CITY COUNCIL AGENDA

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

WORK SESSION
November 15, 2010
6:00 AM

CALL TO ORDER BY MAYOR ROGERS

1 ROLL CALL BY THE CITY CLERK

2 PROPOSED INTERGOVERNMENTAL AGREEMENT WITH TOLLESON TO PROVIDE DETENTION SERVICES

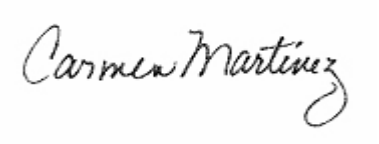
Staff is seeking direction from Council regarding a proposed Intergovernmental Agreement with the City of Tolleson to provide prisoner booking, transportation and misdemeanor sentence service at the Avondale Detention Facility. In exchange, the City of Tolleson will provide funds to pay for one full-time Detention Officer and a monthly stipend to the Avondale City Court. For information, discussion and direction.

3 REVISIONS TO ZONING ORDINANCE SECTION 1, ADMINISTRATION AND PROCEDURES (TA-08-6)

Staff is seeking City Council direction regarding revisions to Section 1, Administration and Procedures of the Zoning Ordinance pertaining to site plan expirations and extensions. For information, discussion and direction only.

4 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:
Proposed Intergovernmental Agreement with Tolleson to Provide Detention Services

MEETING DATE:
November 15, 2010

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The Avondale and Tolleson Police Departments conducted a trial partnership to determine if the Avondale Detention Facility could provide detention services to the Tolleson Police Department in a cost effective manner. The results indicate a significant fiscal and operational benefit to both Tolleson and Avondale. Staff is seeking Council direction to create an Intergovernmental Agreement (IGA) between Tolleson and Avondale allowing Avondale to provide Detention services to Tolleson who in turn will fund one full-time Detention Officer and pay a monthly stipend to the Avondale City Court for services provided.

BACKGROUND:

Beginning April 5, 2010, the Avondale Police Detention Facility began providing detention services for the Tolleson Police Department on a trial basis. Since that time, if a Tolleson Officer makes an arrest, the prisoner is charged with a crime and he/she is no longer taken to the Maricopa County Jail located at 201 S. Madison by the arresting officer from Tolleson. The prisoners are transported to the Avondale Detention Facility located at 519 E. Western Avenue, which is approximately ten miles closer to the city of Tolleson, thus saving initial transport and prisoner processing time for the Tolleson Police Officer. Most significantly, the City of Tolleson is saving on booking costs per prisoner to book misdemeanor prisoners into County Jail, and housing costs per day for those prisoners for the duration of their sentence.

During this trial period, Tolleson felony prisoners are transported to County Jail by an Avondale Detention Officer when they transport a felony prisoner arrested by an Avondale Police Officer. This saves additional transport time for the Tolleson Officer, who no longer transports the prisoner to County Jail, but is returned to patrol service in Tolleson. It creates only a minor workload increase for the Avondale Detention Officer who is typically already transporting a felony prisoner arrested by an Avondale Police Officer.

When a Tolleson or Avondale Police Officer arrests a subject for a misdemeanor charge, that subject is transported to the Avondale Detention Facility for booking and for an initial appearance. This also saves the Tolleson Officer a significant amount of time since the misdemeanor prisoner is processed at the Avondale Detention Facility. This involves booking the misdemeanor prisoner then having that prisoner participate in his/her initial appearance with the Avondale City Court Judge. Prior to this trial period, all of these steps were conducted at the Maricopa County Jail which added additional transport and prisoner processing time for the Tolleson Police Officer making a misdemeanor arrest. Once the Tolleson misdemeanor prisoner sees a judge, if not released, they serve their sentenced time in the Avondale Detention Facility. This means that the City of Tolleson is not paying County Jail booking and daily housing fees on these prisoners as they have in the past. This is the most significant realized cost-savings for Tolleson.

WORKLOAD REVIEW:

Service Type	Numerical Statistics by Month						
	APR 2010	MAY 2010	JUNE 2010	JUL 2010	AUG 2010	SEPT 2010	TOTALS
Initially **Booked** into AVPD Detention Facility	23	29	19	29	26	33	159
Prisoner **Housing** Days - Time served in Avondale Detention Facility	51	113	73	96	65	96	494
Transports for Tolleson (To and from Court/MCSO)	32	68	39	86	53	91	371
Initial Court Appearance at AVPD	9	10	3	14	6	13	55

Tolleson Cost Savings Table [Six (6) Month Trial]:

Service Type	Estimated Savings	Estimated Annual Savings
Bookings into Avondale Detention Facility	$30,569.34	$61,138.68
Housing Days at Avondale Detention Facility	$35,400.04	$70,800.08
Transports (Manhours / Vehicle Costs	$18,086.25	$36,172.50
Estimated TOTAL Cost Savings	$84,055.63	$168,111.26

Avondale City Court Assessment

Based on an assessment by Avondale City Court Judge Richard Lynch, he indicates that since the inception of a trial period beginning April 10, 2010, through September 30, 2010, the Avondale City Court has conducted 55 initial appearances of Tolleson detainees at the Avondale Detention Facility. A review of the process is helpful in evaluating the cost to the Avondale City Court for this service. In the case of a person arrested on a new charge, an Avondale City Court Clerk III must receive and organize the complaint filed by the police and other documents detailing the reason for the arrest, the arrestee's prior criminal history, the views of the alleged victim regarding release, and submit them to the City Judge for review. The judge then addresses the arrestee, advises him/her of the charge(s) and of certain constitutional rights and must order the arrestee either held on a bond and the amount of the bond, or the release of the arrestee and/or the conditions of the release pending the arrestee's next court date which is set by the City Judge in coordination with the Tolleson Court's docket. Once that is accomplished, the court clerk transmits the various documents back to the Avondale Detention Facility for further processing by the staff there. This process is repeated every calendar day including weekends and holidays. There is no court staff involved in this process on weekends and holidays.

In cases wherein a person is arrested for not complying with an already-adjudicated case, the process is simpler but still requires many of the stated administrative tasks. Because these functions are typically carried out in conjuction with Avondale arrestees, it is hard to quantify the cost to the City of this service to Tolleson.

The City Court recommends a charge to the City of Tolleson tied to the cost of Avondale Pro tem judges who preside at weekend hearings, including Fridays. Pro tem judges are paid three hours per day at a rate of $55.00 per hour, which rate is less than the hourly rate for the City Judge, but greater than the hourly rate for a Clerk III. Accordingly, the City Court believes that the City will be fairly compensated by charging Tolleson a weekly rate of $330.00 per week, which represents two days (6 Hours) per week of weekend Pro tem coverage. This charge can be stated as a monthly cost of $1,430.00 and an annual cost of $17,160.00.

BUDGETARY IMPACT:

Annual cost for one full time Detention Officer will be charged to the City of Tolleson. The cost for salary and employee related expenses for one (1) full time Detention Officer is $72,200.00, with a one-time cost of $10,150.00. In addition, the City of Tolleson will pay a monthly fee for Avondale City Court services of $1,419.00. This results in a total of $99,150.00 for the first year.

RECOMMENDATION:

Staff is seeking direction from Council regarding a proposed Intergovernmental Agreement with the City of Tolleson to provide prisoner booking, transportation and misdemeanor sentence service at the Avondale Detention Facility. In exchange, the City of Tolleson will provide funds to pay for one full-time Detention Officer and a monthly stipend to the Avondale City Court.

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Revisions to Zoning Ordinance Section 1, Administration and Procedures (TA-08-6)

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Sue McDermott, Director of Development Services & Engineering, (623) 333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Section 1 of the Zoning Ordinance encompasses definitions of terms; defines the structure, powers and duties of the City's administrative bodies; outlines the City's development processes; and details the procedures for enforcement of the Zoning Ordinance. During this evening's work session, staff will focus the discussion on the site plan expiration and extension process.

DISCUSSION:

Zoning Ordinance Section 106, Site Plan Review, currently specifies, “An approved site plan shall be valid for a period of one (1) year.” As currently written, Section 106 does not state that extensions of a site plan are allowed;. However, site plan extensions have been processed, under an interpretation that they can be extended for a maximum of one year. The sole purpose of tonight's discussion is to consider the positive and negative impacts of increasing the initial validity period and, if an extension process is found to be desirable, to determine the details of that process.

Over the past couple years staff has seen an increase in the number of requests for site plan extensions. In the vast majority of these cases the weak economy and lack of available financing was specified by developers as the primary reasons for delays in development. While Avondale's initial one-year validity period is comparable to most cities across the valley (Exhibit A) and historically has not deterred development, certain cities and towns such as Buckeye and Peoria have provided additional incentives to develop by allowing developers 18-24 months to obtain a building permit approval before a site plan expires. Additionally, cities such as Scottsdale and Tempe allow for the initial validity period for site plans to be increased by stipulation by the decision- making body. While these two cities have a standard one-year expiration for most projects, site plans for special projects which are considered important to their respective cities can be stipulated to expire in two, three, or even five years from the original approval date. Increasing the initial validity period may be viewed as a tool to attract development to a city. The City of Alameda, California amended their code in February of 2010 to allow the initial approval period for design review permits from one year to two years with an opportunity to extend for two years as well. Of the eleven cities/towns researched as part of staff's update, nine allow for site plan extensions ranging from six months to two years. Of those nine that allow for extensions, only one (Surprise) allows developers to extend the site plan more than one time. In most instances, cities will only extend site plans if no Zoning Ordinance changes have occurred since the date of the original approval that would require the site to be redesigned.

The primary reason for expiration is to ensure that development reflects the current vision of a city and its residents. The primary argument against extending initial validity period is that, as codes change, the approved plans would no longer be reflective of what a constituency would like to see. For example, Avondale has recently amended several sections of the zoning ordinance such as the

Landscape, Walls, and Fences Ordinance. Due to the fact that Avondale places a priority on quality landscape in development projects, increasing an initial validity period would mean that developments approved prior to the approved amendments to the landscape ordinance would not be required to adhere to the new standards.

Avondale's Zoning Ordinance does not currently contain any processes, procedures, or regulations for extending a site plan's validity when the initial period is set to expire. While a zoning interpretation has allowed the City to extend site plan extensions for up to one year, the ordinance is silent on how many extensions may be granted or if the extension is subject to meeting all current city ordinances.

With those ideas in mind, staff respectfully asks for Council's direction with regard to the length of a site plan's original validity period and the overall concept of site plan extensions. If Council is in favor of the concept of site plan extensions, the specific details of those site plan extensions (e.g. length of extension, limit on number of extensions, and conditions of extensions).

RECOMMENDATION:

Staff is requesting City Council direction on site plan expirations and extensions, and offers the following alternatives for consideration:

1. Retain Section 1 of the Zoning Ordinance as it is currently written allowing for a site plan validity of one (1) year.
2. Direct staff to initiate an amendment to Section 1, allowing for site plan validity of one year with 2 one year extensions. (Staff's recommendation)
3. Direct staff to initate an amendment to Section 1 with an alternate time limit for validity and/or number of extensions based on information provided in Exhibit A.

If the Council selects alternative 2 or 3, staff will develop and present to Council criteria that is applicable to all site plans which will justify the validity terms and extensions.

This item is for City Council discussion only. No formal action is required.

ATTACHMENTS:

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- Exhibit A - Valley City Comparison of Site Plan Expiration and Extension Requirements

Exhibit A

City	Site Plan Approval Period	Extension Length	Vesting of Site Plan	Extension Approving Body	Conditions on Extensions
Goodyear	180 days	180 days (limit of 1)	Building Permit	Council approval required for extension of Council approved site plans; Administrative approval of all other site plan extensions.	Cannot extend if code changes have occurred which would significantly alter site plan
Glendale	1 year	1 year (limit of 1)	Building Permit	Planning Director	Cannot extend if code changes have occurred which would significantly alter site plan; special circumstances must have delayed building permit approval
Buckeye	2 years for site plans approved after 1/16/2010	6 months (limit of 1)	Building Permit	Development Services Director	Must make final CD submittal within first 2 years to get extension.
Peoria	18 months	6 months (limit of 1)	Building Permit/Grading Permit	Planning Manager	Case-by-case basis
Surprise	1 year	1 Year (policy, not written in code); No limits on number of extensions (policy)	Construction	Approving Body	Permit must be issued
Gilbert	2 years (Previosusly 1 Year)	None	Construction	N/A	N/A
Tempe	1 Year (can be more if stipulated on a case by case basis)	1 Year Maximum (Limit of 1)	Building Permit	Administrative Review	Case-by-case basis
Scottsdale	1 Year (can be more if stipulated on a case by case basis)	1 Year Maximum (Limit of 1)	Building Permit	Director	None
Chandler	1 Year	None	Building Permit	N/A	N/A
Phoenix	2 Years	2 years (Limit of 1)	Building Permit	Approving Body	Building permit must be issued for site plan to be extended
Alameda, California	2 years	2 years (Limit of 1)	Construction	Administrative Review	Cannot extend if code changes have occurred and the project is no longer consistent with City requirments.

CITY COUNCIL AGENDA

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

REGULAR MEETING
November 15, 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. Kathi Soria - Ballet Folklorico Esperanza

3 UNSCHEDULED PUBLIC APPEARANCES

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

4 CONSENT AGENDA

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

a. APPROVAL OF MINUTES
1. Work Session of November 1, 2010
2. Regular Meeting of November 1, 2010

b. RESCHEDULING OF CITY COUNCIL MEETINGS
City Council will consider a request to reschedule three City Council meetings to accommodate scheduling conflicts and in observance of legal holidays that fall on the days of regularly scheduled meetings. The Council will take appropriate action.

c. SPECIAL EVENT LIQUOR LICENSE - FASTACTION SPORTS ANNUAL TURKEY BOWL AND FAMILY FUN FEST
City Council will consider a request from Julia Corbin on behalf of FastAction Sports Charities, Inc. for a Special Event Liquor License to be used in conjunction with the organization's Annual Turkey Bowl and Family Fun Fest to be held on Saturday, November 27, 2010 at Friendship Park. The Council will take appropriate action.

d. SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT - CAPITALEDGE ADVOCACY, LLC
City Council will consider a request to approve the second amendment to the Professional Services Agreement with CapitalEdge Advocacy, LLC to extend the term by six months to coincide with the fiscal year and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. **PURCHASE AGREEMENT - DELL MARKETING LIMITED PARTNERSHIP**
City Council will consider a request to approve a Purchase Agreement with Dell Marketing Limited Partnership for the purchase of computer replacement equipment for Police and Public Works from Dell Inc. in the amount of $198,303.28 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. **AMENDMENT 1 TO PROFESSIONAL SERVICES AGREEMENT – KIMLEY-HORN & ASSOCIATES - DESIGN OF SCHOOL CROSSING IMPROVEMENTS**
City Council will consider a request to approve Amendment 1 to the Professional Services Agreement with Kimley-Horn & Associates, Inc. for the design of school crossing improvements at Michael Anderson Elementary, Rancho Santa Fe Elementary, and Garden Lakes Elementary in the amount of $15,504 for a new contract total of $86,949 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

g. **PURCHASE AGREEMENT - JAMES, COOKE & HOBSON, INC.**
City Council will consider a request to award a purchase agreement to James, Cooke & Hobson, Inc. as the exclusive authorized provider of pumps, parts, and service for Aurora, Flygt, and Pulsafeeder manufactured equipment in the state of Arizona in an amount not to exceed $100,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The council will take the appropriate action.

h. **RESOLUTION 2938-1110 - INTERGOVERNMENTAL AGREEMENT WITH THE FIRST THINGS FIRST SOUTHWEST MARICOPA REGIONAL PARTNERSHIP COUNCIL**
City Council will consider a resolution authorizing an amendment to the Intergovernmental Agreement with First Things First Southwest Maricopa Regional Partnership Council which increases the agreement amount by $48,249 to implement additional public health insurance and enrollment assistance activities and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

i. **RESOLUTION 2937-1110 - INTERGOVERNMENT AGREEMENT WITH GOVERNOR'S OFFICE OF ECONOMIC RECOVERY**
City Council will consider a resolution authorizing an Intergovernmental Agreement with the Governor's Office of Economic Recovery for the acceptance of a Public Safety Stabilization Program Grant in the amount of $62,250 for the purchase of cardiac monitoring equipment for the Fire Department and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

j. **ORDINANCE 1429-1110 - DEDICATION OF EASEMENT TO SOUTHWEST GAS FOR THE HILL DRIVE IMPROVEMENT PROJECT**
City Council will consider an ordinance dedicating a gas line easement to Southwest Gas for the Hill Drive Improvement Project and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

5 **PUBLIC HEARING – CONDITIONAL USE PERMIT FOR A QUIK TRIP GAS STATION WITH A CONVENIENCE STORE (PL-10-0027)**

City Council will hold a public hearing and consider a request by Mr. Juan D. Romero for a Conditional Use Permit to construct and operate a gas station with a convenience store on property zoned PAD. The Council will take appropriate action.

6 **PUBLIC HEARING AND ORDINANCE 1431-1110 – ZONING ORDINANCE TEXT AMENDMENT TO SECTION 3, COMMERCIAL DISTRICTS**

City Council will hold a public hearing and consider an ordinance amending the City of Avondale Zoning Ordinance, Section 3, Commercial Districts. The Council will take appropriate action.

7 **PUBLIC HEARING, RESOLUTION 2939-1110 AND ORDINANCE 1430-1110 - ZONING ORDINANCE TEXT AMENDMENT TO SECTION 307, OLD TOWN AVONDALE BUSINESS DISTRICT**

City Council will hold a public hearing and consider a resolution declaring as a public record a document entitled "The Old Town Avondale Business District Regulations, Amended and Restated November 15, 2010", and an ordinance adopting the same. The Council will take appropriate action.

8 **PROPOSED DEVELOPMENT AGREEMENT - PHOENIX INTERNATIONAL RACEWAY**

Staff will present information to the City Council regarding a proposed development agreement between the City of Avondale and Phoenix International Raceway regarding facility improvements and extension of public utilities. This item is for discussion and possible direction.

9 **EXECUTIVE SESSION**

a. The Council may hold an executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(7) for discussion or consultation with City representatives in order to consider its position and instruct its representatives regarding negotiations for the acquisition of real property on Avondale Boulevard.

10 **ADJOURNMENT**

Respectfully submitted,

Carmen Martinez
City Clerk

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CITY COUNCIL REPORT

SUBJECT:
Kathi Soria - Ballet Folklorico Esperanza

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214

THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

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No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
APPROVAL OF MINUTES

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214

THROUGH: Charlie McClendon, City Manager

PURPOSE:

1. Work Session of November 1, 2010
2. Regular Meeting of November 1, 2010

ATTACHMENTS:

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No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Rescheduling of City Council Meetings

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council reschedule three regularly scheduled Council Meetings due to the observance of legal holidays and to accommodate scheduling conflicts.

BACKGROUND:

The City Council Rules of Procedure read that when the day of a regularly scheduled City Council meeting falls on a legal holiday, no meeting shall be held on such holiday, but said meeting may be held at the same time and the same location on the next succeeding business day thereafter that is not a holiday or at such other time as designated by the City Council.

DISCUSSION:

Staff is recommending that the following meetings be rescheduled in order to accommodate for holiday vacation schedules and in observance of legal holidays:

Holiday	***Meeting Date***	***New Meeting Date***	***Notice Published***
Holiday week	December 20, 2010	December 13, 2010	December 10, 2010
Martin Luther King Jr. Day	January 17, 2011	January 18, 2011	January 11, 2011
Presidents' Day	February 21, 2011	February 22, 2011	February 15, 2011

The City Charter requires that any change in the regular meeting day, time or place be published in a newspaper of general circulation. In order to comply with this requirement and to notify the citizens of the meeting changes, city staff will publish notices in the West Valley View as indicated above.

RECOMMENDATION:

Staff is recommending that City Council reschedule three regular City Council Meetings as indicated above in observance of legal holidays and to accommodate other scheduling conflicts.

ATTACHMENTS:

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No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Special Event Liquor License - FastAction Sports Annual Turkey Bowl and Family Fun Fest

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Carmen Martinez, City Clerk (623) 333-1214

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City Council will consider a request from Julia Corbin on behalf of FastAction Sports Charities, Inc. for a Special Event Liquor License to be used in conjunction with the organization's Annual Turkey Bowl and Family Fun Fest to be held on Saturday, November 27, 2010 at Friendship Park. The Council will take appropriate action.

DISCUSSION:

The City Clerk's Department has received and application from Ms Julia Corbin on behalf of FastAction Sports Charities, Inc. for a Special Event Liquor License to be used in conjunction with the Organization's Annual Turkey Bowl and Family Fun Fest.

The event will be held at Friendship Park from 10:00 a.m. to 5:00 p.m. on Saturday, November 27, 2010. The required fees have been paid. The Police and Fire Department have reviewed the application and are recommending approval. Their comments are attached.

Staff reviewed the application using the 14 factors set forth in Ordinance 1031-04. The findings are as follows:

1. The event will be open to the public.
2. Criminal history of the applicant - A background check of the representative, Ms Corbin, revealed no contact with the Avondale Police Department.
3. The event is a fundraiser.
4. Security measures taken by the applicant - the applicant will hire two off-duty police offices as required by the Avondale Police Department.
5. Beer will be served.
6. Beverages will be dispensed in disposable cups.
7. This is the first time the organizer of this event has submitted an application for a special event liquor license.
8. No problems are foreseen for this event in terms or noise, time or length of the event.
9. The event will last seven hours.
10. Sanitary facilities are available within the park.
11. Zoning designation at this location is AG. Development Services staff has indicated that the proposed use will not result in incompatible land uses.
12. Anticipated daily attendance in the liquor area is 350.
13. Entertainment will be provided by a DJ who will use his own amplification equipment.
14. Per the Police and Engineering Department, no traffic control measures will be necessary.

1.

RECOMMENDATION:

Staff is recommending approval of the request from Ms Julia Corbin on behalf of FastAction Sports Charities, Inc. for a Special Event Liquor License to be used in conjunction with the organization's Annual Turkey Bowl and Family Fun Fest to be held on Saturday, November 27, 2010 at Friendship Park.

ATTACHMENTS:

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- Application
- Department Review

Addendum H

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

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

APPLICATION FOR SPECIAL EVENT LICENSE

Fee = $25.00 per day, for 1-10 day events only
A service fee of $25.00 will be charged for all dishonored checks (A.R.S.§ 44-6852)

PLEASE NOTE: THIS DOCUMENT MUST BE FULLY COMPLETED OR IT WILL BE RETURNED.

DEPT USE ONLY
LIC#

****APPLICATION MUST BE APPROVED BY LOCAL GOVERNMENT**

1. Name of Organization: FastAction Sports Charities Inc
2. Non-Profit/I.R.S. Tax Exempt Number: 27-0398930
3. The organization is a: (check one box only)
   - ☒ Charitable
   - ☐ Fraternal (must have regular membership and in existence for over 5 years)
   - ☐ Civic
   - ☐ Political Party, Ballot Measure, or Campaign Committee
   - ☐ Religious
4. What is the purpose of this event? Fund raiser for neighborhood charity
5. Location of the event: Friendship Park 12325 W McDowell Rd Avondale, AZ 85392
   Address of physical location (Not P.O. Box) | City | County | Zip

Applicant must be a member of the qualifying organization and authorized by an Officer, Director or Chairperson of the Organization named in Question #1. (Signature required in section #18)

6. **Applicant**: Corbin (Last) Julia (First) Nancy (Middle) [redacted] (Date of Birth)
7. Applicant's Mailing Address: 1916 E Concorda Dr. Tempe, Arizona 85282
   Street | City | State | Zip
8. Phone Numbers: (623) 333-2413 (Site Owner #) (877)352-4366 x8 (Applicant's Business #) [redacted] (Applicant's Home #)
9. Date(s) & Hours of Event: (Remember: you *cannot* sell alcohol before 10:00 a.m. on Sunday)

	Date	Day of Week	Hours from A.M./P.M.	To A.M./P.M.
Day 1:	Novemeber27, 2010	Saturday	10:00AM	5:00PM
Day 2:				
Day 3:				
Day 4:				
Day 5:				
Day 6:				
Day 7:				
Day 8:				
Day 9:				
Day 10:				

***Disabled inividuals requiring special accommodations, please call (602) 542-9027**

10. Has the applicant been convicted of a felony in the past five years, or had a liquor license revoked?
☐ YES ☒ NO (attach explanation if yes)

11. This organization has been issued a special event license for 0 days this year, including this event (not to exceed 10 days per year).

12. Is the organization using the services of a promoter or other person to manage the event? ☒ YES ☐ NO
If yes, attach a copy of the agreement. oral

13. List all people and organizations who will receive the proceeds. Account for 100% of the proceeds.
THE ORGANIZATION APPLYING MUST RECEIVE 25% of the gross revenues of Alcoholic Beverage Sales.

Name	Address	Percentage
Neighborhood Ministries	1918 W Van Buren St # 4Phoenix, AZ 85009-3848	20%
FastAction Charities Inc	20928 N John Wayne Pkwy #C13-316 Maricopa, az 85139	80%

(Attach additional sheet if necessary)

14. Knowledge of Arizona State Liquor Laws Title 4 is important to prevent liquor law violations. If you have any questions regarding the law or this application, please contact the Arizona State Department of Liquor Licenses and Control for assistance.

NOTE: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.
"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT PREMISES."

15. What security and control measures will you take to prevent violations of state liquor laws at this event?
(List type and number of security/police personnel and type of fencing or control barriers if applicable)

1 # Police ☒ Fencing
2 # Security personnel ☐ Barriers

Per contract with the city We will contract 2 security officers and 1 off duty police officer as well as put up fencing to control access.

16. Is there an existing liquor license at the location where the special event is being held? ☐ YES ☒ NO
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use? ☐ YES ☒ NO
(ATTACH COPY OF AGREEMENT)

City Of Avondale Parks and Rec (623) 333-2413
Name of Business Phone Number

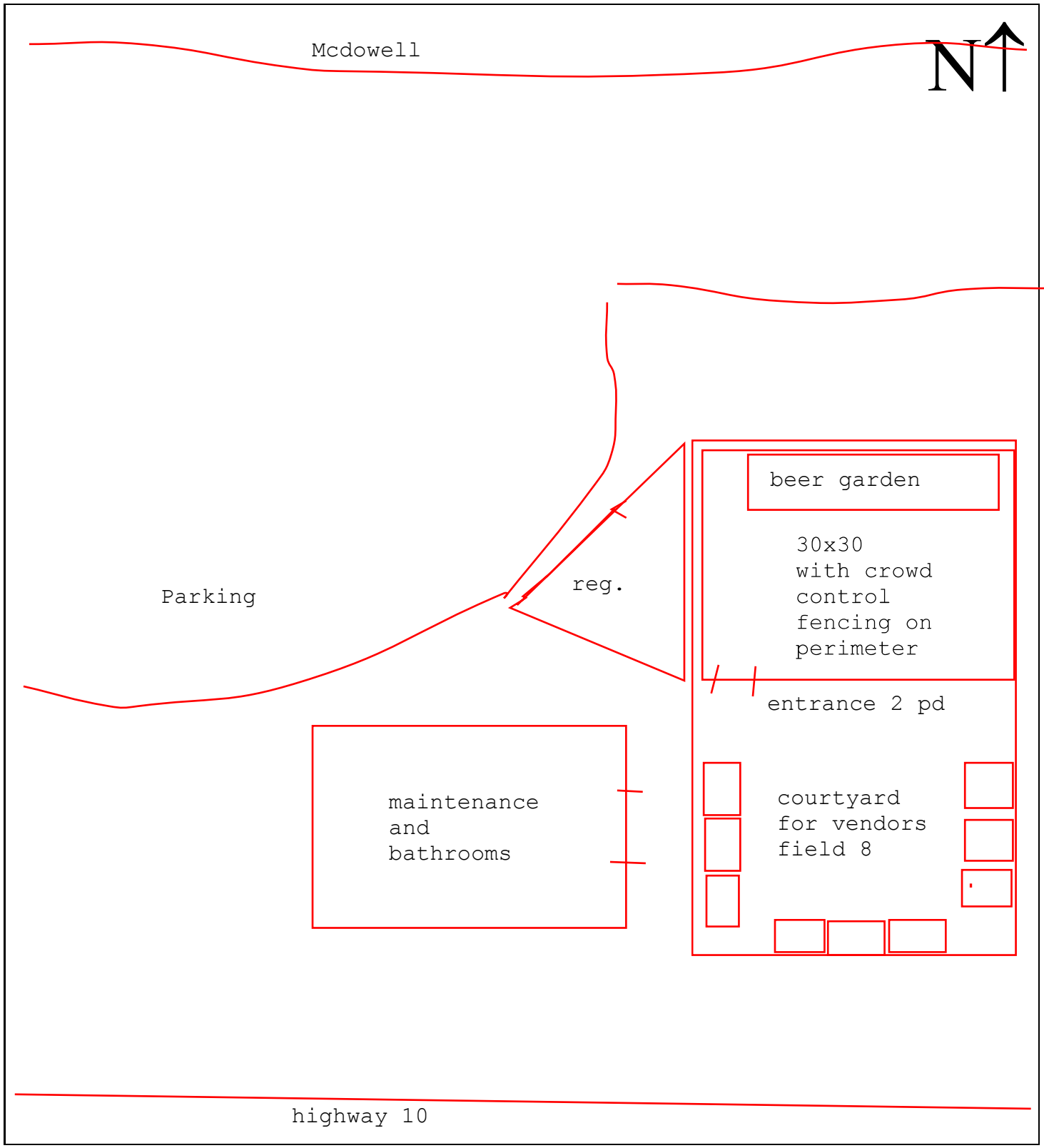
17. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your special event licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

1-877-Flag-Football Ext 8
Julia N. Corbin

FastAction Sports Charities
2010 Turkey Bowl and Family Fun Day

SPECIAL EVENT LICENSED PREMISES DIAGRAM
(This diagram must be completed with this application)

Special Event Diagram: (Show dimensions, serving areas, and label type of enclosure and security positions)
NOTE: Show nearest cross streets, highway, or road if location doesn't have an address.



THIS SECTION TO BE COMPLETED ONLY BY AN OFFICER, DIRECTOR OR CHAIRPERSON OF THE ORGANIZATION NAMED IN QUESTION #1

18. I, Julia Corbin, declare that I am an **Officer/Director/Chairperson** appointing the applicant listed in Question 6, to apply on behalf of the foregoing organization for a Special Event Liquor License.

(Print full name)

X _____ Outreach Manager _____ _____

(Signature) (Title/Position) (Date) (Phone #)

Kelvin M Johnson
Notary Public - Arizona
Maricopa County
My Commission Expires
April 20, 2012

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this

1st November 2010

Day Month Year

My Commission expires on: April 20, 2012

(Date)

_____

(Signature of NOTARY PUBLIC)

THIS SECTION TO BE COMPLETED ONLY BY THE APPLICANT NAMED IN QUESTION #6

19. I, Julia Corbin, declare that I am the APPLICANT filing this application as listed in Question 6. I have read the application and the contents and all statements are true, correct and complete.

(Print full name)

X _____

(Signature)

Kelvin M Johnson
Notary Public - Arizona
Maricopa County
My Commission Expires
April 20, 2012

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this

1st November 2010

Day Month Year

My commission expires on: April 20, 2012

(Date)

_____

(Signature of NOTARY PUBLIC)

You must obtain local government approval. City or County *MUST* recommend event & complete item #20. The local city or county jurisdiction may require additional applications to be completed and additional licensing fees before approval may be granted.

LOCAL GOVERNING BODY APPROVAL SECTION

20. I, _____ _____ hereby recommend this special event application

(Government Official) (Title)

on behalf of _____ _____ _____

(City, Town or County) (Signature of OFFICIAL) (Date)

FOR DLLC DEPARTMENT USE ONLY

Department Comment Section:

_____

_____ _____

(Employee) (Date)

☐ APPROVED ☐ DISAPPROVED BY: _____

_____

(Title) (Date)

Avondale AZ
City Clerk's Department

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:
☒ SPECIAL EVENT LIQUOR LICENSE

ROUTING:
☒ POLICE DEPARTMENT
☐ FIRE DEPARTMENT

APPLICANT'S NAME: JULIA CORBIN

ORGANIZATIONS NAME: FAST ACTION SPORTS ANNUAL TURKEY BOWL AND FAMILY FUN FEST
☒

EVENT ADDRESS: FRIENDSHIP PARK (12325 W. MCDOWELL RD.)

CITY: AVONDALE **STATE:** AZ **ZIP CODE:** 85392

PURPOSE OF EVENT: 4 ON 4 FLAG FOOTBALL TOURNAMENT AND FAMILY CARNIVAL
(FUNDRAISER FOR NEIGHBORHOOD MINISTRIES)

DEPARTMENTAL COMMENTS:

☒ **APPROVED**
☐ **DENIED**

SIGNATURE

ASSISTANT CHIEF OF POLICE
TITLE

102510
DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOVEMBER 15, 2010
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: NOVEMBER 3, 2010

Avondale
City Clerk's Department

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:
☒ SPECIAL EVENT LIQUOR LICENSE

ROUTING:
☐ POLICE DEPARTMENT
☒ FIRE DEPARTMENT

APPLICANT'S NAME: JULIA CORBIN

ORGANIZATIONS NAME: FAST ACTION SPORTS ANNUAL TURKEY BOWL AND FAMILY FUN FEST
☒

EVENT ADDRESS: FRIENDSHIP PARK (12325 W. MCDOWELL RD.)

CITY: AVONDALE **STATE:** AZ **ZIP CODE:** 85392

PURPOSE OF EVENT: 4 ON 4 FLAG FOOTBALL TOURNAMENT AND FAMILY CARNIVAL
(FUNDRAISER FOR NEIGHBORHOOD MINISTRIES)

DEPARTMENTAL COMMENTS:

☒ APPROVED
☐ DENIED

SIGNATURE

FIRE MARSHAL
TITLE

10/26/10
DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOVEMBER 15, 2010
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: NOVEMBER 3, 2010

CITY COUNCIL REPORT

SUBJECT:
Second Amendment to Professional Services Agreement - CapitalEdge Advocacy, LLC

MEETING DATE:
November 15, 2010

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve an amendment to the CapitalEdge Advocacy, LLC contract extending federal advocacy services for an additional six months to coincide with the fiscal year.

BACKGROUND:

January 1, 2010, the City of Avondale entered into a twelve month contract with CapialEdge, a Washington, D.C. based advocacy firm for services related to federal program development, advocacy, policy advice and information services. The contract for services terminates December 31, 2010. To date, CapitalEdge has fulfilled the requirements of its contract. Following is a Summary of CapitalEdge work performed on behalf of the City of Avondale.

Composed proposed federal legislative priorities and workplan for the year outlining potential federal issues on which the City may want to be active

Assisted City with development of FY 2011 congressional appropriations requests

Assisted City with submitting requests, along with requisite forms, letters and accompanying information, to the City's congressional delegation

Arranged for and attended meetings for Mayor Rogers in Washington, DC with congressional delegation and Executive Branch officials to discuss City priorities during NLC Legislative Conference

After NLC meeting, followed-up with pertinent staff to provide additional information and detail on matters such as the City Center Transit facility, Superfund site threats to drinking water, and transit operating assistance relief

Maintained contact with staff of the congressional delegation throughout the year on City priority matters

Assisted City in coordinating contact and flow of information between local entities, the congressional delegation, and regional and Washington EPA offices regarding threats to city drinking water wells from the PGA-North Superfund site

Participated in periodic meetings of Washington DC representatives with the legislative staffs of the National League of Cities and U.S. Conference of Mayors

Alerted City over the course of the year of federal funding opportunities in areas such as transportation, housing, environment, health care benefits for early retirees, and public safety

Alerted City and assisted in advocacy regarding pending federal legislation such as Jobs Bills, collective bargaining mandates for public safety employees, annual appropriations bills, and transportation reauthorization

Sent City issues of Washington Report outlining federal issues pertaining to local governments each week in which Congress was in session

DISCUSSION:

Since October 1, 2010 the federal government has been operating under a Continuing Resolution (CR) to fund government agencies in FY 2011 in the absence of an approved budget. None of the 12 annual appropriations bills that fund departmental programs have been sent to the President. The CR will essentially fund all federal agencies at their FY 2010 levels through December 3, 2010. Congress is in recess in November 15, 2010.

The agenda for the post-election, lame duck session will likely depend on the outcome of the elections. It has been reported that the reauthorization of surface transportation programs will most likely be taken up immediately by the "new" Congress after the first of year. If the City intends to continue to seek federal funding for its transit center through the reauthorization bill, a federal advocacy firm is essential in facilitating that request. Furthermore, given the bulk of the work will occur after the new year, having a contract in place January 1, 2011 with CapitalEdge to continue the work they have begun is important if the Council chooses to move forward with a Federal Legislative Agenda.

BUDGETARY IMPACT:

$34,500.00 (Account Number 215-5113-00-6180) will be expended for advocacy services delivered between January 1, 2011 - June 30, 2011.

RECOMMENDATION:

Staff recommends that the City Council approve an amendment extending CapitalEdge Advocacy, LLC services from January 1, 2011 through June 30, 2011 at its current contract rate.

ATTACHMENTS:

Click to download

- Letter from Carolyn Chaney
- PSA

Capital Edge

October 26, 2010

Ms. Shirley Gunther
Legislative Relations Manager
City of Avondale
11465 W. Civic Center Drive
Avondale, AZ 85323

Dear Shirley:

Please consider this a formal request to renew the contract between the City and CapitalEdge Advocacy, LLC for federal advocacy and information services. Since we are very aware of the significant financial strain under which the City is currently operating, we would propose no change in our current level of compensation.

Even though this very unique election year has not resulted in significant achievement on many items of importance to Avondale and local governments in general, we believe that we have made progress in promoting City priorities in Washington, both with Congress and the Executive Branch. In particular, we are hopeful that Congress will ultimately approve $150,000 proposed by the House of Representatives in the FY 2011 budget for the City request to create a loan program to benefit small businesses in underserved areas that lack access to credit.

We also believe that we have brought a heightened sense of importance for the Avondale City Center Transit facility. Given the tremendous transportation needs in the Valley, it has been our experience that gaining federal traction for such projects is a multi-year process, but activities like the groundbreaking of the recreational facility this year sends strong signal to Washington about the critical nature of the site. If Congress does choose to reauthorize federal surface transportation programs next year, we believe that excellent groundwork has been laid to make a strong proposal for funding.

In addition, we would like to continue to be of assistance with negotiations with the Environmental Protection Agency to protect City drinking water wells from contamination for the Phoenix-Goodyear Airport North Superfund Site, securing relief from prohibitions on the use of federal public transit funds for operating expenses, and alerting the City of pertinent federal competitive funding opportunities. And of course, we are pleased to undertake any federal matters that are unforeseen right now but may emerge over the next year.

It has been a pleasure to serve the City of Avondale over the past year, and we very much appreciate your guidance and that of other City officials. We would very much like to continue the relationship, and would be pleased to discuss any questions you may have about the contract.

Sincerely,

Carolyn

Carolyn C. Chaney
President

1212 New York Ave., NW Suite 250
Washington, DC 20005
202.842.4930
202.842.5051 fax
www.capitaledge.com

SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CAPITALEDGE ADVOCACY LLC

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "Second Amendment") is made as of November 15, 2010, between the City of Avondale, an Arizona municipal corporation ("City"), CapitalEdge Advocacy LLC, a Washington, D.C. limited liability company (the "Consultant").

RECITALS

A. The City and Consultant entered into a Professional Services Agreement dated December 14, 2009, as amended by that certain First Amendment dated January 5, 2010 (collectively, the "Agreement"), for federal lobbyist and information services (the "Services").

B. The City and the Consultant have determined that it is necessary to amend the Agreement to (i) continue the Consultant's performance of the Services on behalf of the City beyond the expected end date (the "Additional Services"), (ii) extend the term of the Agreement to permit completion of the Additional Services and (iii) increase the compensation paid to the Consultant for the Additional Services.

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 Consultant hereby agree as follows:

1. Term of Agreement. The term of the Agreement is extended through June 30, 2011.

2. Compensation. The City shall pay Consultant an aggregate amount not to exceed $34,500.00 for the Additional Services.

3. Payments. The City shall pay the Consultant in equal monthly payments of $5,750.00, based upon work or other efforts undertaken on behalf of the City and upon submission and approval of monthly reports. All monthly reports shall describe all work or other efforts undertaken on behalf of the City justifying payment therefor.

4. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. Non-Default. By executing this Second Amendment, the Consultant affirmatively asserts that the City is not currently in default, nor has been in default at any time prior to this Second Amendment, under any of the terms or conditions of the Agreement.

6. Conflict of Interest. The Agreement and this Second Amendment may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

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

"**Consultant**"

CAPITALEDGE ADVOCACY LLC, a Washington, D.C. limited liability company

By:_____

Name:_____

Title:_____

(ACKNOWLEDGEMENTS)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2010, by _____ as _____ of CAPITALEDGE ADVOCACY LLC**,** a Washington, D.C. limited liability company, on behalf of such company.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

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:

_____

CITY COUNCIL REPORT

SUBJECT:
Purchase Agreement - Dell Marketing Limited Partnership

MEETING DATE:
November 15, 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 Purchase Agreement with Dell Marketing Limited Partnership for the purchase of computer replacement equipment for Police and Public Works from Dell Inc. in the amount of $198,303.28 and authorize the Mayor or City Manager and City Clerk to execute the appropriate documents.

BACKGROUND:

The equipment replacement fund was established to provide an ongoing funding source for the replacement of aged computer equipment. Each year computers are evaluated for replacement based on their usable life and condition. In FY 10-11 a portion of the fund was set aside to replace the fleet of Panasonic Toughbooks utilized by the Police and Public Works Departments.

DISCUSSION:

Starting this fiscal year the IT Department will standardize on Dell semi-rugged laptops as opposed to utilizing the Panasonic Toughbooks. The decision to utilize another laptop other than Panasonic was made as a joint decision between the IT, Police and Finance Departments. Between November 2009 and October 2010, the Police Department evaluated laptops from General Dynamics, Getec, Hewlett Packard and Panasonic. Upon the conclusion of the evaluation period the Police Department selected the Dell Semi-Rugged devices based upon their functionality and price.

The Police Department evaluated the Semi-Rugged laptops for durability, brightness of screen, wireless connectivity and keyboard visibility. The key component to the selection was the availability of a backlit keyboard and price. Since Dell provided both the backlit keyboard and a significant savings, the Police Department recommends the Dell as the primary in car mobile unit.

BUDGETARY IMPACT:

A total of 49 (48 Police and 1 Public Works) Semi-Rugged laptops will be purchased utilizing the equipment replacement fund 603-5120-00-7085 and 530-5120-00-7085. In addition to the equipment replacement, the Police Department will also be purchasing 10 additional units for use by the new seven CAT team members (101-6176-00-7085), two new patrol vehicles laptops (235-6174-00-7085) and one lieutenant (101-6174-00-7085) to equal a total of 59 items. The purchase will include the necessary in car/desk docking station and wiring.

RECOMMENDATION:

Staff recommends that the City Council approve a Purchase Agreement with Dell Marketing Limited Partnership for the purchase of computer replacement equipment for Police and Public Works from Dell Inc. in the amount of $198,303.28 and authorize the Mayor or City Manager and City Clerk to execute the appropriate documents.

ATTACHMENTS:

Click to download

- Purchase Agreement

PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

THIS PURCHASE AGREEMENT (this "Agreement") is made as of November 15, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and Dell Marketing Limited Partnership, a Texas limited partnership ("Contractor").

RECITALS

A. After a competitive procurement process, the State of Minnesota entered into Contract Number B27160 with the Contractor to purchase computing system products and services (the "Minnesota Contract"). The Minnesota Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The State of Arizona entered into a Participating Addendum, Contract Number ADSPO10-00000010 with the Contractor to purchase computing system products and services on the terms and conditions of the Minnesota Contract (the "State Addendum"). The State Addendum is attached hereto as Exhibit B and incorporated herein by reference

C. The City has determined that computing system products and services are required to replace outdated City computer equipment (the "Obsolete Equipment").

D. The City is permitted to make purchases under the State Addendum without further public bidding, and the State Addendum permits its cooperative use by other Arizona municipalities including the City.

E. The City desires to purchase computing system products and services to replace the Obsolete Equipment (the "Goods and Services") under the State Addendum for a lower cost than would otherwise be available.

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 Vendor 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 one (1) year after the effective date hereof.

2. Scope of Work. Contractor shall provide the Goods and Services under the terms and conditions of the Minnesota Contract and the State Addendum, attached hereto as Exhibit A and Exhibit B, respectively.

3. Compensation. The City shall pay Contractor an amount not to exceed $198,303.28 for the Goods and Services as more particularly set forth in the Quotation, attached hereto as Exhibit C.

4. 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.

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

6. Indemnification; Insurance. The City shall be afforded all of the rights, privileges and indemnifications afforded to the Lead State, Participating Entities and its agencies and employees under the Minnesota Contract or to the State of Arizona under the State Addendum, and such rights, privileges and indemnifications shall accrue and apply with equal effect to the City under this Agreement including, but not limited to, the Contractor's obligation to provide indemnification and insurance.

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"

DELL MARKETING LIMITED PARTNERSHIP, a Texas limited partnership

By:_____
Lee Piper

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 _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2010, by Lee Piper as _____ of DELL MARKETING LIMITED PARTNERSHIP, a Texas limited partnership, on behalf of the partnership.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

[Minnesota Contract]

See following pages.

WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

Number B27160

This Agreement is made and entered into by Dell Marketing L.P., One Dell Way, Mailstop 8708, Round Rock, TX 78682 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed

or evaluated as part of the RFP evaluation process. The agreement is located in Exhibit D, Leasing.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed $300,000 each. Desktop per unit/configuration costs should not exceed $100,000. Printers of all types and monitors per unit/configuration costs should not exceed $50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed $25,000 each, or $50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

"Announced Promotional Price" are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

"Consumables" those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser's use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. *Consumables such as magnetic media, paper and generally available office supplies are excluded.*

"Configuration" in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

"Contract" means a binding agreement for the procurement of items of tangible personal property or services. Contract and Master Price Agreement are used interchangeably in this document.

"Contractor" means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

"CPV Member" is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

"CPV Program." The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

"Cumulative Volume Discount" means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

"Documentation" refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

"E-Rate" is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

"Educational Discount Price" means the price offered in a nationally announced promotion, which is limited to educational customers only.

"Equipment" " means workstations, desktop, laptop (includes Tablet PC's), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

"FCC" means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

"General Price Reduction Price" means the Contractor retail price reduction offered to consumer, business or governmental purchasers. General Price reduction prices will be reflected in the PSS as soon as practical.

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

"Mandatory" The terms "must" and "shall" identify a mandatory item or factor.

"Manufacturer" means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer's name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Master Price Agreement" means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor's products and/or services by Purchasing Entities. The "Master Price Agreement" is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

"Materials Management Division" or "MMD" means the procurement official for the State of Minnesota or a designated representative.

"NASPO" means the National Association of State Procurement Officials

"Participating Addendum" or "Participating Addenda" means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

"Participating State" or "Participating Entity" means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

"PDA" means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC's are NOT considered PDA's. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Peripherals" means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Permissive Price Agreement" means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

"Per Transaction Multiple Unit Discount" means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

"Political Subdivision" means local pubic governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

"Price Agreement/Master Price Agreement" means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

"Procurement Manager" means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating

Entities.

"Product(s)" means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Products and Services Schedule Prices" or **"PSS"** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity's price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

"Purchase Order" means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

"**Refurbished Products**" are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

"Services" are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. *General consulting and all forms of application development and programming services are excluded.*

"Servicing Subcontractor/Subcontractor/Reseller Agent" means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase

Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program**.

"Standard Configurations" or **"Premium Savings Configurations (Packages)"** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the Premium Savings Configurations shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

"State Procurement Official" means the director of the central purchasing authority of a state.

"Storage Solution/Auxiliary Storage" means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program**.

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

"Trade In" refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

"Travel" means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

"Universal Resource Locator" or **"URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

"WSCA/NASPO Contract Administrator" means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

2. Scope of Work

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take responsibility for the manufacturer's warranty and maintenance of all proposed equipment, including peripherals. Taking responsibility means the Contractor will provide fulfillment of manufacturer's warranty and maintenance and will provide warranty and maintenance call numbers, ensure manufacturer accepts, processes and responds to those calls, and Contractor shall take responsibility to fulfill warranty as purchased with product. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of product by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

A. Executed Participating Addendum(s);

B. Terms and conditions of this Agreement;

C. Exhibits and amendments to this Agreement;

D. The list of products and services contained in the purchase order;

E. The request for proposals document; and

F. Contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within fifteen (15) calendar days of non-acceptance of a product or service; otherwise the Products or Services shall be deemed accepted

B. Payment of Invoice

Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payment shall be made within 30 days following receipt of an invoice. The ordering entity is not required to pay the Contractor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card" at the time of order placement only.

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the total amount for each configuration on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted

prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor as long as the Contractor designates the carrier, until delivery to the identified ship-to address, when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products due to missing, damaged, defective, incorrect order and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the return shipping cost of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products due to missing, damaged, defective and incorrect order, except for loss or damage directly attributable to the negligence of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within 14 to 30 days after receipt of a purchase order, by a reliable and insured shipping company.

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking responsibility means the Contractor will provide fulfillment of manufacturer's warranty and maintenance and will provide warranty and maintenance call numbers, ensure manufacturer accepts, processes, and responds to those calls. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets, or as listed on Contractor's website.
2. The product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The Product will be suitable for the ordinary purposes for which such Product is intended,
4. The Product has been properly designed and manufactured for its intended use, and
5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
6. The warranty on all Products begins on the date of the title transfer as described in Article 10.
7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:

   a) **ProSupport for IT**

   b) **ProSupport for End Users**

   c) ***CompleteCare***

B. Contractor may modify the warranties described in Exhibit A from time to time with the prior notice of the WSCA/NASPO Contract Administrator.

C. Warranty documents for Products manufactured by a third party shall be

delivered to the Purchasing Entity with the Products as provided by the Manufacturers.

D. The basic warranty offered shall be three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Contractor Branded Product or Contractor Branded Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Contractor Branded Product or Contractor Branded Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

1. Give the Contractor prompt written notice of any claim;
2. Allow the Contractor to control the defense or settlement of the claim; and
3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1. Provide a Purchasing Entity the right to continue using the Products or Services;
2. Replace or modify the Products or Services so that it becomes non-infringing; or
3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.

C. The Contractor has no obligation for any claim of infringement arising from:

1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;

2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
3. Product modifications by the Purchasing Entity or a third party;
4. Product use prohibited by Specifications or related application notes; or
5. Product use with products that are not the Contractor branded.
6. Non-Contractor Branded Product offerings – with respect to any claim that Non-Contractor Branded product(s) infringes upon another person's or entity's patent, copyright, trade secret or other intellectual property rights in the United States. Contractor agrees to pass through to the appropriate Purchasing Entity any rights to indemnification protection for which Contractor currently or subsequently has an agreement in place with the potentially infringing equipment manufacturer/entity.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

A. The PSS prices for Products and services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator for the following Products:

Band 1 – Servers
Band 2 – Workstations
Band 3 – Printers
Band 4 – Storage Solutions
Band 5 – PDAs
Band 6 – Instructional Packages (Bundles)
Band 7 – Monitors
Operating Systems
Local Area Networks

Digital Projectors

B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.

D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.

E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the

Contractor during a product warranty period or during a support agreement.

17. Takeback and Other Environmental Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are list on the web site.

B. Environment: Compliance with the following standards: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and TCO.

C. Product labeling of compliance with Items B & C above, as well as a identification of such information on the web site.

18. Product Delivery

Contractor agrees to deliver Products to Purchasing Entities within 14-30 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot , industry-wide constraints or other catastrophes beyond the reasonable control (each a "Force Majeure event") of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party not performing due to a Force Majeure event under this provision must provide the other party prompt written notice of the Force Majeure event and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has

no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

A. Reseller Agent, Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of $100 or more will be $10. For an unpaid balance of less than $100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial

property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification, Hold Harmless and Limitation of Liability

A. The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including reasonable attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the Contractor, its agents, officers, employees or subcontractors. The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of $2,000,000.

B. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees. To the maximum extent permitted by applicable state law, Purchasing Entities agree to be responsible for their own acts, errors, or omissions pertaining to this indemnification provision.

C. Additional representations
For acquisition of Services, the following additional terms shall apply. To the extent permitted by law, a Participating Entity accepts responsibility for and represents and warrants that: (a) the Participating Entity has obtained the appropriate license, intellectual property rights, or any other permissions required to support any Service Description, SOW, or Technical Specification Form signed by the Parties, or Contractor's performance of the Services, including the right to make any copies or Reproductions of any Participating Entity-provided software, (b) the Participating Entity's representations regarding the existence of an export license or the eligibility for export of software without a license are accurate, or (c) that Contractor shall not be held liable for the effect (if any) on the Participating Entity's third-party product warranties caused by having Contractor perform services on such third-party Products. The Contractor's liability under the contract for any cause whatsoever shall be limited to an aggregate amount of $2,000,000. The foregoing limitation does not apply to Articles 12 and 24 A through 24 C of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

25. Amendments

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

C. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the

approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.

C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.

D. Once the website is approved, the Contractor may not make changes to the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

30. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

31. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any

Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the State.

C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

35. Organizational Conflicts of Interest

A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contractor's objectivity in performing the work is or might be otherwise impaired; or
- the Contractor has an unfair competitive advantage.

B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

37. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

38. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or

any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

40. WSCA/NASPO Contract Administrator

The State shall appoint an WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.

B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.

C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.

D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.

E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.

F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task.

G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.

H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

41. Survival

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification,

Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

A. If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisitions Supervisor
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

To Contractor:

Dell Marketing L.P.
Attention: Public Contracts
Stephanie D. Shipp
One Dell Way, RR8-8707
Round Rock, TX 78682
Email: stephanie_shipp@dell.com

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th

of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.

2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

Period End	**Fee Due**
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.

4. The Contractor agrees to provide with the utilization report as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to. Contractor agrees to add EPEAT and/or Energy Start environmental information to utilization reports as the information becomes available as consumable reporting data.

5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.

6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.

7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.

2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.

3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:

1. Nonperformance of contractual requirements; or

2. A material breach of any term or condition of this Agreement.

B. A written notice of default, and an opportunity to cure within 30days of the written notification, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

1. Exercise any remedy provided by law or equity;

2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;

3. Impose liquidated damages, as specified in a Participating Addendum;

4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.

5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the equivalent product or equivalent

service from another Contractor.

D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

A. Website Audits

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures, described in **Exhibit E**, Audit Guidelines. The Contractor will review web pricing on a monthly basis to ensure discounts continue to be equal to or better than those required by the Agreement.

1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. Sales Audits

The Contractor further agrees to perform sales audits based on the sample formulas described in **Exhibit E**, Audit Guidelines.

C. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

49. Ownership

A. Ownership of Documents/Copyright. Any reports, studies, photographs,

negatives, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.

B. Rights, Title and Interest. All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will remain the property of the Contractor. Where applicable, works of authorship created by the Contractor, specifically for the State shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in the Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

50. Prohibition Against Gratuities

A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.

B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

By entering into a Contract, the Contractor agrees to consider, in the Contractor's discretion, all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State under said Contract. For any cause of action taken herein by Contractor, the State, at the State's discretion, may participate in any such action. In the event that Contractor desires to participate in such action, the Contractor shall not oppose the State's request to join such action so long as the interests/positions of the State are not adverse to the interests/positions of the Contractor.

52. Right to Publish

A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.

B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

55. Customer Satisfaction/Complaint Resolution

A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B.**

B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

57. E-Rate Program

The Contractor's E-Rate identification number is: #143004340.

E-Rate eligibility depends upon who uses the equipment, how it is used and where it is located. In general terms, equipment located on school property and that is necessary for e-mail and Internet access in classrooms is eligible for E-Rate support.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

1. DELL MARKETING L.P.
The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Stephanie D. Shipp

Title: Contract Strategist

Date: June 11, 2009

By: Jane McKenzie

Title: Senior Manager Contracts

Date: June 11, 2009

2. MATERIALS MANAGEMENT DIVISION
In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisitions Supervisor

Date: 6/15/09

3. COMMISSIONER OF ADMINISTRATION
Or delegated representative.

By: Brenda Willard

Date:

Original signed

JUN 15 2009

By Brenda Willard

EXHIBIT A – ADDITIONAL WARRANTIES

ProSupport for IT

Designed for IT Professionals and customers with their own helpdesk/service desk facilities, ProSupport for IT has stripped out the duplication that can occur with basic support packages and delivers the elements that IT professionals need, including the entitlement for your certified IT staff to receive Dell training and accreditation in order to qualify for Fast Track Dispatch. Also NASPO/WSCA's staff benefit from:

- Entitlement to enroll in Fast Track dispatch for Dell certified Customer Technicians
- Direct Access to Dell Expert Centers
- 24x7 Expert Center Support:

ProSupport for End Users

Designed for Customers with limited or no internal IT resource, ProSupport for end-users provides support in the areas that end-users typically encounter issues. The service is available 24 x 7. ProSupport for End Users also gives "Getting started" advice such as remote configuration or set up assistance associated with simple networks (including wired and wireless networks) and configuration assistance with common task small business applications such as:

- Symantec Endpoint Protection
- Microsoft Office
- Microsoft SBS
- QuickBooks
- Adobe Photoshop
- Adobe Acrobat

Service Options

1. Speed of Service Response

Mission Critical

The Mission Critical option includes either a 4 hour or 8 hour response, with the option of a 2 hour response service if your site falls within the service coverage area. Dell has 5 Global Command Centres for around the clock coverage around the world.

Dell's Critical Situation Process for severity 1 incidents provides:

- Ongoing, scheduled situation updates to keep you informed every step of the way
- Problem replication in Dell's simulation labs (as needed)
- Prioritized production in the event of a natural disaster

We will also provide emergency dispatch that allows simultaneous phone and on-site troubleshooting. In addition hardware fault monitoring is available on select server and storage platforms.

Same Day Response Service

Same day response/4-hour on-site service includes:

- After phone-based troubleshooting, a Dell-trained technician arrives on-site within 4 hours of problem determination, depending on location

- On-site service technicians coordinate incident resolution and troubleshooting directly with Dell's Expert Centers

Specialized On-site Service Options

With this module of ProSupport NASPO/WSCA can choose from a range of robust options tailored to your unique needs. Options include:

- On-site Service Delivery Manager
- On-site Escalation Manager
- On-site Service Engineer
- Scheduled On-site Service
- On-site Diagnosis Service

2. Premium Proactive

Maintenance

A study conducted in North America during 2007 showed that a massive 70% of IT budgets and spent on ongoing operations and maintenance. Our ProSupport Proactive Maintenance services have been designed to address this expenditure by reducing the cost and complexity of ongoing maintenance. Proactive maintenance includes:

- Proactively maximize availability
- Help reduce unplanned downtime
- Help reduce recovery time in the event of a technical incident by reducing the number of variables to diagnose and troubleshoot
- Minimize maintenance costs while maximizing uptime

Premium Proactive maintenance is available on select server and storage platforms.

Enterprise Wide Contract

A ProSupport Enterprise Wide Contract from Dell has been proven to reduce technical incidents by as much as 37%. This ProSupport option includes:

- Designated Service Delivery Manager
- On boarding support assessment & comprehensive planning
- Monthly management reviews
- Incident status and defined reporting
- Dell Fast-Track dispatch (with certification)
- 7x24x365 access to Dell Expert Centers
- Technical training and certification program
- Escalation management
- Global Command Centers
- Collaborative support for hardware and software
- Next-Business-Day on-site service

Your designated Service Delivery Manager service includes:

- On boarding support assessment
- Comprehensive planning
- Monthly management reviews
- Incident status and defined reporting

Remote Advisory Options

Remote advisory assistance is designed to support your specialized applications and solutions. It is ideal for ongoing support of Dell Infrastructure Consulting Services deployed solutions or for additional configuration and optimization needs. Customers can select remote advisory services that cover the following specialist areas:

- Virtualization
- Exchange
- Systems Management
- Storage Technology
- Backup and Recovery

Fast Track Dispatch Program

This program is included for customers who choose the ProSupport for IT service model.

Fast Track Dispatch provides the ability for certified IT staff to dispatch parts and/or labor without having to go through scripted phone troubleshooting. The necessary online technical training and certification for major Dell product families is included in the program. IT professionals have access to technical support tips and in-depth hardware and software information. Also, they have direct phone access to expert technicians who can assist with more complex issues when needed.

3. Protection

CompleteCare

Protect assets from inevitable mishaps with CompleteCare Accidental Damage cover to ensure an easy and flexible repair and replacement service for most accidental damage. CompleteCare helps to save time, money and resources in the event of unplanned events such as:

- Spills
- Drops
- Breakages
- Electrical surges

For notebooks and mobile workstations CompleteCare Theft protection is available.

CompleteCare Multi-cover provides both Accidental Damage and Theft Protection under in one easy package.

CompleteCare is essential investment protection for systems that are exposed to high-risk multi-use, high mobility, multiple users and harsh environments.

EXHIBIT B – COMPLAINT RESOLUTION

A dedicated member of your Account Team, your Sales Representative is the owner for any procurement, pricing, or supply issues that may arise. Your Sales Representative has a clearly defined escalation path for issues which includes routing them through an Inside Sales Manager, up through to the appropriate Regional Director. Your Sales Representative is directly accountable to NASPO/WSCA and will keep you apprised of issue resolution and progress.

In the rare case an issue cannot be resolved through standard channels; the escalation process would be directed to the level of Sales Vice President.

The Dell Account Teams provide Executive Business Reviews on a quarterly basis. This tool is like a bank statement that provides purchase history information, tracks our performance against Service Level Agreements and develops specific action plans where needed to meet your objectives. The goal is to use the benefits of our direct relationship to provide you with unprecedented accountability on the products, services and support you want and give you as proactive analysis of what's working and what's not.

Invoicing Resolution

Purchase order management helps Dell maintain our commitment to excellence by allowing us to process orders accurately and efficiently. In support of these goals, Dell assigns a Finance/Accounting Associate to each account. This individual is responsible for resolution of disputed invoices. The Associate will work with NASPO/WSCA's Accounts Payable, Procurement or other necessary departments to resolve disputes.

Your Dell Customer Care representative will help with errors such as duplicate invoices, wrong product shipped, etc. If needed, the dedicated Finance/Accounting Associate for NASPO/WSCA will resolve billing issue.

If NASPO/WSCA is set up for monthly consolidated invoicing, Dell requires that you pay undisputed item(s) and follow the above procedures for error correction.

Dell provides the following solutions to customers in resolving their most common invoicing issues:

If a customer didn't receive original copy in the mail, or it is delayed or lost in the customer's mailroom, Dell makes available round-the-clock access to online copies for all Dell invoices – paid and unpaid – for 24 months. The online invoices look just like the original hard-copy invoices and include service tag numbers for simplified comparisons. Dell can also provide email notification of invoices.

If a customer wants one invoice per purchase order, Dell's collections team can set the customer up for consolidated invoicing. Or, if the request is just for one PO, Dell's customer care or collections team can request a manual consolidated invoice.

If a customer wants their invoice to match their purchase order, Dell's customer care or collections team can request manual invoice.

EXHIBIT C – VALUE-ADDED SERVICES

Contact Dell for further details on these programs:

Custom Factory Integration

Parts Replacement Program

Asset Management Services

Image Management Services

Asset Recovery Services

Managed Deployment Services

Modular Services

Automated Deployment

Training Services

Dell Virtualization Services

Assessment, Design & Implementation Services

EXHIBIT D - LEASING

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. A sample agreement can be found at: www.dell.com/naspowsca

EXHIBIT E – AUDIT GUIDELINES

Website Audits:

1. Websites need to be accurate with both pricing and part numbers
2. Manufacturers MUST have a mechanism in place for periodic and random internal auditing of pricing on the website
3. WSCA will randomly audit websites for accurate pricing
4. Upon request, Contractor will provide documentation of pricing and discounts accuracy

Sales Audits

Sample Guidelines

Frequency: Quarterly

Scope: one tenth of one percent (.001) of purchase orders – at least one if any sales, no more than 100 audits

- Up to 1,000 sales = 1 audit
- 10,000 sales = 10 audits
- Up to 100,000 sales = 100 audits
    - Random sample of purchase orders-invoices
- Can offer several different statistical methods for such small samples

Documentation:

- Contractor to test and keep documentation internally. Noting any actions to correct findings, as necessary.
- Periodic summary report to WSCA/NASPO containing audit findings as summary numbers ONLY

Addendum to Master Price Agreement
Between
Dell Marketing, L.P.
And
State of Minnesota, Materials Management Division
Representing the Western States Contracting Alliance (WSCA) and
the National Association of State Procurement Officials (NASPO)
Lead State Contract #: B27160 Executed on: June 15, 2009

August 12, 2009

This Master Price Agreement Addendum governs Dell Marketing, L.P. (hereinafter "CONTRACTOR") use of the NASPO/WSCA name and logo during the term of this Master Price Agreement and amendments to this Master Price Agreement. CONTRACTOR may use the name and logo only as set forth below. Any use not expressly permitted herein is prohibited, and such use constitutes a material breach of the Master Price Agreement with the Lead State and all Participating States.

1. CONTRACTOR may display the NASPO/WSCA name and logo on the face of the Master Price Agreement, including all electronic and hard copy versions.

2. CONTRACTOR and its subcontractors, resellers, and agents may display the NASPO/WSCA names and logos on a web site as a "click on" link to the Master Price Agreement and/or as otherwise approved for posting on the CONTRACTOR's approved NASPO/WSCA website. No other use of the logos or names is permitted on any web site, except as permitted in paragraphs 1 and 3.

3. With, and only with, prior written approval of the Lead State Contract Administrator, CONTRACTOR may advertise the Master Price Agreement in publications and promotional materials aimed at state and local government entities eligible to use the Master Price Agreement. The sole focus and intent of such advertisements must be to increase participation in the Master Price Agreement. The NASPO/WSCA names may be used and the logos displayed in the advertisement ONLY as it relates to the Master Price Agreement. The Lead State Contract Administrator's approval must encompass the content and appearance of the advertisement and the media in which the advertisement will appear.

4. CONTRACTOR may not make explicit or implicit representations concerning the opinion of NASPO/WSCA, the Lead State, or any Participating State regarding CONTRACTOR or its products or services. This restriction includes general use of the NASPO/WSCA names and logos NOT directly linked to or related to this Master Price Agreement.

