives of the General Plan.
- The proposed site plan is consistent with the requirements of the Coldwater Springs PAD and the C-2 (Community Commercial) zoning.
- The proposed site plan will be in conformance with the City of Avondale Zoning Ordinance with the Planning Commission and staff recommended stipulations.

RECOMMENDATION:

Staff recommends that the City Council **APPROVE** application DR-06-8, a request for master site plan approval for Coldwater Springs Promenade, and final site plan approval for Major A, Shops B-D, Pad 1, Pad 6, and Office A-G subject to the five stipulations recommended by the Planning Commission and the seventeen stipulations recommended by staff.

PROPOSED MOTION:

I move that the City Council accept the findings and **APPROVE** application DR-06-8, a request for master site plan approval for Coldwater Springs Promenade, and final site plan approval for Major A, Shops B-D, Pad 1, Pad 6, and Office A-G subject to the five stipulations recommended by the Planning Commission and the seventeen stipulations recommended by staff.

ATTACHMENTS:

Click to download

- DR-06-8 Exhibits A-J

FULL SIZE COPIES (Council Only):

Master Site Plan dated April 4, 2007 (24 X 36); Phasing Site Plan date stamped April 4, 2007 (24 X 36); Truck Turning Radius Plan date stamped April 4, 2007 (24 X 36); Landscape Plan date stamped April 4, 2007 (24 X 36); Black and White Elevations date stamped April 4, 2007 (24 X 36); Color Elevations date stamped April 4, 2007 (11 X 17)

PROJECT MANAGER:

Scott Wilken, Acting Senior Planner (623) 333-4016

Exhibit J

Coldwater Springs timeline

9/28/2005	Pre-application meeting (Joshua Cook, Planning Division)
3/3/2006	First submittal
5/12/2006	First review comments sent (Joshua Cook, Planning Division)
9/8/2006	Second submittal
11/16/2006	Second review comments sent (Scott Wilken, Planning Division)
12/7/2006	Meeting with Felipe Zubia, Charlie McClendon, David Fitzhugh, Scott Wilken
12/12/2006	Meeting with Empire owners, Felipe Zubia, Charlie McClendon, David Fitzhugh, Scott Wilken
1/18/2007	Scheduled conference call with Felipe Zubia (Felipe didn't call back)
1/19/2007	Third submittal
2/14/2007	Meeting to discuss Commission/Council schedule
2/21/2007	Meeting to discuss traffic issues
2/23/2007	Third review comments sent (Scott Wilken, Planning Division)
3/1/2007	Meeting to discuss traffic comments
3/2/2007	Fourth submittal
3/8/2007	Partial fourth review comments sent (Planning)
3/8/2007	Meeting to discuss fourth review/recommendation with Empire owners, Felipe Zubia, Charlie McClendon, Brian Berndt, Scott Wilken
3/15/2007	Planning Commission meeting
3/20/2007	Meeting to discuss Planning Commission action and upcoming City Council meeting with Felipe Zubia, Empire Owners, Dan Jolley, Brian Berndt, Scott Wilken
3/27/2007	Proceed to City Council letter sent to applicant, along with Traffic Engineering comment memo dated 3/20/07 (which was included in 4/16/07 Council report)
3/28/2007	Scheduled meeting with Felipe Zubia and Empire's traffic engineers to discuss changes to the site plan required based on Kelly LaRosa's review comments- no one from developer's team showed up for the meeting and did not reschedule
4/4/2007	Applicant submitted full package for City Council packets. Site plan had been revised to include striping and signage as their attempt to comply with staff's traffic concerns (note: applicant had previously been told by staff that striping and signage was not an acceptable solution). Applicant had letter from CivTech dated 4/3/07 responding to City traffic comments. Shortly after staff began checking the submittal package, Felipe Zubia took the CivTech letter back, saying the applicant needed to make some changes. Also included in the package were office building elevations identical to previous office building elevation submittals
4/16/2007	(late afternoon) Staff receives a copy of letter from CivTech dated 4/3/07 responding to City traffic comments

