

CITY COUNCIL AGENDA

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

REGULAR MEETING
February 8, 2010
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 SCHEDULED PUBLIC APPEARANCES

a. Presentation by Warren J. Brown of the Warren J. Brown Foundation

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. MEMORANDUM OF UNDERSTANDING - A NEW LEAF

City Council will consider a request to approve a memorandum of understanding with "A New Leaf" to assign a part-time Counselor to the SouthwestFamilyAdvocacyCenter to provide 20 hours of counseling services per week to victims served at the SWFAC and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

b. PROFESSIONAL SERVICES AGREEMENT - REGIONAL PAVEMENT MAINTENANCE OF ARIZONA, INC.

City Council will consider a request to approve a Professional Services Agreement with Regional Pavement Maintenance of Arizona, Inc. for construction, repair and maintenance of asphalt and concrete surfaces in an amount not to exceed \$60,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

c. LEASE AGREEMENT - VERIZON WIRELESS CELLULAR TOWER

City Council will consider a request to approve a new lease agreement with Verizon Wireless including cost-sharing to construct a new communication tower in the amount of \$18,555, authorize monthly lease payments to the City, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The City Council will take appropriate action.

d. RESOLUTION 2887-210 - INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR FEDERAL TRANSIT ADMINISTRATION FUNDING

City Council will consider a resolution approving an Intergovernmental Agreement with the City of Phoenix for Federal Transit Administration pass through grant funding of \$944,470 and authorize the Mayor and City Clerk to execute the necessary documents. The Council will take appropriate action.

5 GENERAL PLAN 2030 UPDATE

City Council will receive an update on the progress made to date on the General Plan 2030 process, a City-initiated and Staff-led effort mandated by the State of Arizona to update the General Plan every 10 years. This item is for information, discussion, and direction only.

6 ADJOURNMENT

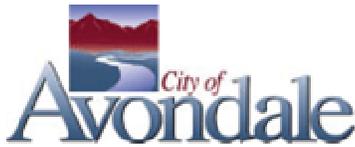
Respectfully submitted,



Carmen Martinez
City Clerk

Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

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



CITY COUNCIL REPORT

SUBJECT:

Presentation by Warren J. Brown of the Warren J. Brown Foundation

MEETING DATE:

February 8, 2010

TO: Mayor and Council

FROM: Sammi Curless, Assistant to the Mayor and Council (623)333-1613

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Mr. Warren Brown would like to share with the City Council information about the Warren J. Brown Foundation (WJBF) and the leadership programming conducted by the Foundation; formerly the KEYS Camp.

BACKGROUND:

The Warren J. Brown Foundation was founded in 2009 to provide community education, technical assistance, 24-hour crisis intervention and support programs that serve teens and young adults from middle school through college. The mission of the Foundation is "to assist youth and young adults in the navigation of obstacles and personal development, while experientially teaching them to become future leaders through education, intervention, recreational and leadership opportunities."

The WJBF Leadership Development Academy, known previously as the KEYS Camp, is a four-day, three-night retreat allowing a cross-section of students to critically evaluate their values, actions, and attitudes toward themselves, their families and respective communities. The program focuses on building the four cornerstones of a positive identity: self-esteem, self-respect, self-restraint, and self-responsibility. The next session of the Academy begins on February 18, 2010.

RECOMMENDATION:

No recommendation as this is a scheduled public appearance.

ATTACHMENTS:

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[WJB Leadership Academy](#)

WJBF Leadership Development Academy

After twenty years of leading youth based organizations (16 years as the Director of the KEYS Program) and serving as a national consultant with the federal government, Warren Brown has expanded his vision for youth and leadership development and founded the **Warren J. Brown Foundation**.

In an effort to expand upon the tremendous success of the KEYS Program, the **Warren J. Brown Foundation (WJBF)**, a 501(c)(3) non-profit organization based in Phoenix, Arizona and was founded in 2009. The foundation provides realistic direction for today's youth through educational support, mentoring, volunteer opportunities, community service projects and activities that promotes character and leadership development. The WJBF presents socially- imperative "life and leadership skills" through the Leadership Development Academy, community education through the Beyond Gangs 101 Curriculum, and at-risk youth consulting services as requested.

The WJBF Leadership Development Academy (Previously known as the KEYS Camp) is a 4-day, 3-night retreat allowing a cross-section of students to critically evaluate their values, actions, and attitudes toward themselves, their families and respective communities. The program focuses on building the four cornerstones of a positive identity: self-esteem, self-respect, self-restraint, and self-responsibility. The Goals of the Academy are:

1. To educate participants on the aspects, definitions and terms of personal identity and how it relates to them individually
2. To teach students the benefits of voluntary involvement in community service projects and engage in making the community a better place to live.
3. To teach participants how to take responsibility for their actions through the application of the "**Mistake Process Model**"
4. To enhance personal cultural pride and understanding of others
5. To help young people discover their individual gifts and develop qualities that will help them to become contributing members of societies and leaders within their families, schools and communities
6. To provide participants with opportunities to critically evaluate their values, actions, and attitude toward themselves, their families and respective communities
7. To provide participants with a framework and tools to increase self-restraint in potentially challenging situations
8. To provide WJBF alumni with opportunities to teach and inspire other potential young leaders
9. To provide experiential opportunities for youth to learn life and leadership skills



7401 S. 32nd Street | Phoenix, Arizona 85042 | 602.464.3790 | www.warrenjbrown.org

10. To increase self esteem among participants of the WJBF Leadership Development Academy



CITY COUNCIL REPORT

SUBJECT:

Memorandum of Understanding - A New Leaf

MEETING DATE:

February 8, 2010

TO: Mayor and Council

FROM: Kevin Kotsur, Chief of Police (623) 333-7201

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a memorandum of understanding with "A New Leaf" to assign a part-time Counselor to the SouthwestFamilyAdvocacyCenter. Under this agreement, A New Leaf will provide 20 hours of counseling services per week to victims served at the SWFAC.

BACKGROUND:

A New Leaf is a non-profit organization that provides prevention and rehabilitation services to victims of domestic violence. Services include victim advocacy, prevention education, residential treatment and outpatient counseling services. As part of this agreement A New Leaf will assign a Master's level therapist to the SWFAC who will provide 20 hours of counseling services per week to victims receiving services at the SWFAC. These counseling services are provided at no charge to victims at the SWFAC. Each Therapist will be licensed by the Arizona Department of Health Services (ADHS) as an outpatient counselor.

BUDGETARY IMPACT:

Funding for the therapist is provided by A New Leaf and there are no financial obligations to the City of Avondale.

RECOMMENDATION:

Staff recommends that the City Council approve a memorandum of understanding with A New Leaf to assign a Therapist to the SWFAC for a six month period at no direct cost to the City of Avondale. This Therapist will provide counseling services to the victims served at the SWFAC.

ATTACHMENTS:

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▢ [MOU](#)

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF AVONDALE
AND
THE PRE-HAB FOUNDATION d/b/a A NEW LEAF**

THIS MEMORANDUM OF UNDERSTANDING (this “Memorandum”) is made as of February 8, 2010, between the City of Avondale, an Arizona municipal corporation (the “City”), by and through the Southwest Family Advocacy Center (the “SWFAC”) and The Pre-Hab Foundation, an Arizona non-profit foundation, d/b/a A New Leaf (“A New Leaf”) (hereinafter referred to individually as “party” or collectively as “parties”).

DESCRIPTION OF PARTIES AND SERVICES

- A. A New Leaf is a non-profit organization committed to being a primary source and leading provider of prevention and rehabilitation services in the areas of domestic violence, homelessness and youth programs. Services include victim advocacy, prevention education, residential treatment and outpatient counseling services, shelter and transitional housing.
- B. A New Leaf has received an Arizona Department of Public Safety grant under the provisions of the Victims of Crime Act of 1984, as amended, to provide individualized, short-term counseling and other related crime victim advocacy services (the “VOCA Grant”).
- C. The SWFAC is a multidisciplinary facility developed and funded by the City’s, the Town of Buckeye’s and the City of Goodyear’s police departments, and the SWFAC’s purpose is to provide quality investigations of abuse in the most sensitive, appropriate manner to crime victims. The SWFAC staff is a team dedicated to serving victims of domestic violence and sexual abuse, understanding that the community is diverse and that by focusing on the needs of each victim, staff will provide the most comprehensive services possible.
- D. The SWFAC currently provides counseling and other related crime advocacy services to child and adult victims and witnesses in cases of domestic violence, sexual assault, child physical and sexual abuse, neglect, elderly abuse, homicide and drug endangerment. The overall goal of advocacy centers is to ensure that the victims who are entrusted to the centers are not further victimized by the systems that are designed to protect them.
- E. The City has determined that it is necessary to maintain the availability of individualized, short-term counseling and other related crime victim advocacy services for its residents at the SWFAC. Individualized, short-term counseling and other related crime victim advocacy services shall

VOCA

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include, without limitation, investigative and prosecutorial support, medical forensic examinations, case management, immediate crisis intervention, individualized, short-term counseling by a designated behavioral health professional or behavioral health technician, prevention and education related programs, as well as community information and referral services.

- F. The SWFAC and A New Leaf wish to enter into this Memorandum and utilize the VOCA Grant to provide individualized, short-term counseling and other related crime victim advocacy services to SWFAC clients who are victims of crime (the "SWFAC Clients"), which shall include, without limitation, victims of domestic violence or sexual assault or abuse, child abuse or molestation, stalking, elder abuse, assault, adult victims of child abuse and secondary victims (the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing description of parties and services, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and A New Leaf hereby agree as follows:

II. ROLES AND RESPONSIBILITIES

A. A New Leaf shall:

- (1) Place a Masters Level therapist (the "Therapist") at the SWFAC to provide short-term counseling services. Such Therapist shall meet all requirements of ARIZ. ADMIN. CODE § R9-20-204 and any other applicable federal, state or local law. The Therapist will provide such services on a part-time basis, 20 hours per week for the duration of this Memorandum. Short-term counseling will consist of up to eight individual sessions plus intake and discharge appointments per client. The Therapist shall conduct all counseling sessions at the SWFAC.
- (2) Ensure that the assigned Therapist will provide one late day of counseling each week. The late day is to be scheduled at the preference of the Therapist.
- (3) Ensure that the assigned Therapist will attend A New Leaf meetings, training, supervision and in-service days as required by A New Leaf and any applicable federal, state or local law.
- (4) Require a bi-monthly clinical supervision meeting for each Therapist assigned to the SWFAC, which supervision meeting shall be conducted by A New Leaf's Clinical Supervisor in order to

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ensure ongoing clinical support and training for each assigned Therapist. Any Clinical Supervisor assigned by A New Leaf to supervise any Therapist placed at the SWFAC shall meet all requirements of ARIZ. ADMIN. CODE §§ R9-20-204, R9-20-205, and any other applicable federal, state or local law.

- (5) In order to protect the best interests of the SWFAC Clients, the Therapist will review all DSM-IV R diagnostic assessments with the A New Leaf clinical supervisor if the Therapist is not independently licensed. Every effort will be made to avoid diagnosis' that do not serve the best short and long-term interests of the client, without compromising adherence to Behavioral Health Licensure requirements and professional ethics and standards.
- (6) The assigned Therapist's client focus will be domestic violence victims, however, the Therapist will also work with sexual assault victims as needed.
- (7) Provide a laptop and cell phone for the Therapist to perform their duties while at the SWFAC.
- (8) The Therapist may provide crisis intervention during the first appointment as needed and appropriate. Cases will be reviewed at the bi-monthly clinical supervision meetings, or more frequently as needed.
- (9) Counseling sessions will take place in a designated A New Leaf office at the SWFAC located in Goodyear, Arizona. All clients will be given a copy of the applicable "client's rights" and grievance process as defined by the Arizona Department of Health Services' Office of Behavioral Health Licensing ("ADHS OBHL") regulations.
- (10) At A New Leaf's sole cost and expense, obtain and maintain all licenses required by ADHS OBHL regulations and any other applicable federal, state, or local law for the provision of the Services under this Memorandum.
- (11) The SWFAC Director and A New Leaf's Clinical Supervisor shall meet quarterly, or more frequently as needed, to review this Memorandum and the services being provided by the Therapist at the SWFAC.

B. The SWFAC shall:

- (1) Provide the Therapist with office space at the SWFAC in order to conduct individual counseling sessions for SWFAC clients and to

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complete the necessary clinical documentation and case management of the SWFAC Clients.

- (2) Provide a lockable file cabinet that will remain in the designated A New Leaf office. Both the office and the file cabinet will remain locked when not in use.
- (3) Provide copier access to the Therapist while at SWFAC.
- (4) Provide Therapist with a telephone land line with voicemail capabilities while at SWFAC.
- (5) The SWFAC Director and A New Leaf's Clinical Supervisor shall meet quarterly, or more frequently as needed, to review this Memorandum and the services being provided by the Therapist at the SWFAC.

C. Client Requirements

- (1) Counseling sessions are free to SWFAC Clients and are funded through the VOCA Grant.
- (2) SWFAC Clients who receive services provided by the Therapist must be victims of crime, which shall include, without limitation, domestic violence, sexual assault/abuse, child abuse/molestation, stalking, elder abuse, assault, adult victims of physical and sexual child abuse and secondary victims.
- (3) SWFAC Clients will be required to make contact with the Therapist to schedule an appointment at a mutually suitable time.

III. TERM OF MEMORANDUM, TERMINATION, AMENDMENTS AND CLIENT RECORDS.

- A. This Memorandum shall be effective February 1, 2010 and shall terminate on June 30, 2010.
- B. Either party, in writing, may terminate this Memorandum for any reason in whole, or in part, at any time before the date of expiration. Termination of this Memorandum will be accomplished by delivering or mailing to the other Party a Notice of Intent to Terminate not less than 30 days prior to the termination date contained in such notice. Such notice shall be mailed to the other Party's contact at the address listed below in this Memorandum.

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- C. This Memorandum may be amended at any time upon written, mutual agreement of both parties. No modification to this Memorandum shall be binding upon the SWFAC or A New Leaf unless and until a signed amendment is executed.
- D. All data or communications, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted in connection with this Memorandum or the Services is confidential and privileged information (the "Client Records"). Each Party shall retain such Client Records as it may receive or obtain during the term of this Memorandum in accordance with ARIZ. REV. STAT. §§ 8-409, 13-4430, ARIZ. ADMIN. CODE § R9-20-203 and any other applicable federal, state or local record retention law. In addition, each party shall maintain the Client Records in accordance with its own internal record retention policy and procedure to the extent such policy and procedure does not conflict with any applicable federal, state or local law.
- E. Personal identifying information, financial account information, or restricted SWFAC or A New Leaf information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, both Parties must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.
- F. When personal identifying information, financial account information, or restricted SWFAC or A New Leaf information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.
- G. In the event that a Party discovers, believes or has reason to believe that the confidentiality of Client Records obtained by it in connection with this Memorandum or the Services has been compromised, such Party shall notify the other Party and any affected clients.

IV. INDEMNIFICATION; INSURANCE

A. Indemnification

- (1) A New Leaf shall indemnify, defend, save and hold harmless the SWFAC its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or

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intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of A New Leaf or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such A New Leaf to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by A New Leaf from and against any and all claims. In consideration of the award of this contract, A New Leaf agrees to waive all rights of subrogation against the Southwest Family Advocacy Center, its officers, officials, agents and employees for losses arising from the work performed by A New Leaf for the SWFAC.

- (2) SWFAC shall indemnify, defend, save and hold harmless A New Leaf, its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of SWFAC or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such SWFAC to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by SWFAC from and against any and all claims. In consideration of the award of this contract, SWFAC agrees to waive all rights of subrogation against A New Leaf, its officers, officials, agents and employees for losses arising from the work performed at the SWFAC by A New Leaf.

