# CITY COUNCIL AGENDA

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

**REGULAR MEETING**
**May 3, 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 RECOGNITION ITEMS (MAYOR PRESENTATIONS)**

**a. RECOGNITION OF AVONDALE CITIZEN LEADERSHIP ACADEMY CLASS IV GRADUATES**

**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 April 19, 2010
2. Regular Meeting of April 19, 2010

**b. SPECIAL EVENT LIQUOR LICENSE - RACEWAY ELKS FOR SPRING DANCE FUNDRAISER**
City Council will consider a request for a special event liquor license from Mr. Gary Bruce on behalf of the Raceway Elks #2852 for a spring dance fundraiser event to be held on June 12, 2010 at the Masonic Temple located at 1015 North 8th Street in Avondale. The Council will take appropriate action.

**c. MEMORANDUM OF UNDERSTANDING - A NEW LEAF**
City Council will consider a request to approve a memorandum of understanding with "A New Leaf" to assign a part-time counselor to the Southwest Family Advocacy Center to provide 20 hours of counseling services per week to victims served at the SWFAC and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**d. THIRD AMENDMENT TO THE AREA AGENCY ON AGING AGREEMENT**
City Council will consider a request to approve the third Amendment to the Area Agency on Aging contract in the amount of $6,550 for the purchase of two exercise bikes, repair of a range hood, and purchase of new dining room tables and authorize the Mayor or City Manager and City Clerk to execute the contract documents. The Council will take appropriate action.

e. **DESIGN SERVICES & CONSTRUCTION CONTRACTS - SALT RIVER PROJECT FOR THE AVONDALE BOULEVARD MCDOWELL ROAD INTERSECTION IMPROVEMENT PROJECT**
City Council will consider a request to approve two Design Services and Construction contracts with Salt River Project for the design and construction of the required electrical improvements for the Avondale Boulevard and McDowell Road Intersection Improvement Project (Phoenix Children's Hospital) in the amount of $211,899.00 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. **FACILITIES EXTENSION AGREEMENT WITH SOUTHWEST GAS FOR AVONDALE CITY CENTER EAST**
City Council will consider a request to approve the Facilities Extension Agreement with Southwest Gas in the amount of $76,985, to provide natural gas service to the City Center Phase 1 development, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. **PROFESSIONAL SERVICES AGREEMENT - ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES INC.**
City Council will consider a request to approve a three-year Professional Services Agreement with Arthur J. Gallagher Risk Management Services Inc. to provide insurance broker services for property, general liability, auto liability and crime insurance coverage in the amount of $35,000 for the first year, $36,000 for the second and $37,000 for the third year and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. **PROFESSIONAL SERVICES AGREEMENT AMENDMENT NO. 2 - DAMON S. WILLIAMS AND ASSOCIATES, LLC, FOR WATER RECLAMATION FACILITY EXPANSION**
City Council will consider a request to approve Amendment No. 2 to the Professional Services Agreement with Damon S. Williams and Associates, LLC for additional Design and Construction Administration services for the Charles M. Wolf Water Resource Center in the amount of $306,733, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

i. **RESOLUTION 2903-510 - AMENDMENT TO THE CITY COUNCIL RULES OF PROCEDURE**
City Council will consider a resolution amending the Council Rules of Procedure Section 15 Boards, Commissions and Committees to update the language and provisions related to membership, removal of members and participation by alternate members, among others. The Council will take appropriate action.

j. **RESOLUTION 2902-510 - AMENDING MUNICIPAL ART COMMITTEE BYLAWS**
City Council will consider a resolution amending the Bylaws of the Municipal Art Committee to standardize their format and update and clarify the language as needed. The Council will take appropriate action.

k. **RESOLUTION 2905-510 - PARKS AND RECREATION ADVISORY BOARD BYLAWS**
City Council will consider a resolution amending the Bylaws of the Parks and Recreation Advisory Board to standardize the format, update and clarify the language as needed and to designate the Board as the Tree Board. The Council will take appropriate action.

l. **RESOLUTION 2899-510 - AUTHORIZING SUBMISSION OF A GRANT PROPOSAL TO THE ARIZONA DEPARTMENT OF TRANSPORTATION ENHANCEMENT FUNDS ROUND 18 – HILL DRIVE**
City Council will consider a resolution supporting the submission of a grant proposal to the Arizona Department of Transportation Enhancement Funds Round 18 for the purpose of developing sidewalks and landscaping elements along Hill Drive in the amount of $200,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

**m. RESOLUTION 2900-510 - GILA RIVER INDIAN COMMUNITY GRANT PROPOSAL FOR A POLICE PRISONER TRANSPORT VAN**

City Council will consider a resolution supporting the submission of a grant proposal to the Gila River Indian Community for a Police Prisoner Transport Van in the amount of $89,925 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

**n. RESOLUTION 2901-510 - GILA RIVER INDIAN COMMUNITY GRANT PROPOSAL FOR THE FAMILY ADVOCACY CENTER**

City Council will consider a resolution supporting the submission of a grant proposal to the Gila River Indian Community for funds to assist with services rendered to victims by the Family Advocacy Center in the amount of $200,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

**o. ORDINANCE 1411-510 - REPEALING CHAPTER 14 OF THE AVONDALE MUNICIPAL CODE, MASSAGE ESTABLISHMENTS**

City Council will consider an ordinance repealing Chapter 14 of the Avondale Municipal Code, Massage Establishments. The Council will take appropriate action.

**p. ORDINANCE 1412-510 - DEDICATION OF EASEMENT TO SRP FOR THE AVONDALE BOULEVARD AND ENCANTO BOULEVARD IMPROVEMENT PROJECT**

City Council will consider an ordinance dedicating an Overhead and Underground Power Distribution Easement to Salt River Project for the Avondale Boulevard and Encanto Boulevard Improvement Project and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**q. TREE CITY USA APPLICATION**

City Council will consider a request to authorize Mayor Rogers to sign the Tree City USA application for submission to the Arbor Day Foundation for the City of Avondale to be recognized as a Tree City. The Council will take appropriate action.

**5 PROFESSIONAL SERVICE AGREEMENT - BUXTON COMPANY FOR A RETAIL DEVELOPMENT STRATEGY PLAN**

City Council will consider a request to approve a Professional Services Agreement with Buxton Company for a Retail Development Strategy Plan in the amount of $75,000 and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

**6 ORDINANCE 1410-510 - AUTHORIZATION TO ACCEPT THE GOODYEAR FARMS CEMETERY**

City Council will consider a request to authorize acceptance of the Goodyear Farms Cemetery and the Cemetery Trust Fund from SunCor Development Company and authorize the Mayor, City Manager, City Attorney and City Clerk to execute the necessary documents for the conveyance of the property and trust fund to the City of Avondale. The Council will take appropriate action.

**7 WESTERN AVENUE BUSINESS RENOVATION PROGRAM UPDATE**

Staff will provide an update to the City Council regarding the status of the Western Avenue Business Renovation Program. For information and discussion only.

**8 CLASSIC SIGN FOR SCHNEIDER THEATER BUILDING (SG-10-18)**

City Council will consider a request for approval of a Classic Sign on the façade of the Schneider Theater Building located at 16 E Western Avenue which will be installed as part of the Western Avenue Exterior Renovation grant program. The Council will take appropriate action.

**9 MASTER SITE PLAN AMENDMENT - ULTIMATE ELECTRONICS IN THE GATEWAY PAVILIONS SHOPPING CENTER**

City Council will consider a request from Mr. Jesse Macias of Stantec to amend the architecture,

colors and building materials of the approved Master Site Plan for Ultimate Electronics to be located at Gateway Pavillions Shopping Center. The Council will take appropriate action.

**10 PUBLIC HEARING, RESOLUTION 2904-510 AND ORDINANCE 1413-510 - ZONING ORDINANCE TEXT AMENDMENT TO SECTION 12, LANDSCAPE, WALLS AND FENCES (TA-09-2)**

City Council will hold a public hearing and consider a resolution declaring as a public record that certain document filed with the City Clerk and entitled the "City of Avondale Landscape, Walls and Fences Regulations" and an ordinance adopting the same. The Council will take appropriate action.

**11 PUBLIC HEARING AND RESOLUTION 2898-510 AND ORDINANCE 1409-510 - AMENDING THE CITY CODE, CHAPTER 8, ARTICLE II, FLOOD HAZARD AREAS AND ADOPTING THE CITY OF AVONDALE FLOOD HAZARD AREAS ORDINANCE**

City Council will hold a public hearing and consider a Resolution declaring as a public record a document entitled City of Avondale Flood Hazard Areas Ordinance and an ordinance adopting the same. Council will take appropriate action.

**12 TIME EXTENSION FOR AVONDALE MARKETPLACE PAD ZONING (ZE-10-1)**

City Council will consider a request from Mr. John Fox of WSCD LLC and Mr. Blake Carroll of Troast Properties of Arizona for a time extension until March 20, 2011 for commencement of development of the Avondale Marketplace Planned Area Development. The Council will take appropriate action.

**13 DISCUSSION ITEMS**

Council will discuss items listed below and possibly give direction to city staff to research and prepare item for future meeting.

**a. Mayor Lopez Rogers - Appointment of a Council Member as a Clean Air Make More Ambassador.**

**14 EXECUTIVE SESSION**

**a.** The Council may hold an executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding the Council's position regarding potential lease agreements.

**15 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:**
Recognition of Avondale Citizen Leadership Academy Class IV graduates

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Pier Simeri, Community Relations Director (623)333-1611

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

City Council will recognize the participants of Avondale's Citizen Leadership Academy, who took time out of their busy schedules to succesfully complete 10 weeks of insightful workshops and informative tours to learn more about their community and how the City of Avondale functions as an organization dedicated to public service.

**BACKGROUND:**

In 2007, Avondale launched its first Citizen Leadership Academy as a means of accomplishing a goal of the City Council to encourage community involvement. Avondale's Citizen Leadership Academy is a ten-week program
that offers a comprehensive, behind-the-scenes perspective on Avondale city government, with interactive and informative workshops on topics ranging from how the city runs to future development and building strong neighborhoods. Participants take part in a "quality of life" tour of city parks and facilities, serve as a "jury" in a mock court trial, and are offered a close up view of public safety vehicles and apparatus during the public safety workshops.

**DISCUSSION:**

Since its inception, the Citizen Leadership Academy has met the Council's goal of encouraging community involvement because many of the graduates from the program have "answered the call" to public service by becoming more involved in their community -- whether it's serving on an HOA board in their neighborhoods or joining a city Board, Commission or Committee. Some have even run for public office at the local or state level.

Staff is aware that it takes a great commitment on behalf of the academy's participants, and as a result, the city would like to recognize the following members of Class IV for their active participation, insightful questions and anticipated continued involvement in their community:
Luis Fontes
Arnold Knack
Steve Stanczyk
Tamy Harmon-Connoly
Michael Connoly
Norma Franco
Gail Frishmann
Felipa Lerma
Maureen Lambright

**BUDGETARY IMPACT:**

The Community Relations Department has reduced the budget for the Citizens Leadership Academy

from $5,560 to $3,040 with no impact to the program, thanks to the dedication and commitment of staff from all participating city departments.

## RECOMMENDATION:

The Mayor and Council are asked to congratulate and recognize the graduating members of Avondale's Citizen Leadership Academy Class IV.

## ATTACHMENTS:

**Click to download**

No Attachments Available

# CITY COUNCIL REPORT

**SUBJECT:**
APPROVAL OF MINUTES

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

1. Work Session of April 19, 2010
2. Regular Meeting of April 19, 2010

**ATTACHMENTS:**

**Click to download**

No Attachments Available

# CITY COUNCIL REPORT

**SUBJECT:**
Special Event Liquor License - Raceway Elks for Spring Dance Fundraiser

**MEETING DATE:**
May 3, 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 consider a request for a special event liquor license from Gary Bruce on behalf of the Raceway Elks #2852, for a spring dance fundraiser event to be held on June 12, 2010 at the Masonic Temple located at 1015 North 8th Street Avondale, Arizona.

**DISCUSSION:**

The City Clerk's Department has received an application for a special event liquor license from Mr. Gary Bruce, representing the Raceway Elks #2852, to be used in conjunction with a spring dance fundraiser.

This event will be held on Saturday, June 12, 2010 from 5:00 p.m. to 11:00 p.m., at the Masonic Temple.

The required fees have been paid. Staff has determined that the applicant is not requesting any city support other than normal city services. The Police and Fire Departments have reviewed the application and are recommending approval. Their comments are attached.

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

1. The event will be restricted to members only
2. Criminal history of the applicant - A background check of the representative, Mr. Gary Bruce, revealed no contact with the Avondale Police Department
3. The event is a charitable fundraiser
4. Security measures taken by the applicant - The Police Department has reviewed the security plan and have determined it to be sufficient
5. All spirituous liquors will be served
6. Beverages will be dispensed in disposable cups and cans
7. The most recent previous event held in December 2009 revealed no neighborhood disturbances
8. Event activities will be confined to the Masonic Temple so there is no potential for problems in the neighborhood in terms of noise, hours and time of the event
9. The event will last six hours
10. Sanitary facilities are available at the temple
11. Zoning is C-2 Community Commercial and Development Services staff has indicated that the proposed use will not result in incompatible land uses
12. Anticipated total daily attendance is 80 people
13. Music will be provided by a disc jockey who will use his own sound amplification system

14. Per the Police Department, traffic control measures will not be necessary

**RECOMMENDATION:**

Staff is recommending approval of the request for a special event liquor license from Mr. Gary Bruce on behalf of the Raceway Elks #2852 for a fundraiser event to be held on June 12, 2010 at the Masonic Temple located at 1015 North 8th Street Avondale, Arizona.

**ATTACHMENTS:**

**Click to download**

- Application
- Comments - Fire Department
- Comments - Police Department

State of Arizona Department of Liquor Licenses and Control
800 W. Washington, 5th Floor
Phoenix, AZ 85007
www.azliquor.gov
(602)542-5141

# 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)

**NOTE: THIS DOCUMENT MUST BE FULLY COMPLETED OR IT WILL BE RETURNED.**
PLEASE ALLOW 10 BUSINESS DAYS FOR APPROVAL

**Application must be approved by local government before submission to Department of Liquor Licenses and Control. (Section #20)

DLLC USE ONLY
LICENSE #

1. Name of Organization: RACEWAY ELKS #2852
2. Non-Profit/I.R.S. Tax Exempt Number: 80-0132941
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? SPRING DANCE FUND RAISER
5. Location of the event: 1015 N. 8th ST. AVONDALE MARICOPA 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:** BRUCE (Last) GARY (First) J. (Middle) 1-23-43 (Date of Birth)
7. Applicant's Mailing Address: 11882 W. WASHINGTON ST (Street) AVONDALE (City) AZ (State) 8532 (Zip)
8. Phone Numbers: ( ) (Site Owner #) (623) 547-2852 (Applicant's Business #) (623) 533-3235 (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: | 6-12-10 | SATURDAY | 5:00 pm | 11:00 pm |
| Day 2: | | | | |
| Day 3: | | | | |
| Day 4: | | | | |
| Day 5: | | | | |
| Day 6: | | | | |
| Day 7: | | | | |
| Day 8: | | | | |
| Day 9: | | | | |
| Day 10: | | | | |



*Disabled individuals 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 1 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.