	(evening) City Council meeting. Applicant presents revised elevations for the office buildings (note: staff had not previously seen these revised elevations). Council directed staff and the applicant to make revisions to the site plan and bring it back to Council on 5/7/07
4/20/2007	Meeting to discuss revisions based on Council's direction with Felipe Zubia, Dan Jolley, Dawn Cartier, David Fitzhugh, Brian Berndt, Scott Wilken, Kelly LaRosa, Andrew McGuire (via phone)
4/25/2007	(afternoon) submitted site plan with revisions to Access A, Access C, and the area around Shops F/Access E
4/26/2007	(afternoon) review comments for 4/25 site plan revisions emailed to applicant
4/30/2007	(late afternoon) Applicant submitted revised site plan and landscape plan partially addressing staff's 4/26 comments

DEVELOPMENT SERVICES

SUBJECT:
Public Hearing and Ordinance 1256-507 - Overnight Parking in Commercial and Industrial Zoning Districts (TA-07-01)

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Dean Svoboda, Long Range Planning Director - 623-333-1035

THROUGH: Charlie McClendon, City Manager

REQUEST: Amend the Zoning Ordinance to restrict the overnight parking of vehicles in commercial and industrial zoning districts.

APPLICANT: City Council

BACKGROUND:

The City Council first discussed this issue on September 18, 2006. At that time, staff was directed to draft the ordinances needed to restrict the overnight parking of trucks and recreational vehicles in shopping centers and other commercial parking lots (Exhibit A). Proposed amendments to the City Code and Zoning Ordinance were reviewed by the City Council on April 2, 2007. The City Code amendment was subsequently adopted by the City Council on April 16, 2007. This report addresses the companion Zoning Ordinance amendment.

SUMMARY OF REQUEST:

The request will amend Section 8, Off-street Parking, Section 803, General Requirements by adding a new subsection "O." The proposed amendment reads as follows: The following regulations shall apply to all properties zoned for commercial or industrial use except as otherwise provided in this ordinance: Recreational vehicles, trailers, commercial vehicles and combinations of vehicles exceeding 21 feet in length that are not owned or operated by a business on the property shall not be parked except for the purpose of loading, unloading, emergency service, or patronizing a commercial use on the site. The overnight parking of any vehicle for the purpose of camping or temporary or permanent habitation is prohibited.

PARTICIPATION:

A notice of the Planning Commission hearing was published in the West Valley View on April 3, 2007. No one spoke in favor or opposition at the Planning Commission hearing on April 19, 2007. A notice of the City Council hearing was published in the West Valley View on April 17, 2007. No public comments have been received to date.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing and unanimously recommended approval of the amendment on April 19, 2007.

ANALYSIS:

Interstate 10 provides convenient access to the City of Avondale and is a major route for commercial truckers and other overnight travelers. Some concerns have been raised about the overnight parking of commercial trucks and recreational vehicles in commercial parking lots. These concerns will probably increase as the community and the surrounding region continues to grow.

Commercial parking lots are not designed or constructed for overnight parking and lack the facilities and amenities necessary to ensure public health and safety. Overnight parking also raises the issue of land use compatibility when the parking lots are located close to residential areas.

Commercial truck parking facilities are available both within the City of Avondale and within a 20 minute drive to the east and the west. Recreational vehicle campgrounds and resorts are also located within the region. These commercial facilities are designed to meet the demand for short and long term overnight parking.

Some local retailers are reluctant to discourage overnight parking in the absence of a city ordinance that prohibits it. The recent City Code amendment addresses this and will require property owners to post signs stating overnight parking is prohibited. The proposed Zoning Ordinance amendment will help to advise future developers of this prohibition and allow violations to be enforced as a land use issue in the event that this is needed.

RECOMMENDATION:

The City Council should approve the proposed text amendment.

PROPOSED MOTION:

I move that the City Council ADOPT the ordinance approving text amendment TA-07-01, a request to restrict overnight parking in commercial and industrial districts.

ATTACHMENTS:

Click to download

- Exhibit A - A. City Council Meeting Minutes dated September 18, 2006
- EXHIBIT B - DRAFT PLANNING COMMISSION MEETING MINUTES APRIL 19, 2007
- ORD - 1256-507

EXHIBIT A

EXCERPT

CITY COUNCIL REGULAR MEETING MINUTES
September 18, 2006

MEMBERS PRESENT

Mayor Lopez-Rogers and Council Members

Chuck Wolf, Vice Mayor
Jim Buster
Frank Scott
Ken Weise
Jason Earp
Betty Lynch

10) DISCUSSION ITEMS

Rogene Hill, Assistant City Manager addressed the Council on this item. She stated that Council Member Lynch asked staff to look into the issue of truck parking within the city. She explained the problem areas.