B. Insurance Requirements

- (1) Insurance Required. A New Leaf shall procure and maintain until all of their obligations have been discharged, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder

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by A New Leaf, its agents, representatives, employees or subcontractors.

- (2) No Representation of Coverage Adequacy. The insurance requirements herein are minimum requirements for this Memorandum. Neither the City nor SWFAC in any way warrants that the minimum limits contained herein are sufficient to protect A New Leaf from liabilities that might arise out of this Memorandum by A New Leaf, its agents, representatives, employees or subcontractors and A New Leaf is free to purchase additional insurance as may be determined necessary.
- (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 this Memorandum, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Memorandum.
- (4) 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 A New Leaf. A New Leaf shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- (5) 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. A New Leaf shall be solely responsible for any such deductible or self-insured retention amount.
- (6) Use of Subcontractors. If any work under this Memorandum is subcontracted in any way, A New Leaf shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and A New Leaf. A New Leaf shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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- (7) Minimum Scope And Limits Of Insurance. A New Leaf shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.
- (a) Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage and broad form contractual liability coverage.
- | | | |
|-------|--|-------------|
| (i) | Each Occurrence | \$1,000,000 |
| (ii) | General Aggregate | \$2,000,000 |
| (iii) | Products – Completed Operations Aggregate | \$1,000,000 |
| (iv) | Personal and Advertising Injury | \$1,000,000 |
| (v) | Fire Damage (“Damage to Rented Premises”) | \$100,000 |
| (vi) | The policy shall be endorsed to include coverage for sexual abuse and molestation. | |
- (b) Automobile Liability—Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.
- | | | |
|-----|-----------------------------|-------------|
| (i) | Combined Single Limit (CSL) | \$1,000,000 |
|-----|-----------------------------|-------------|
- (c) Worker's Compensation and Employers' Liability
- | | | |
|-------|---|-----------|
| (i) | Workers' Compensation | Statutory |
| (ii) | Employers' Liability | |
| | Each Accident | \$100,000 |
| (iii) | Disease – Each Employee | \$100,000 |
| (iv) | Disease – Policy Limit | \$500,000 |
| (v) | Policy shall contain a waiver of subrogation against the SWFAC. | |
- (d) Professional Liability (Errors and Omissions Liability)
The policy shall cover professional misconduct or lack of ordinary skill
- | | | |
|-------|--|-------------|
| (i) | Each Claim | \$2,000,000 |
| (ii) | Annual Aggregate | \$2,000,000 |
| (iii) | In the event that the professional liability insurance required by this Memorandum is written on a claims-made basis, A New Leaf warrants that any retroactive date under the policy shall precede the effective date of this Memorandum; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years | |

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beginning at the time this Memorandum is terminated.

- (8) Notice Of Cancellation. Each insurance policy required by the insurance provisions of this Memorandum shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City and the SWFAC, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.
- (9) Acceptability Of Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The SWFAC in no way warrants that the above-required minimum insurer rating is sufficient to protect A New Leaf from potential insurer insolvency.
- (10) Verification Of Coverage. A New Leaf shall furnish the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Memorandum, issued by A New Leaf's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Memorandum and that such coverage and provisions are in full force and effect. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the City before any work commences. Each insurance policy required by this Memorandum must be in effect at or prior to commencement of work under this Memorandum and remain in effect for the duration of the Memorandum. Failure to maintain the insurance policies as required by this Memorandum or to provide evidence of renewal is a material breach of Memorandum.

V. MISCELLANEOUS

- A. Independent Contractor. A New Leaf acknowledges and agrees that the Services provided under this Memorandum are being provided as an independent contractor, not as an employee or agent of the City. A New Leaf, 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 A New Leaf, its employees or subcontractors. A New Leaf, and not the City, shall determine the time of its performance of the services provided under this Memorandum so long as A New Leaf meets the requirements of its agreed scope of work as set

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forth in Section 2 above. A New Leaf is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and A New Leaf do not intend to nor will they combine business operations under this Memorandum.

- B. Laws and Regulations. A New Leaf shall keep fully informed and shall at all times during the performance of its duties under this Memorandum ensure that it and any person for whom A New Leaf 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.
- C. Amendments. This Memorandum may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and A New Leaf.
- D. Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Memorandum 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 Memorandum will promptly be physically amended to make such insertion or correction.
- E. Severability. The provisions of this Memorandum 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 Memorandum which may remain in effect without the invalid provision or application.
- F. 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. A New Leaf is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and A New Leaf agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Memorandum.
- G. Entire Agreement; Interpretation; Parol Evidence. This Memorandum 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 Memorandum are hereby revoked and superseded by this Memorandum. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set

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forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Memorandum. This Memorandum 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 Memorandum. 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 Memorandum.

- H. Notices and Requests. Any notice or other communication required or permitted to be given under this Memorandum 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 Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

With copy to: Southwest Family Advocacy Center
140 North Litchfield Road
Goodyear, Arizona 85338
Facsimile: (602) 340-1538
Attn: Debra Olson, Director

If to A New Leaf: A New Leaf
868 East Universtiy Drive
Mesa, Arizona 85203
Facsimile: (480) 869-0039
Attn: Michael Hughes, CEO/President

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (c) the following business day after being given to a recognized overnight delivery service, with the

Short-term Counseling Program

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.

- I. Assignment. No right or interest in this Memorandum shall be assigned by A New Leaf without prior, written permission of the City signed by the City Manager and no delegation of any duty of A New Leaf shall be made without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by A New Leaf in violation of this provision shall be a breach of this Memorandum by A New Leaf.
- J. Subcontracts. No subcontract shall be entered into by A New Leaf with any other party to furnish any of the material or services specified herein without the prior written approval of the City. A New Leaf is responsible for performance under this Memorandum whether or not subcontractors are used.
- K. Rights and Remedies. No provision in this Memorandum 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 Memorandum. The failure of the City to insist upon the strict performance of any term or condition of this Memorandum or to exercise or delay the exercise of any right or remedy provided in this Memorandum, or by law, or the City's acceptance of and payment for services, shall not release A New Leaf from any responsibilities or obligations imposed by this Memorandum or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Memorandum.
- L. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Memorandum 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.
- M. Confidentiality of Records. A New Leaf 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 Memorandum shall

Short-term Counseling Program

not be used or disclosed by it, its agents, officers, or employees, except as required to perform A New Leaf's duties under this Memorandum. Persons requesting such information should be referred to the City. A New Leaf also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of A New Leaf as needed for the performance of duties under this Memorandum.

- N. Records and Audit Rights. A New Leaf's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Memorandum, including the papers of any A New Leaf and its subcontractors' employees who perform any work or Services pursuant to this Memorandum to ensure that A New Leaf and its subcontractors are complying with the warranty under subsection 14.17 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (a) evaluation and verification of any invoices, payments or claims based on A New Leaf's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Memorandum and (b) evaluation of A New Leaf's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, A New Leaf and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Memorandum for the duration of the work and until three years after the date of final payment by the City to A New Leaf pursuant to this Memorandum. A New Leaf and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give A New Leaf or its subcontractors reasonable advance notice of intended audits. A New Leaf shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Memorandum.
- O. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, A New Leaf and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). A New Leaf's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Memorandum and may result in the termination of this Memorandum by the City.

Short-term Counseling Program

- P. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, A New Leaf certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term “scrutinized business operations” shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the City determines that A New Leaf submitted a false certification, the City may impose remedies as provided by law including terminating this Memorandum pursuant to subsection 13.2 above.

- Q. Non-Exclusive Contract. This Memorandum is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

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:

Carmen Martinez, City Clerk

“A New Leaf”

THE PRE-HAB FOUNDATION, an Arizona non-profit foundation d/b/a A NEW LEAF

By: _____

Name: _____

Title: _____



CITY COUNCIL REPORT

SUBJECT:

Professional Services Agreement - Regional
Pavement Maintenance of Arizona, Inc.

MEETING DATE:

February 8, 2010

TO: Mayor and Council

FROM: Wayne Janis, Water Resources Director, (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that City Council approve a Professional Services Agreement (PSA) with Regional Pavement Maintenance of Arizona, Inc. (Regional Pavement), for construction, repair and maintenance of asphalt and concrete surfaces, in an amount not to exceed \$60,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

During a typical work week, the Water Resources Department performs several scheduled proactive water service replacements and/or provides emergency repairs to broken water/sewer service lines and water mains. These activities sometimes require removal of large sections of asphalt and/or concrete to access the affected lines as they are usually located under the street or sidewalk areas. Once the line replacement or repair is completed, staff backfill the excavation and install a temporary asphalt and/or concrete patch. A permanent repair to the asphalt and/or concrete surface is scheduled for a later date, with a goal of completion no more than 10 working days subsequent to the line repair, and is contracted to a vendor specializing in street repairs.

DISCUSSION:

Dysart Unified School District #89 used a competitive process to enter into a contract with Regional Pavement to provide construction, repair and maintenance of asphalt and concrete surfaces. The City is permitted to cooperatively attach to the Dysart contract, allowing the City to procure the same services for a lower cost than would otherwise be available. This PSA will allow Water Resources staff to assign permanent asphalt and concrete repairs required subsequent to water/sewer line work to Regional Pavement on an as-needed basis.

BUDGETARY IMPACT:

Funding for the work associated with this PSA is available in the Water Operating Budget, Distribution Division, Capital Outlay (Line Item 501-9100-00-8510).

RECOMMENDATION:

Staff is recommending that City Council approve a Professional Services Agreement with Regional Pavement Maintenance of Arizona, Inc., for construction, repair and maintenance of asphalt and concrete surfaces, in an amount not to exceed \$60,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

 [PSA](#)

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
REGIONAL PAVEMENT MAINTENANCE OF ARIZONA, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of February 8, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and Regional Pavement Maintenance of Arizona, Inc., an Arizona corporation ("Contractor").

RECITALS

A. After a competitive procurement process, the Dysart Unified School District #89 entered into Contract No. 0506-018, as amended June 24, 2009 (the "Dysart Contract"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, for the Contractor to provide construction, repair and maintenance of asphalt and concrete surfaces (the "Services").

B. The City is permitted by Section 25-24 of the City Code to procure services under the Dysart Contract without further public bidding, and the Dysart Contract permits its cooperative use by other governmental agencies including the City.

C. The City has determined that it is necessary to procure the Services under the terms and conditions of the Dysart Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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 remain in full force and effect until November 2, 2010.
2. Scope of Work. Contractor shall provide the Services under the terms and conditions of the Dysart Contract, attached hereto as Exhibit A.
3. Compensation. The Contractor shall provide the Services to the City at the rates set forth Dysart Contract and in the quantities as set forth in purchase orders issued by the City, not to exceed an aggregate total of \$60,000.00.
4. Records and Audit Rights. Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or Services pursuant to the Agreement to ensure that the Contractor and its

subcontractors are complying with the warranty under Section 5 below (all the foregoing hereinafter referred to as “Records”), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (a) evaluation and verification of any invoices, payments or claims based on Contractor’s and its subcontractors’ actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under the Agreement and (b) evaluation of the Contractor’s and its subcontractors’ compliance with the Arizona employer sanctions laws referenced in Section 5 below. To the extent necessary for the City to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors’ facilities, from the effective date of the Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to the Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to the Agreement.

5. E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor’s or its subcontractor’s failure to comply with such warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City.

6. Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term “scrutinized business operations” shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the City determines that the Contractor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement.

7. Conflict of Interest. This Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

8 Agreement Subject to Appropriation. The provisions of this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Contractor and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Contractor fully informed as to the availability of funds for the Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the Contractor shall be relieved of any subsequent obligation under this Agreement.

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:

Carmen Martinez, City Clerk

“Contractor”

REGIONAL PAVEMENT
MAINTENANCE OF ARIZONA, INC.,
an Arizona corporation

By: _____

Name: _____

Title: _____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2010,
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 ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2010,
by _____ as _____ of REGIONAL PAVEMENT
MAINTENANCE OF ARIZONA, INC., an Arizona corporation, on behalf of the corporation.

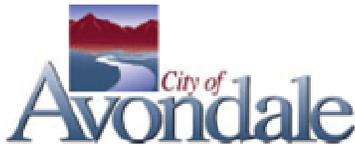
Notary Public in and for the State of Arizona

My Commission Expires:

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
REGIONAL PAVEMENT MAINTENANCE OF ARIZONA, INC.

[Dysart Contract]

See following pages.



CITY COUNCIL REPORT

SUBJECT:

Lease Agreement - Verizon Wireless Cellular Tower

MEETING DATE:

February 8, 2010

TO: Mayor and Council
FROM: Kevin Hinderleider, IT Director (623)333-5007
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is recommending that the City Council approve a new lease agreement with Verizon including cost-sharing to construct a new communication tower in the amount of \$18,555, authorize monthly lease payments to the City, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

On December 6, 1999 U.S. West contracted with the City of Avondale to establish a cellular communications tower located at 1825 North 107th Avenue. Avondale leased the land to U.S. West for a period of 20 years. At the time of construction the tower was established as a single monopole supporting a flag. In June, 2002 Verizon (Wireless Tower One) assumed the lease from U.S. West and continued to support cellular service from that location.

In 2008, Verizon approached the City of Avondale with the need to construct a new tower at the 1825 North 107th Avenue location. Due to advancements in technology and the number of cellular subscribers, the current monopole construction is no longer capable of meeting demands. Verizon is requesting the establishment of a new 100 foot tower with a wider cellular array.

At roughly the same time, the City of Avondale needed to establish a new wireless communications network around the city to pass critical data coming from the Water Resources well sites and lift stations. The project consisted of four new 100 foot towers at each end of the city (North, East, South, West). The planned communications network will pass information such as well site pump status, pump controls, security video, security access and allows for daily operations such as telephone communications, e-mail and file transfers.

On March 9, 2009 Avondale City Council approved the establishment of three towers located at: Northside Booster Station, Waste Water Treatment Plant, Well 10 (behind Home Depot). These three towers have been completed and are now passing network communications as planned. At the time of the original council report, the fourth tower remained under review with Verizon and the City of Avondale.

DISCUSSION:

For the site at 1825 North 107th Avenue, Avondale and Verizon have agreed that the best solution would be to share the cost of building, and co-locating their equipment on the tower. This would allow Verizon to expand their cellular capabilities and allow Avondale to complete the network ring around the City.

Attached are the contracts with Verizon to build a new 100 foot tower at the 1825 North 107th Avenue location, tear down the existing monopole and establish a new five year lease with the City of Avondale.

BUDGETARY IMPACT:

The new lease agreement will provide the City of Avondale with revenue of \$1,500 monthly for five years, with renewable 3 - 5 year extensions totaling a possible twenty year lease agreement.

Initial payment for the portion of the tower construction project will be funded through Water Resources account number 514-1254-00-8520.

RECOMMENDATION:

Staff recommends that the City Council approve a new lease agreement with Verizon including cost-sharing to construct a new communication tower in the amount of \$18,555, authorize monthly lease payments to the City, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents

ATTACHMENTS:

Click to download

[📄 Lease Agreement](#)

TOWER LEASE AGREEMENT
BETWEEN THE CITY OF AVONDALE
AND
VERIZON WIRELESS (VAW) LLC

THIS TOWER LEASE AGREEMENT (this "Agreement") is entered into _____, 2010, (the "Effective Date") between VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company, d/b/a Verizon Wireless (the "Lessee"), and the City of Avondale, an Arizona municipal corporation (the "City").

RECITALS

A. The City owns certain real property commonly known as the Northeast Public Safety Facility, located at 1825 North 107th Avenue, Avondale, Arizona, as more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by reference (the "Property").