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 THE SPECIAL EVENT LIQUOR SALES.**

Name Raceway Elks #2852 100%
Percentage

Address 1015 N. 8th St. Avondale, AZ. 85392

Name _____ _____
Percentage

Address _____
(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)

_____ # Police ☒ Fencing
_____ # Security personnel ☐ Barriers

The officers of the Elks will check membership cards at both the gate and door since only members will attend

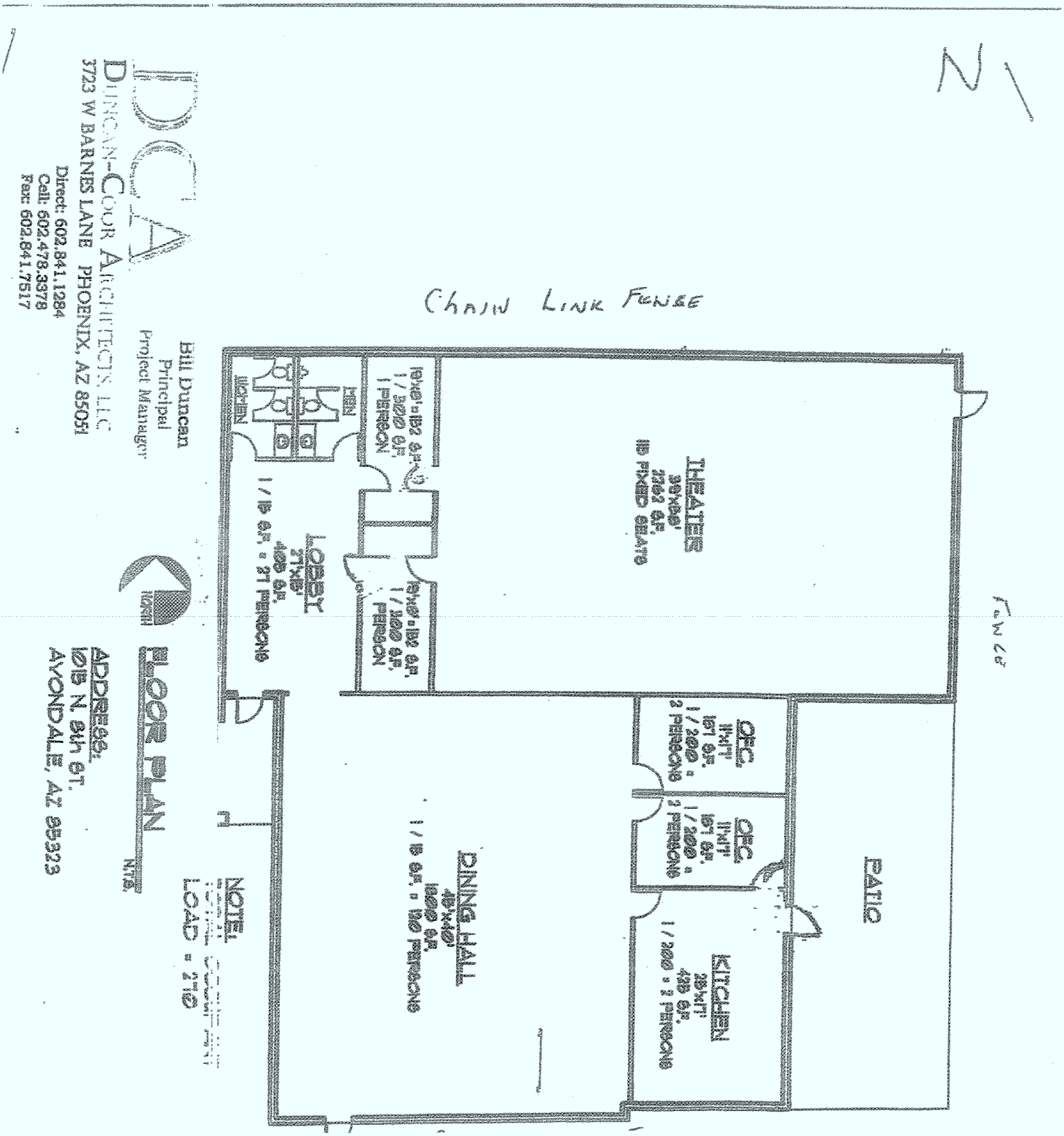
16. Is there an existing liquor license at the location where the special event is being held? ☐ YES ☒ NO
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use? ☐ YES ☐ NO
**(ATTACH COPY OF AGREEMENT)**

_____ ( ) _____
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.

**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, DAVID A. ELIA (Print full name) 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.

X [signature] (Signature) Committee Chair (Title/Position) 1-7-10 (Date) (623) 925-1245 (Phone #)

"OFFICIAL SEAL" Michele R. Miller Notary Public-Arizona Maricopa County My Commission Expires 4/16/2012

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this 7th (Day) January (Month) 2010 (Year)

My Commission expires on: 4-16-2012 (Date) Michele R. Miller (Signature of NOTARY PUBLIC)

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

19. I, Gary J. Bruce (Print full name) 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.

X [signature] (Signature)

"OFFICIAL SEAL" Michele R. Miller Notary Public-Arizona Maricopa County My Commission Expires 4/16/2012

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this 7th (Day) January (Month) 2010 (Year)

My Commission expires on: 4-16-2010 Michele R. Miller (Signature of NOTARY PUBLIC)

**You must obtain local government approval. City or County *MUST* recommend event and complete item #20. The local governing body may require additional applications to be completed and submitted 60 days in advance of the event. Additional licensing fees may also be required before approval may be granted.**

**LOCAL GOVERNING BODY APPROVAL SECTION**

20. I, _____ (Government Official) _____ (Title) hereby recommend this special event application 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
City Clerk's Department

# DEPARTMENTAL REVIEW FORM

**TYPE OF LICENSE:**

☒ SPECIAL EVENT LIQUOR LICENSE

**ROUTING:**

☐ POLICE DEPARTMENT

☒ FIRE DEPARTMENT

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**APPLICANT'S NAME:** GARY BRUCE

**ORGANIZATIONS NAME:** RACEWAY ELKS

**EVENT ADDRESS:** 1015 NORTH 8TH STREET

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

**PURPOSE OF EVENT:** SPRING DANCE FUND RAISER

**DEPARTMENTAL COMMENTS:**

☒ **APPROVED**
☐ **DENIED**

Jon G Homs
**SIGNATURE**

4/27/10
**DATE**

Fire Inspector
**TITLE**

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF:** MAY 3, 2010

**PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY:** APRIL 25, 2010

Avondale AZ
City Clerk's Department

# DEPARTMENTAL REVIEW FORM

**TYPE OF LICENSE:**
☒ SPECIAL EVENT LIQUOR LICENSE

**ROUTING:**
☒ POLICE DEPARTMENT
☐ FIRE DEPARTMENT

**APPLICANT'S NAME:** GARY BRUCE

**ORGANIZATIONS NAME:** RACEWAY ELKS

**EVENT ADDRESS:** 1015 NORTH 8TH STREET

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

**PURPOSE OF EVENT:** SPRING DANCE FUND RAISER

**DEPARTMENTAL COMMENTS:**

■ **APPROVED**
☐ **DENIED**

**SIGNATURE**

042610
**DATE**

ASSISTANT POLICE CHIEF
**TITLE**

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: MAY 3, 2010**
**PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: APRIL 25, 2010**

# CITY COUNCIL REPORT

**SUBJECT:**
Memorandum of Understanding - A New Leaf

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a revised Memorandum of Understanding with "A New Leaf" to assign a part-time counselor to the Southwest Family Advocacy Center. Under this agreement, A new Leaf will provide 20 hours of counseling services per week to victims served at the SWFAC.

**BACKGROUND:**

Staff is requesting that the City Council approve a revised version of the Memorandum of Understanding with "A New Leaf" to assign a part-time counselor to the Southwest Family Advocacy Center. Under this revised agreement, A new Leaf will provide 20 hours of counseling services per week to victims served at the SWFAC effective January 1, 2010 and terminating on June 30, 2010.

**DISCUSSION:**

On February 8, 2010, Council approved a Memorandum of Understanding for "A New Life". The term of the Memorandum was effective February 1, 2010, and terminated on June 30, 2010. A revised version of the Memorandum of Understanding was received from A New Life legal staff with the term of the Memorandum effective January 1, 2010 and terminating on June 30, 2010.

In addition, the revised Memorandum of Understanding contains two substantive changes to Section IV.B relating to Insurance Requirements. Former Section IV.B(3), Additional Insured, requiring that A New Leaf's insurance policies name the City, its officers, directors, agents, representatives, and employees as additional insureds has been stricken. Former Section IV.B(7)(a)(v), requiring a minimum of $100,000 coverage for Fire Damage (Damage to Rented Premises), has been stricken. The City's Risk Management department is aware of and has approved these changes, which were requested by A New Leaf.

**BUDGETARY IMPACT:**

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

**RECOMMENDATION:**

Staff recommends that the City Council approve a memorandum of understanding with A New Leaf to assign a therapist to the SWFAC for a six month period effective January 1, 2010, and terminating on June 30, 2010, at no direct cost to the City of Avondale. This therapist will provide counseling services to the victims served at the SWFAC.

**ATTACHMENTS:**

**Click to download**

- MOU

VOCA
**Short-term Counseling Program**

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

THIS MEMORANDUM OF UNDERSTANDING (this "Memorandum") is made as of April 5, 2010, between the City of Avondale, an Arizona municipal corporation (the "City"), by and through the Southwest Family Advocacy Center (the "SWFAC") and The Pre-Hab of Arizona, a private Arizona non-profit agency, d/b/a A New Leaf ("A New Leaf") (hereinafter referred to individually as "party" or collectively as "parties").

## DESCRIPTION OF PARTIES AND SERVICES

A. A New Leaf is a non-profit organization committed to being a primary source and leading provider of prevention and rehabilitation services in the areas of domestic violence, homelessness and youth programs. Services include victim advocacy, prevention education, residential treatment and outpatient counseling services, shelter and transitional housing.

B. A New Leaf has received an Arizona Department of Public Safety grant under the provisions of the Victims of Crime Act of 1984, as amended, to provide individualized, short-term counseling and other related crime victim advocacy services (the "VOCA Grant").

C. The SWFAC is a multidisciplinary facility developed and funded by the City's, the Town of Buckeye's and the City of Goodyear's police departments, and the SWFAC's purpose is to provide quality investigations of abuse in the most sensitive, appropriate manner to crime victims. The SWFAC staff is a team dedicated to serving victims of domestic violence and sexual abuse, understanding that the community is diverse and that by focusing on the needs of each victim, staff will provide the most comprehensive services possible.

D. The SWFAC currently provides counseling and other related crime advocacy services to child and adult victims and witnesses in cases of domestic violence, sexual assault, child physical and sexual abuse, neglect, elderly abuse, homicide and drug endangerment. The overall goal of advocacy centers is to ensure that the victims who are entrusted to the centers are not further victimized by the systems that are designed to protect them.

E. The City has determined that it is necessary to maintain the availability of individualized, short-term counseling and other related crime victim advocacy services for its residents at the SWFAC. Individualized, short-term counseling and other related crime victim advocacy services shall

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

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

AGREEMENT

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

II. ROLES AND RESPONSIBILITIES

A. A New Leaf shall:

(1) Place a Masters Level therapist (the "Therapist") at the SWFAC to provide short-term counseling services. Such Therapist shall meet all requirements of ARIZ. ADMIN. CODE § R9-20-204 and any other applicable federal, state or local law. The Therapist will provide such services on a part-time basis, 20 hours per week for the duration of this Memorandum. Short-term counseling will consist of up to eight individual sessions plus intake and discharge appointments per client. The Therapist shall conduct all counseling sessions at the SWFAC.

(2) Ensure that the assigned Therapist will provide one late day of counseling each week. The late day is to be scheduled at the preference of the Therapist.

(3) Ensure that the assigned Therapist will attend A New Leaf meetings, training, supervision and in-service days as required by A New Leaf and any applicable federal, state or local law.

(4) Require a bi-monthly clinical supervision meeting for each Therapist assigned to the SWFAC, which supervision meeting shall be conducted by A New Leaf's Clinical Supervisor in order to

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

(5) In order to protect the best interests of the SWFAC Clients, the Therapist will review all DSM-IV R diagnostic assessments with the A New Leaf clinical supervisor if the Therapist is not independently licensed. Every effort will be made to avoid diagnosis' that do not serve the best short and long-term interests of the client, without compromising adherence to Behavioral Health Licensure requirements and professional ethics and standards.

(6) The assigned Therapist's client focus will be domestic violence victims, however, the Therapist will also work with sexual assault victims as needed.

(7) Provide a laptop and cell phone for the Therapist to perform his/her duties while at the SWFAC.

(8) The Therapist may provide crisis intervention during the first appointment as needed and appropriate. Cases will be reviewed at the bi-monthly clinical supervision meetings, or more frequently as needed.

(9) Counseling sessions will take place in a designated A New Leaf office at the SWFAC located in Goodyear, Arizona. All clients will be given a copy of the applicable "client's rights" and grievance process as required by ARIZ. ADMIN. CODE § R9-20-203.

(10) At A New Leaf's sole cost and expense, obtain and maintain all licenses required by the Arizona Department of Health Services' Office of Behavioral Health Licensing ("ADHS OBHL") regulations and any other applicable federal, state, or local law for the provision of the Services under this Memorandum.

(11) The SWFAC Director and A New Leaf's Clinical Supervisor shall meet quarterly, or more frequently as needed, to review this Memorandum and the services being provided by the Therapist at the SWFAC.

B. The SWFAC shall:

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

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

(2) Provide a lockable file cabinet that will remain in the designated A New Leaf office. Both the office and the file cabinet will remain locked when not in use.

(3) Provide copier access to the Therapist while at SWFAC.

(4) Provide Therapist with a telephone land line with voicemail capabilities while at SWFAC.

(5) The SWFAC Director and A New Leaf's Clinical Supervisor shall meet quarterly, or more frequently as needed, to review this Memorandum and the services being provided by the Therapist at the SWFAC.

C. Client Requirements

(1) Counseling sessions are free to SWFAC Clients and are funded through the VOCA Grant.

(2) SWFAC Clients who receive services provided by the Therapist must be victims of crime, which shall include, without limitation, domestic violence, sexual assault/abuse, child abuse/molestation, stalking, elder abuse, assault, adult victims of physical and sexual child abuse and secondary victims.

(3) SWFAC Clients will be required to make contact with the Therapist to schedule an appointment at a mutually suitable time.

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

A. This Memorandum shall be effective January 1, 2010 and shall terminate on June 30, 2010.

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

C. This Memorandum may be amended at any time upon written, mutual agreement of both parties. No modification to this Memorandum shall be binding upon the SWFAC or A New Leaf unless and until a signed amendment is executed.

D. All data or communications, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted in connection with this Memorandum or the Services is confidential and privileged information (the "Client Records"). Each Party shall retain such Client Records as it may receive or obtain during the term of this Memorandum in accordance with ARIZ. REV. STAT. §§ 8-409, 13-4430, ARIZ. ADMIN. CODE § R9-20-302 and any other applicable federal, state or local record retention law. In addition, each party shall maintain the Client Records in accordance with its own internal record retention policy and procedure to the extent such policy and procedure does not conflict with any applicable federal, state or local law.

E. Personal identifying information, financial account information, or restricted SWFAC or A New Leaf information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, both Parties must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

F. When personal identifying information, financial account information, or restricted SWFAC or A New Leaf information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

G. In the event that a Party discovers, believes or has reason to believe that the confidentiality of Client Records obtained by it in connection with this Memorandum or the Services has been compromised, such Party shall notify the other Party and any affected clients.

H. This Memorandum is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Memorandum 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 Memorandum on behalf of the City or any of its departments or agencies is, at any time while the Memorandum or any extension of the Memorandum is in effect, an employee of any other party to the Memorandum in any capacity or a consultant to any other party of the Memorandum with respect to the subject matter of the Memorandum.

## IV. INDEMNIFICATION; INSURANCE

### A. Indemnification

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

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

indemnified by SWFAC from and against any and all claims. In consideration of the award of this contract, SWFAC agrees to waive all rights of subrogation against A New Leaf, its officers, officials, agents and employees for losses arising from the work performed at the SWFAC by A New Leaf.

B. Insurance Requirements

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

(2) No Representation of Coverage Adequacy. The insurance requirements herein are minimum requirements for this Memorandum. Neither the City nor SWFAC in any way warrants that the minimum limits contained herein are sufficient to protect A New Leaf from liabilities that might arise out of this Memorandum by A New Leaf, its agents, representatives, employees or subcontractors and A New Leaf is free to purchase additional insurance as may be determined necessary.

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

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

(5) Use of Subcontractors. If any work under this Memorandum is subcontracted in any way, A New Leaf shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and A New Leaf. A New Leaf shall be responsible for executing any agreements with its

subcontractors and obtaining certificates of insurance verifying the insurance requirements.

(6) Minimum Scope And Limits Of Insurance. A New Leaf shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

(a) Commercial General Liability – Occurrence Form
Policy shall include bodily injury, property damage and broad form contractual liability coverage.

| | | |
|---|---|---|
| (i) | Each Occurrence | $1,000,000 |
| (ii) | General Aggregate | $2,000,000 |
| (iii) | Products – Completed Operations Aggregate | $1,000,000 |
| (iv) | Personal and Advertising Injury | $1,000,000 |

(v) The policy shall be endorsed to include coverage for sexual abuse and molestation.