5. CONTRACTOR must ensure that its authorized sub-contractors, authorized resellers, and/or authorized agents adhere to the terms of this Addendum, and CONTRACTOR is responsible for any breach by these entities.

6. CONTRACTOR must immediately cease all use of the NASPO/WSCA names and logos if directed to do so in writing by the Lead State Contract Administrator, and CONTRACTOR must ensure that its authorized sub-contractors, authorized re-sellers, and/or authorized agents immediately cease all use.

7. CONTRACTOR shall not make, or permit its authorized subcontractors, authorized resellers, or authorized agents to make, any alterations to NASPO's or WSCA's names or logos (including characters, style and colors) and CONTRACTOR shall not use or permit the use of NASPO's or WSCA's names or logos in a manner or context that could adversely affect NASPO's/WSCA's integrity, goodwill, or reputation.

8. Upon termination or expiration of the Master Price Agreement, CONTRACTOR and its authorized sub- contractors, authorized re-sellers, and authorized agents must cease all use of the NASPO/WSCA names and logos; except that, CONTRACTOR may use the NASPO/WSCA names for reference purposes in a description of its prior experience.

Signatures to follow on Separate Page

Acknowledged:

DELL MARKETING L.P.:

The Contractor certifies that the appropriate person(s) have executed this agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Stephanie D. Shipp
Signature

Contract Strategist
Title

12 August 2009
Date

LEAD STATE:

In accordance with state statutes or rules.

Bernadette Kopischke
Signature

Acq. Supvr.
Title

8/17/09
Date

EXHIBIT B
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

[State Addendum]

See following pages.

WSCA/NASPO PC Contracts 2009-2014
Computer Equipment, Peripherals, and Related Services

PARTICIPATING ADDENDUM
Between

Dell Marketing L.P.
and
State of Arizona

Master Price Agreement Number B27160
State of Arizona Contract Number: ADSPO10-00000010

1. Scope

This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts. This Participating Addendum (PA) to the Western States Contracting Alliance (WSCA) Computer contract is for the elective use of the State of Arizona, its departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate, a university, political subdivision, or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by the A.R.S. 41-2632.

2. Participation

Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

Using Agencies shall include Arizona State agencies, boards and commissions and members of the State Purchasing Cooperative. An up-to-date list of State Purchasing Cooperative members may be found at http://www.azdoa.gov/agencies/spo/api_coop.asp.

3. Changes

3.1. Additions

3.1.1. State of Arizona Terms and Conditions

(See Attachment 3.1), attached and incorporated herein by reference.

3.1.2. Federal Immigration and Nationality Act

By entering into the Contract, the Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the Contract. I-9 forms are available for download at USCIS.GOV. The State may request verification of compliance for any Contractor or subcontractor performing work under the Contract. Should the State suspect or find that the Contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

3.1.3. IT 508 Conformance

Unless specifically authorized in the Contract, any electronic or information technology offered to the State of Arizona under this solicitation shall comply with A.R.S. 41-2531 and 2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

3.1.4. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, Direct Services (as defined in the next sentence) under this contract shall be performed within the borders of the United States. Direct Services shall mean those services that

are (i) described in the specifications or scope of work that directly serve the State of Arizona or its clients and (ii) involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers. In no event will the State or its clients grant access and/or provide to Contractor any secure or sensitive data or personal client data or require software development services.

3.1.5. Pandemic Contractual Performance.

3.1.5.1. Contractor represents that is has business continuity of operations policies and procedures in place to address Contractor's performance in the event of a medical pandemic. The Participating State may require a general overview of the plan, on an annual basis, by written request to Contractor. Any disclosure of Contractor's plan is at Contractor's discretion and disclosure of the plan or an overview will be subject to Contractor's imposed restrictions. The plan may include alternative methods to ensure there are products in the supply chain through Contractor's resellers, or purchase recommendations.

3.1.5.2. In the event of a medical pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this contract impossible or impracticable, the State shall have the right after the official declaration of a pandemic to temporarily void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms. In such event the State shall not incur any liability for undelivered orders if a pandemic is declared and emergency procurements are authorized by the director as per § 41-2537 of the Arizona Procurement Code; and, once the pandemic is officially declared over and/or the Contractor can demonstrate the ability to perform, the State, at its sole discretion may reinstate the temporarily voided contract(s).

3.1.6. Business Operations in Iran and Sudan

In accordance with A.R.S. 35-397, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Iran. In accordance with A.R.S. 35-397, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan.

3.1.7 Compliance Requirements for A.R.S. § 41-4401, Government Procurement: E-Verify Requirement

3.1.7.1. The contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section ARS § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)

3.1.7.2. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.

3.1.7.3. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the contractor may be subject to penalties up to and including termination of the contract.

3.1.7.4. The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph 1.

3.1.8. Purchase Order Citation Requirement

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number EPS100001-01, and the Master Price Agreement Number B27160.

3.1.9. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA")

If or when Contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, Contractor agrees to comply with the data element and reporting requirements that are legally required of providers of goods and related services (aka Vendors, or herein Contractor) as required of Vendors under ARRA. Ordering entity is responsible for informing Contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide any required report to the ordering entity as

required by law. The Contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services. With respect to Contractor's sale of goods and related services under this Contract and to the extent required of Contractor under the final rules promulgated by the Federal Government under ARRA, Contractor agrees to comply with requirements of the Act as necessary.

3.1.9.1 Purchase Order Requirements. Recipient/Subrecipient of funds shall specify on the first line of each purchase order placed with Contractor utilizing ARRA funds that ARRA funds are being used to fund the purchase order. Recipient/Subrecipient may NOT co-mingle ARRA funds and non-ARRA funds in a single purchase order and if ARRA funds and non-ARRA funds are co-mingled by Recipient/Subrecipient in a single purchase order, Recipient/Subrecipient acknowledges that Contractor will not separate such funds. The total purchase amount of all funds on any such co-mingled purchase order will be included in any report provided by Contractor for ARRA purposes.

3.2. Deletions

3.2.1. Band 5 Equipment

Notwithstanding any future amendments, this PA is limited to servers, desktops, laptops, printers and storage. PDA's will not be procured by the State of Arizona under this contract.

3.2.2. Wireless

No wireless services shall be purchased under this PA.

3.2.3. Software

Software other than the Operating System is not available under this PA. Imaging of Software purchased and licensed from other State accepted sources is permitted under the PA.

3.2.4. Product leases

Lease agreements for products are not available under this PA for State Agencies, any other authorized purchasers may do so.

3.3. Revisions

3.3.1. Software Licensing

Notwithstanding any future amendments, this PA is limited to the sale of computer hardware, peripherals and all licensed software and operating system software included therein. All applications and operating system software shall be purchased by the manufacturer either through their own pricing agreement or through a separate contract between the State and a Software Value Added Reseller (SVAR).

3.3.2. Servicing subcontractors

Notwithstanding any future amendments, all acceptable subcontractors that may do business in the State of Arizona under this contract shall be listed in this PA or on the webpage set up for purchasing under this PA. Placement of Orders and shipment of Order directly from Dell will remain unchanged in the PA. All orders and payments are to be issued directly to: Dell Marketing L.P.

Only those Dell Authorized subcontractors and/or resellers and service providers ("Servicing Subcontractors") attached hereto or as listed on the Arizona Premier Page are eligible to support the Participating Addendum. Servicing Subcontractors shall not be added to or removed from this list without notice to the State. An amendment for this purpose shall not be necessary. The listing shall include the authorized subcontractor and/or reseller's name and contact information and small businesses, women-owned business enterprises, and minority-owned business enterprises shall be clearly indicated. Orders and payments are to be handled by Dell directly.

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: ADSPO10-00000010 and the Master Price Agreement Number B27160.

Upon approval by the State, Contractor wishes to identify Servicing Subcontractor(s) ("WSCA Agent") to market Contractor's Products and Services, as identified on Contractor's Products & Services Schedule ("PSS"), on behalf of Contractor. The Participating Entity may utilize WSCA Agents pursuant to the Contractor defined WSCA Agent program as defined in a separate written Agreement between Contractor and WSCA Agent.

WSCA Agents authorized within the State will have their names identified on the State's respective www.Dell.com/naspowsca Dell state store page.

3.3.3. Reporting and Fees

3.3.3.1. Reporting

The contractor shall be required to furnish quarterly contract usage reports to the State Procurement Office (SPO), in a format that is mutually agreed upon, at no additional cost to the State.

3.3.3.2. Administrative Fee

Contractor shall assess administrative fees in the amount of one percent (1%) of all sales occurring under this Addendum, not including taxes, to members of the State Purchasing Cooperative. An updated list of State Purchasing Cooperative members may be found at the following URL: http://azdoa.gov/spo/agency-resources/az-purchasing-coop/arizona-purchasing-cooperative. At its option, the State may expand the applicability of this fee with prior written notice and mutual agreement of Contractor. Contractor shall not assess the administrative fee in the form of a line item in their invoices. Rather, the Contractor shall include the amount of the administrative fee in their unit prices for all products and services available under the Addendum. The Contractor's WSCA pricing to the Participating Entity shall be adjusted to offset for the equivalent fee amount. All administrative fees shall be remitted to the State Procurement Office at 100 N. 15th Avenue, Suite 104, Phoenix, AZ 85007, no later than thirty (30) days following the end of the calendar quarter in which the fee was assessed. Calendar quarters shall include the months of January through March, April through June, July through September, and October through December. Contractor's failure to collect or remit administrative fees in a timely manner may result in the State exercising any recourse available under the Contract or as provided by law.

3.3.4. Term of Contract

Notwithstanding any future amendments, this PA is shall begin on September 1, 2009 and continue for three (3) years, through August 31, 2012. The State, at its sole option, may extend the PA for two (2) additional one-year terms, or one additional two-year term, if the Master Price Agreement is still valid.

3.3.5. Travel

When requested, in writing, from the Using Agency to perform work that requires overnight accommodations, the Using Agency will reimburse the contractor in accordance with the current rates specified in the Rules and Regulations applicable to State employee's travel. The contractor shall itemize all per diem and lodging charges. State rates may be located at www.gao.state.az.us.

4. Primary Contacts

The primary contact individuals for this Addendum are as follows (or their named successors):

Lead State

Name: Bernadette Kopischke

Address: 50 Sherburne Ave., 112 Admin Bldg, St Paul, MN 55155

Telephone: (651) 201-2450

Fax: (651) 297-3996

E-mail: bernie.kopischke@state.mn.us

Contractor – Lead for Master

Name: Stephanie Miller

Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682

Telephone: (512) 723-4355

Fax: (512) 283-9092

E-mail: stephanie_g_miller@dell.com

Contractor - State Contract Manager:

Name: Scott Loras

Address: One Dell Way, Mail Stop 8708, Round Rock, TX 78682

Telephone:512-728-8857

Fax: (512) 283-9092

E-mail:Scott_Loras@dell.com

State of Arizona

Name:	Maureen L. McGovern
Address:	State Department of Administration, State Procurement Office
	100 North 15th Avenue #104, Phoenix AZ 85007
Telephone:	602.542.9125
Fax:	602.542.5508
E-mail:	maureen.mcgovern@azdoa.gov

5. Services:

The terms of the Agreement shall apply each time Customer engages Dell to provide services. All services provided will be described in one or more of the following: (i) "Service Descriptions" used to describe any services purchased by an entity; (ii) any mutually agreed upon "Statement of Work" ("SOW") executed by the parties; or (iii) any "Technical Specification Form" approved by the parties

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

Signatures as required by State Statutes, Rules or Policies

Dell Marketing L.P.

SIGNATURE

Scott Loras
Contracts Senior Consultant

AUGUST 31, 2009
DATE

State of Arizona

SIGNATURE

James Scarboro
Deputy State Procurement Administrator

AUGUST 31, 2009
DATE

Attachment 3.1

State of Arizona Terms and Conditions

1. Definition of Term

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

"Attachment" means any item specifically referenced herein and required to be included as a part of this Participating Addendum.

"Contract Means" means the terms and conditions set forth in Amendment 3.1 and are hereby incorporated into the Participating Addendum

"Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

"Contractor" or "Manufacturer" means the Hewlett Packard Company.

"Days" means calendar days unless otherwise specified.

"Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

"Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

"Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

"Participating State" or "Participating Entity" means the State of Arizona.

"Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by the Participating State to enter into an agreement for the purchase of goods and/or services described in this contract.

"Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

"State" means the State of Arizona and Department or Agency of the State that executes the Contract.

"State Fiscal Year" means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1. Arizona Law

The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter **7.**

2.2. Implied Contract Terms

Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3. Relationship of Parties

The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.4. Severability

The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.5. No Parole Evidence

This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.6. No Waiver

Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract administration and operation

3.1. Records

Contractor shall comply with the requirements of A.R.S. § 35-214 and § 35-215.

3.2. Non-Discrimination

The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit

Contractor shall comply with the requirements of ARS § 35-214.

3.4. Facilities Inspection and Materials Testing

In the event of pre-payment, the Contractor agrees to permit access into its facilities and, subcontractor facilities, at reasonable times for inspection of the materials provided under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines material noncompliance of the materials ordered under a particular purchase order, the Contractor shall be responsible for the payment of all reasonable costs incurred by the State for testing and inspection.

3.5. Advertising, Publishing and Promotion of Contract

The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.6. Property of the State; Ownership of Documents

Any reports, computer programs, studies, photographs, negatives, databases, computer programs, or other documents ("Created Materials') first created by Contractor in the performance of its obligations under this Contract and paid for by the State are the sole property of the State. Created Materials shall not include the preexisting intellectual property or modifications thereto of the Contractor. The Contractor is not entitled to a patent or copyright on those Created Materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State. Notwithstanding the foregoing, Contractor shall be entitled to a worldwide, irrevocable, royalty-free license to use and modify any Created Materials that directly pertain to information technology infrastructure.

3.7. Ownership of Intellectual Property

Reference Section 12 of MPA

4. Costs and Payments

4.1. Payments

Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services in accordance with the MPA, the Contractor shall submit a complete and accurate invoice for payment from the State for payment within thirty (30) days of invoice date.

4.2. Delivery

Reference Section 10A of MPA

4.3. Applicable Taxes

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes arising under this Contract that are normally attributable to the Contractor.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. To the extent that Contractor fails to pay for such taxes normally attributable to the Contractor, Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs

including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation. The State agrees to give prompt written notice to the Contractor in the event it is notified regarding taxes due that are attributable to Contractor.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year

Funds may not presently be available for performance under this Contract beyond the current state fiscal year, No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year

Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the, contractor

4.5.2. Cancel the Contract

4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract changes

5.1. Amendments

This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts

The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract. The State is deemed to have accepted Servicing Subcontractors authorized by the Contractor and subcontractors that are properly identified under any applicable Statement of Work.

5.3. Assignment and Delegation

The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss.

Reference Section 10 of MPA

6.2. Indemnification

Reference Section 24 of MPA

6.3. Indemnification - Patent and Copyright

Reference Section 12 of MPA

6.4. Force Majeure.

6.4.1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1.Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens

The Contractor warrants that the materials supplied under this Contract are free of third party liens and shall remain free of liens.

7.2. Quality

Reference Section 11A of MPA

7.3. Fitness

Reference Section 11A3 of MPA

7.4. Inspection/Testing

The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of materials provided such inspection or testing does not violate the express restrictions of the accompanying warranty or payment for the materials by the State.

7.5. Compliance with Applicable Laws

The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination

7.6.1. Contractor's Representations and Warranties. All warranties made by the Contractor under this Contract shall survive the expiration or termination of the Contract for the original duration of the term of the warranty. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance

If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or

continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order

8.2.1. The State may, prior to the time of shipment of ordered Equipment, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. The duration of the Stop Work Order shall be reasonable in length and for cause.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies

The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender

Materials or services supplied under this Contract shall materially comply with the relevant terms of the Contract. The delivery of materials or services or a substantial portion of the materials or services that do not materially comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may, after written notice to the designated representative of the Contractor that provides a reasonable period of time for Contractor to provide a cure of the non-compliance, terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under this Agreement or pursue any other right or remedy available to it.

8.5. Right of Offset

As limited by the limitation of liability, the State shall be entitled to offset against any sums due the Contractor, any reasonable expenses or costs incurred by the State, or damages awarded to the State concerning the Contractor's non-conforming and uncured performance or material breach of performance under the Contract.

9. Contract Termination

9.1. Cancellation for Conflict of Interest

Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty **or** further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities

The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The Stale, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment

The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience

The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the

State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted delivered before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply. Vendor shall have the right to terminate for convenience in the event the Master Price Agreement is terminated. If the Vendor terminates the MPA for convenience, Vendor shall provide the State of Arizona the same notice period as given to the Lead State. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to materially comply with any material term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor along with a reasonable period of time to provide a cure.

9.5.2. Upon termination under this paragraph, all deliverable materials, documents, data and reports first created by the Contractor pursuant to performing under the Contract shall become the property of and be delivered to the State upon demand and payment for same.

9,5.3. The State may, upon termination of a Purchase Order of this Contract for cause, procure, on terms and in the manner that it deems appropriate, materials or services to replace those in default under a Purchase Order of this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor to the extent that such excess costs do not exceed the limitation of liability in cases where indemnification liability does not apply and the State has first allowed the Contractor a reasonable opportunity to cure the default.

9.6. Continuation of Performance through Termination

The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title **41,** Chapter 23, Article 9, and rules adopted there under.

11. Arbitration

The parties to this Contract may agree to resolve all disputes arising out of or relating to this contract between the parties through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Insurance

12.1. Indemnification

Reference Section 24 of MPA

12.2. INSURANCE REQUIREMENTS

Vendor shall procure and maintain, until all of their obligations, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the purchase and or use of the commodity.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the purchase and use of the commodities sold under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase such additional insurance as may be determined necessary.

12.2.1. SCOPE AND LIMITS OF INSURANCE

Contractor shall provide coverage at least as broad and with limits of liability as those stated below.

12.2.1.1.Commercial General Liability — Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

General Aggregate	$2,000,000
Products — Completed Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Fire Legal Liability	$50,000
Blanket Contractual Liability —Written and Oral	$1,000,000
Each Occurrence	$1,000,000

The policy shall, by blanket endorsement, include the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

12.2.1.2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	$1,000,000

The policy shall, by blanket endorsement, include the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor.

12.2.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory Employers' Liability

Each Accident	$ 500,000
Disease — Each Employee	$ 500,000
Disease — Policy Limit	$1,000,000

This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, and Men such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

12.3. ADDITIONAL INSURANCE REQUIREMENTS

The policies are to contain, or be endorsed by blanket endorsement to contain, the following provisions:

12.3.1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be included up to the full limits of liability purchased by the Contractor.

12.3.2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.

12.3.3. Coverage provided by the Contractor shall not be limited by the liability assumed under the indemnification provisions of this Contract.

12.3. NOTICE OF CANCELLATION

Each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided, cancelled, reduced in coverage or in limits without Contractor endeavoring to provide thirty (30) days prior written notice to the State of Arizona. Such notice shall be sent directly to the State of Arizona Primary Contact identified in the PA and shall be sent by certified mail, return receipt requested.

12.4. ACCEPTABILITY OF INSURERS

Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less that A- VII, except for its wholly owned captives. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Vendor from potential insurer insolvency.

12.5. VERIFICATION OF COVERAGE

Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved

by the State of Arizona) as required by this Contract. 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 blanket endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the State of Arizona's Primary Contact. The State of Arizona project/contract number and project description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete summaries of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.

12.6. APPROVAL

Any modification or variation from the insurance requirements in this Contract must have prior approval from the State of Arizona Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

12.7. EXCEPTIONS

In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university then none of the above shall apply.

EXHIBIT C
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

[Quotation]

See following pages.

DELL

QUOTATION

QUOTE #: 560741722
Customer #: 32129236
Contract #: WN98ABZ
CustomerAgreement #: ADSPO10-00000010
Quote Date: 10/18/10
Customer Name: CITY OF AVONDALE

Date: 10/18/10 5:10:59 PM

TOTAL QUOTE AMOUNT:	$198,303.28		
Product Subtotal:	$183,444.29		
Tax:	$14,858.99		
Shipping & Handling:	$0.00		
Shipping Method:	Ground	Total Number of System Groups:	1

GROUP: 1	QUANTITY: 59	SYSTEM PRICE: $2,450.42	GROUP TOTAL: $144,574.78
Base Unit:	Dell Latitude E6410 ATG (224-8098)		
Processor:	Intel Dual Core vPro i7-620M, 2.66GHz, 1066MHz 4M L2 Cache, Latitude E6410 (317-8775)		
Memory:	4.0GB, DDR3-1333 SDRAM, 2 DIMM for Latitude (317-3590)		
Keyboard:	Internal Backlit English Keyboard, Dell Latitude E (330-7359)		
Keyboard:	Documentation (English) Latitude E-Family/Mobile Precision (330-1652)		
Video Card:	Mobile Intel Graphics Media Accelerator 4500MHD With PC-Card, Dell Latitude E6410 ATG (320-8815)		
Hard Drive:	128GB Dell Mobility Solid State Drive, 2.5MM, Dell Latitude E (342-7412)		
Hard Drive Controller:	Fingerprint Reader and Contactless Smartcard Reader, Dell Latitude E6410 ATG (330-7401)		
Floppy Disk Drive:	14.1" WXGA(1280x800) Wide View LED (Outdoor Viewable)with Touch Func & Prem Panel, Dell Latitude E6410 ATG (320-8814)		
Operating System:	Genuine Windows 7 Professional, 32-bit, w/ media, Latitude, English (421-1642)		
Operating System:	Genuine Windows 7 Label, Latitude, Vostro and Mobile Precision Notebooks (330-6322)		
NIC:	Dell Wireless 375 Bluetooth Module, Dell Latitude E (430-3659)		
NIC:	Bluetooth Cable (330-7402)		
Modem:	No Modem for Latitude E-Family (313-6507)		
TBU:	90W AC Adapter, Dell Latitude E (330-9021)		
TBU:	US - 3-FT, 3-Pin Flat E-FamilyPower Cord for Latitude E-Family (330-0879)		
CD-ROM or DVD-ROM Drive:	8X DVD+/-RW for Latitude E-Family (313-6513)		
CD-ROM or DVD-ROM Drive:	Cyberlink Power DVD 8.3,with Media, Dell Latitude/Mobile Precision (421-1459)		
CD-ROM or DVD-ROM Drive:	Roxio Creator Dell Edition 10.3, Media, Dell RLOB (421-1189)		
Sound Card:	Dell Webcam Central Software Dell Latitude/Mobile Precision (421-1201)		
Sound Card:	Light Sensitive Webcam and Noise Cancelling Digital Array Mic, Dell Latitude E6410 ATG (313-9312)		
Processor Cable:	Intel Centrino Advanced-N + WiMAX 6250 802.11a/b/g/n and 802.16e Half Mini Card,E6510 (430-3658)		
Documentation Diskette:	No Intel vPro Technology Advan ced Management Features, Latitude E6510 ATG (330-9699)		
Factory Installed Software:	Resource DVD with Diagnostics and Drivers, Dell Latitude E6410 (330-8999)		
Software Disk Two:	Latitude On Reader for Latitude Notebooks (421-9856)		
Feature	6-cell (60Wh) Primary Battery for Latitude (312-7412)		

Service:	Basic Hardware Service: Next Business Day Parts and Limited Labor Onsite Response 3 Year Extended (908-5363)
Service:	Basic Hardware Service: Next Business Day Parts and Limited Labor Onsite Response Initial Year (926-2880)
Service:	Dell Limited Hardware Warranty Plus Onsite Service Extended Year(s) (909-1428)
Service:	Dell Limited Hardware Warranty Plus Onsite Service Initial Year (909-1427)
Support:	CompleteCare Accidental Damage Protection, 4 Year (908-5573)
Support:	Info, Complete Care (988-7689)
Misc:	CFI,Fee,Integration,Order Ready,BASWC (365-0529)
Misc:	DW5620 2000 Multi-Mode Gobi MB Mini-Card,supports Verizon, Sprint, and ATandT Lat, M Precision (313-9987)
	Intel Core i7 Processor (330-5874)
	CFI Titan Code for CFI FIDA orBypass SI (364-1846)
	CFI,Information,Val, SI Video,Allowed (364-3161)
	CFI,Information, Validation,Select Any Microsoft OS (364-4107)
	CFI Routing SKU (365-0257)
	CFI,Rollup,Integration ServiceTag or Label,Only - No Other CFI Services (366-1036)
	CFI,Information Client,Only (371-0941)
	CFI,B68S,Information,Label, Medium,Factory Install (372-8608)
	CFI,Information,CSRouting,Eligible,Factory Install (375-3088)

SOFTWARE & ACCESSORIES

Product	Quantity	Unit Price	Total
FM-D-E6400-W FirstDock Docking Station with Power Supply for Dell Latitude E6400 and E6400ATG Laptops (A2932366)	57	$660.87	$37,669.59
E/Port Plus, 130W Advanced Port Replicator for Latitude E-Family/Mobile Precision (430-3114)	8	$149.99	$1,199.92
Number of S & A Items: 2		S&A Total Amount: $38,869.51	

COMMENTS

AVONDALE, AZ

SALES REP:	Lee Pieper	PHONE:	888-977-3355
Email Address:	lee_pieper@dell.com	Phone Ext:	

Please review this quote carefully. If complete and accurate, you may place your order online at www.dell.com/qto (use quote number above). POs and payments should be made to *Dell Marketing L.P.*

If you do not have a separate agreement with Dell that applies to your order, please refer to www.dell.com/terms as follows:

If purchasing for your internal use, your order will be subject to *Dell's Terms and Conditions of Sale-Direct* including Dell's U.S. Return Policy, at www.dell.com/returnpolicy#total. If purchasing for resale, your order will be subject to *Dell's Terms and Condition of Sale for Persons or Entities Purchasing to Resell*, and other terms of Dell's PartnerDirect program at www.dell.com/partner. If your order includes services, visit www.dell.com/servicecontracts for service descriptions and terms.

Quote information is valid for U.S. customers and U.S. addresses only, and is subject to change. Sales tax on products shipped is based on "Ship To" address, and for downloads is based on "Bill To" address. Please indicate any tax-exempt status on your PO, and fax your exemption certificate, with seller listed as *Dell Marketing L.P*, to Dell's Tax Department at 800-433-9023. Please include your Customer Number.

For certain products shipped to end-users in California, a State Environmental Fee will be applied. For Asset Recovery/Recycling Services, visit www.dell.com/assetrecovery.

CITY COUNCIL REPORT

SUBJECT:
Amendment 1 to Professional Services Agreement – Kimley-Horn & Associates - Design of School Crossing Improvements

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Sue McDermott, P.E., Director of Development Services & Engineering, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve Amendment 1 to the Professional Services Agreement with Kimley-Horn & Associates, Inc. for the design of school crossing improvements at Michael Anderson Elementary, Rancho Santa Fe Elementary, and Garden Lakes Elementary in the amount of $15,504 for a new contract total of $86,949 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The Safe Routes to School (SRTS) Program was created by the U.S. Congress as part of a federal transportation bill called SAFETEA-LU. The Program provides funding for schools and communities to implement infrastructure projects (such as sidewalk improvements, trails, and traffic calming) and non-infrastructure programs (such as education campaigns, law enforcement efforts, and prize giveaways).

The City of Avondale was awarded $71,445 for the Safe Routes to School Cycle 2 grant - infrastructure program design phase. The City Council approved the original Professional Services agreement with Kimley-Horn & Associates on March 8, 2010 in the amount of $71,445 for traffic calming design services near selected elementary schools.

DISCUSSION:

During project scoping, staff determined that changes would be necessary to the scope of work for the Garden Lakes School site. The City conducted a kick-off meeting with the project stakeholders, including ADOT, and discussed the proposed changes to the project's scope. These changes would allow for additional school safety measures with an ultimate goal of student safety at the Garden Lakes School site.

In addition, staff also requested that project funding allocations for design and construction be adjusted. Justification was submitted to ADOT and was approved by the ADOT Safe Routes to School Advisory Committee. The City's new approved allocation for the Safe Routes to School Cycle 2 grant - infrastructure program design phase is $86,949.

BUDGETARY IMPACT:

This is a reimbursable grant and does not have any matching fund requirements. Funding in the amount of $86,949 is available in Grant Fund, 209-5925. Staff will submit invoices to ADOT for reimbursement. Any cost overages will come from the Engineering Department's Other Professional Services line item number 101-5900-00-6180.

RECOMMENDATION:

Staff recommends that the City Council approve Amendment 1 to the Professional Services Agreement with Kimley-Horn & Associates Inc., for the design of school crossing improvements in the amount of $15,504 for a new contract total of $86,949 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Amendment 1

FIRST AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KIMLEY-HORN AND ASSOCIATES, INC.

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "First Amendment") is made as of November 15, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and Kimley-Horn and Associates, Inc., a North Carolina corporation (the "Consultant").

RECITALS

A. The City and Consultant entered into a Professional Services Agreement dated March 8, 2010 (the "Agreement") for design services for traffic calming measures near Michael Anderson Elementary School, Garden Lakes Elementary School and Rancho Santa Fe Elementary School in Avondale, Arizona (the " Services").

B. The City has determined that additional design services are required in connection with the Project (the "Additional Services").

C. The City and the Consultant desire to enter into this First Amendment to provide for the Additional Services, extend the term of the Agreement and to increase the Consultant's compensation.

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 Consultant hereby agree as follows:

1. Term of Agreement. The term of the Agreement is hereby extended through February 28, 2012.

2. Scope of Work. The Scope of Work and Fee Proposal, attached to the Agreement as Exhibit C, is hereby superseded and replaced in its entirety by the Revised Scope of Work and Fee Proposal, attached hereto as Exhibit 1 and incorporated herein by reference. The Consultant shall provide the Additional Services as set forth in the Revised Scope of Work and Fee Proposal, attached hereto as Exhibit 1.

3. Compensation. The Consultant's total compensation under the Agreement shall be increased by no more than $15,504.00 from $71,445.00 to $86,949.00 as consideration for the Additional Services.

4. Effect of Amendment. In all other respects, the Agreement is affirmed and ratified and, except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

5. Non-Default. By executing this First Amendment, the Consultant affirmatively asserts that the City is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement.

6. Conflict of Interest. This First Amendment and the Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

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

"**Consultant**"

KIMLEY-HORN AND ASSOCIATES, INC., a North Carolina corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGEMENTS)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2010, by _____ as _____ of KIMLEY-HORN AND ASSOCIATES, INC., a North Carolina corporation, on behalf of such corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

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:

_____

EXHIBIT 1
TO
FIRST AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
KIMLEY-HORN AND ASSOCIATES, INC.

[Revised Scope of Work and Fee Proposal]

See following pages.

Kimley-Horn and Associates, Inc.

Suite 200
2266 S. Dobson Rd.
Mesa, AZ 85202

May 27, 2010

Margaret M. Boone-Pixley
Assistant Traffic Engineer
City of Avondale
11465 W. Civic Center Drive, Suite 120
Avondale, AZ 85323

Re: Revised Scope and Fee for the SRTS Cycle 2 Infrastructure Project

Dear Margaret:

Attached are the revised scope and fee for the Safe Routes to School (SRTS) Cycle 2 Infrastructure project for the City of Avondale. The scope and fee were revised per your instructions to include the installation of a bus bay instead of the originally planned speed table at Garden Lakes Elementary.

The total project fee increases from $71,445 to $86,949. This increase is due to a $500 increase in the survey subconsultant fee and to the additional 110 hours of effort required. These additional hours are needed to:

- Prepare a Categorical Exclusion environmental clearance document, which is a more extensive document than a Condensed Clearance Memo; and
- Prepare a larger and more complicated design at Garden Lakes than had originally been envisioned.

I hope you find everything in order to prepare the necessary amendment to the originally executed contract for this project.

If you have any questions about the revised scope and fee, please contact me.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.

Michael Grandy

Michael Grandy, P.E.
Project Manager

Attachment – Revised Scope and Fee for the SRTS Cycle 2 project

DESIGN SERVICES FOR
CYCLE 2 SAFE ROUTES TO SCHOOL INSTALLATIONS
IN THE CITY OF AVONDALE
REVISED MAY 27, 2010

ARTICLE 1
SCOPE OF SERVICES

OVERVIEW

The scope of this project is to provide design services to meet the federal requirements of funding to provide three Safe Routes to School (SRTS) installations. The project will be administered by Avondale and coordinated through the ADOT Transportation Enhancements & Scenic Roads Section. The SRTS installations will be at the following locations:

- 3rd Avenue between Western Avenue and Holly Lane; near Michael Anderson Elementary School – Proposed Speed Table/Raised Cross Walk with Bulb-outs
- Garden Lakes Parkway between 109th Avenue and 107th Avenue; near Garden Lakes Elementary School – Proposed Bus Bay
- Rancho Santa Fe Boulevard between Encanto Boulevard and Sheridan Street; near Rancho Santa Fe Elementary School – Proposed Median Island

SPEED TABLES

The anticipated construction activities for installation of a speed table includes milling the existing roadway per Avondale Standard Detail A1061, applying tack to the newly milled surface, constructing the speed table with an approved D ½ Course Hot Asphalt Mix per Avondale standards and installing thermoplastic chevrons on the new speed table. Also included in the work is the removal of sidewalk for and installation of a mid-block ramp per Avondale Standard Detail A1237-1 including the 4' wide x 16' long landing pad adjacent to the ramp.

BUS BAY

The anticipated construction activities for installation of a bus bay include sawcutting and removing existing pavement, granular base course, curb and gutter, sidewalk, and landscaping (including several trees). Activities also include grading and paving the new bus bay and installing new curb and gutter, sidewalk, sidewalk ramps, and landscaping.

BULB-OUTS AND MEDIAN ISLANDS

The anticipated construction activities for installation of bulb-outs and median island include sawcutting and removing existing pavement and granular base course, constructing new curb and gutter or paint striping for bulb-outs and curb for median island, patching of roadway asphalt, installation of striping and

signage, and installation of median treatments including brick pavers, fencing, or landscaping.

Task 1.0 Preparation of Scoping Document

KHA will prepare a scoping document that meets ADOT requirements for federal funding for Safe Routes for School installations. KHA assumes the following content will be included in the scoping document:

- Purpose and Need for Project
- Description of Project
  - Existing conditions
  - Utilities
  - Right of Way
  - Environmental Considerations
  - Drainage
- Project Scope
  - Design Criteria
  - Proposed Improvements
- Preliminary cost Estimate
- Recommendations
- Vicinity Map
- Schedule

KHA understands that ADOT will also require a statement of the materials that are used by the City of Avondale for the three SRTS installations. The City will provide KHA with as-builts showing existing pavement structural sections at each of the three locations so that KHA may reference these as-builts in the scoping document and provide matching geotechnical information for ADOT review as part of the scoping document. KHA will produce the scoping document based on the understanding that the City of Avondale will require installation of a speed table, a bus bay, and a median island.

KHA assumes no input is required from a Geotechnical Engineer, therefore pavement cores are not within the scope of services. If ADOT or the City requires more technical information thereby requiring the services of a Geotechnical Engineer and /or borings, this will be considered additional services.

KHA will submit eight (8) hardcopies of an initial scoping document and respond to comments that will be incorporated into a final scoping document. KHA will submit eight (8) hardcopies of the final scoping document. KHA assumes no additional submittals of the scoping document will be required.

Task 1 Deliverables:

- Initial Scoping Document
- Final Scoping Document

Task 2.0 Environmental Documentation

KHA will prepare a draft Categorical Exclusion environmental document per ADOT – Environmental Planning Group (EPG) guidance. The document will include project information provided by the City of Avondale and findings from additional evaluations conducted during this phase of the project.

The project involves SRTS installations at three locations as stated in the Overview of this scope. It is our understanding that the project will include all three locations. Based on this understanding, it is assumed that the three locations may be cleared through the completion of one Categorical Exclusion document. Should the project be split apart, additional Categorical Exclusion and/or Condensed Clearance Memorandum documents may need to be completed and will be considered additional services.

The effort in this task is divided into the following subtasks:

Task 2.1 – Environmental Scoping

KHA will prepare a draft environmental scoping letter that will describe the project's scope of work, locations, and general schedule. The letter is intended to inform interested parties of the project and solicit comments. A mailing list will also be prepared for the letter's distribution. It is assumed that the scoping letter will be printed on City letterhead and will target specific agencies and not the general public. The draft letter and mailing list will be submitted to the City for review. KHA will make revisions based on the City's input (up to 2 reviews). It will be the City's responsibility to mail out the scoping letters. KHA will compile any responses and incorporate them into the Categorical Exclusion document.

Task 2.2 – Initial Evaluation and Field Reconnaissance

KHA will perform an initial field reconnaissance of the project area. The field reconnaissance will focus on gathering information regarding biological resources, land use, and potential contamination concerns within the project area. KHA will document the field reconnaissance through ground photography and field notes. This task also includes one meeting with ADOT's EPG staff.

Task 2.3 – Biological Review

KHA will prepare an Urban Project Biological Evaluation (UPBE) for the project area. The UPBE will incorporate observations from field reconnaissance and the results of correspondence with the AGFD and USFWS. A draft UPBE will be submitted to ADOT EPG. Following ADOT EPG review, comments will be incorporated and a final UPBE will be submitted to ADOT EPG.

ADOT EPG has indicated on previous projects of a similar nature that a biological review is sufficient to satisfy the biological component. If ADOT EPG determines that a biological review or non-urban project biological evaluation is needed for the proposed project it will be considered an additional service.

Task 2.4 – Preliminary Initial Site Assessment

KHA will prepare a Preliminary Initial Site Assessment (PISA) to identify contamination concerns within the project area. The PISA documentation will include observations from field reconnaissance and from a search of Environmental Protection Agency and Arizona Department of Environmental Quality databases that are available online. Due to the overall length of the project and its non-contiguous nature, the Consultant will utilize Environmental Database Resources, Inc (EDR) to prepare a third party database search of federal, state, and local regulatory databases. This task assumes that a Phase I Environmental Site Assessment will not be necessary. If ADOT EPG determines that a Phase I Environmental Site Assessment is needed, it will be considered an additional service.

A draft PISA report summarizing the findings will be submitted to ADOT EPG. Following ADOT EPG review, comments will be incorporated and a final PISA report will be submitted to ADOT.

Task 2.5 – Cultural Resources Report

Archeological Consultant Services (ACS) will complete the work in this task as a sub consultant to KHA.

Background Research. A site file check covering the three Areas of Potential Effect (APEs) and a 0.5 mile buffer around each APE will be conducted to determine if portions of the project area have been previously surveyed and to provide information on the types of sites likely to occur within 0.5 miles of the APEs. GIS shapefiles plotting the location of recorded sites and previous projects will be requested from AZSITE. It is assumed due to the nature and location of the project (minimal ground disturbance and located in developed areas) that ADOT/FHWA will accept the 0.5 mile buffer rather than the typical 1.0 mile buffer used on most projects. If ADOT/FHWA requires an expansion of the buffer area from 0.5 to 1.0 miles it will be considered an additional service.

Fieldwork. A field reconnaissance of the three APEs will be conducted by an archaeologist. Photographs will be taken to document prior disturbance and the lack of ground surface visibility. No Class III cultural resources survey will be undertaken.

Letter Report. Because the project impacts will be minimal, it is assumed that ADOT/FHWA will only require a cultural resources letter report. The letter report will include a summary of previous research, photographs of the APEs from the field reconnaissance, and recommendations regarding the need for further archaeological work.

Copies of the draft letter report will be provided for the appropriate review agency. Any comments arising from the agency review will be incorporated into a final letter report.

Task 2.6 – Socioeconomic Analysis

KHA will complete a high level socioeconomic analysis per the EPG Categorical Exclusion guidelines using 2000 census data for the project areas. The

socioeconomic analysis will be incorporated into the Categorical Exclusion document.

Task 2.7 – Prepare Draft Categorical Exclusion and Environmental Clearance Memorandum

KHA will perform an environmental evaluation in the form of ADOT's Categorical Exclusion and will include an objective review of the proposed project and its potential environmental issues or potential changes to the environment.

The results of the evaluation will be documented in the Draft Categorical Exclusion and Draft Environmental Clearance Memorandum that will be submitted to the City of Avondale for review. Following this review, the Draft Categorical Exclusion will be submitted to the ADOT Local Government NEPA Planner for review.

Task 2.8 – Prepare Final Categorical Exclusion and Environmental Clearance Memorandum

This task consists of responding to ADOT comments on the Draft Categorical Exclusion and incorporating the comments into the final Categorical Exclusion. Once the mitigation measures are finalized, KHA will prepare the final Environmental Clearance Memorandum that will accompany the Categorical Exclusion and submit them to the City. It will be the City's responsibility to forward the documents to ADOT for final processing. One meeting with the ADOT Local Government NEPA planner to discuss comments is included.

Additional Environmental Documentation Services:

The following environmental documentation services are not included in the scope and fee for this project but can be provided if authorized by the City of Avondale. Compensation for additional services will be agreed upon prior to their performance.

- Section 404 Jurisdictional Delineation or Permit Application;
- Species Specific Surveys;
- Phase I Environmental Site Assessment;
- Non-Urban Project Biological Evaluation;
- Environmental Assessment or Environmental Impact documents;
- Additional Cultural Resources Field Survey, Monitoring, or Testing;
- Air Quality Analysis; and
- Noise Analysis.

Task 2 Deliverables:

- Urban Project Biological Evaluation
- PISA
- Cultural Resources Letter Report

- Draft Categorical Exclusion and Draft Environmental Clearance Memo
- Final Categorical Exclusion and Final Environmental Clearance Memo

Task 3.0 Topographical Survey

Survey is required for this project, and is included in this scope and fee with services to be performed by Horizon Consultants of Arizona. This survey includes 400' x ~85' of topographical survey at Michael Anderson, and Rancho Santa Fe Elementary Schools, and 500' x 135' of topographical survey at Garden Lakes Elementary. These surveys include utilities from as-built maps, roadway features, grade breaks, walls, driveways, surface evidence of utilities, drainage structures, signs, poles, streetlights, pavement markings, trees, and other pertinent improvements.

To gain information for the drainage spread calculation memo, four (4) additional survey shots outside of the survey area described above will be taken, one at each curb inlet catch basin surrounding the proposed location of each of the three SRTS installations (for a total of twelve (12) additional survey shots). If additional survey shall become necessary, this will be considered additional services.

Task 3 Deliverables:

- Base Map in AutoCAD using Avondale CADD Standards

Task 4.0 Design (60%, 90%, and Final Plans, Specifications & Estimate)

KHA will develop the construction plans based on the following assumptions:

- KHA assumes there will not be a 30% submittal. Plans, Special Provisions, and Estimate will be submitted at 60%, 90% and Final (100%) design stages. If additional submittals are required or become necessary, this will be considered additional services.
- KHA will prepare technical specifications for all elements of the work using MAG specifications with Avondale Supplement as a basis, unless otherwise agreed upon in the project kick off meeting. Construction quantities will be tabulated in ADOT bid schedule format.
- KHA will prepare the Estimate of Probable Construction Cost using the items of work in the bid schedule. Unit prices will be determined from recent unit bid prices on bid tabulations for locally comparable construction projects.
- KHA will plan, attend, and facilitate comment review meetings after the 60%, and 90% submittals.

KHA will prepare detailed design for the project, and produce the construction drawings, technical special provisions, and estimate of probable construction costs for the contract documents. The Plans, Specifications and Estimate (PS&E) will be prepared in accordance with the criteria established in the 60% PS&E and the City's policies, procedures, manuals, and standards and the ADOT Transportation Enhancements requirements.

We will prepare the technical special provisions (if any), to be incorporated into the City's general specifications.

The specifications and estimates will coincide with the separate projects broken out during the preliminary engineering phase.

Submittals will be made to the City and ADOT at 60%, 90%, and 100% completion phases. The KHA team will facilitate the review and revision of the PS&E package. Each submittal will include eight (8) sets (five half-size (11"x17") sets of drawings, three (3) full size (22"x34") and the "red lined" set of plans with written responses to the City's and ADOT's comments from the previous submittal. The KHA team will submit a final complete reproducible set of PS&E and the CAD files. Final (100%) plan sheets will be on reversible Mylar. The Final (100%) PS&E project electronic files will be provided to the City of Avondale via CD. These project files will be provided in their original format (e.g., AutoCAD, Word, Excel) as well as in PDF format.

KHA is responsible to deliver a finalized PS&E package. Omission of any activities or tasks within this scope of services that are required as part of the finalized PS&E package will be the responsibility of KHA and may result in the request for additional submittals to correct the omissions at no additional cost to the City.

An estimated sheet break down per submittal is as follows, based on a design scale of 1"=20'.

Sheet Description	60%	90%	100% (Final)
Cover sheet	1	1	1
Key Map / Design Sheet	1	1	1
Typical Sections	0	1	1
Quantity Summary Sheet	0	1	1
Detail Sheets	0	1	1
Roadway Plan Sheets	5	5	5
Detail & Staking Sheets	0	4	4
Signing & Striping (on Roadway Plans)	-	-	-
Estimated total number of sheets	7	14	14

- If additional sheets are required, this will be considered additional services.

Cover Sheet – 1 sheet

The title sheet will be provided by the City and may include:

- Project Name
- Index of Sheets
- Vicinity and Location Maps
- Utility contacts and telephone numbers

- Signature blocks (as needed)
- Street names

Key Map / Design Sheet / Typical Sections – 2 sheets

A project key map will be prepared at a scale of 1”=100’ for the project and will include:

- Graphical representations of the location and limits of each sheet
- Roadway centerline and stationing
- Roadway centerline control (Basis of Bearing / Project Benchmark)
- Street monument locations
- Street names

Roadway typical sections will include:

- Roadway dimensions (based on the roadway centerline) including:
  - Edge of pavement
  - Traffic lanes
  - Right-of-Way
- Pavement structural section
- Limits or location of typical section

Roadway, Signage and Striping Layout (Plan and Profile) – 5 sheets

Plan and profile sheets will be prepared at a scale of 1”= 20’ (horizontal) and 1”=2’ (vertical), based on the City-approved base plans. The plans will include:

- Roadway centerline stationing
- Right-of-way and adjacent properties identified by parcel number and property owner
- Limits of improvements/construction/grading
- Construction notes and callouts
- Street names
- Horizontal control (curve tables, station/offset labels on all horizontal angle points, etc.)
- Roadway centerline profile grade (slopes, vertical curves, spot elevations every 50-feet and at critical locations (i.e., high/low points, grade breaks, etc.)
- Intersection detail and staking diagrams
- Utility locations and label utilities requiring relocation
- Signing notes and callouts
- Lane dimensions
- Location of roadside signs and designation

Speed Table, Bus Bay and Median Detail Sheets – 4 sheets

- Staking and other detailed geometric information will be prepared at a scale of 1”= 10’ (horizontal).
- Milling details, striping details and other data needed to install both the median and/or the speed tables.

Task 4.1 – 60% PS&E

Upon approval of the scoping report and after obtaining environmental clearance form ADOT; roadway plans, profile, and detail sheets will be prepared for the 60% submittal. These plans will include all details necessary to construct the speed tables and medians, including grading, pavement, etc. Plans will include a summary of construction quantities and an estimate of cost.

Comments from this submittal will be incorporated into the 90% Plans.

Task 4.2 – 90% PS&E

Upon approval of the 60% plans; roadway plans, profile, and detail sheets will be prepared for the 90% submittal. These plans will include all details necessary to construct the speed tables and medians, including grading, signage, striping, etc. Plans will include draft technical special provisions, a summary of construction quantities and an estimate of cost.

Comments from this submittal will be incorporated into the 100% Plans.

Task 4.3 – 100% FINAL PS&E

After review of the 90% plans, all comments will be incorporated into the 100% FINAL PS&E.

Task 4 Deliverables:

- 60% PS&E (8 copies)
- 90% PS&E (8 copies)
- 100% FINAL PS&E (8 copies)
- CD of Final Project Files (1 copy)

Task 5.0 Right-of-Way and Utility Clearances

Task 5.1 – Right-of-Way Clearance

Right-of-way acquisition, easements, or temporary construction easements may be required on this project. KHA will prepare a right-of-way clearance letter and submit it for ADOT approval.

Legal descriptions are not part of this contact, but can be performed as additional services. Any survey necessary to write legal descriptions would also be additional services to this contract.

Task 5.2 – Utility Coordination & Clearance

KHA shall coordinate with utility companies, private development, other agencies and the City to incorporate existing and proposed utilities into the construction plans, in accordance with the latest version of the Arizona Utility Coordinating Committee “Public Improvement Project Guide” (PIPG). KHA shall show all known existing and proposed utilities on the plans. The City will provide KHA with any available list of utility contacts for public projects by the City.

KHA shall coordinate with each utility company to determine if the utilities have

any need to upgrade their facilities before or during the project's construction.

KHA shall work with the City's Project Manager and City staff to coordinate the early determination of facilities that may be abandoned or deactivated.

KHA shall be responsible for field verifying the horizontal locations of all utilities within the project limits, based on correlation of field observations and utility company mapping, prior to the 60% design submittal. KHA shall prepare base maps detailing all existing utility data and transmit them to the utility companies for verification and comment concerning the utility locations. KHA shall incorporate the utility company comments into the base maps.

KHA shall specifically identify utility conflicts, with input from utility companies, which might affect placement of the SRTS installations and recommend alignment alternatives if necessary. Utility conflicts may include, but are not limited to, overhead and subsurface which may affect equipment or materials installation.

At the 60% plan submittal stage, KHA should review the records and Title Reports obtained by the City, as needed, and prepare necessary documents and advise City and utilities of any need for new easements.

KHA shall send a letter to each utility company notifying them of the project and defining the project scope and timeline, and shall also send the appropriate amount of half-size or full size sets at the 60%, 90%, and Final (100%) plan stages to each utility company for their review along with a request for written response from each company to determine the disposition of their utility as it relates to the planned SRTS installations. KHA shall incorporate the utility company and private developer construction requirements into the bid documents.

KHA shall provide the utility companies with electronic base files or other pertinent information necessary for the utility companies to design the relocation of their facilities, if necessary. KHA shall coordinate with the utilities to facilitate the design to relocate their facilities. KHA shall request a letter from each utility impacted by the planned roadway improvement identifying a timeline for relocating their facilities.

For each submittal to the utility companies, KHA shall provide the City's Project Manager and Utility Coordinator each with a written record of receipt.

KHA shall work with the City's Project Manager and City Staff to facilitate utility coordination meetings at each submittal (60%, 90%, and Final (100%)) and provide plans showing proposed City and utility/private installations, and existing and proposed easements.

Prior to submittal of 90% construction documents, KHA shall obtain ADOT-style Utility Clearance letters from each utility stakeholder for the project.

Prior to submittal of Final (100%) construction documents, KHA shall coordinate project design with any proposed private development improvements proposed adjacent to the project sites to insure inclusion of proposed features and to identify and mitigate any conflicts between proposed projects.

KHA shall coordinate with nearby projects/stakeholders as necessary.

KHA will prepare the utility clearance letter and submit it to ADOT for approval.

KHA will also include utility information in the Special Provisions.

If potholing of any utilities shall become necessary, this will be considered additional services.

Task 5 Deliverables:

- Right-of-Way Clearance Letter
- Utility Clearance Letter

Task 6.0 Drainage Analysis

Research of drainage reports for each of the roadways near the proposed speed tables will be reviewed to determine the area drainage patterns. The City will provide the drainage reports.

Spread calculations will be performed at each of the three locations to determine the potential impact the addition of the speed table, bus bay, and median island may cause. Assumptions during this task include:

- Spread calculations will be based on Flood Control District criteria, which indicate that there must remain 12' dry lanes in both directions during the flood event, and that no overtopping of curb is allowed.
- If no drainage reports are found that specifically state otherwise, the catch basin upstream from the new improvement will be assumed to receive all upstream runoff.
- Pre- and Post-installation calculations will be included in the memo.

Results will be summarized in a brief draft drainage analysis memo. Comments from the City will be incorporated in a final drainage analysis memo. Design of additional facilities for drainage improvements is not part of the scope of this project and is considered additional services.

Task 6 Deliverables:

- Draft Drainage Memo
- Final Drainage Memo

Task 7.0 Meetings and Project Management

KHA will establish and maintain a project schedule and budget control for the project and will be responsive to input from the City and ADOT.

KHA will attend one project kickoff meeting at a time and date agreeable to all parties. KHA assumes up to five additional project coordination meetings will be required. Two of these will be after the 60% & 90% plan submittals to discuss comments and three will be with school/district administrators to inform them of the project progress and objectives. If additional meetings are required or become necessary, these will be considered additional services.

Project administration, as well as project status, will be closely coordinated with

the City and ADOT. KHA will communicate and coordinate project issues with the City and ADOT through means of e-mail and phone conversations throughout the duration of the project. KHA will provide and distribute notes and conversation records to the City and ADOT for significant project related conversations.

KHA will invoice the City of Avondale using Avondale's template (to be provided by the City).

Task 7 Deliverables:

- Project Meetings
- Project Schedule
- Project Notes related to the project meetings and project-related conversations
- Invoices in Avondale's requested format

ADDITIONAL SERVICES

The project scope does not include the following services, but they can be added using KHA's then current hourly rates or as otherwise agreed upon in writing:

- Bidding support
- Construction support services
- Potholing
- Traffic studies
- Additional meetings with ADOT, the City, school officials, or others
- Public meetings or presentations
- JPAs
- Legal descriptions

ARTICLE 2
SCHEDULE OF COMPLETION OF SERVICES

KHA will provide the services as expeditiously as practicable to meet the agreed upon schedule. It is anticipated that the project will take twelve to fifteen (12-15) months to complete (from issuance of Notice to Proceed to submittal of the Final Plan Set), depending on the time when environmental clearance is obtained. An initial schedule is attached as Exhibit A.

The schedule is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. It is assumed that design can proceed concurrently with the environmental services per the direction of ADOT. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that KHA does not control.

KHA shall not have liability for or be deemed in breach because of delays caused by any factor outside of KHA's reasonable control, including but not limited to natural disasters, adverse weather, or acts of the City, third parties, or other governmental agencies.

KHA shall commence work immediately upon issuance of the Notice to Proceed.

Proposed contract time: 460 Calendar Days.

ARTICLE 3
FEE FOR SERVICES

The total fee for completing the project as identified in Article 1 is detailed in the attached Derivation of Cost Proposal (Exhibit B).

Archaeological Consulting Services, Ltd.
Cultural Resource, Environmental Management, and GIS Services
a woman-owned business enterprise, established 1977

424 West Broadway Road
Tempe, AZ 85282-1339
(480) 894-5477 • FAX (480) 894-5478
www.acstempe.com

December 15, 2009

Sarah Eichinger
Kimley-Horn and Associates
7878 N. 16th Street, Suite 300
Phoenix, AZ 85020

RE: Cultural Resource Assessment for the City of Avondale Safe Route to School (SRTS) Project
ACS Proposal No. 09-268-00

Dear Sarah:

Thank you for contacting Archaeological Consulting Services, Ltd. (ACS) regarding the abovementioned project. Based on the information you provided, the City of Avondale has retained Kimley-Horn to provide final design services for three Safe Routes to School (SRTS) installations using Federal Highway Administration (FHWA) grant money administered by the Arizona Department of Transportation (ADOT). The areas of potential effect (APEs) are located at Michael Anderson, Garden Lakes, and Rancho Santa Fe Elementary Schools. All project construction activities are anticipated to be confined in their impacts to areas previously disturbed during construction of the existing roadway and associated curb, gutter, sidewalk, and landscaping. Due to the use of federal grant money, compliance with Section 106 of the National Historic Preservation Act is required.

Company Background

ACS is a 31-year-old corporation of the State of Arizona and is certified by the Arizona Unified Certification Program as a woman-owned small business enterprise. ACS is professionally qualified to provide consulting services in cultural resources, environmental studies, paleoenvironmental studies, and Geographic Information Systems (GIS) applications, and is a GSA contractor for these services. ACS won a Small Business Development Center Network and Arizona Friends of Small Business Success Award in 2002 and since 2005, the Phoenix edition of *The Business Journal* has included ACS on the list of top 25 Environmental Consulting Firms in the Phoenix area. ACS' capabilities include the following:

- cultural resource literature reviews, surveys, testing, and data recovery projects
- historic research, oral history, historic building documentation and inventory surveys, National Register assessments and nominations, and historic context development
- biological assessments, reviews, and evaluations
- National Environmental Policy Act (NEPA) documents including Environmental Assessments (EAs) and Environmental Impact Statements (EISs)
- Surface water and groundwater projects
- Geological evaluations including subsidence and earth fissure analysis
- Geomorphology
- Hazardous materials assessments
- GIS and GPS applications

ACS has a solid reputation in the cultural resources management, historic preservation, natural resource management, and GIS services industries. Our highly trained, professional staff provides a diverse range of

services that allow our clients to efficiently meet their needs with one consultant. We get project scoping right the first time, and emphasize communication, not change orders.

Scope of Work

The cultural resource assessment will involve the following tasks.

Background Research. A site file check covering the three APEs and a one-mile study area buffer around each APE will be conducted to determine if portions of the project area have been previously surveyed and to provide information on the types of sites likely to occur within 0.5 miles of the APEs. GIS shapefiles plotting the location of recorded sites and previous projects will be requested from AZSITE. It takes up to two (2) weeks for AZSITE to respond to data requests. A preliminary review of the AZSITE online database shows eight archaeological projects have taken place and three sites have been recorded within 0.5 miles of the three APEs.

Field Reconnaissance. A field reconnaissance of the three APEs will be conducted by an archaeologist. Photographs will be taken to document prior disturbance and the lack of ground surface visibility. No Class III cultural resource survey will be undertaken.

Letter Report. Because project impacts will be minimal, ADOT/FHWA will accept a condensed memo or letter report. The letter report will include a summary of previous research, photographs of the APEs from the field recon, and recommendations regarding the need for further archaeological work.

A copy of the draft letter report will be sent to you for internal review, and any comments arising from the internal review will be addressed in a revised draft letter report. Copies of the revised draft letter report will be sent to you for submittal to ADOT/FHWA. Any comments arising from the agency review will be incorporated into a final letter report.

Project Closeout. Once the final report has been accepted by the appropriate review agency, we request that you provide ACS with copies of all agency consultation letters concurring with the project findings. ACS cannot consider a project closed until such documentation has been made available for our files. The final invoice will be provided after all project closeout procedures have been completed.

Cost Estimate and Schedule

The estimated cost of the cultural resource assessment and letter report is **$1,886** and will take four weeks to complete (ASM is closing for the holidays, precluding AZSITE requests until January 4). Before we can begin work, we will need a written authorization to proceed. Please do not hesitate to call if you have any questions or comments. We look forward to working with you.

Sincerely,

Lourdes Aguila
Principal Investigator

cc: Kristin Fangmeier

ARCHAEOLOGICAL CONSULTING SERVICES, LTD.
Kimley-Horn 12/16/2009
Avondale SRTS Project

DIRECT LABOR	**Loaded Rate**	**Hours**	**Cost**	**Prefield**	**Field Recon**	**Report**	**Proj. Mgmt.**	**Closeout**	**Total**
Principal Investigator I	$83.59	2	$167	0	0	1	0.5	0.5	2
Crew Chief	$57.47	15	$862	1	2	12	0	0	15
GIS Manager	$71.83	2.5	$180	1	0	1	0	0.5	2.5
Spatial Analyst I	$47.02	12	$564	0	0	12	0	0	12
Document Production Assistant	$57.47	0.5	$29	0	0	0.5	0	0	0.5
		32							32
	Direct Labor Total		**$1,802**						
DIRECT EXPENSES									
AZSITE Shapefile request	$35.00	2.4	$84						
	Direct Expenses Total		**$84**						
	Project Total		**$1,886**						

Horizon Consultants of Arizona

AGREEMENT BETWEEN CLIENT AND SURVEYOR FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT MADE AS OF MAY 21, 2010 BETWEEN

HORIZON CONSULTANTS OF ARIZONA, THE SURVEYOR

AND

KIMLEY-HORN AND ASSOCIATES, THE CLIENT

PROJECT NAME:	AVONDALE SAFE ROUTE SURVEYS
MUNICIPALITY:	AVONDALE
PROPOSAL NUMBER:	P4214R
ATTN:	MICHAEL GRANDY

HORIZON CONSULTANTS OF ARIZONA IS PLEASED TO SUBMIT THIS PROPOSAL FOR PROFESSIONAL LAND SURVEYING SERVICES FOR THE ABOVE REFERENCED PROJECT.

TOPOGRAPHICAL SURVEY

HORIZON CONSULTANTS OF ARIZONA WILL PROVIDE A TOPOGRAPHIC SURVEY AT THE FOLLOWING 3 LOCATIONS. THE SURVEY WILL INCLUDE OBTAINING RECORD MAPS FOR RIGHT-OF-WAY LOCATIONS, ALL UTILITIES AS SHOWN ON AS-BUILT MAPS, ROADWAY FEATURES, GRADE BREAKS, WALLS, DRIVEWAYS, SURFACE EVIDENCE OF UTILITIES, DRAINAGE STRUCTURES, SIGNS, POLES, STREETLIGHTS, PAVEMENT MARKINGS, TREES, AND OTHER PERTINENT IMPROVEMENTS. ROADWAY FEATURES INCLUDE THE ROADWAY CROWN, GRADE BREAKS, LIP OF GUTTER, GUTTER FLOW LINE, TOP OF CURB, BACK OF SIDEWALK AND ANY OTHER GRADE BREAKS BEHIND SIDEWALK WILL BE SURVEYED AT 25-FOOT CROSS-SECTIONS.

TASK #1 MICHAEL ANDERSON ELEMENTARY SCHOOL *

HORIZON CONSULTANTS OF ARIZONA WILL PROVIDE A TOPOGRAPHIC SURVEY LOCATED ON 3RD AVENUE 400 FEET SOUTH OF WESTERN AVENUE AT MICHAEL ANDERSON ELEMENTARY SCHOOL AS SHOWN AS EXHIBIT 1 ON DOCUMENT PROVIDED BY CLIENT. THE TOPO AREA WILL BE 400 FEET IN LENGTH AND 70 FEET IN WIDTH.

TASK #2 GARDEN LAKES ELEMENTARY SCHOOL *

HORIZON CONSULTANTS OF ARIZONA WILL PROVIDE A TOPOGRAPHIC SURVEY LOCATED ON GARDEN LAKES PARKWAY AT GARDEN LAKES ELEMENTARY SCHOOL AS SHOWN AS EXHIBIT 2 ON DOCUMENT PROVIDED BY CLIENT. THE TOPO AREA WILL BE 500 FEET IN LENGTH AND 135 FEET IN WIDTH. TOPO WILL INCLUDE TREES AND STRIPING AS WELL.

TASK #3 RANCHO SANTA FE ELEMENTARY SCHOOL *

HORIZON CONSULTANTS OF ARIZONA WILL PROVIDE A TOPOGRAPHIC SURVEY LOCATED ON RANCHO SANTA FE BLVD. AS SHOWN AS EXHIBIT 3 ON DOCUMENT PROVIDED BY CLIENT. THE TOPO AREA WILL BE 400 FEET IN LENGTH AND 100 FEET IN WIDTH.

* - TO OBTAIN INFORMATION FOR THE DRAINAGE SPREAD CALCULATION MEMORANDUM, FOUR (4) ADDITIONAL SURVEY SHOTS OUTSIDE THE AFOREMENTIONED SURVEY AREAS DESCRIBED ABOVE WILL BE TAKEN. ONE AT EACH CURB INLET CATCH BASIN SURROUND THE PROPOSED LOCATION OF EACH OF THE THREE SRTS INSTALLATIONS (FOR A TOTAL OF TWELVE (12) ADDITIONAL SURVEY SHOTS

DELIVERABLES

FINAL DELIVERABLES WILL INCLUDE A HARD COPY DRAWN AT A 1" = 20' SCALE, A FILE WITH POINT DESCRIPTIONS, INCLUDING NORTHING EASTING AND ELEVATIONS, A DESCRIPTION OF THE SURVEY MONUMENT USED INCLUDING A VISUAL DESCRIPTION, NORTHING, EASTING, AND ELEVATION, AND A BASE MAP IN AUTOCAD.

STANDARDS

ALL SURVEY WORK AND DELIVERABLES WILL COMPLY WITH APPLICABLE CITY OF AVONDALE SURVEY AND CAD STANDARDS AS DESCRIBED IN SECTION 1.6 OF THE CITY'S 2008 GENERAL ENGINEERING REQUIREMENTS MANUAL.

TIME LINE

SEVEN (15) WORKING DAYS AFTER DATE OF OFFICIAL NOTICE TO PROCEED.

TASK #1 TOTAL.....$1,500.00

TASK #2 TOTAL $2,000.00

TASK #3 TOTAL $1,500.00

ALL TASK TOTAL $5,000.00

ADDITIONAL SERVICES:

ADDITIONAL SERVICES OF THE SURVEYOR, PRINCIPALS AND EMPLOYEES ENGAGED DIRECTLY ON THIS PROJECT, INCLUDING REIMBURSABLES, SHALL BE BILLED ACCORDING TO THE HORIZON CONSULTANTS OF ARIZONA RATE SHEET ON A TIME AND MATERIALS BASIS. ANY CHANGE TO THE CONTRACT RENDERS IT NULL AND VOID.

INVOICING:

INVOICES WILL BE PREPARED SEMI-MONTHLY AND WILL BE BASED UPON PERCENTAGE COMPLETED. ALL INVOICES ARE DUE WITHIN 30 DAYS, OR A 1.5% LATE CHARGE WILL BE ADDED TO BILLING STATEMENTS. IN THE EVENT OF DELINQUENCY, REASONABLE COLLECTION CHARGES AND/OR ATTORNEY FEES WILL BE INCURRED. INVOICES ARE CONSIDERED DELINQUENT AFTER 60 DAYS. HORIZON CONSULTANTS RESERVES THE RIGHT TO STOP WORK ON ALL PROJECTS THAT ARE DELINQUENT.

NOTICE TO PROCEED:

PROFESSIONAL SERVICES FOR THE CLIENT WILL COMMENCE WITH A SIGNED AGREEMENT AND THE NOTICE TO PROCEED.

IF THE PRECEDING TERMS AND INFORMATION ARE ACCEPTABLE AND MEET YOUR UNDERSTANDING OF THE PROJECT, PLEASE ACKNOWLEDGE ACCEPTANCE WITH YOUR SIGNATURE BELOW AND RETURN A COPY TO HORIZON CONSULTANTS OF ARIZONA.

THIS PROPOSAL IS VALID FOR 90 DAYS FROM THE ABOVE DATE.