B. The Property is the subject of that certain Real Property Lease dated December 6, 1999 between Lessee (as successor in interest to the original lessee, US WEST Wireless, L.L.C.) and the City, referenced by Lessee as Contract #NG 44525 (the "Existing Lease"), pursuant to which Lessee leases a portion of the Property as described in the Existing Lease (the "Existing Premises") for the operation and maintenance of a flagpole/antenna and certain communications equipment (the "Existing Facility"), which were installed on the Existing Premises for use by Lessee.

C. Lessee and City desire to terminate the Existing Lease and enter into this Agreement through which the Existing Facility will be removed and replaced with a new wireless communications facility on an approximately four hundred (400) square foot portion of the Property (the "New Premises") for the joint use of Lessee and City, as described and depicted on the site plan included as page A2 of the plans prepared by Strategic Architectural and Engineering Services, Inc., entitled "Verizon Wireless 0019 PHO Whistler, 1801 N. 107th Ave.," date stamped December 12, 2008, attached hereto as Exhibit B and incorporated herein by reference (the "Plans"). "Plans" shall include any modifications approved by the City Manager or authorized designee.

D. Lessee and City desire to establish their respective rights and responsibilities for construction and operation of the new Communications Facilities (as defined in subsection 3.2 below).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Lessee hereby agree as follows:

1. Lease Agreement.

1.1 Termination of Existing Lease. As of the Commencement Date, the Existing Lease is hereby terminated and of no further force or effect whatsoever, with the exception of only those provisions that expressly survive termination. City and Lessee agree that this Agreement replaces the Existing Lease. City and Lessee acknowledge that notwithstanding the termination of the Existing Lease and the commencement of this Agreement, Lessee may continue to make, and the City may continue to receive, rental and other payments pursuant to the Existing Lease. In such event, any rental or other payments made pursuant to the Existing Lease after its termination shall be applied and credited against any rentals or other payments due under this Agreement.

1.2 Initial Term. The initial term of this Agreement shall be five (5) years (the "Initial Term") commencing on the Commencement Date (as defined herein) and terminating on the fifth anniversary of the Commencement Date unless otherwise sooner terminated as provided herein. The Agreement shall commence based upon the date Lessee commences installation of the Lessee Facilities (as defined in Section 2.2 below) on the New Premises. In the event the date Lessee commences installation of the Lessee Facilities falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if the date installation commences falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month (either the "Commencement Date"). City and Lessee agree that they shall acknowledge in writing the Commencement Date. City and Lessee acknowledge and agree that initial rental payment(s) shall not actually be sent by Lessee until thirty (30) days after a written acknowledgement confirming the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1 and the written acknowledgement confirming the Commencement Date is dated January 14, Lessee shall send to the City the rental payments for January 1 and February 1 by February 13. The Initial Term and any exercised Extension Terms (as defined in subsection 1.3 below), are referred to herein as the "Lease Term."

1.3 Renewal. Upon expiration of the Initial Term, Lessee may request to extend the Term of the Agreement for up to three (3) additional five (5) year terms after the Initial Term (individually each is referred to as an "Extension Term" and collectively the "Extension Terms") on the same terms and conditions as set forth herein except at the Rent (as defined below) specified below, by delivering to City written notice of its election to exercise any renewal for an Extension Term at least ninety (90) but not earlier than one hundred eighty (180) days prior to the expiration of the Initial Term or any then-current Extension Term, as applicable. Only upon the giving of notice of renewal and extension in accordance with the foregoing provisions will the Lease Term be renewed and extended in accordance with such notice. City may deny extension of the Lease Term by written notification of its intention not to renew the Lease Term within fourteen (14) days after receipt of Lessee's renewal notification or at any time at least two (2) years prior to the expiration of the Initial Term or applicable Extension Term. Notwithstanding anything herein to the contrary, City shall have the unconditional right, with or without cause, to terminate this Agreement upon two (2) year's prior written notice; provided, however, that such notice shall not be given within four (4) years following the Effective Date.

1.4 Rent.

A. Base Rent.

(1) Except for the initial rent payment (as set forth in Section 1.2 above), Lessee shall pay base rent (“Base Rent”) in the amount and in the manner specified hereunder, commencing on the Commencement Date. All rent shall be due and payable in advance not later than the first (1st) day of each month. Notwithstanding the payment deadlines set forth above, the Lessee may, at its sole option and without penalty, pay the full annual amount of Base Rent in advance in one annual payment.

(2) Base Rent during the first year of the Initial Term shall be One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per month. The annual rental rate (paid in monthly installments as stated above) shall increase by five percent (5%) on each anniversary of the Commencement Date throughout the Term of this Agreement. All payments by Lessee to City required pursuant to this Agreement are collectively referred to as “Rent.”

B. Late Rent. Should any installment of Rent not be paid within fifteen (15) days following the date due, a ten percent (10%) late fee shall be added to the amount due. Furthermore, any and all amounts payable by Lessee under this Agreement that are not paid within fifteen (15) days following the date due shall accrue interest at the rate of one percent (1%) per month from the date the amount first came due until paid. Lessee expressly agrees that the foregoing represents reasonable estimates of the City’s costs in the event of delay in payment of the Rent, and is not a penalty.

C. No Setoffs. All Rent shall be paid in full directly to City without setoff, demand or deduction of any description. Lessee expressly waives any right of setoff.

D. Holding Over. Any holding over after the expiration of the Lease Term with the consent of the City shall be construed to be a tenancy from month to month at a Base Rent of one hundred fifty percent (150%) of the Base Rent in effect for the last year of the Lease Term, and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

1.5 Utilities. Lessee shall pay for all utilities it consumes in its operations on the Site (separately metered and using separate circuits). City agrees to sign such documents or easements as may be reasonably required by utility companies or others to provide such service, provided however, that any easement necessary for such power or other utilities shall be at a location acceptable to City and the servicing utility company, and may at City’s election be extinguished by City at the termination of the Agreement. All utility lines, without exception, shall be underground and shall be re-vegetated in a manner acceptable to the City.

1.6 Taxes. Lessee shall pay all real, leasehold and personal property taxes assessed on, or any portion of such taxes attributable to Lessee’s operations on the Property. As required by ARIZ. REV. STAT. § 42-1931, notice is hereby given that Lessee shall be responsible for any and all government property lease excise taxes described in ARIZ. REV. STAT. § 42-1901

et seq. or similar laws in force from time to time. In the event that Lessee is found to be in violation of its obligation to pay taxes to the City pursuant to applicable law, failure by Lessee to pay such taxes after notice and opportunity to cure is an event of default that could result in divesting the Lessee of any interest in or right of occupancy of the New Premises.

2. Construction and Maintenance. Subject to the terms and conditions contained in this Agreement, City hereby grants to Lessee the right to construct the Communication Facilities within the New Premises on the Property and to thereafter operate the Lessee Facilities (as defined in subsection 2.2 below).

2.1 Removal of Existing Pole. Lessee shall remove the existing pole located on the Existing Facility on the Existing Premises and shall restore and repair the Property to a condition reasonably satisfactory to the City.

2.2 Installation of New Pole. Lessee shall construct on the New Premises a new one hundred foot (100') pole (the "New Pole") in accordance with the Plans, which Plans have been reviewed and approved by the City. The New Pole shall be of the type, configuration and design set forth in the Plans. Lessee may install on the New Pole no more than twelve (12) cellular panel antennas of the type, configuration and design as described and depicted on the Plans, at the sixty-six foot (66') RAD center. The New Pole shall be engineered for the installation by City of its antennas at the ninety foot (90') and one hundred foot (100') RAD centers, and Lessee shall further install, in locations to be determined by the City, conduit for City's operation of its public safety communications on the New Pole (the "City Conduit"). Lessee also has the right to erect, maintain and operate on the New Premises foundations, utility lines, transmission lines, air conditioned equipment shelters, fences, electronic equipment, radio transmitting and receiving antennas, an emergency generator, supporting equipment and structures thereto, as more particularly described on the Plans. All improvements constructed and installed by Lessee, except the New Pole and City Conduit, are hereinafter referred to as the "Lessee Facilities," which shall to the extent reasonably possible, blend into the surrounding building architecture. Specifically, the equipment storage structure, emergency generator and all related devices shall be screened from view and camouflaged so as to completely conceal their purpose. Lessee shall have the right, without the City's prior approval, to make any modifications, repairs or replacements to the Lessee Facilities so long as such modifications, repairs or replacements: (A) result in a substantially similar configuration (identical in height and weight); and (B) do not materially change the visual and aesthetic layout of the Lessee Facilities as currently depicted in the Plans. As for all other modifications, repairs or replacements, Lessee shall first obtain the City's prior written approval, which approval shall not be unreasonably delayed, withheld or denied. The City Conduit shall be maintained solely by the City, at the City's sole cost and expense. Lessee shall be responsible for any damage caused to the City Conduit solely arising out of Lessee's negligence or willful misconduct.

2.3 Permits and Construction.

A. Construction Standards. Promptly following the Effective Date, Lessee shall commence and diligently complete any and all work necessary to prepare, maintain and alter the New Premises for these permitted improvements, including obtaining approval of licenses and permits as required by federal, state, county and municipal authorities to the extent

such laws relate to Lessee's use of the New Premises. All construction shall be performed in strict compliance with such approved plans and specifications and the Plans, and no such work may materially interfere with existing City uses on the Property, nor render the Property materially unfit for use by City or damage any existing facilities of City. Nothing herein is intended to, nor shall, excuse Lessee's compliance with all ordinances, codes, and regulations of City, including, but not limited to, zoning regulations. City agrees to reasonably cooperate, at no cost to City, with Lessee's efforts to obtain any required licenses and permits. Lessee agrees that all work shall be completed by a licensed and qualified contractor, shall be done with good materials and workmanship and in a lien-free manner, and shall be done in strict compliance with all applicable laws and governmental regulations. Lessee has inspected the New Premises and agrees that it is taking the New Premises in its "as-is" condition.

B. Government Approvals. It is understood and agreed that Lessee's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as a satisfactory building structural analysis and soil boring tests which will permit Lessee use of the Premises as set forth above. City shall cooperate with Lessee in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Lessee. In the event that (1) any of such applications for such Governmental Approvals should be finally rejected; (2) any Governmental Approval issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (3) Lessee determines that such Governmental Approvals may not be obtained in a timely manner; (4) Lessee determines that any building structural analysis is unsatisfactory; (5) Lessee determines that any soil boring tests are unsatisfactory; (6) Lessee determines that the Premises is no longer technically compatible for its use; or (7) Lessee, in its sole discretion, determines that the use the Premises is obsolete or unnecessary, Lessee shall have the right to terminate this Agreement. Notice of Lessee's exercise of its right to terminate shall be given to City in writing in the manner set forth in Section 8.4 below. All rentals paid to said termination date shall be retained by City. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the Lessee shall have no further obligations for the payment of Rent to City.

2.4 City Contribution. City agrees that the City shall pay fifty percent (50%) of the actual, out-of-pocket costs of the construction of the New Pole and City Conduit (the "Construction Costs"). Within thirty (30) days after Lessee delivers to City: (A) notice that the New Pole and City Conduit are complete; (B) a statement from a licensed architect or engineer certifying that the New Pole and City Conduit have been completed in accordance with the Plans and any other plans and specifications prepared by the Lessee and approved by the City; (C) a statement setting forth the Construction Costs, together with invoices sufficiently evidencing such costs; and (D) final unconditional lien waivers from all contractors, subcontractors, suppliers and any other party performing work on or in connection with the Property, City shall pay to Lessee an amount equal to fifty percent (50%) of the Construction Costs (the "City Contribution"), which shall be payable to Lessee either by cashier's check or wire transfer (at Lessee's option). Notwithstanding the foregoing, in no event shall the City Contribution exceed Fifty Thousand Dollars (\$50,000.00).

2.5 Maintenance. Except as expressly otherwise provided herein and for the Lease Term only, Lessee shall be solely responsible, at its sole cost and expense, for all improvements to and maintenance of the Lessee Facilities. City neither assumes, nor shall it have any responsibility for the condition of the Property or the Site, except that the City shall be responsible for the construction, maintenance, up-keep, or repairs necessary to keep the Property or the Site safe and serviceable for Lessee's intended uses. City shall be responsible for maintenance of the New Pole, City Conduit and the City Facilities (as defined below).

2.6 Ownership of New Pole and City Conduit. Upon receipt by Lessee of the City Contribution, Lessee shall provide to City a bill of sale, in a form reasonably acceptable to the City, transferring ownership of the New Pole and the City Conduit to City, at no additional cost to the City. City and Lessee agree that the City shall own and maintain the New Pole and the City Conduit for the duration of the Lease Term.

2.7 Damage to the Lessee's Facilities. Except to the extent arising out of the negligence or willful misconduct by the City or its agents, employees or assigns, in the event that the Lessee Facilities is destroyed or damaged in whole or in part by fire, lightning, windstorm, flood, earthquake, explosion, collapse, aircraft or other vehicle damage or other casualty, Lessee shall, within a period of thirty (30) days after the date of such damage, commence the repair, reconstruction and restoration thereof and thereafter prosecute the same diligently to completion, and this Agreement shall continue in full force and effect.

3. Permitted Use.

3.1 Lessee's Permitted Activities. The Lessee may only use the New Premises for the lawful provision of wireless communication facilities, services and uses incidental thereto, including but not limited to the transmission and reception of radio communication signals in all frequencies authorized by governmental authorities.

3.2 City's Use. City shall have the right to install antennas at the ninety foot (90') and one hundred foot (100') RAD centers of the New Pole for police, fire, public safety and other City uses, together with such utility and transmission lines and other equipment necessary or convenient for the operation of such facilities (collectively, the "City Facilities"). City may access the New Pole as necessary to maintain and operate the City Facilities without the supervision or consent of Lessee; provided, however, that the City shall provide the Lessee notice of such installation work at least twenty-four (24) hours in advance. The New Pole, the City Conduit, the City Facilities and the Lessee Facilities are collectively referred to herein as the "Communications Facilities."

3.3 Lessee Interference. Lessee shall not operate the Lessee Facilities in any manner that materially interferes in any way with governmental or other existing commercial wireless communications, or with the City's Facilities or other existing operations on or around the Property. In the event such interference creates a threat to public safety, City shall contact Lessee's Network Operations Center ("NOC") at (800) 264-6620 to notify them of such interference. If Lessee fails to correct the problem within forty-eight (48) hours after notice from the City to NOC, City shall then have the right to immediately correct or remove the interference

by whatever means necessary and Lessee shall reimburse City for all costs incurred in correcting or removing the interference. In the event City is compelled to correct the interference problem, City shall not be liable for any costs, consequential damages or loss of revenue associated with City's actions. For all other interference problems, Lessee shall take all steps necessary to correct and eliminate the interference within a reasonable time, at its sole cost. If the interference cannot be eliminated within a reasonable length of time, not to exceed seven (7) days, Lessee agrees to immediately cease using the equipment that is creating the interference (except for short tests necessary for the elimination of the interference), and may not recommence using such equipment until the interference has been resolved.

3.4 Lessee Access. Lessee shall have non-exclusive access to the Property at all times, twenty-four (24) hours each day and seven (7) days per week, on foot or motor vehicle, for the installation and maintenance of the Lessee Facilities, the New Pole and the City Conduit. Except in emergencies, Lessee shall perform all work at the Property between 8:00 a.m. and 5:00 p.m. (local time, Phoenix, Arizona) and only on days other than weekends and holidays. In no event shall parking lot use or other uses or events at or around the Property be materially interrupted by Lessee's work.