(b) Automobile Liability—Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

| | | |
|---|---|---|
| (i) | Combined Single Limit (CSL) | $1,000,000 |

(c) Worker's Compensation and Employers' Liability

| | | |
|---|---|---|
| (i) | Workers' Compensation | Statutory |
| (ii) | Employers' Liability Each Accident | $100,000 |
| (iii) | Disease – Each Employee | $100,000 |
| (iv) | Disease – Policy Limit | $500,000 |

(v) Policy shall contain a waiver of subrogation against the SWFAC.

(d) Professional Liability (Errors and Omissions Liability)
The policy shall cover professional misconduct or lack of ordinary skill

| | | |
|---|---|---|
| (i) | Each Claim | $2,000,000 |
| (ii) | Annual Aggregate | $2,000,000 |

(iii) In the event that the professional liability insurance required by this Memorandum is written on a claims-made basis, A New Leaf warrants that any retroactive date under the policy shall precede the effective date of this Memorandum; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years

beginning at the time this Memorandum is terminated.

(7) Notice Of Cancellation. Each insurance policy required by the insurance provisions of this Memorandum shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City and the SWFAC, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.

(8) Acceptability Of Insurers. Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The SWFAC in no way warrants that the above-required minimum insurer rating is sufficient to protect A New Leaf from potential insurer insolvency.

(9) Verification Of Coverage. A New Leaf shall furnish the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Memorandum, issued by A New Leaf's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Memorandum and that such coverage and provisions are in full force and effect. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and any required endorsements are to be received and approved by the City before any work commences. Each insurance policy required by this Memorandum must be in effect at or prior to commencement of work under this Memorandum and remain in effect for the duration of the Memorandum. Failure to maintain the insurance policies as required by this Memorandum or to provide evidence of renewal is a material breach of Memorandum.

V. MISCELLANEOUS

A. Independent Contractor. A New Leaf acknowledges and agrees that the Services provided under this Memorandum are being provided as an independent contractor, not as an employee or agent of the City. A New Leaf, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of A New Leaf, its employees or subcontractors. A New Leaf, and not the City, shall determine the time of its performance of the services provided under this Memorandum so long as A New Leaf meets the requirements of its agreed scope of work as set

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

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

C. Amendments. This Memorandum may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and A New Leaf.

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

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

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

G. Entire Agreement; Interpretation; Parol Evidence. This Memorandum represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Memorandum are hereby revoked and superseded by this Memorandum. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set

forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Memorandum. This Memorandum shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Memorandum. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Memorandum.

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

If to the City:
City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Facsimile: (623) 333-0100
Attn: Charles P. McClendon, City Manager

With copy to:
GUST ROSENFELD, P.L.C.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

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

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

With copy to:
A New Leaf
868 East Universtiy Drive
Mesa, Arizona 85203
Facsimile: (480) 869-0039
Attn: Stacia Nowinski, Vice President of Contracts and Compliance

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.

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

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

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

L. Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Memorandum or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action

and shall be enforced whether or not such action is prosecuted through judgment.

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

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

VOCA
**Short-term Counseling Program**

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

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

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

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

**"City"**

CITY OF AVONDALE, an Arizona municipal corporation

_____
Charles P. McClendon, City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

**"A New Leaf"**

THE PRE-HAB OF ARIZONA, a private Arizona non-profit agency d/b/a A NEW LEAF

By: _____

Name: MICHAEL HUGHES

Title: C.E.O.

1166821.2

VOCA
**Short-term Counseling Program**

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

This instrument was acknowledged before me on _____ _____, 2010, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

This instrument was acknowledged before me on _____ _____, 2010, by _____ as _____ of THE PRE-HAB OF ARIZONA, a private Arizona non-profit agency d/b/a A NEW LEAF, on behalf of the agency.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

# CITY COUNCIL REPORT

**SUBJECT:**
Third Amendment to the Area Agency on Aging Agreement

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Christopher Reams, Director of Parks, Recreation & Libraries (623)333-2412

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve the third (3rd) Amendment to the Area Agency on Aging (AAA) contract (2009-08-AVO) in the amount of $6,550 for the purchase of two exercise bikes, repair of a range hood, and purchase of new dining room tables; and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

**BACKGROUND:**

The City of Avondale has contracted with Area Agency on Aging to provide nutritional meals and activities for seniors and handicapped individuals for over twenty (20) years. Services are provided to eligible residents in Avondale, Goodyear, and Litchfield Park. These services include the congregate meals program, the home delivered meals program, and the multipurpose center operations program

**DISCUSSION:**

The Area Agency on Aging has awarded the City of Avondale an additional $6,550 of program enhancement funds for FY 2009 - 2010. This additional funding is a one-time allocation. These funds will be used for enhanced programming and services to include the following: The purchase of two (2) exercise bikes, repair of a range hood, and the purchase of replacement dining room tables.

The exercise bikes will enhance the health and wellness programs for the senior population and supplement current health related programming. A range hood repair is necessary to ensure the serviceability of the kitchen stove used to prepare meals for both the congregate meal program (CMP) and the Home Delivered Meal Program (HDM). Participant tables will be purchased for the Multipurpose Center. All of the above listed furniture and appliances are in need of repair or due for replacement.

**BUDGETARY IMPACT:**

The amendment will increase the AAAcontract in the amount of $6,550. The funds will be allocated in the following manner:
Exercise bikes - $1,650
Range Hood repair - $ 250
Dining Tables- $4650
Total - $6,550

**RECOMMENDATION:**

Staff recommends that the City Council approve the third (3rd) Amendment to the Area Agency on Aging (AAA) contract (2009-08-AVO) in the amount of $6,550 for the purchase of two exercise bikes, repair of a range hood, and purchase of new dining room tables; and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

## ATTACHMENTS:

**Click to download**

- Agreement

AREA AGENCY
ON AGING
REGION ONE, INCORPORATED

MARY LYNN KASUNIC
President & CEO

1366 East Thomas Road
Suite 108
Phoenix, AZ 85014

*phone*
(602) 264-2255

*toll-free*
1-888-783-7500

*24-hr Senior HELP LINE*
(602) 264-4357
1-888-264-2258

*fax*
(602) 230-9132

*website*
www.aaaphx.org

*e-mail*
answers@aaaphx.org

August 19, 2009

Josie Ortega
City of Avondale
11465 W Civic Center Dr
Avondale, Arizona 85323

Re: Contract #2009-08-AVO

Dear Ms. Ortega:

Enclosed is the fully executed Amendment #2 to the FY 2010 Contract Renewal between City of Avondale and the Area Agency on Aging, Region One, Incorporated.

Thank you for your cooperation in the preparation of this Amendment. If there are any questions, please call (602) 264-2255.

Sincerely,

Mary Lynn Kasunic

Mary Lynn Kasunic
President & CEO
Area Agency on Aging Director

Enclosure

copy: Jim Knaut, Vice President Contract Administration
David Diaz, Chief Financial Officer (2)
Rachel Guerrero, Program Specialist
Central File #2009-08-AVO

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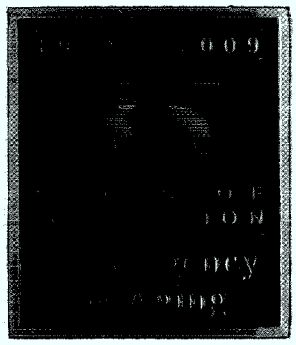


Council on
Accreditation

Area Agency on Aging

Care Directions

DOVES

ElderVention

Family Caregiver
Support Program

*Senior* HELP LINE

CONTRACT FOR SERVICES BETWEEN

# 2009-08-AVO Contract Renewal
# FY 2010 Amendment #2

**Area Agency on Aging, Region One, Incorporated**
**1366 E. Thomas Road, Suite 108**
**Phoenix, Arizona 85014**
**(602) 264-2255 FAX (602) 230-9132**

*AND*

**City of Avondale**
**11465 S Civic Center Drive**
**Avondale, Arizona 85323**
**623-333-1000 fax: 623-333-0100**
**EIN #866000233**

**EFFECTIVE DATE OF THIS AMENDMENT:** July 1, 2009
**DURATION OF THE CONTRACT:** Effective July 1, 2008 and shall end June 30, 2010.

**CONTACT INFORMATION:**

| | |
|---|---|
| *Signatories*: Mary Lynn Kasunic, President & CEO | Charles McClendon, City Manager |
| *Programmatic Authority*: Jim Knaut, Vice President Contracts | Frances McCoy, Recreation Coordinator |
| *Daily Contacts*: Rachel Guerrero, Program Specialist | Frances McCoy, Recreation Coordinator |

**REIMBURSEMENT PAYMENTS SHALL BE MAILED TO:**
Agency Name & Mailing Address

**PURPOSE OF THE AMENDMENT:**

1. Contract Extension Area Agency hereby invokes the right to extend this contract per the Special Terms and Conditions, Section 2, Subsection b. This contract, originally initiated for the period beginning July 1, 2008 and ending June 30, 2009, is effectively extended for the period beginning July 1, 2009 and ending June 30, 2010.
2. The Contractor, in consideration of the covenants and conditions set forth herein, shall provide and perform the services as set forth in the Uniform Terms and Conditions, Special Terms and Conditions, Special Terms and Conditions Addendum #1, Scope(s) of Work, Service Specification(s), Methodology(s), and other Area Agency manuals, policies, and directives. Contractor hereby affirms that all insurance and indemnification requirements as set forth in this contract have been met and shall be maintained fully throughout the terms of this contract. All rights and obligations of the parties shall be governed by the terms of this contract, and shall include any subcontracts and the approved budget and / or unit rates and contract budget ceilings.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AS HERETOFORE CHANGED AND/OR AMENDED REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. IN WITNESS THEREBY OF SIGNATURE, THE PARTIES ENTER INTO THIS CONTRACT:

**AREA AGENCY ON AGING, REGION ONE, INCORPORATED**

Mary Lynn Kasunic 8-19-09
Signature Date
Mary Lynn Kasunic, President & CEO
Area Agency on Aging Director

**CITY OF AVONDALE**

Charles P. McClendon 7/28/09
Signature Date
Charles McClendon, City Manager

ATTEST:
Carmen Martinez
City Clerk

# CONTRACT SUMMARY PAGE
FIXED PRICE WITH ADJUSTMENT

CONTRACT #: 2009-08-AVO

CONTRACTOR: CITY OF AVONDALE

TYPE: ***AMENDMENT #2***

CONTRACT TERM: JULY 1, 2009 TO JUNE 30, 2010

CONTRACT PAYMENT CEILING FOR ALL SERVICES: **TOTAL** **$ 378,989**

| ***THE CONTRACTOR AGREES TO PROVIDE:*** CONTRACTED SERVICES | PSA | UNITS | BUDGET CEILING |
|---|---|---|---|
| ***Congregate Meals*** | 2 | | |
| Older American's Act Program | | 11,305 | $ 65,857 |
| American's Recover and Reinvestment Act | | 2,695 | $ 25,757 |
| ***Home Delivered Meals*** | 2 | | |
| Older American's Act Program | | 17,969 | $ 154,607 |
| American's Recover and Reinvestment Act | | 5,531 | $ 52,668 |
| ***Multipurpose Center Operations*** | 2 | 1,500 | $ 20,100 |
| ***Transportation*** | 2 | 7,500 | $ 60,000 |

# CONTRACT OPERATING BUDGET
# FIXED PRICE WITH ADJUSMENT

CONTRACT #: 2009-08-AVO

AGENCY: CITY OF AVONDALE

TYPE: *AMENDMENT #2*

| | CONGREGATE MEALS | | | HOME DELIVERED MEALS | | | MCO | TRANSPOR-TATION | TOTAL |
|---|---|---|---|---|---|---|---|---|---|
| **REVENUE** | OAA | ARRA | TOTAL | OAA | ARRA | TOTAL | | | |
| Area Agency | 65,857 | 25,757 | 91,614 | 154,607 | 52,668 | 207,275 | 20,100 | 60,000 | 378,989 |
| Project Income | 7,500 | - | 7,500 | 1,100 | - | 1,100 | - | 900 | 9,500 |
| NF Inkind | 12,160 | 2,900 | 15,060 | 7,910 | 2,500 | 10,410 | 19,963 | - | 45,433 |
| NF Cash | 38,735 | 964 | 39,699 | 33,164 | 5,400 | 38,564 | 43,251 | - | 121,514 |
| Other Federal | - | - | - | - | | - | - | - | - |
| TOTAL | 124,252 | 29,621 | 153,873 | 196,781 | 60,568 | 257,349 | 83,314 | 60,900 | 555,436 |
| **EXPENSES** | | | | | | | | | |
| Personnel | 33,581 | 8,006 | 41,587 | 76,887 | 23,665 | 100,552 | 38,912 | 33,800 | 214,851 |
| ERE | 21,977 | 5,239 | 27,216 | 25,619 | 7,885 | 33,504 | 7,449 | 8,108 | 76,277 |
| Prof&Outside | - | - | - | - | - | - | 2,500 | - | 2,500 |
| Travel | - | - | - | 4,683 | 1,442 | 6,125 | - | 11,375 | 17,500 |
| Space | 20,567 | 4,903 | 25,470 | 16,295 | 5,015 | 21,310 | 28,253 | - | 75,033 |
| Equipment | - | - | - | - | - | - | - | - | - |
| Materials/Supl | 45,462 | 10,838 | 56,300 | 61,602 | 18,961 | 80,563 | 5,150 | - | 142,013 |
| Operating Svc | 2,665 | 635 | 3,300 | 11,695 | 3,600 | 15,295 | 1,050 | 7,617 | 27,262 |
| Indirect | - | - | - | - | - | - | - | - | - |
| TOTAL | 124,252 | 29,621 | 153,873 | 196,781 | 60,568 | 257,349 | 83,314 | 60,900 | 555,436 |
| UNITS | 11,305 | 2,695 | 14,000 | 17,969 | 5,531 | 23,500 | 1,500 | 7,500 | |
| UNIT RATE | $ 10.99 | $ 10.99 | $ 10.99 | $ 10.95 | $ 10.95 | $ 10.95 | $ 55.54 | $ 8.12 | |
| **ARRA Match** | | **15%** | | | **15%** | | | | |
| **ARRA % ALLOCATIONS** | | **19.25%** | | | **23.54%** | | | | |

## SPECIAL TERMS AND CONDITIONS

## ADDENDUM #1

The following sections are added to the Special Terms and Conditions of the contract:

**2. Contract Administration and Operation**

n. Government Procurement: E-Verify Requirement In accordance with A.R.S. §41-4401, Contractor shall comply with the following:

1. Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. §23-214, Subsection A:.
   *"After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.*
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. 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.
4. Area 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 above paragraph 1.

o. Scrutinized Business Operations Contractor hereby certifies:

1. In accordance with A.R.S. §35-393.06, the Contractor certifies that the Contractor does not have scrutinized business operations in Iran.
2. In accordance with A.R.S. §35-391.06, the Contractor certifies that the Contractor does not have scrutinized business operations in Sudan.