Ms. Hill stated that currently City Code, Section 23-62, does prohibit the parking on any Avondale City street, except for loading and unloading of vehicles with chassis capacity in excess of one ton.

Ms. Hill stated that staff recommends that the Council revise the City Code to prohibit parking in commercial parking lots. She stated that staff would like to re-enforce that with restrictions within the zoning ordinance. She stated that education and outreach would be another effort that staff would. Ms. Hill stated that there is certainly an opportunity as the CSO program is revised that they can provide additional assistance to the police.

The Council complimented the staff on the research on this issue. Council expressed concern that the ordinances must be enforceable and encouraged the use of CSOs for enforcement.

Ms. Hill stated that staff will work with the police, neighborhood services trying to step up the enforcement. She stated that staff will bring back actual ordinance language.

DRAFT EXCERPT
PLANNING COMMISSION MEETING MINUTES
4-19-07

The regular meeting was called to order at approximately 7:00 p.m. by Chairperson Lageschulte.

The following members and representatives were present:

COMMISSIONERS PRESENT

Linda Webster, Commissioner
Edward Meringer, Commissioner
Kevin Grimsley, Commissioner
David Iwanski, Commissioner
Michael Alcorn, Commissioner
Lisa Copeland, Commissioner (arrived at 7:09 pm)
Alan Lageschulte, Chairperson

4. APPLICATION NO.: TA-07-01

APPLICANT: City Council Initiative
REQUEST: This is a City Council initiative to amend the City of Avondale Zoning Ordinance to restrict the overnight parking of vehicles in commercial and industrial districts.

Mr. Svoboda presented the staff report for TA-07-01 to the Planning Commission. He stated this is a request for a zoning ordinance text amendment to restrict the overnight parking of vehicles in commercial and industrial zoning districts. It is related to the recently adopted city code amendment. Staff is recommending approval of this application.

Commissioner Meringer asked how this Ordinance would be enforced. Mr. Svoboda stated that it would be enforced on a complaint basis by the city's code enforcement officers and police officers. He explained that the amendment will not have an impact on any primary land use such as PIR. This text amendment is targeted for commercial parking lots to restrict trespassers and repeat offenders.

Commissioner Copeland wanted to ensure the visitors to the City of Avondale were not being encouraged to leave the city. Mr. Svoboda stated they are not trying to discourage anyone from visiting and added the intent is to handle the volume in an appropriate manner. He continued to say when the races are taking place at P.I.R. this is not an issue as the track can accommodate RVs.

Commissioner Iwanski questioned if commercial property owners could lease or rent out space for commercial vehicles to allow them to park overnight. Mr. Svoboda stated a warning would be issued to that property owner with citations to follow if the activity continued.

Commissioner Alcorn stated this issue has been a concern of his for some time. He suggested the length of the vehicle be shortened to 16 feet which would include RVs. He added this is long over due. Mr. Svoboda clarified that all RV's are covered and that the 21 foot length referenced in the amendment applies to various combinations of vehicles and trailers.

Commissioner Meringer questioned if all business owners would be required to place signs on their property indicated this change. Mr. Svoboda stated that this is not required by the zoning amendment, but is required by the recently adopted city code amendment.

Chairperson Lageschulte opened the public hearing.

No one wished to address the Commission.

Chairperson Lageschulte closed the public hearing.

Commissioner Meringer made a MOTION to recommend approval of TA-07-01, a request to restrict overnight parking in commercial and industrial zoning districts. Commissioner Alcorn SECONDED the motion.

Chairperson Lageschulte called for a roll call vote and the motion PASSED by a vote of 7 to 0.

ORDINANCE NO. 1256-507

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE ZONING ORDINANCE, SECTION 8, OFF-STREET PARKING, SECTION 803, GENERAL REQUIREMENTS, AS SHOWN IN FILE NAME TA-07-01, RELATING TO THE OVERNIGHT PARKING OF VEHICLES IN COMMERCIAL AND INDUSTRIAL ZONING DISTRICTS.