4. Indemnification.

4.1 By Lessee. To the extent permitted by law, Lessee shall indemnify, defend and hold City harmless for, from and against any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by City on account of: (A) any damages, injury to person or property, or death of any person arising out of any acts, errors, omissions, work, or services of Lessee, its employees, agents, representatives, consultants or subcontractors, their employees, agents, or representatives on the Property; (B) any worker's compensation claims, unemployment compensation claims or unemployment disability compensation claims of employees of Lessee or claims under similar such laws or obligations relating to Lessee's use of the New Premises; or (C) action properly taken by City pursuant to this Agreement. This indemnification obligation shall not extend to any loss, damage, injury, or death to the extent caused by the negligence or willful misconduct of City, or its employees, agents and assigns. The amount and type of insurance coverage requirements set forth herein shall in no way be construed as limiting the scope of the indemnity in this Section.

4.2 By City. To the extent permitted by law, City shall indemnify, defend and hold harmless Lessee for, from and against any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by Lessee on account of: (i) any damages, injury to person or property, or death of any person arising out of any acts, errors, omissions, work, or services of the City, its employees, agents, representatives, consultants or subcontractors, their employees, agents, or representatives; (ii) any worker's compensation claims, unemployment compensation claims or unemployment disability compensation claims of employees of the City or claims under similar such laws or obligations; or (iii) action properly taken by Lessee pursuant to this Agreement. This indemnification obligation shall not extend to any loss, damage, injury, or death to the extent

caused by the negligence or willful misconduct of the Lessee, or its employees, agents and assigns.

5. Insurance.

5.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Lessee, Lessee shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms reasonably 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 Lessee. 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, provided that such review be subject to the following restrictions: (i) the City shall execute a nondisclosure agreement in a form reasonably acceptable to Lessee prior to reviewing any policy or endorsements; and (ii) any review shall be completed at a time and location reasonably selected by Lessee, which location shall be in the office of Lessee's attorney. 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 Lessee 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 and Employers liability insurance, Professional Liability insurance, if applicable, and Builder's Risk insurance 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 responsibilities or obligations required 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. Lessee's insurance shall be primary insurance with respect to Lessee's obligations under this Agreement and in the protection of the City as an Additional Insured.

F. Waiver. All policies, except for Professional Liability, including Workers' Compensation and Employers liability 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 Lessee. Lessee shall arrange to

have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

G. 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. Lessee shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Lessee shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Lessee. Lessee shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Lessee will provide the City with suitable evidence of insurance in the form of certificates of insurance. The City also reserves the right to review, upon request, a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Lessee's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect, provided that such review of any declaration page shall be subject to the following restrictions: (i) the City shall execute a nondisclosure agreement in a form reasonably acceptable to Lessee prior to reviewing any declaration page; and (ii) any review shall be completed at a time and location reasonably selected by Lessee, which location shall be in the office of Lessee's attorney. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the responsibilities or obligations and the City's acceptance of the Lessee's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Lessee's responsibility to forward renewal certificates to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A twenty-five dollar (\$25.00) administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) 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 substantial equivalent.

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

(c) Excess Liability – Follow Form to underlying insurance as applicable.

(2) Lessee’s insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation and Employers liability insurance, 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 Lessee under this Agreement.

(4) A thirty (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.

5.2 Required Insurance Coverage.

A. Commercial General Liability. Lessee shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million Dollars (\$2,000,000.00) 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 substantial 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. All commercial general liability and property damage policies maintained by Lessee shall contain a provision that City, although an additional insured, shall nevertheless be entitled to recover under said policies for loss occasioned to it, its servants, agents or employees, by reason of the negligence of Lessee.

B. Vehicle Liability. Lessee shall maintain Business Automobile Liability insurance with a limit of One Million Dollars (\$1,000,000.00) each occurrence on

Lessee's owned, hired and non-owned vehicles assigned to or used in the performance of the Lessee's responsibilities or obligations 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 Lessee engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Lessee shall maintain (or cause its contractors or subcontractors to maintain) Professional Liability insurance covering negligent errors and omissions arising out of the any responsibilities or obligations performed by the Lessee, or anyone employed by the Lessee, or anyone for whose negligent acts, mistakes, errors and omissions the Lessee is legally liable, with an unimpaired liability insurance limit of One Million Dollars (\$1,000,000.00) each claim and Two Million Dollars (\$2,000,000.00) annual aggregate. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the work or services, and the Lessee shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

D. Workers' Compensation Insurance. Lessee shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Lessee's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than Five Hundred Thousand Dollars (\$500,000.00) for each accident, Five Hundred Thousand Dollars (\$500,000.00) disease for each employee and One Million Dollars (\$1,000,000.00) disease policy limit.

E. Builder's Risk Insurance. Lessee shall be responsible for purchasing and maintaining insurance to protect the Lessee Facilities, the New Pole and the City Conduit from perils of physical loss, subject to the limitations set forth in this subsection. The insurance shall provide for the full cost of replacement for the Lessee Facilities at the time of any loss, and for the full cost of replacement for the New Pole and the City Conduit until the time of transfer of title of same to the City. The insurance shall include as named insureds the City, up and until the time of transfer of the New Pole and the City Conduit to the City, and at all times Lessee and Lessee's Subcontractors 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. Lessee shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

5.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially change without thirty (30) days' prior written notice to the City by Lessee's insurance broker (10 days notice shall apply to non-payment).

6. Defaults.

6.1 Lessee's Default. If Lessee fails to pay any rental or other amounts payable under this Agreement when due, or if Lessee should fail to perform any other of the covenants, terms or conditions of this Agreement, prior to exercising any rights or remedies against Lessee on account thereof, City shall first provide Lessee with written notice of the failure and provide Lessee with a ten (10) day period to cure such failure if the failure is to pay Rent or any other sum of money under this Agreement, or a thirty (30) day period to cure such failure if the failure is to perform any other covenant, term or condition of this Agreement. If the failure to perform does not involve the payment of Rent or any other sum of money under this Agreement and cannot reasonably be cured within 30 days, Lessee shall not be in default of this Agreement if Lessee commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion; provided, however, that no such cure period shall exceed 90 days. In the event Lessee fails to cure its default within the applicable cure period, or Lessee breaches this Agreement or otherwise fails to perform or observe any covenant or condition applicable to it under the terms of this Agreement, then City may elect any one or more of the following remedies:

A. Terminate Agreement. Terminate this Agreement pursuant to Section 7.1 below.

B. Reentry. Reenter the Property and take possession thereof and remove all persons and personal property therefrom.

C. Other Remedies. Pursue any and all other legal remedies available to it without election, with or without canceling this Agreement, including without limitation recovering its actual damages caused by the breach or failure of Lessee.

6.2 City's Default. In the event that City fails to perform or observe any covenant, term or condition applicable to it under the terms of this Agreement, then Lessee shall first provide City with written notice of the failure and provide City a thirty (30) day period to cure such failure. Should the City fail to cure such failure, then Lessee may: (A) terminate the Agreement; (B) initiate legal action to compel specific performance by City; or, (C) if specific performance is not available as a remedy, Lessee may sue to recover its actual damages caused by the breach or failure of City.

6.3 Limitation of Liability. Except for indemnification pursuant Section 4, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

7. Termination; Cancellation.

7.1 For Cause. This Agreement may be terminated by either party upon thirty (30) days' written notice following the applicable cure period set forth above 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 Lessee to the City for the undisputed portion of any Rent due as of the termination date.

7.2 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 this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of this Agreement.

7.3 Gratuities. The City may, by written notice to the Lessee, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Lessee or any agent or representative of the Lessee 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 Lessee an amount equal to one hundred fifty percent (150%) of the gratuity.

8. Miscellaneous.

8.1 Applicable Law; Venue. In the performance of this Agreement, Lessee 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.

8.2 Dispute Resolution. Any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by Arizona law and may, but in no event need, be settled by submission with the consent of both parties to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, ARIZ. REV. STAT. § 12-1501, *et seq.*, and judgment upon any award rendered by the arbitrators may be entered in the Superior Court of Maricopa County, or any such dispute, controversy, claim or cause of action may be litigated in a court of competent jurisdiction. The venue for any such dispute shall be Maricopa County, Arizona, and each party waives the right to object to venue in Maricopa County for any reason.

8.3 Independent Contractor. The Lessee acknowledges and agrees that the construction services provided under this Agreement are being provided as an independent

contractor, not as an employee or agent of the City. Lessee, 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 Lessee, its employees or subcontractors.

8.4 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, associate of the other than as contracting parties, or landlord and tenant.

8.5 Laws and Regulations. Lessee shall keep fully informed and shall at all times during the performance of its obligations under this Agreement ensure that it and any person for whom the Lessee is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting this Agreement, 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.

8.6 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.

8.7 Authority. Each person executing this Agreement on behalf of any party hereto warrants that he has the right and authority to execute this Agreement, and that all the procedures and approvals that are necessary and required to enable him to properly execute this Agreement and to bind the person or entity whom he represents in accordance with the terms hereof have been followed and/or secured. Each party agrees to execute and deliver all documents and to perform all further acts as may be reasonably necessary to carry out the provisions of this Agreement.

8.8 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 Lessee.

8.9 Assignment and Subleasing. Except as provided for herein, Lessee may not assign its interest in this Agreement or sublease any portion of the Property at any time without the prior written consent of City, which may be withheld in City's sole and absolute discretion. Any attempted assignment or sublease by Lessee in violation of this provision in violation of this provision shall be a breach of this Agreement by Lessee. Notwithstanding the foregoing, this Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of the City to the Lessee's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder. No assignment shall be deemed to release Lessee from its obligations hereunder.

8.10 Sale of Property. If at any time during the term of this Agreement, City decides to sell all or part of the New Premises, to a purchaser other than Lessee, then such sale shall be under and subject to this Agreement and Lessee's rights hereunder.

8.11 Mortgages and Liens. At City's option, this Agreement shall be subordinate to any mortgage by City which may now or hereafter affect all of City's property including the Property, provided that any such mortgage shall recognize the validity of this Agreement in the event of foreclosure of City's interest and also recognize Lessee's right to remain in possession and have access to the New Premises. Lessee shall execute whatever instruments may reasonably be required to evidence this subordination clause.

8.12 Warranty of Quiet Enjoyment. City covenants that so long as Lessee performs the covenants, terms and conditions required of Lessee contained herein, Lessee shall peaceably and quietly have, hold and enjoy the Site for the aforesaid term and any extensions thereof, and City shall not in any manner interfere with or disrupt the Lessee's business or frustrate Lessee's intended use of the Property.

8.13 Abandonment of Property. Lessee shall neither vacate nor abandon the Property at any time during the term of this Agreement. If Lessee abandons, vacates, or surrenders the Property, or is disposed by process of law, or otherwise, the Lessee Facilities and any personal property belonging to Lessee and left on the Property shall be deemed to have been abandoned.

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

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Charles P. McClendon, City Manager

With copy to: GUST ROSENFELD, P.L.C.
201 East Washington, Suite 800
Phoenix, Arizona 85004-2327
Attn: Andrew J. McGuire, Esq.

If to Consultant: Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate
Site Name: PHO Whistler

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

8.15 Hazardous Substances. Lessee shall hold City harmless from and indemnify City against any damage, loss, expense, response costs or liability, including consultant fees and reasonable attorneys' fees, resulting from hazardous substances generated, stored, disposed of or transported to, on or under the Property by Lessee or Lessee's agents, employees or contractors. For purposes of this Agreement, hazardous substances shall mean (A) any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons, (B) any substance which is flammable, radioactive, corrosive or carcinogenic, (C) any substance the presence of which on the Property causes or threatens to cause a nuisance or health hazard affecting human health, the environment, the Property or property adjacent thereto or (D) any substance the presence of which on the Property requires investigation or remediation under any hazardous substance law, as the same may hereafter be amended. "Hazardous substance law" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Emergency Planning and Community Right to Know Act (SARA Title III) 42 U.S.C. §11001 *et seq.*; and any similar and applicable state law or regulation.

8.16 Binding Effect. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of City and Lessee, subject to the terms and conditions hereof.

8.17 Headings; Gender. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable.

8.18 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute but one and the same agreement. The original execution pages of counterpart copies of this Agreement may be attached to any one such copy to form a single, complete document.

8.19 Recording. At the request of either party, a memorandum of this Agreement may be recorded in the official records of Maricopa County, Arizona.

8.20 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 of Rent, shall not release the Lessee 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.

8.21 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.

8.22 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.

8.23 Confidentiality of Records. Lessee 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 Lessee's obligations under this Agreement. Persons requesting such information should be referred to the City. Lessee also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Lessee as needed for the performance of this Agreement.

8.24 Time of Performance. Time is of the essence in the performance of each obligation set forth in this Agreement.

8.25 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

“City”

CITY OF AVONDALE, an Arizona
municipal corporation

Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

“Lessee”

VERIZON WIRELESS (VAW) LLC,
a Delaware limited liability company,
d/b/a Verizon Wireless

By: _____

Name: Walter L. Jones, Jr.

Its: Area Vice President Network

Date: _____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2010,
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 California)
)
County of Orange)

On _____ before me, _____, Notary Public,
personally appeared Walter L. Jones, Jr.,
who proved to me on the basis of satisfactory evidence to be the person whose name is
subscribed to the within instrument and acknowledged to me that he executed the same in his
authorized capacity, and that by his signature on the instrument the person, or the entity upon
behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

EXHIBIT A
TO
TOWER LEASE AGREEMENT
BETWEEN THE CITY OF AVONDALE
AND
VERIZON WIRELESS (VAW) LLC

[Legal Description of Property]

Lot 1 of CRYSTAL GARDENS PARCEL 9, according to plat recorded in Book 247 of Maps,
page 13, records of Maricopa County, Arizona.

EXHIBIT B
TO
TOWER LEASE AGREEMENT
BETWEEN THE CITY OF AVONDALE
AND
VERIZON WIRELESS (VAW) LLC

[The Plans]

See following pages.



SITE NAME: PHO WHISTLER



SITE PHOTO



126 W. GEMINI DR., TEMPE, AZ. 85283

INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



6052 E. BASELINE RD., MESA, AZ. 85206
 PHONE: (480) 830-9343 FAX: (480) 830-9353

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PROJECT NUMBER
09112

REVISIONS		
△	05.06.09	ISSUE TO CLIENT

SHEET INDEX	
• T-1	PROJECT INFORMATION AND DATA
• Z-1	SITE PLAN
• Z-2	ENLARGED SITE PLAN/DEMOLITION PLAN
• Z-3	ANTENNA INFORMATION
• Z-4	ELEVATIONS
• Z-5	ELEVATIONS
• Z-6	DETAILS

CLIENT
 VERIZON WIRELESS
 126 W. GEMINI DR.
 TEMPE, AZ. 85283
 CONTACT: ERIC BERRY
 PHONE: (602) 463-7663

OWNER
 CITY OF AVONDALE
 P.O. BOX 3
 AVONDALE, AZ 85323

PROJECT DATA

LEASEE: VERIZON WIRELESS

ZONING: C-2/PUBLIC
 APN: 102-30-959

JURISDICTION: CITY OF AVONDALE

BUILDING CODES: 2006 IBC
 2005 NEC
 2006 INTERNATIONAL MECHANICAL CODE
 2006 INTERNATIONAL ENERGY CONSERVATION CODE
 2003 INTERNATIONAL FIRE CODE

PROJECT DESCRIPTION

THIS PROJECT CONSISTS OF THE REMOVAL OF (3 OF 3) EXISTING ANTENNAS MOUNTED ON AN EXISTING FLAG POLE (TO BE REMOVED) WITH (12) NEW ANTENNAS MOUNTED ON A NEW MONOPOLE. ADDITION OF (18) NEW COAX CABLES ROUTED INSIDE MONOPOLE. ADDITION OF A PREMANUFACTURED EQUIPMENT SHELTER. ADDITION OF AN OUTDOOR GENERATOR.