# American Recovery and Reinvestment Act of 2009
# Special Terms

1. Definition
   Recovery Act funds are designed to specifically maintain or increase the number of congregate and home delivered meals. Capital purchases do not qualify for this funding.
2. Funding Criteria Contractor will comply with the following criteria
   a. Restore nutrition services that may have been cut; this may include opening clients on a wait list, suspending closure of a center, or re-instating any service days that may have been or are planned to be eliminated.
   b. Restore staff positions that have been or are planned to be eliminated or reduced.
   c. Replace existing or planned cuts from other fund sources to nutrition programs. There must be documentation/evidence that these cuts did occur or are being issued. Funding cannot be requested in order to make reductions to, or replace other funding sources.
   d. Contractor will match the ARRA funds by at least 15% which may include any combination of non-federal cash, contributions, and in-kind revenue sources.
3. Audit and Justification Requirements
   a. The following is based on the ARRA Funding Request Narrative Contractor submitted:

| SITE | CONGREGATE MEALS | | HDM | | TOTAL # FTEs | CONGREGATE MEALS | | HOME DELIVERED MEALS | |
|---|---|---|---|---|---|---|---|---|---|
| | # MEALS | # PERSONS | # MEALS | # PERSONS | | FUNDING REQUEST | Brief Description of Intended Use of Funds | FUNDING REQUEST | Brief Description of Intended Use of Funds |
| Avondale Community Ctr | 733 | 87 | 756 | 46 | 4.00 | $25,757 | Maintain current service levels, reinstating staff due to City funding cuts | $52,668 | Maintain current service levels, reinstating staff due to City funding cuts |

   b. Contractor understands that any deviation or lack of documentation related to ARRA funding could result in forfeiture of the funding at any time in the grant.
   c. All audit and justifications for utilization of the funds is the sole responsibility of the Contractor. Contractor agrees to comply and materially participate in all audit requests and requirements.
4. Reporting Requirements
   a. Contractor shall submit quarterly programmatic reports including:
      i. ARRA State Matrix form as provided by the Area Agency
      ii. Congregate Meal Program Report for the periods as identified in the chart below.
      iii. Home Delivered Meal Program Report for SAIL clients only for the periods as identified.
      iv. Narrative Summary of actions taken that support the original Funding Request Narrative as identified in *3.a.*
   b. Contractor shall submit quarterly reports as follows:

| Quarter | Reporting Period | Reporting Due Date |
|---|---|---|
| 1 | April and May 2009 | June 10, 2009 |
| 2 | June, July, August 2009 | September 10, 2009 |
| 3 | September, October, November | December 10, 2009 |
| 4 | December, January 2010, February | March 10, 2010 |
| 5 | March, April, May 2010 | June 10, 2010 |
| 6 | June, July, August 2010 | September 10, 2010 |
| **Final** | September 2010 | December 5, 2010 |

   c. Contractor shall submit no later than the 10th of the following month a Financial Report.
5. Changes to these Terms Area Agency hereby acknowledges that the State and or Federal rules and requirements may change at any time during this contract. Contractor hereby agrees to comply with all State and Federal requirements as published.

# CITY COUNCIL REPORT

**SUBJECT:**
Design Services & Construction Contracts - Salt River Project for the Avondale Boulevard McDowell Road Intersection Improvement Project

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve two (2) Design Services and Construction contracts with Salt River Project (SRP) for the design and construction of the required electrical improvements for the Avondale Boulevard and McDowell Road Intersection Improvement Project (Phoenix Children's Hospital) in the amount of $211,899.00 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

On November 3, 2008, Council approved a professional services agreement with Ritoch-Powell & Associates to provide design services for this project. This project will improve the intersection and provide roadway improvements along the west leg of McDowell Road in anticipation of the upcoming Phoenix Children's Hospital (PCH). PCH will be located at the northeast corner of Avondale Boulevard and McDowell Road. A portion of the project includes the relocation of 69Kv electrical poles and distribution equipment located on the north side of McDowell Road. SRP requires an agreement with the City to authorize the work.

**DISCUSSION:**

The electrical improvements are broken into two (2) categories: Transmission and Distribution.

<u>Transmission</u>

The intersection and roadway widening will affect the existing SRP 69kv power-lines that currently exist along the north side of McDowell Road. The intersection and roadway widening will necessitate the relocation of one (1) 69kv pole and the installation of an additional 69kv pole which will match the other existing 69kv poles in both color and material. The design and construction will be in accordance with SRP guidelines. The following work items are included in the scope of work:
- Survey
- Construction Engineering
- 69kv Relocation and new 69kv Pole Installation
- As-Built Documentation

<u>Distribution</u>

The intersection and roadway widening will also require the relocation of the existing electrical switches and transformers that are currently located in the north-east corner of Avondale Boulevard and McDowell Road. SRP will relocate the switches and transformers into the new 10-foot public-

utility easement that was dedicated to them by PCH. The design and construction will be in accordance with SRP guidelines. The following work items are included in the scope of work:
- Survey
- Construction Engineering
- Relocation of Electrical Switches and Transformers
- As-Built Documentation

**BUDGETARY IMPACT:**

Funding in the amount of $111,798 (Transmission) and $100,101 (Distribution) for a total of $211,899, is available in CIP Street Fund Line Item No. 304-1260-00-8420 (Avondale/McDowell Road Intersection Improvements).

**RECOMMENDATION:**

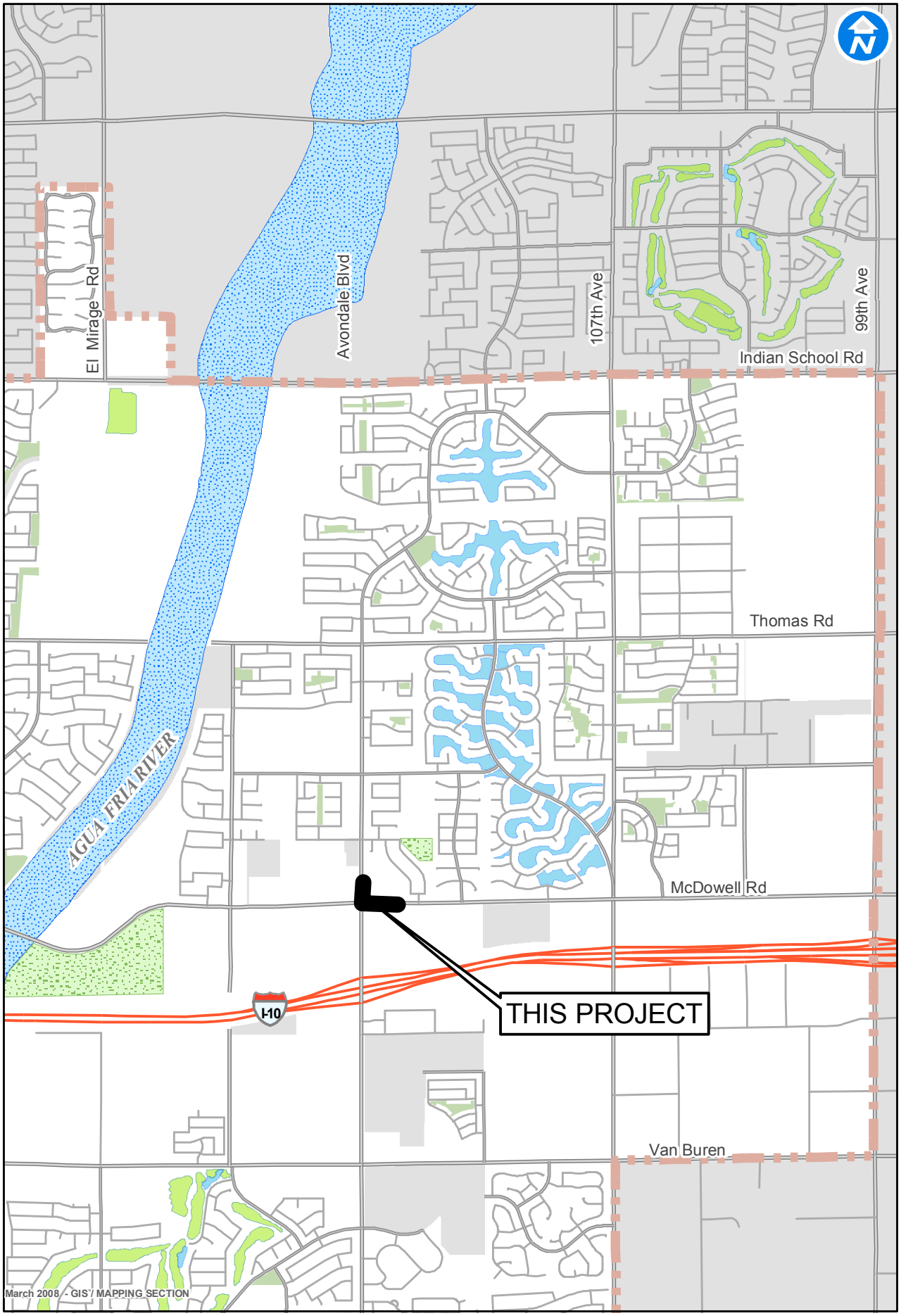
Staff recommends that the City Council approve two (2) Design Services and Construction contracts with Salt River Project (SRP) in the amount of $211,899.00 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

**Click to download**

- Vicinity Map
- SRP Transmission Contract
- SRP Distribution Contract

# VICINITY MAP




CITY OF AVONDALE

Phoenix Children's Hospital

**CONSTRUCTION SERVICES CONTRACT (Municipal Transmission)**

Transmission Line Design
P.O. Box 52025 (M/D XCT-315)
Phoenix, AZ 85072-2025
Cost Center: 82620

Expeditor: (602) 236-0841
Design Fax: (602) 236-8069
File: XA3-3774.06
Ref: SDCE- 352

Date: April 13, 2010

To: City of Avondale
c/o Charles Andrews
11465 E. Civic Center Suite 120
Avondale, AZ 85323

The Salt River Project Agricultural Improvement and Power District, an agricultural improvement district organized and existing under the laws of the State of Arizona (SRP) and the **City of Avondale**, a municipal corporation organized and existing under the laws of the State of Arizona (City) enter into this contract (Contract) for the construction of electrical facilities for the following City project (Project):

**Project Name:** **Phoenix Children's Hospital 69kV**
**Location:** **Avondale/McDowell Rd**
**SRP Job Order Number(s):** **XA3-03774**
**Town Project Number:**

Customer acknowledges that it previously entered into a design services contract with SRP for the Project. City now desires SRP to proceed with construction of the Project in accordance with the design drawings delivered by SRP pursuant to the design services contract.

This Contract includes the attached Electrical Design and Construction Terms and Conditions, and describes the general obligations of SRP and the City. Any changes, amendments or modifications to this Contract shall be in writing and shall be signed by both parties.

In consideration of the work to be performed by SRP, City shall pay SRP the following non-refundable fees:

| SRP Job Number | Description | Cost |
|---|---|---|
| **XA3-03774** | **Phoenix Children's Hospital 69kV** | **$111,798.00** |
| **Total:** | | **$111,798.00** |

SRP shall not be required to perform inspections or begin any construction or installation work on the Project until City (i) signs and returns this Contract, (ii) accepts the completed design drawings by signing them, (iii) pays SRP the fees set forth above, (iv) provides SRP the approved City permit(s) and (v) provides to SRP a copy of a deed or deeds evidencing ownership of all of the real property that is encompassed within or will be affected by the Project or other written documentation acceptable to SRP that establishes City's authority in

connection with the Project. If City is unable to provide such documentation, and as a result SRP is required to modify its designs for the Project, City shall be responsible for paying additional costs of the redesign work. If City changes the Project, or if there is any change to the information regarding the Project provided by City and relied upon by SRP, SRP will charge City and City shall pay for any additional costs incurred by SRP, including but not limited to redesign and engineering costs.

SRP's delivery of this Contract to City constitutes an offer to perform the construction services on the terms and conditions set forth in this Contract. City may accept this offer by signing this Contract (with no additions, deletions or modifications) and returning it to SRP. This offer shall expire if City has not signed and returned this Contract to SRP within 90 days of the date first set forth above. SRP shall have the right to terminate this Contract if Customer fails to commence construction of the above Project(s) within 90 days after SRP provides the design drawings to Customer.

City understands and agrees to the terms and conditions of this Contract. The undersigned represents and warrants that he or she has the authority to enter into this Contract on behalf of City.

| | |
|---|---|
| _____ | _____ |
| ACCEPTED: City signature, title, Date | Steven J. Lopez, Manager TLD, SRP<br>602-236-8080 |
| FOR: _____ | Date_____ |

## Electrical Design and Construction
## Terms and Conditions

1. The existing applicable SRP Rules and Regulations, as they may be amended or revised from time to time by SRP, and all terms and conditions thereof, are adopted and incorporated herein by reference as part of this Contract except as specifically modified herein. The Rules and Regulations can be found at http://www.srpnet.com and are on file at the principal offices of SRP.

2. SRP shall construct all electric facilities up to the point(s) of delivery, including any connections to electric, in accordance with the SRP Rules and Regulations and SRP construction specifications and practices.

3. City shall timely provide SRP all drawings and data requested by SRP that are pertinent to the design of the City Project. SRP shall review such drawings and data for compatibility with SRP facilities and shall have sole discretion in determining whether the City facilities may be used with SRP's facilities.

4. Before beginning construction, City shall provide SRP executed originals of the construction services contract, all requested easements, including any easements required from third parties, for SRP to access and maintain the electric facilities installed under this Contract, using SRP's standard form(s) of easement. City, at all times, shall permit SRP to access and maintain any SRP electric facility on City property. City understands and agrees that SRP shall have no obligation to provide electric service to the Project unless and until City has provided all such easements.

5. City shall require that any construction work performed by CUSTOMER or its contractor or subcontractor shall be in accordance with national and local building and safety codes, the SRP Electric Service Specifications and construction drawings, and the Electric Utility Service Entrance Requirements Committee.

6. City shall secure all required State, County, and local permits and approvals.

7. If City decides to provide trenching, provision and installation of conduit, backfilling and/or surveying, ("City Work"), then all City Work shall conform to SRP's standards, and City shall permit SRP to inspect, at any time, any City Work or City-provided facility. If City decides to provide surveying, then City shall be responsible for setting or verification of road right-of-way monuments and/or construction staking, and City shall forward all results of survey to SRP for review and approval. If, at the time of inspection, there are no offset stakes to enable SRP to verify that the facilities are installed within the easements granted to SRP, SRP's Survey Department will reset the offset stakes at City's expense. Any inspection by SRP shall not be deemed an approval of any City-provided facility or a waiver by SRP of any right to enforce strict compliance with the terms and conditions of this Contract.

8. SRP shall not be responsible for, and City shall indemnify, defend and hold harmless SRP and members of its governing bodies, its officers, agents and employees, for, from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities ("Claims") arising out of or relating to City's performance of the City Work, including without limitation Claims arising out of the performance of City Work on property not owned by City or outside of the easements provided to SRP under Section 4 of this Contract.

9. City shall not install any curb, sidewalk, paving, or any conflicting foundation within the development boundaries until SRP completes the installation of the electric facilities.

10. City, upon demand, shall reimburse SRP for the costs of relocation of facilities found to be installed at the wrong location or grade due to City-requested changes in property lines, easement grade,

and/or errors in staking, trenching, or survey when such work is performed by City or a contractor retained by City.

11. City shall indemnify, defend, and hold harmless SRP, the members of its governing bodies, and its directors, officers, employees, agents and contractors for, from and against any loss, damage, liability, cost, or expense incurred by SRP, members of its governing bodies, directors, officers, employees, agents or contractors arising out of any act or omission of City, or its officials, employees, agents, contractors, or subcontractors. City's obligation under this section shall extend to defend SRP when SRP, or members of its governing bodies, directors, officers, employees, agents or contractors are allegedly concurrently negligent with City, its officials, employees, agents, contractors, or subcontractors, but shall not extend to any liability caused by the sole negligence of SRP. City shall release SRP from any loss, damage, liability, cost, or expense incurred by City arising out of (i) any delay by SRP in performing, completing, or inspecting any work or (ii) any loss or damage to any installation prohibited by Section 9.

12. This Contract shall be interpreted, governed by and construed in accordance with the substantive and procedural laws of the State of Arizona, without regard to conflicts of law principles. SRP and City agree that any action, suit, or proceeding arising out of or relating to this Contract shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Maricopa County, Arizona, and the parties irrevocably submit to the jurisdiction and venue of such court. To the fullest extent permitted by law, SRP and City hereby irrevocably waive any and all rights to a trial by jury and covenant and agree that neither will request a trial by jury, with respect to any legal proceeding arising out of or relating to this Contract.

13. The title to all work performed by SRP, or performed by City at SRP's request and accepted by SRP, shall remain with SRP at all times.

14. City shall meet with an SRP inspector before construction begins. The meeting may be scheduled by calling the SRP contact name and phone number specified on the Project drawings.

15. If City requires SRP to relocate any electrical facilities installed and paid for by the City pursuant to this Contract, in addition to providing SRP with a new easement for such relocated facilities, City shall reimburse SRP for all costs associated with moving the relocated facilities. City's reimbursement obligations shall also continue to apply for subsequent relocations. SRP shall be responsible for costs associated with moving any facilities installed pursuant to this Contract but not paid for by the City.