WHEREAS, all due and proper notices of public hearings on this Ordinance held before the City of Avondale Planning and Zoning Commission (the "Commission") and the Council of the City of Avondale (the "City Council") were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, pursuant to ARIZ. REV. STAT. § 9-462.04, the Commission held a public hearing on this Ordinance on April 19, 2007; and

WHEREAS, the Commission recommended to the City Council that this Ordinance be approved; and

WHEREAS, the City Council held a public hearing on this Ordinance on May 7, 2007.

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

SECTION 1. That the City of Avondale Zoning Ordinance, Section 803, General Requirements, is hereby amended by adding a new Subsection O to read as follows:

O. The following regulations shall apply to all properties zoned for commercial or industrial use, except as otherwise provided in this ordinance:

1. Recreational vehicles, trailers, commercial vehicles and combinations of vehicles exceeding 21 feet in length that are not owned or operated by a business on the property, shall not be parked except for the purpose of loading, unloading, emergency service, or patronizing a commercial use on the site.

2. The overnight parking of any vehicle for the purpose of camping or temporary or permanent habitation is prohibited.

SECTION 2. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct, and independent of all other provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED:

_____
Andrew J. McGuire, City Attorney

DEVELOPMENT SERVICES

SUBJECT:
Public Hearing and Ordinance 1257-507 - Variable Message Signs (TA-07-02)

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Dean Svoboda, Long Range Planning Director (623)333-1035

THROUGH: Charlie McClendon, City Manager

REQUEST: Amend the Zoning Ordinance to allow the limited use of variable message signs for specified land uses.

APPLICANT: City Council

BACKGROUND:

On October 17, 2005, the City Council discussed the topic of variable message signs in response to a request made by American Legion Post 61. At that time, staff was directed to prepare a text amendment for further consideration (Exhibit A).

SUMMARY OF REQUEST:

Variable message signs are designed to allow all or a portion of the sign copy to be easily and frequently modified. They have also been known as changeable letter signs, reader boards, reader panels, change copy signs, electronic messaging signs, LED (light emitting diode) signs, flip disc displays, and marquee signs. These signs are currently prohibited by the Zoning Ordinance. The request will amend Section 909, Sign Ordinance; Section 908, Definitions; and Section 909, Signs Allowed With Permit, Subsection D, Special Purpose Signs. The amendment eliminates the definitions for "Change Panel Signs" and "Reader Board" and adds new definitions for "Variable Message Sign," "Fuel Price Sign," "Theatre Sign," and "Time and Temperature Sign." The amendment will allow variable message signs to be used only by the following land uses: churches and similar places of worship, elementary and secondary schools and college campuses, military veteran and fraternal organization halls, motion picture and performing arts theatres, municipal uses, and vehicle fueling stations.

PARTICIPATION:

A notice of the Planning Commission hearing was published in the West Valley View on April 3, 2007. One person spoke in favor of the amendment at the Planning Commission hearing on April 19, 2007 (EXHIBIT B). A notice of the City Council hearing was published in the West Valley View on April 17, 2007. No additional comments have been received to date. A representative of the Electronic Sign Service of America has expressed interest in a variable message sign on behalf of a local church.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on April 19, 2007 and voted 5-2 to recommend approval of the amendment (EXHIBIT B).

ANALYSIS:

Variable message signs have been prohibited by the City's Zoning Ordinance for several years. A few can be found at public schools (which are exempt from city zoning regulations), gas stations, older retail stores, and churches. Many cities restrict the use of variable message signs to reduce the visual clutter along roadways