DEVELOPMENT AND CONSTRUCTION OF THIS PROJECT WILL COMPLY WITH ALL APPLICABLE CODES AND ORDINANCES.

THIS PROJECT DOES NOT INCLUDE WATER OR SEWER.

PARKING SPACES WILL NOT BE AFFECTED BY THIS PROJECT.

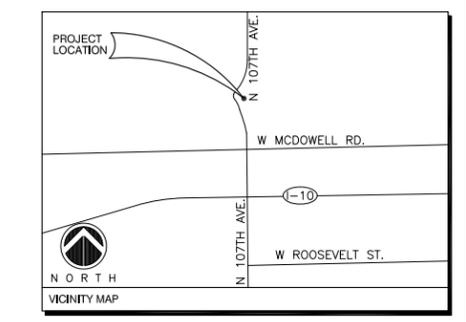
SITE ACQUISITION
 RELIANT LAND SERVICES
 3234 S. FAIR LANE
 TEMPE, AZ 85252
 CONTACT: REG DESTREE
 PHONE: (602) 349-6930

DESIGNER
 BK DESIGN INC.
 6052 E. BASELINE RD., SUITE 104
 MESA, AZ 85206
 CONTACT: STEPHEN PHILLIPS
 PHONE: (602) 904-2108

SITE DIRECTIONS

FROM 126 W. GEMINI DR., TEMPE (VERIZON OFFICE) START OUT GOING WEST ON W GEMINI DR TOWARD S ASH AVE. <0.1 MILES
 2: TURN LEFT ONTO S ASH AVE. 0.2 MILES
 3: TURN RIGHT ONTO W GUADALUPE RD. 0.2 MILES
 4: TURN RIGHT ONTO S KYRENE RD. 1.0 MILES
 5: TURN LEFT ONTO W BASELINE RD. 1.2 MILES
 6: MERGE ONTO I-10 W TOWARD PHOENIX 6.0 MILES
 7: MERGE ONTO I-17 N/US-60 W VIA EXIT 150A TOWARD FLAGSTAFF 6.2 MILES
 8: MERGE ONTO I-10 W VIA EXIT 200A TOWARD LOS ANGELES 9.6 MILES
 9: TURN RIGHT ONTO N. 99TH 0.2 MILES
 10: TURN LEFT ONTO W. MCDOWELL RD. 1.0 MILES
 11: TURN RIGHT ONTO N. 107TH AVE. 0.2 MILES
 END AT 1801 N. 107TH AVE

SYMBOLS			
	DETAIL MARK		LEASE LINE
	SECTION MARK		PROPERTY LINE
	REVISION		CHAINLINK FENCE LINE
	ELEVATION DATUM A.F.F.		STRUCTURAL SHEAR WALL
	NORTH ARROW		STRUCTURAL POST



SITE NAME

PHO WHISTLER

SITE ADDRESS

1801 N. 107TH AVE.
 AVONDALE, AZ 85323

SHEET TITLE

PROJECT INFORMATION AND DATA

SHEET NUMBER

T-1

INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



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PROJECT NUMBER
 09112

REVISIONS		
△	05.06.09	ISSUE TO CLIENT

SITE NAME

PHO WHISTLER

SITE ADDRESS

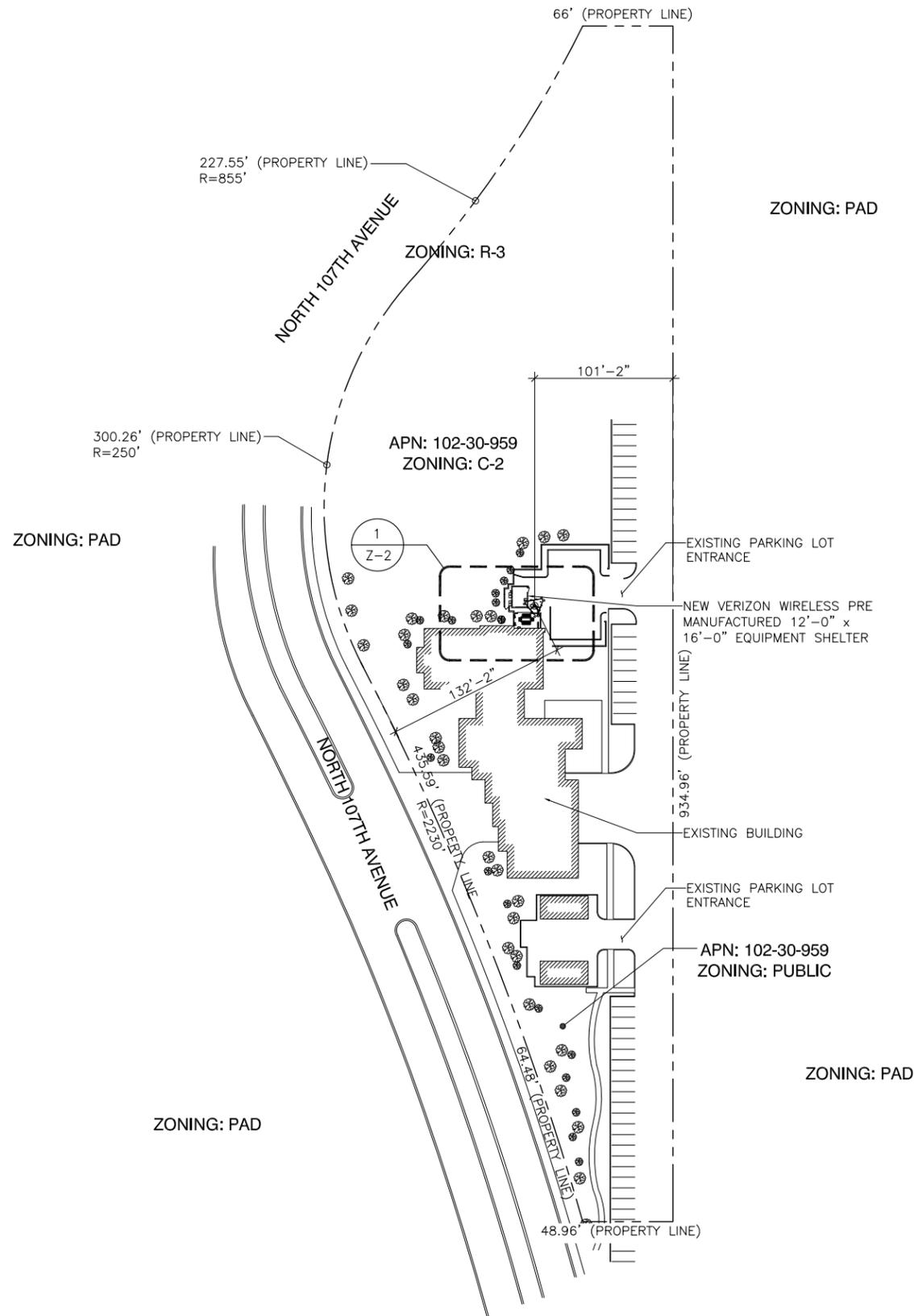
1801 N. 107TH AVE.
 AVONDALE, AZ 85323

SHEET TITLE

SITE PLAN

SHEET NUMBER

Z-1



INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



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PROJECT NUMBER
 09112

REVISIONS		
△	05.06.09	ISSUE TO CLIENT

SITE NAME

PHO WHISTLER

SITE ADDRESS

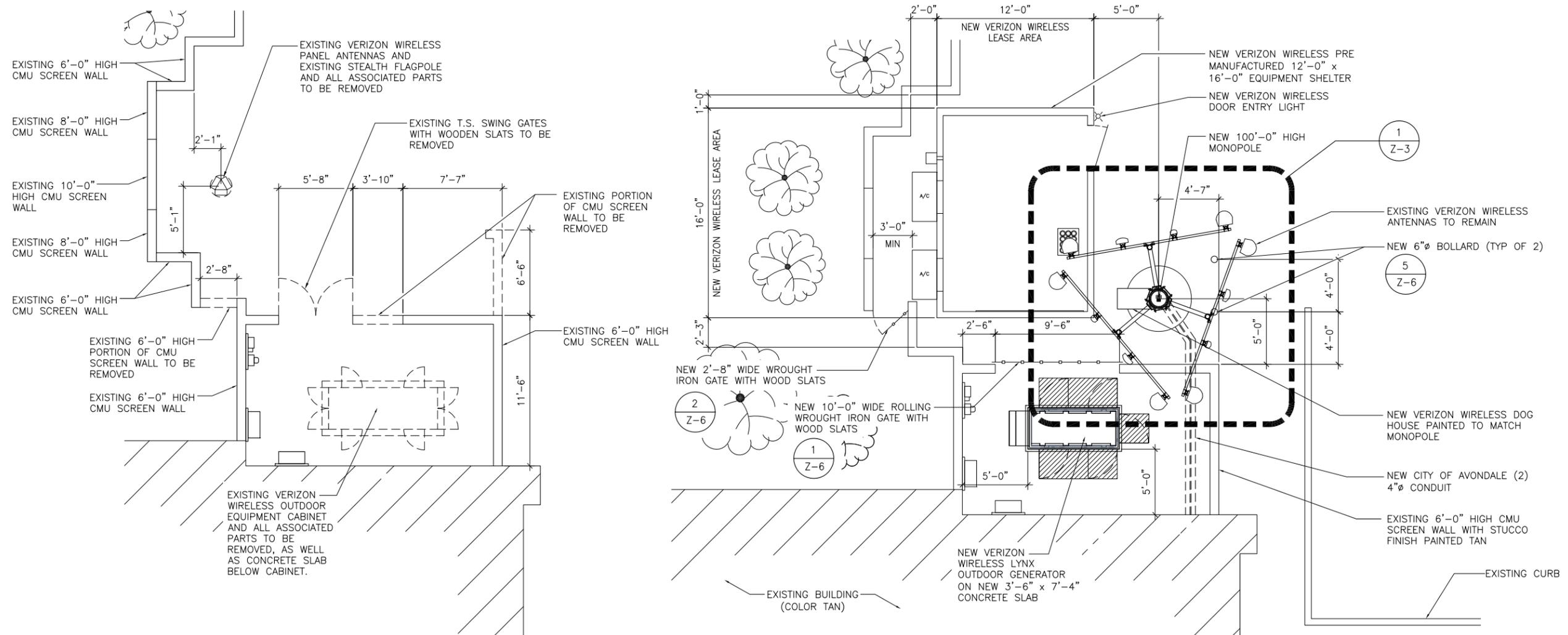
1801 N. 107TH AVE.
 AVONDALE, AZ 85323

SHEET TITLE

**ENLARGED SITE
 PLAN/ DEMOLITION
 PLAN**

SHEET NUMBER

Z-2



INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



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PROJECT NUMBER
09112

REVISIONS		
△	05.06.09	ISSUE TO CLIENT

SITE NAME

PHO WHISTLER

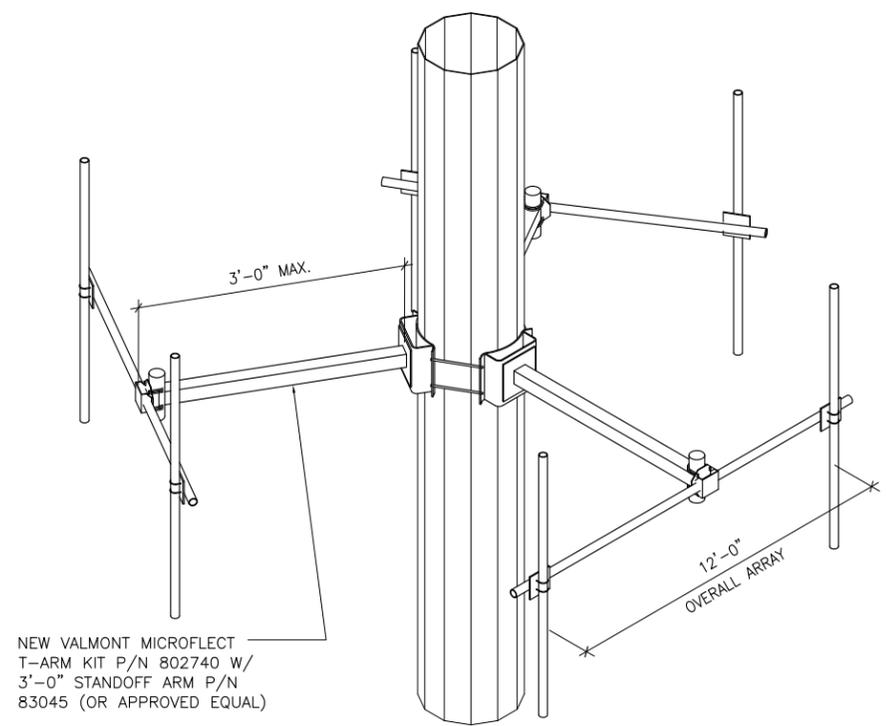
SITE ADDRESS

1801 N. 107TH AVE.
 AVONDALE, AZ 85323

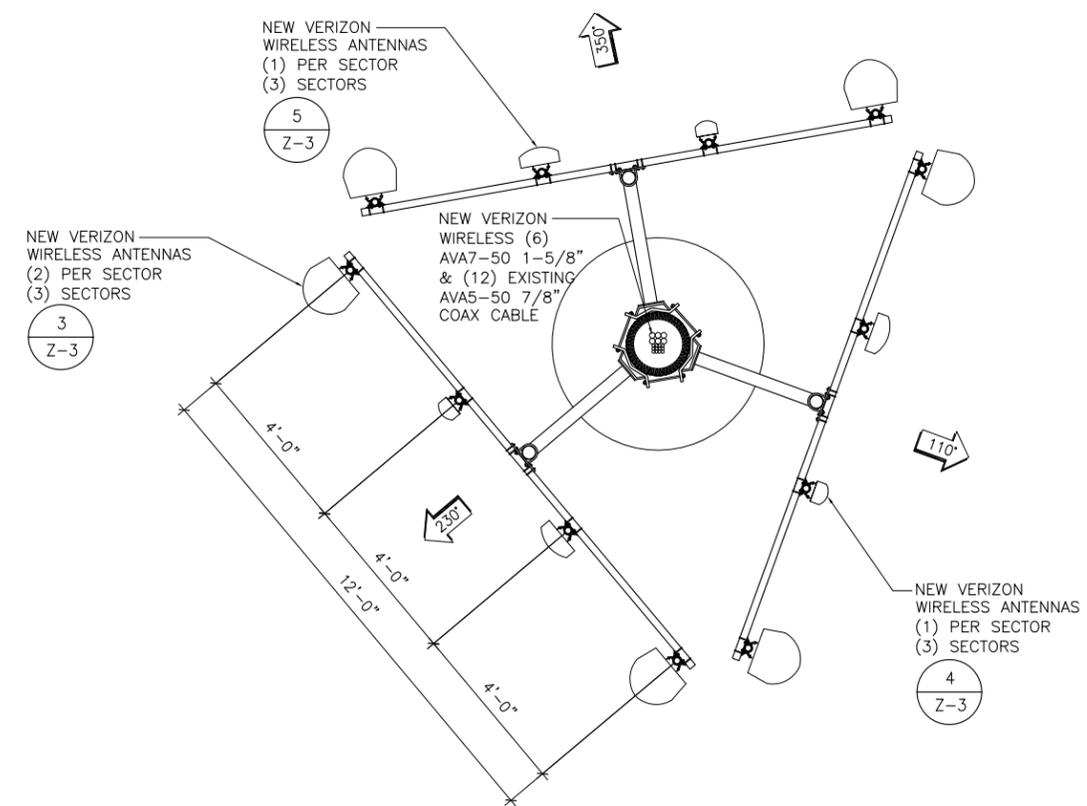
SHEET TITLE

ANTENNA INFORMATION

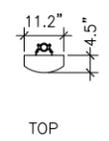
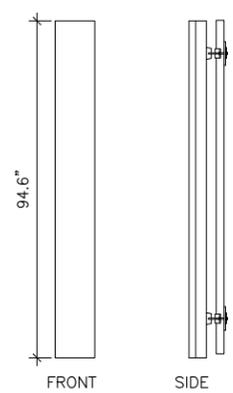
SHEET NUMBER