THANK YOU FOR ALLOWING US TO SUBMIT THIS PROPOSAL TO YOU. IF YOU SHOULD HAVE ANY QUESTIONS OR WOULD LIKE TO DISCUSS ANY ASPECT OF THIS PROPOSAL, PLEASE FEEL FREE TO CALL OUR OFFICE. WE LOOK FORWARD TO WORKING WITH YOU ON THIS PROJECT.

SURVEYOR
FORSMAN, INC DBA
HORIZON CONSULTANTS OF ARIZONA
8037 NORTH 43RD AVENUE
SUITE 100
PHOENIX, AZ 85051

CLIENT
KIMLEY-HORN AND ASSOCIATES
ATTENTION: MICHAEL GRANDY
1255 W. BASELINE ROAD
SUITE 258
MESA, AZ 85202

SIGNATURE: _____

PRINT: SANDRA PHILLIPS, P.E.

TITLE: VICE PRESIDENT

DATE: JANUARY 18, 2010

SIGNATURE: _____

PRINT: _____

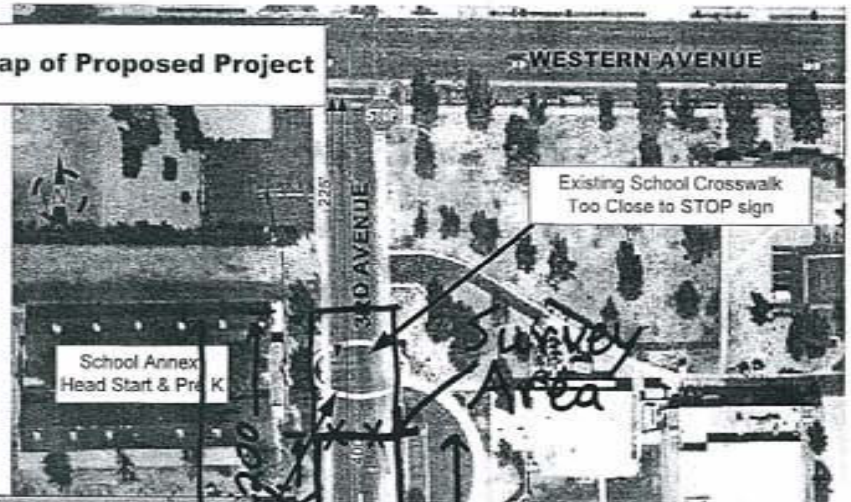
TITLE: _____

DATE: _____

Exhibit 1 revised 12-02-09

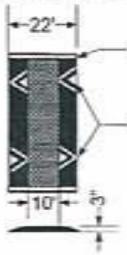
MICHAEL ANDERSON ELEMENTARY SCHOOL
SAFE ROUTES TO SCHOOL MAP

Aerial Map of Proposed Project

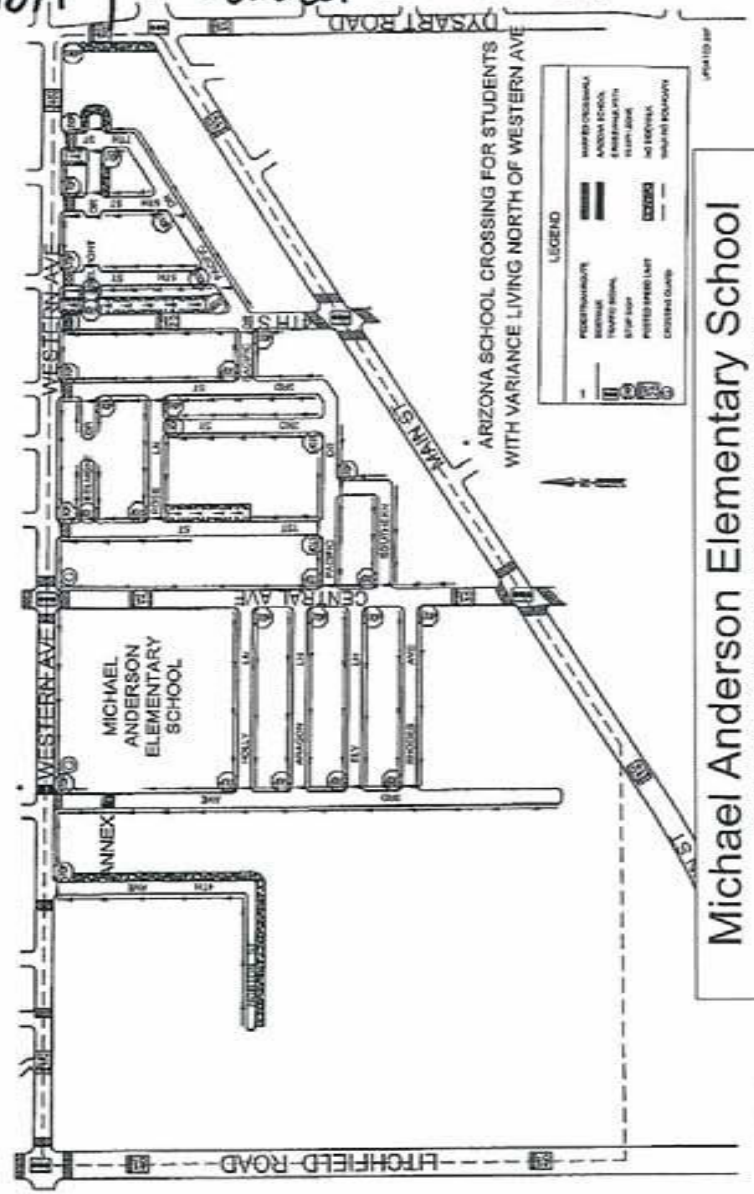


Groups of children cross between the main school campus and the annex building multiple times a day for school programs, art classes, and special education

RAISED CROSSING DETAIL



Children and parents dart across busy street on 3rd Avenue outside of the crosswalk

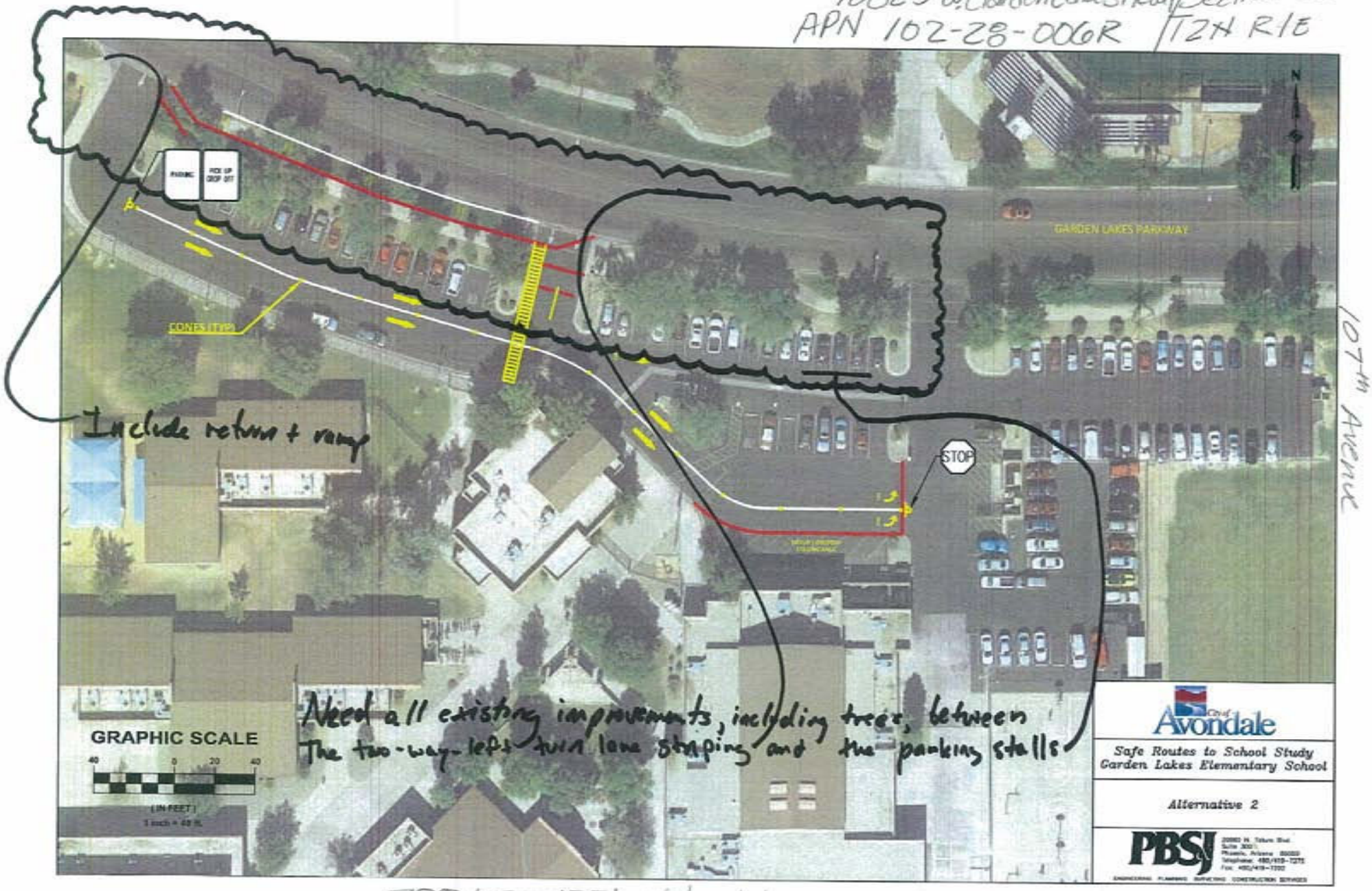


Michael Anderson Elementary School
Avondale Elementary School District #44

APN 500-45-001
Tract A

T1N R1W
Section 15
NE 1/4

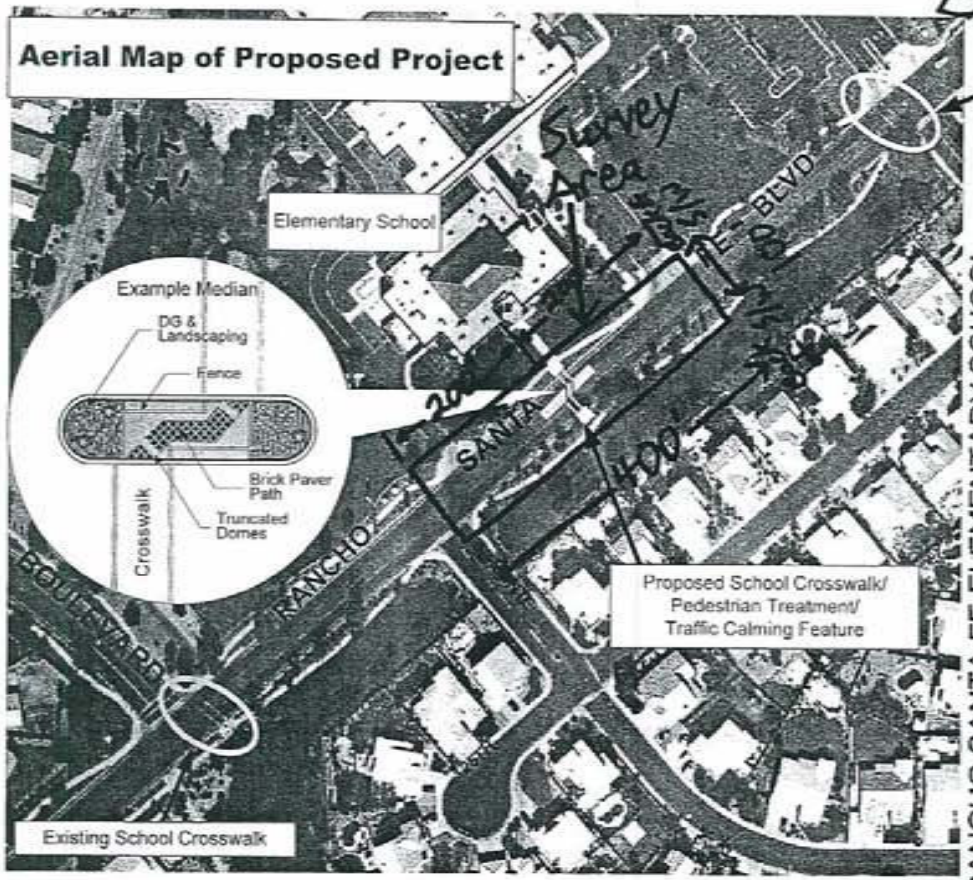
85392 / NE¼ of
10825 W. Garden Lakes Pkwy / Section 30
APN 102-28-006R / T2N R1E



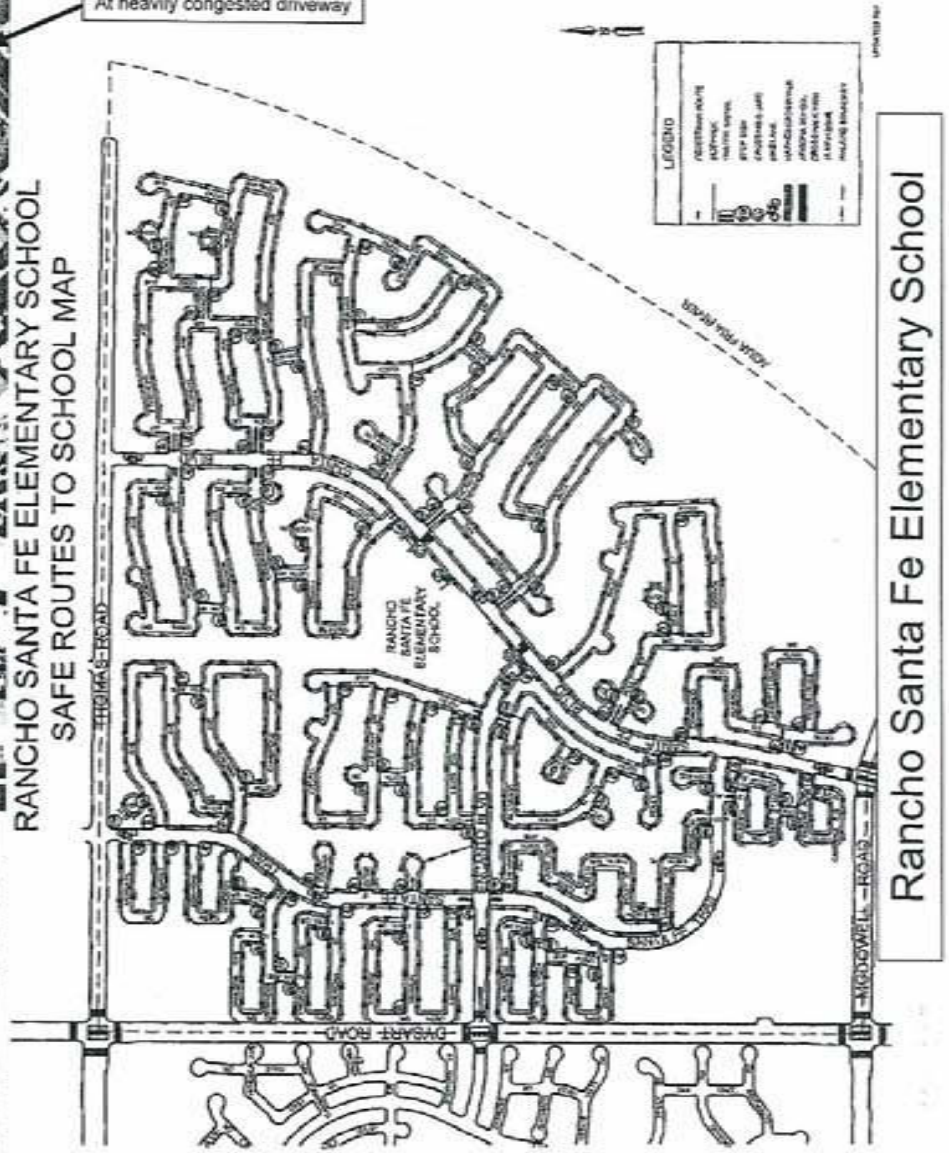
500 LF x 135' wide + trees, striping in turn lane + parking stalls

+500.00

Exhibit 3



RANCHO SANTA FE ELEMENTARY SCHOOL
SAFE ROUTES TO SCHOOL MAP



Rancho Santa Fe Elementary School

APN 501-75-839
Tract G

T2N R1W
Section 35
NE 1/4

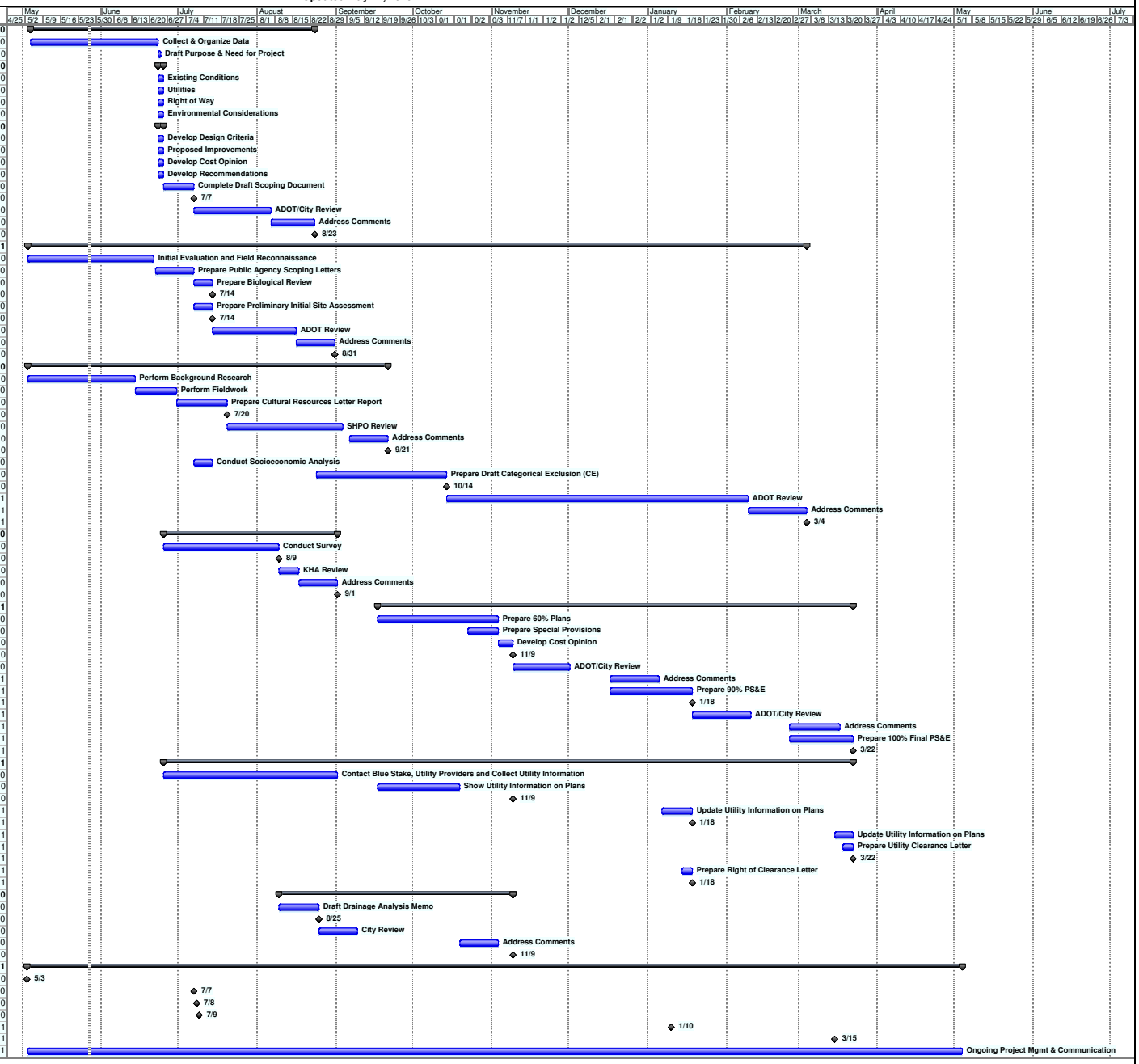
Exhibit A

Project Schedule

Avondale Cycle 2 Safe Routes to School Installations

Updated May 27, 2010

ID	Task Name	Duration	Start	Finish
1	**Task 1.0 Preparation of Scoping Document**	**71 days**	**Tue 5/4/10**	**Mon 8/23/10**
2	Collect & Organize Data	32 days	Tue 5/4/10	Wed 6/23/10
3	Draft Purpose & Need for Project	1 day	Wed 6/23/10	Thu 6/24/10
4	**Draft Description of Project**	**2 days**	**Wed 6/23/10**	**Fri 6/25/10**
5	Existing Conditions	2 days	Wed 6/23/10	Fri 6/25/10
6	Utilities	2 days	Wed 6/23/10	Fri 6/25/10
7	Right of Way	2 days	Wed 6/23/10	Fri 6/25/10
8	Environmental Considerations	2 days	Wed 6/23/10	Fri 6/25/10
9	**Draft Project Scope**	**2 days**	**Wed 6/23/10**	**Fri 6/25/10**
10	Develop Design Criteria	2 days	Wed 6/23/10	Fri 6/25/10
11	Proposed Improvements	2 days	Wed 6/23/10	Fri 6/25/10
12	Develop Cost Opinion	2 days	Wed 6/23/10	Fri 6/25/10
13	Develop Recommendations	2 days	Wed 6/23/10	Fri 6/25/10
14	Complete Draft Scoping Document	7 days	Fri 6/25/10	Wed 7/7/10
15	Submit Draft Scoping Document	0 days	Wed 7/7/10	Wed 7/7/10
16	ADOT/City Review	20 days	Wed 7/7/10	Fri 8/6/10
17	Address Comments	10 days	Fri 8/6/10	Mon 8/23/10
18	Submit Final Scoping Document	0 days	Mon 8/23/10	Mon 8/23/10
19	**Task 2.0 Environmental Documentation**	**195 days**	**Mon 5/3/10**	**Fri 3/4/11**
20	Initial Evaluation and Field Reconnaissance	32 days	Mon 5/3/10	Mon 6/21/10
21	Prepare Public Agency Scoping Letters	10 days	Tue 6/22/10	Wed 7/7/10
22	Prepare Biological Review	5 days	Wed 7/7/10	Wed 7/14/10
23	Submit Draft Urban Project Biological Evaluatior	0 days	Wed 7/14/10	Wed 7/14/10
24	Prepare Preliminary Initial Site Assessment	5 days	Wed 7/7/10	Wed 7/14/10
25	Submit Draft PISA Report	0 days	Wed 7/14/10	Wed 7/14/10
26	ADOT Review	20 days	Wed 7/14/10	Mon 8/16/10
27	Address Comments	10 days	Mon 8/16/10	Tue 8/31/10
28	Submit Final UPBE and PISA Reports	0 days	Tue 8/31/10	Tue 8/31/10
29	**Develop Cultural Resources Report**	**90 days**	**Mon 5/3/10**	**Tue 9/21/10**
30	Perform Background Research	27 days	Mon 5/3/10	Mon 6/14/10
31	Perform Fieldwork	11 days	Mon 6/14/10	Wed 6/30/10
32	Prepare Cultural Resources Letter Report	12 days	Wed 6/30/10	Tue 7/20/10
33	Submit Draft Cultural Resources Letter Rep	0 days	Tue 7/20/10	Tue 7/20/10
34	SHPO Review	30 days	Tue 7/20/10	Fri 9/3/10
35	Address Comments	10 days	Mon 9/6/10	Tue 9/21/10
36	Submit Final UPBE and PISA Reports	0 days	Tue 9/21/10	Tue 9/21/10
37	Conduct Socioeconomic Analysis	5 days	Wed 7/7/10	Wed 7/14/10
38	Prepare Draft Categorical Exclusion (CE)	33 days	Tue 8/24/10	Thu 10/14/10
39	Submit Draft CE for Review	0 days	Thu 10/14/10	Thu 10/14/10
40	ADOT Review	75 days	Thu 10/14/10	Wed 2/9/11
41	Address Comments	15 days	Wed 2/9/11	Fri 3/4/11
42	Submit Final CE	0 days	Fri 3/4/11	Fri 3/4/11
43	**Task 3.0 Topographical Survey**	**43 days**	**Fri 6/25/10**	**Wed 9/1/10**
44	Conduct Survey	28 days	Fri 6/25/10	Mon 8/9/10
45	Submit Draft Survey Data for Review	0 days	Mon 8/9/10	Mon 8/9/10
46	KHA Review	5 days	Mon 8/9/10	Tue 8/17/10
47	Address Comments	10 days	Tue 8/17/10	Wed 9/1/10
48	Submit Final Survey Data	0 days	Wed 9/1/10	Wed 9/1/10
49	**Task 4.0 Design (60%, 90%, Final PS&E)**	**118 days**	**Fri 9/17/10**	**Tue 3/22/11**
50	Prepare 60% Plans	30 days	Fri 9/17/10	Wed 11/3/10
51	Prepare Special Provisions	7 days	Fri 10/22/10	Wed 11/3/10
52	Develop Cost Opinion	3 days	Wed 11/3/10	Tue 11/9/10
53	Submit 60% PS&E	0 days	Tue 11/9/10	Tue 11/9/10
54	ADOT/City Review	15 days	Tue 11/9/10	Wed 12/1/10
55	Address Comments	12 days	Fri 12/17/10	Wed 1/5/11
56	Prepare 90% PS&E	20 days	Fri 12/17/10	Tue 1/18/11
57	Submit 90% PS&E	0 days	Tue 1/18/11	Tue 1/18/11
58	ADOT/City Review	15 days	Tue 1/18/11	Thu 2/10/11
59	Address Comments	12 days	Fri 2/25/11	Thu 3/17/11
60	Prepare 100% Final PS&E	15 days	Fri 2/25/11	Tue 3/22/11
61	Submit 100% Final PS&E	0 days	Tue 3/22/11	Tue 3/22/11
62	**Task 5.0 Right-of-Way and Utility Clearances**	**171 days**	**Fri 6/25/10**	**Tue 3/22/11**
63	Contact Blue Stake, Utility Providers and Collect	43 days	Fri 6/25/10	Wed 9/1/10
64	Show Utility Information on Plans	20 days	Fri 9/17/10	Tue 10/19/10
65	Submit Plans to Utilities and Request Conflict Le	0 days	Tue 11/9/10	Tue 11/9/10
66	Update Utility Information on Plans	7 days	Thu 1/6/11	Tue 1/18/11
67	Submit Plans to Utilities and Request Conflict Le	0 days	Tue 1/18/11	Tue 1/18/11
68	Update Utility Information on Plans	5 days	Tue 3/15/11	Tue 3/22/11
69	Prepare Utility Clearance Letter	2 days	Fri 3/18/11	Tue 3/22/11
70	Submit Utility Clearance Letter	0 days	Tue 3/22/11	Tue 3/22/11
71	Prepare Right of Clearance Letter	2 days	Fri 1/14/11	Tue 1/18/11
72	Submit Right of Way Clearance Letter	0 days	Tue 1/18/11	Tue 1/18/11
73	**Task 6.0 Drainage Analysis**	**58 days**	**Mon 8/9/10**	**Tue 11/9/10**
74	Draft Drainage Analysis Memo	10 days	Mon 8/9/10	Wed 8/25/10
75	Submit Memo for Review	0 days	Wed 8/25/10	Wed 8/25/10
76	City Review	10 days	Wed 8/25/10	Thu 9/9/10
77	Address Comments	10 days	Tue 10/19/10	Wed 11/3/10
78	Submit Final Drainage Analysis Memo	0 days	Tue 11/9/10	Tue 11/9/10
79	**Task 7.0 Meetings and Project Management**	**233 days**	**Mon 5/3/10**	**Wed 5/4/11**
80	Project Kickoff Meeting	0 days	Mon 5/3/10	Mon 5/3/10
81	Meeting with Michael Anderson School	0 days	Wed 7/7/10	Wed 7/7/10
82	Meeting with Garden Lakes School	0 days	Thu 7/8/10	Thu 7/8/10
83	Meeting with Rancho Santa Fe School	0 days	Fri 7/9/10	Fri 7/9/10
84	60% PS&E Comment Resolution Meeting	0 days	Mon 1/10/11	Mon 1/10/11
85	90% PS&E Comment Resolution Meeting	0 days	Tue 3/15/11	Tue 3/15/11
86	Ongoing Project Mgmt & Communication	233 days	Mon 5/3/10	Wed 5/4/11



City of Avondale **Exhibit B**
Avondale SRTS Cycle 2

May 27, 2010

DERIVATION OF COST PROPOSAL

(Figures Rounded To The Nearest $1)

ESTIMATED DIRECT LABOR

CLASSIFICATION	PERSON HOURS	BILLING RATE/HOUR	TOTAL
Project Principal	2	$ 210.02	$ 420
Project Manager	94	$ 172.45	$ 16,210
Project Engineer	104	$ 152.03	$ 15,811
Engineer/Designer	208	$ 121.63	$ 25,299
Tech/Draftsman	149	$ 87.94	$ 13,102
Administrative	8	$ 94.11	$ 753
Clerical	35	$ 63.74	$ 2,231
	600 Hours		
Estimated Labor Cost			$ 73,826

ESTIMATED DIRECT EXPENSES

Travel	$ -	
Computer CAD Time & Plotting	$ 3,232	
Miscellaneous Expenses	$ -	
	Total Estimated Expenses	$ 3,232

ESTIMATED OUTSIDE SERVICES AND CONSULTANTS

Firm	Cost	Compensation Method
Horizon	$ 5,000	LSUM
ACS	$ 1,886	
EDR Database	$ 200	
	Total Estimated Outside Services	$ 7,086

TOTAL ESTIMATED COST TO CONSULTANT $ 10,318

Allocation @ 3.8% of Total Labor $ 2,805

REVISED TOTAL FEE $ 86,949

CONTRACT TIME 460 Calendar Days

Consultant Firm Signature

Date

City of Avondale **Exhibit B**

Avondale SRTS Cycle 2

ESTIMATED STAFF HOUR SUMMARY

SCOPE SECTION / TASK	Proj Prin	Proj Mgr	Proj Eng	Eng/Des	Tech/ Draft	Admin	Clerical	Total
1 - Preparation of Scoping Document	-	6	18	32	-	-	2	58
2 - Environmental Documentation	-	14	17	50	72	-	3	156
3 - Topographical Survey	-	-	8	-	-	-	-	8
4 - Design (60%,90%, Final PS&E)	-	18	22	47	77	-	7	171
5 - Right-of-Way, Utility Clearance	-	16	37	39	-	-	18	110
6 - Drainage Analysis	-	2	-	12	-	2	2	18
7 - Meetings and Project Management	2	38	2	28	-	6	3	79
Totals	2	94	104	208	149	8	35	600
Percentages	0.00%	16.00%	17.00%	35.00%	25.00%	1.00%	6.00%	100%

CITY COUNCIL REPORT

SUBJECT:
Purchase Agreement - James, Cooke & Hobson, Inc.

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Wayne Janis, Public Works Director (623) 333-4444

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is recommending that the City Council authorize the sole source procurement of pumps, parts and authorized factory service provided by James, Cooke & Hobson, Inc., for Aurora, Flygt, and Pulsafeeder manufactured pumps and equipment for an amount not to exceed $100,000 annually and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

In the Public Works Department, the Collections, Production and Treatment divisions have various pumps and equipment that are used specifically in locations based on design, function, and flow requirements. It has been common practice to maintain similar types of manufactured pumps and equipment within each division to create consistency and standardization in function of these equipment items. To change the types of pumps used in these divisions could create issues related to not providing proper function, developing issues in design function, voiding service warranties, or ultimately not meeting treatment or flow requirements.

In the production division, there are (11) Aurora pumps, in the Collections division there are (7) Flygt pumps, and the Treatment plant has (46) Flygt pumps and mixers and (13) Pulsafeeder pumps in service. It has proven imperative to have James, Cooke & Hobson, Inc., provide the required replacements, parts and service as they are exclusive authorized factory service provider in the State of Arizona for these manufacturers.

DISCUSSION:

In order to maintain the pumps that are in use in the Production, Collections, and Treatment divisions, it is necessary that procurement is made through James, Cooke & Hobson, Inc. No other vendor in the state can offer the required pumps, parts and service without adding significant mark-up pricing. Vendors other than JCH could not provide the warranty work when applicable as well. For these two reasons staff is requesting that Council approve the sole source procurement through James, Cooke & Hobson. Notice of the planned sole source procurement was published in the West Valley View on September 14th and 21st, 2010, as well as the AZ Business Gazette on September 16th, 2010 as required by the city's procurement code. No protests were received.

The term of the agreement is for (1) year with the option to extend four (4) one-year (1-year) extensions. Total length of the contract will be no more than (5) years.

BUDGETARY IMPACT:

The funding will be found in line items 501-9122-00-7490 and 501-9122-00-6740, for the Production division, 503-9222-00-6720 and 503-9222-00-7990 for the Collections division, and 503-9230-00-6720 and 503-9230-00-7990 for the Treatment division.

RECOMMENDATION:

Staff is recommending that the City Council authorize the sole source procurement of pumps, parts and authorized factory service provided by James, Cooke & Hobson, Inc., for Aurora, Flygt, and Pulsafeeder manufactured pumps and equipment for an amount not to exceed $100,000 annually and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Notice of Intent
- Purchase Agreement

Notice of Intent to Award Contract
Under Sole Source Public Contract Rule

James, Cook & Hobson, Inc. for sales of product to provide to Aurora, Flygt, and Pulsafeeder pumps, parts and service. Notice is hereby given pursuant to City of Avondale Procurement Code Article III, 25-23 that the City of Avondale intends to award a contract to James, Cook and Hobbs Inc. for the following generally described equipment: Aurora pumps, parts, and service, Flygt pumps, parts, and service, and Pulsafeeder pumps and equipment. A complete listing of the parts may be obtained by contacting, Todd Carpenter at the address below, or by telephone at 623-333-4434.

Water Resource Center
4800 South Dysart Road
Avondale, AZ 85323

The City believes that James, Cook, and Hobbs, Inc., is the sole provider of such equipment to meet the City's required equipment and operational needs because James, Cook, and Hobbs, Inc. is the exclusive authorized distributor of Aurora, Flygt, and Pulsafeeder equipment for the Industrial and Municipal markets in the State of Arizona.

Any protest of this sole-source procurement by an Affected Person must be in writing and must be received by Loretta Browning, Procurement Officer, at Avondale City Hall 11465 W. Civic Center Drive on or before September 28, 2010, at 5:00 PM. Affected Persons may submit comments directly to the Procurement Office. The risk of timely delivery is upon the person submitting the protest. "Affected Person" means a person whose ability to participate in the procurement is adversely affected by the decision that the goods and services are available from only one source.
A written protest must include:

a. A detailed statement of the legal and factual grounds for the protest;
b. A description of the resulting harm to the person submitting the protest; and
c. The relief requested.

Published Dates:

West Valley View	**September 14, & September 21, 2010**
AZ Business Gazette	**September 16, 2010**

PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
JAMES, COOKE, & HOBSON, INC.

THIS PURCHASE AGREEMENT (this "Agreement") is made as of November 15, 2010, between the City of Avondale, an Arizona municipal corporation (the "City"), and James, Cooke, & Hobson, Inc., a Texas corporation (the "Vendor").

RECITALS

A. Vendor is in the business of selling Flygt brand, Aurora brand and Pulsafeeder brand pumps ("Pumps") and Pump replacement parts ("Replacement Parts") and is in the business of providing authorized factory service with respect to the Pumps and Replacement Parts (collectively with the Pumps and Replacement Parts, the "Materials and Services").

B. The City currently operates various Pumps within the City's Water Resources Department.

C. The City has determined that, because Vendor is the sole retailer and provider of Materials and Services necessary to keep the Pumps in good working order, a sole source procurement is appropriate pursuant to the Avondale City Code, Section 25-23.

D. The City and Vendor desire to enter into an agreement for the City to purchase the Materials and Services from Vendor.

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 Vendor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective from the date it is fully executed by the City and remain in full force and effect for one year thereafter (the "Initial Term"), unless terminated as otherwise provided herein. After the expiration of the Initial Term, this Agreement shall automatically renew for up to four successive one-year terms (the "Renewal Terms"), subject to termination as provided in Section 23 below. At least 30 days prior to the termination of either the Initial Term or any of the Renewal Terms, either party may provide written notification to the other party of its intention not to renew this Agreement.

2. Purchase of Materials and Services. Vendor shall provide to the City the Materials and Services under the terms and conditions of this Agreement, on an as-needed basis pursuant to purchase orders issued by the City as more particularly set forth in the Quote, attached hereto as Exhibit A.

3. Compensation. The City shall pay Vendor for the Materials and Services an aggregate price not to exceed $100,000.00 during the Initial Term and during each of the Renewal Terms as set forth in the Quote, attached hereto as Exhibit A. The Vendor shall not provide any Materials and Services under this Agreement until the Vendor receives an executed purchase order from the City.

4. Payments. The Vendor will be paid on the basis of invoices submitted following acceptance of the Materials and Services. All invoices shall document and itemize all Materials and Services delivered and provided and shall include the purchase order number authorizing the transaction to the City Accounts Payable address indicated on the face of the purchase order, unless otherwise specified. All transportation charges must be prepaid by the Vendor. If invoice is subject to a cash discount, the discount period will be calculated from the date of receipt of the claim or the Materials and Services, whichever is later.

5. Vendor Personnel. Vendor shall provide adequate, experienced personnel, capable of and devoted to the successful completion and delivery of Materials and Services required pursuant to this Agreement.

6 Deliveries. Time is of the essence for all orders placed under this Agreement. Delivery shall be made to:

Avondale Municipal Operations Service Center
399 East Lower Buckeye Road, Suite 100
Avondale, Arizona 85323

Vendor shall retain title and control of Pumps and Replacement Parts until they are delivered and the City has accepted delivery. All risk of transportation and all related charges shall be the responsibility of the Vendor. All claims for visible or concealed damage shall be filed by the Vendor. The City will notify the Vendor promptly of any damaged Pumps or Replacement Parts and shall assist the Vendor in arranging for inspection. The City reserves the right to cancel and reject the Pumps or Replacement Parts upon default by Vendor in time, rate or manner of delivery. The City also reserves the right to refuse shipments made in advance of any scheduled delivery date appearing on the purchase order.

7 Quantity. The quantity of Pumps and Replacement Parts ordered, as reflected on the purchase orders issued by the City must not be exceeded or reduced without the City procurement representative's permission in writing except in conformity with acknowledged industry tolerances.

8. F.O.B. Unless otherwise agreed to in writing, signed by the City Manager or designee, all delivery terms are FOB Destination and are to be prepaid. All other freight charges are to be prepaid and charged on the invoice. If a cash discount is not permitted on freight charges, then specific notation of this must be shown on the invoice.

9. Packing. No extra charges shall be made for packaging or packing material unless authority is expressly incorporated in this Agreement. Vendor shall be responsible for safe packing which must conform to the requirement of carrier's tariffs. All shipments must carry the correct quantity, product identification, purchase order number, receiving address and

product department plainly marked on all packages. Cars or trucks must be loaded to minimum weight requirements to assure lowest rate unless otherwise specified or shipper will be charged with excess freight that the City is required to pay.

10. Performance Warranty. All Pumps and Replacement Parts supplied under this Agreement shall be fully guaranteed by the Vendor for a minimum period of one year from the date of acceptance by the City. Any defects in design, workmanship or materials that would result in non-compliance with the terms of this Agreement shall be fully corrected by the Vendor (including parts and labor) without cost to the City. Vendor further agrees to execute any special guarantees as provided by the Agreement or by law. Contactor shall require similar guarantees from all of its vendors or its subcontractors. Vendor shall include a complete and exclusive statement of the product warranty.

11. Price Warranty. Vendor shall give the City the benefit of any price reductions before actual time of shipment, except that should the procurement representative of the City permit shipment to be made prior to specified shipping date that the City shall have advantage of any price reduction before specified shipping date.

12. Inspection; Acceptance. All Pumps and Replacement Parts are subject to final inspection and acceptance by the City. Pumps or Replacement Parts failing to conform to the provisions of this Agreement will be held at Vendor's risk and may be returned to the Vendor. If so returned, all costs are the responsibility of the Vendor. Upon discovery of a non-conforming material, the City may elect to do any or either of the following by written notice to the Vendor: (A) waive the non-conformance; or (B) bring material or service into compliance and withhold the cost of same from any payments due to the Vendor.

13. Waiver. Waiver by the City of a condition in any shipment shall not be considered a waiver of (1) any other terms of this Agreement or (2) that condition for subsequent shipments.

14. No Replacement of Defective Tender. Every tender of Materials or Services shall fully comply with all provisions of the Agreement. If a tender is made which does not fully conform, this shall constitute a breach of the Agreement as a whole.

15. Shipment Under Reservation Prohibited. Vendor is not authorized to ship Pumps or Replacement Parts under reservation and no tender of a bill of lading will operate as a tender of the Pumps or Replacement Parts.

16. Liens. All Pumps and Replacement Parts shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

17. Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform it may demand that the other party give a written assurance of its intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

18. Right to Inspect Plant. The City may, at reasonable times, inspect the part of the plant or place of business of the Vendor that is related to the performance of this Agreement.

19. Advertising. Vendor shall not advertise or publish information concerning this Agreement without prior, written consent of the City.

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

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

22. Applicable Law; Venue. In the performance of this Agreement, Vendor 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.

23. Termination; Cancellation.

23.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Vendor of written notice by the City.

23.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination.

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

consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

23.4 Gratuities. The City may, by written notice to the Vendor, 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 Vendor or any agent or representative of the Vendor 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 Vendor an amount equal to 150% of the gratuity.

23.5 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 Agreement 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 Vendor 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 Vendor shall be relieved of any subsequent obligation under this Agreement.

24. Miscellaneous.

24.1 Independent Contractor. The Vendor acknowledges and agrees that all Materials and Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Vendor, 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 Vendor, its employees or subcontractors. Vendor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Vendor do not intend to nor will they combine business operations under this Agreement.

24.2 Laws and Regulations. The Vendor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Vendor is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Materials and Services, including the following: (1) existing and future City and Maricopa County ordinances and regulations, (2) existing and future state and federal laws, (3) existing and future Occupational Safety and Health Administration ("OSHA") standards and (4) Arizona employer sanctions provisions.

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

24.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were

included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

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

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

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

24.8 Assignment. No right or interest in this Agreement shall be assigned by Vendor without prior, written permission of the City signed by the City Manager. Any attempted assignment by Vendor in violation of this provision shall be a breach of this Agreement by Vendor.

24.9 Subcontracts. No subcontract shall be entered into by the Vendor with any other party to furnish any of the Materials and Services without the prior written approval of the City. The Vendor is responsible for performance under this Agreement whether or not subcontractors are used.

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

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

24.12 Liens. All Pumps and Replacement Parts shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

24.13 Offset.

a. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Vendor any amounts Vendor owes to the City for damages resulting from breach of any obligation under this Agreement.

b. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Vendor any amounts Vendor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

24.14 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, (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. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Facsimile: (602) 254-4878 Attn: Andrew J. McGuire, Esq.
If to Vendor:	James, Cooke, & Hobson, Inc. 3501 East Broadway Road Phoenix, Arizona 85040 Facsimile: (602) 276-5402 Attn: Eric Loring

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 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.

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

24.16 Records and Audit Rights. In order to ensure that the Vendor and its subcontractors are complying with the warranty under subsection 24.17 below, Vendor'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 Vendor and its subcontractors' employees who perform any work with respect to the Materials and Services provided to the City pursuant to this Agreement (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 and (b) evaluation of the Vendor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 24.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Vendor 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 Agreement during the term of this Agreement and until three years after the date of final payment by the City to Vendor pursuant to this Agreement. Vendor 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 Vendor or its subcontractors reasonable advance notice of intended audits. Vendor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

24.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Vendor 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). Vendor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

24.18 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Vendor 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 Vendor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 23.2 above.

24.19 Non-Exclusive Contract. This Agreement 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

"**Vendor**"

JAMES, COOKE, & HOBSON, INC., a Texas 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 _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2010, by _____ as _____ of JAMES, COOKE, & HOBSON, INC., a Texas corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
JAMES, COOKE, & HOBSON, INC.

[Quote]

See following pages.

QUOTATION #102110-3JWF

October 22, 2010

To: CITY OF AVONDALE

Job Name: CONTRACT PRICING
MODEL: VARIOUS
SEE BELOW

Attn: TODD CARPENTER

Location: AVONDALE, AZ
Quotation By: Jim Feickert
Bid Date:

Unless otherwise stated: Prices are firm for 30 days from bid date, payment terms are NET 30 DAYS from shipment. Prices do not include any sales and/or use taxes. Applicable taxes will be added to the invoice at the rate in effect at the time of shipment. Interest shall accrue on past due amounts at 1.5% per month. Freight terms are F.O.B. factory, full freight allowed.

Qty	Description	Each	Total
	FLYGT 3045 SERIES PUMPS		
1	FLYGT MODEL CP3045.XXX SUBMERSIBLE WASTEWATER PUMP, WITH 1.2 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. IMPELLER CODE TO BE DETERMINED.	$2,000.00	$2,000.00
	FLYGT 3085 SERIES PUMPS		
1	FLYGT MODEL CP/NP3085.XXX SUBMERSIBLE WASTEWATER PUMP, WITH 3 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. IMPELLER CODE TO BE DETERMINED, VERIFY FLS.	$4,500.00	$4,500.00
1	FM ADDER TO ORDER ABOVE PUMP IN EXPLOSION-PROOF VERSION.	$500.00	$500.00
	FLYGT 3102 SERIES PUMPS		
1	FLYGT MODEL CP/NP3102.XXX SUBMERSIBLE WASTEWATER PUMP, WITH 5 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. IMPELLER CODE TO BE DETERMINED, VERIFY PUMP DISCHARGE SIZE, VERIFY FLS.	$5,500.00	$5,500.00
1	FM ADDER TO ORDER ABOVE PUMP IN EXPLOSION-PROOF VERSION.	$500.00	$500.00
	FLYGT 3126 SERIES PUMPS		
	THE FLYGT 3126 SERIES IS NO LONGER A PRODUCTION SERIES. IT HAS BEEN REPLACED BY THE 3127 SERIES LISTED ON THE NEXT PAGE.		

FLYGT 3127 SERIES PUMPS

1	FLYGT MODEL CP/NP3127.XXX) SUBMERSIBLE WASTEWATER PUMP, WITH 7.5 OR 10 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. IMPELLER CODE TO BE DETERMINED, VERIFY PUMP DISCHARGE SIZE, VERIFY FLS.	$8,500.00	$8,500.00
1	FM ADDER TO ORDER ABOVE PUMP IN EXPLOSION-PROOF VERSION.	$600.00	$600.00

FLYGT 3140 SERIES PUMPS

THE FLYGT 3140 SERIES IS NO LONGER A PRODUCTION SERIES. IT HAS BEEN REPLACED BY THE 3153 SERIES LISTED BELOW.

FLYGT 3152 SERIES PUMPS

THE FLYGT 3152 SERIES IS NO LONGER A PRODUCTION SERIES. IT HAS BEEN REPLACED BY THE 3153 SERIES LISTED BELOW.

FLYGT 3153 SERIES PUMPS

1	FLYGT MODEL NP3153.XXX SUBMERSIBLE WASTEWATER PUMP, WITH 20 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. IMPELLER CODE TO BE DETERMINED, VERIFY PUMP DISCHARGE SIZE, VERIFY FLS.	$15,500.00	$15,500.00
1	FM ADDER TO ORDER ABOVE PUMP IN EXPLOSION-PROOF VERSION.	$1,000.00	$1,000.00

FLYGT 3171 SERIES PUMPS

1	FLYGT MODEL NP3171.XXX SUBMERSIBLE WASTEWATER PUMP, WITH 25 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. IMPELLER CODE TO BE DETERMINED, VERIFY PUMP DISCHARGE SIZE, VERIFY FLS.	$25,000.00	$25,000.00
1	FM ADDER TO ORDER ABOVE PUMP IN EXPLOSION-PROOF VERSION.	$1,700.00	$1,700.00

FLYGT 4660 SERIES PROPELLER PUMPS

1	FLYGT MODEL 4660.XXX SUBMERSIBLE PROPELLER PUMP, WITH 15 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. PROPELLER CODE TO BE DETERMINED, VERIFY FLS. 316 SS MATERIALS OF CONSTRUCTION	$31,000.00	$31,000.00
1	FM ADDER TO ORDER ABOVE PUMP IN EXPLOSION-PROOF VERSION.	$3,000.00	$3,000.00

FLYGT 4650 SERIES MIXERS

1	FLYGT MODEL 4650.XXX SUBMERSIBLE MIXER, WITH 8.3 HP, 3/60/460 MOTOR AND 50 FT POWER CABLE. PROPELLER CODE TO BE DETERMINED, VERIFY FLS.	$24,000.00	$24,000.00
1	FM ADDER TO ORDER ABOVE MIXER IN EXPLOSION-PROOF VERSION.	$2,000.00	$2,000.00

FLYGT PARTS

LINE	QTY	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL
1.	1	601-89-49	basic repair kit (Model 3045)	$242.48	$242.48
2.	1	601-89-48	basic repair kit (Model 3085)	$765.79	$765.79
3.	1	601-89-06	basic repair kit (Model 3102)	$853.76	$853.76
4.	1	601-89-09	basic repair kit (Model 3127)	$1,390.60	$1,390.60
5.	1	601-89-31	basic repair kit (Model 3140)	$2,062.78	$2,062.78
6.	1	601-89-21	basic repair kit (Model 3152)	$2,104.52	$2,104.52
7.	1	657-17-08	basic repair kit (Model 3153)	$1,440.22	$1,440.22
8.	1	657-17-01	basic repair kit (Model 3171)	$2,822.94	$2,822.94
9.	1	656-35-03	basic repair kit (Model 4650/4660)	$3,627.06	$3,627.06

AURORA HORIZONTAL SPLIT-CASE PUMPS

1	AURORA MODEL 411-BF, SIZE 6 X 8 X 15, HORIZONTAL SPLIT-CASE PUMP COMPLETE WITH BASE, COUPLING, TYPE 1 HI-WEAR MECHANICAL SEALS, SS SHAFT, SS IMPELLER WEAR RINGS, SS SLEEVES, SS CASE WEAR RINGS AND 150 HP, 3/60/460, TEFC, PREMIUM EFFICIENCY MOTOR.	$47,600.00	$47,600.00

(CONTINUED)

PULSAFEEDER PUMPS

SODIUM HYDROXIDE

1	PULSAR MODEL 25HJ-STANDARD-LEFT CHEMICAL METERING PUMP TO DUPLICATE S/N: U687468-4-3	$6,000.00	$6,000.00
1	NPKAAAUPCEE KOPKIT FOR ABOVE PUMP	$1,700.00	$1,700.00

FERRIC CHLORIDE

1	PULSAR MODEL 25HJ-STANDARD-LEFT CHEMICAL METERING PUMP TO DUPLICATE S/N: U687468-4-6	$7,000.00	$7,000.00
1	NPKVLVUPCEE KOPKIT FOR ABOVE PUMP	$1,800.00	$1,800.00

SODIUM HYPOCHLORITE (25 GPH)

1	PULSAR MODEL 25HJ CHEMICAL METERING PUMP TO DUPLICATE S/N: X871001-2-3	$5,600.00	$5,600.00
1	NPK7LVVCDGG KOPKIT FOR ABOVE PUMP	$1,400.00	$1,400.00

SODIUM HYPOCHLORITE (50 GPH)

1	PULSAR MODEL 25HL CHEMICAL METERING PUMP TO DUPLICATE S/N: X871001-1	$6,000.00	$6,000.00
1	NPK7LVVCDGG KOPKIT FOR ABOVE PUMP	$1,400.00	$1,400.00

SERVICE RATES

1	STANDARD SHOP RATE (PER HOUR)	$75.00
1	EMERGENCY SHOP RATE (PER HOUR)	$125.00
1	STANDARD FIELD RATE, ONE MAN (PER HOUR)	$105.00
1	EMERGENCY FIELD RATE, ONE MAN (PER HOUR)	$155.00
1	TRUCK MILEAGE CHARGE (PER MILE, ROUNDTRIP)	$1.50

PLUS APPLICABLE TAXES

CITY COUNCIL REPORT

SUBJECT:
Resolution 2938-1110 - Intergovernmental Agreement with the First Things First Southwest Maricopa Regional Partnership Council

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Gina Montes, Neighborhood and Family Services Director (623) 333-2727

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a resolution authorizing an amendment to the intergovernmental agreement with First Things First Southwest Maricopa Regional Partnership Council which provides $48,249 to implement additional public health insurance and enrollment assistance activities.

BACKGROUND:

The Arizona Early Childhood Development and Health Board, known as First Things First, is a State agency established by a voter initiative to support a voluntary system of early care and education for children five and under. The Southwest Maricopa Regional partnership Council (Regional Council) represents Avondale and the surrounding communities. The Regional Council is charged with making funding and strategy recommendations to the First Things First Board.

DISCUSSION:

A need has been identified by the Regional Council to assist residents in obtaining and enrolling in health insurance program for lower income families in the Southwest Valley. With this additional funding, a Request for Proposals will be developed as the mechanism for staff to choose a qualified agency to provide this assistance to residents. The agency selected will have the expertise to enroll families with children five and under in public health care programs for which they are eligible and meet their families' health care needs. This service will be provided at the Care1st Avondale Resource and Housing Center.

BUDGETARY IMPACT:

There is no funding requested from the City of Avondale General Fund. The $48,249 included in this amendment will fully fund the activities described in this contract amendment.

RECOMMENDATION:

Staff recommends that the City Council approve a resolution authorizing an amendment to the Grant Agreement with First Things First Southwest Maricopa Regional Partnership Council which provides $48,249 to implement additional public health insurance and enrollment assistance activities.

ATTACHMENTS:

Click to download

- Resolution 2938-1110

RESOLUTION NO. 2938-1110

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE SECOND AMENDMENT TO THE GRANT AGREEMENT WITH THE FIRST THINGS FIRST SOUTHWEST MARICOPA REGIONAL PARTNERSHIP COUNCIL RELATING TO IMPLEMENTATION OF ADDITIONAL PUBLIC HEALTH INSURANCE AND ENROLLMENT ASSISTANCE.

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

SECTION 1. The Second Amendment to the Grant Agreement with the First Things First Southwest Maricopa Regional Partnership Council relating to implementation of additional public health insurance and enrollment assistance (the "Second Amendment") is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

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

PASSED AND ADOPTED by the Council of the City of Avondale, November 15, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2938-1110

[Second Amendment]

See following pages.

CONTRACT AMENDMENT

FIRST THINGS FIRST
The right system for bright futures

Amendment # 2

Grant Agreement/Contract Award #
GRA-RC007-10-0008-01-Y2

Early Childhood Health and Development Board (First Things First)

4000 North Central Avenue, Suite 800
Phoenix, Arizona 85012

(602) 771-5000
(602) 265-0009 fax

CONTRACTOR:
City of Avondale
11456 West Civic Center Drive
Avondale, AZ 85323

PURPOSE OF AMENDMENT:

Pursuant to Special Terms and Conditions, "Amendment", of the above referenced Grant Agreement/Contract Award, the State of Arizona hereby exercises its sole option to amend the contract as follows:

1. Total award amount for the contract period is hereby increased by $43,649 from $209,352 to $253,001. The additional funding in the amount of $43,649 is to be used to implement additional Public Health Insurance and Enrollment Assistance Activities, as set forth in Attachment A and Attachment B, each as attached hereto and incorporated herein by reference.

2. Public Health Insurance and Enrollment Assistance Activities to reach 1,500 families.

3. The Grantee is responsible for all additional items to be added to the Grantee's Scope of Work, as set forth in Attachment A, and for compliance with the First Things First Public Health Insurance Outreach and Enrollment Assistance Standards of Practice, attached hereto as Attachment B.

4. This Second Amendment and the Agreement may be cancelled pursuant to ARIZ. REV. STAT. § 38-511

5. All other terms and conditions remain unchanged and are according to the original award documents, clarification documents, renewal submission documents.

Contractor hereby acknowledges receipt and understanding of the contract amendment.

Signature_____

Name_____

Title_____

Date:_____

The above referenced amendment is hereby executed effective October 1, 2010 once signed and dated below:

_____
Rhian Evans Allvin
Executive Director

_____
Date

Attachment A

Public Health Insurance and Enrollment
Scope of Work

The Southwest Maricopa Regional Partnership Council (RPC) has identified the need for regional implementation of the following strategy:

- Public Health Insurance Outreach and Enrollment Assistance to ensure eligible community families enroll in and retain health coverage and other public benefits for their young children

Arizona has a large number of children who lack health insurance coverage. Some estimates are that as many as 16 percent of children age birth through five are without coverage for medical care. Research indicates that children without health insurance have a significantly worse health status than those with coverage and are less likely to receive routine preventative care. Arizona has two insurance programs for families who otherwise could not afford health care insurance, Arizona Health Care Cost Containment System (AHCCCS) and KidsCare. Despite the availability of insurance for low-income families, there continue to be those who are eligible who do not apply. There are a variety of reasons why this happens. In some cases, travel to a Department of Economic Security office to apply is out of reach due to lack of transportation.

Others express feelings of intimidation which result in reluctance to apply. Gathering the appropriate paperwork can seem overwhelming and may require multiple visits to complete. In some cases, families simply do not realize that they are eligible for services. In addition to the difficulty in getting enrolled in the first place, many families find it difficult to renew their coverage for many of the same reasons. In 2008, after a pilot program in selected Arizona counties, AHCCCS began accepting applications via the internet. The on-line application, called Health E Arizona was implemented to help address some of the challenges faced by families in applying for coverage. The Health E Arizona application is internet based and can be completed from any public or private computer. A family fills out the application and is screened for eligibility for AHCCCS, KidsCare, Nutrition Assistance (Food Stamps) and Temporary Assistance for Needy Families (TANF).

Target Population

The intended target population of this funding opportunity is the population of families with children ages birth through five who are likely to qualify for public health insurance, yet are currently underserved. Additionally, the targeted population should include underserved populations or underserved geographic locations, focusing specifically on families up to 200 percent of the Federal Poverty Level. This strategy targets all families with children ages birth through five, as well as health professionals who serve families with children in this age range throughout the Southwest Maricopa region. Specifically, the strategy targets children ages birth through five in the Southwest Maricopa region who do not have public health insurance but who are eligible, or those who are currently enrolled in KidsCare and need to maintain public health insurance.

The Grantee must serve the families within the geographic boundaries of the Southwest Maricopa Regional Partnership Council.

Assessment of Need

A needs and assets assessment of the region has shown that parents and families need education and support to understand their child's development and health, develop parenting skills, and have access to resources to be the best parents possible. The regional area has a lack of quality family support and education services to

assist families in developing the necessary skills to support their children's optimal development and health as well as a lack of capacity among available programs to meet the needs of all families in the region.

Children without medical insurance have a difficult time obtaining primary and specialty care. They are more likely to be sick as newborns, less likely to be immunized as preschoolers, and less likely to receive medical treatment for injuries. Undiagnosed and untreated medical conditions can result in long term health and learning problems. Families without health insurance experience high out of pocket cost when their children lack coverage. Lack of health insurance can threaten families' economic security. Research has shown that health insurance coverage is linked to improved health. Insured children are more likely to access primary health care services to keep them well, more likely to receive timely immunizations and more likely to have a medical home.

Health insurance outreach and enrollment assistance is a proven practice for improving and increasing health coverage in public programs. In California, for example, 63 percent of applicants who received no community–based assistance were approved for enrollment, compared to a 79 percent approval rate for families who received assistance. According to a report from St. Luke's Health Initiatives; outreach efforts for publicly funded health insurance can be effective in covering more children with health coverage. Successful efforts include public awareness campaigns, and outreach and enrollment by trusted, health or social service oriented community based organizations. Application assistance and follow up are an integral part of such efforts.

Health-E-Arizona application assistance gives families easy access and the option to apply for and renew health coverage, as well as other supports such as TANF, Cash Assistance, and Food Stamps, directly over the internet. In Southwest Maricopa, as with many communities, community based organizations and families may be unfamiliar with the new AHCCCS application and may need assistance in completing it. Health-E-Arizona application assistance has been shown to result in timelier enrollment and a reduction in application errors (resulting in applicants less likely to be denied coverage).

Implementation Requirements

First Things First is soliciting applications to provide assistance in identifying families who might be eligible for these services, providing information and education to families regarding the availability of the programs, and/or assisting families to complete the Health-E-Arizona application or completing the renewal process. The Grantee will identify and provide direct outreach and information to potentially eligible families. Outreach should include how families who might potentially be eligible will be identified and how families who might not otherwise be aware of their eligibility will be recruited and engaged. The Grantee will encourage and assist families to renew their enrollment on time to prevent a gap or complete loss in health insurance coverage.

Health-E-Arizona application assistance can be performed in a variety of locations such as hospitals, clinics, social service agencies, faith communities, campuses and other community based locations such as a Family Resource Center.

In addition to helping families apply and/or renew coverage, the Grantee will have methods and resources provided to forward the supporting documentation required to complete the application process on to AHCCCS and the Department of Economic Security. The Grantee will provide families who do not qualify for or those waitlisted for services with information regarding available alternatives for free or low cost health care in the region. Some examples might include; free clinics, federally qualified health centers or county hospitals.

At a future date, the Grantee will be expected to provide data on outreach and enrollment activities that may be needed to meet federal requirements for Arizona to receive additional federal funding for these activities.

Due to the current economic situation in the state of Arizona, enrollment into KidsCare has been temporarily capped. Because of this, in addition to any other data reporting required by First Things First, the Grantee will be required to report the family income level of those who receive application assistance. This cap in services highlights the importance of encouraging families to renew coverage on time. Failure to renew coverage by the deadline will result in a family being waitlisted for services.

Programs providing outreach and enrollment assistance to families should describe any equipment and supplies that will be necessary to complete the work. This might include computers, software, scanners and facsimile equipment. In addition, a description of any outreach/awareness materials should be included or a description provided.

This strategy addresses these specific Goals and Key Measures:

First Things First Goal Area to be addressed:

- Health

First Things First Goals to be addressed:

- First Things First will collaborate with existing Arizona early childhood health care systems to improve children's access to quality health care.
- First Things First will coordinate and integrate with existing education and information systems to expand families' access to high quality, diverse and relevant information and resources to support their child's optimal development.

First Things First Key Measures to be addressed:

- Total number and percent of children with health insurance
- Total number and percent of families who feel competent and confident about their ability to support their child's safety, health and well being
- Total number and percent of children receiving appropriate and timely well child visits
- Total number and percent of children receiving appropriate and timely oral health care

Attachment B

First Things First
Health Insurance Outreach and Application Assistance
Standards of Practice

Many children living in low income families qualify for publicly funded health insurance. Across the nation, as many as half the children who are uninsured qualify for publicly funded health insurance coverage (such as KidsCare or the Arizona Health Care Cost Containment System also known as AHCCCS). In Arizona, it is estimated that 16 percent of children lack health care coverage. For children birth through age five this represents 80,000 children. Health insurance outreach and application assistance is a proven practice for improving and increasing health coverage in public programs. Community application assistance occurs nationally and in Arizona in a wide variety of settings, such as health clinics, child care settings, social service agencies, recreation centers, and homeless shelters. Reports based on national as well as Arizona experience indicate that such assistance can make a difference in getting children covered. (U.S. Census Bureau, Annual Estimates of Population by Sex and Age for States and Fro Puerto Rico, Release data: May 1, 2008. http://www.census.gov/popest/states/asrh/SC-Est207-02.html).

In Arizona, AHCCCS implemented an electronic application for services to make applications more accessible to families. The universal application, known as Health-e-Arizona, allows families to apply for and renew health coverage, as well as other family support programs such as Temporary Assistance for Needy Families (TANF) cash assistance, and nutrition assistance, directly over the internet.

While this application promises to make enrollment in public coverage programs for young children easier, barriers still exist. Many families are not aware of available publicly funded health insurance programs for which they may be eligible. Community-based organizations and families may be unfamiliar with the new application, and may need assistance in completing it. Other families do not have access to a computer or an internet connection. In addition, families who are applying for coverage for the first time are required to submit original documentation to an Arizona Department of Economic Security (DES) office or a community-based agency that is “certified” by AHCCCS to accept such documentation. Families may find going to a DES office intimidating or difficult due to hours of operation (8-5), long wait times or travel distance. Currently, a limited number of community organizations use the Health-e-Arizona application to enroll children in health coverage, including some community health centers and hospitals.

There are several approaches to reducing the number of children who lack health insurance coverage such as increasing awareness of available publicly funded health insurance programs; increasing awareness of and access to the Health-e-Arizona online application; and reducing barriers in the public health insurance application process.

Programs implementing health insurance outreach and enrollment assistance will:

- Build upon, enhance and coordinate with existing health insurance outreach and enrollment assistance efforts occurring within a region.
- Demonstrate connections to community-based organizations in the region that serve families and/or community-based organizations where the uninsured are likely to congregate or seek other services.
- Provide ongoing staff development on diversity issues.

- Be accessible for families. Some examples include offering extended service hours including weekend/evening hours or operating in locations where public transportation is accessible or where families with young children already congregate.
- Engage families as partners to ensure that the program is reaching eligible families.
- Assure that staff receive specific training to carry out outreach and enrollment activities.
- Provide ongoing staff training as necessary.
- Maintain confidentiality of all information obtained as a part of the outreach and enrollment process.
- Establish an effective, consistent supervisory system that provides support for all staff members and ensures accountability to participants, funders, and the community.
- Assure that evaluation and monitoring is a collaborative, ongoing process that includes feedback from staff, families, and community members.
- Establish a system to ensure that families are informed of all of their health insurance enrollment options and assist families in choosing the appropriate plan to meet their individual family/child's needs.