**CONSTRUCTION SERVICES CONTRACT (Municipal Distribution)**

Customer Improvements
XCT 341
P.O. Box 52025
Phoenix, AZ 85072-2025

Fax 602.220-1164
Cost Center: 82520

April 13, 2010

To: City of Avondale
ATTN: CHARLES ANDREWS
11465 W CIVIC CENTER DRIVE SUITE 120
AVONDALE, AZ 85323

The Salt River Project Agricultural Improvement and Power District, an agricultural improvement district organized and existing under the laws of the State of Arizona (SRP) and **City of Avondale**, a municipal corporation organized and existing under the laws of the State of Arizona (City) enter into this contract (Contract) for the construction of electrical facilities for the following City project (Project):

**Project Name: AVONDALE BLVD/MCDOWELL INTERSE**
**Location: NEC _ AVONDALE BLVD/MCDOWELL RD**
**Job Order Number: KJ6-275** **Customer Job #ST 1260**

Customer acknowledges that it previously entered into a design services contract with SRP for the Project. City now desires SRP to proceed with construction of the Project in accordance with the design drawings delivered by SRP pursuant to the design services contract.

This Contract includes the attached Electrical Design and Construction Terms and Conditions, and describes the general obligations of SRP and the City. Any changes, amendments or modifications to this Contract shall be in writing and shall be signed by both parties.

In consideration of the work to be performed by SRP, City shall pay SRP the following non-refundable fees:

| Job Number | Description | Cost | Survey | Trench, Conduit |
|---|---|---|---|---|
| KJ6-275 | Relocation | $100,101 | SRP | SRP |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| **Total:** | | **$100,101** | | |

Scope: **REMOVE 2 SWITCHING ENCLOSURES, 1 SINGLE PHASE TRANSFOMER AND ONE FLUSH MOUNTED PULL BOX. SRP WILL ADJUST MH-1304 TO PROPOSED GRADE. SRP TO PROVIDE AND INSTALL ALL TRENCH AND CONDUIT. INSTALL 2 SWITCHING ENCLOSURES, 1 SINGLE PHASE TRANSFORMER AND 1 FLUSH MOUNTED PULL BOX.**

SRP shall not be required to perform inspections or begin any construction or installation work on the Project until City (i) signs and returns this Contract, (ii) accepts the completed design drawings by signing them, (iii) pays SRP the fees set forth above, (iv) provides SRP the approved City permit(s) and (v) provides to SRP a copy of a deed or deeds evidencing ownership of all of the real property that is encompassed within or will be affected by the Project or other written documentation acceptable to SRP

that establishes City's authority in connection with the Project. If City is unable to provide such documentation, and as a result SRP is required to modify its designs for the Project, City shall be responsible for paying additional costs of the redesign work. If City changes the Project, or if there is any change to the information regarding the Project provided by City and relied upon by SRP, SRP will charge City and City shall pay for any additional costs incurred by SRP, including but not limited to redesign and engineering costs.

SRP's delivery of this Contract to City constitutes an offer to perform the construction services on the terms and conditions set forth in this Contract. City may accept this offer by signing this Contract (with no additions, deletions or modifications) and returning it to SRP. This offer shall expire if City has not signed and returned this Contract to SRP within 120 day of the date first set forth above.

City understands and agrees to the terms and conditions of this Contract. The undersigned represents and warrants that he or she has the authority to enter into this Contract on behalf of City.

| | |
|---|---|
| _____ | _____ |
| ACCEPTED: City signature, title, Date | Allen Garrison, Supervisor, SRP Date |
| FOR: _____ | 602.236.0873 |

## Electrical Design and Construction
## Terms and Conditions

1. The existing applicable SRP Rules and Regulations, as they may be amended or revised from time to time by SRP, and all terms and conditions thereof, are adopted and incorporated herein by reference as part of this Contract except as specifically modified herein. The Rules and Regulations can be found at http://www.srpnet.com and are on file at the principal offices of SRP.

2. SRP shall construct all electric facilities up to the point(s) of delivery, including any connections to electric, in accordance with the SRP Rules and Regulations and SRP construction specifications and practices.

3. City shall timely provide SRP all drawings and data requested by SRP that are pertinent to the design of the City Project. SRP shall review such drawings and data for compatibility with SRP facilities and shall have sole discretion in determining whether the City facilities may be used with SRP's facilities.

4. Before beginning construction, City shall provide SRP executed originals of the construction services contract, all requested easements, including any easements required from third parties, for SRP to access and maintain the electric facilities installed under this Contract, using SRP's standard form(s) of easement. City, at all times, shall permit SRP to access and maintain any SRP electric facility on City property. City understands and agrees that SRP shall have no obligation to provide electric service to the Project unless and until City has provided all such easements.

5. City shall require that any construction work performed by CUSTOMER or its contractor or subcontractor shall be in accordance with national and local building and safety codes, the SRP Electric Service Specifications and construction drawings, and the Electric Utility Service Entrance Requirements Committee.

6. City shall secure all required State, County, and local permits and approvals.

7. If City decides to provide trenching, provision and installation of conduit, backfilling and/or surveying, ("City Work"), then all City Work shall conform to SRP's standards, and City shall permit SRP to inspect, at any time, any City Work or City-provided facility. If City decides to provide surveying, then City shall be responsible for setting or verification of road right-of-way monuments and/or construction staking, and City shall forward all results of survey to SRP for review and approval. If, at the time of inspection, there are no offset stakes to enable SRP to verify that the facilities are installed within the easements granted to SRP, SRP's Survey Department will reset the offset stakes at City's expense. Any inspection by SRP shall not be deemed an approval of any City-provided facility or a waiver by SRP of any right to enforce strict compliance with the terms and conditions of this Contract.

8. SRP shall not be responsible for, and City shall indemnify, defend and hold harmless SRP and members of its governing bodies, its officers, agents and employees, for, from and against any and all claims, demands, suits, costs of defense, attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities ("Claims") arising out of or relating to City's performance of the City Work, including without limitation Claims arising out of the performance of City Work on property not owned by City or outside of the easements provided to SRP under Section 4 of this Contract.

9. City shall not install any curb, sidewalk, paving, or any conflicting foundation within the development boundaries until SRP completes the installation of the electric facilities.

10. City, upon demand, shall reimburse SRP for the costs of relocation of facilities found to be installed at the wrong location or grade due to City-requested changes in property lines, easement grade,

and/or errors in staking, trenching, or survey when such work is performed by City or a contractor retained by City.

11. City shall indemnify, defend, and hold harmless SRP, the members of its governing bodies, and its directors, officers, employees, agents and contractors for, from and against any loss, damage, liability, cost, or expense incurred by SRP, members of its governing bodies, directors, officers, employees, agents or contractors arising out of any act or omission of City, or its officials, employees, agents, contractors, or subcontractors. City's obligation under this section shall extend to defend SRP when SRP, or members of its governing bodies, directors, officers, employees, agents or contractors are allegedly concurrently negligent with City, its officials, employees, agents, contractors, or subcontractors, but shall not extend to any liability caused by the sole negligence of SRP. City shall release SRP from any loss, damage, liability, cost, or expense incurred by City arising out of (i) any delay by SRP in performing, completing, or inspecting any work or (ii) any loss or damage to any installation prohibited by Section 9.

12. This Contract shall be interpreted, governed by and construed in accordance with the substantive and procedural laws of the State of Arizona, without regard to conflicts of law principles. SRP and City agree that any action, suit, or proceeding arising out of or relating to this Contract shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Maricopa County, Arizona, and the parties irrevocably submit to the jurisdiction and venue of such court. To the fullest extent permitted by law, SRP and City hereby irrevocably waive any and all rights to a trial by jury and covenant and agree that neither will request a trial by jury, with respect to any legal proceeding arising out of or relating to this Contract.

13. The title to all work performed by SRP, or performed by City at SRP's request and accepted by SRP, shall remain with SRP at all times.

14. City shall meet with an SRP inspector before construction begins. The meeting may be scheduled by calling the SRP contact name and phone number specified on the Project drawings.

15. If City requires SRP to relocate any electrical facilities installed and paid for by the City pursuant to this Contract, in addition to providing SRP with a new easement for such relocated facilities, City shall reimburse SRP for all costs associated with moving the relocated facilities. City's reimbursement obligations shall also continue to apply for subsequent relocations. SRP shall be responsible for costs associated with moving any facilities installed pursuant to this Contract but not paid for by the City.

# CITY COUNCIL REPORT

**SUBJECT:**
Facilities Extension Agreement with Southwest Gas for Avondale City Center East

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve the Facilities Extension Agreement with Southwest Gas (SWG) in the amount of $76,985, to provide natural gas service to the City Center Phase 1 development, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

During the past year, the City of Avondale has planned for the construction of the American Sports Center-Avondale in the City Center planning area. Most recently, on November 16, 2009, Council approved Amendment No.1 to the CMAR agreement with Sundt establishing the Guaranteed Maximum Price for infrastructure improvements and on January 4, 2010 approved Amendment No. 2 to the CMAR agreement which authorized the construction of the 83,000 square foot facility.

**DISCUSSION:**

In order to provide natural gas service to the upcoming 83,000 square foot American Sports Center Facility, and future development, it is necessary to install the natural gas infrastructure. Proposed City Center East Phase 1 development includes public infrastructure, 12 acres of future retail, office, residential and other approved uses in the City Center Plan. The natural gas infrastructure will be primarily located under the streets and must be installed prior to street construction. The contract will allow SWG to complete their design and fund the natural gas infrastructure.

**BUDGETARY IMPACT:**

Funding for the Facilities Extension Agreement with Southwest Gas is available in CIP Parks Fund Line Item 310-1119-00-8210.

**RECOMMENDATION:**

Staff recommends that the City Council approve the Facilities Extension Agreement with Southwest Gas in the amount of $76,985, which will allow for the design and construction of the required natural gas service for the City Center Phase 1 development, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

**Click to download**

- Facilities Extension Agreement

**SOUTHWEST GAS CORPORATION**

FEC No. SG-5: JDC

# *FACILITIES EXTENSION AGREEMENT (ARIZONA)*

**1. Agreement, Applicants.**

1.1 This is a Facilities Extension Agreement ("Agreement") dated 7-Apr, 2009 between Southwest Gas Corporation ("Southwest"), located at 10851 North Black Canyon Highway, P.O. Box 52075 Phoenix, Arizona 85072-2075, and City of Avondale ("Applicant") located at 11465 West Civic Center Drive, Suite 120 Avondale, Arizona 85392.

1.2 All communications concerning this Agreement shall be in writing, and shall be delivered to each party at its address shown above or to such other address as either party may hereafter specify in writing.

1.3 This Agreement may not be amended except in writing executed by all of the parties hereto.

1.4 No assignment of this Agreement or of any refunds which may become due hereunder shall be binding upon Southwest without its written consent.

1.5 The mutual promises made and obligations undertaken by the parties constitute the consideration for this Agreement.

**2. Proposed Service Addresses or Lot(s), Subdivision, Location.**

City Center East

Avondale Blv & City Center Dr. Avondale, AZ 85392

**3. Description and Sketch of the Requested Facilities.**

3.1 Annexed hereto as Exhibit A and incorporated by this reference is a drawing or diagram of the gas distribution facilities ("Subject Facilities") Southwest proposes to install pursuant to this Agreement.

**4. Description of Requested Service.**

4.1 Gas service provided through the Subject Facilities will be used for the following purposes (indicate residential, commercial, industrial, and/or other purposes as appropriate): WR#998897

Commercial - to serve NEW CITY CENTER EAST

4.2 ☐ Southwest Trench ☑ Developer Trench

4.3 Appliances/Equipment agreed to be installed and utilized, and upon which any allowance is granted, are as follows:

| *Appliance/Equipment* | *Therms/Year* |
|---|---|
| | |
| | |
| | |
| | |
| | |
| Total Estimated Annual Therms | 0 |

**5. Estimated Costs.**

5.1 Southwest will install the Subject Facilities as described in Exhibit A at an estimated cost of $ 76,985.00.

**6. Payment Terms.**

6.1 Applicant agrees to pay Southwest, the full estimated cost of the Subject Facilities less any allowance to which Applicant may be entitled.

*Estimated Cost $* *$76,985.00* *Allowance ($* *0.00* *)*

*Advance Required $* *76,985.00* *Contribution Required $* *0.00*

6.2 Notwithstanding the foregoing, if Applicant fails for whatever reasons, to take gas service in the amounts stated in paragraph 4.3 of this Agreement, as the basis for estimating Applicant's allowance, Southwest may recalculate such allowance and bill Applicant. Applicant shall pay Southwest the resulting non-refundable contribution (or facility charge) required in accordance with Southwest's Rules filed with the Arizona Corporation Commission ("Commission") in effect on the date of this Agreement as though gas service had been requested on the basis of the actual appliances/equipment

installed and utilized.

6.3 Southwest may, at its option, require Applicant to provide a bond or other surety guaranteeing Applicant's performance of its payment obligations under paragraph 6 of this Agreement.

**7. Refunds.**

7.1 Southwest will refund to Applicant, without interest, the amount advanced in accordance with the allowable investment and refund provisions of its Rules. In no event will the total refund exceed the amount advanced by Applicant. No advance will be refundable after 5 years from the date Southwest is first ready to render service, except in the case of feeder mains to serve master planned communities, the refund period will be 10 years.

**8. Estimated Dates of Commencement and Completion of Construction.**

8.1 Southwest estimates that construction of the Subject Facilities will begin on approximately N/A and will be completed by approximately N/A ("Completion Date"); provided, however, th if the date on which the Subject Facilities actually are completed shall be more than 30 days after the estimated date of completion specified above, the Completion Date shall be the date the Subject Facilities actually are completed, and this Agreement shall be noted accordingly.

**9. Copy of Agreement.**

9.1 Applicant hereby acknowledges receipt of a copy of this Agreement.

**10. Ownership and Easements.**

10.1 The Subject Facilities will at all times be owned by Southwest.

10.2 Applicant agrees to grant or otherwise provide to Southwest, without cost to Southwest, easements and rights of way which are adequate, in the opinion of Southwest, for the location, installation operation, maintenance, and removal of the Subject Facilities.

**11. Regulatory Changes; Arizona Law.**

11.1 This Agreement is subject to the jurisdiction of the Commission.

11.2 Southwest's Rules filed with the Commission, to the extent applicable and as they may be changed from time to time, are part of this Agreement, but no change in any such Rule occurring after the date hereof shall increase the amount Applicant is obligated to advance or the amount Southwest may become obligated to refund hereunder.

11.3 The laws of Arizona shall govern the interpretation of this Agreement.

WHEREFORE, the parties have executed this Agreement as of the indicated date.

**SEE EXHIBIT D FOR LEGAL NAME**

| **APPLICANT** | **SOUTHWEST GAS CORPORATION** |
|---|---|
| City of Avondale | **By** _____ |
| ***Company Name*** | |
| _____ | *Michael Favela, Manager, New Business Projects* |
| ***Applicant Signature*** | ***Title*** |
| _____ | *Central Arizona* |
| ***Print Name*** | ***Division*** |
| _____ | _____ |
| ***Title*** | ***Date Signed*** |

# CITY COUNCIL REPORT

**SUBJECT:**
Professional Services Agreement - Arthur J. Gallagher Risk Management Services Inc.

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Allen Iampaglia, Risk Manager (623) 333-1101

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a Professional Service Agreement with Arthur J. Gallagher Inc. to provide insurance broker services for property, general liability, auto liability and crime insurance coverage. The costs for these services are included in the Risk Management Trust Fund for the next three years. The annual amounts are $35,000 for year one, $36,000 for year two and $37,000 for year three. These amounts represent the broker's compensation in lieu of commissions on insurance policies.

**BACKGROUND:**

A broker of record is required to access the commercial insurance marketplace both domestic and overseas. The broker will assist Risk Management in the placement of property, liability and crime coverage to protect the City from a wide variety of financial losses from liability exposures that occur as a result of day-to-day operations. The insurance programs are designed by Risk Management and our Legal staff to protect all city departments from liability and property losses.

The broker will develop a marketing plan for the City's profile. This will include all property and vehicles owned by the City along with special programs involving unique liability issues.

**DISCUSSION:**

This contract will cover all aspects of the City's insurance needs including but not limited to issuing of certificates of insurance for all City activities.