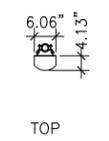
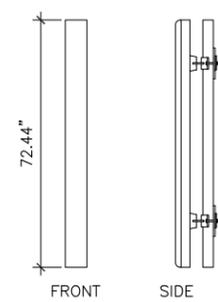
2 NEW ANTENNA MOUNTING
 SCALE: NTS



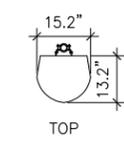
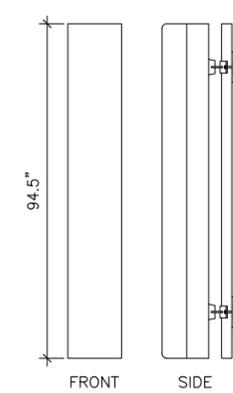
1 NEW ANTENNA LAYOUT
 SCALE: 1/2" = 1'-0"



5 NEW ANTENNA
 SCALE: NTS



4 NEW ANTENNA
 SCALE: NTS



3 NEW ANTENNA
 SCALE: NTS

INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



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 PHONE: (480) 830-9343 FAX: (480) 830-9353

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PROJECT NUMBER
 09112

REVISIONS		
△	05.06.09	ISSUE TO CLIENT

SITE NAME

PHO WHISTLER

SITE ADDRESS

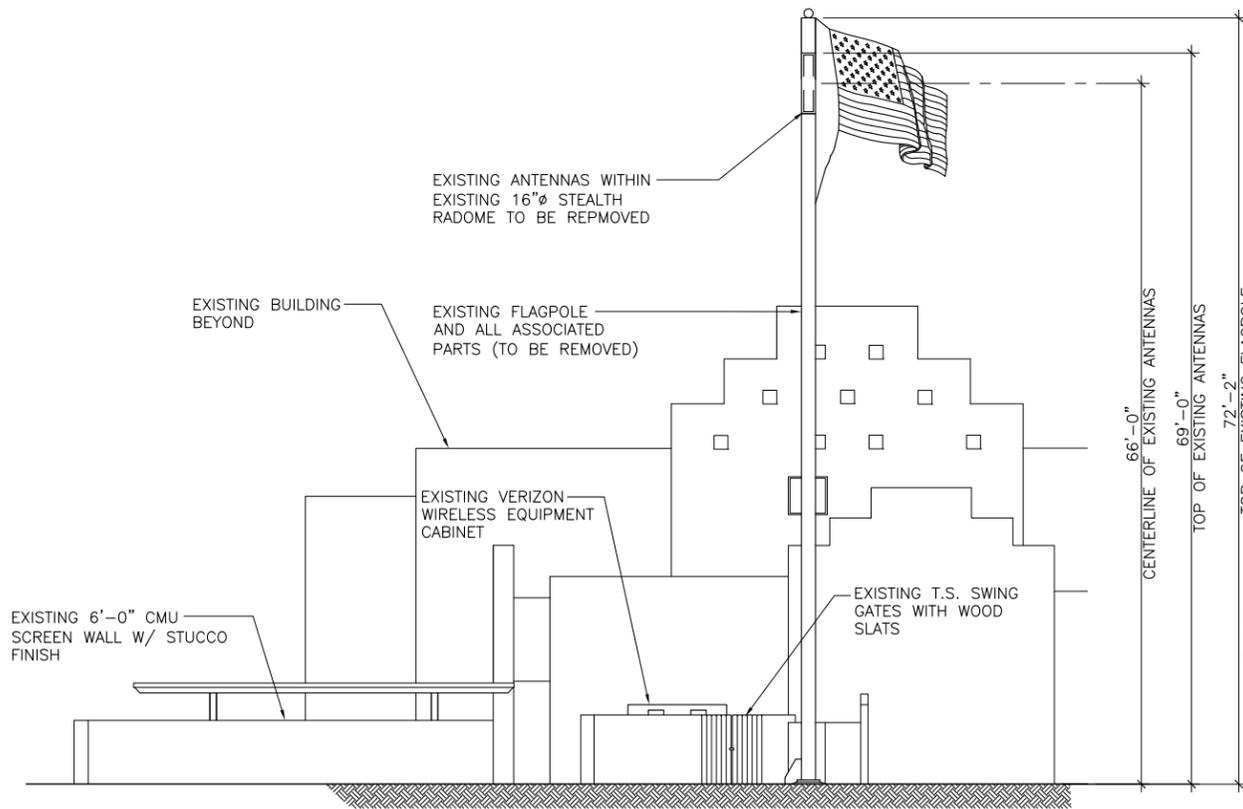
1801 N. 107TH AVE.
 AVONDALE, AZ 85323

SHEET TITLE

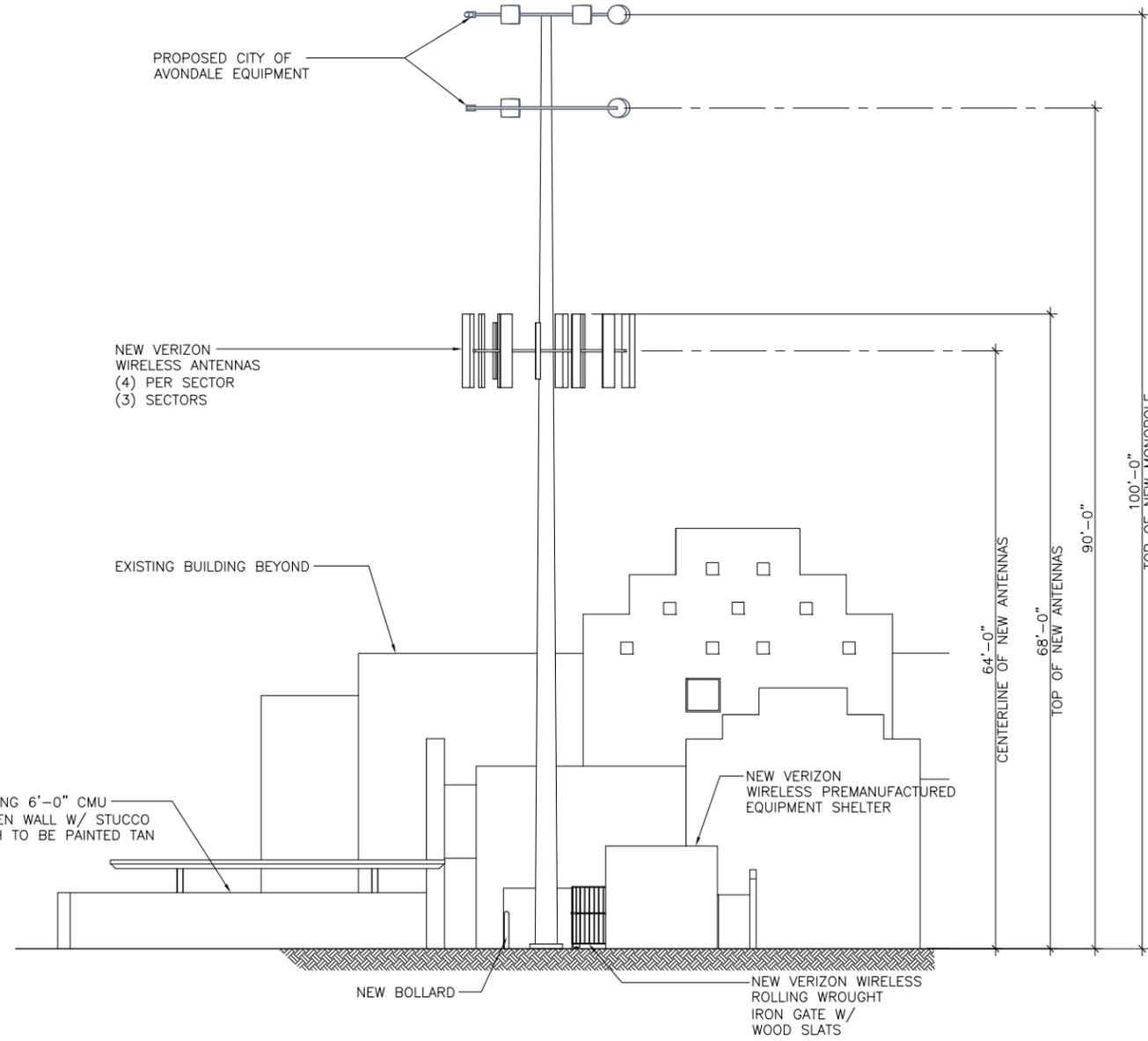
ELEVATIONS

SHEET NUMBER

Z-4



2
 Z-4
EXISTING NORTH ELEVATION
 SCALE: 1/8" = 1'-0"



2
 Z-4
NEW NORTH ELEVATION
 SCALE: 1/8" = 1'-0"

INTERNAL REVIEW	
CONSTRUCTION SIGNATURE	DATE
RF SIGNATURE	DATE
REAL ESTATE SIGNATURE	DATE



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 PHONE: (480) 830-9343 FAX: (480) 830-9353

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PROJECT NUMBER
 09112

REVISIONS		
△	05.06.09	ISSUE TO CLIENT

SITE NAME

PHO WHISTLER

SITE ADDRESS

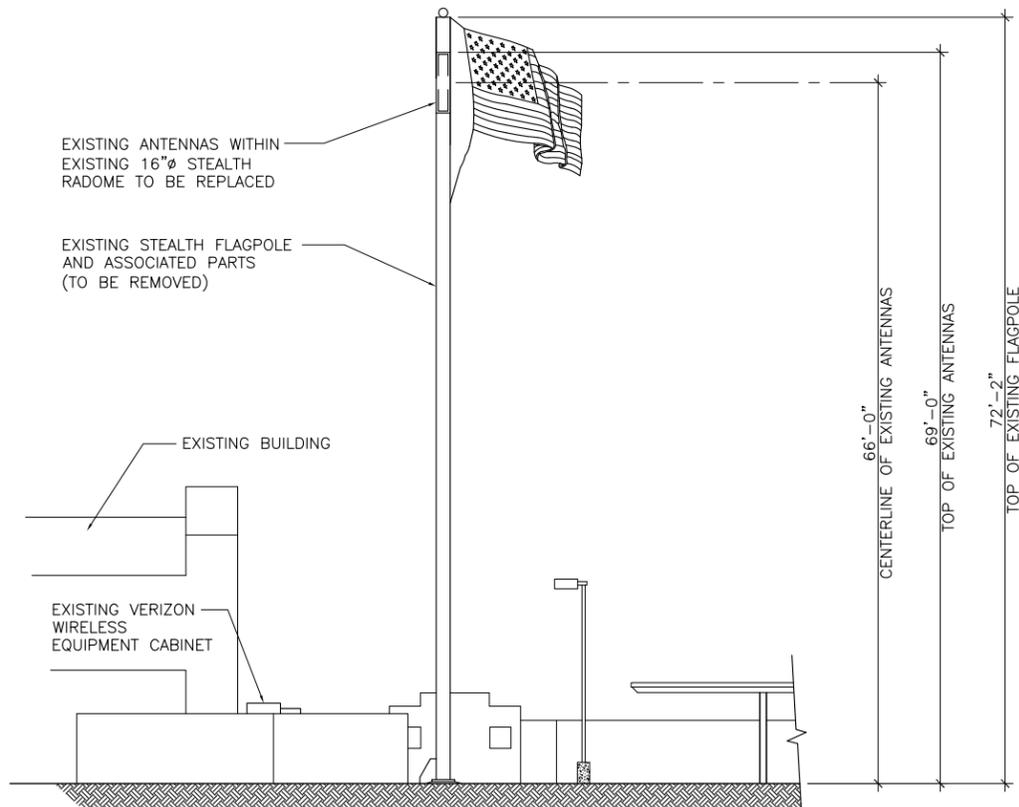
1801 N. 107TH AVE.
 AVONDALE, AZ 85323

SHEET TITLE

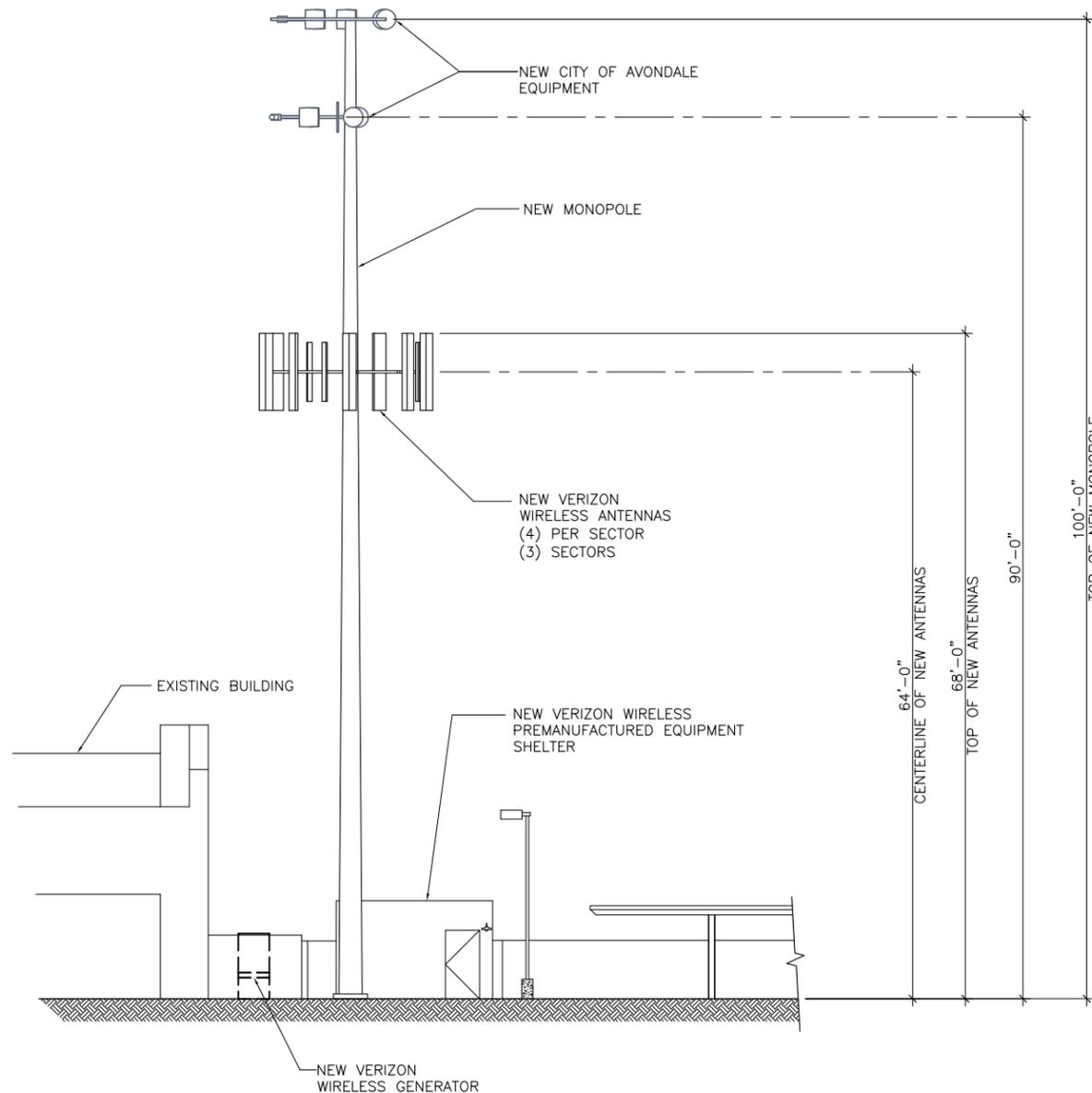
ELEVATIONS

SHEET NUMBER

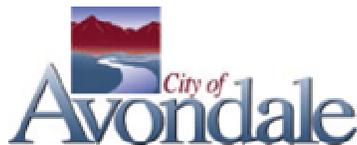
Z-5



2 EXISTING EAST ELEVATION
 Z-5 SCALE: 1/8" = 1'-0"



1 NEW EAST ELEVATION
 Z-5 SCALE: 1/8" = 1'-0"



CITY COUNCIL REPORT

SUBJECT:

Resolution 2887-210 - Intergovernmental Agreement with the City of Phoenix for Federal Transit Administration Funding

MEETING DATE:

February 8, 2010

TO: Mayor and Council

FROM: Kristen Sexton, Transit Management Assistant (623)333-1030

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution approving an Intergovernmental Agreement with the City of Phoenix for Federal Transit Administration (FTA) pass through grant funding of \$944,470 and authorize the Mayor and City Clerk to execute this agreement.