and encourage business identification instead of product advertising. The extent of the restriction varies from city to city based on local values and the desired character of the community. Exhibit C summarizes the regulations of several other valley cities. The City's current ordinance allows adequate business identification. It does not provide the opportunity for other information to be communicated for the benefit of the community. Allowing the unrestricted use of variable message signs would alter the character of the community and be contrary to the purpose of the Zoning Ordinance. Only allowing this type of sign for those land uses that have unique communication needs; however, will not significantly increase the amount of visual clutter or otherwise harm the community. Churches and similar places of worship, military veteran and fraternal organization halls, and municipal facilities will be allowed to use up to fifty percent (50%) of a freestanding identification sign for variable messages. Elementary and secondary schools and colleges, the Avondale Civic Center, and community level city parks will be allowed a separate freestanding variable message sign in addition to any allowed freestanding identification sign. Motion picture and performing arts theatres will be allowed one variable message sign on the wall or marquee of the building for the purpose of announcing current attractions, show times, and on-site events. Vehicle fueling stations will be allowed a variable message sign for the purpose of identifying the type, grade, and price of fuel being sold. Sites that are not part of a shopping center or planned development will be allowed to use up to fifty percent (50%) of the freestanding sign area or a maximum of 24 square feet, whichever is less, for a fuel price sign. Sites that are part of a shopping center or planned development that does not allow freestanding identification signs for individual businesses will be allowed a freestanding fuel price sign on each street frontage. The maximum sign area will be 16 square feet. The proposed amendment includes minimum standards for variable message signs to further minimize the potential for any negative impacts. Variable message signs will not be permitted as part of a multi-tenant freestanding identification sign. Variable message signs with interchangeable letters will be required to have a clear cover to secure the letters. All variable message signs will be limited to static displays that do not change more than once every 15 seconds. Video displays and special effects such as traveling, scrolling, fading, dissolving, and bursting will not be allowed. The static display interval recommended by staff at the Planning Commission hearing was one minute for time and temperature signs and one hour for all other variable message displays. This was subsequently reduced to a single standard of 15 seconds for the sake of simplicity. Staff believes this will allow some additional flexibility without compromising the original objective.

RECOMMENDATION:

The City Council should APPROVE the proposed text amendment.

PROPOSED MOTION:

I move that the City Council ADOPT the ordinance approving Text Amendment TA-07-02, a request to allow the limited use of variable message signs.

ATTACHMENTS:

Click to download

- EXHIBIT A: City Council Meeting Minutes October 17, 2005
- EXHIBIT B: DRAFT PLANNING COMMISSION MINUTES APRIL 19, 2007
- EXHIBIT C: Comparison of Other Cities Sign Regulations
- ORD - 1257-507

EXCERPT

CITY COUNCIL REGULAR MEETING MINUTES
October 17, 2005

Members Present

Mayor Drake and Council Members	Vice Mayor Lynch Albert Carroll, Jr. Jason Earp Marie Lopez Rogers Chuck Wolf
Excused	Gail Leitner

8) DISCUSSION ITEMS

Changeable Message Signs

Mayor Drake said the American Legion has had a lingering application with the city for a changeable message sign. He asked if anyone on the Council has an issue with their request.

Council Member Earp asked if approval of one changeable message sign sets precedence for future requests. Andrew McGuire, City Attorney, said the sign ordinance would have to be amended to approve the Legion's request. He said the Council would need to determine the criteria on which they would allow such signs to be approved and approval would have to be granted across the board for all applicants who meet those criteria.

Mayor Drake asked if they could grant a Conditional Use Permit. Mr. Svoboda recommended the Council not pursue a Conditional Use Permit category, stating that is not the intention of a Conditional Use Permit. He said, while legally it could be accomplished, it would be very difficult in practice. He explained the Legion requested a new monument sign that has a reader panel, stating the city's current ordinance does not allow reader panels. He noted, however, the city is permitted to use reader panels on occasion through a provision in the ordinance that provides exceptions. He said the question is whether or not the Council wants to entertain requests for changeable message signs, displaying examples of some of the signs that might come about as a result of such a decision. He stated schools are currently exempt from the city's ordinance and some commercial businesses have changeable message signs that were grandfathered in under a development or other agreement. He explained the purpose of the city's sign ordinance is to minimize the amount of visual clutter along the roadway and, historically, cities encourage business identification rather than advertising on their signs. He said there can

also be problems with signs that are not well-maintained and the city's lack of control over the verbiage used on the signs. He said cities that have not completely banned changeable message signs typically allow them for only certain types of uses, such as theaters, performing art centers, city buildings, parks, schools, gas stations, and churches. He stated other cities have decided to allow everyone to have reader boards, but to control the size and design of the signs. He suggested the city make an allowance for certain types of community facilities to have reader panels, but that it not extend to every commercial advertising sign or business identification sign.