**SELECTION PROCESS:**

In accordance with the City's Procurement Policy, staff created a five (5)-person panel to select the most qualified firm that responded to the Request for Proposals issued on January 28, 2010. Three firms responded and oral interviews were held on March 8, 2010. On April 5, 2010, the firm of Arthur J. Gallagher was seleced for the three-year contract.

**BUDGETARY IMPACT:**

The Risk Management Trust Fund will cover all costs associated with insurance coverage and broker fees. These costs along with claims and legal fees have been allocated in accordance with the City's actuarial firm and the Finance Department.

**RECOMMENDATION:**

Staff recommends that the City Council approve a Professional Service Agreement with Arthur J. Gallagher to provide insurance broker services and authorize the City Manager and City Clerk to execute the necessary documents.

## ATTACHMENTS:

**Click to download**

- PSA

**PROFESSIONAL SERVICES AGREEMENT**
**BETWEEN**
**THE CITY OF AVONDALE**
**AND**
**ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of May 3, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and Arthur J. Gallagher Risk Management Services, Inc., an Illinois corporation (the "Consultant").

RECITALS

A. The City issued a Request for Proposals, 10-051 "Insurance Brokerage and Consulting Services" (the "RFP"), attached hereto as Exhibit A, and incorporated herein by reference, seeking proposals from vendors for professional consulting services.

B. The Consultant submitted a proposal (the "Proposal") in response to the RFP, attached hereto as Exhibit B, and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant for insurance brokerage and consulting services (the "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. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until May 2, 2013 (the "Initial Term"), subject to annual renewal by the City upon written notice given not later than 30 days prior to the anniversary of the this Agreement and subject to availability and appropriation of funds in each subsequent year of the Initial Term. Thereafter, this Agreement may be renewed for up to two additional one-year terms (each a "Renewal Term") if deemed in the best interests of the City and subject to availability and appropriation of funds for renewal in each subsequent year. Such renewal shall occur upon the City's written notice to the Consultant given not later than 30 days prior to the end of the then-current term. The Initial Term and any Renewal Terms are collectively referred to as the "Term". Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

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

3. Compensation.

3.1 Base Compensation. The City shall pay Consultant a price not to exceed $108,000.00 for the Services during the Initial Term as set forth in the Fee Proposal, attached hereto as Exhibit D and incorporated herein by reference.

3.2 Compensation Upon Renewal. In the event that the parties renew this Agreement for an additional Renewal Term, as described in Section 1, above, the compensation shall be increased from $108,000.00 to a total aggregate price not to exceed $146,000.00 for the Services during the Initial Term and the additional Renewal Term together as set forth in the Fee Proposal, attached hereto as Exhibit D. In the event that the parties renew this Agreement for a second additional Renewal Term, as described in Section 1, above, the compensation shall be increased from $146,000.00 to a total aggregate price not to exceed $185,000.00 for the Services during the Initial Term and additional Renewal Terms together as set forth in the Fee Proposal, attached hereto as Exhibit D.

3.3 Temporary Fiduciary Funds Income. In addition to the base compensation and any compensation due to Consultant upon renewal, as described in subsections 3.1 and 3.2, investment income which may accrue on fiduciary funds temporarily held by Consultant in the performance of its obligations under this Agreement shall accrue for Consultant's benefit in exchange for the Services.

3.4 Third Party Commissions and Fees. Other parties such as excess and surplus lines brokers, wholesalers, reinsurance intermediaries, underwriting managers, captive managers and similar parties, some of which may be owned in whole or in part by Consultant's corporate parent company, may earn and retain usual and customary commissions and fees in the course of providing insurance products to its clients. Such usual and customary commissions and fees shall not be considered part of Consultant's compensation as set forth in this Section 3.

4. Payments. The City shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

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

6. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire City residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject

to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

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

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

9. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

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

11. Insurance.

11.1 General.

a. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or

deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

c. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance, Professional Liability insurance, if applicable, and Vehicle Liability insurance as described in subsection 11.2(b), below, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

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

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

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

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

i. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions

do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of the Consultant's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

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

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

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

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

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

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

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

11.2 Required Insurance Coverage.

a. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate and a $2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. The City hereby waives the additional insured requirement described in subsection 11.1(c), above, with respect to the Vehicle Liability requirement described in this subsection 11.2(b). If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

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

d. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

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

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

13. Termination; Cancellation.

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

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

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

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

13.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

13.6 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 Consultant 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 Consultant shall be relieved of any subsequent obligation under this Agreement.

14. Miscellaneous.

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

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

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

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

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

14.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the

employee or agent of the other for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Consultant agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

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

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

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

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

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

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

14.13 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 Consultant any amounts Consultant owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

b. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Consultant any amounts Consultant owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

14.14 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.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

If to Consultant:
Arthur J. Gallagher Risk Mangement Services, Inc.
426 North 44th Street, Suite 320
Phoenix, Arizona 85008
Facsimile: (602) 244-2242
Attn: Steven E. Beck

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.

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

14.16 Records and Audit Rights. Consultant'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 Consultant and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Consultant and its subcontractors are complying with the warranty under subsection 14.17 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (a) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (b) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant 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 for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. Consultant 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 Consultant or its subcontractors reasonable advance notice of intended audits. Consultant 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.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant 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). Consultant'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.

14.18 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant 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 Consultant submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 13.2 above.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the Agreement, the Scope of Work, the Fee Proposal, the RFP and the Consultant's Proposal, the documents shall govern in the order listed herein.

14.20 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.

14.21 Cooperative Purchasing. This Agreement shall be for the use of the City. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate, at their discretion and with the agreement of the awarded Consultant. In order to participate in this Agreement, a political subdivision or nonprofit educational or public health institution must agree to the terms and conditions in the solicitation and the Consultant must be in agreement with the cooperative transaction. Any orders placed to the successful Consultant will be placed by the specific agencies participating in this purchase. Payment for purchases made under this Agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others.

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"**

ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., an Illinois corporation

By: _____

Name: SUSAN A. DALEY

Title: AREA PRESIDENT

1222932.1

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

This instrument was acknowledged before me on _____, 2010, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

STATE OF California )
) ss.
COUNTY OF Orange )

This instrument was acknowledged before me on April 26th 2010, 2010, by Susie Daley as Area President of ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., an Illinois corporation, on behalf of the corporation.

Chloe Orzio
Notary Public in and for the State of California

My Commission Expires:

4-8-2011

CHLOE ORZIO
Commission # 1737563
Notary Public - California
Orange County
My Comm. Expires Apr 8, 2011

1222932.1

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

[RFP]

See following pages.

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

[Consultant's Proposal]

See following pages.

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

[Scope of Work]

See following pages.

EXHIBIT D
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC.

[Fee Proposal]

See following pages.

# CITY COUNCIL REPORT

**SUBJECT:**
Professional Services Agreement Amendment No. 2 - Damon S. Williams and Associates, LLC, for Water Reclamation Facility Expansion

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Wayne Janis, P.E., Public Works Director, (623) 333-4444

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve Professional Services Agreement (PSA) Amendment No. 2 for Damon S. Williams and Associates, LLC (DSWA), for additional Design and Construction Administration services for the Charles M. Wolf Water Resource Center in the amount of $306,733, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

DSWA was contracted by the City of Avondale in July, 2006, to complete the design and construction administration of the Charles M. Wolf Water Resource Center Expansion project (Contract No. 12287). The original contract amount was $5,493,817.

Amendment No. 1 was approved by City Council at their September 21, 2009, regular meeting for $110,654, for a new contract amount of $5,604,471. Amendment No. 1 included a project time extension, additional regulatory agency coordination, and modification of the Fire Discharge Box, Chlorine Contact Basin, and Aquifer Protection Permit Application.

**DISCUSSION:**

Amendment No. 2 includes several items:

1. The original PSA provided for 24 months of on-site engineering and inspection services. Due to the five month delay to the start of GMP 3, DSWA provided 29 months of on-site engineering and inspection services.
2. It was discovered that the City's existing underground piping as-builts were inaccurate. This required a redesign of the new underground piping locations.
3. The City had originally intended to relocate the existing chlorine solution feed system to the new chlorine basins. Due to the aged condition of the existing system this was not possible, resulting in a redesign of the feed system.
4. The electrical controls required on-site redesign to simplify the system operation.
5. To extend chemical feed equipment life, shade covers were designed and added to the chemical storage areas.
6. The original allowance for materials testing was insufficient, requiring an increase.

This Amendment No. 2 provides monies in the amount of $306,733 for these design and/or redesign efforts, representing an increase of 5.6% over the original contract amount for a new contract total of

$5,911,204.

**BUDGETARY IMPACT:**

Funding for this contract amendment is available in the Wastewater Capital Budget, line item 513-1109-00-8610.

**RECOMMENDATION:**

Staff recommends that City Council approve this Professional Services Agreement Amendment No. 2 for Damon S. Williams and Associates, LLC (DSWA), for additional Design and Construction Administration services for the Charles M. Wolf Water Resource Center in the amount of $306,733, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

**Click to download**

- PSA Amendment 2

**SECOND AMENDMENT**
**TO**
**PROFESSIONAL SERVICES AGREEMENT**
**BETWEEN**
**THE CITY OF AVONDALE**
**AND**
**DAMON S. WILLIAMS ASSOCIATES, L.L.C.**

THIS SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "Second Amendment") is made as of May 3, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and Damon S. Williams Associates, L.L.C., an Arizona limited liability company (the "Consultant").

RECITALS

A. The City and the Consultant entered into a Professional Services Agreement dated July 10, 2006, for design and construction administration relating to the Water Reclamation Facility Expansion, Phase 1, Final Design and Construction Administration, City Project No.: UT 06-008 (the "Initial Agreement").

B. The Initial Agreement was amended once on September 21, 2009, to provide for additional services related to modifying the design and preparing additional permit applications (the "First Amendment"). The Initial Agreement and the First Amendment are collectively referred to herein as the "Agreement."

C. The City and the Consultant have determined that it is necessary to amend the Agreement to (i) include additional services to the Scope of Work of the Agreement for further modification of the designs and preparation of additional materials (the "Additional Services") and (ii) increase the compensation of 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 to amend the Agreement as follows:

1. Scope of Work. The Consultant shall provide the Additional Services as set forth in the Change Order, attached hereto as Exhibit 1 and incorporated herein by reference.

2. Compensation. The Consultant's total compensation under the Agreement shall be increased by no more than $306,733.00 from $5,604,471.00 to $5,911,204.00 as consideration for the Additional Services as more particularly set forth in Exhibit 1.

3. 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.

4. 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.

5. Conflict of Interest. This Second Amendment and the First 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**"

DAMON S. WILLIAMS ASSOCIATES, an Arizona limited liability company

By:_____

Name:_____

Its:_____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

This instrument was acknowledged before me on _____, 2010, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

This instrument was acknowledged before me on _____, 2010, by _____ as _____ of DAMON S. WILLIAMS ASSOCIATES, L.L.C., an Arizona limited liability company, on behalf of the company.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

EXHIBIT 1
TO
SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DAMON S. WILLIAMS ASSOCIATES, L.L.C.

[Change Order]

See following pages.

# Avondale WRF Expansion, Phase 1
## Additional Design Construction Phase Services
## Change Order Request

**SUMMARY OF ADDITIONAL EFFORT**

1 The current as-builts did not accurately describe the location of the existing WAS line. Revision to the sludge piping design was necessary to connect the WAS line to the new solids handling system. The redesign required DSWA to modify one drawing, prepare a new drawing, issue an RFCOP, modify the MOPO, and modify the as-builts.

2 At the request of the City, the Sodium Hypochlorite disinfection feed equipment at the Chlorine Contact Tanks had to be redesigned from an induction mixer feed system to a chemical metering pump feed system. The reason for the change was the existing induction mixers (one currently in use and the other a spare in storage) were not functional and needed to be replaced. Changing to a chemical metering pump feed system was more cost effective and could be implemented quicker than replacing the induction mixers. The change required DSWA to modify 16 drawings, prepare a new specification section, rewrite the disinfection section in the O&M Manual, issue an RFCOP, modify the MOPO, and modify the as-builts.

3 At the request of the City, the operator control stations were deleted. This required DSWA to modify the control drawings, issue an RFCOP, submit to the Building Safety Department, modify the as-builts, and prepare cost estimates.

4 At the request of the City, DSWA designed shade structures for the Chemical Storage and Feed Areas. This required DSWA to design, bid, award on behalf of the City to the lowest bidder, review submittals, inspect the installation, and prepare as-builts of the structures.

5 In order to reduce the project's construction costs, the Tertiary Filters were deleted from the project at the 60% design level. The engineering effort to complete the design and for construction oversight of the filters is deducted from the Agreement.

6 Subsection 5.3 of DSWA's Professional Services Agreement dated July 10, 2006 states DSWA will provide onsite engineering services for a continuous 24-month construction period with construction anticipated to start in August 2007. Construction actually started in September 2007 and is anticipated to be complete in January 2010, which is a continuous 29-month period. This required DSWA to provide an additional 5 months of full time onsite engineering effort.

7 DSWA's Professional Services Agreement dated July 10, 2006 identified an allowance of $80,000 for materials testing in the Construction Phase. The actual cost will be $135,000. This requires the Materials Testing Allowance to be increased by $55,000.

| Task No. | Description | HOURS | | | | | | | | | | | Costs |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Prin | Sr. PM | PM | QA/QC | Eng3 | Eng2 | Tech | RE | CO | Cler | Total | |
| **TASK 1** | **Additional Design Services** | **0** | **30** | **42** | **15** | **-20** | **176** | **206** | **16** | **0** | **44** | **509** | **$58,940** |
| **1000** | **Project Management** | **4** | **12** | **16** | | | | | | | **8** | **40** | **$6,341** |
| **1100** | **WAS Tie-In** | **0** | **4** | **14** | **1** | **0** | **32** | **44** | **0** | **0** | **6** | **101** | **$11,740** |
| 1110 | Field Verification of Existing WAS Piping | | | *2* | | | *4* | *4* | | | *2* | *12* | *$1,333* |
| 1120 | Prepare Drawing and Sketches | | *2* | *6* | *1* | | *24* | *32* | | | *2* | *67* | *$7,647* |
| 1130 | Issue RFCOP's, Modify MOPO's and As-Builts | | *2* | *6* | | | *4* | *8* | | | *2* | *22* | *$2,761* |
| **1200** | **Chlorination System Modifications** | **0** | **12** | **16** | **12** | **24** | **156** | **134** | **0** | **0** | **22** | **376** | **$43,836** |
| 1210 | Data Collection & Coordination w/ Avondale | | *4* | | | | *12* | | | | *2* | *18* | *$2,324* |
| 1220 | Modify 16 Drawings and Prepare New Spec Section | | *4* | *8* | *8* | *16* | *72* | *100* | | | *8* | *216* | *$24,733* |
| 1230 | Rewrite Disinfection O&M Manual Section | | *2* | *8* | *4* | *8* | *48* | *10* | | | *8* | *88* | *$10,976* |
| 1240 | Issue RFCOP's, Modify MOPO's and As-Builts | | *2* | | | | *24* | *24* | | | *4* | *54* | *$5,804* |
| **1300** | **Delete Operator Control Stations** | **0** | **8** | **0** | **2** | **20** | **48** | **56** | **0** | **0** | **8** | **142** | **$16,447** |
| 1310 | Revise Design to Delete Stations | | *2* | | | *16* | | *24* | | | *2* | *44* | *$5,126* |
| 1320 | Issue RFCOP's, Building Safety Submittals, and As-Builts | | *4* | | *2* | | *24* | *32* | | | *2* | *64* | *$7,199* |
| 1330 | Prepare Cost Estimates | | *2* | | | *4* | *24* | | | | *4* | *34* | *$4,123* |
| **1400** | **Shade Struct Over Chem Storage & Feed Areas** | **0** | **6** | **4** | **0** | **36** | **0** | **12** | **16** | **0** | **12** | **86** | **$11,561** |
| 1410 | Design Shade Structures | | *2* | *2* | | *20* | | *8* | | | *4* | *36* | *$4,672* |
| 1420 | Bid, Award, and Review Submittals for Structures | | *2* | *2* | | *16* | | | | | *2* | *22* | *$3,196* |
| 1430 | Inspection of Structures and As-Builts | | *2* | | | | | *4* | *16* | | *6* | *28* | *$3,693* |