BACKGROUND:

In 2002, the US Census Bureau designated the City of Avondale and surrounding communities, including sections of Goodyear, Litchfield Park, Glendale, Phoenix, and Maricopa County, as a separate urbanized area from the Phoenix-Mesa urbanized area. Because Avondale Urbanized Area is under 200,000 in population, it may spend its federal funds on both operating and capital expenditures. Operating expenses require a 50% local match, while capital expenses require a 20% local match. The City of Phoenix is designated as the Metropolitan Planning Organization, for federal transit related operations, for Phoenix and the surrounding communities. This allows the City of Phoenix to submit a single federal grant application, which incorporates the funding requests of all the eligible communities. The Avondale Urbanized Area is designated as a sub-recipient in the application.

DISCUSSION:

The Avondale Urbanized Area transit plan was approved by the City Council on November 17, 2003. City staff worked with City of Phoenix representatives to incorporate the funding needs identified in the transit plan in the federal grant application. The City of Phoenix has submitted the grant application and will act as the administrator of the grant funding. The City of Phoenix will reimburse the City of Avondale and surrounding communities for all eligible operating and capital expenses incurred under the grant pass through agreement.

In 2008, \$869,823 in federal funds was made available to the area for transit needs.

The City of Avondale and surrounding communities will provide local matching funds and all necessary reports as required. The funding will be utilized to operate transit needs in the Avondale Urbanized Area transit plan.

BUDGETARY IMPACT:

Based on the service and funding estimates provided by the City of Phoenix, the City of Avondale and surrounding communities, including Phoenix, would be required to provide the match funding in the amount of \$944,470, which is available in the transit fund budget 215.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution approving an Intergovernmental Agreement with the City of Phoenix for Federal Transit Administration (FTA) pass through grant funding in the amount of \$944,470 in federal funds with a required local match of \$944,470 for a total project cost of \$1,888,940 and authorize the Mayor and City Clerk to execute this agreement.

ATTACHMENTS:

Click to download

 [Resolution 2887-210](#)

RESOLUTION NO. 2887-210

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR FEDERAL TRANSIT ADMINISTRATION FUNDING.

WHEREAS, the Avondale Urbanized Area Transit Plan (the “Plan”) was approved by the Council of the City of Avondale (the “City Council”) on November 17, 2003; and

WHEREAS, the City of Phoenix (“Phoenix”) has submitted a grant application for Federal Transit Administration funding (“Grant Funds”) that incorporates the funding needs identified in the Plan; and

WHEREAS, the City of Avondale was designated as a sub-recipient of in Phoenix’s application for Grant Funds; and

WHEREAS, the City Council desires to enter into an intergovernmental agreement with Phoenix for the administration of Grant Funds (the “Agreement”).

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

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

SECTION 2. The Agreement is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The City Council hereby authorizes expenditure of matching funds as required under the terms of the Agreement.

SECTION 4. 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, February 8, 2010.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2887-210

[Agreement]

See following pages.

AGREEMENT NO. _____

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF PHOENIX
AND
THE CITY OF AVONDALE**

**(Grant Pass-through Agreement)
(Grant No. AZ-90-X096)**

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the state of Arizona (hereinafter referred to as "PHOENIX") and City of Avondale, a municipal corporation, duly organized and existing under the laws of the state of Arizona (hereinafter referred to as "SUB-RECIPIENT").

RECITALS

WHEREAS, the City Manager of PHOENIX, is authorized and empowered by provisions of the City Charter to execute contracts; and,

WHEREAS, PHOENIX has Charter authority to provide transit services and Charter and statutory authority to enter into Agreements with other entities within the Phoenix Urban Area to provide transit services [A.R.S. Section 11-951, et seq.; Chapter 2, Section 2, Subsections (c)(i) and (l), Charter of the City of Phoenix, 1969]; and,

WHEREAS, SUB-RECIPIENT has broad Charter and statutory authority to engage in all of the activities and endeavors allowed under the laws of the state of Arizona and to enter into intergovernmental agreements with other governmental entities (Article I, Section 3, Charter of the City of Avondale; A.R.S. Section 11-951, et seq.); and,

WHEREAS, Chapter 53 of 49 United States Code (formerly the Federal Transit Act of 1964, as amended), makes financial aid available to municipalities and local units of government showing a substantial effort toward the preservation, improvement and operation of mass transit systems; and,

WHEREAS, PHOENIX successfully applied to the Federal Transit Administration (FTA) for a FTA grant for the purpose of Operating Assistance and same was awarded as Grant No. AZ-90-X096; and,

WHEREAS, SUB-RECIPIENT shall receive funds from said Grant and perform the work as required therein all as set forth in Exhibit "A" hereto which Exhibit is, by this reference, incorporated herein as though fully set forth; and,

WHEREAS, PHOENIX and SUB-RECIPIENT have been authorized by their respective Councils to enter into this Agreement; NOW, THEREFORE,

AGREEMENT

IT IS HEREBY AGREED, by and between the parties, as follows:

1. Grant Reimbursement. PHOENIX agrees to reimburse SUB-RECIPIENT for the federal share of the purchase of item/services shown in the "Project(s) Description" box on Exhibit "A." Reimbursement shall not exceed the federal funds allocated to SUB-RECIPIENT, unless approved in writing by PHOENIX. The federal funds allocated to SUB-RECIPIENT under this Agreement shall not exceed \$944,470. SUB-RECIPIENT shall provide the required local match for these project(s). No reimbursements shall be made unless all required reports have been submitted. Project(s) must be completed and reimbursement must be requested within thirty (30) months of the grant award by the FTA, i.e., the FTA obligation date. The thirty (30) month duration shall be the term of the Agreement. Funding for uncompleted and unbilled project(s) will be reassigned at the discretion of PHOENIX, as needed to close out the grant.

A. Application for reimbursement of federal share.

SUB-RECIPIENT shall submit their application for reimbursement of federal share to:

City of Phoenix
Public Transit Department
Fiscal Services Division, Accounts Payable Section
City of Phoenix
302 North First Avenue; Suite 900
Phoenix, AZ 85003

The cover letter must identify the City of Phoenix contract number and the period for which the application is submitted.

SUB-RECIPIENT shall submit its application with the reimbursement request form that is attached as **Exhibit "B"** to this Agreement.

B. Backup Documentation.

The application for reimbursement must be accompanied by detailed backup documentation for all eligible expenses. At a minimum the documentation shall include, but is not limited to, the following.

1. A listing of all invoiced costs with vendors and payment dates.

2. Copies of paid invoices received from vendors for purchases of supplies and services.
3. All purchases of vehicles shall be accompanied with "Vehicle Inventory Record" form.
4. All other asset purchases shall be accompanied with a "Capital Asset Purchase" form.

2. Exhibits and Incorporation by Reference. Attached hereto are the following Exhibits each of which is, by this reference, incorporated herein as though fully set forth.

- Exhibit A Federal Grant Pass Thru Agreement Detail Summary
- Exhibit B Federal Grant Reimbursement Form
- Exhibit C Required Reports
- Exhibit D Required Federal Provision
- Exhibit E Partial List of Applicable Laws
- Exhibit F Master Grant Agreement, Table of Contents
- Exhibit G Required Local Provisions

3. Sub-recipient Performance. SUB-RECIPIENT shall complete the project(s) for which grant funds have been awarded in a proper and timely manner. SUB-RECIPIENT further acknowledges that it is responsible for complying with all federal, state, and local requirements required under the grant. SUB-RECIPIENT agrees that failure to comply with all applicable requirements may result in the withholding of grant funds to SUB-RECIPIENT for the specific grant.

4. Notice. Any notice, consent, or other communication ("NOTICE") required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for SUB-RECIPIENT:

Charles P. McClendon
City of Avondale
11465 W. Civic Center Drive
Avondale, Arizona 85340
Telephone: (623) 333-1000
FAX: (623) 333-0100

If intended for PHOENIX:

Debbie Cotton
Public Transit Director
Public Transit Department
City of Phoenix
302 North First Avenue, Suite 900
Phoenix, Arizona 85003
Telephone: (602) 262.7242
FAX: (602) 495.2002

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

5. Effective Date: This Agreement shall be in full force and effect upon approval of the Councils of PHOENIX and SUB-RECIPIENT, when executed by their duly authorized officials, and when filed with the County Recorder pursuant to A.R.S. § 11-952(G).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF PHOENIX, ARIZONA
David Cavazos, City Manager

By _____
Debbie Cotton
Public Transit Director

ATTEST:

City Clerk - PHOENIX

APPROVED AS TO FORM:

City Attorney - PHOENIX

APPROVED BY PHOENIX CITY COUNCIL BY FORMAL ACTION ON JULY 1, 2009.

CITY OF AVONDALE, ARIZONA
A Municipal Corporation

By _____
Charles P. McClendon, City Manager

ATTEST:

City Clerk - AVONDALE

APPROVED AS TO FORM:

City Attorney for AVONDALE

APPROVED BY SUB-RECIPIENT'S GOVERNING BODY BY FORMAL ACTION ON:

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of Section 11-952(D), Arizona Revised Statutes, each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, 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.

Attorney for PHOENIX

Attorney for City of Avondale

801934v1

EXHIBIT "A"

**2008
FEDERAL GRANT PASS THRU AGREEMENT**

GRANT NUMBER: AZ-90-X096			
GRANT RECIPIENT: CITY OF PHOENIX			
GRANT SUB- RECIPIENT'S NAME: CITY OF AVONDALE			
GRANT SUB- RECIPIENT'S ADDRESS: City of Avondale 11465 W. Civic Center Drive Avondale, AZ 85340			
TOTAL ELIGIBLE PROJECT(S) COST (TEPC): \$ 1,888,940			
• Federal Share of TEPC : \$ 944,470			
• Local Share/Match of TEPC: \$ 944,470			
PROJECT(S) DESCRIPTION:			
30.09.01	Operating Assistance	\$ 944,470	\$ 944,470 \$1,888,940

EXHIBIT "A"

EXHIBIT "B"

FTA Grant Expenditure Reimbursement Request Application

The information provided will be used by the City of Phoenix Public Transit Department (PTD) to monitor designated lead agency. No further monies may be paid out under this program unless this report is completed and filed as required.

SUB-RECIPIENT ORGANIZATION NAME AND ADDRESS	PROJECT(S) AGREEMENT #	REQUEST #
	REPORTING PERIOD (Dates)	
	FROM:	TO:

	TOTAL	FTA SHARE
TOTAL ELIGIBLE COSTS	\$	\$
TOTAL PREVIOUS PAYMENTS	-	-
CURRENT PAYMENT REQUESTED	\$	\$
REMAINING FUNDING	\$	\$

REQUIRED SIGNATURE

This document must be signed by the recipient's Chief financial Officer or their designated representative.

CERTIFICATION

I certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures consistent with the project(s) goals and all applicable requirements, have not been previously requested, and that payment is due. I also certify that all matching requirements have been met and sufficient documentation has been provided.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REQUEST SUBMITTED
TYPED OR PRINTED NAME AND TITLE	TELEPHONE

Instructions

1. Keep a copy of everything submitted.
2. All project(s) records, including financial records, must be maintained for 3 years beyond project(s) completion.

For PTD use only

Date request received:	Life cycle compliance review (signature/date)
Approved for funds availability	Date of funds transfer

EXHIBIT “C”

Required Reports

SUB-RECIPIENT agrees to submit report(s) statements or plans as now or hereafter required by PHOENIX or the FTA. Quarterly report(s) are due on or before the 15th of the month following the end of the quarter, i.e., October 15, January 15, April 15 and July 15; and annual report(s) are due ninety days (except NTD Report(s) which shall be due 150 days after the end of the fiscal year (July 1 - June 30). Drug and Alcohol Report(s) are due January 31 for the previous calendar year.

REPORT	FREQUENCY	DESCRIPTION
DBE Report(s)	As required by PHOENIX	DBE Participation, Utilization, Annual Goal Setting, Progress, and informational report(s)
Grant Status Report(s)	Quarterly	Status of each project(s) by grant number
NTD Report(s)	Annually	Copy for information only
Fixed Assets Status Report	Annually	Inventory of all FTA funded assets
Single Audit Report	Annually	Copy of federally required audit
Drug and Alcohol Reports	Annually	FTA Drug and Alcohol Testing

The reports and required submissions listed above may be increased, revised, reorganized, deleted or changed as required by FTA guidelines. **All reports must be current before any FTA funds will be disbursed by PHOENIX.**

EXHIBIT “C”

EXHIBIT "D"

Required Federal Provisions

1. SUB-RECIPIENT shall permit the authorized representatives of PHOENIX, the United States Department of Transportation, and the Controller General of the United States to inspect and audit all data, books, records and reports relating to this Agreement and SUB-RECIPIENT's performance hereunder. PHOENIX's audit shall be at SUB-RECIPIENT's sole cost and expense. All required records shall be maintained for a minimum of three years, after the grant has been formally closed.
2. Both parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and, further, that no member or delegate to Congress, the City Council or any employee of PHOENIX or SUB-RECIPIENT, has any interest, financial or otherwise, in this Agreement.
3. SUB-RECIPIENT shall fully comply with the Disadvantaged Business Enterprise (DBE) Regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 and with the FTA-approved goal, submitted annually by PHOENIX as the recipient on behalf of the region. SUB-RECIPIENT shall abide by all stipulations, regulations, and procedures set forth in the FTA-approved City of Phoenix DBE Program Plan. The Transit Civil Rights Officer of the City of Phoenix Public Transit Department and representative(s) of the City of Phoenix Equal Opportunity Department will meet annually with SUB-RECIPIENT to cooperatively determine DBE participation for all FTA assisted project(s).
4. In performing the services for which federal funding is provided under this Agreement, SUB-RECIPIENT agrees to comply with all laws, rules, regulations, standards, orders or directives (hereinafter "Laws") applicable to this Agreement, to the services provided pursuant to this Agreement, and to PHOENIX as the designated recipient of FTA funding. The Laws referred to above include federal, state and local laws, and include, but is not limited to, those items set forth in Exhibit "D."