"To address cultural competency objectives, early childhood practitioners /early childhood service providers shall ensure that children and families receive from all staff members effective, understandable, and respectful care that is provided in a culturally competent manner- a manner compatible with their cultural beliefs and practices and preferred language. Early childhood practitioners /early childhood service providers should ensure that staff at all levels and across all disciplines receive ongoing education and training in culturally and linguistically appropriate service delivery. Early childhood practitioners/early childhood service providers should develop participatory, collaborative partnerships with communities and utilize a variety of formal and informal mechanisms to facilitate community and family-centered involvement to ensure that services are delivered in a manner that is consistent with the National Standards on Culturally and Linguistically Appropriate Services and/or the National Recommendations on Cultural and Linguistic Competence for the National Association for the Education of Young Children."
http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15 and
http://www.naeyc.org/positionstatements/linguistic

Individuals providing outreach and enrollment assistance will:

- Be adequately trained on the Health-e-Arizona application procedure, the health insurance enrollment process, and the different insurance plan options
- Seek out families that are eligible but not enrolled in public health insurance and provide assistance for these families to enroll
- Introduce and provide technical assistance to potential enrollees so that they have the skills to apply for services utilizing the Health-E-Arizona application
- Provide information that parents can use about the importance of taking their children to well child and preventive health check-ups on a regular basis to receive timely, preventative health care for their children
- Establish and maintain partnerships/relationships with local or regional AHCCCS and DES offices to remain current on eligibility or enrollment requirements that will maximize enrollment and renewal of public health insurance
- Maintain confidentiality of all information obtained as part of the outreach and enrollment process
- Include opportunities for feedback from families into outreach and enrollment activities

CITY COUNCIL REPORT

SUBJECT:
Resolution 2937-1110 - Intergovernment Agreement with Governor's Office of Economic Recovery

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Janeen Gaskins, Grants Administrator (623) 333-1025

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City staff is requesting City Council's approval to accept grant funding in the amount of $62,250; which includes American Recovery Reinvestment Act provisions. This funding is from the Arizona Office of Economic Recovery for the purpose of supporting the Fire Department's purchase of heart monitors.

BACKGROUND:

Avondale's 2000 Census population was 35,883. By 2005, the population increased by 52% yielding more than 69,350 residents. Avondale's Fire Rescue Department has four front line apparatus that respond to more than 6,000 fire and emergency medical calls a year. Eighty percent of the calls are medically related. Cardiac monitors are used 75% of the time and are an essential tool for saving lives. This equipment is used on a daily basis to assess heart rates and vital statistics. The equipment will also be used throughout the region as part of the automatic aid system. Additionally, Avondale hosts two NASCAR events each year at the Phoenix International Raceway attracting more than 75,000 fans per race. This equipment will be used during these events to provide advanced life support.

DISCUSSION:

The Governor's Office of Economic Recovery issued the Public Safety Stabilization applications on September 16, 2010. Avondale's Fire Rescue Department applied for cardiac monitors. The City will use a GSA contract for the purpose of expediting the equipment purchase and ensuring the project is completed within the allowable funding timeframe. The estimated time for delivery is four months. The City will abide by the tight time constraints outlined in the request for proposal. The Intergovernmental Agreement and City Council Approval are due back to the state on November 30, 2010.

This funding request aligns with the City Council's Goals and the overall Public Safety Stabilization Program by increasing the capacity of Avondale's Fire Rescue Department and supporting their ability to provide lifesaving functions. During the economic downturn the city is unable to purchase these additional units.

The typical life-span of a cardiac monitor is five to seven years. Avondale's current monitors are approaching 10 years old. The current monitors are not only suffering from long term use but are technologically behind due to equipment advancements. In addition, there are no local repair vendors; which requires shipping the devices out of state for repairs adding to the maintenance costs.

Funding in the amount of $62,250 has been awarded to Avondale for the immediate purchase of four cardiac monitors. The goal of this project is to provide essential care to people during medical emergencies. The monitors will be purchased within 4-6 months and used at least 75% of the time as indicated by medical service calls and the usage of the equipment which will be tracked and reported on a quarterly basis.

BUDGETARY IMPACT:

Funding for this program will not be used to supplant existing budgeted resources. This funding will be used to restore critical fire safety activities that were cut during the 2007-2008 budget year. Funding for the Cardiac Monitors is essential in saving lives. The grant award amount is $62,250 and the ongoing City obligation is $2,250 which will cover the standard one year maintenance costs currently budgeted for fiscal year 10-11. There are no match requirements for this federal grant funding.

RECOMMENDATION:

Staff recommends City Council adopt a resolution authorizing an Intergovernmental Agreement with the Governor's Office of Economic Recovery to accept grant funding in the amount of $62,250 for the purchase of heart monitors for the Fire Department and authorize the Mayor or City Manager and City Clerk to execute the necessary documents

ATTACHMENTS:

Click to download

- Resolution 2937-1110

RESOLUTION NO. 2937-1110

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACCEPTANCE OF A PUBLIC SAFETY STABILIZATION PROGRAM GRANT FROM THE GOVERNOR'S OFFICE OF ECONOMIC RECOVERY FOR CARDIAC MONITORING EQUIPMENT.

WHEREAS, the State of Arizona, Governor's Office of Economic Recovery ("GOER"), has awarded the City of Avondale, acting by and through its Fire Department, a Public Safety Stabilization Program grant for the purchase of cardiac monitoring equipment (the "Grant"); and

WHEREAS, the Council of the City of Avondale (the "City Council") desires to accept the Grant.

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

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

SECTION 2. The City Council hereby authorizes (i) the acceptance of the Grant in the amount of $62,250.00 and (ii) the execution of an intergovernmental agreement between the GOER and the City of Avondale Fire Department relating to acceptance and administration of the Grant funds (the "Agreement") in the form attached hereto as Exhibit A and incorporated herein by reference.

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

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, November 15, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2937-1110

(Agreement)

See following pages.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE GOVERNOR'S OFFICE OF ECONOMIC RECOVERY
AND
City of Avondale Fire Department
CONTRACT #OER-11-IGA-GS-78

This INTERGOVERNMENTAL AGREEMENT (the "AGREEMENT") is entered into by and between the Governor's Office of Economic Recovery ("GOER"), established by Governor Brewer to oversee and discharge funds granted under the American Recovery and Reinvestment Act of 2009 ("Recovery Act" or "ARRA"), and located at 1700 West Washington, Suite 300, Phoenix, Arizona 85007, and the City of Avondale Fire Department, located at 11465 W. Civic Center Drive, Avondale, AZ 85323 in accordance with A.R.S. § 41-2701 et seq., authorizing the State of Arizona, GOER to execute and administer grants for Title XIV of the ARRA, known as the State Fiscal Stabilization Fund (as amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524). The Catalog of Federal Domestic Assistance (CFDA) Number is 84.397, Government Services Fund, administered by the U.S. Department of Education.

I. PURPOSE OF THE AGREEMENT

GOER is tasked with oversight and swift distribution of Economic Recovery Funding. In this capacity, GOER has agreed to provide funding to the City of Avondale Fire Department for the purpose of supporting local public safety agencies to provide basic public safety activities, a project that GOER has determined meets the requirements of projects suitable for Recovery Act funding. The jurisdiction agrees to comply with all terms of the proposal as approved, submitted in response to the grant opportunity that emerged from Governor Brewer's Public Safety Stabilization Program. Attachment 1, detailing the jurisdiction's allowable expenditures, is made part of this agreement by reference herein. GOER will fund the jurisdiction up to $62,250.00 for this purpose.

II. WORK STATEMENT AND GENERAL PROVISIONS

The parties mutually agree as follows:

A. Scope of Work

1. The jurisdiction shall provide GOER, within five business days of GOER's request, all information, data and supporting documentation requested by GOER or, if not requested by GOER, determined relevant by the jurisdiction to assist GOER in reconciling award amounts.

2. The jurisdiction shall comply with all ARRA requirements including the following 1512 reporting requirements:
   a. Provide the following information, as required by GOER by the 15th day of the month following the end of a quarter or as requested by GOER:
   b. Grants and Projects
   c. Financial Transactions
   d. DUNS
   e. Prime Vendor/Sub-recipients
   f. 1512 Report Update

3. The jurisdiction shall make relevant personnel available for contact and meetings with Federal or State oversight agencies, when requested by GOER and shall make relevant jurisdiction personnel available to contact and meet with GOER when requested by GOER. The jurisdiction shall provide to GOER contact names, addresses, telephone numbers, e-mail addresses, and any other relevant contact information available to the jurisdiction regarding the jurisdiction's personnel considered by the jurisdiction relevant to the activities described in this section. GOER shall not reimburse the jurisdiction for any costs associated with the jurisdiction's personnel participation in these activities.

4. GOER may monitor the jurisdiction's compliance with ARRA requirements regarding Recovery Act funds, in addition to any monitoring that other oversight agencies may decide to conduct. The jurisdiction shall cooperate with GOER regarding all monitoring activities related to ARRA funds. The jurisdiction may be required to provide information, data and supporting documentation of their ARRA transactions to GOER. GOER shall not reimburse the jurisdiction for any costs associated with these activities of the jurisdiction.

5. The jurisdiction shall inform GOER when the jurisdiction is contacted by any Federal or State oversight agency regarding Recovery Act dollars within five business days of contact, including:
    a. When an oversight agency requests any documents, data and information from the jurisdiction. The jurisdiction shall provide copies of the jurisdiction's responses to oversight agencies to GOER, if requested by GOER, within five business days of GOER's request.
    b. When an oversight agency issues reports to the jurisdiction or about the jurisdiction. The jurisdiction shall provide copies to GOER, if available to the jurisdiction and if requested by GOER, within five business days of GOER's request.
    c. When the jurisdiction responds to follow-up requests for documents, data and information from oversight agencies. The jurisdiction shall provide copies of the jurisdiction's responses to oversight agencies to GOER, if requested by GOER, within five business days of GOER's request.

6. The jurisdiction shall allow GOER to review the jurisdiction's fraud, waste and abuse prevention programs and ARRA transactions, if requested by GOER in the manner requested by GOER.

7. The jurisdiction shall comply with ARRA requirements as described in the following quotation: "Recipients who have failed to submit a Section 1512 report as required by the terms of their award are considered to be non-compliant. Non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal action, up to and including the termination of Federal funding or the ability to receive Federal funds in the future." EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, Peter R. Orszag.

B. Method and Terms of Reimbursement

Recovery Act funds will be transferred to the jurisdiction on a cost reimbursement basis upon receipt and approval of a Payment Request Form showing cumulative expenditures by line item. Items to be reported on are, dollar amount requested, name of project worked on, any Davis-Bacon reports and project status compared to timeline submitted. Travel expenses shall be at State rates (see website at www.gao.az.gov/travel/default.asp) and reimbursable at cost. State rates as established by the Arizona Department of Administration, General Accounting Office are made part of this agreement

by reference herein. The jurisdiction will submit to GOER an estimated payment schedule and timeline for the project and the jurisdiction will be responsible for paying vendors associated with this project. GOER may provide to the jurisdiction a master template for the Payment Request Form. GOER will reimburse expenses to the jurisdiction using a warrant, transfer or by direct deposit of Recovery Act funds to the jurisdiction. Method of payment will be at the discretion of GOER and the jurisdiction will allow seven to ten working days for completion of payment of Recovery Act funds after receipt of a Payment Request Form. Any unspent funds associated with this agreement will be refunded to GOER at completion of stated agreement term. Final payment for this agreement will be released upon receipt of any final reporting requirements which are yet to be determined.

C. Reporting and Compliance Requirements

Payments by GOER to the jurisdiction shall be in strict compliance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (2 CFR 225 A-87) and shall adhere to the Federal Cash Management Improvement Act (CMIA) and comply with guidelines of the State Fiscal Stabilization Fund (SFSF), established under Recovery Act through Public Law 111-5 (H.R.1) and amended by Public Law 111-8 (H.R. 1105).

In addition, the Recovery Act specifically provides that funds may not be used by any state or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. The Recovery Act funds may be used in conjunction with other funding as necessary to complete projects, but tracking and reporting of Recovery Act funds must be separate, to meet the reporting and other requirements of the Recovery Act and other applicable law.

The accounting systems of all recipients and sub-recipients must ensure that funds from any award under this Recovery Act solicitation are not commingled with funds from any other source. Misuse of grant funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties.

Consistent with the special purposes and goals of the Recovery Act, and its strong emphasis on accountability and transparency, it is essential that all funds from a Recovery Act grant be tracked, accounted for, and reported on separately from all other funds. Recipients must also be prepared to track and report on the specific outcomes and benefits attributable to use of Recovery Act funds.

Funds associated with this AGREEMENT shall only be used to reimburse the jurisdiction for the purposes set forth on section I of this agreement. The jurisdiction must understand and comply with all applicable Federal and State policies, procedures, and requirements related to Recovery Act monies including, but not limited to, the following:

1). **"Buy American Act" Est. 1933**

The recipient understands that this award is subject to the provisions of section 1605 of the Recovery Act ("Buy American Act"). No award funds may be used for non-American sources of iron, steel, or manufactured goods for a project for the construction, alteration, maintenance, or repair of a public building or public work, unless the recipient provides advance written notification and upon approval of the federal grant agency, a waiver is issued allowing this activity.

2.) **Davis-Bacon and Related Acts: Wage Rate Requirements**

All applicants should be aware that the Recovery Act contains a provision on wage rate requirements that concerns projects funded or assisted by Recovery Act funds that employ laborers and mechanics. See section 1606 of the Recovery Act for the full text of this requirement.

3.) **ARRA Infrastructure Investment: Preference for Quick-Start Activities**
Pursuant to section 1602 of the Recovery Act, recipients of funds under this solicitation for infrastructure investment are to give preference to activities that can be started and completed expeditiously, and also are expected to use grant funds in a manner that maximizes job creation and economic benefit. For the details of this requirement, please refer to the text of section 1602 of the Recovery Act.

4.) **Recovery Act: Contracts**
Generally speaking, the Recovery Act places special emphasis on the use of fixed-price contracts awarded through competitive procedures.

5.) **National Environmental Policy Act Requirements**
Under section 1609 of the American Recovery and Reinvestments Act of 2009 all recipients must comply with any applicable environmental impact requirements of the National Environmental Policy Act of 1970 (NEPA), as amended, (42 U.S.C. 4371 et seq.), 40 CFR parts 1500 through 1508 and any State government requirements that implement NEPA.

III. EFFECTIVE DATE, TERM, TERMINATION, RENEWAL, AMENDMENT

A. Effective Date

This AGREEMENT shall become immediately effective only upon the following: (1) execution by GOER and the jurisdiction, and (2) execution by GOER's and the jurisdiction's attorneys, whose execution shall determine that this AGREEMENT is in proper form and within the powers and authority granted to GOER and the jurisdiction under the laws of the State of Arizona.

B. Term, Termination, Renewal

This AGREEMENT shall begin on October 1, 2010 and terminate on September 30, 2011, unless terminated as provided herein, or extended. Either party may terminate this AGREEMENT at any time by providing thirty (30) days written notice to the other party. If this AGREEMENT is extended by mutual written consent of the parties, all terms, conditions and provisions of the original AGREEMENT shall remain in full force and effect and apply during any extension period.

C. Amendment

This AGREEMENT may be modified, altered, extended or amended only in writing signed by, or on behalf of, both parties.

IV. NOTICES

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this AGREEMENT, unless otherwise noted, shall be delivered in person or sent by United States Mail, postage prepaid, to the parties at their respective addresses as set forth immediately below:

GOER	**City of Avondale Fire Department**
James J. Apperson, Director Governor's Office of Economic Recovery 1700 West Washington, Suite 300 Phoenix, Arizona 85007 Phone: (602) 542-6402	Charles McClendon, City Manager City of Avondale Fire Department 11465 W. Civic Center Drive Avondale, AZ 85323 Phone: 623-333-1025

V. ARBITRATION

This AGREEMENT is subject to arbitration to the extent required by A.R.S. § 12-1518.

VI. NON-AVAILABILITY OF FUNDS

Every payment obligation of GOER under this AGREEMENT is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this AGREEMENT, either party may terminate this AGREEMENT at the end of the period for which funds are available. No liability shall accrue to GOER or the State of Arizona in the event this provision is exercised, and GOER and the State of Arizona shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

VII. CANCELLATION FOR CONFLICT OF INTEREST

This AGREEMENT is subject to cancellation pursuant to Arizona Revised Statutes § 38-511, the provisions of which herein incorporated by reference.

VIII. AUDIT OF RECORDS

Pursuant to Arizona Revised Statutes § 41-1351, GOER shall retain all data, books, and other records relating to this AGREEMENT. The jurisdiction is subject to all audit oversight policies and procedures established by GOER.

IX. GOVERNING LAW

This AGREEMENT is made under, and is to be construed in accordance with, the laws of the State of Arizona. In the event of litigation arising under, out of, or relating to, this AGREEMENT, GOER and The jurisdiction hereby stipulate to the exclusive jurisdiction and venue of the Maricopa County Superior Court in Phoenix, Arizona.

X. ENTIRE AGREEMENT

This AGREEMENT contains the entire agreement and understanding of the parties hereto. There are no representations or provisions other than those contained herein, and this AGREEMENT supersedes all prior agreements between the parties, whether written or oral, pertaining to the same subject matter of this AGREEMENT.

XI. INVALIDITY OF PART OF THIS AGREEMENT

The parties agree that, should any part of this AGREEMENT be held to be invalid or void, the remainder of the AGREEMENT shall remain in full force and effect and shall be binding upon the parties.

XII. COUNTERPARTS

This AGREEMENT may be executed in any number of duplicate originals, photocopies or facsimiles, all of which (once each party has executed at least one such duplicate original, photocopy, or facsimile) will constitute one and the same document.

XIII. INTERPRETATION

This AGREEMENT is not to be construed or interpreted for or against either of the parties on the grounds of sole or primary authorship or draftsmanship.

XIV. PARAGRAPH HEADINGS

The paragraph headings in this AGREEMENT are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

XXXXXXXXXXXXXXXXX

THIS SECTION INTENTIONALLY LEFT BLANK

XXXXXXXXXXXXXXXXXXXXX

XV. IN WITNESS WHEREOF, the parties agree to execute this AGREEMENT.

Governor's Office of Economic Recovery
1700 W. Washington, Suite 300
Phoenix, Arizona 85007

City of Avondale Fire Department
11465 W. Civic Center Drive
Avondale, AZ 85323

_____
James J. Apperson, Director
Governor's Office of Economic Recovery

_____
Charles McClendon, City Manager
City of Avondale Fire Department

This AGREEMENT is in proper format and is within the powers and authority granted to the respective public agency.

_____
Joseph Kanefield
General Counsel
Governor's Office

_____
Name: _____
Legal Counsel

_____

ATTACHMENT 1

Allowable Expenditures:

City of Avondale

Description	Qty	Unit Cost	Total Allowable Cost
Cardiac monitors & maintenance	2		$62,250.00
Total Award Amount			***$62,250.00***

Jurisdiction Initials: _____

GOER Initials: _____

CITY COUNCIL REPORT

SUBJECT:
Ordinance 1429-1110 - Dedication of Easement to Southwest Gas for the Hill Drive Improvement Project

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Sue McDermott, P.E., Director of Development Services & Engineering, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt an ordinance dedicating a gas line easement to Southwest Gas (SWG) for the Hill Drive Improvement Project and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

BACKGROUND:

The City plans to construct roadway improvements and water and sewer line installation within the Hill Drive alignment (see attached vicinity map). Staff has completed the design of the street improvement project. There is an existing Roosevelt Irrigation District (RID) irrigation line running within the 4th Street alignment which is a shallow, concrete cast in-place line. With the new roadway crossing, the line will need to be reconstructed. An existing SWG line runs parallel to the RID line but does not currently have the separation that is required. These facilities will be relocated to the outside of the irrigation line corridor as part of this project. In order to relocate the line, a new easement for SWG is needed.

DISCUSSION:

The dedication of the easement to SWG is necessary to relocate an existing underground gas service line for the proposed roadway improvements along Hill Drive. The proposed easement is located within a City owned lot (see attached exhibit).

BUDGETARY IMPACT:

The proposed dedication of the easement to SWG will have no budgetary impact on the City.

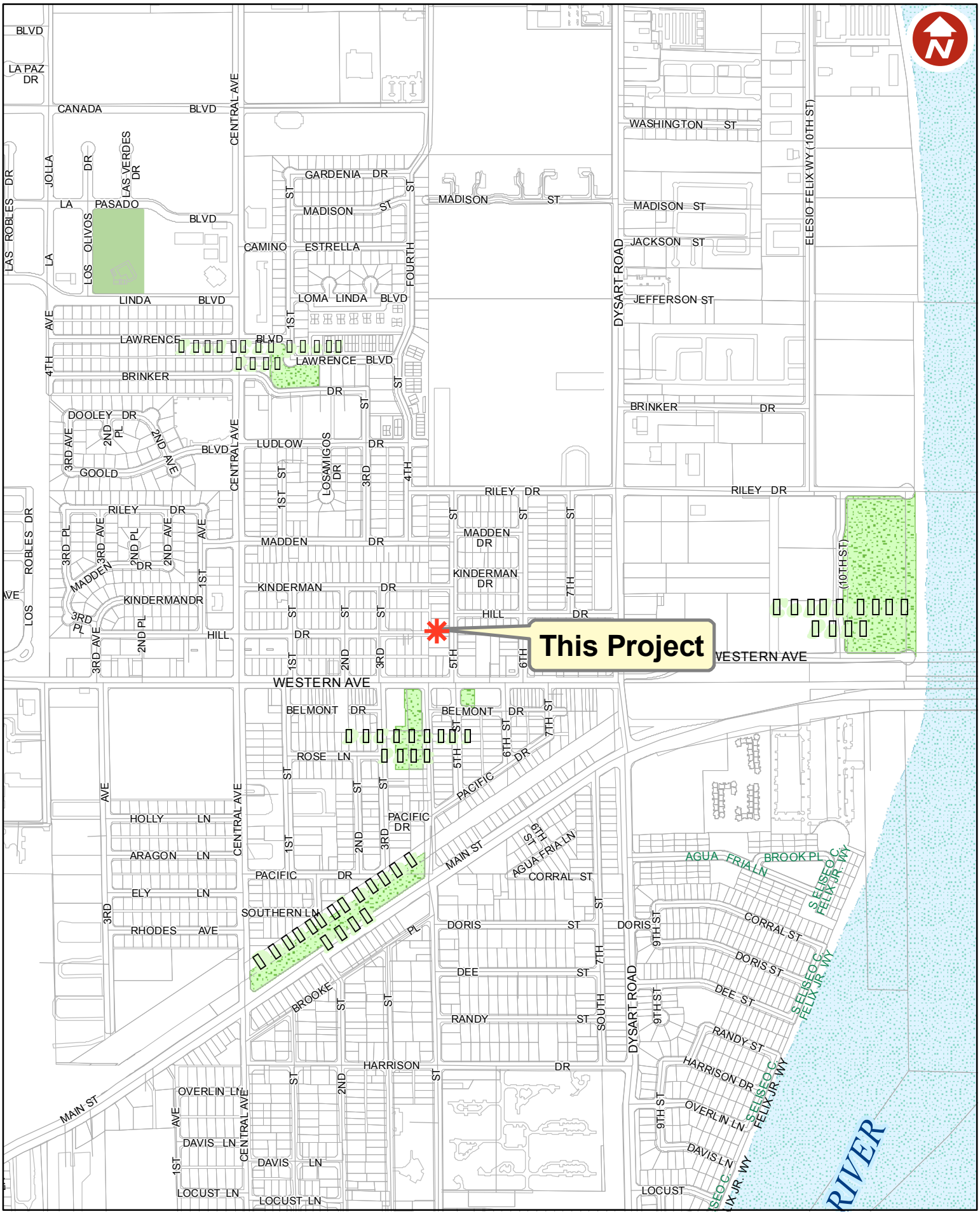
RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance dedicating a gas line easement to Southwest Gas (SWG) for the Hill Drive Improvement Project and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Vicinity Map
- Ordinance 1429-1110



Prepared February 2009
Avondale GIS/Water Resources

City of Avondale

Hill Street Extension Project

ORDINANCE NO. 1429-1110

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, GRANTING AN EASEMENT TO SOUTHWEST GAS CORPORATION FOR THE INSTALLATION AND MAINTENANCE OF NATURAL GAS PIPELINES FOR THE HILL DRIVE IMPROVEMENT PROJECT.

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

SECTION 1. An easement is hereby granted to Southwest Gas Corporation for the installation and maintenance of natural gas pipelines for the Hill Drive Improvement Project in the form attached hereto as Exhibit 1 and incorporated herein by reference, through, over, under and across certain real property, generally located along Hill Drive, west of 5th Street, described in Exhibit A to the easement form attached hereto as Exhibit 1.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, November 15, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT 1
TO
ORDINANCE NO. 1429-1110

[Southwest Gas Grant of Easement]

See following pages.

APN # 500-17-089

Recording Requested By/Return To:
Southwest Gas Corporation

Hold for Pick Up

SOUTHWEST GAS CORPORATION

GRANT OF EASEMENT

This form is used to acquire land rights for installation of pipeline(s) and appurtenances.

Prepared By	Mary Carson	Approved By	Greg Cooper GC
Sec. 10	T 1N R 1W	Meridian	G& SRB & M
County	Maricopa	State	Arizona
W.R. No.	1251313	W.O. No.	

I (We) City of Avondale, an Arizona municipal corporation

For and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, hereinafter referred to as Grantor(s), does hereby grant, convey, quitclaim and release unto **SOUTHWEST GAS CORPORATION**, a California Corporation, its, successors and assigns hereinafter referred to as Grantee, a perpetual easement 8.00 feet wide for the installation and maintenance of a natural gas pipeline or pipelines and appurtenances, across, over, under and through the following described property, to wit:

SEE ATTACHED EXHIBIT(s) "A" Attached Hereto and Made a Part Hereof

together with the right of ingress and egress to and from the said easement and the right to use existing roads for the purpose of constructing, inspecting, repairing, and maintaining said pipeline or pipelines and appurtenances and the removal or replacement of same, in whole or in part, at will.

Grantor agrees that no buildings, structures, fences or trees shall be placed upon, over or under said parcel of land, except for street, road or driveway purposes, which Grantor agrees shall not interfere with Grantee's exercise of the rights herein granted. Grantee agrees to work with due care in the exercise of its rights on the property and to restore it to reasonably the same condition which existed before the work was performed.

Except as provided above, Grantee agrees to pay all direct damages which are caused by the Grantee's exercise of the rights herein granted.

Page of APN # 500-17-089

W.R. No. 1251313 W.O. No. _____

The undersigned hereby affirms that there is no Social Security Number contained in this document submitted for recording.

TO HAVE AND TO HOLD said easement unto Grantee, its successors and assigns, together with all rights granted hereby.

IN WITNESS WHEREOF, the duly authorized representative of the undersigned has executed this Grant of Easement this

_____ day of _____ , _____ .

City of Avondale

Grantor _____
Officer's Name Title

Grantor _____
Printed Name Title

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ , before me, _____ ,
(here insert name of the officer)

a notary public, personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

SOUTHWEST GAS CORPORATION
GRANT OF EASEMENT
WR: 1251313

APN: 500-17-089

THAT PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 10, TOWNSHIP 1 NORTH, RANGE 1 WEST, GILA AND SALT RIVER BASE & MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

A STRIP OF LAND BEING THE EAST 8.00 FEET OF BLOCK 1, LOT 10, OF "HILL TRACT", RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, IN BOOK 29, PAGE 45, OF PLAT MAPS, INSTRUMENT 19440031754, ON NOVEMBER 4, 1944.

DEVELOPMENT SERVICES

SUBJECT:
Public Hearing – Conditional Use Permit for a Quik Trip Gas Station with a Convenience Store (PL-10-0027)

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Sue McDermott, Director of Development Services and Engineering (623) 333-4211

THROUGH: Charlie McClendon, City Manager

REQUEST: Conditional Use Permit (CUP) approval for a gas station with convenience store in the Coldwater Springs Planned Area Development (PAD).

PARCEL SIZE: Approximately 2.227 acres

LOCATION: Northwest corner of Avondale Boulevard and Coldwater Springs Boulevard.

APPLICANT: Mr. Juan D. Romero, QuikTrip Corporation (480) 446-6322

OWNER: Avondale Coldwater I, LLC, Mr. Todd A. Gellar (651) 222-8972

BACKGROUND:

The subject property was annexed April 7, 1997 as a part of the Coldwater Springs property, and was rezoned to Planned Area Development (PAD) on March 17, 1999. The PAD development plan indicated that this portion of the property was designated as commercial. The General Plan Land Use Map shows the property as Commercial (Exhibit A).

On September 4, 2007, the City Council approved the Avondale Coldwater I Master Site Plan (case DR-06-20) for approximately 8.3 acres at the northwest corner of Avondale Blvd and Coldwater Springs Blvd (Exhibit E). The Master Site Plan included the subject property, which was shown as a one-story 10,796 square retail building. The Master Site Plan expired on September 4, 2008.

SUMMARY OF REQUEST:

1. The applicant is requesting a Conditional Use Permit to operate a gas station with a convenience store on vacant property in the Coldwater Springs PAD. If approved, the applicant will make application for site plan approval and provide proposed building elevations, materials, and colors. The site plan request will come before both Planning Commission and City Council. A conceptual site plan is included with this application (Exhibit H).

2. The applicant has submitted a narrative which describes the use (Exhibit H). As proposed, the business would operate 24 hours a day and seven days a week.

3. Stipulations are recommended in order to mitigate potential adverse off-site impacts to surrounding properties.

PARTICIPATION:

The applicant conducted a neighborhood meeting at 7:00 p.m. on July 19, 2010 at City Hall. The neighborhood meeting was advertised in the West Valley View on July 2, 2010. The property was

posted with a public hearing notice sign on July 2, 2010. Notification letters were mailed to 127 adjacent property owners within 500 feet of the subject site on July 2, 2010.

According to the sign-in sheet and summary report provided by the applicant (Exhibit F), eight citizens attended the meeting, several of whom also attended the Planning Commission meeting on October 21, 2010 for this request. Items discussed included appreciation of having QuikTrip in the area, the need for a convenient place to buy fuel, store security, QuikTrip's Safe Place Program, anticipated number of employees, contributions to United Way to be used locally through QuikTrip's Contributions Committee, the schedule for delivery of fuel and store merchandise, delivery location in the rear of the building and the appropriate delivery route onsite, landscaping, lighting levels, and the status of the dirt piles on the site. One person present announced their support of QuikTrip coming to the site; there were no declarations of opposition from the others present.

A notice regarding the Planning Commission public hearing was published in the Tuesday August 31, 2010 edition of the West Valley View. The property was posted on or before August 31, 2010. Letters were sent to 127 property owners on or before August 31, 2010.

Seven public participation cards were filled out for the Planning Commission meeting, with three opposed, three in favor, and one neither. Of these, two persons addressed the Planning Commission, both in opposing the request citing a negative impact to their property value due to pollution, traffic, and noise (Exhibit I). Of the seven persons submitting public participation cards, six were present at the neighborhood meeting held in City Hall on July 19, 2010.

Staff has received a total of two voicemails and five emails on this subject. Both voicemails and two of the emails oppose the request, two emails are in favor of the request, and one email from the Coldwater Springs homeowners association president expressed a generally unfavorable opinion held by residents attending a meeting with QuikTrip representatives subsequent to the neighborhood meeting in City Hall. Of those leaving voicemails or emailing, two were present at the Planning Commission meeting, one in favor and one opposed.

A notice regarding the City Council public hearing was published in the Tuesday, October 26, 2010 edition of the West Valley View. The property's public notice sign was updated with the City Council date, time, and location on October 22, 2010. Letters were sent to 127 property owners within 500 feet of the subject property on October 26, 2010.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on October 21, 2010, and voted 6-0 to recommend approval of this request subject to the following stipulations (Exhibit I):

1. The Conditional Use Permit approval shall expire two years from the approval date if a building permit is not obtained.

2. Deliveries of fuel and convenience store merchandise are to take place between 6 a.m. and 10 p.m. Store merchandise shall be delivered through the rear of the building.

3. Minimum tree size on Coldwater Springs Boulevard shall be 3-inches for single trunk trees and 2.5-inches for multi-trunk trees. Sisso and Pine Trees shall be arranged to buffer the direct line of site between the pump island canopy and driving area from the residences to the south.

4. The Coldwater Springs Boulevard median adjacent to this development shall be improved in conformance with the Landscape Ordinance and the General Engineering Regulations.

5. Enhance the corner of Avondale Boulevard and Coldwater Springs Boulevard with an abundance of landscaping of extraordinary design and pattern, shaded seating, and City Center monumentation or public artwork.

6. The landscaped areas along Avondale Boulevard shall match the Coldwater Promenade to the north and Coldwater Springs to the south.

7. Prior to issuance of a building permit, the excess dirt onsite shall be removed.

8. Site plan approval for the QuikTrip site shall include completion of all off-site improvements along Avondale Boulevard and Coldwater Springs Boulevard for the entire master planned property, including deceleration and right-turn lanes on both Avondale Boulevard and Coldwater Springs Boulevard and sidewalks.

9. Provide paved access and connectivity to the Coldwater Promenade development to the north.

Commissioner Cotera was excused from the meeting.

ANALYSIS:

In order to grant a Conditional Use Permit, Section 108.C.2 of the Zoning Ordinance lists five findings that must be met. The burden of proof is upon the applicant. The findings and analysis are as follows:

a. That the proposed use (i) is consistent with the land use designation set forth in the General Plan, (ii) will further the City's general guidelines and objectives for development of the area, as set forth in the General Plan, and (iii) will be consistent with the desired character for the surrounding area.

i. The proposed use, gas station with a convenience store, is commercial. The General Plan Land Use Map identifies the subject property as Commercial. Therefore, the use conforms to the General Plan.

ii. The General Plan and Freeway Corridor Specific Plan (FCSP) identify Avondale Boulevard as a commercial and retail corridor, intended to be an area of more intense commercial and employment development. The FSCP states (p. 32) that the freeway corridor should be pedestrian friendly, with a landscaped and shaded plaza and similar amenities to encourage people to walk to a place rather than drive very short distances. The subject site and use fulfills this role for residents of the Coldwater Springs neighborhood and employees of adjacent surrounding non-residential developments for lunch, drinks, and snacks. The subject property is within the City Center Specific Plan (CCSP), and is identified as Neighborhood Commercial, but is not zoned City Center or subject to the design requirements of City Center. The Coldwater Springs PAD adopted by City Council in 1999 identifies the subject property as commercial.

iii. A convenience store with gas pumps is compatible with the desired character. The site will not abut against residences and is separated from them by more than 400 feet to the west and 60 feet to the south across Coldwater Springs Boulevard, a collector roadway. It is expected the future commercial between the subject property and the residences would be developed as office or retail.

b. That the use will be (i) compatible with other adjacent and nearby land uses, and (ii) will not be detrimental to (1) persons residing or working the area, (2) adjacent property, (3) the neighborhood, or (4) the public welfare in general.

i. The remainder of the eight acre commercial site is expected to develop with commercial uses. To the north is Coldwater Promenade, with office, retail, bank, restaurant, and personal services as approved uses, and to the southeast is Avondale's civic center complex with PIR offices, City Hall, police and courts buildings. The proposed use is compatible with these uses. East of the site is vacant farmland that is identified as Employment Mixed Use in the CCSP. Employment Mixed Use is expected to develop with professional office, retail, hotel, and personal services uses, with

residential as a possibility if constructed along with the employment uses. The proposed use is compatible with these possible uses. West and south of the eight acre commercial property is the Coldwater Springs neighborhood. The proposed use is compatible with the development.

ii. The use will not be detrimental to persons residing or working in the area, on adjacent properties, in the neighborhood, or to the public welfare in general. The site plan for the proposed use will comply with all zoning, traffic, engineering, fire safety, and building code requirements. Gas stations with convenience stores have safety operated in, and adjacent to, neighborhoods for decades across the United States without detrimental effects. The site has always been identified for commercial development.

c. That the site is adequate in size and shape to accommodate the proposed use, allow safe onsite circulation, and meet all required development standards including but not limited to setbacks, parking, screening, and landscaping.

· The site is of adequate size and shape to meet all requirements for parking, landscaping, screening, and allow for safe onsite circulation. The conceptual Site Plan (Exhibit H) shows the proposed layout of the convenience store building, the gas pump island, the parking, delivery area, drive aisles, and driveways. The conceptual Landscape Plan shows adequate room for required landscaping. Staff is recommending conditions of approval to be implemented at Site Plan approval regarding landscaping to enhance the buffering effects of trees along Coldwater Springs Boulevard to shield residences to the south from noise and visual impacts, and to provide a feature at the northwest corner of Avondale Blvd and Coldwater Springs Blvd to complement the view corridor from City Hall. If this Conditional Use Permit is approved, the site would still be required to go through the Site Planning process, where the landscaping and building architecture would be determined. The Planning Commission and City Council will both have an opportunity to review the Site Plan application.

d. That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.

· A full Traffic Impact Study for the entire eight acre master planned site was prepared in 2007 during the Avondale Coldwater I Master Site Plan approval process. That study was used as a basis for an updated traffic analysis conducted last month at staff's request to examine the changes in use on the 2.227 acre site from a retail building to a gas station with convenience store. The results of the study confirm that a deceleration and right-turn lane is required on both Avondale Boulevard and Coldwater Springs Boulevard, that a full-turning movement driveway on Coldwater Springs Boulevard will be safe, and the traffic study recommended that two additional seconds be added to the length of time the traffic light signal remains green at the intersection of Coldwater Springs and Avondale Boulevards for motorists on Coldwater Springs Boulevard. This recommendation was made to aid clearing vehicles stacked in the left turn lane on Coldwater Springs Boulevard waiting to turn north onto Avondale Boulevard, for example during school pick-up and drop-off peak hours, which potentially can conflict with vehicles on the QuikTrip site wishing to turn left onto Coldwater Springs Boulevard. Both Avondale and Coldwater Springs Boulevards are of adequate size and configuration to accommodate the anticipated traffic generated by the proposed use without additional lanes or widening, with the exception of the two deceleration and right-turn lanes proposed to be installed by the developer at construction as mentioned above and shown on the conceptual site plan.

Following up on concerns expressed by the surrounding property owners, on September 15, 2010, staff, the applicant, and the applicant's traffic engineer met to further discuss the results of additional traffic data collection and analysis. The applicant demonstrated that left-turn movements into, and out of, the site from Coldwater Springs Boulevard can safely be accommodated during a.m. peak hours with an additional two seconds added to the length of the green light time for vehicles on Coldwater Springs Boulevard heading east or turning north onto Avondale Boulevard. There is no

requirement to lengthen the existing median in Coldwater Springs Boulevard to prevent left-turns into and out of the QuikTrip site from Coldwater Springs Boulevard. In addition, the results confirmed that a deceleration and right-turn lane would be required on both Avondale Boulevard and on Coldwater Springs Boulevard to access the site.

e. That adequate conditions have been incorporated into the approval to insure that any potential adverse effects will be mitigated.

· Staff is recommending conditions of approval to insure that potential offsite adverse impacts are mitigated. They are:

a. The proposed use will operate 24 hour/7 days a week. Staff is recommending a condition of approval that deliveries of merchandise and fuel take place between 6 a.m. and 10 p.m. This is the same limitation approved for limited delivery times for Coldwater Promenade to the north.

b. Residents to the south, across Coldwater Springs Boulevard, are approximately 250 feet from the gas pump island canopy, which is typically well lighted. Staff is recommending a condition that trees along Coldwater Springs Boulevard be a minimum of 3-inch caliper instead of 2-inches at installation, and that they be arranged more densely so as to block the direct view of the canopy and the parking area by the residences to the south from their backyards. Also, the Zoning Ordinance prohibits light levels greater than one-foot candle at the property line of the site, which will keep lighting spillage low as it is across the City.

c. Aesthetic impacts to the view corridor from City Hall and for residents and visitors traveling on abutting streets. Staff is recommending a condition that the median in Coldwater Springs Boulevard be improved with landscaping and other enhancements, in conformance with the General Engineering Requirements Manual, and Landscape Ordinance. Another condition recommended by staff is that the southeast corner of the site be improved with a monument feature, public art, enhanced special landscaping, and shade canopy. This could be a corner feature equal, or superior, to the corner feature for Coldwater Promenade at Van Buren Street and Avondale Boulevard.

A third condition recommended by staff is that the landscaping theme for this property be complementary to the landscaping themes of Coldwater Springs to the south, which has pines, and Coldwater Promenade to the north, which has sisso trees, by using pine trees and sisso trees both on the subject property.

A fourth condition recommended by staff is that the dirt piles located on site be removed with construction of the subject property.

A fifth condition recommended by staff regarding aesthetics and offsite impacts is that all offsite perimeter improvements, for example landscaping and sidewalks, along Avondale and Coldwater Springs Boulevards for the entire eight acre development be installed with the first phase.

d. Due to increased traffic on Coldwater Springs Boulevard resulting from the use, staff is recommending a condition that an access drive connecting the subject site to the Coldwater Promenade development to the north be installed. This will allow motorists a second option to left turning onto Coldwater Springs, by allowing them to go north through Coldwater Promenade and then turning right onto Van Buren Street.

Conclusion:

Based on the information provided by the applicant, the public input received, the analysis by staff, and the recommendation of the Planning Commission, staff recommends approval of the requested Conditional Use Permit. This request meets the required criteria and will conform to the conditions of approval.

FINDINGS:

1. The proposed use is (i) consistent with the land use designations set forth in the General Plan, the Freeway Corridor Specific Plan, and City Center Specific Plan, (ii) furthers the City's general guidelines and objectives for development of the area, as set forth in the General Plan and Freeway Corridor Specific Plan, and (iii) is consistent with the desired character for the surrounding areas.

2. The use is (i) compatible with other adjacent and nearby land uses, and (ii) will not be detrimental to (1) person residing or working in the area, (2) adjacent property, (3) the neighborhood, or (4) the public welfare in general.

3. The site is adequate in size and shape to accommodate the proposed use, allow safe onsite circulation, and is capable of meeting all required development standards including, but not limited to, setbacks, parking, screening, and landscaping.

4. The site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.

5. Adequate conditions have been incorporated into the approval to ensure that any potential adverse effect will be mitigated.

RECOMMENDATION:

The City Council should conduct a public hearing and **APPROVE** Application PL-10-0027, subject to the following nine stipulations:

1. The Conditional Use Permit approval shall expire two years from the approval date if a building permit is not obtained.

2. Deliveries of fuel and convenience store merchandise are to take place between 6 a.m. and 10 p.m. Store merchandise shall be delivered through the rear of the building.

3. Minimum tree size on Coldwater Springs Boulevard shall be 3-inches for single trunk trees and 2.5-inches for multi-trunk trees. Sisso and Pine Trees shall be arranged to buffer the direct line of site between the pump island canopy and driving area from the residences to the south.

4. The Coldwater Springs Boulevard median adjacent to this development shall be improved in conformance with the Landscape Ordinance and the General Engineering Regulations.

5. Enhance the corner of Avondale Boulevard and Coldwater Springs Boulevard with an abundance of landscaping of extraordinary design and pattern, shaded seating, and City Center monumentation or public artwork.

6. The landscaped areas along Avondale Boulevard shall match the Coldwater Promenade to the north and Coldwater Springs to the south.

7. Prior to issuance of a building permit, the excess dirt onsite shall be removed.

8. Site plan approval for the QuikTrip site shall include completion of all off-site improvements along Avondale Boulevard and Coldwater Springs Boulevard for the entire master planned property, including deceleration and right-turn lanes on both Avondale Boulevard and Coldwater Springs Boulevard and sidewalks.

9. Provide paved access and connectivity to the Coldwater Promenade development to the north.

PROPOSED MOTION:

I move that the City Council accept the findings and **APPROVE** Application PL-10-0027, a request for approval of a Conditional Use Permit for a gas station with a convenience store in the Coldwater Springs Planned Area Development, subject to nine recommended stipulations.

ATTACHMENTS:

Click to download

- Exhibit A - General Plan Land Use Map
- Exhibit B - Area Zoning Map
- Exhibit C - Area Aerial Photo 2010
- Exhibit D - Summary of Related Facts
- Exhibit E - Expired Avondale Coldwater I master site plan
- Exhibit F - Neighborhood Meeting Summary Report
- Exhibit G - Citizen Review Process - Comments Received
- Exhbit H - Conceptual site plan & landscape plan, and Project Narrative
- Exhibit I - Draft Minutes of 10.21.2010 Planning Commission
- Exhibit J - Public Comments

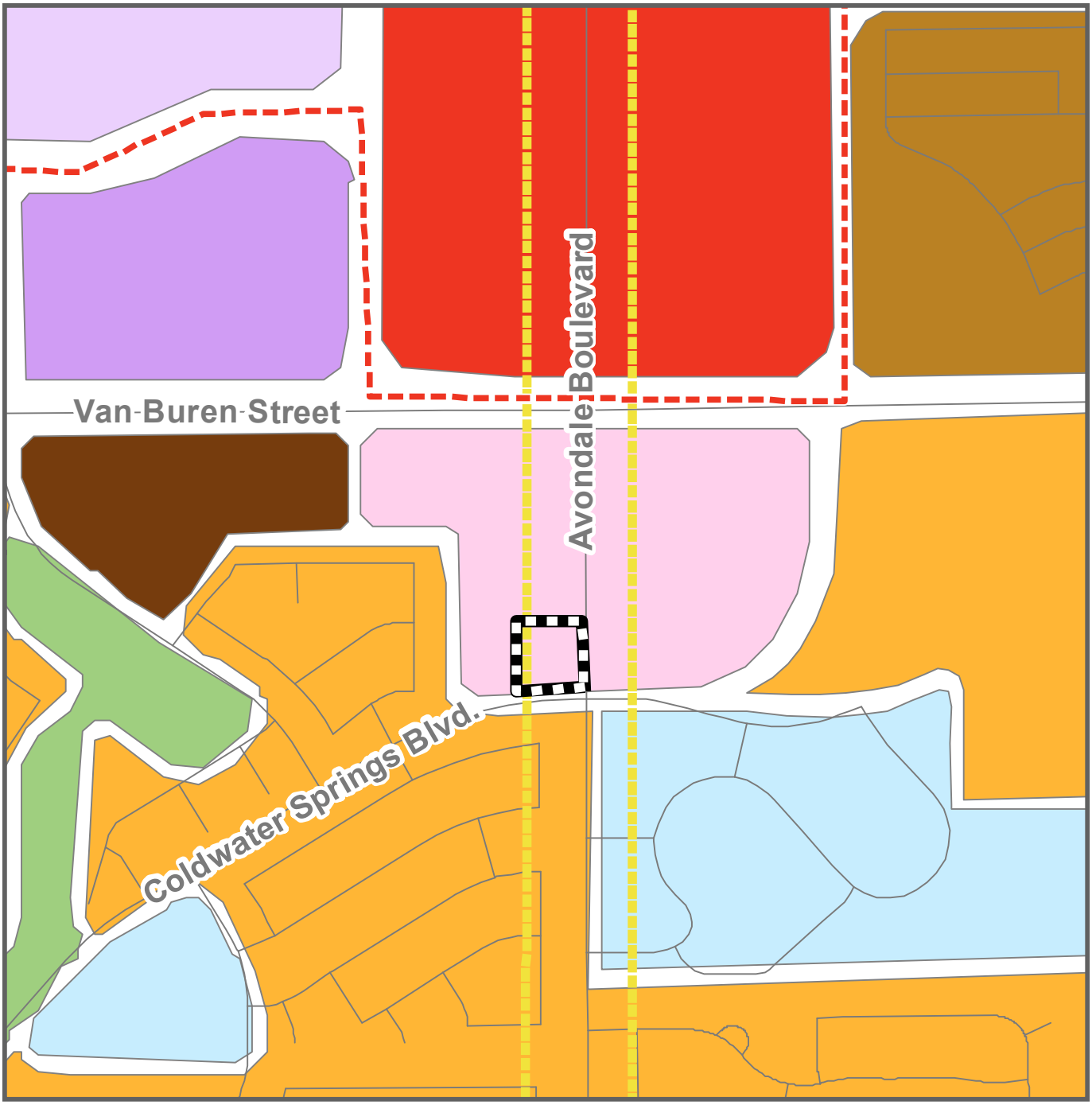
FULL SIZE COPIES (Council Only):

None

PROJECT MANAGER:

Eric Morgan, Planner II (623) 333-4017

Exhibit A



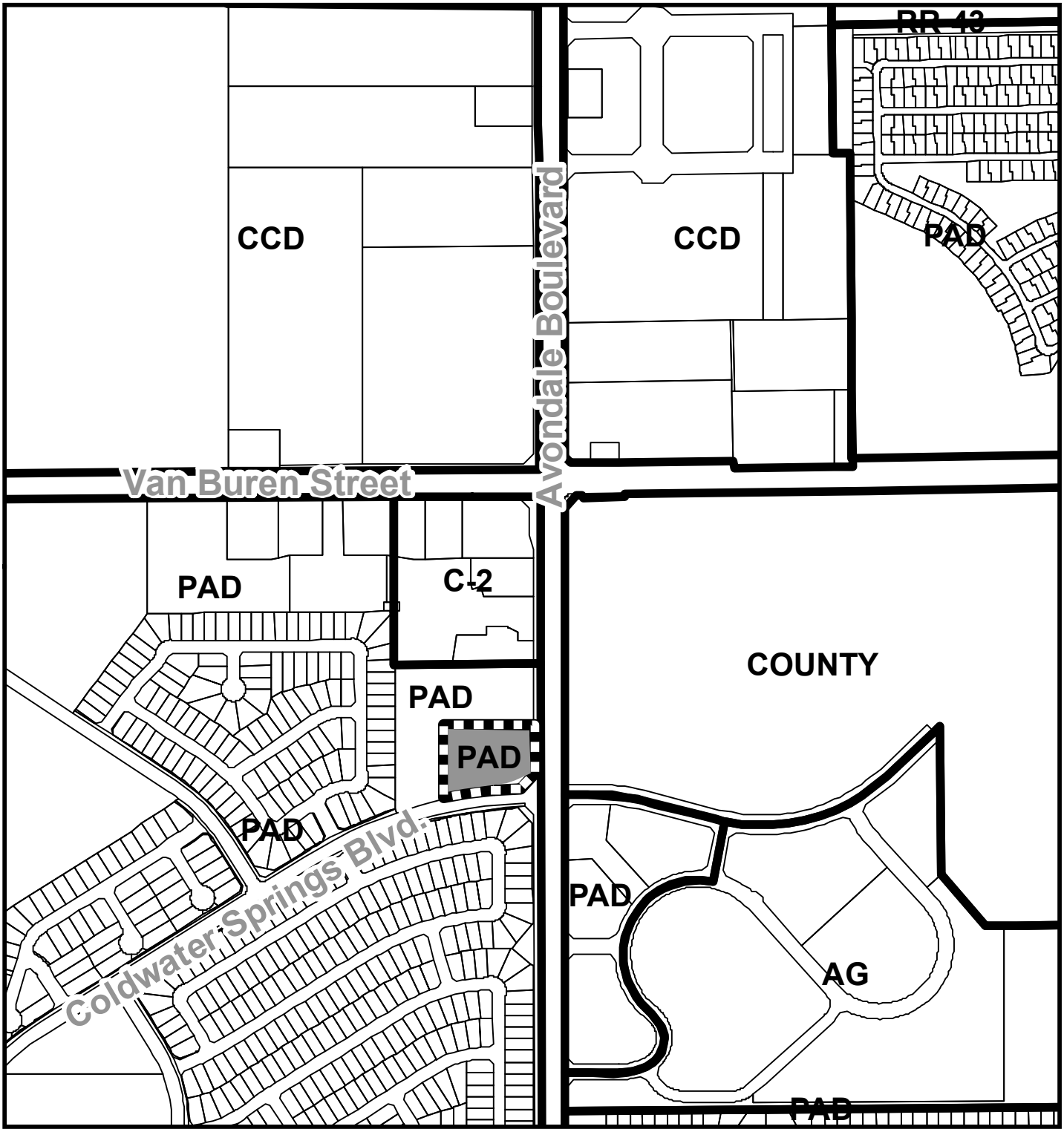
QuikTrip #1424
PL-10-0027

General Plan Land Use Map

- Commercial Corridor, Commercial Corridor
- Growth Area, Growth Area
- Commercial
- Employment
- Freeway Commercial
- High Density Residential
- Low Density Residential
- Medium Density Residential
- Medium High Density Residential
- Mixed Use
- Multi Family Residential
- Open Space
- Public Facilities

Subject Property

Exhibit B



Zoning Vicinity Map
QuikTrip #1424
PL-10-0027

Avondale

Subject Property

Exhibit C

Aerial Photograph 2010
QuikTrip #1424
PL-10-0027

Avondale

Subject Property

Exhibit D

SUMMARY OF RELATED FACTS
APPLICATION PL-10-0027 QUIKTRIP #1424

THE PROPERTY	
PARCEL SIZE	2.227 acres
LOCATION	NWC Avondale & Coldwater Springs Boulevards
PHYSICAL CHARACTERISTICS	Rectangular and relatively flat, with debris dirt mounds and a street retention area
EXISTING LAND USE	Vacant
EXISTING ZONING	Planned Area Development (PAD)
ZONING HISTORY	Annexed 4/7/1997, Rezoned to PAD 3/17/1997
DEVELOPMENT AGREEMENT	Yes (1997), but there are no outstanding issues.

SURROUNDING ZONING AND LAND USE	
NORTH	Planned Area Development (PAD) – Coldwater Springs (vacant)
EAST	COUNTY (agricultural uses)
SOUTH	Planned Area Development (PAD) – Coldwater Springs (residential)
WEST	Planned Area Development (PAD) – Coldwater Springs (residential)

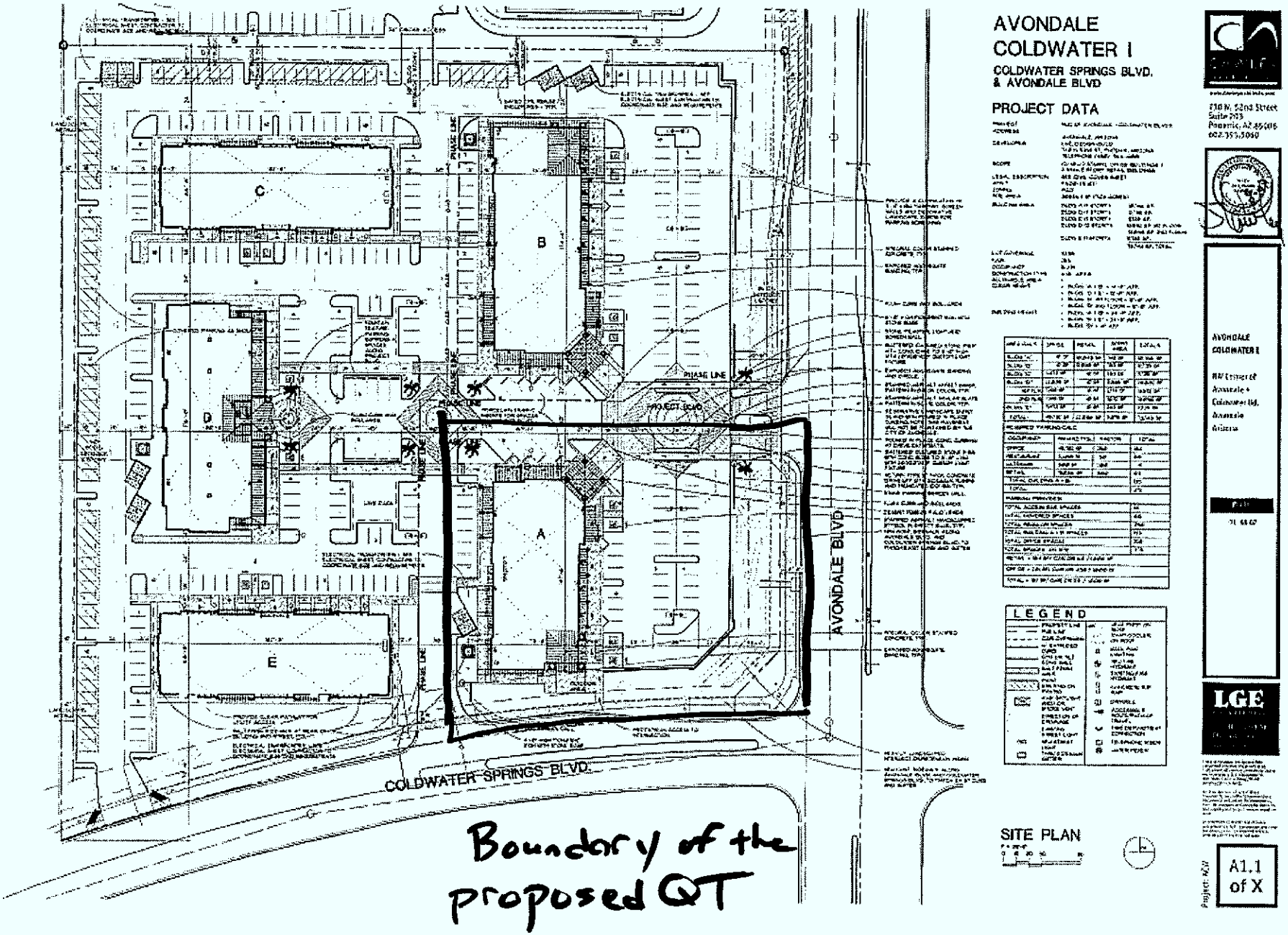
GENERAL PLAN
The subject property is designated as **Commercial** on the General Plan Land Use Map.

PUBLIC SCHOOLS	
SCHOOL DISTRICT(S)	Littleton Elementary School District Tolleson Union High School District
ELEMENTARY SCHOOLS	Collier Elementary School
HIGH SCHOOL	La Joya Community High School

STREETS	
Avondale Boulevard	
Classification	Arterial
Existing half street ROW	65 feet
Standard half street ROW	65 feet
Existing half street improvements	3 vehicular lanes, ½ landscaped median, bike lane, curb and gutter, street lights
Standard half street improvements	3 vehicular lanes, ½ landscaped median, bike lane, curb and gutter, detached sidewalk, street lights

STREETS	
Coldwater Springs Boulevard	
Classification	Minor Collector
Existing half street ROW	50 – 60 feet
Standard half street ROW	80 feet
Existing half street improvements	1 vehicular lanes, ½ median
Standard half street improvements	1 vehicular lane, ½ landscaped median/turn lane, bike lane, curb and gutter, detached sidewalk, and street lights

UTILITIES
There is an existing 24" water line in Avondale Boulevard and a 12" water line existing in Coldwater Springs Boulevard. Both transition across the entire frontage of the property. There are existing 18" sewer lines in Avondale Boulevard and Coldwater Springs Boulevard. Both transition across the entire frontage of the property.


AVONDALE
COLDWATER I
COLDWATER SPRINGS BLVD.
& AVONDALE BLVD
PROJECT DATA
LEGEND
SITE PLAN
A
B
C
D
E
PHASE LINE
PROJECT BLVD
AVONDALE BLVD
COLDWATER SPRINGS BLVD
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of X
Boundary of the
proposed QT

EXHIBIT E

EXHIBIT F

From: Romero, Juan [jromero@quiktrip.com]
Sent: Wednesday, July 21, 2010 10:45 AM
To: Eric Morgan
Subject: Neighborhood Meeting recap

Attachments: N1420_neighborhood sign in sheet_7-19-10.pdf

Good morning Eric,

I wanted to get you a recap of the neighborhood meeting held on Monday 19th of July at 7pm.

Attached you will find the sign in sheet showing the participents that signed in. There are 10 names on the sign in sheet but I would estimate not including staff 11 neighbors in attendence.

Overall feeling of the meeting was positive with several voicing opinions that this would be a good development for the city of Avondale. Comments of underserved in the gasoline capacity in the area were talked about and how the QT development would help with that. Currently Avondale citizens visit our Goodyear and Tolleson sites.

Questions were brought up by the attendees addressing security at the QT, stores near other neighborhoods in the Phoenix metro area, questions on some of QT's neighborhood programs ie Safe Place, United Way Contributions and our locat Contributions Committee.

QuikTrip provided site plan boards and renderings showing the site for familiarity to the attendees and questions were addressed accordingly.

Staff was in attendence as well as two Councilmembers also stopped by and posed questions and concerns, delivery times for product and landscaping/streetscape along the City Center Corridor.

All questions were taken into consideration and addressed.

There was no vocal opposition to the project at the meeting.

Eric please let me know if you need anything else.

Have a great day,

Juan D. Romero
QUIKTRIP Corporation
Real Estate Project Manager- Phoenix Division
Office: 480-446-6322
Mobile: 480-648-7077
Fax: 918-615-7401
jromero@quiktrip.com

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QuikTrip Corporation

NAME	ADDRESS	PHONE	EMAIL ADDRESS
Kent Lading	11591 W. Jefferson St	623-547-7044	Kentlading@msn.com
Allison Dering		6232294575	allmarie02@yahoo.com
Allison Anderson			allisonanfordey@aol.com
Dennis Anderson	11713 W Jefferson St	602-327-9449	dennisanninja-@yahoo.com
Mark Watratz	11570 W. Jefferson St	623 249 2740	
Eric Morgan	11465 W. Civic Ctr. Dr.	623-333-4017	emorgan@avondale.org
Tony & Lesa Swenson	109 S. 115TH Dr.	602-432-4458	tswinsew@cox.net
Jason McVey	113 S. 115th Dr	623-826-4260	Jmpinotenman1@yahoo.com
Ken Weise	141 N. 114th dr.	623-535-0729	kweise@avondale.org

EXHIBIT G

City of Avondale

MEMORANDUM

DATE: July 19, 2010

TO: File PL-10-0027 QuikTrip # 1424

FROM: Eric Morgan, Planner II

SUBJECT: Citizen Review Process

At 4:19 p.m. a Mr. Alex Fargus left a voicemail stating his opposition to the location of the proposed QT. His concerns were the proximity to homes, fumes from gas, and the increase to traffic in the area. He expressed a preference for a restaurant or park on the site.

Alex Fargus
623-792-5855

From: Linda Myrick [lmyrick03@cox.net]
Sent: Sunday, August 01, 2010 3:31 PM
To: Eric Morgan
Subject: QT station

I'm a resident and homeowner in Coldwater Springs.

I don't know why the planning commission would even consider such a location for a gas station. Putting a station at that location would not only put
our homeowner's in jeopardy but cause congestion at Coldwater Blvd. This is a business that needs to be put in a location that has an easy access and doesn't
cause congestion and a safety concern. There's plenty of land available around this area.

I'm not against a QT but I think there are limits to where one should be located.

Linda Myrick
12534 W. Madison St.
Avondale, AZ
623 925-8861
lmyrick03@cox.net

From: Jimdandyh [mailto:jimdandyh@yahoo.com]
Sent: Sunday, August 15, 2010 5:49 AM
To: David Fitzhugh
Subject: Proposed QT

Hello,
I hear that there is a proposal to build a QT on the NW corner of Coldwater Springs Blvd and Avondale Blvd.
BAD IDEA.
They will want to build an exit onto Coldwater Springs Blvd. This is a residential street. No way should commercial traffic empty into a residential neighborhood. The street as it stands right now, could not handle the traffic generated by a gas station. No less a 24 hour gas station. They lights from that type of developement with destroy the night and would shine into the adjacent houses. Might not be direct light, but it would not be as dark as it is now.
This station would also contribute to a huge traffice snarl during NASCAR and other events.
There is nothing good or convenient about the placement of the QT.
The property bordering Van Buren, which is a highway and major commercial artery, could handle a QT quite nicely, without pouring unwanted traffic into our neighborhood.
Maybe the station should be on the NE corner, so as to show it's closeness with City Hall.

Keep it out of our neighborhood. You know, there is a gas station north of the freeway...how about there?

Is there anyone else I can address this concern to?
This must be stopped at this location.

Jim Hari Jr
Coldwatersprings, Avondale

From: V TORTORICI [mailto:histepper1974@q.com]
Sent: Friday, August 27, 2010 3:46 PM
To: Email City Council
Subject: Proposed QT

Hi Councilman Weise,

Last month we met at City Hall on the way to the QT Neighborhood Meeting. You said you
would be interested to know how I felt about the project. That meeting was
okay. Representative of QT seemed sincere in their presentation and the hype about their organization. Since it was the first time we could see what their plans looked like it took some time to digest what they were proposing.

Last evening our HOA had a community meeting with QT representatives. Two representatives were there. Needless to say the majority of our residents at this meeting where not happy with the prospect of having QT in their backyards.

Most of the discussion centered around the entering and exiting of property, noise that would be produced by their customers and vendors, lighting, traffic coming into our sub-division, increased litter on our streets, etc. If you wish specifics let me know.

I found out yesterday from planning that the proposed Public Meeting for this project has been postponed to October 21. Our residents will show up for this meeting.

I expect that the City Council as well as the Planning Commission will be seeing more mail from our residents.

If you have any questions of me please call me at 623-932-2773 or e-mail me.

Roni Tortorici
President
Coldwater Springs Homeowners Association

Handout to PC 10/21/2010

COLDWATER SPRINGS RESIDENTS

Just say no to QT!

Do you want a gas station in your back yard? Of course not!

Please help us stop the new QT (Quik Trip gas station) from being put in on the corner of Avondale Blvd and Coldwater Springs Rd.

Why is a gas station bad for our neighborhood?

1. Increased noise (from extra cars, their engines, and the music that comes with those cars).
2. Increased pollution (from the car exhaust and the gasoline pumps).
3. Increased traffic in and around the neighborhood.
4. The possibility of an unsavory element gathering to meet at the gas station.

Do we really want those things near our homes and an elementary school?

What you can do!

1. Sign our online petition:
   http://www.petitiononline.com/NoQTCS/petition.html
2. Email or phone to let City Hall know how you feel:
   Ken Galica, 623-333-1600, kgalica@avondale.org
3. Attend the Avondale City Planning Meeting:
   Avondale City Hall, Council Chambers,
   6:00pm on Thursday, 10/18/2010

We need your help!

City of Avondale

DEVELOPMENT SERVICES DEPARTMENT

MEMORANDUM

DATE: October 19, 2010

TO: File PL-10-0027 QuikTrip # 1424

FROM: Eric Morgan, Planner II

SUBJECT: Citizens Review Process

An anonymous female left a voicemail with Ken Galica stating that she was a resident of Coldwater Springs and that a flier was going around the neighborhood opposing the location of a QuikTrip gas station with convenience store on the northwest corner of Avondale and Coldwater Springs Boulevards. She agreed with the fliers points and did not want the QuikTrip because she believes it will bring additional traffic and pollution.

She left her phone number (623) 266-4381.

From: Kent Lading [mailto:kentlading@msn.com]
Sent: Tuesday, October 19, 2010 2:16 PM
To: Ken Galica
Subject: Response to Flyer QT application

On Tuesday, October 19, 2010, a flyer was left on my door at 11591 W. Jefferson St. in the Coldwater Springs Development. The flyer was in opposition to the QT request to build a gas station on he corner of Avondale Blvd and Coldwater Springs Rd. Four points were stated as to why a gas station at this location would be bad for our communnity. I believe that the reasons given are not logical and I do not agree with them.