Mayor Drake pointed out the American Legion has been trying to get approval for their sign for a couple years.

Frank Whitton, Adjunct of American Legion Post 61, said the sign they have had for many years is about three feet square and poorly visible. He stated the post decided to install a more attractive sign that could be changed to reflect current activities being held at the Legion. He suggested the city allow non-profit organizations to have changeable message signs.

Mayor Drake asked about the cost difference between a changeable and a digital reader sign. Mr. Whitton said a changeable sign will be about $7,000 whereas a digital sign will be almost double that amount. Mayor Drake said he feels indebted to the people who have served this country, but is compelled to adhere to the rules of the city.

Council Member Earp agreed staff should come back to Council with a list of identified uses that could be allowed to use changeable message signs. He emphasized he would not want all commercial businesses permitted to use such signs.

Mayor Drake directed staff to return with a proposed ordinance. He asked Mr. Whitton to work with staff on the prototype of their sign. Mr. McGuire, City Attorney, said they will bring to Council a proposed categorization of uses permitted to use reader board signs and sign regulations relating to the physical appearance of the signs.

Mayor Drake asked Mr. Svoboda to work with the American Legion on a site plan and landscape design, stating the Legion may not be as skilled at working through the city's processes as other applicants. Mr. Svoboda said the city has already reviewed a site plan and elevation prepared by the Legion. He stated they will return to Council with the framework for an ordinance amendment, one that includes a definition, a list of uses or types of uses allowed to have such signs, and design guidelines and limitation for the physical appearance of the signs.

DRAFT EXCERPT
PLANNING COMMISSION MEETING MINUTES
4-19-07

The regular meeting was called to order at approximately 7:00 p.m. by Chairperson Lageschulte.

The following members and representatives were present:

COMMISSIONERS PRESENT

Linda Webster, Commissioner
Edward Meringer, Commissioner
Kevin Grimsley, Commissioner
David Iwanski, Commissioner
Michael Alcorn, Commissioner
Lisa Copeland, Commissioner (arrived at 7:09 pm)
Alan Lageschulte, Chairperson

5. APPLICATION NO.: TA-07-2

APPLICANT: City Council Initiative
REQUEST: This is a City Council initiative to amend the City of Avondale Zoning Ordinance to amend Section 9, Sign Ordinance to allow changeable message signs.

Mr. Svoboda presented the staff report for TA-07-2 to the Planning Commission. He stated this is a request to amend the Zoning Ordinance to allow the limited use of variable message signs for specified land uses. Staff is recommending approval of this application.

Chairperson Lageschulte questioned the requirement of the variable message sign changing more than once each hour. Mr. Svoboda clarified that the amendment would restrict message changes to once each hour except for time and temperature signs. He said this may be a discussion point for the Commission.

Commissioner Copeland asked if each store would be allowed to have a sign. Mr. Svoboda clarified that commercial establishments, with the exception of fuel sales and theaters, will not be allowed to have these signs.

Commissioner Copeland recommended that an exception be made regarding an Amber Alert. She explained that Walgreen's will replace their advertisements with any Amber Alerts. Mr. Svoboda stated that the amendment will not prevent Walgreen's from continuing to do this where a sign already exists.

Commissioner Grimsley verified that any existing variable signs would not have to conform to this proposed text amendment. Mr. Svoboda explained that any sign that is legally established with non-conforming rights may exist as they always have.

Commissioner Iwanski asked his fellow commissioners not to vote in favor of this text amendment. He stated he needs more information as to what some of the potential impacts could be if this were approved. He needs a much more detailed analysis from staff including the City Attorney. In response, Mr. Svoboda reviewed the uses that would be allowed to have variable message signs and those that would not. He said if the Commission believes the text amendment should be more defined or broader, then that is what should be recommended to City Council.

Chairperson Lageschulte asked if the American Legion initiated this text amendment. Mr. Svoboda explained the Council decided to review not only the needs of the Legion but to review the demand for variable messages signs throughout the city.

Commissioner Alcorn asked if commercial properties would feel they too were in need and should be granted variable message signs. Mr. Svoboda stated he has worked closely with the city attorney and staff is confident that the city can require different standards for different land uses.