EXHIBIT "D," page 2

5. The parties acknowledge that federal funds are being used for the work, services and/or operations provided under this Agreement. In that regard the City of Phoenix, as the designated grant recipient, is obligated to accept and comply with all of the terms and conditions set forth in the Federal Transit Administration (FTA) Master Grant Agreement. In order for SUB-RECIPIENT to receive funding under this Agreement with the City of Phoenix, SUB-RECIPIENT is required to similarly accept and comply with all such terms and conditions and SUB-RECIPIENT does hereby specifically agree to be bound thereby. (A copy of the Master Grant Agreement has been provided to SUB-RECIPIENT and additional copies are available from the City of Phoenix.) The Master Grant Agreement for FY2008 and any subsequent revisions are, by this reference, incorporated herein as though fully set forth. Further, a summary of some of the terms of the Master Grant Agreement, as set forth its Table of Contents, are attached hereto as Exhibit "F" and are, by this reference, incorporated herein. The items listed in Exhibit "F" are illustrative only and are set forth in the Exhibit for SUB-RECIPIENT's ease of reference; SUB-RECIPIENT is solely responsible for complying with all of the terms and conditions of the Master Grant Agreement and any subsequent revisions whether or not they are set forth in Exhibit "F".
6. SUB-RECIPIENT understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (IRCA) and agrees to comply with the IRCA in the performance of this Agreement.
7. SUB-RECIPIENT shall fully comply with Equal Employment Opportunity (EEO) regulations of the U.S. Department of Transportation (USDOT) Urban Mass Transportation Administration (UMTA) Circular 4704.1. SUB-RECIPIENT shall provide an EEO Program Plan when they employ 50 or more transit-related employees and requests or receives capital or operating assistance under Section 3, 4(i), or 9 of the UMT Act; assistance under 23 U.S.C. 142 (a) (2) or 23 U.S.C. 103(e) (4), or any combination thereof, in excess of \$1 million in the previous Federal fiscal year; or requests or receives planning assistance under Section 8 and/or 9 in excess of \$250,000 in the previous Federal fiscal year. SUB-RECIPIENT shall fully comply with EEO regulations as they pertain to subcontractors. Any subcontractor with 50 or more transit-related employees shall provide and EEP Program Plan.

EXHIBIT “E”

Partial List of Applicable Laws

- A. Federal Codes. SUB-RECIPIENT shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to U.S.C. 2000d-4 (hereinafter referred to as the Act) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUB-RECIPIENT receives federal financial assistance, directly or indirectly, from the Department of Transportation, including the Federal Transit Administration, and hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, SUB-RECIPIENT hereby gives the following specific assurances with respect to the project(s):

1. SUB-RECIPIENT shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with a project(s) under 49 U.S.C. chapter 53 and, in adapted form in all proposals for negotiated agreements:

CONTRACTOR, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, non-discrimination in federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders and proposers that it will affirmatively ensure that in

regard to any contract or procurement entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit bids and proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

2. If SUB-RECIPIENT carries out a program of training under Section 5312 of Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to make selection of the trainee or fellow without regard to race, color, sex or national origin.
3. Where SUB-RECIPIENT receives federal financial assistance to carry out a program under Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to assign transit operators and to furnish transit operators without regard to race, color, sex or national origin.
4. Where SUB-RECIPIENT carries out a program under Title 49, United States Code chapter 53, routing, scheduling, quality of service, frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes and location of routes may not be determined on the basis of race, color, sex or national origin.
5. This assurance obligates SUB-RECIPIENT for the period during which federal financial assistance is extended to the project(s).
6. SUB-RECIPIENT shall provide for such methods of administration for the program as are found by PHOENIX to give reasonable guarantee that it, its contractors, sub-contractors, transferee's, successors in interest and other participants under such program will comply with all requirements imposed or pursuant to 49 U.S.C. chapter 53, the Regulations and this assurance.
7. SUB-RECIPIENT agrees that PHOENIX has a right to seek judicial enforcement with regard to any matter arising under 49 U.S.C. chapter 53, the Regulations and this assurance.

B. Compliance with FTA Regulations. During the performance of this Agreement, SUB-RECIPIENT, for itself, its assignees and successors in interest agrees as follows:

1. SUB-RECIPIENT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by this reference and made a part of this contract.
2. With regard to the work performed by it during the contract, SUB-RECIPIENT shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of sub-contractors, including procurement and leases of equipment.
3. In all solicitations, either by competitive bidding or negotiation, made by SUB-RECIPIENT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by SUB-RECIPIENT of the sub-contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.
4. SUB-RECIPIENT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by PHOENIX or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of SUB-RECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, SUB-RECIPIENT shall so certify to PHOENIX, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. In the event of SUB-RECIPIENT's noncompliance with the nondiscrimination provisions of this contract, PHOENIX shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
 - a) Withholding of payments to SUB-RECIPIENT under the grant award until SUB-RECIPIENT complies; and/or,
 - b) Cancellation, termination or suspension of this Agreement, in whole or in part.
6. SUB-RECIPIENT shall include the FTA provisions included in paragraphs 1 through 5 of Section B, in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. SUB-RECIPIENT shall take such action with respect to any sub-contract or procurement as PHOENIX or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that, in the event SUB-RECIPIENT becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, SUB-RECIPIENT may request that PHOENIX enter into such litigation to protect the interests of PHOENIX, and, in addition, SUB-RECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.
7. SUB-RECIPIENT hereby adopts the Title VI investigation and tracking procedure developed by PHOENIX. SUB-RECIPIENT agrees that PHOENIX personnel shall conduct Title VI investigations. The determinations made by PHOENIX of Title VI complaints shall be binding upon SUB-RECIPIENT.
SUB-RECIPIENT shall maintain a list of any active Title VI investigations conducted by any governmental entity, including PHOENIX and shall maintain a Title VI complaint log of closed investigations for three (3) years.
SUB-RECIPIENT shall provide information to the public concerning its Title VI obligations and apprise the public of protections offered by Title VI.
8. SUB-RECIPIENT specifically avows that, where applicable, it is and will provide fair and equitable labor protective arrangements, as reflected in 49 U.S.C. § 5333(b), otherwise known as 13(c).

9. SUB-RECIPIENT shall comply with the following Statutes and Regulations:

18 U.S.C. 1001

Section 5323(d) of 49 U.S.C. chapter 53

Section 5323(f) of 49 U.S.C. chapter 53

Section 5307(k) of 49 U.S.C. chapter 53

Section 5309(h) of 49 U.S.C. chapter 53

Section 5301 of 49 U.S.C. chapter 53

Section 5333 of 49 U.S.C. chapter 53 which requires compliance with applicable labor requirements.

Section 5310 of 49 U.S.C. chapter 53 which provides, among other things, for the planning and design of mass transportation facilities to meet the special needs of senior persons and persons with disabilities.

Section 5332 of 49 U.S.C. chapter 53 which, among other things, prohibits discrimination on the basis of race, color, creed, national origin, sex or age.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d which, among other things, prohibits discrimination on the basis of race, color or national origin by recipients of federal financial assistance.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e which, among other things, prohibits discrimination in employment.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 which, among other things, prohibits discrimination on the basis of disability.

49 CFR Part 600 et seq. regulations promulgated by FTA.

49 CFR Parts 21, 23, 25, 26 and 27 regulations promulgated by the Department of Transportation governing Title VI, Minority Business Enterprise (Disadvantaged Business Enterprise/ Women's Business Enterprise), Relocation and Land Acquisition and Nondiscrimination on the basis of disability, respectively.

46 CFR Part 381 regulations promulgated by the Maritime Administration governing cargo preference requirements.

36 CFR Part 800 regulations promulgated by the Advisory Council on Historic Preservation.

31 CFR part 205 regulations promulgated by the Department of the Treasury governing letter of credit.

40 CFR Part 15 regulations promulgated by the Environmental Protection Agency pertaining to administration of clean air and water pollution requirements.

29 CFR Parts 5 and 215 regulations promulgated by the Department of Labor pertaining to construction labor and transit employee protections.

- C. Drug and Alcohol Testing. SUB-RECIPIENT shall have in place, maintain, and implement a plan and a program for compliance with U.S. DOT Drug and Alcohol Regulations, as specified in 49 CFR 40, 49 CFR 653 and 49 CFR 654. Said plan and program shall be modified to incorporate and comply with such other regulations as were adopted in the USDOT and published in the Federal Register as of February 14, 1994 and any subsequent changes thereto.

EXHIBIT “F”

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
MASTER AGREEMENT**

**For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended
by the SAFETEA-LU Technical Corrections Act, 2008,
the Transportation Equity Act for the 21st Century, as amended,
the National Capital Transportation Act of 1969, as amended,
the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,
February 17, 2009, or other Federal laws that FTA administers.**

**FTA MA(16)
October 1, 2009**

http://www.fta.dot.gov/documents/16-Master.pdf		
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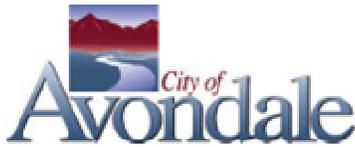
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EXHIBIT "G"

Required Local Provisions

1. Transactional Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. Section 38-511.
2. Assignability; Successors and Assigns. This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by SUB-RECIPIENT without the prior written consent of PHOENIX. Any attempt to assign without such prior written consent shall be void.
3. Employment and Organization Disclaimer. This Agreement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. Neither party is the agent of the other and neither party is authorized to act on behalf of the other party. SUB-RECIPIENT shall be liable to PHOENIX for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
4. Entire Agreement; Modification (No Oral Modification). This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms, may not be modified or changed except in writing signed by both parties.
5. Invalidity of Any Provisions. This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.

6. Compliance with Laws, Permits and Indemnity. SUB-RECIPIENT shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, SUB-RECIPIENT shall be solely responsible for obtaining all approvals and permits necessary to perform the work called for under this Agreement. In addition, SUB-RECIPIENT shall indemnify, defend, save and hold harmless PHOENIX from all loss, cost and damage by reason of any violation of the provisions of this paragraph and from any liability including, but not limited to, fines, penalties and other costs arising therefrom.
7. Applicable Law and Litigation. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
8. Inspection and Audit. The provisions of Section 35-214, Arizona Revised Statutes, shall apply to this Agreement. CITY shall perform the inspection and audit function specified therein.
9. Non-waiver. Should PHOENIX fail or delay in exercising or enforcing any right, power, privilege or remedy under this Agreement such failure or delay shall not be deemed a waiver, release or modification of the requirements of this Agreement or of any of the terms or provisions thereof.
10. Labor Protective Provisions. SUB-RECIPIENT shall fully cooperate with PHOENIX in meeting the legal requirements of the labor protective provisions of Section 5333(b) of Title 49 U.S. Code [formerly Section 13(c) of the Federal Transit Act of 1964, as amended (49 U.S.C. 1609)] and the Labor Agreements and side letters currently in force and certified by the United States Department of Labor. Changes, including changes in service and any other changes that may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 5333(b) protections granted to employees. SUB-RECIPIENT shall defend and indemnify PHOENIX from any and all claims and losses due, or alleged to be due, in whole or in part, to the consequences of changes made by SUB-RECIPIENT, that were not requested by PHOENIX which result in grievances, claims and/or liability.
11. Sudan and Iran. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, contractor certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.



CITY COUNCIL REPORT

SUBJECT:
General Plan 2030 Update

MEETING DATE:
February 8, 2010

TO: Mayor and Council
FROM: Sue McDermott, City Engineer/Development Services Director (623)333-4211
THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting City Council comment and provide direction on the progress made to date on the General Plan 2030 process. Staff will present what has transpired to date since the last time a General Plan 2030 presentation was made to Council on March 2, 2009. This item is for information, discussion, and direction only.

BACKGROUND:

Upon commencement of the update, Staff made it a point to promote public outreach as we move through the General Plan 2030 update process. Public outreach began with the formulation of the General Plan Advisory Committee (GPAC). The GPAC is comprised of Avondale residents including various board, commission and council members, business owners, and property owners, all who have met four times since July of 2009. Staff designed and developed a specific General Plan 2030 web page www.avondale.org/generalplan which provides overall information on the General Plan, the update process, meeting schedule, and most notably a library where materials presented and generated during the process can be found. Staff also created a General Plan 2030 brochure which highlights the process and effort at hand. This brochure is available at City Hall and distributed at key meetings and presentations.

To further solicit public opinion, staff created and solicited a General Plan 2030 survey asking Avondale residents what they'd like to see in terms of development in their community. Staff made this survey available by hard copy and online where access was available to the public at the City's Civic Center and Sam Garcia Libraries. The survey was also distributed at the Senior Center, at "City Hall Comes to You", to all boards and commissions, and to the 4th grade classrooms during the "Build A City" event at Michael Anderson Elementary School. The survey was concluded at the first Community Open House held on January 7, 2010. Lastly, staff utilized the press by advertising meetings, issuing press releases, and coordinating with the West Valley View and Arizona Republic at their request.

The GPAC and Staff's in-house Technical Advisory Committee (TAC) have met several times since the joint Pre-visioning Session/Kick-off Meeting held July 27, 2009. At the Kick-off Meeting, staff led an interactive discussion regarding what the GPAC considered City assets and/or priorities. The results of this discussion concluded at the September 19, 2009 GPAC Meeting (the committee's first formal meeting) with a draft vision statement and associated defining values specific to the General Plan 2030. The group refers to the draft vision and values statement often to keep the process in line with the intent of the update. Subsequently the GPAC met four more times. On October 27, 2009 and December 9, 2009 discussions focused on the Land Use element. Prior to these two meetings, Staff requested that the GPAC review the existing element and come prepared to discuss the relevance of the existing information, specifically the existing goals, objectives, and policies. In addition, staff prepared its evaluation of the Land Use element goals and objectives, and provided this information for feedback from the committee. With the conclusion of the Land Use discussion, a

draft of the element is being prepared for GPAC review and comment. The following GPAC meeting held on January 19, 2010 focused on the Economic Vitality elements. A similar format for discussion was followed as used for the Land Use discussions.

Prior to the last GPAC Meeting in January, a Community Open House was held in the Council Chambers, highlighting the General Plan 2030's progress to date. Information covered the Pre-visioning Session, City assets and priorities, existing conditions data, and the survey. Visitors had a final chance to complete the survey.

The TAC met two times since the initial joint Kick-off meeting. The focus of the first meeting was to update the TAC on staff's progress, the process itself, and staff's expectations of the group. The second meeting reviewed the Land Use Element progress and began a general discussion on the Economic Vitality elements.

Separate from public outreach, but an important effort with respect to gathering data has been the creation of staff's Existing Conditions Plan. The Planning Division canvassed the entire city and documented every parcel of property with respect to its current use (undeveloped parcels were identified as vacant). This information will play an important role throughout the General Plan update as it clearly identifies what types of development are in Avondale today. This map will be updated on a regular basis for future use by staff.

The document continues to move forward in line with the process. A fundamental change agreed upon by the GPAC was to incorporate all policies into a new Implementation Element thereby simplifying each element in terms of its purpose. While policies are often discussed, they are documented and will become part of a later discussion. A draft of the Land Use element was prepared including an update to the land use categories, relevant tables, and overall analysis. The GPAC will continue to discuss and analyze new and existing land uses as we progress through the document.

DISCUSSION:

Staff is requesting City Council comment and provide direction on the progress made to date on the General Plan 2030 process, the City-initiated and Staff-led effort mandated by the state of Arizona to update its General Plan. Staff will present what has transpired to date since the last time an update presentation was made to Council on March 2, 2009. This item is for information, discussion, and direction only.

BUDGETARY IMPACT:

Not applicable.

RECOMMENDATION:

For discussion and direction only.

ATTACHMENTS:

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No Attachments Available