Point 1: Increased noise. I do not believe that this is a logical argument. Avondale Blvd is a major north-south corridor through Avondale. I believe that the primary users of this gas station would be the existing traffic. People who do not normally drive on Avondale Blvd would not drive on Avondale Blvd. just to get gas at this station. Drivers normally would use gas stations that are convient to them where they drive.

Point 2: Increased pollution. The question is would a gas station increase the amount of pollution. What if a strip mall were build at this location which is zoned for commercial use. Wouldn't these business add additional pollution? Since EPA laws are strick regarding fuel pumps, no pollution (gas fumes) can leak from pump nossels.

Point 3: Increased traffic. See point 1. I don't believe that this would be the case.

Point 4: Possibility of an unsavory element. I believe that this is an unfounded argument. This location is very close to the city administration buildings and the Avondale Police Department. Why would "an unsavory element" be meeting here? I have not experienced an unsavory element at any of the staions I have used in Avondale and Goodyear. I have used the QT station on Dysart Blvd. and the Circle K station on Buckeye and have never felt uncomfortable at any time.

For the record, I have no ties with QT. My interest in supporting this application is that all viable bussiness in a community make it a healthy community. I am happy that a business wants to build in our community and add to the financial base.

Regards,
Kent Lading

From: jason mcvey [mailto:gjmcvey@gmail.com]
Sent: Tuesday, October 19, 2010 7:59 PM
To: Ken Galica
Subject: Qt

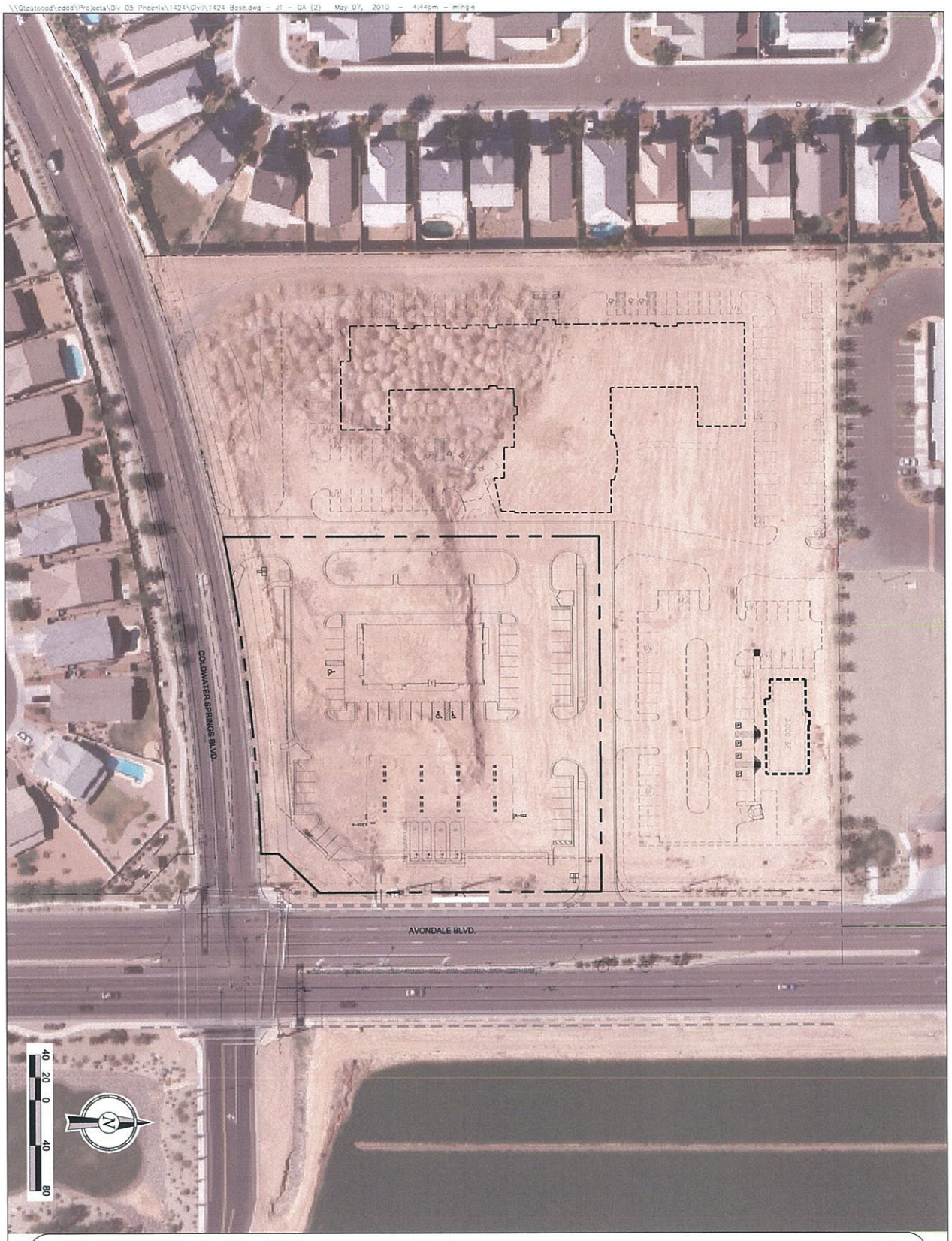
Ken galica,

This email is regarding a flyer I received on my door about the projected QT, on avondale and coldwater springs. I'm not sure if you represent the city or the group against QT. I am a firefighter/paramedic and live at 113 s 115th dr. I attended the first meeting, but will be unable to attend the coming meeting on Thursday. I would like to express that I am for QT, and think it would be perfect for the proposed intersection and our community. If there is anything else I can do or any other meeting please let me know.

Thank you

Jason mcvey
623-826-4260

EXHIBIT H



QuikTrip.
4705 South 129th East Ave.
Tulsa, OK 74134-7008
P.O. Box 21226
Tulsa, OK 74121-1226
(918) 615-7700

GENERAL NOTES

1. TYPE NOTES HERE.

No.	Revision	Date

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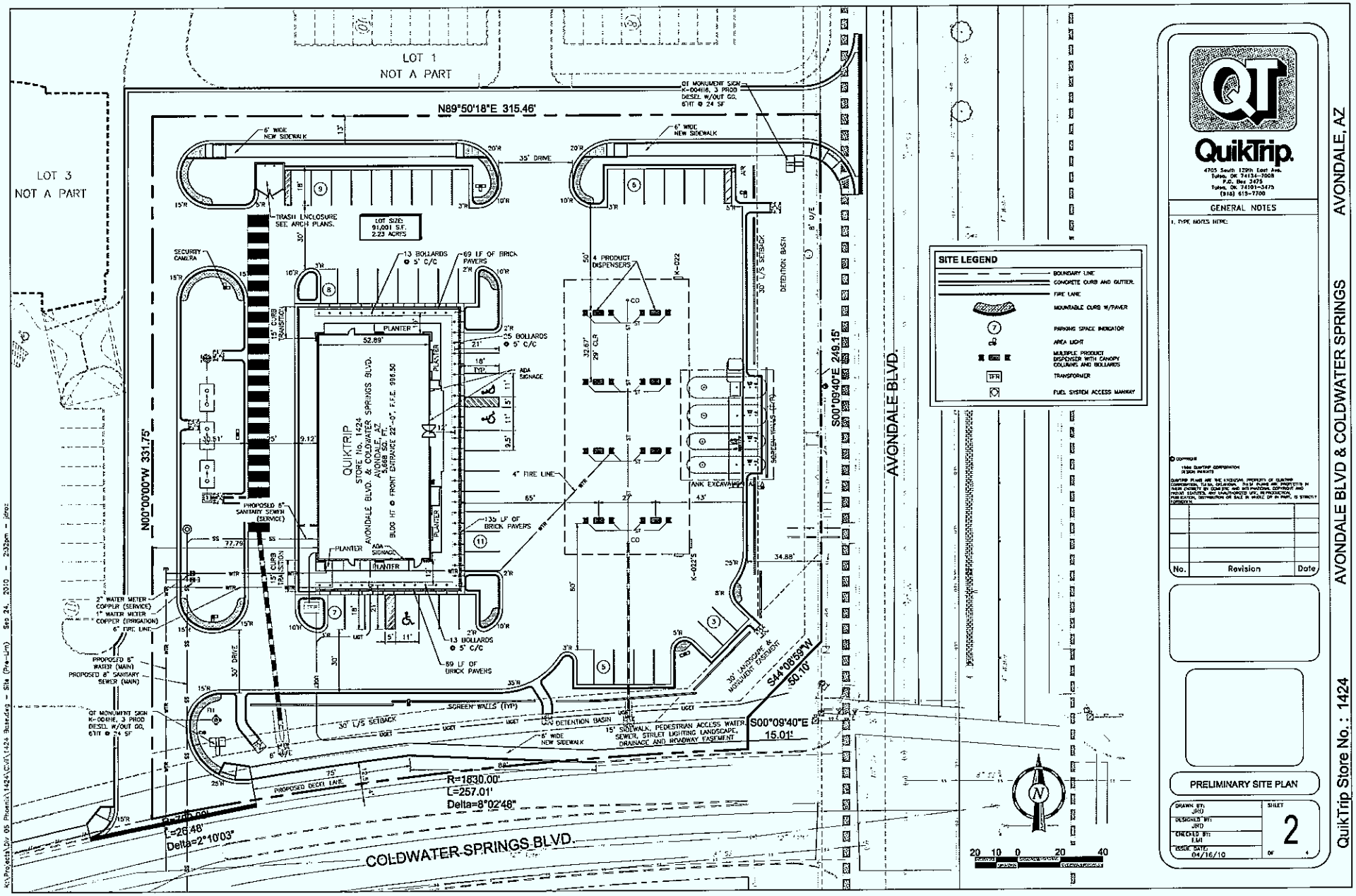
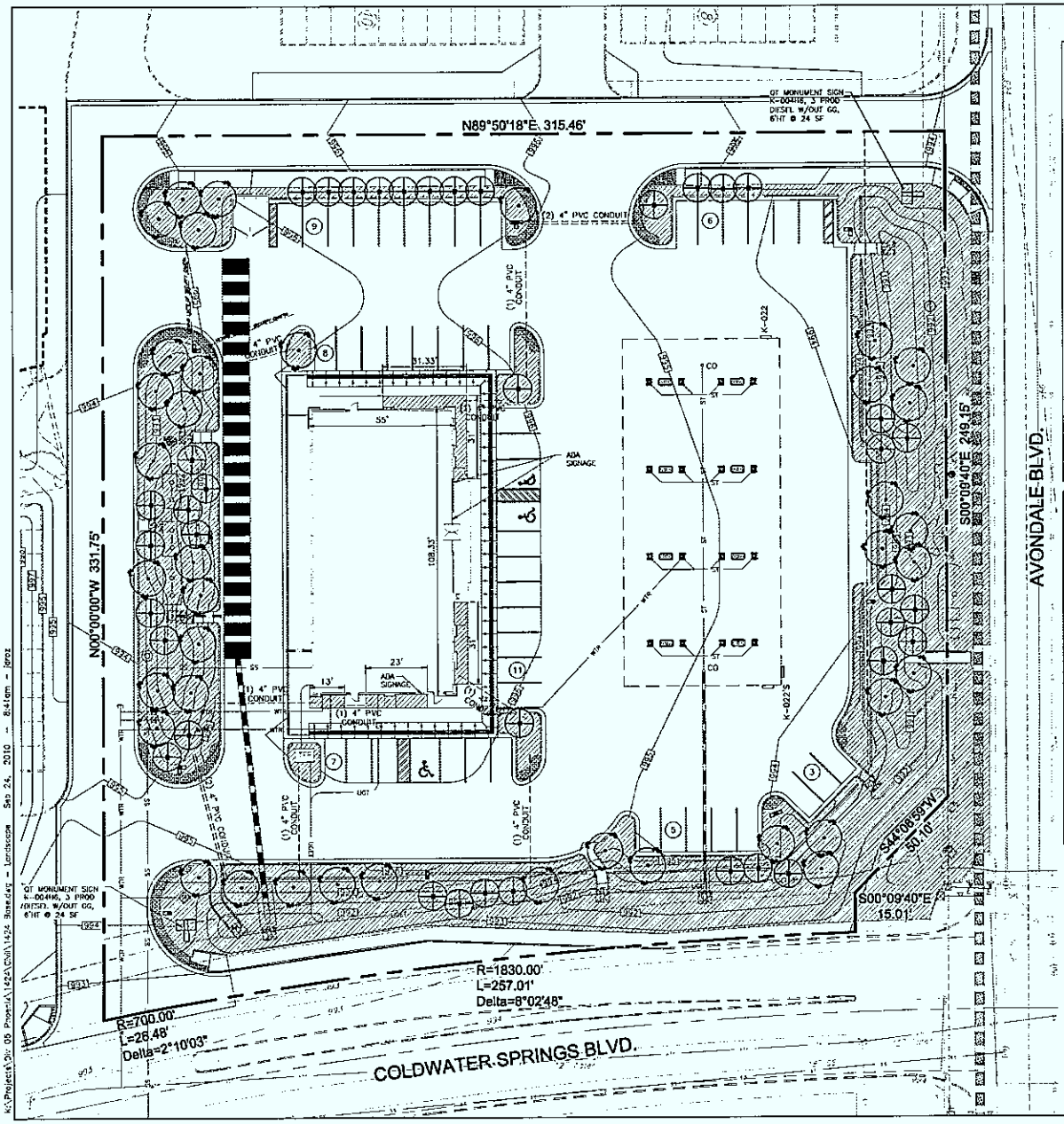
OVERALL PLAN LAYOUT
MASTER SITE PLAN

DRAWN BY: JED
DESIGNED BY:
CHECKED BY: TJM
ISSUE DATE: 04/16/10

SHEET 1 OF 4

QuikTrip Store No. : 1424 AVONDALE BLVD & COLDWATER SPRINGS AVONDALE, AZ


LOT 1
NOT A PART
LOT 3
NOT A PART
N89°50'18"E 315.46'
N00°00'00"W 331.75'
S00°09'40"E 249.15'
S00°09'40"E 15.01'
S44°08'59"W 50.10'
AVONDALE BLVD.
COLDWATER SPRINGS BLVD.
QUIKTRIP
STORE No. 1424
AVONDALE BLVD. & COLDWATER SPRINGS BLVD.
AVONDALE, AZ
BLDG HT @ FRONT ENTRANCE 22'-0", F.F.E. 996.50
LOT SIZE:
91,001 S.F.
2.23 ACRES
TRASH ENCLOSURE
SEE ARCH PLANS.
SECURITY CAMERA
13 BOLLARDS @ 5' C/C
69 LF OF BRICK PAVERS
25 BOLLARDS @ 5' C/C
ADA SIGNAGE
4 PRODUCT DISPENSERS
4" FIRE LINE
135 LF OF BRICK PAVERS
PROPOSED 6" SANITARY SEWER (SERVICE)
2" WATER METER COPPER (SERVICE)
1" WATER METER COPPER (IRRIGATION)
6" FIRE LINE
PROPOSED 8" WATER (MAIN)
PROPOSED 8" SANITARY SEWER (MAIN)
QT MONUMENT SIGN K-004H6, 3 PROD DESEL W/OUT GO, 6'HT @ 24 SF
6' WIDE NEW SIDEWALK
35' DRIVE
30' DRIVE
30' L/S SETBACK
SCREEN WALLS (TYP)
DETENTION BASIN
15' SIDEWALK, PEDESTRIAN ACCESS WATER, SEWER, STREET LIGHTING LANDSCAPE, DRAINAGE AND ROADWAY EASEMENT
30' LANDSCAPE & MONUMENT EASEMENT
PROPOSED DECEL LANE
R=1830.00'
L=257.01'
Delta=8°02'48"
R=700.00'
L=26.48'
Delta=2°10'03"
SITE LEGEND
BOUNDARY LINE
CONCRETE CURB AND GUTTER
FIRE LANE
MOUNTABLE CURB W/PAVER
PARKING SPACE INDICATOR
AREA LIGHT
MULTIPLE PRODUCT DISPENSER WITH CANOPY COLUMNS AND BOLLARDS
TRANSFORMER
FUEL SYSTEM ACCESS MANWAY
20 10 0 20 40
QuikTrip
4705 South 129th East Ave.
Tulsa, OK 74134-7008
P.O. Box 3475
Tulsa, OK 74101-3475
(918) 615-7700
GENERAL NOTES
1. TYPE NOTES HERE:
No.
Revision
Date
PRELIMINARY SITE PLAN
DRAWN BY: JRD
DESIGNED BY: JRD
CHECKED BY: EJM
ISSUE DATE: 04/16/10
SHEET 2 OF 4
AVONDALE, AZ
AVONDALE BLVD & COLDWATER SPRINGS
QuikTrip Store No.: 1424



Landscape Concept Plant Materials

Symbol	Common Name/Botanical Name	Size	Quantity
Trees			
	SISSOO Dalbergia sissoo	15 Gallon	39
	PHOENIX Prosopis hybrid	24" Box	39
Shrubs			
	DWARF OLEANDER Nerium oleander "Petite Pink"	5 Gallon	220
	RIO BRAVO SAGE Leucophyllum langmaniae	5 Gallon	210
	BAJA RUELLIA Ruellia peninsularis	5 Gallon	145
Groundcovers			
	LANTANA - NEW GOLD Lantana Montevidensis	5 Gallon	140
	BUSH MORNING GLORY Convolulus cneorum	5 Gallon	140
	DECOMPOSED GRANITE 3/4" "Gold"	3/4"	29,165 S.F.

	Trees		Shrubs		
	Provided Size/Quantity	Required Size/Quantity		Provided Size/Quantity	Required Size/Quantity
Streetscape					
1 Tree/20' of street frontage	30	30	Shrubs @ 10 per Tree	410	410
50% 15 Gallon	15	15	100% 5 Gallon	410	410
50% 24" Box	15	15			
Parking Areas					
1 Tree/5 Spaces	10	10	15 Shrubs/5 Spaces	135	135
50% 15 Gallon	5	5	100% 5 Gallon	135	135
50% 24" Box	5	5			
On-Site LS Requirement					
1 Tree/500 SF of required LS Area	38	38			
50% 15 Gallon	19	19			
50% 24" Box	19	19			

Building Planters
1 LF Planter/2 LF Building Frontage
216.33 LF OF FRONTAGE / 2 = 109.16 = 110 required
13+23+31+31+31.33=

Streetscape = 598 linear feet

Impervious Area = 74,180 square feet

Landscaped Area = 22,821 square feet (24% of site area)
19,400 square feet required

Total Site Area = 97,001 square feet

NOTE:
No Cacti will be provided as plant material.

QuikTrip
4705 South 129th East Ave.
Tulsa, OK 74134-7005
P.O. Box 3475
Tulsa, OK 74101-3475
(918) 615-7700

GENERAL NOTES

TWO 4" PVC PIPES ARE TO BE INSTALLED ON 2' C/C. PIPES ARE TO BE PLACED 18" (MIN. OF PIPE) BELOW CONCRETE CURB WITH BOTH ENDS MARKED WITH STAKES.

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No.	Revision	Date

PRELIMINARY LANDSCAPE PLAN

DRAWN BY: JRD	SHEET 4
DESIGNED BY: JRD	
CHECKED BY: EMI	
ISSUE DATE: 04/16/10	OF 4

AVONDALE, AZ

AVONDALE BLVD & COLDWATER SPRINGS

QuikTrip Store No.: 1424

20 10 0 20 40

PROJECT NARRATIVE
Conditional Use Permit

Proposed QuikTrip #1424
NWC of Avondale Blvd & Coldwater Springs
Avondale, Arizona

Introduction

The QuikTrip proposed for the northwest corner of Avondale Boulevard and Coldwater Springs requires a Conditional Use Permit.

The proposed QuikTrip development will include the construction of a new 5,668 +/- square foot retail convenience grocery store oriented toward Avondale Boulevard with 8 gasoline and 2 diesel dispensing pumps with a canopy above the fueling stations. It will provide numerous needed consumer products inside the store as well as the fuel under the canopy. As this is an already designated commercial node our development will fit into the area and provide area residents and consumers with a needed service. The QT would be compatible with the surrounding uses which include several types of retail establishments from fast food feeders to a strip center and grocery store.

This site is a 2+/- acre parcel currently part of a 7+/- acre planned development. The site is within the Coldwater Springs PAD. The proposed QuikTrip commercial development is consistent with the Avondale General Plan and the Avondale City Center Specific Plan. The site plan presented outlines a compatible land use to Coldwater Springs (the Coldwater Springs PAD designates this site for C-2 uses) and provides a cohesive extension and logical "conclusion" to the Avondale Promenade retail development.

QuikTrip has worked hard to earn a sterling reputation. It accomplished this with a cohesive business strategy combining generous site layout, demanding traffic planning, attractive building and landscape design and coupled with expert merchandising and excellent management practices. These efforts have made the QuikTrip business a successful partner to Cities and communities.

1. This QuikTrip development is consistent with the Coldwater Springs PAD, the Avondale General Plan, Freeway Corridor Specific Area Plan and the Avondale City Center Specific Plan.

2. This QuikTrip development is allowed in the C-2 (Community Commercial)

district and a gas station with convenience store is permitted subject to a conditional use permit.

3. This QuikTrip development is a compatible use to the overall area context; it is a cohesive extension to the Avondale Promenade, it fits well within the planned commercial development envisioned for the balance of the 7 acre parcel, and it provides necessary retail services for the Avondale Blvd Corridor and the adjacent neighborhoods.

4. The proposed site and building design features four sided architecture, attractive landscaping and excellent vehicular and pedestrian flow throughout the development.

5. Access to the site is via a cross easement with the Coldwater Promenade, and a common internal drive with access points onto both Avondale Blvd and Coldwater Springs. The access points and necessary median break are approved within the existing Coldwater Commons PAD.

6. Internal vehicle circulation is provided with an internal roadway, generous QuikTrip spacing and layout, and a cohesive design to integrate with the overall 7 acre site and the greater commercial center wrapping the Avondale Blvd/Van Buren corner. The QuikTrip has a designated loading area.

7. Pedestrian and bicycle access are encouraged and designed into this development with safe sidewalk access points serving the Coldwater Springs community, the adjacent bus stop, adjacent Avondale Civic Center and the Avondale Blvd. Corridor.

8. Although QuikTrip would like to consider themselves as a destination spot for customers, the volume and character of traffic will be that of what is present on the Avondale and Coldwater Springs Blvds today. The majority of QuikTrip's customer base comes from the existing traffic on the adjacent roadways.

9. There is NO offsite parking and NO offsite loading in this development.

10. This QuikTrip development is services neutral; it should not tax City

services beyond the normal and expected demands of commercial development.

11. The trash enclosures and drive lanes are screened as per Avondale requirements.

12. The fueling portion of the QuikTrip is located under typical gas canopies. There is no outside storage in the QuikTrip site plan.

13. QuikTrip is a 24/7 operation. Deleveries vary in times based upon needs and schedules of the many different vendors involved with supplying the store with merchandise. There are deliveries daily for some vendors and others that are once a week. Gas deliveries occur as a need for the store arises so there are no set schedules for those deliveries. As with any product the last thing you want is to be out of anything your customers would want.

14. The exterior lighting of the site will follow Avondale's ordinances to allow for on-site security and visibility while taking into consideration the adjacent residential to the South across Coldwater Springs Blvd and to the West, separated by a future development, landscaping and 6' masonry walls.

15. QuikTrip works closely with Cities and neighborhoods to ensure our stores are a good neighbor.

16. QuikTrip provides environmentally friendly features to our sites. Examples are reduced energy lighting in the stores, a reflective roof to help reduce solar heating within the store, as well as a monitored system which regulates and controls heating and cooling with in the store and our cooler system to maintain energy efficiency. The use of an upgraded concrete on site, as opposed to asphalt, also helps with reducing the heat island affect.

We seek approval of a Conditional Use Permit to allow for our use.

Project Team

Developer QuikTrip Corporation Attn: Juan Romero, Real Estate Project Manager 1116 E. Broadway Road Tempe, AZ 85282 (480)648-7077	**Property Owner** Avondale Coldwater I, LLC **421 N. Wabasha Street** **Suite 200** **St. Paul, MN 55102** **Phone: (651)222-8972** Attn: Todd Geller
Civil Engineer Undetermined at this time.	**Architect** JMS & Associates Attn: Kim Filuk 4001 N 3rd St. Suite 130 Phoenix, AZ 85012 (602) 234-1868

PLANNING COMMISSION
REGULAR MEETING

CITY COUNCIL CHAMBERS
11465 W. CIVIC CENTER DR.
AVONDALE, AZ 85323

Thursday, October 21, 2010
6:30 P.M.

I. CALL TO ORDER

The Regular Meeting was called to order at approximately 6:30 p.m. by Chairperson Iwanski.

II. ROLL CALL

The following members and representatives were present:

COMMISSIONERS PRESENT
David Iwanski, Chairman
Michael Long, Commissioner
Lisa Amos, Commissioner
Grace Carrillo, Commissioner
David Scanlon, Commissioner
Sean Scibienski, Commissioner

COMMISSIONER ABSENT
Angela Cotera, Vice Chair

CITY STAFF PRESENT
Tracy Stevens, Planning Manager, Development Services Department
Chris Schmaltz, Legal Counsel
Ken Galica, Planner II, Development Services Department
Eric Morgan, Planner II, Development Services Department
Margaret Boone-Pixley, Assistant Traffic Engineer
Linda Herring, Development Services Representative

VII. PUBLIC HEARING ITEMS

3. PL-10-0027: This is a public hearing before the Planning Commission to review and solicit public input on application PL-10-0027, a request by Juan D. Romero, QuikTrip Corporation, for approval of a Conditional Use Permit to allow a gas station with a convenience

DRAFT

store. The subject site is located at the northwest corner of Avondale Boulevard and Coldwater Springs Boulevard. Staff Contact: Eric Morgan

Eric Morgan, Planner II, Development Services Department, stated this item is a request for a Conditional Use Permit for a gas station with a convenience store. The subject property is located on the northwestern corner of Avondale Blvd. and Coldwater Springs Blvd. The General Plan identifies the land use as Commercial. The property is within the Freeway Corridor Specific Plan area and within the City Center Specific Plan area, and also within the commercial corridor as identified on the General Plan Land Use Map, which calls specifically for retail and commercial uses along Avondale Boulevard. The subject property is approximately 2.2 acres and is zoned Planned Area Development, or PAD, with Community Commercial, or C-2, uses as a part of the Coldwater Springs PAD. The site is currently vacant. In 2007, the entire 8 acre property, including the subject property, received a Master Site Plan approval as Avondale Coldwater I for retail and office uses on the property. That Master Site Plan subsequently expired.

North of the subject property is the Coldwater Springs Promenade, which has restaurants, a bank, retail, etc. To the southeast is Avondale's Civic Center complex with the Phoenix International Raceway offices, City Hall, and police and court buildings. East of the site is vacant farmland that is identified as Employment Mixed Use in the City Center Specific Plan. Employment Mixed Use is expected to develop with professional office, retail, hotel and personal service uses, and residential is allowed if constructed atop ground floor offices. West and south of the eight acre commercial property is the Coldwater Springs neighborhood.

The request tonight is only for a Conditional Use Permit (CUP), as the applicant is not ready to proceed with the site plan. A CUP would be valid for two years from approval if a building permit is not obtained. The approval request is for the use of the gas station with a convenience store at this location. It would also approve the site layout with the gas pump canopy to the east of the main building and parking as approximately laid out. The operation hours would be 24 hours a day, 7 days a week. Store merchandise deliveries would occur along the rear of the building if the request is approved. Future action on this item will be review and approval of the site plan for this site and the master site plan for the entire eight acre site before both Planning Commission and City Council. The site plan will review the layout of trees, final parking, building architecture, and colors and materials. No Neighborhood Meeting is required for site plan application.

Mr. Morgan explained that the Zoning Ordinance requires five findings to be met in order to grant a Conditional Use Permit:

a. The proposed use (i) is consistent with the land use designation set forth in the General Plan, (ii) will further the City's general guidelines and objectives for development of the area, as set forth in the General Plan, and (iii) will be consistent with the desired character

for the surrounding area. The gas station use is Commercial and the land use is Commercial, so the proposed use does agree with the General Plan. Avondale Boulevard is identified as a Commercial and Retail Corridor in the General Plan and the Freeway Corridor Specific Plan. The City Center identifies the area as Neighborhood Commercial. The Coldwater Springs PAD identifies the subject property as Commercial. A convenience store with gas pumps is compatible with the desired character of the area. The gas station and convenience store will provide residents and people working in the area with needed services. Sidewalk and vehicle connections will be available. The QuikTrip building is complimentary to offices and retail in the area, including City Hall and future development across the street of in the Employment Mixed Use area.

b. The use will be (i) compatible with other adjacent and nearby land uses, and (ii) will not be detrimental to (1) persons residing or working in the area, (2) adjacent property, (3) the neighborhood, or (4) the public welfare in general. Mr. Morgan reminded the Planning Commission that they will still be afforded the opportunity to see the entire master site plan in the future if this approval is granted tonight for the gas station and convenience store. As the PAD use includes C-2 uses, restaurants, retail, office, etc. are expected to abut the subject property, and to the east the use will be employment. The requested use is compatible with adjacent land uses. The site will have to meet all zoning, traffic, fire safety, building safety, and other requirements of the City, and thus will not be detrimental to the area.

c. The site is adequate in size and shape to accommodate the proposed use, allow safe onsite circulation, and meet all required development standards including, but not limited to, setbacks, parking, screening, and landscaping. Mr. Morgan stated that the applicant will not be requesting any variances. The landscaping area is required to be a 30 foot setback from Avondale and Coldwater Blvds. Parking must be at least 30 feet away from public streets and adequate parking will be provided. Overall, the site layout is adequate to accommodate the requested use.

d. The site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use. Mr. Morgan stated there would be two access points from public streets, a right-in/right-out from Avondale Boulevard and a full-turning movement, right-in/right-out/left-in/left-out access on Coldwater Springs Boulevard, as well as an internal access from the Coldwater Spring Promenade site to the north via a paved drive (indicated on the presentation slide). A traffic study completed in 2007 for the Avondale Coldwater I master site plan was updated in September 2010 at Staff's request. The traffic study confirmed that deceleration lanes were required along Avondale and Coldwater Blvds., that a full turning movement on Coldwater Blvd. would not be unsafe, and it recommended that an extra two seconds be added to the green traffic light to accommodate traffic proceeding straight through or making a right or left turn. Neither Avondale Blvd. nor Coldwater Springs Blvd. will have to be widened or will require additional lanes to accommodate the traffic generated by this use.

e. That adequate conditions have been incorporated into the approval to insure that any potential adverse effects will be mitigated. Staff is recommending nine stipulations totally, one of which is the standard CUP expiration after two years, and eight to mitigate potential offsite adverse effects.

Staff recommends the following conditions of approval:

1. The Conditional Use Permit approval shall expire two years from the approval date if a building permit is not obtained.

2. Deliveries of fuel and convenience store merchandise are to take place between 6 a.m. and 10 p.m. Store merchandise shall be delivered through the rear of the building. Mr. Morgan noted that these stipulated delivery times are the same as imposed on Coldwater Springs Promenade to the north.

3. Minimum tree size on Coldwater Springs Boulevard shall be 3 inches for single trunk trees and 2.5 inches for multi-trunk trees. Sisso and Pine trees shall be arranged to buffer the direct line of sight between the pump island canopy and driving area from the residences to the south. Mr. Morgan noted that the Zoning Ordinance limits the amount of light that is allowed to come to the property line to one candle foot at the property line. A photometric survey will be required.

4. The Coldwater Springs Boulevard median adjacent to this development shall be improved in conformance with the Landscape Ordinance and the General Engineering Regulations.

5. Enhance the corner of Avondale Boulevard and Coldwater Springs Boulevard with an abundance of landscaping of extraordinary design and pattern, shaded seating, and City Center monumentation or public artwork. Mr. Morgan noted this enhancement should be similar to or exceed the Coldwater Springs Promenade corner at Van Buren Street and Avondale Blvd.

6. The landscaped areas along Avondale Boulevard shall match Coldwater Springs Promenade to the north and Coldwater Springs to the south.

7. Prior to issuance of a building permit, the excess dirt onsite shall be removed. Mr. Morgan noted this includes all excess dirt on the entire eight acres.

8. Site plan approval for the QuikTrip site shall include completion of all off-site improvements along Avondale Boulevard and Coldwater Springs Boulevard for the entire master planned property, including deceleration and right-turn lanes on both Avondale Boulevard and Coldwater Springs Boulevard and sidewalks.

9. Provide paved access and connectivity to the Coldwater Promenade development to the north.

A Neighborhood Meeting was held July 19, 2010. Letters were sent to 127 adjacent property owners within 500 feet. Four to five QuikTrip team members attended the meeting, two City Staff members, a City Council member, and approximately eight private citizens. Attendees expressed appreciation that QuikTrip was coming to the area, they asked about QuikTrip's Safe Place Program, about the anticipated number of employees, contributions to United Way, the delivery schedule of fuel and merchandise, landscaping, lighting, and status of the dirt piles on site. Citizen input included one voicemail and three e-mails. Two contacts expressed opposition and one contact was seeking further information. To date, three more citizens have commented on the site. Two e-mails were in support, and one voicemail was opposed and referenced the flyer on the site being placed on doors in the neighborhood.

Staff recommends approval with nine stipulations.

Chairperson Iwanski invited questions.

Commissioner Scanlon asked what the City Center monumentation would entail. Mr. Morgan stated there is no specific layout for City Center monumentation, but that recommended the artwork be something that would tie in with the City Center area or theme.

Commissioner Scanlon asked about the residential wall height to the south on Coldwater Blvd. Mr. Morgan stated he did not know for sure but assumed at least six feet in height.

Commissioner Scanlon asked how bright one candle foot of light at the property line was. Mr. Morgan stated it is represented by light levels seen at new developments in the City. It is defined as the amount of light reflected from a white surface by one candle one-foot from the white surface.

Commissioner Scanlon asked if precautions would be taken so that no spillover of light would shine into the adjoining residential areas. Mr. Morgan stated that in addition to the photometric survey, the light sources under the canopy must be recessed as another precaution in addition to the recommended condition that larger trees be planted along Coldwater Springs Boulevard to screen the site from residences to the south. If there is a complaint on the light emitted, Code Enforcement has a light meter and can measure the light at the property line.

Chairperson Iwanski asked if the master site plan for this item returns to the Planning Commission in the future, could additional conditions be required if appropriate. Mr. Morgan stated the site plan can have addition stipulations imposed.

Commissioner Carrillo stated she had a question for the applicant.

Bill Lally with the law firm of Ridenour, Hienton and Lewis, PLLC., representing the applicant, stated he had a presentation for the Planning Commission.

Chairperson Iwanski asked Commissioner Carrillo if she would defer her question, which she agreed to do.

Bill Lally stated their CUP request is for 2.5 acres on an overall 8 acre site. They have been zoned Commercial for over 10 years. He noted the property is under two area plans, the Freeway Corridor Plan and the City Center Plan. Both area plans envision Commercial along Avondale Blvd. and a dense mixed-use, urban style Commercial development. They believe the QuikTrip and gas station is certainly an urban amenity that fits well within the area. He pointed out that this area of Avondale is underserved in terms of gas stations, and they believe their request fits well within the zoning and the area plans. When they bring the entire site plan to the Planning Commission, the Commissioners will understand that the design of the facility will fit well with the desired character for the area.

Mr. Lally pointed out that much of the focus of the Conditional Use Permit considers the effect of their project on the surrounding property. To the north and west they will be buffered by additional commercial buildings in the future, and to the south they will be buffered by a roadway. There will be various enhancements along the median of the roadway, as stipulated by Staff, as well as additional landscaping. Mr. Lally pointed out that they have tried to separate the customer base from the deliveries. They have developed a unique site plan that provides for a larger site and a dedicated delivery isle in the rear of the building to the west. Deliveries will come in through the rear of the building and will be placed in a separate room in the back. There will potentially be three entrances and exits located on the north, east, and the south side of the building. Additional parking is provided along the north and the south.

Mr. Lally reported that QuikTrip is embarking on a new generation of stores that are larger and provide more food options. Their goal is to separate the loading and unloading from the customer base, but also provide customers an opportunity to park on the north or south, enter the building, and have a quick exit that is much more convenient. Gas purchasers can park in front and merchandise customers can park along the side. They are also providing a substantial landscape isle that will buffer trucks from the properties on the west. He assured the Commissioners that when they return to the Commission, they will have a very specific site plan, landscape plan, lighting plan, and elevations for review. He presented a conceptual site plan to the Commissioners depicting the groupings of the trees and the density of the trees along the south. He stated an engineering plan will be submitted with the full site plan packet which will include engineering diagrams and engineering numbers so Staff can confirm that there is no spillage of light. The conceptual plan is a rendering of the engineered plan.

They believe they meet the conditions and the intent of the City Center plan by providing neighborhood commercial and convenience uses in an urban setting. He noted that QuikTrip has

routinely located stores in very similar locations throughout the Valley and they have adapted into residential neighborhoods. QuikTrip sites are generally larger than their competitors, providing room in between pumps to maneuver and circulate on site. They are providing an even larger site for this location. He assured the Commissioners they will provide deceleration lanes and improvements to the roadway to allow for ingress and egress, and they will build an offsite access point to the commercial development to the north.

Mr. Lally showed the Commissioners slides of QuikTrips around the Valley. He informed the Commissioners that QuikTrip partners with the police departments, providing desk space and a chair to fill out paperwork or reports. QuikTrip provides many more employees than other stores. QuikTrip employees are busy stocking, hosing off the sidewalk, taking care of the grounds, and making sure that they are good neighbors. The employees are active participants in the community as well. He noted that the stipulation of the delivery hours was a substantial adjustment for them, but they can meet the restriction. Many of the offsite improvements requested are also pretty substantial, as well as the offsite landscaping required in the first phase, which is outside the scope of the QuikTrip site. QuikTrip is intentional about finding sites where they can incorporate their prototype, which includes proper lighting, proper circulation onsite, and natural surveillance. These design standards were codified informally in a Crime Prevention Through Environmental Design (CPTED) program. There is also an area where police staff can come in and write reports.

QuikTrip is a privately-owned family company with nearly 500 stores and 10,000 employees. They have never had to lay off an employee. They invest in their employees and provide safe, clean stores for customers. Mr. Lally presented the Commission with statistics on the average number of employees per store, average salaries per store, and average sales tax collected per store. He stated that Avondale will find QuikTrip a great civic partner.

Chairperson Iwanski invited questions.

Commissioner Carrillo asked what the timeframe for the development was. Mr. Lally stated he does not have the QuikTrip site plan approval tonight because QuikTrip is about to launch a "Generation 3" store that is unlike any of their other stores. Potentially Avondale could be the first area to see a larger, more beautiful store than what is seen at other QuikTrips in the Valley. They need a few months to finalize the design, and then in the next few months they will return to the City for site plan approval. After site plan approval, he understands the QuikTrip Company wants to be under construction as soon as possible.

Commissioner Carrillo asked who would be responsible for the landscaping and if QuikTrip would be using local businesses to do the landscape work. Mr. Lally replied he could not answer that question, but he believes it is cost effective for any business to use local business in terms of landscaping and contracts. He believes QuikTrip shops locally, but he does not know at this time who QuikTrip will use for the landscaping.

Commissioner Scibienski asked if semi- trucks delivering the fuel and goods on Coldwater Blvd. were taken into account during the traffic study. Mr. Lally stated the traffic study examined the turning movements on the roadways. A turning study is always performed to make sure the fuel and delivery trucks can get in and out of the site with ease. On this site they have the good fortune of a dedicated delivery isle in the back, which will help with merchandise and gas deliveries. The gas tanks are along Avondale Blvd. and he predicts the delivery trucks will come off Avondale Blvd. and exit by going back up through the shopping center to exit at Van Buren Street.

Commissioner Scibienski stated his concern is the traffic congestion on Coldwater Springs Blvd., particularly with semi-trucks. He is familiar with the QuikTrip Goodyear gas station and there were traffic problems there that even the addition of a traffic light could not improve. While there may be room for the semi-trucks, it does not mean the ingress and egress will be quick. He asked where the fuel tanks will be located. Mr. Lally stated that City Staff will be provided with turning radii information on the site plan, and fuel trucks would off-load along the front of the site facing Avondale Boulevard. The trucks that deliver store merchandise will be off-loading on the west side, rear elevation, of the building. He reminded the Planning Commission that this site is 2.2 acres, larger than other gas stations in the Valley. He does not believe turning movements will be an issue, and they will discuss ingress and egress as the site plan moves forward.

Commissioner Scanlon asked where the gas trucks will park. Mr. Lally pointed out the underground fuel tanks on slides for the Commission, stating they are on the east side of the canopy along Avondale Blvd.

Commissioner Amos stated that at the QuikTrip at 19th Avenue and Southern, the delivery trucks do come from the back of the store. She does not see a back entrance to this building. Mr. Lally stated that when they go through the site plan approval process, their plans will show an entrance in the back on the elevation renderings.

Commissioner Amos stated that most QuikTrip sites are on two major arterials. As Coldwater Springs Blvd. is a minor street, she is concerned about the turning movements. She asked for an example of another store in a similar situation. Mr. Lally stated that QuikTrip has a number of locations and presented slides of sites adjacent to residential to the Planning Commission. They also have a number of stores similar to this one where access is at the major arterial and the secondary access is off of a residential road.

Commissioner Amos stated that access to Avondale Blvd. is shared, being a driveway for all of the businesses in the eight acre property.

Commissioner Scibienski stated the community's concern is over the traffic, which will be the most difficult thing to mitigate when the final site plan is presented. Mr. Lally stated the bulk of the conversation from day one has regarded traffic. They have tried to work closely with the

neighbors and to mitigate as many concerns as possible. That is why they did a traffic study, which recommended deceleration lanes on both streets and a significant recommendation that includes adding two seconds to the green light, which will change the current condition for the better. He asked the Commissioners to keep in mind that QuikTrips are a convenience use, not a destination use. People within a mile or so radius will be the ones to use the QuikTrip.

Chairperson Iwanski invited further questions, and hearing none, asked Staff to discuss the traffic issues.

Eric Morgan, Planner II, Development Services Department, stated that Margaret Boone-Pixley would report on the traffic study.

Margaret Boone-Pixley, Assistant Traffic Engineer, stated that Staff makes sure that an applicant meets industry standards for trip generation, demonstrates safe ingress and egress from the site, and that City standards are met. Upon review of the traffic study and discussions with the applicant and the applicant's traffic engineer, Staff is satisfied that the site meets industry and City standards for both safety and accuracy as to traffic generation from the site.

Chairperson Iwanski opened the public hearing on item PL-10-0027 and reviewed the speaker cards received from the public. He stated that Tony and Lesa Swinson are in favor of the project. Kent Lading is in favor of the project. Mr. Lading also submitted an e-mail dated October 19, 2010 in which he laid out his rationale for support of the project. An e-mail was received the Jason McVey regarding a flyer on the project that had been left on doors. He supports the project. Chairperson Iwanski noted that Ken Galica, Planner II, Development Services Department, had received an anonymous female voicemail based on the flyer. The voicemail stated she is against the project.

Chairperson Iwanski invited Dennis Anderson to address the Commission.

Dennis Anderson stated he is a resident near the proposed QuikTrip site and he is against the project. He is a fan of QuikTrip and buys fuel and food from the company. However, he feels this location is not the best location. He has three reasons for opposing the proposed QuikTrip location. 1) As the business is designed to increase traffic, it will increase the traffic in the neighborhood. 2) The extra traffic will produce extra noise from the idling engines, cars accelerating back onto the major thoroughfare, and from the music that drivers listen to in their cars at loud and sometimes disruptive volumes. 3) Cars will be idling and will produce exhaust. The fuel pumps do not absorb 100% of the pollution, which will produce bleed-off pollution. He has heard that on high pollution days, drivers should fuel at certain times so as not to produce more pollution. He is not convinced the residents want these problems in their neighborhood.

Chairperson Iwanski invited resident Allison Anderson to address the Commission.

Allison Anderson stated she has been a resident of Avondale for approximately two years. She loves QuikTrip and visits them often. However, she feels that this area is not underserved with gas stations because there is a Fry's gas station and a Circle K gas station in the area. A QuikTrip on the corner might be more convenient, but she does not think it is a good idea due to the increased traffic and other issues residents have brought up. She finds the area next to Collier Elementary with the park and the City Center to be aesthetically pleasing, and having a gas station on the corner will not be consistent with the character of the area. No matter how many trees are used, it is still a gas station. She could find no hard data that gas stations increase home values. She would not want her home values to decrease in this economy because a gas station is present.

Chairperson Iwanski invited questions from the Commissioners and heard none.

Chairperson Iwanski invited resident Veronica Tortorici to address the Commission. She did not wish to speak, but voiced she is opposed to the project.

Chairperson Iwanski asked Lee Baliki to address the Commission. He did not wish to speak.

Chairperson Iwanski invited the public to address the Commission. No one wished to speak. Chairperson Iwanski invited Mr. Lally to respond to the public comments.

Mr. Lally stated that every gas station built in Maricopa County has to have a vapor recovery system on the nozzle, underneath the canopy, and at the gas drop area. This mechanism recovers the vapors. The Arizona Department of Weights and Measures is mandated to test stores located all over the Valley. As Maricopa County is a non-attainment area, this department must visit each gas station once a year. The Weights and Measures Department has informed him that they visited 95 QuikTrip stores in 2010 and have found zero failures in terms of the vapor recovery system. QuikTrip is using the latest and greatest technology. Some vapor will be released from a gas station, but in Maricopa County gas stations are watched very closely. As federal funds are hanging in the balance, the Weights and Measure Department takes this issue very seriously. As QuikTrip stores have easy access, this reduces the time cars are idling and cars cannot have their engines running while filling up with gas. Their delivery trucks do not idle. As they are providing ample parking, cars will not be stacked in the drive waiting for a parking spot. He assured the Commissioners that QuikTrip will knock their socks off with their site plan because this will be the nicest-looking QuikTrip in Arizona. City Staff will require that their store fit in with the character of the area and the design guidelines. In terms of home values, empty lots with large dirt piles adjacent to homes as opposed to a state-of-the-art convenience store that provides a service to the neighborhood is something home buyers will take into consideration.

Chairperson Iwanski invited further questions for the applicant.

Commissioner Amos asked what the appeal is of this site given its challenges of being near neighborhoods and not having a major arterial as one of the streets alongside the store. Mr. Lally

stated the person who chose the site has shared that much of Avondale Blvd. properties from the freeway down are either not zoned correctly, already zoned for a PAD that excludes gas stations, are within an area of the City Center where a gas station would not be appropriate, or the property is not available. This site is attractive because it is on Avondale Blvd. and it is at a stop light and a conjunction of two roadways. Those issues make the location attractive, as well as it is close to a stable resident population that will utilize the convenience of the store. While they would have loved to be at the northwest corner of Van Buren and Avondale Blvd. that corner is not available. Many other PADs in the area exclude gas stations outright and this was their only option for the area, particularly as there are gas stations to the north, south, east and west. This location is their sweet spot and they believe they can design a store that fits the character of the area.

Commissioner Amos stated that all the QuikTrip stores look the same to her. She asked if the applicant was really going to do something different in the area. Mr. Lally stated the site plan will show that this store will be much upgraded and very unique. It is the intent of QuikTrip to design a Generation Three store for the area that has one single prototype. This prototype is top secret and they hope to unveil this Generation Three store in the next few months. He cannot think of a better location than the City Center in Avondale to build their store. He produced slides of the top secret prototype store, stating that Staff has already viewed the slides. Years and years of experience tell QuikTrip that they want to separate the gas buying customers from the food buying customers. This prototype store includes everything that Staff has wanted, to include vertical articulation and horizontal articulation on the front plane.

Chairperson Iwanski asked to view another slide and asked if it depicted residential properties to the back and side of the store location. Mr. Lally stated that QuikTrip grew up in the mid-west and the stores are overwhelmingly accepted in the Missouri and Tulsa areas. The store depicted in the slides the Commissioners are viewing is indeed in a residential area. The Avondale QuikTrip will be substantially different than all other gas stations seen in Phoenix.

Chairperson Iwanski invited further questions. There were no requests to speak. Chairperson Iwanski closed the public hearing for item PL-10-0027. He invited a motion and a second.

Commissioner Carrillo moved that the Planning Commission accept the findings and recommend approval of application PL-10-0027, a request for a Conditional Use Permit for a gas station with convenience store, subject to the nine Staff-recommended conditions of approval. Commissioner Scanlon seconded the motion.

1. The Conditional Use Permit approval shall expire two years from the approval date if a building permit is not obtained.

2. Deliveries of fuel and convenience store merchandise are to take place between 6 a.m. and 10 p.m. Store merchandise shall be delivered through the rear of the building.

3. Minimum tree size on Coldwater Springs Boulevard shall be 3 inches for single trunk trees and 2.5 inches for multi-trunk trees. Sisso and Pine trees shall be arranged to buffer the direct line of sight between the pump island canopy and driving area from the residences to the south.

4. The Coldwater Springs Boulevard median adjacent to this development shall be improved in conformance with the Landscape Ordinance and the General Engineering Regulations.

5. Enhance the corner of Avondale Boulevard and Coldwater Springs Boulevard with an abundance of landscaping of extraordinary design and pattern, shaded seating, and City Center monumentation or public artwork.

6. The landscaped areas along Avondale Boulevard shall match the Coldwater Springs Promenade to the north and Coldwater Springs to the south.

7. Prior to issuance of a building permit, the excess dirt onsite shall be removed.

8. Site plan approval for the Quik Trip site shall include completion of all off-site improvements along Avondale Boulevard and Coldwater Springs Boulevard for the entire master planned property, including deceleration and right-turn lanes on both Avondale Boulevard and Coldwater Springs Boulevard and sidewalks.

9. Provide paved access and connectivity to the Coldwater Promenade development to the north.

Chairperson Iwanski called for a vote.

ROLL CALL VOTE

Chairperson Iwanski	Aye
Vice Chair Cotera	Excused
Commissioner Long	Aye
Commissioner Amos	Aye
Commissioner Carrillo	Aye
Commissioner Scanlon	Aye
Commissioner Scibienski	Aye

The motion passed unanimously.

Chairperson Iwanski thanked the public for submitting speaker cards.

DEVELOPMENT SERVICES DEPARTMENT

MEMORANDUM

DATE: November 8, 2010

TO: File PL-10-0027 QuikTrip #1424 Conditional Use Permit

FROM: Eric Morgan, Planner II

SUBJECT: Citizen Participation

Additional public comments for the file.

From: Jimdandyh [mailto:jimdandyh@yahoo.com]
Sent: Thursday, November 04, 2010 5:03 AM
To: Sue McDermott
Cc: David Fitzhugh; Tracy Stevens; Margaret Boone-Pixley
Subject: Re: FW: Proposed QT

While the tone appears to be angry, I am not. Just being short and emphatic.
Thanks

--- On Thu, 11/4/10, Jimdandyh <jimdandyh@yahoo.com> wrote:

From: Jimdandyh <jimdandyh@yahoo.com>
Subject: Re: FW: Proposed QT
To: smcdermott@avondale.org
Cc: dfitzhugh@avondale.org, tstevens@avondale.org, mboone-pixley@avondale.org
Date: Thursday, November 4, 2010, 4:43 AM

Ms McDermott,
Yes I understand what was.
Now is the time to look at what is NOW.
That is what the citizens of Coldwater Springs Development want. Remember, it's what WE THE PEOPLE want. NOT what the QT wants.
There are alternative places to place that station. One would be fronting Van Buren, next to the existing M&I Bank. What's wrong with that area?
You are in error stating that Avondale is an alternate access to our neighborhood. Guess what, that is the corner we are talking about. You know, right out the front door of city hall?
So, if the station is to remain where QT wants it, then make them pay for the speed bumps.
You expertly state that Coldwater is a collector road. GLORY BE, I am impressed with that label. How about increasing the speed limit thru Garden Lakes. After all, that is an ARTERY, that has been strangled for their community. Also, the id of collect, is proper?

The street is a little longer than 1 mile. Just exactly what traffic is it collecting? It is definitely NOT a thoroughfare
We will see increased traffic down Coldwater, by virtue of the apartment complex on Links and Van Buren. Their residents will enter our community thru their west gate onto Links; then south to Coldwater; then east to the proposed debacle. Result, increased traffic on Cold water. Am I missing something here? Do you disagree with this?
IF QT is the only entity that desires the station on this corner, just why can't it move?
I know you won't get the corner all gussied up, but hey, a book store or a nice restaurant would be so much better and would EMPLOY so many more AVONDALE RESIDENTS!
You chased away WalMart, now make QT move!
I really want to hear - Why You Can't - Do tell.

Sincerely,
Jim Hari Jr
Coalition to Keep QT AWAY

--- On Wed, 11/3/10, Sue McDermott <smcdermott@avondale.org> wrote:

From: Sue McDermott <smcdermott@avondale.org>
Subject: FW: Proposed QT
To: "jimdandyh@yahoo.com" <jimdandyh@yahoo.com>
Cc: "David Fitzhugh" <dfitzhugh@avondale.org>, "Tracy Stevens" <>, "Margaret Boone-Pixley" <mboone-pixley@avondale.org>
Date: Wednesday, November 3, 2010, 4:10 PM
Mr. Hari-
The following is a response to your email. If you have any questions, please feel free to call Margaret or me.

Sue McDermott, P.E.
Director of Development Services & Engineering
City of Avondale
11465 W. Civic Center Drive
Avondale, AZ 85323-6809
Phone: 623-333-4211
Mobile: 623-826-1527
Fax: 623-333-0420
From: Margaret Boone-Pixley
Sent: Wednesday, November 03, 2010 4:06 PM
To: Sue McDermott
Subject: RE: Proposed QT

Regarding speed humps; Avondale has suspended the Neighborhood Traffic Management Program (NTMP) which was the mechanism for all residents of Avondale to request speed humps on local streets (those with homes fronting them). Because of

the budget reductions necessary to provide the basic needs to residents (fire, water, sewer, etc.), it was necessary to suspend programs such as the NTMP.

The City did receive a request for Coldwater Springs in 2008. However, but because it is a collector roadway it did not qualify for the program.

Furthermore, a development like the proposed QT will not likely add traffic to Coldwater Springs Boulevard since there are more convenient and efficient ways to approach the development (Van Buren and Avondale). Of course, those residents who patronize the QT will use CWS, but they are already accounted for in the current volumes of that collector roadway.

Therefore, it could not be stipulated that QT install speed humps on the collector roadway.

Margaret M. Boone-Pixley
Assistant Traffic Engineer
City of Avondale
11465 W. Civic Center Drive , Suite 120
Avondale, AZ 85323
Phone: 623-333-4217
Email: mboone-pixley@avondale.org
Fax: 623-333-0420

From: Jimdandyh [mailto:jimdandyh@yahoo.com]
Sent: Wednesday, November 03, 2010 03:02 PM
To: Tracy Stevens
Cc: David Fitzhugh
Subject: Proposed QT

Hi,
Seeing as how it is inevitable that there will be a QT Station on the NW corner of Coldwater Springs Blvd and Avondale Blvd, I have a request.
How about having QT provide the 'speed bumps' on CWS Blvd? A few years back the city tried to institute a program to slow traffic on this street. They fell short of money to continue.
Recently we had a vehicle traveling over 60 mph, (guesstimate) lose control and slam into someones' backyard fence. Maybe with the added traffic control, this could have been prevented.
There is no way that QT can please everyone. And there is no doubt that the traffic will increase on this NEIGHBORHOOD street.
The city slowed down Avondale Blvd when it enters the beloved Garden Lakes Snob Community to 25 mph. HOWEVER, they will not do that on CWS Blvd. Sounds like

typical political favoritism. They even rerouted 107th Ave JUST FOR THAT NEIGHBORHOOD!
Show us some moxie and control the flow.
After all, you have a lot to make up for with that ugly box project on Avon Blvd with the vomit looking colors! Good Show....viva la...YUCK!

Jim Hari Jr
CWS Neighborhood

Attn. Planning Division

CITY OF AVONDALE
NOV 8 2010
DEVELOPMENT SERVICES

Re: Proposed QuikTrip
Avondale & Coldwater Springs intersection
Avondale, Arizona

We strongly object to having a gas station-convenience store built in this location. This has developed into a quality residential area for young families with children going to our nearby schools.

INAPPROPRIATE LOCATION

A convenience market selling gasoline needs to be closer to the freeway and Freeway 10 is only a few miles from the proposed site. There are several lots available on Avondale Blvd which are more appropriate for this kind of development.

POTENTIAL NEIGHBORHOOD PROBLEMS

This kind of business brings in all types of people thus increasing the chance of police activity in & around the center and our homes. We will have an influx of people to the area that do not normally frequent this area. We will have 24 hour noise, 24 hour lights, night deliveries of gasoline & products along with continuous activity on that corner. Liquor sales will be individual bottles &/or cans for immediate consumption. This is not a positive plan for our quiet area.

DECREASED PROPERTY VALUES

Don't let the clout and money of this group - QuikTrip- over ride the residents/owners wishes. This type of development would further devaluate our property. Some of us have had a 50% devaluation in property value already.

MORE SUITABLE PLAN

This type of development will discourage a more upscale retailer from locating in this center. We feel tax revenue for the city of Avondale can wait until they find a more desirable business for this parcel.

FULTON HOMES

When purchasing this property from Fulton Home Builders we were told an office building was to be built on that lot. That statement played a big part in the decision to buy the house.
Plans stated by the city of Avondale at the time of property purchase were as follows. "7 acres for retail was approved.
3.5 acres for two 1 story office buildings
at 11,500 sq. ft. each and one 2 story office
building at 27,000 sq. ft."
What happened to this plan???? No No No to the Quik Trip project.

We do not approve of this plan.

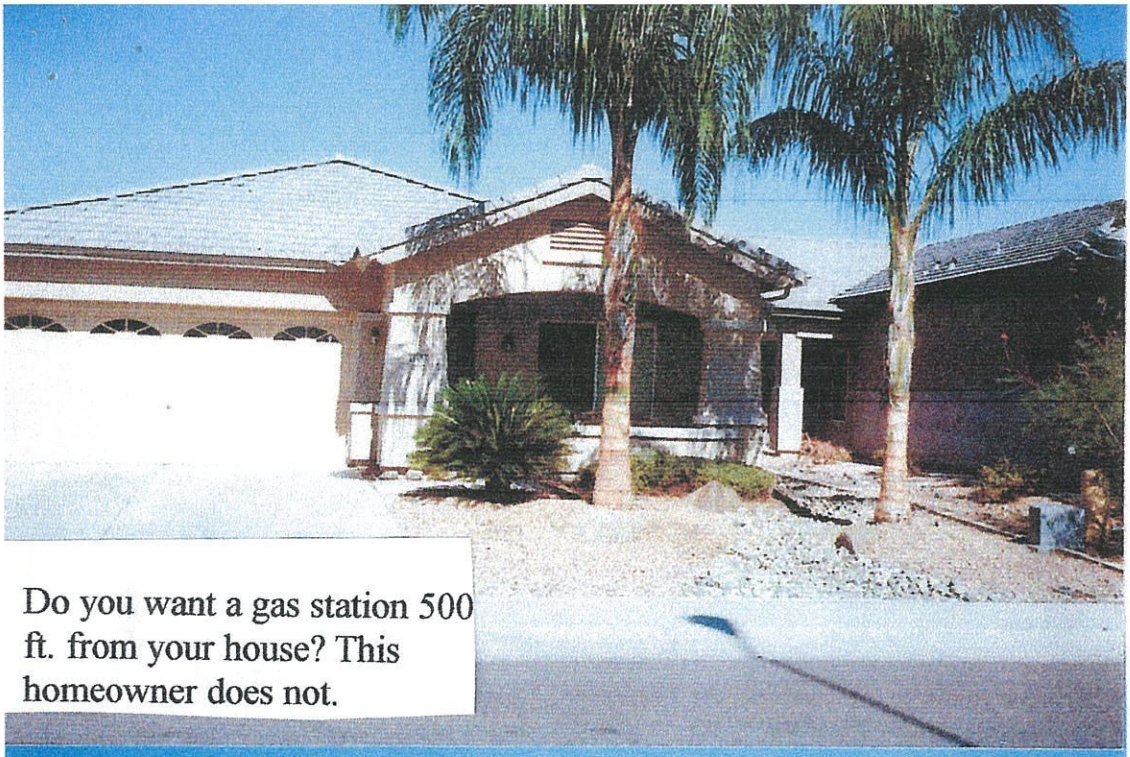
Sincerely

Shirley & Paul Watratz
Watz@earthlink.net

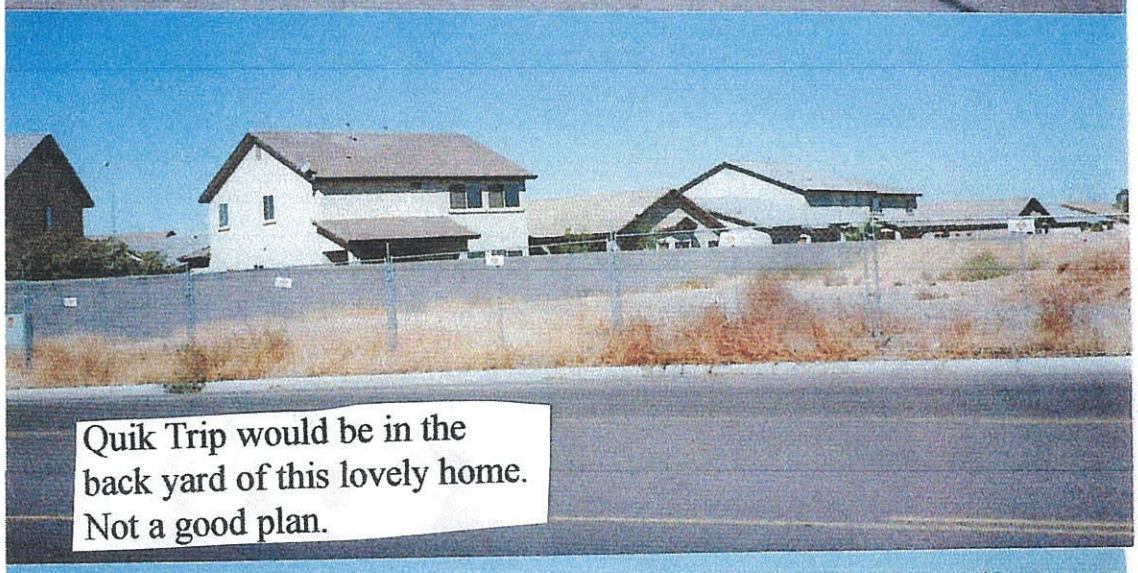
c.c.
Juan D. Romero
Project Manager
QuikTrip
1116 E. Broadway Rd.
Tempe, AZ 85282

cc.
Eric Morgan
Avondale city planner
623 333 4000
Avondale, AZ.

Cc.
Chester Cadieux III
CEO Quik Trip



Do you want a gas station 500 ft. from your house? This homeowner does not.



Quik Trip would be in the back yard of this lovely home. Not a good plan.

Other sites available for the Q.T. project.

These homes back up to proposed site of Q.T. Do you want it in your back yard?

DEVELOPMENT SERVICES

SUBJECT:
Public Hearing and Ordinance 1431-1110 – Zoning Ordinance Text Amendment to Section 3, Commercial Districts

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Sue McDermott, Development Services and Engineering Department Director (623) 333-4211

THROUGH: Charlie McClendon, City Manager (623) 333-1015

REQUEST: Approval of a comprehensive Text Amendment to Zoning Ordinance Section 308, *Cashion Business District.*

LOCATION: Citywide

APPLICANT: Development Services Department, Planning Division

BACKGROUND:

As part of a comprehensive update to Avondale's Zoning Ordinance, staff is proposing a Text Amendment to the Cashion Business Zoning District (CBD).

A majority of properties on the northern edge of Cashion have historically been used for commercial purposes. However, most of the area directly abutting Buckeye Road is currently zoned Single Family Residential (R1-6). With this residential zoning, most existing commercial uses are considered nonconforming. While nonconforming commercial uses may continue to operate in a residential zone, these uses are subject to certain provisions not faced by conforming uses, such as strict limitations on expansion or enlargement of the use. New commercial development on vacant parcels is not permitted by the current R1-6 zoning.

In an attempt to remediate the problem, the Cashion Business Zoning District was adopted by the City Council in October of 2002. The intent of the district was to promote commercial development within the Cashion area and remove the nonconforming status from the existing businesses. The CBD District includes relaxed development standards from those that are typically required in the City's standard Commercial Districts, including, but not limited to, reduced setback requirements. These relaxed standards are important in order to make development of smaller parcels viable.

The existing version of the Cashion Business District is attached as Exhibit A of this report. This section is currently organized as follows:

- **Section 308.A, Permitted Uses:** This subsection includes a list of the uses which are permitted by right in the Cashion Business Zoning District. Relative to most of the City's other commercial districts such as C-2 (Community Commercial), the uses currently permitted in the CBD are limited. Examples of uses which are not permitted in the CBD but are permitted in the C-2 include video rental stores, thrift stores, tanning salons, and automobile service and diagnostic facilities (e.g. oil change shops).

- **Section 308.B, Uses Permitted Subject to a Conditional Use Permit (CUP):** This subsection includes a list of the uses which are permitted in the Cashion Business District subject to City Council approval of a Conditional Use Permit. Several uses, including emergency medical care facilities, hotels, and veterinary hospitals, currently require a CUP in the Cashion Business District but are allowed by right in standard commercial districts such as C-2.

- **Section 308.C, Prohibited Uses:** This subsection simply states that, "Any use not expressly stated herein is prohibited." The Cashion Business District is the only zoning district which contains a written provision to this effect; the remainder of the Ordinance functions under the implied premise that if a use is not listed it is indeed prohibited.

- **Section 308.D, Property Development Standards:** This subsection establishes minimums and maximums for lot coverage, setbacks, building height, and parking for the CBD district, along with instituting limited design standards.

At the time of adoption, it was anticipated that the City would initiate a rezoning of all properties fronting the south half of Buckeye Road from 109th Avenue to 113th Avenue to Cashion Business District. However, only one property in this area has been rezoned to Cashion Business District. As such, the business owners in this area, as well as potential commercial developers, still face many of the same difficulties in development/expansion that were present in 2002.

With this proposed amendment (Exhibit B), staff attempted to remove any obstacles with the District's regulations that may have prevented it from achieving its original intended purpose. The primary goal of the updated Cashion Business District remains the same: To encourage and facilitate the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor.