# Avondale WRF Expansion, Phase 1
## Additional Design Construction Phase Services
## Change Order Request

**SUMMARY OF ADDITIONAL EFFORT**

1. The current as-builts did not accurately describe the location of the existing WAS line. Revision to the sludge piping design was necessary to connect the WAS line to the new solids handling system. The redesign required DSWA to modify one drawing, prepare a new drawing, issue an RFCOP, modify the MOPO, and modify the as-builts.
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3. At the request of the City, the operator control stations were deleted. This required DSWA to modify the control drawings, issue an RFCOP, submit to the Building Safety Department, modify the as-builts, and prepare cost estimates.
4. At the request of the City, DSWA designed shade structures for the Chemical Storage and Feed Areas. This required DSWA to design, bid, award on behalf of the City to the lowest bidder, review submittals, inspect the installation, and prepare as-builts of the structures.
5. In order to reduce the project's construction costs, the Tertiary Filters were deleted from the project at the 60% design level. The engineering effort to complete the design and for construction oversight of the filters is deducted from the Agreement.
6. Subsection 5.3 of DSWA's Professional Services Agreement dated July 10, 2006 states DSWA will provide onsite engineering services for a continuous 24-month construction period with construction anticipated to start in August 2007. Construction actually started in September 2007 and is anticipated to be complete in January 2010, which is a continuous 29-month period. This required DSWA to provide an additional 5 months of full time onsite engineering effort.
7. DSWA's Professional Services Agreement dated July 10, 2006 identified an allowance of $80,000 for materials testing in the Construction Phase. The actual cost will be $135,000. This requires the Materials Testing Allowance to be increased by $55,000.

| Task No. | Description | HOURS | | | | | | | | | | | Costs |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Prin | Sr. PM | PM | QA/QC | Eng3 | Eng2 | Tech | RE | CO | Cler | Total | |
| 1500 | **Delete Design Effort of Tertiary Filters** | -4 | -12 | -8 | | -100 | -60 | -40 | | | -12 | -236 | ($30,986) |
| TASK 2 | **Additional Construction Phase Services** | 12 | 84 | 12 | 0 | 0 | 0 | 0 | 576 | 308 | 694 | 1,686 | $190,793 |
| 2000 | **Project Management** | 4 | 24 | 12 | | | | | | | 8 | 48 | $7,890 |
| 2100 | **Additional Construction Inspection** | 8 | 60 | 0 | 0 | 0 | 0 | 0 | 550 | 300 | 678 | 1,596 | $177,375 |
| 2110 | 5 Months Additional Construction Phase Services | *8* | *60* | | | | | | *950* | *600* | *750* | *2,368* | *$278,113* |
| 2120 | Delete Inspection Effort for Tertiary Filters | | | | | | | | *-400* | *-300* | *-72* | *-772* | *($100,738)* |
| 2200 | **Additional Materials Testing** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26 | 8 | 8 | 42 | $5,529 |
| 2210 | Coordinate and Schedule Testing Company | | | | | | | | *10* | *4* | *4* | *18* | *$2,286* |
| 2220 | Review Materials Testing Results | | | | | | | | *16* | *4* | *4* | *24* | *$3,242* |
| | **DSWA TOTAL HOURS** | 12 | 114 | 54 | 15 | -20 | 176 | 206 | 592 | 308 | 738 | 2,185 | $249,733 |
| | Project Billing Rate | $ 217.51 | $ 185.68 | $ 169.76 | $ 199.66 | $ 147.09 | $ 120.82 | $ 94.56 | $ 159.29 | $ 107.63 | $ 65.78 | | |
| | **SUBTOTAL LABOR COSTS** | $ 2,610 | $ 21,167 | $ 9,167 | $ 2,995 | $ (2,942) | $ 21,265 | $ 19,479 | $ 94,297 | $ 33,149 | $ 48,547 | | |

| | | |
|---|---|---|
| **TOTAL OTHER DIRECT COSTS** | | |
| 1 | Reproduction and Printing | $1,500 |
| 2 | Mileage & Delivery Services (Mail, Courier, etc.) | $500 |
| 3 | Materials Testing (ALLOWANCE INCREASE) | $55,000 |
| | **TOTAL OTHER DIRECT COSTS** | **$57,000** |
| | **TOTAL** | **$306,733** |

# CITY COUNCIL REPORT

**SUBJECT:**
Resolution 2903-510 - Amendment to the City Council Rules of Procedure

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

City Council will consider a resolution amending the Council Rules of Procedure Section 15 Boards, Commissions and Committees to update the language and provisions related to membership, removal of members and participation by alternate members, among others.

**BACKGROUND:**

Staff has undertaken the task of reviewing the Bylaws for the City's various Boards, Commissions and Committees (BCCs). In doing so, it became apparent that there were discrepancies in the provisions included in the Bylaws of the various BCCs as well as with the Council Rules of Procedure which govern them. In an effort to standardize all of the Bylaws and to ensure concurrence with the Rules of Procedure, staff proposes to amend them.

**DISCUSSION:**

In addition to some minor clarifying changes, Staff is proposing the following amendments to the Council Rules of Procedure:

- The Rules currently include provisions for the staggering of terms for BCCs consisting of up to eight members. There are four Boards, Commissions and Committees (Art Committee, Social Services, Enviornmental Affairs and Neighborhood and Family Services) that have more than eight members; the proposed amendment revises the provision to accommodate for the staggering of BCCs consisting of eight or more members.
- Allows a member who has served two terms to remain seated until a successor is appointed. This provision will prevent BCCs from not being able to meet due to lack of quorum in cases where a qualified candidate has not come forward.
- Allows for the BCC to remove a member for absenteeism only. Currently, Council action is necessary in order to remove a member for any reason. Staff believes that when a member has ceased to attend meetings, he/she has in fact forfeited his/her seat on that BCC and Council action should not be required for official removal from the roster.
- Currently, alternate members are expected to attend meetings but are not allowed to participate or vote. The amendment will allow alternate members to participate in meetings, but the right to vote will continue to be reserved for regular members.

The proposed amendments will set the foundation necessary to update the BCCs bylaws to standardize them and eliminate discrepancies between the different bylaws and make it easier for staff to coordinate the City's BCCs.

**RECOMMENDATION:**

Staff is recommending adoption of the resolution to amend the City Council Rules of Procedure.

## ATTACHMENTS:

**Click to download**

- Resolution 2903-510

**RESOLUTION NO. 2903-510**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY COUNCIL RULES OF PROCEDURE RELATING TO BOARDS, COMMISSIONS AND COMMITTEES.

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

SECTION 1. That the City of Avondale, City Council Rules of Procedure, Section 15, Boards, Commissions and Committees, Subsection 15.5, Terms, Vacancies, Removal, is hereby amended as follows:

**15.5 TERMS, VACANCIES, REMOVAL**

….

B. For ~~those~~ REGULARLY SCHEDULED boards, commissions and committees ~~having five (5) members or less~~, the MEMBERS' terms of office shall be staggered so that, WHEN POSSIBLE, no more TERMS than ~~two (2) terms~~ THE NUMBER OF MEMBERS CONSTITUTITNG A QUORUM OF THE BOARD, COMMISSION OR COMMITTEE shall expire in any single year ~~when possible~~; provided, however, that no staggering of terms shall be required for any board, commission or committee that will be in existence for a single term.

~~C.~~ ~~For those boards, commissions and committees having more than five (5) members but less that eight (8) members, the terms of office shall be staggered so that no more than three (3) terms shall expire in any single year when possible; provided, however, that no staggering of terms shall be required for any board, commission or committee that will be in existence for a single term.~~

~~D.~~C. No individual may serve as a voting member on more than two regularly scheduled and one unscheduled board, commission and committee at one time.

~~E.~~ D. A vacancy on a board, commission or committee shall be deemed to have occurred upon the following:

1. Death or resignation of a member of a board, commission or committee.
2. A member ceasing to be an Avondale resident unless the City Council has provided that such member may be a non-resident.

3. Three consecutive unexcused absences by a member from board, commission or committee meetings.
4. A member serves two consecutive terms, EXCEPT THAT A MEMBER SHALL REMAIN SEATED UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED.

~~F.~~ E. Any board, commission or committee REGULAR OR ALTERNATE member may be removed as a member ~~to~~ OF that board, commission or committee upon a vote of not less than five (5) Council Members for any cause as determined by the City Council.

~~G.~~ F. Whenever a vacancy has occurred on one board, commission or committee and no alternate has been appointed as set forth in Section 15.6 below, the Council Subcommittee for Board, Commission and Committee Appointments shall meet to recommend a candidate to complete the remainder of the term. Procedures described in 15.3 above will be used to generate applicants, interview applicants, and make a recommendation. IN CASES OF A VACANCY DUE TO THE EXPIRATION OF A MEMBER'S TERM, THE MEMBER SHALL REMAIN SEATED UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED.

~~H.~~ G. An individual is limited to two consecutive appointments/reappointments to any one board, commission or committee; provided, however, that the time during which the individual is an alternate shall not count against this term limitation.

~~I.~~ H. An incumbent member of a board, commission or committee seeking reappointment shall submit a new application under the provisions set forth in Section 15.3 above and shall be considered for appointment by the City Council in the same manner as all other applicants for such position.

SECTION 2. That the City of Avondale, City Council Rules of Procedure, Section 15, Boards, Commissions and Committees, Subsection 15.6, Alternates, is hereby amended as follows:

**15.6 ALTERNATES**

The City Council may appoint alternates to serve on boards, commissions and committees in the event of vacancy. Such alternates may attend AND PARTICIPATE IN meetings of the board, commission or committee but shall not ~~participate~~ VOTE IN SUCH MEETINGS until such time as a vacancy has occurred and the alternate has filled such vacancy. If the City Council appoints more than one alternate for a particular board, commission or committee, the City Council shall designate the alternates as first alternate, second alternate and so on such that immediately upon a vacancy occurring in a board, commission or committee, the first alternate shall fill such vacancy without the need for further City Council action.

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

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

# CITY COUNCIL REPORT

**SUBJECT:**
Resolution 2902-510 - Amending Municipal Art Committee Bylaws

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

City Council will consider a resolution amending the Municipal Art Committee bylaws to standardize their format and update and clarify the language as needed.

**BACKGROUND:**

The Avondale Muncipal Art Committee (AMAC) was established in 2005. Since then the committee's bylaws have been updated twice to update the language and to increase membership.

Upon reviewing the bylaws of the AMAC and other City Boards, Commissions and Committees, staff has found that while they all meet their primary intent and have common clauses and purposes, they differ considerably in their format. In addition some of them outline the process followed for the appointment of members which is specifically detailed in the Council's Rules of Procedure. Over the next few months, staff will propose amendments to the Bylaws of the City's various Boards, Commissions and Committees to standardize their format and to eliminate discrepancies or redundancy with other policy documents.

**DISCUSSION:**

As stated above, the purpose of this amendment is to standardize the format of the Avondale Municipal Art Committee Bylaws and remove redundancy with other policy documents. Following is an outline of the proposed changes; a redline is not feasible due to the change in format:

- Corrects a typo and clarifies that the name of the Committee is *Avondale Municipal Art Committee* (not Arts).
- Removes the requirement for one member to be an Avondale business owner and another a visual or performing artist and instead welcomes both artists and patrons of the arts as members.
- Removes the membership eligibility criteria and appointment process and references the Council Rules of Procedure for specific procedures.
- Allows for a member whose term has expired to remain seated until a successor is appointed.
- Allows the committee to vote to remove a member due to having three unexcused or unexplained absences upon a seven-day notification to the member of the committee's intent to vote on his/her removal. Council action is necessary in order to remove a member from the committee for reasons other than lack of attendance.
- Removes detail for the nomination and appointment of the Chair and Vice Chair and simply indicates that such appointment must take place at the first meeting of the new calendar year.
- Allows alternate members to participate in the meeting (current bylaws require them to attend but do not allow participation in meetings by alternate members).

Staff feels that the proposed amendment is a better structured document and sets the necessary guidelines for the committee to carry on its mission and purpose.

**RECOMMENDATION:**

Staff is recommending Council adoption of a resolution amending the bylaws of the Avondale Municipal Art Committee.

**ATTACHMENTS:**

**Click to download**

- Resolution 2902-510

**RESOLUTION NO. 2902-510**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, REPEALING THE CITY OF AVONDALE MUNICIPAL ARTS COMMITTEE RULES AND PROCEDURES, AND ADOPTING AVONDALE MUNICIPAL ARTS COMMITTEE BYLAWS.

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

SECTION 1. The City of Avondale Municipal Arts Committee Rules and Procedures, Amended and Restated November 3, 2008, pursuant to Resolution No. 2781-1108, are hereby repealed in their entirety and replaced by the City of Avondale Municipal Arts Committee Bylaws in the form attached hereto in 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 take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2902-510

[Municipal Arts Committee Bylaws]

See following pages.

**CITY OF AVONDALE**
**MUNICIPAL ART COMMITTEE**
**BYLAWS**

I. Name.

The name of this organization shall be the *Avondale Municipal Art Committee* (the "Committee").

II. Powers and Duties of the Committee.

It shall be the duty of the Committee to develop program guidelines and procedures and to advise the City Council and City staff on matters and issues pertaining to the acquisition, maintenance and disposition of works of art, public art displays, monuments and memorials. The Committee shall bring all projects that will require capital expenditure to the City Council for conceptual approval before committing the funds. The Committee will then bring to the City Council a final recommendation on the project and its placement.

At the discretion of the City Council, an amount up to 1/2% of the General Funds transferred to the Capital Improvement Budget may be deposited in a Municipal Arts Fund annually through the budget process. The Committee shall administer this fund in carrying out its mission and program objectives.

The duties of the Committee further include, but are not limited to, the following:

A. Direct a Public Art program by drafting program guidelines and procedures for the administration of the City's Municipal Arts Program, including a mission and vision statement.

B. Set long-range program goals with an annual work plan for the Committee, beginning with a mini-symposium on what constitutes public art.

C. Prepare an inventory of the City's existing public art and an inventory of possible locations for public art displays.

D. In cooperation with City staff and other organizations, develop schedules for community arts events.

E. Prepare guidelines for accepting gifts of art including memorials and monuments.

F. Recommend to the City Council the placement of publicly funded art, gifts or temporary use of loaned art and memorials and/or monuments.

G. Promote and advocate for the arts and other cultural activities including special cultural events.

H. Recommend to the City Council funding sources and possible grant opportunities pertaining to the arts.

I. Promote involvement in all aspects of the arts by enhancing the level of public awareness and involvement in public art.

J. Support the City Council goals and be consistent with the City's Strategic Plan, Priority Areas and General Plan.

III. Membership and Composition.

A. Number of Committee Members. The Committee shall be composed of nine regular members (collectively, the "Members"). The Committee shall also have one standing ex-officio member from the West Valley Arts Council ("Ex-officio Member") and up to two alternate members ("Alternate Members"), all of whom shall attend and may participate in Committee meetings but shall not vote in any Committee meeting.

B. Membership Eligibility and Appointment. The Committee welcomes both artists and patrons of the arts to serve as Members. Each of the Members and each of the Alternate Members shall be Avondale residents. The Ex-officio Member need not be an Avondale resident. In addition, Members and Alternate Members shall meet all eligibility criteria as outlined in the City Council Rules of Procedure. Appointment of Members and Alternate Members shall be conducted according to the same.

C. Term. Unless appointed to fill a vacancy mid-term, each Member's term of office shall be three years, unless the Member resigns sooner or is removed from his/her position. For initial appointments, staggered terms of two and three years shall be designated.

D. Term Limits. No Member may serve more than two consecutive terms; provided, however, that a Member appointed to fill a vacancy may serve two consecutive terms after the conclusion of the unexpired term to which he or she was appointed.

E. Vacancy. Any vacancy on the Committee shall be filled for the unexpired term by the Alternate Member if one has been appointed by the City Council per the established procedures, or by the first Alternate Member if more than one Alternate Member has been appointed by the City Council. If an Alternate Member has not been so appointed, the position shall remain vacant until a new Member is appointed by the City Council to fill the vacancy. In cases of a vacancy due to the expiration of a Member's term, the Member shall remain seated until a successor is appointed.

F. Attendance. All Members, the Ex-officio Member and the Alternate Members are required to attend all Committee meetings unless excused by the Chairperson. Three successive unexcused or unexplained absences from any regular or special meeting shall be grounds for removal as outlined in Section G below.