Commissioner Copeland asked if a conditional use permit could be granted to the American Legion for the sign they are requesting. Mr. Svoboda said this could not be done under the existing ordinance and he would not recommend it as a solution for any sign issue.

Chairperson Lageschulte asked staff for more information and suggested this item be continued to the next meeting. Mr. Svoboda suggested that the chairman open the public hearing.

Chairperson Lageschulte opened the public hearing.

Mr. Ron Quillen, 13396 West Virginia Avenue, Goodyear, Arizona, stated he has been trying to get a sign approved for the Legion since 2003. He said the purpose of the sign they are requesting is to notify the community of events such as free Thanksgiving Day dinners and those types of events. He felt staff did a great job of composing this text amendment. He would appreciate the Commission's approval.

Commissioner Meringer stated this issue with the American Legion needs to be resolved. He also asked if staff could present all ordinance amendments to the Commission at one time so they would not have to keep reviewing new amendments.

Mr. Svoboda stated that the City Council has directed staff to continue to bring forth text amendments on an ongoing basis as needed.

Commissioner Grimsley stated there will always be a need for ongoing ordinance amendments as the community continues to grow and evolve.

Commissioner Alcorn suggested that text amendments be addressed at workshops rather than the public hearing. Mr. Svoboda stated that would be at the Commission's discretion.

Chairperson Lageschulte closed the public hearing and stated that to wait four years for a sign approval is ridiculous.

Commissioner Grimsley made a MOTION to recommend approval of TA-07-2. Commissioner Webster SECONDED the motion.

Chairperson Lageschulte called for a roll call vote and the motion PASSED by a vote of 5 to 2 (with Commissioners Iwanski and Copeland voting nay).

EXHIBIT C

COMPARISON OF OTHER CITIES SIGN REGULATIONS

City	Summary of Variable Sign Regulations
Avondale	• Not allowed
Gilbert	• Allowed for commercial and public / institutional uses • One-half of freestanding sign may be variable message • Design Review Board approval required • Operational restrictions for electronic variable message signs determined case by case • Electronic variable message signs prohibited in specific areas (except theatres and gas stations)
Glendale	• Allowed for churches, elementary and secondary schools, community colleges, gas stations, and theatres • Churches - one-half freestanding sign may be variable message • Schools and colleges - separate freestanding variable message sign allowed (max. 32 sq. ft. and 14' high) • Separate gas station - one-half freestanding sign may be variable message (max. 24 sq. ft.) • Shopping center gas station – separate freestanding variable message sign allowed (max. 16 sq. ft.) • Theatres – one wall sign may be variable message (max. 75 sq. ft. or area of allowed wall signage)
Goodyear	• Allowed for churches, elementary and secondary schools, religious and academic institutions, theatres, municipal uses, and quasi-government organizations • Churches in residential – one half of freestanding sign may be variable message • Schools in residential – separate freestanding variable message sign allowed (max. 32 sq. ft. and 14' high) • Theatres, municipal uses, religious and academic institutions, and quasi – government organizations – one freestanding variable message sign (max. 24 sq. ft. and 6 feet high)
Surprise	• Allowed for schools, public facilities and gas stations • Schools and public facilities – one half of the sign area may be variable message • Electronic message displays must be turned off 10 p.m. to 7 a.m. in residential districts • Electronic message displays can not change copy more than once per day • Gas stations – one half of freestanding sign may be variable message (max. 24 sq. ft. and 5 feet high)
Peoria	• Allowed for government uses, institutional uses, schools, churches, theatres and gas stations • Signs may be on building wall or freestanding • Two-thirds of freestanding sign may be variable message • Freestanding school sign may be 14 feet high • Wall mounted variable message signs limited to 64 sq. ft. • Gas stations – 16 sq. ft. of freestanding sign may be variable message
Phoenix	• Allowed on ground signs and wall signs • Time and temperature signs 32 sq. ft. or less not counted in area of wall or ground sign • Gas station fuel price signs and theatre signs not subject to certain display limitations
Scottsdale	• Allowed for theatres, convention facilities, gas stations, public uses, institutional uses, schools and churches • Price signs – must be ground sign (total max. 30 sq. ft if incorporated or 6 sq. ft. if separate)

ORDINANCE NO. 1257-507

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE ZONING ORDINANCE, SECTION 9, SIGNS, SECTION 908, DEFINITIONS, AND SECTION 909, SIGNS ALLOWED WITH PERMIT, AS SHOWN IN FILE NAME TA-07-02, RELATING TO VARIABLE MESSAGE SIGNS.