SUMMARY OF REQUEST:

1.The proposed amendment to Section 308, *Cashion Business District*(Exhibit B), includes four subsections listed below. Two subsections are new; the remaining two subsections are existing but have been revised to increase the usability of the CBD for property owners in the Cashion Business area. Each of these proposed subsections is discussed in greater detail below.

308.A Purpose (NEW)
308.B Applicability (NEW)
308.C Permitted Uses
308.D Property Development and Design Standards

2.A new Subsection 308.A, ***Purpose,*** is proposed. The current Cashion Business Zoning District (CBD) does not contain a purpose statement and, as a result, the overall objective of the CBD can be unclear to Zoning Ordinance users; it is the only zoning district that does not presently include a purpose statement.

The recommended purpose is intended to be clear and concise: "To encourage the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor." This statement is supplemented by additional language specifying how the CBD intends to carry out that purpose, most notably by reducing setback, parking, and landscaping requirements relative to other commercial districts in Avondale.

3.A new Subsection 308.B, ***Applicability,*** is proposed. This provision limits the use of the CBD zoning to parcels that have historically been part of Cashion's commercial core - those properties between 107th Avenue and 113th Avenue with direct frontage on Buckeye Road.

The current CBD does not contain a provision which defines the properties that are eligible for the reduced standards allowed in the CBD district. Without such a statement, it is possible for someone located outside of the Cashion neighborhood to request and receive CBD zoning and take advantage of the relaxed requirements. This new subsection will eliminate any potential misuse of this Zoning District.

4.Currently, the Cashion Business District contains customized lists of permitted and conditional uses that are amongst the more limited of the City's commercial zoning districts. Before undertaking this update, staff worked with several property owners/developers who chose to bypass using the CBD District in favor of C-2 (Community Commercial) zoning because the list of permitted and conditional uses in the CBD was too limited.

In an effort to market the area to a wider array of business types than is currently possible under the current terms of the Ordinance, Subsection 308.C, ***Permitted Uses***, has been revised to eliminate the customized lists. Instead, the proposed amendment states that the uses permitted in the CBD shall be the same as those permitted in the C-2 District. This change will result in additional uses being allowed in the CBD which had previously been prohibited and will also eliminate the need to receive conditional use permit approval for several use types. Tying the allowed uses in the CBD to the C-2 District has essentially the same effect as making the CBD an overlay zoning district, staff's original concept when developing ideas on how to improve the utility of the CBD.

5.Subsection 308.D, ***Property Development and Design Standards***, has been revised. Side and rear setbacks are currently not required in the CBD with the exception that a minimum side and/or rear setback of 10 feet is required when a property line abuts a residential use or residential zoning district. The proposal removes the requirement for a 10 foot setback when adjacent to a residential zone; the 10 foot setback requirement is maintained for development occurring next to a residential use. Furthermore, a 5 foot setback for parking areas from residential uses has been added to reduce the impacts of commercial uses on adjacent residents.

The proposed amendment removes design standards from this section. The City's Design Manuals are now used to guide site and building design. Additionally, the proposed amendment removes all specific parking requirements currently contained in this section. The parking requirements for the Cashion Business District were added to Section 8, Parking, in September, 2010.

Lastly, several landscaping and buffering requirements for commercial development have been modified for properties zoned CBD. For example, commercially zoned sites are required to provide landscaping over 20 percent of the net site area; due to the small size of the standard parcels in the Cashion commercial corridor, this percentage has been reduced to 10 percent. For the same reasons, landscape setbacks and landscape buffer requirements have been reduced as well.

PARTICIPATION:

This item was presented to the City Council at a work session meeting on March 1, 2010 (Exhibit C) and to Planning Commission at a work session meeting on May 20, 2010 (Exhibit D).

A Neighborhood Meeting was held on May 13, 2010 at 6:00 p.m. at the City's Cashion Police Substation. The meeting was advertised in the April 27, 2010 edition of the West Valley View. Additional notice was provided through a public hearing notice sign erected on April 27th at the southeast corner of Buckeye Road and 111th Drive. Furthermore, bi-lingual (English/Spanish) flyers were also distributed to homes and businesses in the Cashion area prior to the meeting. A total of seven citizens, primarily owners of businesses and property in the Cashion commercial corridor, attended the meeting (Exhibit E). Overall, the attendees were supportive of an amendment which could potentially help revitalize the area and make expansion of their own businesses easier. Many were concerned about possible upgrades to their sites that this amendment would require; staff noted that no upgrades to any of the sites would be required unless two things happened: First, they

would have to rezone their properties to the CBD District, and second, they would have to propose expansion or redevelopment plans for their properties. Otherwise, existing businesses would be unaffected by the proposal. At the conclusion of the hour long meeting, no significant concerns with the proposed amendment were voiced by any attendees.

The Planning Commission held a public hearing on this application on October 21, 2010. A notice of this Planning Commission hearing was published in the West Valley View on October 5, 2010. The public hearing notice sign was updated to reflect the date and time of the Planning Commission meeting on September 30, 2010. Attendees of the neighborhood meeting were notified by phone call of the upcoming Planning Commission meeting and were given copies of the proposed amendment if requested. No citizens spoke on this application at the Planning Commission meeting.

A notice of this City Council meeting was published in the West Valley View on October 26, 2010. The public hearing notice sign was updated to reflect the date and time of the City Council meeting on October 22, 2010. Additionally, the proposed new Ordinance language is available on the City's website for review. No comments have been received to date.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on October 21, 2010, and voted 6-0 to recommend approval of the request with one amendment to staff's proposal: to extend the eastern boundary of the CBD from 109th Avenue to 107th Avenue (Exhibit F). Vice Chairperson Cotera was excused from the meeting.

In addition to the discussion regarding the eastern boundary of the CBD, Commission inquired about the level of participation that Cashion business owners had in the text amendment process and the status of the Buckeye Road widening project planned by Maricopa County.

ANALYSIS:

The proposed text amendment to the Cashion Business Zoning District is intended to remove the obstacles which have prevented the zoning district from having its original intended effect of promoting the expansion of existing businesses and development of new businesses in the Cashion commercial corridor. From increasing the overall number of uses permitted in the CBD to reducing the number of uses which require CUP approval to reducing landscaping requirements, the proposed amendment results in a reconfigured zoning district that will give existing as well as potential business owners in the Cashion commercial area the greatest opportunity for success.

Conclusion:

Staff recommends approval of the Zoning Ordinance text amendment to Section 308, Cashion Business District.

FINDINGS:

1. The proposed amendment meets the intent of the General Plan.
2. The proposed amendment meets the requirements and intent of the Zoning Ordinance.
3. The proposed amendment provides for increased flexibility for development projects while maintaining the City's standards for design and functionality.

RECOMMENDATION:

The City Council should **APPROVE** Application TA-08-10, a City initiated request to amend Zoning Ordinance Section 308, *Cashion Business District (CBD*), with the modification to extend the east boundary to 107th Avenue as recommended by the Planning Commission.

PROPOSED MOTION:

I move that the City Council adopt Ordinance 1431-1110, an amendment to Section 3 of the Zoning

Ordinance.

ATTACHMENTS:

Click to download

- Exhibit A - Current Zoning Ordinance Section 308, Cashion Business District
- Exhibit B - Proposed Zoning Ordinance Section 308, Cashion Business District
- Exhibit C - Excerpt of City Council Work Session Minutes from March 1, 2010
- Exhibit D - Excerpt of Planning Commission Work Session Minutes from May 20, 2010.
- Exhibit E - Neighborhood Meeting Sign-In Sheet from May 13, 2010
- Exhibit F - Excerpt of Draft Planning Commission Meeting Minutes from October 21, 2010.
- Ordinance 1431-1110

PROJECT MANAGER:

Ken Galica, Planner II (623) 333-4019

308 Cashion Business District

A. Permitted uses.

Automatic teller machines.

Church, synagogue, temple, similar place of worship.

Clothing alteration, custom dressmaking, or tailor shop.

Cultural institution.

Dancing, theatrical, or music studio.

Child care center.

Dry cleaning and laundry establishment.

Laundromat, self-service.

Library or museum.

Medical, dental or health office, clinic, or laboratory.

Nail salon, barbershop, or beauty salon.

Photographic developing and printing studio.

Post office.

Professional, administrative, or business office, bank or financial institution, or similar use, excluding non-chartered financial services.

Public service or non-profit community use.

Restaurants, including drive-thru restaurants.

Retail sales of new merchandise in enclosed buildings, excluding liquor stores.

Retail sales of new merchandise and produce in open-air markets (mercados), excluding liquor sales and sidewalk sales.

Schools and educational institutions (public and private), excluding colleges, universities, and vocational schools.

Specialty stores and services, indoor, excluding liquor stores, pawn shops, tattoo parlors, body piercing studios, plasma centers and non-chartered financial services.

Ticket and travel agency.

B. Uses permitted subject to a conditional use permit.

Appliance service and repair.

Assisted living facility, nursing home, hospice, group home.

Auto supply store.

Automobile leasing facility.

Business or technical school.

Car wash, mechanical or self-service.

Caretaker's quarters (one, accessory use).

Dwelling units above the ground floor of a building.

Emergency medical care facility.

Gas service station with retail gasoline sales, convenience store, and car wash.

Health and exercise facility.

Hospitals.

Hotel and motel.

Movie theater.

Plant nursery.

Public utility building, structure, use, facility, equipment.

Reception center, recreation center, or social/private club.

Veterinary hospital, office or clinic, excluding animal boarding.

Vocation school.

C. Prohibited uses.

Any use not expressly stated herein is prohibited.

D. Property development standards.

1. Area and density. No standard is established.

2. Coverage. Full coverage is allowable provided minimum loading space; parking, landscaping, and setbacks have been provided, unless otherwise approved by the City Council.

3. Setbacks.

   a. Front yard. The minimum setback required shall be ten (10) feet. Within this setback, the first ten (10) feet must be used for landscaping.

   b. Side yard. No side yard setbacks shall be required, except as follows:

      1) Where the side property line abuts with residential use or zoning, the minimum setback required shall be ten (10) feet from such side property line. Such setback shall be landscaped in accordance with Section 12 of this ordinance.

      2) Where the side property line abuts a dedicated alley, which separates such side property line from abutting residential zoned property, the side yard shall have a minimum depth of ten (10) feet. Such side yard shall be landscaped in accordance with Section 12 of this ordinance.

   c. Rear yard. No rear yard setbacks shall be required except as follows:

      1) Where the rear property line abuts residential zoned property, a minimum rear yard setback of ten (10) feet shall be maintained. Such setback shall be landscaped in accordance with Section 12 of this ordinance.

      2) Where the rear property line abuts a dedicated alley, which separates such rear property line from abutting residential zoned property, the rear yard shall have a minimum depth of ten (10) feet. Such rear yard shall

be landscaped in accordance with Section 12 of this ordinance.

4. Height. Maximum height of all structures shall be thirty (30) feet.

5. Width. For the purpose of regulating the division of existing storefronts, no minimum storefront width shall apply. For the purpose of this section, a storefront is the primary (front facade) and secondary (rear/side facade) building entrance where access is taken from a public street, alley, or parking lot.

6. Design standard. The Cashion Business District shall be subject to the property development standards found in Section 12, Sections 609.4. and 609.5. of this ordinance, with the exception of subsections 503.C.2. and 3., and the exterior color reference in subsection 609.4.d. In addition, the following design standards shall be applicable to the Cashion Business District:

   A Cashion Heritage theme shall be implemented in the Cashion Business District, requiring the use of vibrant facade colors, tinted sidewalks, the color of which shall be prescribed by the City of Avondale Development Services Department, and the planting of one Phoenix roebelenii tree (Pygmy Date Palm) every twenty (20) linear feet within the first ten (10) feet of the required front setback adjacent to the public right-of-way for each property in the district.

7. Cashion Business District joint-use parking. Joint-use parking standards are based on the assumption that patrons will use a single parking space for more than one destination in the Cashion Business District and that one parking space will be open and available for short-term parking to serve many different uses, which may have different peak hours.

   a. The following categories of development shall be eligible to use joint use parking standards to meet parking requirements:

      1) Non-residential new construction on sites of less than twenty thousand (20,000) square feet in size.

      2) New construction on sites greater than twenty thousand (20,000) square feet in size for retail commercial, restaurants, and movie theater.

      3) Existing buildings with uses or occupancies as specified in Section 307 of this ordinance, including additions to and rehabilitations of such building; and

4) Changes in uses or occupancies of existing buildings from uses or occupancies not listed in Section 307 of this ordinance to any uses or occupancies specified in Section 307 of this ordinance.

b. Ineligible development. The following types of uses are not eligible to use joint-use parking standards:

1) Existing residential uses; and

2) New construction of hotel or office uses on sites greater than twenty thousand (20,000) square feet in size.

8. Alternative joint-use parking standards. Section 8 of this ordinance shall determine circumstances in which parking shall be required. Once it has been established that parking is required, eligible projects within the Cashion Business District may choose to provide required parking by using the Alternative Joint-Use Parking Standards (Table 1), or provide parking for the project's exclusive use under the standards established in Section 8.

9. Joint-use parking agreement. All parking developed under joint-use parking standards shall be required to enter into an agreement with the city and recorded by the city clerk, requiring the parking to be operated on a nonexclusive basis, to be open and available to the public for joint-use short term public parking during normal business hours.

10. Parking reductions within the Cashion Business District. For new and existing development within the Cashion Business District, required parking may be reduced on a case-by-case basis in compliance with subsection 804.F.

Exhibit A

TABLE I

CASHION BUSINESS DISTRICT ALTERNATIVE JOINT-USE PARKING STANDARDS MINIMUM PARKING RATIOS	
USE	**MINIMUM PARKING RATIOS**
OFFICE Including: 1. Banks, Savings and Loans, Other Financial Institutions. 2. Medical or Dental Office. 3. Professional or Unspecified Office.	3.0 Spaces/1,000 SF of gross usable area
RETAIL COMMERCIAL	4.0 Spaces/1,000 SF of gross usable area
PUBLIC ASSEMBLY Including: 1. Movie Theater. 2. Social/Private Club.	 1.0 Space/4 seats 3.0 Spaces/1,000 SF of gross usable area
RESTAURANT Including: 1. Restaurant under 1,000 SF gross usable area. 2. Restaurant over 1,000 SF gross usable area.	 3.0 Spaces/1,000 SF of gross usable area 5.0 Spaces/1,000 SF of gross usable area
RESIDENTIAL New Construction of Office or Hotel Uses on Lots Greater Than 20,000 Square Feet	Excluded from use of joint-use parking standards. Excluded from use of joint-use parking standards.
OTHER Any category not listed above may be reviewed by the City on a case-by-case basis.	Variable

308 CASHION BUSINESS DISTRICT (CBD)

A. Purpose

The Cashion Business Zoning District (CBD) is intended to encourage and facilitate the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor. This District promotes flexibility in development standards necessary due to the smaller sized parcels in the area and encourages variation in circulation patterns and land use. Relative to the City's standard Commercial Districts, the CBD includes development standards allowing for reduced setbacks, parking requirements and landscaping requirements.

B. Applicability

The Cashion Business District may be established on any property located between 107th Avenue and 113th Avenue that has direct frontage on Buckeye Road.

C. Permitted Uses

1. The uses permitted in the Cashion Business District shall be the same as those permitted in the C-2 (Community Commercial) Zoning District.

2. Any conditions listed in Subsections 304 (Uses Permitted with Conditions) and 305 (Conditional Use Development Standards) of this Zoning Ordinance shall also apply unless specifically exempted in this Subsection 308.

D. Property Development and Design Standards

1. The development standards of the Cashion Business District, including but not limited to setbacks, landscaping and screening, are designed to provide flexibility for new and existing businesses. The following table outlines the minimum setback and buffering standards required for this district. Unless specifically modified in this Subsection, all development standards in the CBD shall be in accordance with the C-2 District standards.

Cashion Business District Minimum Setbacks & Buffers	
Buckeye Road Setback	10' Minimum, Fully Landscaped
Secondary Street Setback	10' Minimum, Fully Landscaped
Interior/Side Setback	None
Rear Setback and/or Building Setback from a Residential Use	10' Minimum, Fully Landscaped. No setback shall be required if an alley is adjacent to a rear property line or separates a commercial use from a residential use.
Parking Setback from a Residential Use	5' Minimum, Fully Landscaped

2. Setbacks in excess of those listed in the table in Subsection 308(D)(1) above may be required in accordance with the conditions required of uses permitted with conditional use permits or uses permitted with conditions.

3. On-site parking shall be provided in accordance with Section 8 of the Zoning Ordinance. Joint-use parking shall be permitted in accordance with the procedures outlined in Subsection 8 of this Zoning Ordinance.

4. Landscaping and walls shall be required in accordance with the provisions of Section 12 (Landscaping, Walls, and Fences Regulations) of this Zoning Ordinance, except as follows:

    a. Landscaped areas shall be provided on the site in an amount equal to or greater than ten percent (10%) of the net site area. Development in the Cashion Business District shall be exempt from the provisions of Subsection 1204(C)(1)(d) (Landscape Design Standards, Required Landscape Areas, General).

    b. The provisions of 1204(C)(3) (Landscape Design Standards, Landscape Setback) shall apply to development in the Cashion Business District, except that the minimum dimension of landscape setbacks shall be determined by the Development Standard table, set forth in Subsection 308(D)(1) above.

    c. The provisions of 1204(C)(5) (Landscape Design Standards, Land Use Buffers) shall apply to development in the Cashion Business District, except that the minimum dimension of landscape buffers between a CBD property and a residential use shall be determined by the Development Standard table, set forth in Subsection 308(D)(1) above. This landscape buffer shall also be required on any CBD property where an alley separates the property from a residential use.

5. Any conditions required of uses listed in Subsections 304 (Uses Permitted With Conditions) and 305 (Conditional Use Development Standards) of this Zoning Ordinance shall apply, except as follows:

    a. The provisions of Subsection 304(C). (Uses Permitted With Conditions, Automobile Service and Diagnostic Facilities) of this Zoning Ordinance shall apply to the development of automobile service and diagnostic facilities, except that the landscape buffer shall be a minimum of ten (10) feet. Additionally, garage bay doors may face residentially zoned properties or uses if screened in a method acceptable to this Zoning Administrator or designee.

    b. The provisions of Subsection 304(R) (Uses Permitted With Conditions, Tire Sales, Repair, and Mounting Facilities) of this Zoning Ordinance shall apply to the development of tire sales, repair, and mounting facilities, except that the landscape buffer shall be a minimum of ten (10) feet. Additionally,

garage bay doors may face residentially zoned properties or uses if screened in a method acceptable to the Zoning Administrator or designee.

c. Screening of drive-thru lanes shall only be required from public streets.

Exhibit C

City Council Work Session Meeting – Excerpt of Meeting Minutes
March 1, 2010

TEXT AMENDMENT:CASHION BUSINESS ZONING DISTRICT (TA-08-10)
Information regarding potential text amendment to the Cashion Business Zoning District.

Charlie McClendon, City Manager, introduced Ken Galica, Planner II to present items 2 and 3 regarding potential text amendments for the Cashion Business District and Old Town Avondale Business District.

Mr. Galica said the purpose of the Cashion Business Zoning District (CBD) is to encourage and facilitate the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor. The business area is small, relative to Cashion as a whole, and consists of roughly half a mile of commercial frontage along Buckeye Road. The area was annexed by Avondale in 1989, and rezoned to R1-6 in 1990. Many existing businesses became non-conforming at that time which made expansion and development or vacant parcels difficult. The CBD was created in October of 2002 but did not remediate the problem. Since then, two properties have been rezoned to C-2, and neither chose to use the CBD. Most properties are used for commercial purposes or are vacant.

The district allows for reduced development standards that are intended to enhance development opportunities on parcels smaller than what are typically needed for modern suburban developments. Developers have not opted to use the CBD because they feel its more restrictive set of standards discourages development as there are a variety of uses that are not allowed in this district such as small auto service facilities and have instead opted to rezone to C-2 or move to other areas where the use is allowed. To address these concerns, the CBD could be modified to make it more attractive. One option would be to change the district from an underlying zone to an overlay zone which would allow more flexibility. Design and development standards would also be revisited and amended as needed. Flexibility and reduced standards should be incorporated so as not to discourage development. The update and review process would include input from the neighborhood, local business community, Planning Commission and the City Council. The timeline for the update targets adoption by late fall of 2010.

Council Member Weise indicated that neighborhoods should be allowed to develop naturally. The City can help that process along and provide guidance, but should not change the character of the area. Local residents should be involved in the process. If lowering the development standards makes the task easier, the City should do it.

Council Member Scott noted that Cashion is unique, since development there was unrestricted before the Avondale annexed it. He would support an overlay containing guidelines and standards, but also allowing for flexibility. Vice Mayor McDonald concurred that the overlay would be the best way to proceed.

Council member Karlin said the CBD languished because it came along at a time when there were so many other issues going on. Most of existing businesses at the time simply wanted to maintain the status quo.

Mayor Lopez-Rogers noted that a transit center is proposed just north of the district, and Council should consider this when deciding the types of businesses that would be appropriate there. Some residents have been in the area for many years, but the new residents might have different ideas that should be considered as well.

Exhibit D

Planning Commission Work Session Meeting – Excerpt of Meeting Minutes
May 20, 2010

TA-08-10, Zoning Ordinance Text Amendment – A presentation will be provided by Planning Staff to discuss proposed amendments to the Cashion Business Zoning District (CBD) of the Avondale Zoning Ordinance.

Ken Galica, Planner II, Development Services Department, stated this text amendment concerns the Cashion Business Zoning District (CBD). The proposed purpose for this district is to encourage and facilitate the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor, with a singular focus of generating business in this area. The Cashion area starts at 113th Avenue, extends to 107th Avenue, and stretches from Buckeye Road to the north and to Durango Street to the south. The vast majority of commercially used parcels in the Cashion business area are between 113th Avenue and 109th Avenue fronting Buckeye Road. Typical parcels are 150 feet deep and 50 feet wide, which is inadequate for modern commercial development, necessitating that the commercial development standards be reduced.

Mr. Galica gave the Cashion history, stating this area was annexed into the City in August 1989. The entire area was rezoned to R1-6 (Single Family Residential) in August 1990. This made the existing businesses into non-conforming businesses, and any expansion of these businesses became a very difficult process, requiring a Conditional Use Permit. Staff's goal is to resolve these issues to help the existing business owners and allow the vacant property owners to develop their properties. The Cashion Business Zoning District was created in October 2002. Two properties in the Cashion Business area have been rezoned to C-2 (Community Commercial) since 1990. One property has been rezoned to Cashion Business District (CBD) to date. The remaining properties are still zoned R1-6. Mr. Galica showed the Commissioners maps of the Cashion Business area zoning and existing land uses. He added that the goal of zoning is to eliminate non-conforming uses where possible.

The current subsections of the Cashion Business District section are: 308.A – Permitted Uses. 308.B – Uses Permitted Subject to a Conditional Use Permit. 308.C – Prohibited Uses. Staff is considering deleting this section as it is assumed in other sections of the City Code that uses not listed are prohibited. 308.D – Property Development Standards. The revisions to the CBD Zoning Ordinance will reduce development standards in order to spur development of smaller parcels through 10 foot front setbacks, 0 foot side setbacks except when abutting residential uses/zoning, and through allowing joint-use parking. The main reason developers give for not rezoning their properties to the existing Cashion Business District is that the uses allowed are limited and not desirable located off of such a heavily-traveled County highway. Buckeye Road is a wide street with a high speed of traffic, and no medians or landscaping to speak of. Uses that could work but are currently prohibited in the Cashion district include a tire store, brake repair shop, etc.

Mr. Galica presented Staff's revisions to the Cashion Business District for the Planning Commission's consideration.

- Change the Cashion Business District from an "underlying" zone to an "Overlay" zone, which would allow additional flexibility in land uses for property owners. This would provide property owners all the rights of a C-2 district while maintaining the 10 foot front setback and 0 foot side setbacks.

- Revisit the Cashion specific design and development standards. Identify a design vision for the area and consider if the Cashion Heritage Theme is still appropriate. Consider if the current setbacks provide maximum flexibility.

- Centralize the parking standards in Section 8, Parking, and ensure the parking standards are flexible and encourage development.

Public participation began with a City Council Work Session on March 1, 2010. A most rewarding Neighborhood Meeting was held at the Cashion PD Substation on May 13, 2010. Eight to ten business property owners attended whose businesses are located on Buckeye Road. Several property owners stated they hoped the City would apply the zoning for them so they could avoid applying for rezoning. Staff suggested that the property owners circulate a petition, and if everybody agrees, the City can zone the whole strip at once. A tentative Planning Commission hearing is scheduled for July 2010 and a City Council hearing for August 2010.

Chairperson Iwanski invited questions.

Vice Chair Cotera asked if the City could provide any incentives for business owners to develop and suggested lining the street with palm trees to unify the area. Mr. Galica explained one big difference between the OTAB District and the CBD District is the ownership of the roads. The County owns MC-85 in the CBD district. Improvement projects similar to the public investment in old town, such as landscaping, are much more difficult to accomplish. Further, in a recent County plan, the need for an additional lane in each direction was identified, which would wipe out the existing businesses' parking, and in some cases take out their buildings, not to mention any landscaping that is existing or would be installed.

Vice Chair Cotera asked if there is a way for the City to be proactive in rezoning the vacant land in the CBD District to promote development. Mr. Galica explained that the Economic Development Department is willing to help, but the property owner has to make the first move. Then the City can help the property owner locate a developer for their property or find perspective tenants for existing buildings.

Commissioner Scibienski stated he likes the idea of the business property owners having their properties rezoned all at once.

Commissioner Long stated he is in favor of developing this area, as it has the highest crime rate in the City. He asked if thought had been given to expanding this district to include additional lots, which would provide larger lots for development. Mr. Galica stated that Staff has considered expanding the district. However, an existing alley with easements for various utility companies would make it difficult to develop and would result in split sites.

Commissioner Long stated this will make the area a problem area for a long, long time, especially if MC-85 widens. Mr. Galica agreed that development is difficult because of the size of the lots and development will be more difficult if MC-85 is widened. The hope is to maintain the size of the lots, offer some flexibility, and then see what takes off.

Vice Chair Cotera stated beautifying the area might be worth it, as she believes the area might require a hand up.

Chairperson Iwanski asked if there were any meeting minutes from the Neighborhood Meeting held on May 13, 2010. Mr. Galica stated he can only provide the sign-in sheet. Chairperson Iwanski asked if Mr. Galica would provide the sign-in sheet and summarize the meeting to the Commissioners. Mr. Galica agreed to provide this information when the item returns for Commission's recommendation.

Commissioner Amos noted that the permitted uses include schools and educational institutions, public and private, but colleges, universities, and vocational schools are excluded. She asked what the reason for excluding certain educational uses is. Mr. Galica stated the reason for excluding certain educational uses might be the amount of traffic generated next to residential properties.

Exhibit E

MEETING SIGN-IN SHEET

Project:	Cashion Zoning Ordinance Text Amendment	**Meeting Date:**	5/13/2010
Facilitator:	Ken Galica, Project Manager	**Place/Room:**	Cashion Police Substation

Name	Title	Company	Phone	~~Fax~~ ADDRESS	E-Mail
Ken Galica	Planner II	City of Avondale DSD	(623) 333-4019	City Hall	kgalica@avondale.org
Tracy Stevens	Planning Manager	City of Avondale DSD	(623) 333-4012	"	tstevens@avondale.org
Stacey Bridge-Denzak	Planner I	City of Avondale DSD	(623) 333-4015	"	sbridgedenzak@avondale.org
Jennifer Fostino	Zoning Specialist	City of Avondale DSD	(623) 333-4022	"	jfostino@avondale.org
Raul Santellan	Neighborhood Outreach Coordinator	City of Avondale Department of Neighborhood & Family Services	(623) 333-2718	"	rsantellan@avondale.org
✓ Joy Jones	Saguaro Liquor Grocery	OWNER	623-936-4862	PO Box 1226	cashion
✓ Roberto Garcia	11945 W. Rd Club Santa Fee	" " " "	623-936-8735	PO Box 49	" " " "
Guillermo Lua	moricos Iapizza	owner	6239071301	P.O Box 1578	Avondale AZ 85323
Jose I. Barahona	Rio's Bar	owner	623-2054554	P.O Box 357.	cashion avondale 85329.
JP Chilcoat	District manager	C.P. STEEL	602 768 8627	11215 W. Buckeye Rd.	jp@cpsteelindustries.com
Sergio Valdez		Hontera Valdez	623 418-6747		
Ramon Olivas		Owner	818-04C	2421 S. 107 DR	

Planning Commission Regular Meeting – Excerpt of Draft Meeting Minutes
October 21, 2010

The following members and representatives were present:

COMMISSIONERS PRESENT
David Iwanski, Chairman
Michael Long, Commissioner
Lisa Amos, Commissioner
Grace Carrillo, Commissioner
Sean Scibienski, Commissioner
David Scanlon, Commissioner

COMMISSIONERS EXCUSED
Angela Cotera, Vice Chair – Arrived late

CITY STAFF PRESENT
Tracy Stevens, Planning Manager, Development Services Department
Chris Schmaltz, Legal Counsel
Ken Galica, Planner II, Development Services Department
Eric Morgan, Planner II, Development Services Department
Margaret Boone-Pixley, Assistant Traffic Engineer
Linda Herring, Development Services Representative

2. TA-08-10: This is a public hearing before the Planning Commission to review and solicit public input on application TA-08-10, a City-initiated request to amend the Cashion Business Zoning District (CBD), Zoning Ordinance Section 308. The proposed amendment will expand the list of permitted uses allowed in the district and revise property design and development standards. The Cashion Business District is intended to be used by properties directly abutting Buckeye Road from 113th Avenue to 107th Avenue. Staff Contact: Ken Galica

Ken Galica, Planner II, Development Services Department, stated this item is a Zoning Ordinance Text Amendment for the Cashion Business District (CBD). The purpose for the CBD is to encourage and facilitate the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor. To summarize, the City is inviting people to move to the CBD area and the City will do everything possible to allow for the business in the area. The boundaries of Cashion are 107th and Durango Street to the south, 113th Avenue to the west, and Buckeye Road (MC-85) to the north. The Cashion commercial corridor includes properties in Cashion that directly abut Buckeye Road. Current business uses in the area include restaurants, markets, churches, a gas station, and bars. Cashion was annexed into the City in August 1989 and was rezoned to R1-6 (Single Family Residential) in August 1990. However,

this was not appropriate zoning for the commercial properties abutting Buckeye Road and hindered expansion plans in the area, as well as made the existing businesses nonconforming.

To remediate this problem, the Cashion Business Zoning District was adopted by the City Council in October 2002. The intent was to promote development and make it easier for existing businesses to grow. To date, two properties in the area have been rezoned to C-2 (Community Commercial). Only one business has been rezoned to CBD. The remaining properties are still zoned residential (R1-6). For the most part, properties along Buckeye Road are developed as commercial businesses, vacant, or are used for pseudo-industrial purposes. The thought behind the zoning was to promote commercial development within the Cashion area and remove the non-conforming status from existing businesses. This was done through reducing setback requirements due to the small parcels, allowing a zero foot side setback, and through joint-use parking. However, this zoning did not achieve the desired outcome.

In discussion with developers in the area, it was gleaned that the primary reason the CBD zoning did not work was because the use list was limited for development. To remediate this problem, Staff has proposed revisions to the Zoning Ordinance.

- Subsection 308.A Purpose – A purpose statement was added.

- Subsection 308.B Applicability – This section was added, limiting the use of the CBD zoning to parcels that have historically been part of Cashion's commercial core.

- Subsection 308.C Permitted Uses - Staff has eliminated the customized use list and simply references the C-2 use list. The City will allow C-2 uses in the Cashion Business District.

- Subsection 308.D Property Development and Design Standards – Side and rear setbacks are currently not required in the CBD, with the exception that a minimum side and/or rear setback of 10 feet is required when a property line abuts a residential use or residential zoning district. A 5 foot setback for parking areas from residential uses has been added to reduce the impact of commercial uses on adjacent residents. Staff has eliminated the Cashion Specific Design Standards. The City's Design Manuals will now be used to guide site and building design. Staff has also reduced the overall quantity of landscaping requirements and some of the landscape setback requirements.

A City Council Work Session was held on March 1, 2010. A Neighborhood Meeting was held on May 13, 2010 at the Cashion Police Substation. The public was notified through a wide variety of advertisements. A Planning Commission Work Session was held in May 2010 and business owners have been briefed to the present. This item is scheduled to come before the City Council in November 2010. Staff recommends approval.

Chairperson Iwanski invited questions.

Commissioner Carrillo referred to Maricopa County's need for additional lanes on Buckeye Road and asked if Staff knew the status of that request. Mr. Galica replied there is no definite date for the road widening. In the interim, in lieu of taking right-of-way when an area is developed, the City is obtaining a roadway easement. That way the property owner can use the space for parking and landscaping, and then if the road is widened in the future, it will remove parking and landscaping rather than buildings.

Commissioner Scibienski asked why the City was not extending the CBD zoning all the way to 107th Avenue, referencing an empty lot zoned C-2 at the corner of 107th Avenue and Buckeye Road. He suggested that CBD zoning might make the lot easier to develop than standard C-2 zoning. Mr. Galica stated Staff's original draft did have the CBD zoning extending all the way from 107th Avenue to 113th Avenue, but the reason that lot was not included is because that corner lot is zoned PAD. Since the developer took action to rezone the property to PAD, Staff is reluctant to change his zoning.

Commissioner Scibienski stated his only concern was that the small corner lot at 107th Avenue could be difficult to develop. Mr. Galica stated he would not oppose extending the zoning to 107th Avenue.

Chairperson Iwanski asked if Staff's discussions with seven business owners was a healthy representation of the district. Mr. Galica stated seven business owners represent a healthy participation, as there are not many developed properties in the area.

Chairperson Iwanski opened the public hearing for item TA-08-10. There were no requests to speak, and Chairperson Iwanski closed the public hearing.

Chairperson Iwanski invited further discussion. He asked if Commissioner Scibienski would like to give further input on extending the CBD zoning area.

Commissioner Scibienski stated he would like to propose a motion that includes an amendment extending the boundaries of the CBD zoning to 107th Avenue, if permitted.

City Attorney, Chris Schmaltz, stated a proposed motion to extend the zoning boundaries to 107th Avenue would be appropriate, but it would not bring about the rezoning of the property. It merely makes it possible for the property to be rezoned.

Commissioner Scibienski stated that would be his intention.

Chairperson Iwanski invited further discussion.

Commissioner Scanlon asked if the property owner of the parcel at the corner of 107th Avenue should have input before the Planning Commission makes any recommendation to the City Council on extending the CBD boundaries. Attorney Schmaltz explained that the motion would only extend the boundaries of what can be rezoned to Cashion Business

District. It would not rezone the property. The property owner currently has PAD zoning and will continue to have PAD zoning. If the boundaries of the CBD are extended, then in the future the property owner can change his zoning from PAD to CBD if so desired.

Commissioner Scanlon asked for clarification that such a motion would not be an encumbrance on the property owner at all, which Attorney Schmaltz confirmed. Attorney Schmaltz added that the property owner could do the same thing via an amendment to the PAD itself. Extending the boundaries of the Cashion Business District would only include that property within the CBD zoning boundaries.

Commissioner Amos asked if PADs have a zoning expiration time. Mr. Galica explained that PAD zoning has an expiration date of three years. The commercial corner at 107th Avenue is part of the surrounding residential community PAD, and as soon as the residences were built, it vested the rights for that commercial zoning. The property will maintain commercial zoning until somebody changes the zoning.

Chairperson Iwanski invited further questions.

Commissioner Scibienski reiterated it is not his intention to encumber the property owner, but to provide an option if the property owner at some point in time would like to exercise that right.

Chairperson Iwanski entertained a motion and a second on item TA-08-10.

Commissioner Scibienski moved that the Planning Commission accept the findings and recommend adoption of application TA-08-10, a request to amend Zoning Ordinance Section 308, Cashion Business District, with one amendment to extend the proposed district to 107th Avenue on the eastern boundary. Commissioner Long seconded the motion.

Chairperson Iwanski invited further discussion, and hearing none, called for a vote.

ROLL CALL VOTE

Chairperson Iwanski	Aye
Vice Chair Cotera	Excused
Commissioner Long	Aye
Commissioner Amos	Aye
Commissioner Carrillo	Aye
Commissioner Scanlon	Aye
Commissioner Scibienski	Aye

The motion passed unanimously.

ORDINANCE NO. 1431-1110

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE ZONING ORDINANCE, SECTION 3, COMMERCIAL DISTRICTS.

WHEREAS, all due and proper notices of public hearings on this Ordinance held before the City of Avondale Planning and Zoning Commission (the "Commission") and the Council of the City of Avondale (the "City Council") were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, the Commission held a public hearing regarding the subject matter of this Ordinance on October 21, 2010, after which the Commission recommended to the City Council that the actions contemplated by this Ordinance be approved; and

WHEREAS, the City Council held an additional public hearing on this Ordinance on November 15, 2010.

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

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

SECTION 2. The City of Avondale Zoning Ordinance (the "Zoning Ordinance"), Section 3, Commercial Districts, Subsection 308, Cashion Business District ("CBD"), is hereby deleted in its entirety and replaced by the following:

308 CASHION BUSINESS DISTRICT (CBD)

A. Purpose

The Cashion Business Zoning District (CBD) is intended to encourage and facilitate the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor. This District promotes flexibility in development standards necessary due to the smaller sized parcels in the area and encourages variation in circulation patterns and land use. Relative to the City's standard Commercial Districts, the CBD includes development standards allowing for reduced setbacks, parking requirements and landscaping requirements.

B. Applicability

The Cashion Business District may be established on any property located between 107th Avenue and 113th Avenue that has direct frontage on Buckeye Road.

C. Permitted Uses

1. The uses permitted in the Cashion Business District shall be the same as those permitted in the C-2 (Community Commercial) Zoning District.

2. Any conditions listed in Subsections 304 (Uses Permitted with Conditions) and 305 (Conditional Use Development Standards) of this Zoning Ordinance shall also apply unless specifically exempted in this Subsection 308.

D. Property Development and Design Standards

1. The development standards of the Cashion Business District, including but not limited to setbacks, landscaping and screening, are designed to provide flexibility for new and existing businesses. The following table outlines the minimum setback and buffering standards required for this district. Unless specifically modified in this Subsection, all development standards in the CBD shall be in accordance with the C-2 District standards.

Cashion Business District Minimum Setbacks & Buffers	
Buckeye Road Setback	10' Minimum, Fully Landscaped
Secondary Street Setback	10' Minimum, Fully Landscaped
Interior/Side Setback	None
Rear Setback and/or Building Setback from a Residential Use	10’ Minimum, Fully Landscaped. No setback shall be required if an alley is adjacent to a rear property line or separates a commercial use from a residential use.
Parking Setback from a Residential Use	5' Minimum, Fully Landscaped

2. Setbacks in excess of those listed in the table in Subsection 308(D)(1) above may be required in accordance with the conditions required of uses permitted with conditional use permits or uses permitted with conditions.

3. On-site parking shall be provided in accordance with Section 8 of the Zoning Ordinance. Joint-use parking shall be permitted in accordance with the procedures outlined in Subsection 8 of this Zoning Ordinance.

4. Landscaping and walls shall be required in accordance with the provisions of Section 12 (Landscaping, Walls, and Fences Regulations) of this Zoning Ordinance, except as follows:

a. Landscaped areas shall be provided on the site in an amount equal to or greater than ten percent (10%) of the net site area. Development in the Cashion Business District shall be exempt from the provisions of Subsection 1204(C)(1)(d) (Landscape Design Standards, Required Landscape Areas, General).

b. The provisions of 1204(C)(3) (Landscape Design Standards, Landscape Setback) shall apply to development in the Cashion Business District, except that the minimum dimension of landscape setbacks shall be determined by the Development Standard table, set forth in Subsection 308(D)(1) above.

c. The provisions of 1204(C)(5) (Landscape Design Standards, Land Use Buffers) shall apply to development in the Cashion Business District, except that the minimum dimension of landscape buffers between a CBD property and a residential use shall be determined by the Development Standard table, set forth in Subsection 308(D)(1) above. This landscape buffer shall also be required on any CBD property where an alley separates the property from a residential use.

5. Any conditions required of uses listed in Subsections 304 (Uses Permitted With Conditions) and 305 (Conditional Use Development Standards) of this Zoning Ordinance shall apply, except as follows:

a. The provisions of Subsection 304(C). (Uses Permitted With Conditions, Automobile Service and Diagnostic Facilities) of this Zoning Ordinance shall apply to the development of automobile service and diagnostic facilities, except that the landscape buffer shall be a minimum of ten (10) feet. Additionally, garage bay doors may face residentially zoned properties or uses if screened in a method acceptable to this Zoning Administrator or designee.

b. The provisions of Subsection 304(R) (Uses Permitted With Conditions, Tire Sales, Repair, and Mounting Facilities) of this Zoning Ordinance shall apply to the development of tire sales, repair, and mounting facilities, except that the landscape buffer shall be a minimum of ten (10) feet. Additionally, garage bay doors may face residentially zoned properties or uses if screened in a method acceptable to the Zoning Administrator or designee.

c. Screening of drive-thru lanes shall only be required from public streets.

SECTION 3. Any person who fails to comply with any provision of the CBD shall be subject to civil and criminal penalties as set forth in Section 114 of the Zoning Ordinance. Civil penalties shall not exceed $1,000.00. Criminal penalties shall constitute a class one misdemeanor, punishable by a fine not to exceed $2,500.00 or by imprisonment for a period not

to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the CBD adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Council of the City of Avondale, November 15, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

DEVELOPMENT SERVICES

SUBJECT:
Public Hearing, Resolution 2939-1110 and Ordinance 1430-1110 - Zoning Ordinance Text Amendment to Section 307, Old Town Avondale Business District

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Sue McDermott, Development Services and Engineering Department Director (623) 333-4211

THROUGH: Charlie McClendon, City Manager (623) 333-1015

REQUEST: Approval of a comprehensive Text Amendment to Zoning Ordinance Section 307, *Old Town Avondale Business District.*

LOCATION: Citywide

APPLICANT: Development Services Department, Planning Division

BACKGROUND:

As part of the ongoing comprehensive update to Avondale's Zoning Ordinance, staff is proposing a Text Amendment to the Old Town Avondale Business (OTAB) Zoning District. The OTAB District can currently be found as Subsection 307 of the Commercial Districts Section of the Zoning Ordinance. The OTAB district's official name is the “Old Town Avondale Zoning Overlay District” which contains its own list of permitted and conditional uses, development standards, and design standards in a manner similar to our other commercial districts, such as C-2 (Community Commercial).
The existing version of the Old Town Avondale Business District is attached as Exhibit A of this report. This section is currently organized as follows:

- **Section 307.A, Permitted Uses:** This subsection includes a customized list of the uses which are permitted by right in the OTAB District. The uses that are currently permitted in Old Town are limited to unique commercial businesses that are the most likely to contribute to a pedestrian and family friendly traditional main street that serves customers from a regional trade area. Examples of permitted uses within the OTAB District include art galleries, bakeries, restaurants, antiques shops, candy shops, book stores, and specialty retail shops. General retail uses, where a retailer does not specialize in a certain type of product but rather sells a wide variety of merchandise (e.g. a dollar store, convenience store, etc.) are not permitted in the district because in most instances they are not unique businesses and, as a result, are less likely to attract clientele from a regional trade area.

- **Section 307.B, Uses Permitted Subject to a Conditional Use Permit:** This subsection includes a list of the uses which are permitted in OTAB subject to City Council approval of a Conditional Use Permit (CUP). Uses that are listed in this section require an additional level of review to ensure that they will be compatible with the intended main street character of the area. Uses which currently require CUPs in Old Town include cocktail lounges/bars, residential uses, child care centers, theaters, veterinary offices, and sidewalk cafes. This subsection also currently includes a provision which allows for uses not listed to be approved via the CUP process so long as they are similar to and not more detrimental than the uses that are listed.

This provision has been used most recently to allow a funeral home as it is not currently listed as an allowed use.

- **Section 308.C, Property Development Standards:** This subsection establishes minimums and maximums for lot coverage, setbacks, building height, and parking for the OTAB district, along with instituting limited design standards.

The OTAB District, summarized above, was adopted by the City Council in December 2000 in an effort to revitalize Western Avenue. To accomplish this task, development standards, such as setbacks, parking requirements, and building heights, were adjusted from the City's typical requirements in order to ensure that Western Avenue would take the form of a traditional main street. Additionally, permitted uses were carefully chosen by a group of community stakeholders and City staff to create a vibrant and active street scene that would allow Western Avenue to function as the City's central shopping destination for families. The original implementation area focused specifically on properties fronting Western Avenue between Dysart Road and Central Avenue. Standards for properties on Western Avenue west of Central Avenue, on Central Avenue and in the neighborhoods north and south of Western Avenue were not affected by the adoption of the OTAB District.

In addition to the zoning changes implemented in 2000-2001, the City has made several substantial investments in Western Avenue, most notably a streetscape/landscaping improvement program and the construction of the Sam Garcia Library, completed in 2008. Together, the OTAB zoning and civic investment has dramatically improved the quality of Western Avenue as a shopping and dining destination.

SUMMARY OF REQUEST:

1.The proposed revision to Section 307, ***Old Town Avondale Business District*** (Exhibit B), includes eight subsections listed below:

Subsection 307.A Purpose (NEW)
Subsection 307.B Applicability (NEW)
Subsection 307.C Sub-Districts (NEW)
Subsection 307.D OTAB Land Use Matrix (Re-Titled)
Subsection 307.E OTAB Uses Permitted with Conditions (NEW)
Subsection 307.F OTAB Conditional Use Standards (NEW)
Subsection 307.G OTAB District Property Development Standards (Re-Titled)
Subsection 307.H OTAB Performance Standards (NEW)

2.***Subsection 307.A,Purpose***, defines the vision that the City, Old Town business owners, and Old Town property owners have for the future of Western Avenue and the surrounding area. As stated in this section, the goal of the OTAB district is to further the revitalization of the City's original town site and its immediate vicinity by encouraging the re-use of existing buildings, promoting pedestrian oriented development, and emphasizing a unique mix of uses intended to make Old Town a destination. This subsection contains six objectives which the OTAB District seeks to achieve. These objectives include, but are not limited to, creating an environment where patrons can shop and dine for several hours in a walkable setting, respecting the local and cultural significance of the area without hindering creativity in design, and supporting limited commercial uses in neighborhoods surrounding Western Avenue.

3.The OTAB District's boundaries currently extend along Western Avenue between Central Avenue and Dysart Road. ***Subsection 307.B,Applicability***, proposes a map which identifies which areas adjacent to the current OTAB District will be eligible to receive OTAB zoning in the future. Based on this map, future expansion of the OTAB District could occur along Western Avenue west of Central Avenue, Western Avenue east of Dysart Road, and in neighborhoods surrounding Western Avenue, particularly neighborhoods on the south side of Western Avenue.

It is important to note that the areas denoted on the map as “eligible expansion areas” will not be automatically rezoned by the City. The current zoning or those properties (C-2, R1-6, R-4) will remain in place until a property owner or group of property owners requests to be included in the OTAB District. Inclusion of a property on the map simply increases the flexibility for development of those parcels currently located on the periphery of the OTAB District.

4.The OTAB District's current focus is solely on creating a unique, pedestrian oriented main street destination along Western Avenue. The proposed amendment will maintain and enhance that important focus while also taking new measures to allow the positive accomplishments occurring on Western Avenue to spill over into adjacent neighborhoods. ***Subsection 307.C, Sub-Districts***, proposes to establish two distinct sub-districts, the Heritage District and the Neighborhood District, which will guide development based on the location of a given property.

The Heritage District will apply to any property zoned OTAB with direct frontage on Western Avenue, Central Avenue, or Dysart Road. Much like OTAB does today, the Heritage District requires development to take the form of a traditional main street, where businesses extend to the sidewalk and parking is provided on the street, behind buildings, or in public lots/structures. Commercial uses are required on the street level and residential uses are encouraged on upper floors.

The Neighborhood District will apply to any property zoned OTAB with frontage on streets other than Western Avenue, Central Avenue, or Dysart Road. This sub-district has been designed to provide a transition between the Heritage District and the surrounding single-family and multi-family zoned properties. Since the majority of existing buildings within areas eligible for the Neighborhood District are used for residential purposes, residential uses will remain the primary land use. Small scale, non-intrusive commercial uses such boutiques, cafes, and professional offices will also be permitted to expand the pedestrian activity beyond simply Western Avenue. The Development standards for the Neighborhood District have been carefully designed to be respectful of the residential character of the district.

5.***Subsection 307.D, OTAB Land Use Matrix***, establishes the permitted uses, uses permitted with a conditional use permit, uses permitted with conditions, accessory uses, and prohibited uses for both the Heritage and Neighborhood sub-districts.

The uses allowed in the Heritage District remain focused on creating a unique, main street destination. For that purpose, specialty retail (i.e. jewelry store) is emphasized over general retail (i.e. dollar store). New uses listed which previously were not permitted in the OTAB District include: Massage/day spas, pet grooming, cigar bars/hookah lounges, video arcades/game rooms, art schools, community gardens, farmers markets, grocery stores, and pharmacies. In several cases, uses were added after discussions with Western Avenue business owners and/or property owners. For example, video arcades were added after business owners expressed a concern that there was a lack of after school gathering places for students from Agua Fria High School. Grocery stores and pharmacies were added as the result of conversations with a business owner who noted the difficulty of finding tenants for some of the larger commercial buildings along Western Avenue.

The Neighborhood District allows a combination of residential and low-intensity office, retail, and restaurant uses. Several types of residential development are allowed: Single-family detached dwellings (e.g. single family houses), single-family attached dwellings (e.g. townhomes), and, with CUP approval, multi-family dwellings (e.g. apartments) could be developed within the Neighborhood District. Commercial uses have been selected which will be compatible with the surrounding residences. Any uses which were deemed to generate significant traffic, noise, or other impacts were not permitted in this sub-district.

6.Several uses that are allowed in the Heritage and Neighborhood Districts are permitted only if they adhere to specific conditions intended to ensure they are compatible with surrounding uses. ***Subsection 307.E, OTAB Uses Permitted with Conditions***, lists the conditions which apply to any

use listed in the Land Use Matrix as PC.

The majority of uses which fall under this category are commercial uses located within the Neighborhood District. The conditions for commercial uses in this sub-district are important to insuring that adjacent residential uses are not negatively affected by a nearby commercial business. Conditions include limiting business hours to between 6:00 a.m. and 10:00 p.m., limiting the maximum square footage of businesses (3,000 square feet), limiting commercial deliveries to businesses (no more than 3 per day), and prohibiting outdoor storage.

There are fewer uses permitted with conditions in the Heritage District. Some of these include outdoor sales and display accessory to an approved retail use (limiting display hours, etc.), sidewalk cafes (ensuring cafes do not block sidewalks, etc.), and sidewalk vendors (limiting the size of vending carts, limiting hours of operation, etc.).

7.Some uses that are allowed in the Heritage and Neighborhood Districts are permitted only if they receive approval of a Conditional Use Permit from the City Council. The CUP process allows staff to analyze each proposed use on a case-by-case basis and impose stricter requirements than normal if necessary to protect the integrity of the neighborhood and limit effects on surrounding properties. ***Subsection 307.F, OTAB Conditional Use Standards***, lists conditions for several of the uses requiring Conditional Use Permits. Any use which is shown in the Land Use Matrix as requiring a CUP but which is not listed in Section 307.F will still be required to meet basic Conditional Use Permit Findings as established in Section 1, Administration and Procedures.

8.***Subsection 307.G, OTAB District Property Development Standards***, establishes the minimum setbacks, lot widths and depths, building heights, and lot coverage required for new development in both the Heritage and Neighborhood Districts. The development standards for the Heritage District have not changed from what currently exists; buildings are to be built as close to the sidewalk as possible with a maximum street setback of ten feet. Side setbacks are not required so entire blocks can be developed with few breaks between storefronts. The development standards for the Neighborhood District are new, but are largely based on the required setbacks of the R1-5 (Single Family Residential) Zoning District. For example, 15 to 30 foot front setbacks are required in order to allow front yards to be landscaped and to keep with the existing single-family residential form in the neighborhoods. Rear setbacks are also required, however side setbacks are waived unless adjacent to a residential use.

9.***Subsection 307.H, OTAB Performance Standards***, contains several design requirements specific to ensuring Old Town maintains its historic feel and pedestrian oriented nature. Examples include a provision which requires character defining features be maintained on existing buildings if exterior modifications are proposed, a requirement that windows be used on ground levels of buildings fronting on Western Avenue, and a provision requiring larger buildings over 50 feet in length be designed to appear like a series of smaller buildings.

This subsection also contains provisions to ensure Old Town remains clean and orderly through prohibitions on outdoor storage (except for merchandise display), requirements for trash enclosures to be hidden from Western Avenue, etc. Lastly, this subsection exempts development in OTAB from several landscaping requirements which conflict with dense, urban commercial development forms.

PARTICIPATION:

This item was presented to the City Council at a work session meeting on March 1, 2010 (Exhibit C) and to the Planning Commission at a work session meeting on May 20, 2010 (Exhibit D).

An introductory presentation concerning the upcoming text amendment was given by staff at the April 13th Old Town Avondale Merchants Meeting. Attendees at the meeting included approximately 20 Western Avenue business/property owners, the majority of which expressed an interest in remaining a part of the process moving forward (Exhibit E).

A Neighborhood Meeting to discuss proposed revisions to the Old Town Avondale Business District was held on May 24, 2010 at 6:00 p.m. at the City's Sam Garcia Western Avenue Library. The meeting was advertised in the May 4, 2010 edition of the West Valley View. Additional notice was provided through a public hearing notice sign erected in front of Sam Garcia library on Western Avenue. Furthermore, bi-lingual (English/Spanish) flyers were also distributed to homes and businesses in the Old Town area prior to the meeting. Attendees from the Merchants Meeting who had indicated that they wanted to be kept up to date regarding the revisions to the OTAB district were also emailed notices and other materials in advance of the Neighborhood Meeting. Five citizens attended the meeting (Exhibit F) and were given handouts detailing some of the specific aspects of the proposed amendment.

The primary topic of discussion was protecting the unique feel of Western Avenue; several attendees expressed a concern that adding too many new, general uses would negatively affect the progress that has occurred along Western Avenue. Attendees also discussed their concerns regarding the police presence in the area, the location of the City's overnight holding facility, and the design of the Sam Garcia Western Avenue Library. Overall, the attendees preferred to see the existing themes of the OTAB District (limited commercial uses, traditional architecture) maintained.

Following the neighborhood meeting, staff continued attending Old Town Avondale Merchants Meetings to update area business owners on the status of the upcoming text amendment. Staff attended meetings, presented information, and took questions and suggestions from business owners at these meetings on May 11th, September 14th, and October 12th. Staff has also held a series of smaller meetings for interested stakeholders, including representatives of the Arizona State University Stardust Center and University of Arizona Drachmann Institute, to discuss any concerns they have had after reviewing earlier drafts of the proposed amendment. In a majority of instances the public's suggestions were incorporated into the proposed amendment. Some of those suggestions incorporated into the draft include, but are not limited to, the following:

- Allowing video arcades to provide additional after school activities for students at Agua Fria High School.
- Reducing restrictions on sidewalk cafes to encourage additional street activity.
- Eliminating the need for a Conditional Use Permit for attached single-family residential uses (i.e. townhomes) in the Neighborhood District.
- Revising and/or eliminating several design requirements that were viewed as illogical and/or overly burdensome.
- Maintaining a narrow list of uses intended to create a unique business area different from the suburban style shopping offered elsewhere throughout the city and region.

The list of suggestions not incorporated is much shorter; the following suggestions from the public were not incorporated into the draft (followed by an explanation):

- A stakeholder stated that the original OTAB uses are too restrictive, especially in regards to finding occupants for larger buildings on Western Avenue. The stakeholder suggested allowing general retail uses in buildings over 4,000 square feet in floor area. Staff took note of this difficulty, particularly as it pertains to larger buildings, and has attempted to add several uses which are appropriate for larger buildings but that wouldn't risk changing the unique feel of the OTAB area. While staff did not feel adding “general retail” was appropriate, uses such as grocery stores, pharmacies, and day spas - all of which typically require larger spaces - were added to the OTAB permitted uses list.

- A stakeholder suggested adding check cashing and pawn shops as a permitted use. Staff did not believe these uses fit with the intended character of the OTAB District and did not incorporate this change.

- A stakeholder proposed allowing places of worship in the Neighborhood District. Places of Worship are allowed in the Heritage District however staff believed that traffic impacts of churches and other similar uses within neighborhoods would be too great and negatively impact the privacy and residential character of these areas.

- A stakeholder suggested that vending trucks (i.e. large scale mobile food vending operations) should be embraced since they provide an important neighborhood service. Staff did not incorporate this suggestion for several reasons. Small scale food vending is already allowed in OTAB. Furthermore, the Council stated opposition to large scale outdoor vending at their work session meeting. Staff also feels that these uses may have negative impacts on surrounding businesses by stealing customers from businesses located within buildings and also believes that these uses, particularly when tents, tables, and chairs are set up over an entire vacant lot, cheapen the appearance of an area.

- A stakeholder noted that there has been a shift in how tattoo parlors are perceived today compared to 30 years ago and that allowing these uses in OTAB could be beneficial. Staff decided against revising this language because the City's separation requirement for tattoo establishments (quarter mile from bars, pawn shops, liquor stores, etc) would make locating a tattoo parlor in OTAB impossible even if it were listed as a permitted use.

The Planning Commission held a public hearing on this application on October 21, 2010. A notice of the Planning Commission hearing was published in the West Valley View on October 5, 2010. The public hearing notice sign was updated to reflect the date and time of the Planning Commission meeting on September 30, 2010. Attendees of the neighborhood meeting, merchants meetings, and other informal meetings were notified by phone call or email of the upcoming Planning Commission meeting and were given copies of the proposed amendment if requested. Additionally, the proposed Ordinance language was made available on the City's website for review. At the meeting, one business owner submitted a card in favor of the proposed text amendment but did not wish to speak.

A notice of this City Council meeting was published in the West Valley View on October 26, 2010. The public hearing notice sign was updated to reflect the date and time of the City Council meeting on October 22, 2010. Additionally, the proposed new Ordinance language is available on the City's website for review. Staff has received two emails pertaining to the proposed amendment (Exhibit G).

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on October 21, 2010, and voted 6-0 to recommend approval of the request as recommended by staff (Exhibit H). Vice Chairperson Cotera was excused from the meeting.

Questions for staff by the Commission pertained to vandalism on Western Avenue and the impacts of unsupervised children on businesses in the OTAB area. Commissioner Scanlon suggested limiting uses which appealed to children in order to reduce loitering in the area. Commissioner Scibienski inquired as to whether a previous video arcade on Western Avenue impacted crime rates in any fashion. In response to Commissioner Scibienski's request, staff attempted but was not successful in locating crime data relating to a defunct arcade on Western Avenue.

ANALYSIS:

The genuine achievements accomplished throughout the Old Town area thus far indicated to staff that an overhaul of the City's strategy is not necessary. Instead, building upon the recent successes without changing the character of the area was the next logical step in the continued revitalization of

the area. Expanding upon the importance of pedestrian oriented development in the area was vital. The proposed amendment will increase the odds for success along Western Avenue without harming the character that has carefully been developed over the past decade. Furthermore, with the creation of the Neighborhood District, the proposed amendment will allow the positive vibe created from Western Avenue to more freely spill over into the adjacent neighborhoods. Overall, the proposed amendment relies heavily upon the vision of the business owners and residents of the area, both past and present, and does not represent a fundamental shift in strategy for the revitalization of Western Avenue from what has been implemented since 2002.

Conclusion:

Staff recommends approval of the Zoning Ordinance text amendment to Section 307, Old Town Avondale Business District (OTAB).

FINDINGS:

1. The proposed amendment meets the intent of the General Plan.
2. The proposed amendment meets the requirements and intent of the Zoning Ordinance.
3. The proposed amendment will enhance the ongoing Old Town Avondale revitalization efforts.

RECOMMENDATION:

The City Council should **APPROVE** Application TA-08-9, a City initiated request to amend Zoning Ordinance Section 307, *Old Town Avondale Business District (OTAB).*

PROPOSED MOTION:

1. I move that the City Council adopt Resolution 2939-1110 declaring as a public record a document entitled "The Old Town Avondale Business District Regulations, amended and Restated November 15, 2010".
2. I move that the City Council adopt Ordinance 1430-1110 adopting the Text Amendment.

ATTACHMENTS:

Click to download

- Exhibit A - Current Zoning Ordinance Section 307, Old Town Avondale Zoning Overlay District
- Exhibit B - Proposed Zoning Ordinance Section 307, Old Town Avondale Business District
- Exhibit C - Excerpt of City Council Work Session Minutes from March 1, 2010.
- Exhibit D - Excerpt of Planning Commission Work Session Minutes from May 20, 2010.
- Exhibit E - Sign-In Sheet from Old Town Merchants' Meeting from April 13, 2010.
- Exhibit F - Sign-In Sheet from Neighborhood Meeting from May 24, 2010.
- Exhibit G - E-Mails from Colleen Schorr (Business Owner) and Vicki Velasquez (Property Owner)
- Exhibit H - Excerpt of Draft Planning Commission Minutes from October 21, 2010
- Resolution 2939-1110
- The Old Town Avondale Business Regulations
- Ordinance 1430-1110

307 Old Town Avondale Zoning Overlay District

A. Permitted uses. In the OTAB zone, the following uses and their accessory buildings and uses are permitted, subject to the general revisions and exceptions set forth by this ordinance:

1. Antiques and collectibles shops.
2. Art galleries.
3. Artists' studios, and artisans' and craftspersons' studios or workshops, including retail sales.
4. Athletic clubs, health clubs.
5. Bakeries.
6. Banks and financial institutions, excluding non-chartered financial services.
7. Beauty salons, nail salons, and barber shops, without massage services.
8. Bicycle and sporting good stores.
9. Bookstores.
10. Camera shops.
11. Candy/confectioner's shops.
12. Churches.
13. Clothing, resort-wear, and t-shirt shops, selling only new merchandise.
14. Clothing consignment shops.
15. Clubs and lodges.
16. Coffee houses.
17. Curio shops.
18. Delicatessens.

19. Florists and flower shops.

20. Furniture sales, but not furniture, office, or household item rental.

21. Gift shops.

22. Herbal, natural remedy and metaphysical shops.

23. Ice cream shops.

24. Import stores.

25. Jewelry stores.

26. Juice bars.

27. Medical, dental, and optical offices.

28. Museums.

29. Music, record, and CD stores.

30. Newsstands.

31. Offices for professional, administrative, clerical, and sales service.

32. Outdoor gear stores.

33. Photography studios.

34. Plant nurseries with outdoor display.

35. Restaurants, restaurant/bars, and cafes of a sit-down nature, including those with outdoor dining.

36. Retail shops, as an accessory use to any of the primary uses permitted in this section.

37. Shoe stores and shoe repair shops.

38. Specialty grocers and food stores, without gasoline sales.

39. Specialty retail, such as flag, kite, magic, and puppet shops, etc.

40. Tailors and dressmaking shops.

41. Toy shops.

42. Video and DVD rental stores.

43. Sidewalk vendors. Vending on public streets and sidewalks in the OTAB District promotes the public interest by contributing to an active and attractive pedestrian environment. However, reasonable regulation of street and sidewalk vending is necessary to protect the public health, safety, and welfare.

    The purpose of this section is to set forth the conditions and requirements under which sidewalk vendors may be permitted to operate within the OTAB District.

    a. Definition. For purposes of this section, the following definitions shall apply:

        1) "Stand," means a pushcart, wagon, or any other wheeled vehicle or device which may be moved without the assistance of a motor and is used for the displaying, storing, or transporting of articles offered for sale by a vendor.

        2) "Vending" means the sale of food or merchandise from a stand operating on private property within the downtown area.

    b. Vendors license required. Selling, or offering for sale, any food, beverage or merchandise on any property within the downtown shall comply with City of Avondale Municipal Code licensing requirements.

    c. Applications. The application for a vendor's license shall be signed by the applicant and shall include:

        1) The name, home, and business address of the applicant, and the name and address of the owner, if other than the applicant, of the vending stand to be used in the operation of the vending business,

        2) A description of the type of food, beverage, or merchandise to be sold.

        3) A description and photograph (including signage and colors) of any stand to be used in the operation of the business.

4) Proof of an insurance policy, issued by an insurance company licensed to do business in the State of Arizona, protecting the licensee and the city from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the license. Such insurance shall name as additional insured the city and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the city.

d. Issuance and fees. Not later than thirty (30) days after the filing of a completed application for a vendor's license, the applicant shall be notified of the decision on the issuance or denial of the license.

1) Fees shall be determined by resolution of the City Council and shall be paid prior to issuance of a permit.

2) Licenses to vend within the OTAB District shall be reviewed and approved by development services director in conjunction with the city clerk.

3) Locations for vending within the OTAB District area shall be approved by the development services director. Vending locations shall be designated based on the ability of the site to safely accommodate the use and to assure, as much as practical, that the sidewalk vendor is not selling merchandise that is primarily sold "on premise" within three hundred (300) feet of the vending locations.

4) Vending locations may change only upon written request by an applicant and approval by the development services director.

5) All locations of vending stands shall be in conjunction with right-of-way considerations, pedestrian safety, and proximity to existing vendors. All locations shall be within the OTAB District with primary emphasis at major intersections in the downtown core.

6) As an initial pilot program, it is recommended that a maximum of six (6) sidewalk vendors be allowed in Old Town Avondale. The director of may review this program periodically development services.

e. Term and renewal. All licenses are valid for one year unless revoked or suspended prior to expiration. An application to renew a license shall be made not later than sixty (60) days before the expiration of the current license. License fees and renewal procedures shall be established in accordance with the City of Avondale Municipal Code.

f. Prohibited conduct and hours of operation. It shall be prohibited for any outdoor vendor to operate under any of the following conditions:

1) Vend between 10:00 p.m. to 6:00 a.m. unless in conjunction with a special event.

2) Leave any stand or motor vehicle unattended.

3) Store, park, or leave any stand overnight on any public street or sidewalk, or park any motor vehicle other than in a lawful parking place.

4) Sell food or beverages for immediate consumption unless there is a litter receptacle available for patrons' use.

5) Leave any location without first picking up, removing, and disposing of all trash or refuse remaining from sales made from by him. Trash and refuse generated by the vending cart operations shall not be disposed in public trash receptacles.

6) Allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the stand.

7) Set up, maintain, or permit the use of any additional table, crate, carton, rack, or any other device to increase the selling or display capacity of his/her stand where such terms have not been described in his/her application.

8) Solicit or conduct business with persons in motor vehicles.

9) Sell anything other than that which he/she is licensed to vend.

10) Sound or permit the sounding of any device that produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract the attention of the public.

11) Vend without the insurance coverage previously specified.

g. Vending stand requirements. Vendor shall be required to submit a photograph or drawing of the vending stand to be used for review during application approval process, including materials, colors and signage. No stand shall exceed four (4) feet in width, eight (8) feet in length, and eight (8) feet in height.

h. Safety requirements. All vehicles in or from which food is prepared or sold shall comply with the following requirements:

1) All equipment installed in any part of the vehicle shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.

2) All utensils shall be stored in order to prevent their being hurled about in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided to avoid loose storage of knives.

3) Compressors, auxiliary engines, generators, batteries, battery chargers, gas fueled water heaters, and similar equipment shall be installed so as to be hidden from view to the extent possible and be easily accessible.

i. Display of license. All licenses shall be displayed in a visible and conspicuous location at all times during the operation of the vending business.

j. Advertising. No advertising, except the posting of prices, shall be permitted on any stand, except to identify the name of the product or the name of the vendor.

k. Denial, suspension, and revocation. Any license may be denied, suspended, or revoked in accordance with the procedures in the City of Avondale Municipal Code for any of the following causes:

1) Fraud or misrepresentation contained in the application for the license.

2) Fraud or misrepresentation made in the course of carrying on the business of vending.

3) Conduct of the licensed business in such manner as to create a public nuisance, or constitute a danger to the public health, safety, welfare, or morals.

4) Conduct, which is contrary to the provisions of this section.

B. Uses permitted subject to a conditional use permit. In the OTAB District, the following uses and activities and their accessory buildings and uses are permitted subject to the provisions of Section 107:

1. Alcoholic beverage sales for off premises consumption (1iquor stores).

2. Child Care Centers

3. Cocktail lounges, bars, nightclubs, taverns, with or without entertainment and/or dancing.

4. Commercial parking lots and garages. Alleyway or side street ingress and egress is preferred for such lots and garages, as is their location to the rear of street side businesses, such that they are not visible from Western Avenue. Parking garages may be required by the development services director to accommodate commercial or civic uses on ground floors adjacent to the street.

5. Dwellings not part of a commercial development (fourteen and one-half (14.5) dwelling units/acre maximum). For lots fronting on Western Avenue, no front yard setbacks are required and the maximum setback permitted shall be ten (10) feet which may be used for landscaping, pedestrian circulation, entry court, and

similar uses related to a downtown pedestrian environment. Development standards for such dwellings shall be determined on a case-by-case basis, taking into account the character of the surrounding area.

6. Dwellings which are an integral part of a commercial development (fourteen and one-half (14.5) du/ac maximum). Must be located above ground floor, or to the side or the rear, of the commercial development. Development standards for such dwellings shall be determined on a case-by-case basis, taking into account the character of the surrounding area.

7. Hotels, motels and bed and breakfast inns.

8. Movie theaters (enclosed buildings), especially art film theaters, but excluding adult theaters.

9. Performing arts theaters, but excluding adult live entertainment establishments.

10. Restaurants with a separate bar/lounge area, with or without entertainment and/or dancing.

11. Veterinary offices provided such offices are constructed to prevent objectionable noises and odors outside the walls of the office. The boarding of animals shall be permitted only for short time periods for the purpose of observation incidental to care.

12. Uses similar to and not more detrimental than those permitted herein, excluding tattoo parlors, body piercing studios, pawn shops, plasma centers, and non-chartered financial services.

13. Sidewalk cafes. Sidewalk cafes on public sidewalks can enhance the pedestrian ambiance of Old Town Avondale and are encouraged. The purpose of this section is to set forth the conditions and requirements under which a sidewalk cafe, as defined below, may be permitted to operate on a public sidewalk within the OTAB District.

    a. Definition. A sidewalk cafe is any group of tables and chairs, and its authorized decorative and accessory devices, situated and maintained upon the public sidewalk or along the private porches and arcades for use in connection with the consumption of food and beverage sold to the public from or in an adjoining indoor restaurant or delicatessen.

b. Conditional use permit required. A conditional use permit is required for all sidewalk cafes. Fees for the conditional use permit may be waived by City Council Resolution as an incentive for sidewalk cafes.

c. Findings and conditions. In connection with approval of a conditional use permit, the development services director shall make findings that the proposed operation meets the limitations of this section. The development services director may impose such conditions in granting approval as deemed necessary to assure that the proposed operation will meet the operating requirements and conditions set forth in this section and to assure that the general public health, safety and welfare will be protected.

d. Term and renewal. A conditional use permit for a sidewalk cafe may be approved by the development services commission for a maximum period of one year. Thereafter, the development services director, if an extension application is filed prior to any expiration date of the conditional use permit, may extend the permit for additional periods, not to exceed one year each, following his review and approval of the cafe's operations. In the event the development services director considers additional or revised conditions are necessary and should be imposed if the permit is to be extended or if the development services director is of the opinion that the permit should not be extended at all, he or she shall refer the application to the Planning Commission which shall hold a public hearing and thereafter decide the matter. The Planning Commission may make any extension of a conditional use permit subject to such additional and revised conditions and requirements as it deems appropriate or necessary and any extensiongranted by the Planning Commission shall not exceed a period of one year.

e. Revocation. A conditional use permit may be revoked by the development services director, following notice to the permitted and a public hearing, upon a finding that any of the following are true:

1) One or more conditions of the permit have been violated;

2) That one or more conditions of this section have been violated;

3) That the sidewalk cafe is being operated in a manner which constitutes a nuisance; or

4) That the operation of the sidewalk cafe unduly impedes or restricts the movement of pedestrians past the sidewalk cafe.

f. Appeals. The applicant or any interested party may appeal a decision of the development services director to the Planning Commission. All applications for appeal shall be accompanied by the required fee.

g. Limitations and requirements. A sidewalk cafe may be permitted only in the OTAB District it the sidewalk cafe is situated adjacent to an indoor restaurant or delicatessen as specified below, and the sidewalk cafe's operation is incidental to and a part of the operation of such adjacent indoor restaurant or delicatessen.

1) Existing indoor restaurants and delicatessens must conform to all sections of the City of Avondale Municipal Code in order to be eligible for approval of sidewalk services.

2) A sidewalk cafe may be located on the public sidewalk immediately adjacent to and abutting the indoor restaurant or delicatessen which operates the cafe, provided that the area in which the sidewalk cafe is located extends no farther along the sidewalk's length than the actual sidewalk frontage of the operating indoor restaurant or delicatessen and all other applicable provisions of this section are fulfilled.

3) An indoor restaurant or delicatessen may be permitted to operate only one sidewalk cafe and each sidewalk cafe shall be confined to a single location or the sidewalk.

4) A sidewalk cafe may be permitted only where the sidewalk or porch is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the proposed cafe. There shall be a minimum forty-eight (48) inches clear

distance free of all obstructions, in order to allow adequate pedestrian movement.

5) All outdoors dining furniture, including tables, chairs, umbrellas, and planters, shall be movable. Umbrellas must be secured with a minimum base of not less than sixty (60) pounds. Outdoor heaters, amplified music, or speakers shall be reviewed at the time of application for a conditional use permit.

6) No signing shall be allowed at any outdoor cafe except for the name of the establishment on an awning or umbrella valance.

7) A sidewalk cafe may serve only food and beverages prepared or stocked for sale at the adjoining indoor restaurant or delicatessen; provided that the service of beer or wine, or both, solely for on-premises consumption by customers within the area of the sidewalk cafe has been authorized as part of a conditional use permit approval. Each of the following requirements must also be met:

   i. The area in which the sidewalk cafe is authorized is identified in a manner, as approved by the development services director, which will clearly separate and delineate it from the areas of the sidewalk, which will remain open to pedestrian traffic.

   ii. The sidewalk cafe operation is duly licensed in accordance with, the City of Avondale Municipal Code, or prior to the service of any beer or wine at the cafe, will be duly licensed, by state authorities to sell beer or wine, or both, for consumption within the area of the sidewalk cafe.

   iii. The outdoor preparation of food and busing facilities are prohibited at sidewalk cafes. The presetting of tables with utensils, glasses, napkins, condiments, and the like is prohibited. All exterior surfaces within the cafe shall be easily cleanable and shall be kept clean at all times by the permitted.

iv. Trash and refuse storage for the sidewalk cafe shall not be permitted within the outdoor dining area or on adjacent sidewalk areas and the permitted shall remove all trash and litter as they accumulate. The permitted shall be responsible for maintaining the outdoor dining area, including the sidewalk surface and furniture and adjacent areas in a clean and safe condition.

8) Hours of operation shall be identical to those of the indoor restaurant or delicatessen. All furniture used in the operation of an outdoor cafe shall be removed from the sidewalk and stored indoors whenever the indoor restaurant or delicatessen is closed.

9) The city shall have the right to prohibit the operation of a sidewalk cafe at any time because of anticipated or actual problems or conflicts in the use of the sidewalk area. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades, repairs to the street or sidewalk, or emergencies occurring in the area. To the extent possible, the permitted will be given prior written notice of any time period during which the operation of the sidewalk cafe will be prohibited by the city.

10) The sidewalk cafe shall not require the provision of additional off-street parking.

C. Property development standards.

1. Area and density. No standard is established.

2. Coverage. Full coverage is allowable provided minimum loading space; parking, landscaping, and setbacks have been provided, unless otherwise approved by the City Council.

3. Setbacks.

a. Front yard. No front yard setbacks are required and the maximum setback permitted shall be ten (10) feet which may be used for landscaping, pedestrian, circulation, entry

court, outdoor dining, and similar uses related to a downtown pedestrian environment.

b. Side yard. No side yard setbacks shall be required, except as follows:

1) Where the side property line abuts residential zoned property, no setback shall be required for the ground floor portion of the structure or first fifteen (15) feet of structure height, whichever is less. Portions of the structure above the ground floor or fifteen (15) feet in height shall be set back a minimum of ten (10) feet from the side property line.

2) Where the side property line abuts dedicated alley which separates such side property line from abutting residential zoned property, the side yard shall have a minimum depth of ten (10) feet, which shall be measured from the center line of said alley and the forty-five-degree angle of the afore described plane may be measured at the ground level along the center line of said alley.

c. Rear yard. No rear yard setbacks shall be required except as follows:

1) Where the rear property line abuts residential zoned property a minimum rear yard setback of twenty (20) feet shall be maintained, except that no portion of any structure shall encroach through a plane projected from an angle of forty-five (45) degrees measured at the ground level along the rear property line.

2) Where the rear property line abuts a dedicated alley which separates such rear property line from abutting residential zoned property, the rear yard shall have a minimum depth of twenty (20) feet which shall be measured from the center line of said alley and the forty-five (45) degree angle of the afore described plane may be measured at the ground level along the center line of said alley.

4. Height. Maximum height of all structures shall be three (3) stories.

5. Width. For purposes of regulating the division of existing storefronts, no minimum storefront width shall apply. For the purpose of this section, a storefront is the primary (front facade) and secondary (rear/side facade) building entrance where access is taken from a public street, alley, public or private parking lot, or pedestrian mall/arcade or passage.

6. Design standards. Any exterior modification of a building, structure or site within the OTAB District shall be subject to the standards set forth in the Old Town Avondale Business District Design Guidelines as adopted by the City Council. The Old Town Avondale Business District Design Guidelines shall supersede the design requirements respecting site organization and development, building design, landscaping, lighting, signage and public art set forth elsewhere in this ordinance. The required approval process shall be as follows:

    a. Exterior modifications requiring a building permit shall be subject to the site plan review process and the appeal procedures for site plan review set forth in Section 106 of this ordinance.

    b. Exterior modifications that do not require a building permit shall be reviewed and approved by city staff according to procedures established by the City Manager or designee.

7. OTAB joint-use parking. Joint-use parking standards are based on the assumption that patrons will use a single parking space for more than one destination in Old Town Avondale and that one parking space will be open and available for short-term parking to serve many different uses which may have different peak hours.

    a. The following categories of development shall be eligible to use joint-use parking standards to meet parking requirements:

        1) Non-residential new construction on sites of less than twenty thousand (20,000) square feet in size.

        2) New construction on sites greater than twenty thousand (20,000) square feet in size for retail commercial, restaurants, and movie theaters;

        3) Existing buildings with uses or occupancies as specified in Section 306 of this ordinance, including

additions to and rehabilitation of such buildings; and

4) Changes in uses or occupancies of existing buildings from uses or occupancies not listed in Section 306 of this ordinance to any uses or occupancies specified in Section 306 of this ordinance.

b. Ineligible development. The following types of uses are not eligible to use joint-use parking standards:

1) New or existing residential uses; and

2) New construction of hotel or office uses on sites greater than twenty thousand (20,000) square feet in size.

8. Alternative joint-use parking standards. Section 8 the City of Avondale Zoning Ordinance shall determine circumstances in which parking shall be required. Once it has been established that parking is required, eligible projects within the OTAB District may choose to provide required parking by using the Alternative Joint-Use Parking Standards (Table 1) or to provide parking for the projects exclusive use under the standards established in Section 8.

9. Joint-use parking agreement. A11 parking developed under joint-use parking standards shall be required to enter into an agreement with the city and recorded by the city clerk, requiring the parking to be operated on a non-exclusive basis, to be open and available to the public for joint-use short-term public parking during normal business hours.

Exhibit A

ALTERNATIVE JOINT-USE PARKING STANDARDS
MINIMUM PARKING RATIOS

TABLE INSET:

Use	Minimum Parking Ratios
OFFICE	3.0 spaces/1,000 sf of gross usable area
Including:	
1. Banks, Savings and Loans, Other Financial Institutions.	
2. Medical or Dental Office.	
3. Professional or Unspecified Office.	
RETAIL COMMERCIAL	4.0 Spaces/1,000 sf of gross usable area
PUBLIC ASSEMBLY	
Including:	
1. Movie Theater	1.0 space/4 seats
2. Museum.	3.0 Spaces/1,000 of gross usable area
RESTAURANT	
Including:	
1. Restaurant, Coffee House, Juice Bar under 1,000 square feet of gross usable area.	3.0 spaces/1,000 of gross usable area
2. Restaurant over 1,000 square feet of gross usable area.	5.0 spaces/1,000 of gross usable area
3. Outdoor dining areas associated with a restaurant.	0 spaces
RESIDENTIAL	Excluded from use of joint-use parking standards
NEW CONSTRUCTION OF OFFICE OR HOTEL USES ON LOTS GREATER THAN 20,000 SQUARE FEET	Excluded from use of joint-use parking standards
OTHER	Any category not listed above may be reviewed by the city on a case-by-case basis, taking into consideration the impact on peak-hour parking usage and the established parking standards contained in Section 8 of the City of Avondale Zoning Ordinance

10. OTAB in-lieu parking fee. The existence of small parcels within Old Town Avondale often makes it difficult to provide on-site parking. As an alternative to on-site parking, the city may establish an in-lieu parking fee as part of a transportation system development charge. The fees would be "banked" by the city to provide funds to develop and maintain centralized public parking facilities.

11. Use of alleys within OTAB. For existing structures, a public alley may be used as part of the required maneuvering aisle for on-site parking that is immediately adjacent to the alley.

12. Structured parking within OTAB. For any proposed project in the OTAB District, up to a maximum twenty-five (25) percent reduction in required parking spaces may be allowed for the development of structured parking provided that a finding can be made that adequate parking will be available to serve the subject project.

13. On-street parking within OTAB. The number of on-street parking spaces within one hundred (100) feet of a parcel in the OTAB District, or the number that will be within one hundred (100) feet upon completion of planned street/parking improvements, whichever is greater, may be counted toward the required number of parking spaces.

14. Parking reductions within OTAB. For new and existing development within the OTAB area, required parking may be reduced on a case-by-case basis in compliance with Section 106.

15. OTAB parking lot landscaping and lighting requirements. Parking lot landscaping and lighting requirements shall be included as components of the OTAB District design standards which are promulgated administratively pursuant to Section 306 of this ordinance, under property development standards, item (6).

16. Business address required. Each business or structure (as appropriate) shall provide its address in numbers a minimum of six (6) inches in height. The address shall be placed on the building, awning valance, or canopy in a manner to be clearly visible from the adjacent street, alley, and sidewalk. The preferred locations are above the main pedestrian entrance and at rear or side entrances. (Ord. No. 1211-1106, §§ 4, 5, 11-20-06)

Exhibit B

307 OLD TOWN AVONDALE BUSINESS DISTRICT (OTAB)

A. Purpose

The purpose of the Old Town Avondale Business District (OTAB) is to further the revitalization of the City's original town site and its immediate vicinity by encouraging pedestrian-oriented development and by emphasizing a unique mix of uses intended to make Old Town a destination, with street level activity that takes one back to an earlier place in Avondale's history.

The district shall enhance and maintain the character of retail and residential living by encouraging an active pedestrian environment while also promoting vitality throughout the district. To accomplish the task of making OTAB pedestrian friendly, the district requires new structures to be designed at a human scale to preserve the residential and historical character of the neighborhood. Development occurring in the district shall be designed to reduce conflicts between pedestrians and vehicular traffic and to promote primary areas of concentrated indoor retail and service business uses, but not regional shopping centers.

The Old Town Avondale Business District is intended to:

1. Encourage development and redevelopment of pedestrian-focused commercial businesses, such as those which encourage patrons to shop and dine for several hours without having to use their vehicles between stops.

2. Reduce the dominance of the automobile by encouraging the use of shared parking areas, such as on-street parking, public surface lots, and public parking structures.

3. Create a destination for unique retail, restaurant, entertainment and service uses that increase revenues and strengthen the city's tax base, drawing consumers both locally and regionally.

4. Respect the local and cultural significance of the City's original town site without hindering creativity in design.

5. Support limited commercial uses in residential structures located within the neighborhoods that are located in close proximity to Western Avenue.

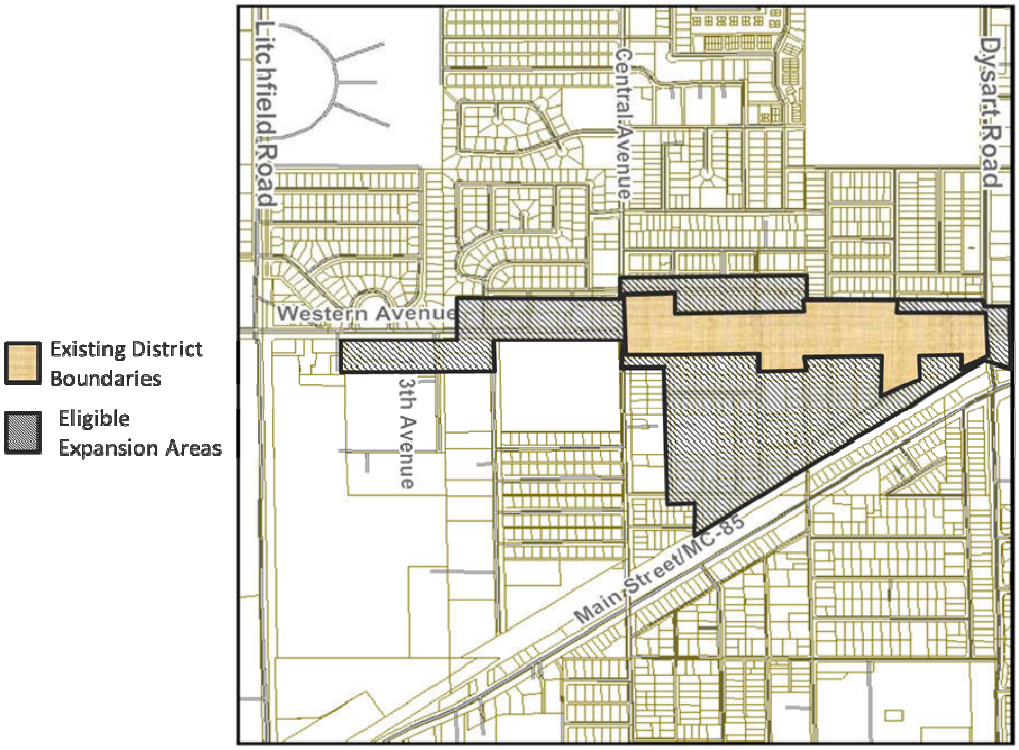
6. Provide an environment where commerce can flourish in a traditional main street type of setting, with the knowledge that ample opportunity for suburban style development is available throughout the remainder of the City.

B. Applicability

1. The location and boundaries of the OTAB District are established as shown on the map entitled "Zoning Atlas, City of Avondale, Arizona," as amended, a

copy of which is on file with the City of Avondale Development Services Department.

2. Expansion of the boundaries of this District shall be limited to the cross-hatched areas on the following map:



C. **Sub-Districts**

The OTAB District is comprised of the following sub-districts:

1. **Heritage District.** Any property located within OTAB with direct frontage on Western Avenue, Central Avenue or Dysart Road shall be subject to the requirements, restrictions and standards that are listed in this Subsection 307(C)(1). This Sub-District promotes pedestrian-oriented development that is designed to attract customers from a regional trade area as well as from the immediate area. Commercial uses are required on the ground floor in order to produce the critical mass of businesses necessary to make the area flourish; residential uses are encouraged on upper floors to create a presence in the area during off-peak business hours. Development shall take the form of a traditional main street, where businesses extend to the pedestrian sidewalk and parking is provided on the street, within public lots/structures, or behind the buildings.

2. **Neighborhood District.** Any property located within OTAB with direct frontage on a local street shall be subject to the requirements, restrictions and standards that are listed in this Subsection 307(C)(2) for the Neighborhood

District. This Sub-District is designed to provide a transition between the OTAB Heritage District and the residential districts located on the periphery of the OTAB Neighborhood District. Residential uses remain the primary land use; however, non-residential uses such as boutiques, cafes, professional offices and bed and breakfast inns are permitted. These commercial businesses may be located in either retrofitted residences or new buildings. Development standards have been designed to be respectful of the residential character of the district. Unlike the Heritage District, which requires buildings be placed at the edge of the sidewalk, lushly landscaped areas are required in the fronts of businesses in this Sub-District in order to give entryways a sense of importance and to distinguish businesses from residential uses.

D. OTAB Land Use Matrix

The following land use matrix shows the uses that are:

- (P) Permitted outright
- (C) Permitted with a conditional use permit
- (PC) Permitted with conditions
- (A) Permitted as an accessory use
- (-) Prohibited

LAND USE	Heritage Sub-District	Neighborhood Sub-District
Assembly Uses		
Funeral homes	C	-
Movie and performing arts theaters, indoor	P	-
Places of worship	P	-
Reception centers	C	-
Social/Private club	P	-
Commercial Service Uses		
Banks and financial institutions, excluding non-chartered financial services	P	-
Barber shops	P	PC
Beauty salons	P	PC
Child care centers	C	-
Clothing alteration, custom dressmaking, or tailor shop	P	PC
Health and exercise center	P	-
Massage or day spas	P	PC
Nail salons	P	PC
Pet grooming	P	-
Shoe repair shops	P	PC
Ticket, travel, and recreational activity agencies	P	P

LAND USE	Heritage Sub-District	Neighborhood Sub-District
Dining and Entertainment Uses		
Bakeries	P	PC
Bars	C	-
Cigar bars and hookah lounges	P	-
Coffee shops	P	PC
Juice bars	P	PC
Outdoor dining	A	A/PC
Restaurants, without drive-thru	PC	PC
Sidewalk cafes	PC	-
Sidewalk vendors	PC	-
Video arcades or game rooms	P	-
Educational, Institutional, and Office Uses		
Art schools	P	-
Dance studios	P	-
Medical, dental, or health offices, excluding plasma centers.	P	PC
Museums, libraries, and cultural centers	P	-
Music studios	P	C
Professional offices	P	PC
Public schools	P	P
Hospitality Uses		
Bed and breakfast inns	C	PC
Hotels	P	-
Miscellaneous Uses		
Community gardens	P	P
Public parking facilities, including parking structures, surface lots and park-and-rides.	PC	PC
Public uses, including utility buildings, structures, uses, facilities and equipment	PC	PC
Uses that are customary and incidental to the principal permitted use of the property	A	-
Pedestrian Oriented Retail Uses		
Antique and collectible shops	P	PC
Art, craft and photography studios, including retail sales	P	PC

LAND USE	Heritage Sub-District	Neighborhood Sub-District
Pedestrian Oriented Retail Uses (Continued)		
Art galleries	P	PC
Consignment shops	P	PC
Farmers markets, indoor or outdoor	P	-
Florists	P	PC
Liquor Stores	C	-
Outdoor sales and display	A/PC	-
Specialty retail shops, excluding liquor stores	P	-
Grocery Store	P	-
Pharmacy	P	-
Residential Uses		
Dwelling units on the second/third stories of a commercial building	P	-
Multi-family dwelling, such as apartment homes	-	C
Residential living quarters, occupied by owner or employee of a permitted business on property	-	PC
Single family attached dwelling	-	PC
Single family detached dwelling	-	PC

E. **OTAB Uses Permitted with Conditions**

The following land uses are listed in the OTAB land use matrix as Permitted with Conditions. These uses are permitted by right only if the conditions listed below for the individual uses are met. Based on site plan and/or tenant improvement plan review, additional conditions of approval deemed necessary to protect the health, safety, and public welfare may be added.

1. **(a) Antique and collectible shops, (b) Art, craft, and photography studios, (c) Art galleries, (d) Barber shops, (e) Beauty Salons, (f) Clothing alteration, dressmaking, or tailor shops, (g) Coffee shops, (h) Consignment shops, (i) Juice bars, (j) Massage and day spas, (k) Medical, dental, or health offices, (l) Nail salons, (m) Professional offices and (n) Shoe repair shops,** are allowed in the Neighborhood Sub-District provided that:

    i. The business shall not be open to customers between the hours of 10:00 p.m. and 6:00 a.m.

    ii. The floor area devoted to the business shall not exceed three-thousand (3,000) square feet.

iii. A maximum of two (2) on-site parking spaces may be provided on a paved driveway. Any additional required parking must be accommodated by delineated on-street spaces, public surface parking lots or public parking structures, all of which must be located within two hundred and fifty (250) feet of the property on which the business is to be located.

iv. The business shall not receive more than three (3) commercial deliveries in a twenty-four (24) hour period.

v. Outdoor storage or display shall be prohibited.

2. **Bakeries** are allowed in the Neighborhood Sub-District provided that:

a. The business shall comply with the conditions listed in Subsection 307(E)(1), above.

b. The business shall not make more than one (1) delivery of baked goods for off-site sale in a twenty-four (24) hour period.

3. **Bed and breakfast inns** are allowed in the Neighborhood Sub-District provided that:

a. The bed and breakfast inn shall be owner-occupied. The guess rooms shall be part of the primary residence.

b. The bed and breakfast inn shall not have more than three (3) commercial deliveries or outside service in a twenty-four (24) hour period.

c. Meals shall only be served to overnight guests and residents.

d. The bed and breakfast inn shall not be used for the hosting of receptions, private parties or similar events.

e. A fire escape plan shall be developed and graphically displayed in each guest room. Such plan shall be filed with and approved by the City of Avondale Fire Department.

4. **Florists** are allowed in the Neighborhood Sub-District provided that:

a. The business shall comply with the conditions listed in Subsection 307(E)(1), above.

b. Commercial vehicles, as defined in Section 1, shall not be used to make floral deliveries to off-site locations.

5. **Outdoor dining** is allowed as an accessory to a restaurant in the Neighborhood Sub-District provided that:

    a. The outdoor dining area shall only be allowed if located on the same property as a restaurant operating in compliance with the restaurant requirements set forth in Subsections 307(E)(10) and (11) below.

    b. The outdoor dining area shall not exceed one-thousand (1,000) square feet.

    c. Music, live or recorded, may not be played in the outdoor dining area.

6. **Outdoor sales and display** are allowed as an accessory use to an approved retail use in the Heritage Sub-District provided that:

    a. Outdoor sales and displays shall feature products sold and displayed in the primary business conducted in the adjacent permanent building.

    b. Outdoor sales and displays shall be clearly subordinate to the indoor sales occurring in the adjacent permanent building.

    c. Displays shall not impede pedestrian access ways, handicapped access ways, fire lanes, parking spaces, driveways, entryways, street intersections or landscape areas, and shall not interfere with traffic visibility.

    d. Displays shall only occur during the hours the business in the permanent building is operating. Items must be returned indoors prior to the closing of business in the permanent building.

7. **Public parking facilities, including parking structures and surface lots** are allowed in the Heritage and Neighborhood Sub-Districts provided that:

    a. Parking structures may be above ground, provided the structure is architecturally concealed and has the appearance of being enclosed.

        i. Open metal railings or panels which don't adequately screen the vehicle from view are prohibited.

        ii. When located within the Heritage Sub-District, parking structures shall be designed to have side street accessibility where possible.

        iii. The architecture of the parking structure shall share architectural themes of adjacent and nearby buildings.

b. Parking structures shall adhere to the height limitations of the Sub-District in which they are located.

c. Where feasible, parking structures shall feature commercial space on the perimeter of the ground floor. In instances where commercial space cannot be provided, ground level landscaping shall be required on the perimeter of the structure for aesthetic enhancement.

8. **Public uses, including utility buildings, structures, uses, facilities and equipment**, are allowed in the Heritage and Neighborhood Sub-Districts provided that sites shall be screened from off-site view by a minimum six (6) foot tall masonry wall; taller screen walls may be required depending on the dimensions of the facility being screened. Wall design shall comply with the requirements of Section 12 of this Zoning Ordinance, Landscaping, Walls, and Fences.

9. **Residential living quarters occupied by the owner or employee of a permitted business on the property** are allowed in the Neighborhood Sub-District provided that:

a. The interior of the building shall be designed such that customers do not have access to the residential living quarters.

b. The living quarters shall not be rented, leased or sold separately from the principle residence or otherwise used for compensation.

c. A separate address, water meter, or utility meter shall not be provided for the living quarters.

d. The living quarters must be physically attached to the business and cannot be located within a separate structure.

10. **Restaurants without drive-thrus** are allowed in the Heritage and Neighborhood Sub-District provided that:

a. Restaurants within the Neighborhood Sub-District shall comply with the conditions listed in Subsection 307(E)(1), above.

b. Restaurants shall schedule regularly occurring trash pickups and provide individual dumpsters to ensure that objectionable odors are minimized.

11. **Sidewalk cafés** are allowed in the Heritage Sub-District provided that:

a. Sidewalk cafés shall be located directly adjacent to and abutting an indoor restaurant and cannot extend beyond the frontage of the operating indoor restaurant.

b. A sidewalk café shall be allowed only where the sidewalk or porch is wide enough to adequately accommodate both pedestrian traffic in the area and the operation of the proposed café. There shall be a minimum of forty-eight (48) inches clear distance free of all obstructions in order to allow adequate pedestrian movement.

c. All outdoor dining furniture, including tables, chairs, umbrellas and planters, shall be moveable. Umbrellas must be secured with a minimum base of not less than sixty (60) pounds. All furniture used in the operation of the café, including any barriers required as a condition of a liquor license must be removed from the sidewalk and stored indoors whenever the restaurant is closed.

d. If determined necessary, by the City Engineer or authorized designee, for public safety, in conjunction with a license issued pursuant to Subsection 307(E)(11)(i) below, a moveable decorative barrier separating café seating from pedestrian traffic shall be provided. The designs must reflect the architecture of the restaurant building façade. The barrier must be removed from the sidewalk and stored indoors whenever the restaurant is closed.

e. A sidewalk café shall only serve food and beverages prepared or stocked for sale at the adjoining indoor restaurant, provided that an extension of premises for the service of alcoholic beverages for on-site consumption has been authorized by the City of Avondale and the State of Arizona.

f. Hours of operation for a sidewalk café shall be the same as those of the adjoining indoor restaurant, or less, but in no event shall the sidewalk café be open when the main restaurant is not.

g. The City shall have the right to prohibit the operation of the sidewalk café at any time because of anticipated or actual problems or conflicts in the use of the public sidewalk. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades, repairs to the street or sidewalk or emergencies occurring in the area. To the extent possible, the business will be given prior written notice of any time period during which the operation of the sidewalk café will be prohibited by the City.

h. The sidewalk café shall not require the provision of additional parking.

i. A sidewalk café shall require a license, or other authorization as determined acceptable by the City Attorney, prior to utilizing any portion of the public right-of-way. Plans detailing the specific location and dimensions of the sidewalk café, as well as the specifications of the proposed site furniture and barrier, shall be approved by the Development Services Department prior to approval of the sidewalk café.

12. **Sidewalk vendors** are allowed in the Heritage Sub-District provided that:

a. Licensing

i. Selling, or offering for sale, any food, beverage, or merchandise on any property within Old Town shall comply with the City of Avondale Municipal Code business licensing requirements. Licenses to vend within the OTAB District shall be reviewed and approved by the Development Services Director or authorized designee in conjunction with the City Finance and Budget Department. The application for a vendor's license shall be signed by the applicant and include:

1) The name, home and business address of applicant, and the name and address of the owner, if other than applicant, of the vending stand to be used in the operation of the vending business.

2) An itemized list and description of the food, drinks and/or merchandise to be sold.

3) A description and a depiction (including signage and colors), and specifications of any stand to be used in the operation of the business.

4) A site plan (to scale) depicting the exact proposed location of the vending stand.

5) Proof of an insurance policy, issued by an insurance company licensed to do business in the State of Arizona, protecting the licensee and the City from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the license. Such insurance shall name as additional insured the City and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the City.

ii. Vending locations shall be approved only if the site is determined to safely accommodate the use.

iii. All licenses shall be displayed in a visible and conspicuous location at all times during the operation of the vending business.

iv. The Zoning Administrator may recommend to the Finance and Budget Office that any license may be denied, suspended or

revoked in accordance with the procedures in the Municipal Code for any of the following causes:

1) Fraud or misrepresentation contained in the application for license.

2) Fraud or misrepresentation made in the course of operating the vending business.

3) Conduct of the licensed business in such a manner as to create a public nuisance, or constitute a danger to the public health, safety, or welfare.

4) Any conduct contrary to the vending cart regulations contained within this Subsection 307(E)(12).

b. Sidewalk vendors shall not sell food, beverages or merchandise that is not listed on their license applications, nor sell anything that is sold by an indoor restaurant or retail business within a three hundred (300) foot radius from the approved vending location.

c. Vendors within Old Town may operate only between the hours of 8:00 a.m. and 10:00 p.m. except in association with a City-approved special event.

d. No vending stand shall exceed four (4) feet in width, eight (8) feet in length, and eight (8) feet in height.

e. All food or drink sold must be for immediate consumption.

f. Trash receptacles shall be provided for use by patrons. Trash and refuse generated by the vending cart shall not be disposed of in public trash receptacles. All trash must be removed and disposed of by the vendor at the conclusion of each business day, or more frequently as necessary.

g. All items relating to the vending business shall be confined to the stand itself. Seating, tables or other furniture may not be provided in association with the vending operation.

h. A vending stand shall not be left unattended while in operation or left outdoors overnight.

i. Vendors shall not solicit or conduct business with persons in motor vehicles.

j. Vendors shall not sound any device that produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public.

k. No advertising shall be permitted on any stand, except to identify prices and/or the name of the product or vendor.

l. All vending stands shall comply with the following safety requirements:

i. All equipment shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn. A safety knife holder shall be provided to avoid the loose storage of knives.

ii. All mechanical instruments used in the operation of the stand shall be installed so as to be hidden from view to the extent possible while remaining accessible.

13. **Single family attached dwellings** are allowed in the Neighborhood Sub-District, provided that new single-family attached dwellings and additions to existing single-family attached dwellings shall comply with the development standards, accessory use standards, and design standards (including landscaping and signage requirements) of the R-2 (Multiple Family Residential) Zoning District.

14. **Single family detached dwellings** are allowed in the Neighborhood Sub-District, provided that new dwellings and additions to existing dwellings shall comply with the development standards, accessory use standards, and design standards (including landscaping and signage requirements) of the R1-6 (Urban Residential) Zoning District.

F. OTAB Conditional Use Standards

The following land uses are listed in the OTAB land use matrix as being allowed with a Conditional Use Permit. All uses being granted a Conditional Use Permit shall meet the City's required findings for a Conditional use Permit. Additionally, the individual uses listed below shall comply with the conditions set forth below. Based on review of the Conditional Use Permit application, the City Council may add additional conditions of approval deemed necessary to protect the health, safety and public welfare.

1. **Funeral homes** are allowed in the Heritage Sub-District provided that:

a. A plan illustrating the route that funeral processions will use exiting Old Town shall be provided by the business and approved by the City Council as part of the Conditional Use Permit process prior to issuance of a business license.

b. Delivery of funeral accessories to the site shall be scheduled at non-peak viewing and service times to reduce vehicular and pedestrian conflicts.

c. The disposal of blood extracted during embalming shall comply with the City's Wastewater Pre-Treatment Ordinance.

2. **Liquor stores** may be permitted as a conditional use in the Heritage Sub-District provided that:

a. The minimum separation between any liquor store and the nearest body piercing studio, tattoo parlor, non-chartered financial service provider, pawn shop, plasma center, sexually oriented business or another liquor store shall be one thousand three hundred and twenty (1,320) feet, measured in a straight line from the nearest property line of each property.

b. The minimum separation required shall apply regardless of whether the other use is located within the incorporated area of the City of Avondale or within another jurisdiction.

3. **Multi-family dwellings** may be permitted as a conditional use in the Neighborhood Sub-District, provided that new multi-family dwellings and additions to existing multi-family dwellings shall comply with the development standards, accessory use standards and design standards (including landscaping and signage requirements) of the R-3 (Multiple Family Residential) Zoning District.

4. **Music studios** may be permitted as a conditional use in the Neighborhood Sub-District provided that:

a. The floor area devoted to the business shall not exceed three-thousand (3,000) square feet.

b. Sound attenuation measures shall be taken to ensure the business has no measurable impact on adjacent residential uses.

G. OTAB District Property Development Standards

OTAB District Development Standards	Heritage Sub-District	Neighborhood Sub-District
Minimum Lot Width	Not Applicable	50 feet
Minimum Site Depth	Not Applicable	100 feet
Maximum Lot Coverage	100 percent	50 percent
Maximum Building Height	40 feet	30 feet
Minimum Front Setback	0 feet	15 feet
Maximum Front Setback	10 feet	30 feet

Minimum Side Setback	0 feet, except as provided in Subsection 307(G)(2)(a) below	0 feet, except when adjacent to a residential use a 5' minimum setback is required.
Minimum Street Side Setback	0 feet	10 feet
Minimum Rear Setback	0 feet, except as provided in Subsection 307(G)(2)(b) below	15 feet

1. The preceding table outlines the minimum development standards required in the OTAB District. Setbacks in excess of those listed on this table may be required in accordance with the conditions required of conditional use permits or uses permitted with conditions.

2. Additional Requirements

   a. Within the Heritage Sub-District, where a side property line abuts a residentially zoned property, no setback shall be required for the ground floor portion of the structure or first fifteen (15) feet of structure height, whichever is less. Portions of the structure above the ground floor or fifteen (15) feet in height shall be set back a minimum of ten (10) feet from the side property line.

   b. Within the Heritage Sub-District, where a rear property line abuts a residentially zoned property, a minimum rear yard setback of twenty (20) feet shall be maintained.

H. **OTAB Performance Standards**

1. Any exterior modification of a building, structure or site within the OTAB District shall be subject to the standards set forth in the Old Town Avondale Business District Design Guidelines and future amendments thereto, as well as the requirements contained within this Subsection 307(H).

   a. New and remodeled buildings shall be compatible with the Old Town character and architecture.

   b. Design shall preserve the integrity of each individual structure and the character of its streetscape.

   c. Important character-defining features and details of existing buildings shall be preserved when exterior alterations are proposed.

   d. All new buildings shall be designed to be compatible with the human scale and shall also preserve the residential and historic character of the surrounding neighborhood.

   e. For elevations fronting onto Western Avenue, Dysart Road or Central Avenue, storefront windows shall be utilized to allow views into and out

of ground level spaces. Clear or lightly tinted glass shall be used in windows, doors and display windows.

f. Façade surfaces adjacent to major streets (Western Avenue, Dysart Road and Central Avenue) shall be no more than twenty-four (24) feet in length without an opening.

g. Any building over fifty (50) feet wide shall be designed to appear as a series of buildings no wider than fifty (50) feet each.

h. All retail entrances adjacent to major streets (Western Avenue, Dysart Road and Central Avenue) shall be sheltered by use of a porch, canopy or awning.

i. All customer entries shall be open to either the public right-of-way or an open air breezeway leading to the public right-of-way.

2. All activities shall be conducted entirely within enclosed buildings, except where outdoor uses are explicitly listed in the OTAB Land Use Matrix as permitted, permitted with conditions or permitted as an accessory use.

3. Outdoor storage and/or display of goods and materials shall be prohibited except where specifically authorized in this Section.

4. Service entrances and service yards shall be located in the rear and/or side yard of the business use or accessed from an alley. Service yards shall be screened from any adjoining residential zone or use by the installation and maintenance of a solid wall or solid (opaque) fence having a height of not less than six (6) feet.

5. Trash enclosures shall be located within screened enclosures that are designed to correspond to the particular architectural style of the corresponding property. These enclosures should not be visible from Western Avenue, Central Avenue or Dysart Road.

6. Signage within OTAB shall be provided in accordance with Section 9 of the Zoning Ordinance.

7. Except where specified otherwise within this Subsection 307, parking shall be provided in accordance with Section 8 of the Zoning Ordinance. Joint-use parking shall be permitted in accordance with the procedures outlined in that Section.

8. Landscaping and walls shall be required in accordance with the provisions of Section 12 of the Zoning Ordinance (Landscaping, Walls, and Fences Regulations), except as follows:

a. Development in the OTAB District shall be exempt from the provisions of Subsection 1204(C)(1)(d) (Landscape Design Standards, Required Landscape Areas, General). No minimum percentage of site landscaping shall be required.

b. The provisions of Subsection 1204(C)(3) (Landscape Design Standards, Landscape Setback) shall apply to development in the OTAB District, except that the minimum dimension of landscape setbacks shall be determined by the Development Standard table, above.

c. The provisions of Subsection 1204(C)(5) (Landscape Design Standards, Land Use Buffers) shall not apply to development in the OTAB District.

ORDINANCE NO. 1430-1110

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE ZONING ORDINANCE, SECTION 3, COMMERCIAL DISTRICTS, AND ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT KNOWN AS "THE OLD TOWN AVONDALE BUSINESS DISTRICT REGULATIONS, AMENDED AND RESTATED NOVEMBER 15, 2010."

WHEREAS, all due and proper notices of public hearings on this Ordinance held before the City of Avondale Planning and Zoning Commission (the "Commission") and the Council of the City of Avondale (the "City Council") were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, the Commission held a public hearing regarding the subject matter of this Ordinance on October 21, 2010, after which the Commission recommended to the City Council that the actions contemplated by this Ordinance be approved; and

WHEREAS, the City Council held an additional public hearing on this Ordinance on November 15, 2010.

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

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

SECTION 2. The document known as the Old Town Avondale Business District Regulations, Amended and Restated November 15, 2010 (the "OTAB Regulations"), three copies of which are on file in the office of the City Clerk, which document was made a public record by Resolution No. 2939-1110 of the City of Avondale, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 3. The City of Avondale Zoning Ordinance (the "Zoning Ordinance"), Subsection 307, Old Town Avondale Zoning Overlay District, is hereby deleted in its entirety and replaced by the OTAB Regulations, which shall be inserted into the Zoning Ordinance as a new Subsection 307, Old Town Avondale Business District.

SECTION 4. Any person who fails to comply with any provision of the OTAB Regulations shall be subject to civil and criminal penalties as set forth in Section 114 of the Zoning Ordinance. Civil penalties shall not exceed $1,000.00. Criminal penalties shall

constitute a class one misdemeanor, punishable by a fine not to exceed $2,500.00 or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the OTAB Regulations adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Council of the City of Avondale, November 15, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

Exhibit C

City Council Work Session Meeting – Excerpt of Meeting Minutes
March 1, 2010

POSSIBLE TEXT AMENDMENT: OLD TOWN AVONDALE ZONING OVERLAY DISTRICT (TA-09-9) Information regarding potential text amendments for the Old Town Zoning Overlay District.

Mr. Galica said the purpose of the Old Town Avondale Business Zoning District (OTAB) is to encourage promotion and maintenance of the pedestrian-oriented retail environment, improve the vitality of the District, preserve the original character of neighborhoods, and reduce conflicts between pedestrians and vehicular traffic. OTAB would be used to develop commercial businesses that encourage pedestrian circulation based around common parking areas. Zoning would establish areas of retail and services designed to increase revenues and strengthen the City's tax base, while reflecting the character of the city, its architecture, and its environmental needs.

OTAB was adopted in December of 2000. The zoning district created development standards that were adjusted from the City's typical requirement, to make Western Avenue feel like a traditional main street. Staff is looking for ways to build upon the successes in the area as well as City's investment in the area such as streetscape/landscape program, the construction of the Sam Garcia Library and recent public art installations. As part of the update, Staff would revisit the allowed uses to determine whether they are functioning optimally. Currently OTAB only allows specialty retail stores. The update process could be used to revisit development standards to determine whether existing setbacks and building heights create the desired pedestrian-oriented environment. Currently OTAB has no front and side setbacks in most instances and it is unlikely that changes are needed. The existing ordinance allows for limited food vending in Old Town with cart size requirements, distance from brick and mortar businesses, etc. The current allows food vendor carts as a "pilot program" and it is likely that the intent was to reevaluate the program after a while. After eight years, this would be a good time to re-evaluate the program to determine whether that option should be maintained, or expanded.

Potential long-term options could include expanding the boundaries of OTAB into residential areas directly north and south of Western Avenue with corresponding standards that would allow for limited commercial uses such as boutiques, small restaurants, cafes, and offices within actual residences. The design guidelines for Western Avenue could be updated and expanded. Council could also decide whether to continue the streetscape enhancement programs to unimproved portions of Western Avenue and Central Avenue. Mr. Galica indicated if council desires to proceed with the amendment, the process would include seeking input from staff, business community, developers, residents, Planning Commission and Council. Council adoption could happen in late summer or early fall.

In response to an inquiry from Mayor Lopez-Rogers, Mr. Galica explained that the draft ordinance incorporated community input on Western Avenue that came out of the

General Plan update process. Council Member Karlin commented that she does not have enough information about the mobile food vending businesses to voice an opinion. She added that neighborhood-based eateries often contribute to the quaintness of an area and would invite pedestrian activity, but she voiced concerns about having the restaurants placed so close to residences.

Vice Mayor McDonald said he supports properly licensed mobile food vendors. He queried whether Goodyear's plans for their side of Western Avenue fall in line with Avondale's plan. Mr. Galica responded that Goodyear has its own program for this area, and Avondale would coordinate with them to create a good transition. Vice Mayor McDonald inquired about the number of homes in the proposed expansion area that are currently running businesses. Mr. Galica said the properties are all zoned residential R1-6 and R-3. There might be some home occupations in the area, but he was unaware of any that were being used for commercial operations. The purpose would be to allow homeowners to expand the use of their property if they wanted to, thus encouraging business growth. Before the zoning district is changed, Staff would work to ensure that the community supports it. Vice Mayor McDonald noted that the increased number of businesses could aggravate the already challenging parking situation in the area.

Council Member Scott felt that the mobile food vendor pilot program has run its course. While he does not oppose food carts for specific events, some have been in the same place every weekend for five years. Brick and mortar businesses have more of a stake in the community. The overlay has not worked well, since the practicality of realizing the community's vision turned out to be very difficult, and many businesses have had trouble working with the City. Council should consider including Main Street or Dysart Road in the overlay. Many of those businesses have been in Avondale for a long time, yet they would have trouble getting into the district under the current rules. In response to Mayor Lopez-Rogers' inquiry, Mr. McClendon noted that the revitalization area included many different land use areas.

Council Member Weise agreed that mobile food carts are problematic. Brick and mortar businesses have invested in OTAB, yet are asked to directly compete with food stands that have essentially become permanent fixtures. He supports the idea of allowing businesses to operate in the residential areas, since it has proven to work well in other communities. This option might require more City staff in areas such as Code Enforcement, however. The overlay should not be expanded into new areas until the existing potential has been more fully realized.

Council Member Buster said Council should be sensitive to existing successful businesses that want to expand, since the area is in need of success. Mixed use is as appropriate in old areas as it is in new areas. Existing businesses are right to be concerned about mobile food carts that do not have the same permitting requirements that they do. However, food carts add ambience and provide a service, and should be allowed in certain circumstances.

Vice Mayor McDonald said his initial impression was that mobile food carts would consist of traveling ice creams vendors, for example, and not stands that operate on the same corner every week. Whatever actions Council decides on, should not jeopardize those food carts that are not taking customers away from the businesses that have invested in the community. Council member Scott noted that Code Enforcement officers are not out at night when some mobile food vendors are violating City codes. Police are therefore expected to enforce the rules when they have better things to do. Five years is far too long for a mobile cart to set up in one place, and he proposed permit limitations of three months.

Mayor Lopez-Rogers noted that the mobile food carts have cultural value. They are also small businesses, and the City should be encouraging small businesses regardless of their size. She proposed working with those vendors to get them into buildings at some point. They should be permitted and licensed, and must operate on private property. Mr. Galica explained that when mobile food vendors request a business license, the City requires a site plan and the consent of the property owner. Mayor Lopez-Rogers said the larger area plan should be viewed as a long-term project that would take many years to realize. Many of the properties in the area consist of old apartment buildings and trailers. At some point they are going to change, so Avondale should begin planning now for what to replace them with. She suggested moving ahead with the Western Avenue design guidelines.

Exhibit D

Planning Commission Work Session Meeting – Excerpt of Meeting Minutes
May 20, 2010

TA-08-10, Zoning Ordinance Text Amendment – A presentation will be provided by Planning Staff to discuss proposed amendments to the Cashion Business Zoning District (CBD) of the Avondale Zoning Ordinance.

Ken Galica, Planner II, Development Services Department, stated this text amendment concerns the Cashion Business Zoning District (CBD). The proposed purpose for this district is to encourage and facilitate the construction of new commercial enterprises and/or the expansion of existing businesses in the Cashion commercial corridor, with a singular focus of generating business in this area. The Cashion area starts at 113th Avenue, extends to 107th Avenue, and stretches from Buckeye Road to the north and to Durango Street to the south. The vast majority of commercially used parcels in the Cashion business area are between 113th Avenue and 109th Avenue fronting Buckeye Road. Typical parcels are 150 feet deep and 50 feet wide, which is inadequate for modern commercial development, necessitating that the commercial development standards be reduced.

Mr. Galica gave the Cashion history, stating this area was annexed into the City in August 1989. The entire area was rezoned to R1-6 (Single Family Residential) in August 1990. This made the existing businesses into non-conforming businesses, and any expansion of these businesses became a very difficult process, requiring a Conditional Use Permit. Staff's goal is to resolve these issues to help the existing business owners and allow the vacant property owners to develop their properties. The Cashion Business Zoning District was created in October 2002. Two properties in the Cashion Business area have been rezoned to C-2 (Community Commercial) since 1990. One property has been rezoned to Cashion Business District (CBD) to date. The remaining properties are still zoned R1-6. Mr. Galica showed the Commissioners maps of the Cashion Business area zoning and existing land uses. He added that the goal of zoning is to eliminate non-conforming uses where possible.

The current subsections of the Cashion Business District section are: 308.A – Permitted Uses. 308.B – Uses Permitted Subject to a Conditional Use Permit. 308.C – Prohibited Uses. Staff is considering deleting this section as it is assumed in other sections of the City Code that uses not listed are prohibited. 308.D – Property Development Standards. The revisions to the CBD Zoning Ordinance will reduce development standards in order to spur development of smaller parcels through 10 foot front setbacks, 0 foot side setbacks except when abutting residential uses/zoning, and through allowing joint-use parking. The main reason developers give for not rezoning their properties to the existing Cashion Business District is that the uses allowed are limited and not desirable located off of such a heavily-traveled County highway. Buckeye Road is a wide street with a high speed of traffic, and no medians or landscaping to speak of. Uses that could work but are currently prohibited in the Cashion district include a tire store, brake repair shop, etc.

Mr. Galica presented Staff's revisions to the Cashion Business District for the Planning Commission's consideration.

- Change the Cashion Business District from an "underlying" zone to an "Overlay" zone, which would allow additional flexibility in land uses for property owners. This would provide property owners all the rights of a C-2 district while maintaining the 10 foot front setback and 0 foot side setbacks.

- Revisit the Cashion specific design and development standards. Identify a design vision for the area and consider if the Cashion Heritage Theme is still appropriate. Consider if the current setbacks provide maximum flexibility.

- Centralize the parking standards in Section 8, Parking, and ensure the parking standards are flexible and encourage development.

Public participation began with a City Council Work Session on March 1, 2010. A most rewarding Neighborhood Meeting was held at the Cashion PD Substation on May 13, 2010. Eight to ten business property owners attended whose businesses are located on Buckeye Road. Several property owners stated they hoped the City would apply the zoning for them so they could avoid applying for rezoning. Staff suggested that the property owners circulate a petition, and if everybody agrees, the City can zone the whole strip at once. A tentative Planning Commission hearing is scheduled for July 2010 and a City Council hearing for August 2010.

Chairperson Iwanski invited questions.

Vice Chair Cotera asked if the City could provide any incentives for business owners to develop and suggested lining the street with palm trees to unify the area. Mr. Galica explained one big difference between the OTAB District and the CBD District is the ownership of the roads. The County owns MC-85 in the CBD district. Improvement projects similar to the public investment in old town, such as landscaping, are much more difficult to accomplish. Further, in a recent County plan, the need for an additional lane in each direction was identified, which would wipe out the existing businesses' parking, and in some cases take out their buildings, not to mention any landscaping that is existing or would be installed.

Vice Chair Cotera asked if there is a way for the City to be proactive in rezoning the vacant land in the CBD District to promote development. Mr. Galica explained that the Economic Development Department is willing to help, but the property owner has to make the first move. Then the City can help the property owner locate a developer for their property or find perspective tenants for existing buildings.

Commissioner Scibienski stated he likes the idea of the business property owners having their properties rezoned all at once.

Commissioner Long stated he is in favor of developing this area, as it has the highest crime rate in the City. He asked if thought had been given to expanding this district to include additional lots, which would provide larger lots for development. Mr. Galica stated that Staff has considered expanding the district. However, an existing alley with easements for various utility companies would make it difficult to develop and would result in split sites.

Commissioner Long stated this will make the area a problem area for a long, long time, especially if MC-85 widens. Mr. Galica agreed that development is difficult because of the size of the lots and development will be more difficult if MC-85 is widened. The hope is to maintain the size of the lots, offer some flexibility, and then see what takes off.

Vice Chair Cotera stated beautifying the area might be worth it, as she believes the area might require a hand up.

Chairperson Iwanski asked if there were any meeting minutes from the Neighborhood Meeting held on May 13, 2010. Mr. Galica stated he can only provide the sign-in sheet. Chairperson Iwanski asked if Mr. Galica would provide the sign-in sheet and summarize the meeting to the Commissioners. Mr. Galica agreed to provide this information when the item returns for Commission's recommendation.

Commissioner Amos noted that the permitted uses include schools and educational institutions, public and private, but colleges, universities, and vocational schools are excluded. She asked what the reason for excluding certain educational uses is. Mr. Galica stated the reason for excluding certain educational uses might be the amount of traffic generated next to residential properties.

EXHIBIT E

Old Town Avondale Revitalization Area Merchants Meeting 6 pm Tuesday, April 13th at Suenos Reception Hall

Sign-In Sheet

Name	Business	Email	Phone Number
Randy Raux	Ed's Fish N' Chips	cindyscupboard@yahoo.com	602-[illegible]
Cindy Hambuckle-Raux	Ed's Fish N' Chips	" "	602-740-1257
DAN SISK	Sisk Photography		602-635-7238
Kelly Fleming	Triple Threat Dance Studio	irishbal@cox.net	623 217-5319
Saul Aranda	Super Barber shop	user Je9976@aol	623 650 3119
Laura Askeland	A Grill on the Go.	Grillonthego@msn.com	623 [illegible]
★ Betty Ledesma	Your Hidden Treasures	newhealth4u2@yahoo.com	[illegible]
★ Cassie Wilkins	All Faith Community Services The Attic @ the White House	allfaithscsa.com	623-882-1249 623-386-3513
Colleen Schorr	KEEPSAKE TROPHY & ENG	keepsaketrophy@[illegible]	[illegible]
★ Teresa Torres	El taco 'T'	terry10777@yahoo.com	[illegible]
★ Sophia Bostamant	E&B Suenos Reception	ebsuenos@yahoo.com	[illegible]
★ Reem Abraham	[illegible]	reem@abraham-yahoo.com	623 695 5222

EXHIBIT F

MEETING SIGN-IN SHEET

Project:	Old Town Avondale Business District (OTAB) Zoning Ordinance Amendment	**Meeting Date:**	5/24/2010
Facilitator:	Ken Galica, Project Manager	**Place/Room:**	Sam Garcia Western Avenue Library, 2nd Floor Community Room

Name	Address	Business (if applicable)	Phone	E-Mail	Would you like to receive updates?
Ken Galica, Planner II	11465 W. Civic Center Drive, Suite 110, Avondale AZ 85323	City of Avondale DSD	(623) 333-4019	kgalica@avondale.org	
Ruth Clark, Revitalization Project Manager	1007 S. 3rd Street, Avondale, AZ 85323	City of Avondale NFS	(623) 333-2724	rclark@avondale.org	
Bill Hill	206 E. Western	Corners RTD	972-0860		
Jeremy Pryor	[illegible]	[illegible]	[illegible]	[illegible]	yes
Colleen Schors	~~[illegible]~~ 410 E. Western	Avondale	623 8530280	KEEPSAKETROPHY@gmail.com	YES
Tom Walker					
Sally Hineman	518 E Western			Sally@hineman.us	yes

Exhibit G

Ken Galica

From: colleen schorr <keepsaketrophy@gmail.com>
Sent: Thursday, October 21, 2010 5:02 PM
To: Ken Galica
Subject: OTAB Rezoning

Hello Ken,
Due to a rush order I am unable to attend the board meeting this evening. My intent was to attend and speak regarding the zoning changes. My husband Tom and I appreciate your efforts to keep Western Avenue a special location shopping experience. Our only concern was the potential for apartments behind our building. At this time I feel it would hurt our neighborhood but in the future as the OTAB area reduces the criminal activity and the distressed areas become productive it may be something to consider.

Thank you again for all of your efforts.
Sincerely,
Colleen Schorr

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"Recognition is the best motivator"

To ensure receipt of our emails, please add keepsaketrophy@gmail.com to your Address Book.
To sign up for our monthly specials please email us and type SIGN ME UP in the subject line.
Thank you for your business - we appreciate it very much.

Sincerely,
Colleen Schorr
410 E. Western Ave
Avondale, AZ 85323
623-853-0280
Fax: 623-853-1407
www.keepsaketrophy.com

Ken Galica

From: vicki velasquez <thepaintedlizard@hotmail.com>
Sent: Thursday, October 21, 2010 3:30 PM
To: Ken Galica; Frank Scott; Marie Lopez Rogers
Subject: P&Z Meeting tonight

Hello Ken,
I would like you to pass on this e-mail to all P&Z Board members and see that they have it to consider at tonights meeting. I am sorry that I will not be able to attend the meeting tonight due to a conflicting meeting.

I have been the property manager for six commercial buildings on Western Av. for twenty-five years. I was an active member of the Central Business District Committee for about twenty years. I was involved in the meetings associated with the current Western Avenue Zoning Overlay and Design Guidelines. Over the past several years I have made myself available to new City of Avondale employees to offer insight into the history of Western Avenue because I care. I moved from Avondale five years ago but I still manage the business properties for my mother.
The current zoning overlay is changing and will allow for some new approved uses. " New uses listed which previously were not permitted in the OTAB District include: Massage/day spas, pet grooming, cigar bars/hookah lounges, video arcades/game rooms, art schools, community gardens, farmers markets, grocery stores, and pharmacies. Grocery stores and pharmacies were added as the result of conversations with a business owner who noted the difficulty of finding tenants for some of the larger commercial buildings along Western Avenue. "
My concern is for the buildings on Western Avenue that exeed 3000 square feet of which there are at least six. I am not sure of the actual length of Western Avenue from Central to Dysart but certainly no more than one grocery or one pharmacy would desire to come into this small area. Besides a pharmacy can easily be fitted into a space of 2000 square feet thus not requiring one of our large buildings.
An additional problem for at least four of these buildings is that they do not have sprinkler systems. I would cost at least $50,000.00 to retrofit my 4500 square foot building and $70,000.00 for the 5500 square foot building. It just doesn't make sense to put that kind of money in when the uses are so restrictive that the buildings cannot be rented.
Empty buildings are not attractive to pedestrian shoppers or anyone else for that matter. In these difficult economic times, I think more uses should be allowed for these large buildings. Surely you can see that an occupied building is much better than a vacant one.
I hope you will give serious thought to my concerns and recommend that more uses be allowed for our larger buildings.

One other issue is the limiting of commercial deliveries in the Neighborhood District to no more than 3 per day. Typically, the vendor chooses the delivery days not the business. I think that this could be detrimental to businesses in these areas.

Thank you for your consideration,
Vicki Velasquez
P.O. Box 214
Yarnell, AZ 85362
623-932-0142 P.

Be the change you wish to see in the World.

Exhibit H

Planning Commission Regular Meeting – Excerpt of Draft Meeting Minutes
October 21, 2010

The following members and representatives were present:

COMMISSIONERS PRESENT
David Iwanski, Chairman
Michael Long, Commissioner
Lisa Amos, Commissioner
Grace Carrillo, Commissioner
Sean Scibienski, Commissioner
David Scanlon, Commissioner

COMMISSIONERS EXCUSED
Angela Cotera, Vice Chair – Arrived late

CITY STAFF PRESENT
Tracy Stevens, Planning Manager, Development Services Department
Chris Schmaltz, Legal Counsel
Ken Galica, Planner II, Development Services Department
Eric Morgan, Planner II, Development Services Department
Margaret Boone-Pixley, Assistant Traffic Engineer
Linda Herring, Development Services Representative

1. TA-08-9: This is a public hearing before the Planning Commission to review and solicit public input on application TA-08-9, a City-initiated request to amend the Old Town Avondale Business (OTAB) Zoning District, Section 307 of the Avondale Zoning Ordinance. The lists of permitted and conditional uses will be reexamined and updated, along with property development standards, parking requirements, and design standards. The OTAB District is currently applied to properties abutting Western Avenue between Dysart Road and Central Avenue. Staff Contact: Ken Galica

Ken Galica, Planner II, Development Services Department, stated the purpose of amending the Old Town Avondale Business District (OTAB) zoning is to further the revitalization of the City's original town site and its vicinity by encouraging pedestrian-oriented development, and through emphasizing a unique mix of uses intended to make Old Town a destination of street level activity which takes one back to an earlier place in Avondale's history. The OTAB Zoning District was adopted in December 2000 by the City in an effort to enhance the redevelopment and revitalization opportunities along Western Avenue. The City has tried to accomplish this through amending development standards to ensure a main street type of development, to include zero setbacks, making sure parking is located behind buildings, and having building heights compatible with surrounding neighborhoods. The City has enhanced redevelopment and revitalization

through narrowing the list of permitted uses in order to create a vibrant and active street scene which will allow Western Avenue to function as the City's central district for eclectic shopping, cafes, etc.

The current boundaries of the OTAB district stretch between Central Avenue and Dysart Road. The district is largely comprised of properties that directly abut Western Avenue. Currently there are only a handful of properties in the OTAB district which do not have direct frontage on Western Avenue. A substantial public investment has been made in Old Town, to include the narrowing of Western Avenue to one lane in each direction with angular parking, and the addition of landscape islands, benches, decorative street lighting, etc. The construction of the Sam Garcia Western Avenue Library has enhanced opportunities for children activities, and there are now several opportunities for public art. This proposed amendment will build upon the success in the district.

Staff proposes the following revisions to Section 307, Old Town Avondale Business District.

- Subsection 307.A Staff has added a purpose statement and goals.

- Subsection 307.B Applicability – Staff has identified areas adjacent to the current OTAB district that would be eligible in the future to receive OTAB zoning. The City has no plans to rezone additional properties to the OTAB zoning in the near future. This section will allow property owners in existing residential zoning to receive OTAB zoning in the future if they desire.

- Subsection 307.C Sub-Districts – Staff has determined that the creation of Sub-Districts is necessary to allow the unique, pedestrian-oriented development to spill over into adjacent neighborhoods. The Heritage District includes Western Avenue properties with a commercial focus built directly up to the street. The Neighborhood District is comprised of local streets and properties which do not have direct frontage on Western Avenue, Central Avenue, or Dysart Road. The Neighborhood District will allow limited commercial uses, such as a small retail store or small restaurant or office, and other uses that are compatible with residential areas.

- Subsection 307.D OTAB Land Use Matrix – Staff added uses to the Heritage District after several property owners expressed concerns that there were not enough compatible uses for the few larger buildings in the area without losing the character of the district. Staff added uses to include grocery stores, pharmacies, and other uses that will allow the business owners to find tenants. As the Neighborhood District is a new district, Staff has created a new set of uses, to include residential and low intensity office, as well as retail and restaurant uses.

- Subsection 307.E OTAB Uses Permitted with Conditions - This section sets the uses for commercial buildings located in the Neighborhood District. It

includes limiting the hours of operation and deliveries, and other limitations that ensure a business will not have a negative impact on the residential areas.

- Subsection 307.F OTAB Conditional Use Standards – This section outlines various standards that must be adhered to for the allowed uses.

- Subsection 307.G OTAB District Property Development Standards – This section discusses development standards for the OTAB District and establishes minimum setbacks, building heights, lot widths, etc. The development standards for the Heritage District have not changed from what currently exists. The Neighborhood District development standards attempt to mimic standards for the existing residential through making sure a commercial development will be set back roughly the same distance as the existing residential properties. This will help commercial properties to blend in with the residential properties.

- Subsection 307.H OTAB Performance Standards – This section contains design requirements and standards to ensure that the district remains clean and orderly through prohibitions on outdoor storage, trash enclosures, etc.