WHEREAS, all due and proper notices of public hearings on this Ordinance held before the City of Avondale Planning and Zoning Commission (the "Commission") and the Council of the City of Avondale (the "City Council") were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, pursuant to ARIZ. REV. STAT. § 9-462.04, the Commission held a public hearing on this Ordinance on April 19, 2007; and

WHEREAS, the Commission recommended to the City Council that this Ordinance be approved; and

WHEREAS, the City Council held a public hearing on this Ordinance on May 7, 2007.

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

SECTION 1. That the City of Avondale Zoning Ordinance, Section 908, Definitions, is hereby amended by (i) deleting the definitions for "Change Panel Sign" and "Reader Board" and (ii) adding the following new definitions:

"Variable Message Sign" shall mean a sign or portion of a sign designed to allow the immediate and frequent change of copy by manual, mechanical, or electronic means.

"Fuel Price Sign" shall mean a variable message sign used by commercial vehicle fueling stations to identify the type, grade, and price of fuel being sold.

"Theater Sign" shall mean a variable message sign used by motion picture and performing arts theaters to announce current attractions, show times and on-site events.

"Time and Temperature Sign" shall mean a variable message sign used to display the current time and air temperature.

SECTION 2. That the City of Avondale Zoning Ordinance, Section 909, Signs Permitted With A Permit, Subsection 909 (D), Special Purpose Signs, is hereby amended by adding a new subsection 5 as follows:

5. Variable Message Signs.

a. General.

i. Variable message signs are prohibited unless specifically authorized by this section. This includes time and temperature signs.

ii. A variable message sign shall not be included in any multi-tenant freestanding sign.

iii. Any sign using plastic zip track or other method of replaceable lettering shall have a secured, clear plastic or lexan cover.

iv. All variable message signs shall have static displays. Video screens, animation and special effects such as traveling, scrolling, fading, dissolving and bursting shall not be permitted.

v. Static message displays shall not be changed more than once every fifteen (15) seconds.

b. Churches and Similar Places of Worship. Up to fifty percent (50%) of the sign area of an allowed freestanding identification sign may be used for a variable message sign.

c. Elementary and Secondary Schools and College Campuses.

i. One (1) freestanding variable message sign shall be permitted in addition to any allowed freestanding identification signs.

ii. The maximum sign area shall be thirty-two (32) square feet.

iii. The maximum sign height shall be fourteen (14) feet.

d. Military Veteran and Fraternal Organization Halls. Up to fifty percent (50%) of the sign area of an allowed freestanding identification sign may be used for a variable message sign.

e. Motion Picture and Performing Arts Theater.

i. One (1) theater sign may be located on the wall or marquee of the building.

ii. The sign shall not exceed seventy-five (75) square feet or the maximum allowed wall sign area, whichever is less.

f. Municipal Uses.

i. Up to fifty percent (50%) of the sign area of an allowed freestanding identification sign may be used for a variable message sign.

ii. One freestanding variable message sign shall be permitted at the Civic Center and each community park, subject to City Council approval.

g. Vehicle Fueling Stations.

i. Vehicle fueling stations on independent parcels may use up to fifty percent (50%) of the allowed freestanding identification sign area or twenty four (24) square feet, whichever is less, for a fuel price sign.

ii. Vehicle fueling stations that are part of a shopping center or other planned development where businesses are not permitted to have individual freestanding identification signs shall be allowed one (1) freestanding fuel price sign on each adjacent street frontage, subject to the following:

1. The maximum sign area shall be sixteen (16) square feet.

2. The maximum sign height shall be six (6) feet.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

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 provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, May 7, 2007.

_____
Marie Lopez-Rogers, Mayor

ATTEST:

_____
Linda M. Farris, City Clerk

APPROVED:

_____
Andrew J. McGuire, City Attorney

CITY COUNCIL REPORT

SUBJECT:
Executive Session

MEETING DATE:
May 7, 2007

TO: Mayor and Council

FROM: Linda Farris

THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

Click to download

No Attachments Available