Mr. Galica stated that once this ordinance update is approved, further steps will include initiating a rezoning extending the boundaries of OTAB, and updating and potentially expanding the Western Avenue design guidelines, as well as continuing streetscape enhancement programs to the unimproved portions of Western and Central Avenues. He noted a Central Avenue enhancement project is already in the works.

Public participation included a City Council Work Session on March 2, 2010. In April 2010, the first Old Town Avondale Merchants meeting was held where the concepts of the OTAB district were presented. A Planning Commission Work Session was held on May 20, 2010. A Neighborhood Meeting was held on May 24, 2010 at the Sam Garcia Western Avenue Library. In September and October of 2010, two more Merchant Meetings were held. Several small meetings were held as well to receive public input. Following the public hearing tonight, City Council will hear the item in November. Staff has incorporated a majority of the suggestions received in the meetings, such as including after school opportunities for children in the area. Sidewalk cafes will now be permitted on corner properties. Conditional Use Permits have been eliminated for several uses, such as hotels and pet grooming, in the Heritage District. The design requirements have been revised to meet the preferences and needs of the neighborhood. Farmers markets and community gardens will be permitted in the Heritage District. Other uses suited to larger commercial buildings, such as grocery stores, will be permitted. Staff has accommodated business owners in the area by maintaining limited uses for retail and convenience stores.

Mr. Galica stated certain uses in the OTAB District will continue to be prohibited, such as check cashing stores, pawn shops, and tattoo parlors. Places of worship will not be allowed in the Neighborhood District as the narrow streets in the Neighborhood District

will not accommodate church traffic. Churches are allowed in the Heritage District. Large scale mobile vending operations will not be allowed.

Staff recommends approval of the request to amend the Zoning Ordinance, Section 307.

Commissioner Scanlon asked if the City has a plan to address the vandalism in the area. Mr. Galica stated the vandalism issues are raised often by business owners in the area. From a zoning standpoint, the City has tried to provide additional uses for youth to keep them occupied. From a City standpoint, Western Avenue is a priority of the police department. There is a police substation on Western Avenue, but unfortunately, the police cannot catch everyone committing illegal acts. There are regular patrols in the area, but he is not aware of the frequency. He added that police beats throughout the City are monitored and adjusted based on crime data.

Commissioner Scanlon stated he would prefer to limit uses in the area that would appeal to younger kids. Mr. Galica replied that even without present uses that appeal to children, such as arcades, the children congregate in the area and the City needs to find something to occupy the youth.

Commissioner Scibienski noted that in the past there was an arcade in the area, but it was not successful. As a matter of economy, while the City might allow such use, he doubts that the City will see such use due to the low profits from such a venture. Research could be done to see if more vandalism occurred in the area when the arcade was present. He informed the Commissioners that the police department has created a new squad that works out of the police substation in the area and they are targeting Western and Central Avenues to help bring down crime in general. He has heard vandalism concerns at the community meetings in the area as well.

Chairperson Iwanski opened the public hearing on item TA-08-9. He stated Ms. Delia Perez, resident, had submitted a speaker card in favor of amending the Zoning Ordinance amendment, but did not wish to speak before the Commission. With no requests to speak, Chairperson Iwanski closed the public hearing and invited further questions from the Commissioners.

Chairperson Iwanski reopened the public hearing, stating he had received e-mails from residents Colleen Schorr and Vicky Valenzuela. He asked City Counsel if the e-mails would become part of the public hearing record, which Attorney Schmaltz affirmed.

Chairperson Iwanski invited comments from Staff in regard to the e-mails.

Ken Galica, Planner II, Development Services Department, stated that Staff had received the e-mails today. He informed the Planning Commission that Vicki Velasquez owns some of the larger buildings along Western Avenue. She asked the City to allow general retail uses in buildings of a certain square footage. Mr. Galica reported that the majority of the business owners in the area that staff has worked with believes general retail uses in the larger buildings will be a threat to the character of the area. Staff shares their

belief. He pointed out that Staff has added uses such grocery and pharmacy, and the area already allows for speciality retail, which could include a furniture store, an antique shop, consignment sales, etc. Staff believes there are many uses that fit the area and chose not to include general retail uses for large buildings.

Mr. Galica reported that Colleen Schorr's e-mail addressed her concern that apartment buildings will be allowed in the area behind her property. Mr. Galica explained that within the Neighborhood District, apartments are permitted with a Conditional Use Permit and require approval by the Planning Commission and City Council, as well as neighborhood meetings. He added that bringing people to the area in the right situation could be a plus to the area. However, people are nervous because previous apartment buildings in the area had presented a crime problem and were a source of fear for the residents. The apartment buildings were destroyed and she is concerned they will be rebuilt. Mr. Galica assured the Planning Commission that the City's current requirements in terms of design will never allow a similar type of product.

Chairperson Iwanski invited further questions or speakers, and hearing none, closed the public hearing. Chairperson Iwanski entertained a motion and a second on Item TA-08-9.

Commissioner Scanlon moved that the Planning Commission accept the findings and recommend adoption of application TA-08-9, a request to amend Zoning Ordinance Section 307, Old Town Avondale Business District (OTAB). Commissioner Amos seconded the motion.

Chairperson Iwanski opened the floor for discussion, and hearing none, called for a vote.

ROLL CALL VOTE

Chairperson Iwanski	Aye
Vice Chair Cotera	Excused
Commissioner Long	Aye
Commissioner Amos	Aye
Commissioner Carrillo	Aye
Commissioner Scanlon	Aye
Commissioner Scibienski	Aye

The motion passed unanimously.

RESOLUTION NO. 2939-1110

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "THE OLD TOWN AVONDALE BUSINESS DISTRICT REGULATIONS, AMENDED AND RESTATED NOVEMBER 15, 2010."

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

SECTION 1. That certain document entitled "The Old Town Avondale Business District Regulations, Amended and Restated November 5, 2010", of which three copies are on file in the office of the City Clerk and open for public inspection during normal business hours, is hereby declared to be a public record and said copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the Council of the City of Avondale, November 15, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

THE OLD TOWN AVONDALE BUSINESS DISTRICT REGULATIONS

Amended and Restated November 15, 2010

307 OLD TOWN AVONDALE BUSINESS DISTRICT (OTAB)

A. Purpose

The purpose of the Old Town Avondale Business District (OTAB) is to further the revitalization of the City's original town site and its immediate vicinity by encouraging pedestrian-oriented development and by emphasizing a unique mix of uses intended to make Old Town a destination, with street level activity that takes one back to an earlier place in Avondale's history.

The district shall enhance and maintain the character of retail and residential living by encouraging an active pedestrian environment while also promoting vitality throughout the district. To accomplish the task of making OTAB pedestrian friendly, the district requires new structures to be designed at a human scale to preserve the residential and historical character of the neighborhood. Development occurring in the district shall be designed to reduce conflicts between pedestrians and vehicular traffic and to promote primary areas of concentrated indoor retail and service business uses, but not regional shopping centers.

The Old Town Avondale Business District is intended to:

1. Encourage development and redevelopment of pedestrian-focused commercial businesses, such as those which encourage patrons to shop and dine for several hours without having to use their vehicles between stops.

2. Reduce the dominance of the automobile by encouraging the use of shared parking areas, such as on-street parking, public surface lots, and public parking structures.

3. Create a destination for unique retail, restaurant, entertainment and service uses that increase revenues and strengthen the city's tax base, drawing consumers both locally and regionally.

4. Respect the local and cultural significance of the City's original town site without hindering creativity in design.

5. Support limited commercial uses in residential structures located within the neighborhoods that are located in close proximity to Western Avenue.

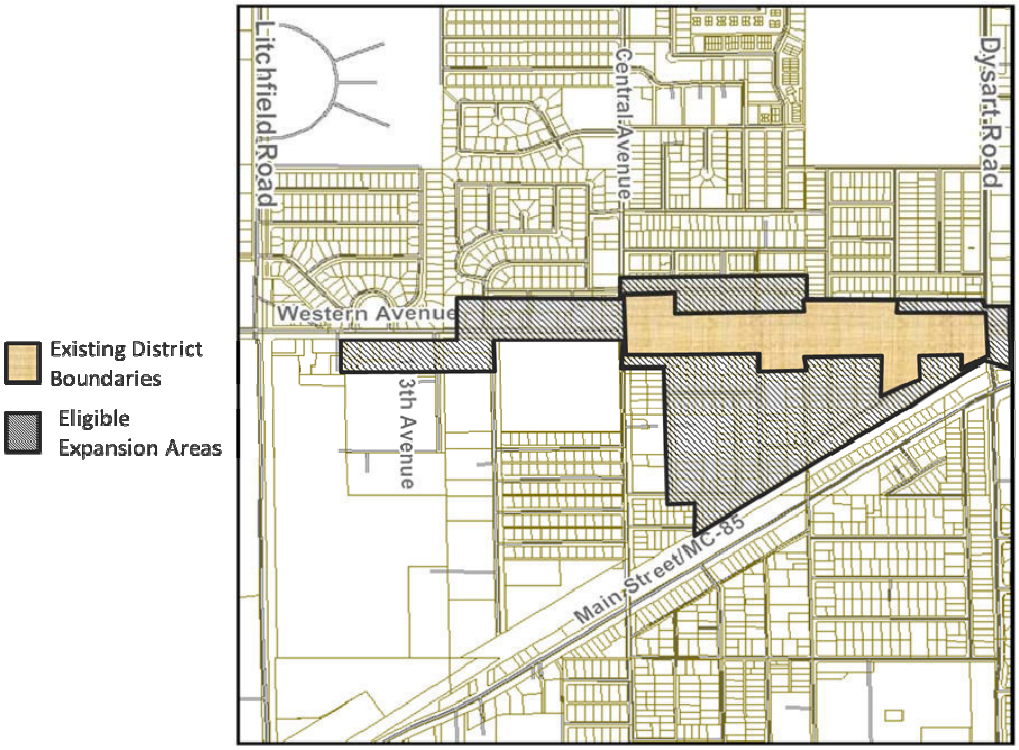
6. Provide an environment where commerce can flourish in a traditional main street type of setting, with the knowledge that ample opportunity for suburban style development is available throughout the remainder of the City.

B. Applicability

1. The location and boundaries of the OTAB District are established as shown on the map entitled "Zoning Atlas, City of Avondale, Arizona," as amended, a

copy of which is on file with the City of Avondale Development Services Department.

2. Expansion of the boundaries of this District shall be limited to the cross-hatched areas on the following map:



C. **Sub-Districts**

The OTAB District is comprised of the following sub-districts:

1. **Heritage District.** Any property located within OTAB with direct frontage on Western Avenue, Central Avenue or Dysart Road shall be subject to the requirements, restrictions and standards that are listed in this Subsection 307(C)(1). This Sub-District promotes pedestrian-oriented development that is designed to attract customers from a regional trade area as well as from the immediate area. Commercial uses are required on the ground floor in order to produce the critical mass of businesses necessary to make the area flourish; residential uses are encouraged on upper floors to create a presence in the area during off-peak business hours. Development shall take the form of a traditional main street, where businesses extend to the pedestrian sidewalk and parking is provided on the street, within public lots/structures, or behind the buildings.

2. **Neighborhood District.** Any property located within OTAB with direct frontage on a local street shall be subject to the requirements, restrictions and standards that are listed in this Subsection 307(C)(2) for the Neighborhood

District. This Sub-District is designed to provide a transition between the OTAB Heritage District and the residential districts located on the periphery of the OTAB Neighborhood District. Residential uses remain the primary land use; however, non-residential uses such as boutiques, cafes, professional offices and bed and breakfast inns are permitted. These commercial businesses may be located in either retrofitted residences or new buildings. Development standards have been designed to be respectful of the residential character of the district. Unlike the Heritage District, which requires buildings be placed at the edge of the sidewalk, lushly landscaped areas are required in the fronts of businesses in this Sub-District in order to give entryways a sense of importance and to distinguish businesses from residential uses.

D. OTAB Land Use Matrix

The following land use matrix shows the uses that are:

- (P) Permitted outright
- (C) Permitted with a conditional use permit
- (PC) Permitted with conditions
- (A) Permitted as an accessory use
- (-) Prohibited

LAND USE	Heritage Sub-District	Neighborhood Sub-District
Assembly Uses		
Funeral homes	C	-
Movie and performing arts theaters, indoor	P	-
Places of worship	P	-
Reception centers	C	-
Social/Private club	P	-
Commercial Service Uses		
Banks and financial institutions, excluding non-chartered financial services	P	-
Barber shops	P	PC
Beauty salons	P	PC
Child care centers	C	-
Clothing alteration, custom dressmaking, or tailor shop	P	PC
Health and exercise center	P	-
Massage or day spas	P	PC
Nail salons	P	PC
Pet grooming	P	-
Shoe repair shops	P	PC
Ticket, travel, and recreational activity agencies	P	P

LAND USE	Heritage Sub-District	Neighborhood Sub-District
Dining and Entertainment Uses		
Bakeries	P	PC
Bars	C	-
Cigar bars and hookah lounges	P	-
Coffee shops	P	PC
Juice bars	P	PC
Outdoor dining	A	A/PC
Restaurants, without drive-thru	PC	PC
Sidewalk cafes	PC	-
Sidewalk vendors	PC	-
Video arcades or game rooms	P	-
Educational, Institutional, and Office Uses		
Art schools	P	-
Dance studios	P	-
Medical, dental, or health offices, excluding plasma centers.	P	PC
Museums, libraries, and cultural centers	P	-
Music studios	P	C
Professional offices	P	PC
Public schools	P	P
Hospitality Uses		
Bed and breakfast inns	C	PC
Hotels	P	-
Miscellaneous Uses		
Community gardens	P	P
Public parking facilities, including parking structures, surface lots and park-and-rides.	PC	PC
Public uses, including utility buildings, structures, uses, facilities and equipment	PC	PC
Uses that are customary and incidental to the principal permitted use of the property	A	-
Pedestrian Oriented Retail Uses		
Antique and collectible shops	P	PC
Art, craft and photography studios, including retail sales	P	PC

LAND USE	Heritage Sub-District	Neighborhood Sub-District
Pedestrian Oriented Retail Uses (Continued)		
Art galleries	P	PC
Consignment shops	P	PC
Farmers markets, indoor or outdoor	P	-
Florists	P	PC
Liquor Stores	C	-
Outdoor sales and display	A/PC	-
Specialty retail shops, excluding liquor stores	P	-
Grocery Store	P	-
Pharmacy	P	-
Residential Uses		
Dwelling units on the second/third stories of a commercial building	P	-
Multi-family dwelling, such as apartment homes	-	C
Residential living quarters, occupied by owner or employee of a permitted business on property	-	PC
Single family attached dwelling	-	PC
Single family detached dwelling	-	PC

E. **OTAB Uses Permitted with Conditions**

The following land uses are listed in the OTAB land use matrix as Permitted with Conditions. These uses are permitted by right only if the conditions listed below for the individual uses are met. Based on site plan and/or tenant improvement plan review, additional conditions of approval deemed necessary to protect the health, safety, and public welfare may be added.

1. **(a) Antique and collectible shops, (b) Art, craft, and photography studios, (c) Art galleries, (d) Barber shops, (e) Beauty Salons, (f) Clothing alteration, dressmaking, or tailor shops, (g) Coffee shops, (h) Consignment shops, (i) Juice bars, (j) Massage and day spas, (k) Medical, dental, or health offices, (l) Nail salons, (m) Professional offices and (n) Shoe repair shops,** are allowed in the Neighborhood Sub-District provided that:

    i. The business shall not be open to customers between the hours of 10:00 p.m. and 6:00 a.m.

    ii. The floor area devoted to the business shall not exceed three-thousand (3,000) square feet.

iii. A maximum of two (2) on-site parking spaces may be provided on a paved driveway. Any additional required parking must be accommodated by delineated on-street spaces, public surface parking lots or public parking structures, all of which must be located within two hundred and fifty (250) feet of the property on which the business is to be located.

iv. The business shall not receive more than three (3) commercial deliveries in a twenty-four (24) hour period.

v. Outdoor storage or display shall be prohibited.

2. **Bakeries** are allowed in the Neighborhood Sub-District provided that:

a. The business shall comply with the conditions listed in Subsection 307(E)(1), above.

b. The business shall not make more than one (1) delivery of baked goods for off-site sale in a twenty-four (24) hour period.

3. **Bed and breakfast inns** are allowed in the Neighborhood Sub-District provided that:

a. The bed and breakfast inn shall be owner-occupied. The guess rooms shall be part of the primary residence.

b. The bed and breakfast inn shall not have more than three (3) commercial deliveries or outside service in a twenty-four (24) hour period.

c. Meals shall only be served to overnight guests and residents.

d. The bed and breakfast inn shall not be used for the hosting of receptions, private parties or similar events.

e. A fire escape plan shall be developed and graphically displayed in each guest room. Such plan shall be filed with and approved by the City of Avondale Fire Department.

4. **Florists** are allowed in the Neighborhood Sub-District provided that:

a. The business shall comply with the conditions listed in Subsection 307(E)(1), above.

b. Commercial vehicles, as defined in Section 1, shall not be used to make floral deliveries to off-site locations.

5. **Outdoor dining** is allowed as an accessory to a restaurant in the Neighborhood Sub-District provided that:

    a. The outdoor dining area shall only be allowed if located on the same property as a restaurant operating in compliance with the restaurant requirements set forth in Subsections 307(E)(10) and (11) below.

    b. The outdoor dining area shall not exceed one-thousand (1,000) square feet.

    c. Music, live or recorded, may not be played in the outdoor dining area.

6. **Outdoor sales and display** are allowed as an accessory use to an approved retail use in the Heritage Sub-District provided that:

    a. Outdoor sales and displays shall feature products sold and displayed in the primary business conducted in the adjacent permanent building.

    b. Outdoor sales and displays shall be clearly subordinate to the indoor sales occurring in the adjacent permanent building.

    c. Displays shall not impede pedestrian access ways, handicapped access ways, fire lanes, parking spaces, driveways, entryways, street intersections or landscape areas, and shall not interfere with traffic visibility.

    d. Displays shall only occur during the hours the business in the permanent building is operating. Items must be returned indoors prior to the closing of business in the permanent building.

7. **Public parking facilities, including parking structures and surface lots** are allowed in the Heritage and Neighborhood Sub-Districts provided that:

    a. Parking structures may be above ground, provided the structure is architecturally concealed and has the appearance of being enclosed.

        i. Open metal railings or panels which don't adequately screen the vehicle from view are prohibited.

        ii. When located within the Heritage Sub-District, parking structures shall be designed to have side street accessibility where possible.

        iii. The architecture of the parking structure shall share architectural themes of adjacent and nearby buildings.

b. Parking structures shall adhere to the height limitations of the Sub-District in which they are located.

c. Where feasible, parking structures shall feature commercial space on the perimeter of the ground floor. In instances where commercial space cannot be provided, ground level landscaping shall be required on the perimeter of the structure for aesthetic enhancement.

8. **Public uses, including utility buildings, structures, uses, facilities and equipment**, are allowed in the Heritage and Neighborhood Sub-Districts provided that sites shall be screened from off-site view by a minimum six (6) foot tall masonry wall; taller screen walls may be required depending on the dimensions of the facility being screened. Wall design shall comply with the requirements of Section 12 of this Zoning Ordinance, Landscaping, Walls, and Fences.

9. **Residential living quarters occupied by the owner or employee of a permitted business on the property** are allowed in the Neighborhood Sub-District provided that:

a. The interior of the building shall be designed such that customers do not have access to the residential living quarters.

b. The living quarters shall not be rented, leased or sold separately from the principle residence or otherwise used for compensation.

c. A separate address, water meter, or utility meter shall not be provided for the living quarters.

d. The living quarters must be physically attached to the business and cannot be located within a separate structure.

10. **Restaurants without drive-thrus** are allowed in the Heritage and Neighborhood Sub-District provided that:

a. Restaurants within the Neighborhood Sub-District shall comply with the conditions listed in Subsection 307(E)(1), above.

b. Restaurants shall schedule regularly occurring trash pickups and provide individual dumpsters to ensure that objectionable odors are minimized.

11. **Sidewalk cafés** are allowed in the Heritage Sub-District provided that:

a. Sidewalk cafés shall be located directly adjacent to and abutting an indoor restaurant and cannot extend beyond the frontage of the operating indoor restaurant.

b. A sidewalk café shall be allowed only where the sidewalk or porch is wide enough to adequately accommodate both pedestrian traffic in the area and the operation of the proposed café. There shall be a minimum of forty-eight (48) inches clear distance free of all obstructions in order to allow adequate pedestrian movement.

c. All outdoor dining furniture, including tables, chairs, umbrellas and planters, shall be moveable. Umbrellas must be secured with a minimum base of not less than sixty (60) pounds. All furniture used in the operation of the café, including any barriers required as a condition of a liquor license must be removed from the sidewalk and stored indoors whenever the restaurant is closed.

d. If determined necessary, by the City Engineer or authorized designee, for public safety, in conjunction with a license issued pursuant to Subsection 307(E)(11)(i) below, a moveable decorative barrier separating café seating from pedestrian traffic shall be provided. The designs must reflect the architecture of the restaurant building façade. The barrier must be removed from the sidewalk and stored indoors whenever the restaurant is closed.

e. A sidewalk café shall only serve food and beverages prepared or stocked for sale at the adjoining indoor restaurant, provided that an extension of premises for the service of alcoholic beverages for on-site consumption has been authorized by the City of Avondale and the State of Arizona.

f. Hours of operation for a sidewalk café shall be the same as those of the adjoining indoor restaurant, or less, but in no event shall the sidewalk café be open when the main restaurant is not.

g. The City shall have the right to prohibit the operation of the sidewalk café at any time because of anticipated or actual problems or conflicts in the use of the public sidewalk. Such problems and conflicts may arise from, but are not limited to, scheduled festivals and similar events, parades, repairs to the street or sidewalk or emergencies occurring in the area. To the extent possible, the business will be given prior written notice of any time period during which the operation of the sidewalk café will be prohibited by the City.

h. The sidewalk café shall not require the provision of additional parking.

i. A sidewalk café shall require a license, or other authorization as determined acceptable by the City Attorney, prior to utilizing any portion of the public right-of-way. Plans detailing the specific location and dimensions of the sidewalk café, as well as the specifications of the proposed site furniture and barrier, shall be approved by the Development Services Department prior to approval of the sidewalk café.

12. **Sidewalk vendors** are allowed in the Heritage Sub-District provided that:

a. Licensing

i. Selling, or offering for sale, any food, beverage, or merchandise on any property within Old Town shall comply with the City of Avondale Municipal Code business licensing requirements. Licenses to vend within the OTAB District shall be reviewed and approved by the Development Services Director or authorized designee in conjunction with the City Finance and Budget Department. The application for a vendor's license shall be signed by the applicant and include:

1) The name, home and business address of applicant, and the name and address of the owner, if other than applicant, of the vending stand to be used in the operation of the vending business.

2) An itemized list and description of the food, drinks and/or merchandise to be sold.

3) A description and a depiction (including signage and colors), and specifications of any stand to be used in the operation of the business.

4) A site plan (to scale) depicting the exact proposed location of the vending stand.

5) Proof of an insurance policy, issued by an insurance company licensed to do business in the State of Arizona, protecting the licensee and the City from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the license. Such insurance shall name as additional insured the City and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advance written notice to the City.

ii. Vending locations shall be approved only if the site is determined to safely accommodate the use.

iii. All licenses shall be displayed in a visible and conspicuous location at all times during the operation of the vending business.

iv. The Zoning Administrator may recommend to the Finance and Budget Office that any license may be denied, suspended or

revoked in accordance with the procedures in the Municipal Code for any of the following causes:

1) Fraud or misrepresentation contained in the application for license.

2) Fraud or misrepresentation made in the course of operating the vending business.

3) Conduct of the licensed business in such a manner as to create a public nuisance, or constitute a danger to the public health, safety, or welfare.

4) Any conduct contrary to the vending cart regulations contained within this Subsection 307(E)(12).

b. Sidewalk vendors shall not sell food, beverages or merchandise that is not listed on their license applications, nor sell anything that is sold by an indoor restaurant or retail business within a three hundred (300) foot radius from the approved vending location.

c. Vendors within Old Town may operate only between the hours of 8:00 a.m. and 10:00 p.m. except in association with a City-approved special event.

d. No vending stand shall exceed four (4) feet in width, eight (8) feet in length, and eight (8) feet in height.

e. All food or drink sold must be for immediate consumption.

f. Trash receptacles shall be provided for use by patrons. Trash and refuse generated by the vending cart shall not be disposed of in public trash receptacles. All trash must be removed and disposed of by the vendor at the conclusion of each business day, or more frequently as necessary.

g. All items relating to the vending business shall be confined to the stand itself. Seating, tables or other furniture may not be provided in association with the vending operation.

h. A vending stand shall not be left unattended while in operation or left outdoors overnight.

i. Vendors shall not solicit or conduct business with persons in motor vehicles.

j. Vendors shall not sound any device that produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public.

k. No advertising shall be permitted on any stand, except to identify prices and/or the name of the product or vendor.

l. All vending stands shall comply with the following safety requirements:

i. All equipment shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn. A safety knife holder shall be provided to avoid the loose storage of knives.

ii. All mechanical instruments used in the operation of the stand shall be installed so as to be hidden from view to the extent possible while remaining accessible.

13. **Single family attached dwellings** are allowed in the Neighborhood Sub-District, provided that new single-family attached dwellings and additions to existing single-family attached dwellings shall comply with the development standards, accessory use standards, and design standards (including landscaping and signage requirements) of the R-2 (Multiple Family Residential) Zoning District.

14. **Single family detached dwellings** are allowed in the Neighborhood Sub-District, provided that new dwellings and additions to existing dwellings shall comply with the development standards, accessory use standards, and design standards (including landscaping and signage requirements) of the R1-6 (Urban Residential) Zoning District.

F. OTAB Conditional Use Standards

The following land uses are listed in the OTAB land use matrix as being allowed with a Conditional Use Permit. All uses being granted a Conditional Use Permit shall meet the City's required findings for a Conditional use Permit. Additionally, the individual uses listed below shall comply with the conditions set forth below. Based on review of the Conditional Use Permit application, the City Council may add additional conditions of approval deemed necessary to protect the health, safety and public welfare.

1. **Funeral homes** are allowed in the Heritage Sub-District provided that:

a. A plan illustrating the route that funeral processions will use exiting Old Town shall be provided by the business and approved by the City Council as part of the Conditional Use Permit process prior to issuance of a business license.

b. Delivery of funeral accessories to the site shall be scheduled at non-peak viewing and service times to reduce vehicular and pedestrian conflicts.

c. The disposal of blood extracted during embalming shall comply with the City's Wastewater Pre-Treatment Ordinance.

2. **Liquor stores** may be permitted as a conditional use in the Heritage Sub-District provided that:

a. The minimum separation between any liquor store and the nearest body piercing studio, tattoo parlor, non-chartered financial service provider, pawn shop, plasma center, sexually oriented business or another liquor store shall be one thousand three hundred and twenty (1,320) feet, measured in a straight line from the nearest property line of each property.

b. The minimum separation required shall apply regardless of whether the other use is located within the incorporated area of the City of Avondale or within another jurisdiction.

3. **Multi-family dwellings** may be permitted as a conditional use in the Neighborhood Sub-District, provided that new multi-family dwellings and additions to existing multi-family dwellings shall comply with the development standards, accessory use standards and design standards (including landscaping and signage requirements) of the R-3 (Multiple Family Residential) Zoning District.

4. **Music studios** may be permitted as a conditional use in the Neighborhood Sub-District provided that:

a. The floor area devoted to the business shall not exceed three-thousand (3,000) square feet.

b. Sound attenuation measures shall be taken to ensure the business has no measurable impact on adjacent residential uses.

G. OTAB District Property Development Standards

OTAB District Development Standards	Heritage Sub-District	Neighborhood Sub-District
Minimum Lot Width	Not Applicable	50 feet
Minimum Site Depth	Not Applicable	100 feet
Maximum Lot Coverage	100 percent	50 percent
Maximum Building Height	40 feet	30 feet
Minimum Front Setback	0 feet	15 feet
Maximum Front Setback	10 feet	30 feet

OTAB District Development Standards (Contiued)	Heritage Sub-District	Neighborhood Sub-District
Minimum Side Setback	0 feet, except as provided in Subsection 307(G)(2)(a) below	0 feet, except when adjacent to a residential use a 5' minimum setback is required.
Minimum Street Side Setback	0 feet	10 feet
Minimum Rear Setback	0 feet, except as provided in Subsection 307(G)(2)(b) below	15 feet

1. The following table outlines the minimum development standards required in the OTAB District. Setbacks in excess of those listed on this table may be required in accordance with the conditions required of conditional use permits or uses permitted with conditions.

2. Additional Requirements

   a. Within the Heritage Sub-District, where a side property line abuts a residentially zoned property, no setback shall be required for the ground floor portion of the structure or first fifteen (15) feet of structure height, whichever is less. Portions of the structure above the ground floor or fifteen (15) feet in height shall be set back a minimum of ten (10) feet from the side property line.

   b. Within the Heritage Sub-District, where a rear property line abuts a residentially zoned property, a minimum rear yard setback of twenty (20) feet shall be maintained.

H. **OTAB Performance Standards**

1. Any exterior modification of a building, structure or site within the OTAB District shall be subject to the standards set forth in the Old Town Avondale Business District Design Guidelines and future amendments thereto, as well as the requirements contained within this Subsection 307(H).

   a. New and remodeled buildings shall be compatible with the Old Town character and architecture.

   b. Design shall preserve the integrity of each individual structure and the character of its streetscape.

   c. Important character-defining features and details of existing buildings shall be preserved when exterior alterations are proposed.

   d. All new buildings shall be designed to be compatible with the human scale and shall also preserve the residential and historic character of the surrounding neighborhood.

e. For elevations fronting onto Western Avenue, Dysart Road or Central Avenue, storefront windows shall be utilized to allow views into and out of ground level spaces. Clear or lightly tinted glass shall be used in windows, doors and display windows.

f. Façade surfaces adjacent to major streets (Western Avenue, Dysart Road and Central Avenue) shall be no more than twenty-four (24) feet in length without an opening.

g. Any building over fifty (50) feet wide shall be designed to appear as a series of buildings no wider than fifty (50) feet each.

h. All retail entrances adjacent to major streets (Western Avenue, Dysart Road and Central Avenue) shall be sheltered by use of a porch, canopy or awning.

i. All customer entries shall be open to either the public right-of-way or an open air breezeway leading to the public right-of-way.

2. All activities shall be conducted entirely within enclosed buildings, except where outdoor uses are explicitly listed in the OTAB Land Use Matrix as permitted, permitted with conditions or permitted as an accessory use.

3. Outdoor storage and/or display of goods and materials shall be prohibited except where specifically authorized in this Section.

4. Service entrances and service yards shall be located in the rear and/or side yard of the business use or accessed from an alley. Service yards shall be screened from any adjoining residential zone or use by the installation and maintenance of a solid wall or solid (opaque) fence having a height of not less than six (6) feet.

5. Trash enclosures shall be located within screened enclosures that are designed to correspond to the particular architectural style of the corresponding property. These enclosures should not be visible from Western Avenue, Central Avenue or Dysart Road.

6. Signage within OTAB shall be provided in accordance with Section 9 of the Zoning Ordinance.

7. Except where specified otherwise within this Subsection 307, parking shall be provided in accordance with Section 8 of the Zoning Ordinance. Joint-use parking shall be permitted in accordance with the procedures outlined in that Section.

8. Landscaping and walls shall be required in accordance with the provisions of Section 12 of the Zoning Ordinance (Landscaping, Walls, and Fences Regulations), except as follows:

   a. Development in the OTAB District shall be exempt from the provisions of Subsection 1204(C)(1)(d) (Landscape Design Standards, Required Landscape Areas, General). No minimum percentage of site landscaping shall be required.

   b. The provisions of Subsection 1204(C)(3) (Landscape Design Standards, Landscape Setback) shall apply to development in the OTAB District, except that the minimum dimension of landscape setbacks shall be determined by the Development Standard table, above.

   c. The provisions of Subsection 1204(C)(5) (Landscape Design Standards, Land Use Buffers) shall not apply to development in the OTAB District.

CITY COUNCIL REPORT

SUBJECT:
Proposed Development Agreement - Phoenix International Raceway

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: David Fitzhugh, Assistant City Manager (623) 333-1014

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff will present information to the City Council regarding a proposed development agreement between the City of Avondale and Phoenix International Raceway regarding facility improvements and extension of public utilities. This item is for discussion and direction purposes only.

BACKGROUND:

Phoenix International Raceway (PIR) owns and operates a professional racing facility on approximately 600 acres located between the intersections of Avondale Boulevard and Dysart Road, south of the Gila/Salt River. The raceway was originally constructed in 1964 and has been periodically improved over the years. PIR desires to construct facility improvements in the near term as the first phase of a long range plan intended to enhance and expand the facility. These improvements are critical to the long-term viability of the facility, the assurance of maintaining featured NASCAR race events and increasing the potential to expand activities on the property. The City of Avondale will benefit from the improvements through construction sales tax, assurance of continued revenue generated by the events and the potential for increased revenue due to future activities.

The current facility is not connected to City of Avondale water or sewer and is dependent on a private well and on-site disposal of sewage. The well water is extremely high in total dissolved solids and, while it meets all county, state and federal water quality standards, it is not desiresable for consumption due to taste and appearance. It is used primarily for non-potable uses including dust control, irrigation and fire suppression. The on-site sewer system is at capacity and will not support any expansion of uses. PIR has been in discussion with staff for the past several months discussing their planned improvements and the City's ability to provide necessary infrastructure. Staff believes we have developed conceptual plans to meet their needs.

DISCUSSION:

Staff determined that encouraging the redevelopment/improvement of the PIR property will result in significant economic and other public purpose benefits to the City and its residents by:

- Causing the construction of water and sewer infrastructure improvements,
- Facilitating the development of the PIR property in a manner consistent with the City's General Plan,
- Transitioning the PIR property to a new zoning district suited to a major sports and entertainment venue like PIR,
- Increasing tax revenues to the City arising from or relating to the development of the PIR property,
- Retaining a strong economic engine within Avondale,

- Enhancing cooperation between Avondale and PIR to improve the likelihood of other race-themed venues will locate within Avondale,
- Facilitating the development of the PIR property in accordance with an expansion development plan and the ultimate development plan estimated to cost over $100 million,
- Providing additional land for locating the City's utility infrastructure,
- Improving public safety operations during major events on the property, and
- Facilitating a long-term presence of PIR corporate offices in Avondale.

General Plan and Rezoning

The PIR property currently has a mixed land-use designation of Employment and Rural Low Density Residential under the City's existing General Plan. Staff has reviewed these designations as a part of the General Plan 2030 update and the Estrella Foothills Specific Area Plan development process and will be recommending amending the designation to "Sports and Entertainment". The General Plan 2030 is scheduled for voter authorization in the fall of 2012 following public hearings before the Planning Commission and the City Council. Rezoning the property must be consistent with the 2002 General Plan (current). Prior to adoption of the General Plan 2030, the City and PIR agree that in order to be consistent, the current 2002 General Plan must be amended to eliminate the Rural Low Density designation. PIR understands that this will require a major General Plan Amendment.

The property is currently zoned Industrial (A-1) and Agricultural (AG). Staff has been working with PIR to prepare a text amendment to the Zoning Code to create a new zoning category "Major Sports and Entertainment District to more adequately address the unique zoning aspects of a large-scale sports venue such as PIR. Staff will bring this text amendment forward to Council for approval in December 2010. Should Council approve the amendment, PIR intends to submit applications requesting a Major General Plan Amendment to Sports and Entertainment and to rezone the property Major Sports and Entertainment District in early 2011. The agreement stipulates that PIR may initiate their proposed Phase I improvements with their current zoning as long as the number of grandstand seats do not exceed 79,000.

Infrastructure Improvements - City Obligation

The City agrees to extend water and sanitary sewer services to PIR at an estimated cost of between $7 and $8 million. The Capital Improvement Program Water Fund budget approximately $2.4 million to construct a 16-inch water line from the existing 24-inch line located in Avondale Blvd south of Lower Buckeye Road to the Gila River/PIR. This line will also connect with the existing Rigby Water Company lines allowing the closure of the existing poor quality wells serving this community. This work is conceptually estimated to cost between $3.5 million and $4 million. Additional funds above the budgeted amount may be obtained from the Water Operating Budget fund balance.

Sanitary sewer services will be provided through the construction of a lift station on property to be dedicated to the City by PIR and installation of two different sized force mains that will tie into the City's sewer trunk line at Avondale Boulevard and Rosier Street alignment. Details of the design have not been developed at this time but staff conceptual believes there will have to be two (2) different sized pumps, one to handle day to day low flows and smaller events and a larger one to manage significant events. This work is conceptually estimated to cost $3.5 to $ 4 million. It is not currently budgeted in the Capital Improvement Program. Staff recommends funding be obtained from the Sewer Operating fund balance.

Infrastructure Improvements - PIR Obligation

PIR agrees to construct $15 million in facility improvements including refurbishment of the race track and construction of a state of the art media center or other improvements of equal value. PIR also understands its obligation to pay all applicable City transaction privilege taxes related to new construction, pay all required development impact, plan review and permit fees and dedicate

property for City infrastructure. PIR agrees to maintain its corporate offices in Avondale unless circumstances dictate they relocate. Should this occur, PIR agrees to meet with the City prior to any binding relocation commitment and will provide an opportunity for the City to locate comparable Class A office space within our corporate limits. PIR has also agreed to work with staff regarding the provision of public safety services and to that end, enter into a separate agreement detailing the terms of the service provided and cost reimbursement to the city.

Schedule

The agreement establishes a completion date of November 2012 for both off-site city infrastructure and on-site PIR facility improvements. Discussions are still in progress regarding relief for either party should funding availability become an issue.

Staff intends to incorporate any Council comments or direction into the agreement and bring back for Council approval on November 22, 2010.

BUDGETARY IMPACT:

Funding for the water portion of the City's obligation will come from the Capital Improvement Program, Water Fund and the Water Operating Budget fund balance.

Funding for the Sewer portion of the City's obligation will come from the Sewer Operating Budget fund balance.

RECOMMENDATION:

Staff will present information to the City Council regarding a proposed development agreement between the City of Avondale and Phoenix International Raceway regarding facility improvements and extension of public utilities. This item is for discussion and direction purposes only.

ATTACHMENTS:

Click to download

- Draft Development Agreement

When recorded, return to:

City Clerk
City of Avondale
11465 W. Civic Center Drive, Suite 110
Avondale, Arizona 85323-6804

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into _____ _____, 2010 (the "Effective Date"), by and between the City of Avondale, an Arizona municipal corporation (the "City") acting by and through the Mayor and City Council (the "Council") and Phoenix Speedway Corp., a Delaware corporation d/b/a Phoenix International Raceway ("PIR"). The City and PIR are sometimes referred to herein collectively as the "Parties" or individually as a "Party."

RECITALS:

A. ARIZ. REV. STAT. § 9-500.05 authorizes the City to enter into an agreement with any person or entity having an interest in real property providing for the development of such property and related matters.

B. PIR owns and operates the professional racing facility known as Phoenix International Raceway on approximately 600 acres of real property located at the intersection of Avondale Boulevard and Indian Springs Road, as more particularly described in Exhibit A and depicted in Exhibit B, both of which are attached hereto and incorporated herein by reference (the "PIR Property").

C. The City and PIR desire to enter into this Agreement to (i) set forth their understanding as to each Party's responsibility for certain actions and infrastructure improvements related to Phoenix International Raceway and/or the PIR Property and (ii) establish expectations for future cooperation between the City and PIR with respect to businesses to be attracted to Avondale, including the PIR Property and the area included within the Avondale City Center Specific Plan (the "City Center").

D. The City has determined that encouraging redevelopment/improvement of the PIR Property pursuant to this Agreement will result in significant economic and other public purpose benefits to the City and its residents by, among other things (i) causing the construction of certain public improvements, (ii) facilitating the development of the PIR Property in a manner consistent with the City's General Plan, (iii) transitioning the PIR Property to a new zoning district suited to a major sports and entertainment venue like PIR, (iv) increasing tax revenues to the City arising from or relating to the development of the PIR Property, (v) retaining a strong economic engine within Avondale, (vi) enhancing cooperation between the Parties to improve the likelihood that other race-themed venues will locate within Avondale, particularly within the City Center, (vii) facilitating the development of the PIR Property in accordance with the Expansion Development Plan (as defined herein) and the Ultimate Development Plan (as defined

herein), the combined capital investment of which is estimated by PIR to cost over $100,000,000.00, (viii) providing additional land for locating the City's utility infrastructure, (ix) improving public safety operations during major events on the PIR Property and (x) facilitating a long-term presence of the PIR corporate offices in Avondale.

E. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered into pursuant to the terms of ARIZ. REV. STAT. § 9-500.05, to facilitate the proper municipal zoning designation and development of the PIR Property by providing for, among other things, conditions, terms, restrictions and requirements related to infrastructure improvements and other matters with respect to the expanded development of the PIR Property. The terms of this Agreement shall constitute covenants running with the PIR Property as more fully described in this Agreement.

AGREEMENT

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

1. Term and Effective Date. This Agreement shall become effective upon the Effective Date and shall remain in full force and effect until December 31, 2020 after which time this Agreement shall automatically terminate without the necessity of any notice, agreement or recording by or between the Parties (the "Initial Term") unless extended pursuant to this Section 1. If, as of six (6) months prior to the expiration date of the Initial Term, PIR is hosting or is scheduled to host at least one (1) NASCAR-sanctioned event per calendar year and PIR has satisfied its capital improvement obligations under Section 3.2 of this Agreement, then the Term of this Agreement shall be automatically extended for an additional ten (10) years without any further action by either PIR or the City.

2. Development of PIR Property.

2.1. General Plan and Rezoning.

A. General Plan. The PIR Property currently has a mixed land-use designation of "Employment" and "Rural Low Density Residential" under the City's existing General Plan (the "2002 General Plan"). City staff is in the process of receiving technical review and public comments on a revised General Plan (commonly referred to as "Avondale 2030" but referred to herein as the "2012 General Plan") that will be submitted to the Avondale voters for ratification after public hearings and review and consideration by the City's Planning and Zoning Commission and the Council according to ARIZ. REV. STAT. § 9-461.06(K); the 2012 General Plan is anticipated to be approved by the Council in sufficient time to be ratified by the Avondale voters in September/November of 2012. Under the 2012 General Plan, the proposed land-use designation for the PIR Property is recommended to be amended to "Sports and Entertainment." Any rezoning of the PIR Property must be consistent with the 2002 General Plan, as required by ARIZ. REV. STAT. § 9-461.02(F), as amended (the

"Consistency Requirements"). Prior to adoption of the 2012 General Plan, the City and PIR agree and understand that in order to meet the Consistency Requirements, certain interim amendments to the 2002 General Plan would be required to eliminate the inconsistency between the existing use of the portion of the PIR Property designated "Rural Low Density Residential" and any zoning category suitable for a large-scale sports venue (the "Interim Amendments"). PIR agrees and understands that the Interim Amendments will require a major amendment to the 2002 General Plan, which major amendment may, pursuant to State Law, be considered only once each year (the City has designated August for such amendments). If PIR requests that the PIR Property be rezoned prior to the time that the 2012 General Plan is ratified by the voters, the City staff shall process such Interim Amendments as necessary to ensure that rezoning of the PIR Property would meet the Consistency Requirements, and if deemed appropriate by the Council acting in its sole, legislative discretion, shall approve the Interim Amendments.

B. Development Plans and Zoning. The current zoning designation for the PIR Property is a combination of Industrial (A-1) and Agricultural (AG). PIR intends to make track improvements and to construct a new media center within the current track footprint commencing in 2011, as described and depicted on Exhibit C (the "Expansion Development Plan"). The parties agree that the Expansion Development Plan may be undertaken by PIR subject only to the submittal of a site plan and without the necessity of additional entitlements. Provided that the capacity of the racetrack grandstand seating does not exceed 79,000 seats, the City further agrees that no traffic studies or roadway infrastructure expansion will be required. PIR's ultimate expansion plans are depicted in Exhibit D (the "Ultimate Development Plan"). To implement the Ultimate Development Plan, City staff is working and will continue to work with PIR representatives towards drafting a new zoning category, "Major Sports and Entertainment District" to more adequately address the unique zoning aspects of a large-scale sports venue like Phoenix International Raceway and in conformance with the Ultimate Development Plan. When requested by PIR or on the City's own initiative, and in the event the City Council determines, in its sole, legislative discretion that it is in the best interests of the City, the PIR Property shall be rezoned to Major Sports and Entertainment District (the "Rezoning"). Such Rezoning shall be completed in accordance with Section 4.1(B) below.

C. Ultimate Development Plan. At such time as the City satisfies all of its obligations pursuant to Section 3.1 of this Agreement and upon completion of the obligations of PIR under Section 3.2 of this Agreement, PIR shall, subject to reasonable phasing reflecting market conditions, commence development of the PIR Property in accordance with the Ultimate Development Plan, which at this time is estimated to represent an additional capital investment in the PIR Property of approximately $85,000,000.00. Development of the PIR Property in accordance with the Ultimate Development Plan will create a state of the art racing facility that will draw spectators from around the country and allow PIR to maintain or potentially enhance its current schedule of NASCAR sanctioned events. Although not a requirement, the Ultimate Development Plan may be developed in multiple phases over the Term of this Agreement. The time frames and physical boundaries for each of the phases, and development of the PIR Property in accordance with the Ultimate Development Plan, are

approximate and contingent upon market conditions, board approval and matters beyond the control of PIR.

2.2 Approvals. Upon adoption of the Rezoning, and provided that PIR is not in breach, for the duration of this Agreement, the City shall be restricted from changing, restricting or limiting the rights of PIR or its successors and assigns to develop the PIR Property in accordance with this Agreement, the Expansion Development Plan and the Ultimate Development Plan and/or from changing, restricting or limiting the PIR Property's permitted uses, densities and intensities of uses, locations of uses, and other similar standards of design applicable to the PIR Property without the consent of PIR; provided, however, that compliance with the applicable existing Rules and Regulations or permissible amendments thereto referred to herein shall in all events be required. After adoption of the Rezoning, the City shall grant and issue all subsequent administrative approvals necessary to allow PIR to implement the Expansion Development Plan and develop the PIR Property in accordance with the Expansion Development Plan and this Agreement, subject to the City's reasonable and customary review and approvals of plats, site plans and specifications, permits and other similar items in accordance with the Rules and Regulations and payment of all required review, permit and development impact fees. The City will process all zoning, plat, site plan and building applications in a timely manner as agreed upon by both Parties. Upon prior written approval by PIR, outside consultants may be utilized in order to expedite the performance of plat, site plan and building plan review or other plan review services as deemed reasonably necessary by the City, the cost of which shall be the sole responsibility of PIR. The City shall waive any costs not approved in advance by PIR.

2.3 Additional Property. The City and PIR acknowledge that during the Term of this Agreement, PIR may acquire additional property adjacent to or within a one (1) mile radius of the existing PIR Property to be used in connection with the uses on the PIR Property. Upon the request of PIR and the submission of an amended Development Plan for the additional property hereafter referenced, the City hereby agrees to consider and, if in the best interest of the City as determined by the City and in accordance with typically applicable notice and public hearing requirements, to incorporate into this Agreement the whole or any portion of additional properties adjacent to or proximate to the PIR Property (the "Additional PIR Property") if and when PIR acquires such Additional PIR Property. The City and PIR agree that if PIR elects to request from City the incorporation of such Additional PIR Property or portions thereof and if the City consents: (A) thereafter, such Additional PIR Property shall be included in the PIR Property and shall be subject to and shall benefit from all provisions of this Agreement applicable thereto and any reference herein to the PIR Property shall include such Additional PIR Property; and (B) the City and PIR shall cooperate in order for the Additional PIR Property to receive the necessary land use approvals, including any necessary amendment to the zoning required to approve the amended Expansion Development Plan.

2.4 Applicable Rules and Regulations. For purposes of this Agreement, the term "Rules and Regulations," shall mean the ordinances, rules, regulations, permit requirements and other official policies of the City in existence on the Effective Date of this Agreement except as those items may be modified by this Agreement. Except as otherwise expressly provided to the contrary in this Agreement, the City shall not impose or enact any additional Rules and Regulations applicable to or governing the development of the PIR Property for the Term of this Agreement.

2.5 Permissible Additions to the Rules and Regulations. Notwithstanding the provisions of Sections 2.2 and 2.4 above, the City may enact the following provisions and take the following actions which shall be allowable additions to the Rules and Regulations and shall be binding on the development of the PIR Property:

A. State, County or Federal Requirements. Rules and Regulations of the City enacted as reasonably necessary to comply with requirements imposed on the City by the State, County or Federal government, provided, that in the event such requirement prevents or precludes compliance with this Agreement, such effective provisions of this Agreement shall be modified, if legally possible, as may be necessary to achieve the minimum permissible compliance with such requirements.

B. Public Health and Safety. Rules and Regulations enacted by the City that are reasonably necessary to alleviate threats to public health and safety, in which event any such remedial or corrective enactments shall be rationally related to the alleviation of such threats and may be imposed only after allowing for public comment at an open meeting and shall not, in any event, be imposed unreasonably or arbitrarily.

C. Building Codes and Standards. Future updates of, and amendments to: (1) building, construction, plumbing, mechanical, electrical, drainage and similar construction and safety-related codes, such as the recognized construction, safety organization or by the county, state or federal government or by the Central or Maricopa Association of Governments, provided that such building or safety code updates and amendments have been duly adopted by the appropriate publishing agency and are reasonably applied and, unless mandated by superior legal authority, shall not apply to any structures for which a permit has already been issued; (2) the City's amendments to the adopted codes set forth in Subsection 2.5(C)(1); and (3) the Avondale General Engineering Requirements and Avondale Supplement to the MAG Specifications and Standard Details.

3. Infrastructure Improvements.

3.1 City Obligations.

A. Water Improvements. The City has budgeted $800,000 in the approved Fiscal Year 2010-2011 Capital Improvement Program ("CIP") and $1.6 Million is committed in the proposed 2011-2012 CIP, which was approved by Council on July 5, 2010, to extend a water line in Avondale Boulevard (or at such other location as determined by the City, in its sole discretion, after consultation with PIR) to provide water service to the PIR Property (the "Avondale Boulevard Water Line"). Subject to PIR's obligations set forth in Subsection 3.2 below, the City agrees to design and install said Avondale Boulevard Water Line within public rights-of-way during Fiscal Years 2011/2012 through 2012/2013 and in the event that the costs exceed the CIP budget, the City will not be relieved of its obligation to complete the water improvements under this Subsection 3.1(A); provided, however, that if the Avondale Boulevard Water Line costs exceed the allocated CIP budget, upon the City's request, PIR shall contribute to such

costs in an amount not to exceed $1,200,000.00 (the "PIR Water Contribution"), which PIR Water Contribution shall be reimbursed to PIR in accordance with Subsection 5.2 below. The design and location of the Avondale Boulevard Water Line shall be at the City's discretion, after consultation with PIR, and as necessary to provide sufficient water service to at a minimum meet the required water flow demands as provided in the Water Supply and Wastewater Services Conceptual Plan Report, prepared by HNTB, subject to the modification by and approval of the City's Public Works Director (the "Report"). The City will own and operate the Avondale Boulevard Water Line within the public right-of-way, which line will be stubbed out to the private property line of the PIR Property at the locations determined by both parties, working together in good faith. PIR specifically agrees and understands that the City's water improvements, as set forth in this Subsection 3.1(A), shall not include a reservoir for potable water storage, which reservoir, if any, shall be constructed, owned and operated by PIR at its sole cost and expense.

B. Wastewater Improvements. The City will budget sufficient funds in Fiscal Years 2011/2012 and 2012/2013 to design and construct a wastewater lift station (which shall include a sewer force main) that will provide sufficient sewer utility service to meet the minimum flow requirements as detailed in the Report and to be located at an appropriate site on the PIR Property (the "Lift Station") as detailed in Section 3.2(C) below. The City will, subject to PIR's obligations set forth in Subsections 3.2 below, design and construct the Lift Station and related force mains in Fiscal Years 2011/2012 through 2012/2013. The design of the Lift Station shall be at the City's sole discretion, after considering and reasonably incorporating comments from PIR. PIR specifically agrees and understands that the City's wastewater improvements, as set forth in this Subsection 3.1(B), shall not include a reservoir for wastewater storage for peak events, which reservoir, if any, shall be constructed, owned and operated by PIR at its sole cost and expense.

C. Infrastructure Completion Schedule. The Avondale Boulevard Water Line and the Lift Station are collectively referred to herein as the "Public Infrastructure." The City will commit to anticipated delivery dates for the Public Infrastructure by January 1, 2011. Once the City has provided PIR with anticipated delivery dates for the Public Infrastructure, PIR shall have the option, but not the obligation, to complete all or a portion of the Public Infrastructure and to receive reimbursement from the City for such costs in accordance with Section 5 of this Agreement. PIR shall provide written notice of its decision within ninety (90) days of receipt of the anticipated delivery date schedule from City.

D. 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 Agreement 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 PIR 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, and is unable to meet its obligations under this Section 3.1, then City shall be considered in default of this Agreement in which event PIR shall be relieved of any contingent and subsequent financial obligation under this Agreement and shall be permitted to exercise any remedy available pursuant to the terms of this Agreement, the law and equity.

3.2 PIR Obligations.

A. Improvements to PIR Property. In consideration of the City's performance of its obligations under this Agreement, PIR will contribute a minimum of $15,000,000 towards improving the PIR Property, including the refurbishment of the existing race track and the construction of a state of the art media center. PIR shall make such improvements to the PIR Property in the manner (type of improvement, size, expected benefit to fans in attendance) and at the times (phases anticipated, date of opening to the public for each phase) to accommodate the Expansion Development Plan (the "PIR Improvements") and as required in the Report, as amended from time to time. PIR shall work cooperatively with the City staff to ensure that proposed facilities are designed and constructed in accordance with applicable State, County and City codes, ordinances, regulations and requirements. If the PIR Property is developed in phases, one or more of the phases or a portion of those phases may be undertaken contemporaneously. The physical boundaries of the phases (not the exterior physical boundaries of the PIR Property) may be adjusted administratively, as mutually agreed by PIR and City and in accordance with the Rezoning.

B. Transaction Privilege Tax on Construction Activities. PIR agrees and understands that it is obligated to pay all applicable City transaction privilege taxes related to new construction activities ("Construction Sales Tax").

C. Real Property Dedication. PIR shall dedicate to the City up to a one (1) acre parcel(s) of real property generally located at near the intersection of El Mirage and Indian Springs Roads, for use by the City in constructing the Lift Station(s), at such time as the City has notified PIR in writing that it (1) has the necessary funds to construct the Lift Station and (2) will commence design within sixty (60) days of such notice. The fair market value of the real property dedicated for the Lift Station shall be mutually agreed upon by City and PIR at the time of dedication and said value will establish the development impact fee credit, if any, owed to PIR under Section 5.

D. Operation of Improvements. The City shall be responsible for all maintenance and operation of the Public Improvements. PIR shall be solely responsible for constructing, operating and maintaining all infrastructure located on the PIR Property including, but not limited to, any on-site reservoirs and booster pumps.

E. Existing Well. PIR agrees to use its existing wells, Arizona Department of Water Resources ("ADWR") Registration Nos. _____, located on the PIR Property in the locations depicted in Exhibit E attached hereto and incorporated

by reference (the "Existing Wells"), solely for non-potable water purposes (such as irrigation and dust control) for the PIR Property.

F. PIR Corporate Offices. PIR agrees to maintain its corporate offices within the corporate limits of the City during the term of this Agreement, subject only to the limitations set forth in this Subsection 3.2(F). In the event that PIR determines, in good faith, that it cannot either (1) maintain its offices at its current location (125 S. Avondale Boulevard) or (2) relocate its offices to another comparable Class A office space within the City limits, PIR shall meet with the City prior to any binding relocation commitment to office space outside the corporate limits of the City in order to identify potential opportunities for relocation to comparable Class A Office Space within the corporate limits of the City. PIR shall consider such options presented by the City in good faith and use reasonable consideration in deciding whether to relocate outside the City's corporate limits; provided, however, that in no event shall PIR locate its corporate offices in any city or town sharing a common boundary with the City.

G. Public Safety Services. PIR acknowledges that there is a significant annual cost to the City to provide public safety services to the PIR Property during major race events. As such, the parties agree to work together in good faith to determine a public safety services plan that provides adequate public safety while being cost effective. Such public services plan shall be memorialized in a separate written agreement between the parties and shall be executed prior to the first NASCAR event weekend at the PIR Property in 2011. Such public safety services plan shall include the provision of necessary space and available services such as water and electricity to be used by the City public safety personnel and equipment, and reimbursement to the City for the City's reasonable costs of providing the services.

4. PIR Property Land Use.

4.1 General Plan Amendments and Rezoning.

A. General Plan Amendments. PIR shall fully cooperate to the extent necessary with the City staff in the completion and implementation of the Interim Amendments and the 2012 General Plan to ensure that the land-use designation for the PIR Property is consistent with the uses thereon.

B. Rezoning. So long as the Council (1) adopts the ordinance creating the Major Sports and Entertainment District (the "MSED Ordinance") as described in Subsection 2.1 above prior to December 31, 2010 and (2) initiates the Interim Amendments prior to January 31, 2011, PIR shall initiate the Rezoning of the PIR Property to the Major Sports and Entertainment District not later than 60 days after the effective date of the MSED Ordinance.

C. Waiver of Claims. Whether initiated by the City or requested by PIR, prior to adoption of both the Interim Amendments and the Rezoning for the PIR Property, PIR shall execute a Waiver of Claims Pursuant to ARIZ. REV. STAT. § 12-1134

et seq., substantially in the form attached hereto as Exhibit F, and incorporated herein by reference.

4.2 PIR Affiliated Businesses and Attractions. PIR shall use good faith efforts to work with the City toward developing a cooperative marketing and promotional relationship to promote tourism to Avondale and the NASCAR events at PIR.

5. Development Impact Fees and Payback Improvements.

5.1 Payment of Development Fees. At building permit issuance, PIR shall pay all development fees assessed by the City under ARIZ. REV. STAT. § 9-463.05 ("Development Fees") owing with respect to new development on the PIR Property. Some of the Public Infrastructure or real property that PIR has agreed to install or otherwise provide pursuant to this Agreement are or may be included within the improvements to be funded by various Development Fees. City agrees that, in accordance with the provisions of ARIZ. REV. STAT. § 9-463.05, PIR shall receive a dollar-for-dollar credit against the Development Fees for the cost of all Public Infrastructure that it constructs or has constructed for which a Development Fee is assessed and for the appraised fair market value of land acquired and dedicated for public facilities for which a Development Fee is assessed.

5.2 Payback Improvements. If PIR elects under Subsection 3.1(C) of this Agreement to design and/or construct all or any portion of the Public Infrastructure (a "Payback Improvement"), the City agrees to reimburse PIR for all costs expended by PIR in such design and construction through a separate payback agreement between the City and PIR (the "Payback Agreement"). City may elect to reimburse PIR in full for the Payback Improvement upon dedication by PIR and acceptance by City of the Public Infrastructure. If City cannot pay for the Payback Improvement at the time of acceptance, then such reimbursement shall be provided through the Payback Agreement. The amount to be reimbursed through the Payback Agreement shall include all design, engineering, financing and construction costs, up to a maximum of the original cost of the Payback Improvement incurred by PIR in the design and construction of the Payback Improvement, but will not include the fair market value of any PIR Property dedicated by PIR on which any of the Payback Improvements are constructed.

6. Default; Remedies; Termination.

6.1 Default. Failure or unreasonable delay by PIR or City to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within 45 days after written notice thereof from the other Party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than 45 days would reasonably be required to perform such action or comply with any term or provision hereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within five days after written notice and diligently proceeds to complete such performance or fulfill such obligation (the "Cure Period"); provided further, however, that no such cure period shall exceed 90 days, unless

otherwise agreed to, in writing, by the Parties. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. In the event a breach is not cured within the Cure Period, the non-defaulting Party shall have all rights and remedies which may be available under law or equity, including without limitation the right to (A) specifically enforce any term or provision of this Agreement, (B) terminate this Agreement or (C) institute an action for damages.

6.2 Dispute Resolution. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves and the cure period for the breach has expired, the Parties agree that there shall be a 45 day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by PIR and the City. In the event that the Parties cannot agree upon the selection of a mediator within seven days, then within three days thereafter, the City and PIR shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five years of experience in mediating or arbitrating disputes relating to land and property development. The cost of any such mediation shall be divided equally between the City and PIR. The results of the mediation shall be non-binding on the Parties, and any Party shall be free to initiate litigation. This Section 6.2 shall not apply to any legal rights of PIR that must be exercised within a certain number of days that is less than 45.

6.3 No Personal Liability.

A. City to PIR. No member, official, employee, or agent of the City shall be personally liable to PIR, or any successor or assignee (1) in the event of any default or breach by the City or (2) pursuant to any obligation of the City under the terms of this Agreement.

B. PIR to City. No member, official, employee, or agent of PIR shall be personally liable to the City (1) in the event of any default or breach by PIR, (2) for any amount that may become due to the City or (3) pursuant to any obligation of PIR under the terms of this Agreement.

7. General Provisions.

7.1 Cooperation. The City and PIR hereby acknowledge and agree that they shall cooperate in good faith with each other as contemplated by this Agreement.

7.2 Time of Essence. Time is of the essence with respect to each and every provision of this Agreement and the performance required by each Party hereto.

7.3 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or

indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to ARIZ. REV. STAT. § 38-511.

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

If to the City:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Facsimile: 623-333-0100 Attn: Charles P. McClendon, City Manager
With copy to:	GUST ROSENFELD, P.L.C. One East Washington, Suite 1600 Phoenix, Arizona 85004-2553 Facsimile: 602-340-1538 Attn: Andrew J. McGuire, Esq.
If to PIR:	Phoenix Speedway Corp. 125 S. Avondale Blvd Suite 200 Avondale, Arizona 85323 Facsimile:_____ Attn: Bryan Sperber
With a copy to:	Legal Department One Daytona Boulevard Daytona Beach, Florida 32114 Facsimile: (386) 681-6884 Attn: General Counsel

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (D) when confirmed 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.

7.5 Governing Law; Venue. This Agreement shall be interpreted and governed according to laws of the State of Arizona. The venue for any dispute hereunder shall be Maricopa County, Arizona, and the Parties hereby irrevocably waive any right to object to such venue.

7.6 Successors and Assigns. The rights established under this Agreement and the Expansion Development Plan are not personal rights but attach to and run with the PIR Property. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto pursuant to ARIZ. REV. STAT. § 9-500.05(D). Upon PIR's transfer of the PIR Property, or any portion thereof, the transferee(s) shall automatically become the owner hereunder and the City shall release all prior owner(s) from the obligations of this Agreement that are to be performed in that portion of the PIR Property that has been transferred. This Agreement may be assigned by PIR to any successor in interest to the PIR Property (or any portion thereof) without the consent of City, provided that PIR provides the City with written notice of such assignment and the identity of the assignee within fifteen (15) days of such assignment.

7.7 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by either Party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

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

7.9 Limited Severability. The City and PIR each believe that this Agreement was executed, delivered and performed in compliance with all applicable laws. However, in the unlikely event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement is declared void or unenforceable by a court of competent jurisdiction (or is construed as requiring the City to do any act in violation of any applicable laws, constitutional provision, law, regulation or City Code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic or otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

7.10 Exhibits. All exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

7.11 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties hereto, oral or written, are hereby superseded by and merged into this Agreement.

7.12 Recordation of Agreement. This Agreement shall be recorded in the Maricopa County Recorder's Office within ten days after its approval and execution by the City.

7.13 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between PIR and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder.

7.14 Additional Acts and Documents. Each Party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement. If any action or approval is required of any Party in furtherance of the rights under this Agreement, such approval shall not be unreasonably withheld.

7.15 Headings; Counterparts. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

7.16 City Services. Upon completion of the Public Infrastructure, the City shall provide and maintain all City services to the PIR Property to the same extent and upon the same terms and conditions as those services are provided to other real properties in the City, except as otherwise provided herein.

7.17 Force Majeure. The performance of either Party and the duration of this Agreement shall be extended by any causes that are extraordinary and beyond the control of the Party required to perform, such as, but not limited to, a significant weather or geological event or other act of God, civil or military disturbance, labor or material shortage, or acts of terrorism.

7.18 Fair Interpretation. All Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

7.19 Computation of Time. In computing any period of time under this Agreement the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (local time in Phoenix, Arizona) on the last day of the applicable time period provided herein.

7.20 Amendment. No amendments are to be made to this Agreement except by written document executed by City and PIR. Within ten (10) days after the execution of the amendment by both parties, the amendment shall be recorded by the City with the Maricopa County Recorder, Maricopa County, Arizona. From time to time, PIR may apply to amend the Expansion Development Plan or the Ultimate Development Plan in accordance with the Rezoning and Major Sports and Entertainment District. Said amendments that are administratively approved under the Rezoning and Major Sports and Entertainment District may be approved without requiring or constituting amendment to this Agreement.

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

"**PIR**"

PHOENIX SPEEDWAY CORP.,
a Delaware corporation

By:_____

Name:_____

Title:_____

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

By:_____
Charles P. McClendon, City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

(ACKNOWLEDGMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on _____, 2010, by _____, who acknowledged that he signed the foregoing instrument as ___ _____ on behalf of PHOENIX SPEEDWAY CORP.

_____
Notary Public

My commission expires:

_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on _____, 2010, by Charles P. McClendon, City Manager of the CITY OF AVONDALE, who acknowledged that he signed the foregoing instrument on behalf of the City of Avondale.

_____
Notary Public in and for the State of Arizona

My commission expires:

_____

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

[PIR Property Legal Description]

See following pages.

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

[Map of PIR Property]

See following pages.

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

[Expansion Development Plan]

EXHIBIT D
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX SPEEDWAY CORP.

[Ultimate Development Plan]

EXHIBIT E
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX SPEEDWAY CORP.

[Map of Existing Wells]

See following pages.

EXHIBIT F
TO
DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX SPEEDWAY CORP.

[Waiver of Claims]

See following pages.

CITY COUNCIL REPORT

SUBJECT:
EXECUTIVE SESSION

MEETING DATE:
November 15, 2010

TO: Mayor and Council

FROM: Andrew McGuire, City Attorney (602) 257-7664

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The Council may hold an executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(7) for discussion or consultation with City representatives in order to consider its position and instruct its representatives regarding negotiations for the acquisition of real property on Avondale Boulevard.

ATTACHMENTS:

Click to download

No Attachments Available