G. Removal. Any Member, the Ex-officio Member or any Alternate Member may be removed upon a vote of not less than five City Council members for any reasonable cause as determined by the City Council; provided, however, that in the case of removal of a Member, the Ex-officio Member or an Alternate Member due to excessive absences, it shall be assumed that said Member, Ex-officio Member or Alternate Member has chosen to forfeit his/her seat on the Committee.

IV. Committee Officers and Staff.

A. Chairperson and Vice-Chairperson. At the first regularly scheduled Committee meeting of each calendar year, the Committee shall elect a Chairperson and Vice-Chairperson from among the Members. The Chairperson and Vice-Chairperson shall assume responsibilities at the next scheduled meeting. The term of the Chairperson and Vice-Chairperson shall be for one year. Any Member serving as Chairperson or Vice-Chairperson shall be eligible for re-election; provided, however, that each Member may serve no more than two terms per office.

B. Duties of the Chairperson and Vice-Chairperson. The Chairperson shall (i) preside at all Committee meetings, (ii) decide all points of order and procedure, (iii) appoint committees if necessary and coordinate the work of the committees, (iv) serve as a representative of the Committee to other governmental units on such matters as have been approved and designated by the Committee and (v) perform any duties as required by law, ordinance or these Bylaws. The Chairperson shall have the right to vote on all matters before the Committee and shall have the right to make or second motions in the absence of a motion or a second. The Vice-Chairperson shall act as an aid to the Chairperson and shall perform the duties of the Chairperson in his or her absence or inability to serve. In the absence of the Chairperson and the Vice-Chairperson, the City Staff Liaison shall call the meeting to order and a simple majority of the Members then present shall select an acting Chairperson for the meeting. If the Committee Members present are unable to select an acting Chairperson, the City Staff Liaison shall act as the Chairperson for the meeting but without voting privileges.

C. Vacancy. A vacancy in the office of Chairperson shall be filled by the Vice-Chairperson. A vacancy in the office of Vice-Chairperson shall be filled by a vote of the Committee at the next meeting of the Members.

D. Removal. The Chairperson or Vice-Chairperson may be removed from office at any time at a meeting of the Members by an affirmative vote of a three-fourths majority of Members.

E. City Staff Liaison. The Assistant City Manager or authorized designee shall serve as the City Staff Liaison to furnish support to the Committee as requested or required to advise and furnish professional and technical advice.

F. Legal Counsel. The Committee may request that the City Attorney, or authorized designee provide, legal advice and rulings on points of order, procedure, or other matters related to the Committee's duties.

V. Committee Meetings.

A. Frequency. Committee meetings shall be held monthly at the City of Avondale Civic Center, Avondale, Arizona, unless posted differently at least 24 hours in advance.

B. Additional Committee Meetings. Additional Committee meetings may be held on the call of the Chairperson or the request of two or more Members, or by giving

notice to all the Members, the Ex-officio Member and all Alternate Members by telephone or personal delivery or by verbal comment during a regular meeting. All notices shall be given, and posted according to applicable law, at least 24 hours before the meeting.

C. Participation by the Public. Committee meetings shall be open to the public. For any matter under consideration, any person may submit written comments and if attending in person, may speak to the issue upon being recognized by the Chairperson and stating his or her name and, if applicable, the names of any person or organization on whose behalf he or she is appearing.

D. Quorum. A Committee meeting where a majority of its Members are present shall constitute a quorum. A majority vote of those Members present shall be required to take official action. No action shall be taken at any meeting in absence of a quorum, except to adjourn the meeting to a subsequent date. Neither the Ex-officio Member nor the Alternate Members may vote at any Committee meeting.

E. Agenda. The agenda shall be prepared by the City Staff Liaison, reviewed by the Chairperson, and posted no less than 24 hours before the Committee meeting in accordance with the Arizona Open Public Meeting Law.

F. Minutes. Minutes of the proceedings shall be retained and filed with the City Clerk's Department who will, in turn, file and post the minutes according to applicable law.

G. Open Meeting Law. The Committee is subject to the Arizona Open Public Meeting Law.

VI. Special Committees.

The Committee may create special committees for specific purposes. Such committees shall automatically dissolve when their work is done and after their final report has been accepted by the Committee.

VII. Amendments.

These Bylaws may be amended by the affirmative vote of a two-thirds majority of the Members. The Committee will then forward the amended Bylaws to the City Council for its approval.

# CITY COUNCIL REPORT

**SUBJECT:**
Resolution 2905-510 - Parks and Recreation Advisory Board Bylaws

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

City Council will consider a resolution amending the Bylaws of the Parks and Recreation Advisory Board to standardize the format, update and clarify the language as needed and to designate the Board as the Tree Board.

**BACKGROUND:**

The Parks and Recreation Advisory Board was established by Council in 1986. The Board was to be made up of eleven members and the Mayor or his/her designee were to serve as ex-officio members. The bylaws were amended in 1991 to remove the Council's ex-officio membership requirement, but allow a Council Member to be a regular member of the board. The bylaws were subsequently amended in 2001 to decrease the membership to seven.

Upon reviewing the bylaws of the Parks and Recreation Advisory Board and other City Boards, Commissions and Committees, staff has found that while they all meet their primary intent and have common clauses and purposes, they differ considerably in their format. Over the next few months, staff will propose amendments to the bylaws of the City's various Boards, Commissions and Committees to standardize their format and to eliminate discrepancies or redundancy with other policy documents.

**DISCUSSION:**

In addition to standardizing the format of the bylaws as stated above, the proposed amendment will designate the Board as the Tree Board. Following is an outline of the proposed changes; a redline is not feasible due to the change in format:

- All sections were reformatted to the City's standardized format and edited to eliminate redundancy and discrepancies with the City Council Rules of Procedure.
- Adds designation of the Board as Avondale Tree Board to meet the standards set by The Arbor Day Foundation and the National Association of State Foresters for the City to be recognized as a Tree City.
- Allows the board to remove members due to lack of attendance without further action from the Council. Council approval is still needed for removal of a member for any other reason.
- In the case of the absence of the Chair and Vice-Chair, the staff liaison will call the meeting to order and the membership will select a member to act as chair for meeting.
- Allows alternate members to participate (but not vote) in the meeting.
- Removes the clause that allows a Council Member to be a regular member of the Board as this is in contradiction with the Rules of Procedure.

**RECOMMENDATION:**

Staff recommends adoption of the resolution amending the Bylaws of the Parks and Recreation Advisory Board.

## ATTACHMENTS:

**Click to download**

- Resolution 2905-510

**RESOLUTION NO. 2905-510**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING AND RESTATING THE CITY OF AVONDALE PARKS AND RECREATION ADVISORY BOARD BYLAWS.

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

SECTION 1. The City of Avondale Parks and Recreation Advisory Board Bylaws, Amended and Restated May 3, 2010, are hereby adopted in the form attached hereto in 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 take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2905-510

[Parks and Recreation Advisory Board Bylaws, Amended and Restated May 3, 2010]

See following pages.

**CITY OF AVONDALE**
**PARKS AND RECREATION ADVISORY BOARD BYLAWS**
**Amended and Restated May 3, 2010**

I. Name.

The name of this organization shall be the Avondale Parks and Recreation Advisory Board (the "Board").

II. Powers and Duties of the Board.

The Parks and Recreation Advisory Board shall:

A. Advise the City Council and City staff on matters and issues pertaining to Parks and Recreation Services. This includes, but is not limited to, the planning of future parks, the modification of existing parks, the planning of current and future recreation activities and input in the preparation of the Parks and Recreation Comprehensive Master Plan.

B. Serve as the designated Avondale Tree Board in accordance with the requirements of the City of Avondale's Tree City USA designation. It shall be the duty of the Tree Board to advise and provide input to City staff on matters pertaining to an annual comprehensive tree plan which includes, but is not limited to, tree care, preservation, pruning, planting, removal or disposal of trees and shrubs in City parks, along streets and in other public areas.

III. Membership and Composition.

A. Number of Board Members. The Board shall be composed of seven regular members (collectively, the "Members"). The Board shall also have one alternate member ("Alternate Member") who shall attend and may participate in Board meetings but shall not vote in any Board meeting.

B. Membership Eligibility and Appointment. Each of the Members and the Alternate Member shall be Avondale residents. In addition, Members and the Alternate Member shall meet all eligibility criteria as outlined in the City Council Rules of Procedure. Appointment of Members and the Alternate Member shall be conducted according to the same.

C. Term. Unless appointed to fill a vacancy mid-term, each Member's term of office shall be three years, unless the Member resigns sooner or is removed from his/her position. For initial appointments, staggered terms of two and three years shall be designated.

D. Term Limits. No Member may serve more than two consecutive terms; provided however, that a Member appointed to fill a vacancy may serve two consecutive terms after the conclusion of the unexpired term to which he or she was appointed.

E. Vacancy. Any vacancy on the Board shall be filled for the unexpired term by the Alternate Member if one has been appointed by the City Council per the

established procedures. If an Alternate Member has not been so appointed, the position shall remain vacant until a new Member is appointed by the City Council to fill the vacancy. In cases of a vacancy due to the expiration of a Member's term, the Member shall remain seated until a successor is appointed.

F. Attendance. All Members and the Alternate Member are required to attend all Board meetings unless excused by the Chairperson. Three successive unexcused or unexplained absences from any regular or special meeting shall be grounds for removal as outlined in Section G below.

G. Removal. Any Member or Alternate Member may be removed upon a vote of not less than five City Council members for any reasonable cause as determined by the City Council; provided, however, that in the case of removal of a Member or Alternate Member due to excessive absences, it shall be assumed that said Member or Alternate Member has chosen to forfeit his/her seat on the Board.

IV. Board Officers and Staff.

A. Chairperson and Vice-Chairperson. At the first regularly scheduled Board meeting of each calendar year, the Board shall elect a Chairperson and Vice-Chairperson from among the Members. The Chairperson and Vice-Chairperson shall assume responsibilities at the next scheduled meeting. The term of the Chairperson and Vice-Chairperson shall be for one year. Any Member serving as Chairperson or Vice-Chairperson shall be eligible for re-election; provided however, that each Member may serve no more than two terms per office.

B. Duties of the Chairperson and Vice-Chairperson. The Chairperson shall (i) preside at all Board meetings, (ii) decide all points of order and procedure, (iii) appoint committees if necessary and coordinate the work of the committees, (iv) serve as a representative of the Board to other governmental units on such matters as have been approved and designated by the Board and (v) perform any duties as required by law, ordinance or these Bylaws. The Chairperson shall have the right to vote on all matters before the Board and shall have the right to make or second motions in the absence of a motion or a second. The Vice-Chairperson shall act as an aid to the Chairperson and shall perform the duties of the Chairperson in his or her absence or inability to serve. In the absence of the Chairperson and the Vice Chairperson, the City Staff Liaison shall call the meeting to order and a simple majority of the Members then present shall select an acting Chairperson for the meeting. If the Members present are unable to select an acting Chairperson, the City Staff Liaison shall act as the Chairperson for the meeting but without voting privileges.

C. Vacancy. A vacancy in the office of Chairperson shall be filled by the Vice-Chairperson. A vacancy in the office of Vice-Chairperson shall be filled by a vote of the Board at the next meeting of the Members.

D. Removal. The Chairperson or Vice-Chairperson may be removed from office at any time at a meeting of the Member by an affirmative vote of a three-fourths majority of Members.

E. City Staff Liaison. The City of Avondale's Parks, Recreation and Libraries Director, or authorized designee, shall serve as the City Staff Liaison to furnish support to the Board as requested or required to advise and furnish professional and technical advice.

F. Legal Counsel. The Board may request that the City Attorney, or authorized designee provide, legal advice and rulings on points of order, procedure, or other matters related to the Board's duties.

V. Board Meetings.

A. Frequency. Board meetings shall be held monthly at the City of Avondale Civic Center, Avondale, Arizona, unless posted differently at least 24 hours in advance.

B. Additional Board Meetings. Additional Board meetings may be held on the call of the Chairperson or the request of two or more Members, or by giving notice to all the Members and the Alternate Member by telephone or personal delivery or by verbal comment during a regular meeting. All notices shall be given, and posted according to applicable law, at least 24 hours before the meeting.

C. Participation by the Public. Board meetings shall be open to the public. For any matter under consideration, any person may submit written comments and if attending in person, may speak to the issue upon being recognized by the Chairperson and stating his or her name and, if applicable, the names of any person or organization on whose behalf he or she is appearing.

D. Quorum. A Board meeting where a majority of its Members are present shall constitute a quorum. A majority vote of those Members present shall be required to take official action. No action shall be taken at any meeting in absence of a quorum, except to adjourn the meeting to a subsequent date. The Alternate Member may not vote at any Board meeting.

E. Agenda. The agenda shall be prepared by the City Staff Liaison, reviewed by the Chairperson, and posted no less than 24 hours before the Board meeting in accordance with the Arizona Open Public Meeting Law.

F. Minutes. Minutes of the proceedings shall be retained and filed with the City Clerk's Department who will, in turn, file and post the minutes according to applicable law.

G. Open Meeting Law. The Board is subject to the Arizona Open Public Meeting Law.

VI. Standing and Special Committees.

A. Standing Committees. The Board may create standing committees at the beginning of each calendar year as it deems necessary to carry on the work of the Board. The term shall be for the remainder of the calendar year or until terminated by a vote of the Board at a regular meeting.

B. Special Committees. The Board may create special committees for specific purposes. Such committees shall automatically dissolve when their work is done and after their final report has been accepted by the Board.

VII. Amendments.

These Bylaws may be amended by the affirmative vote of a two-thirds majority of the Members. The Board will then forward the amended Bylaws to the City Council for its approval.

# CITY COUNCIL REPORT

**SUBJECT:**
Resolution 2899-510 - Authorizing Submission of a Grant Proposal to the Arizona Department of Transportation Enhancement Funds Round 18 – Hill Drive

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Janeen Gaskins, Grants Administrator (623)333-1025

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt a resolution supporting the submittal and acceptance of a grant proposal to the Arizona Department of Transportation Enhancement Funds Round 18 for the purpose of developing sidewalks and landscaping elements along Hill Drive in the amount of $200,000.

**BACKGROUND:**

In 2008, the City of Avondale Police Department was concerned about a high number of calls for service coming from Hill Drive between 3rd and 5th Streets, just north of Western Avenue (see attached vicinity map). Drugs, prostitution, and other crimes were problems for this area. After determining that the properties had been condemned and/or foreclosed, the City purchased them through the Neighborhood Stabilization Grant Program. In an effort to improve the area the substandard properties were demolished. The City's goal is to create new housing and/or mixed use developments in the area.

**DISCUSSION:**

Arizona Department of Transportation in conjunction with Maricopa Association of Governments provides a competitive grant process for federal funding under the Enhancement Transportation Program. Avondale's engineering staff is requesting funding to support the construction of 500 linear feet of six foot wide sidewalks; installation of a 4 foot wide bike lane, installation of landscaping; and necessary lighting for the Hill Drive project.

If this grant is awarded the Engineering Department will enter into an intergovernmental agreement with ADOT which will outline all grant requirements. Avondale has received ADOT grants under the Enhancement Program in the past and has the necessary resources to comply with all federal mandates.

**BUDGETARY IMPACT:**

Funding for this project is available in Street Fund Line Item 304-1273-00-8420, 107th Ave - Indian School to RID and will be transferred to 304-1252-00-8420 Hill Street Extension Improvements.

**RECOMMENDATION:**

Staff recommends that the City Council adopt a resolution supporting the submittal and acceptance of a grant proposal to Arizona Department of Transportation Enhancement Funds Round 18 for the purpose of developing sidewalks and landscaping elements along Hill Drive in the amount of $200,000, authorize the transfer of $12,000 from 304-1273-00-8420, 107th Ave - Indian School to

RID to 304-1252-00-8420 Hill Street Extension Improvements, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

## ATTACHMENTS:

**Click to download**

- Resolution 2899-510

**RESOLUTION NO. 2899-510**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR GRANT CONSIDERATION BY THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE MARICOPA ASSOCIATION OF GOVERNMENTS RELATING TO HILL DRIVE PEDESTRIAN AND LANDSCAPE IMPROVEMENTS.

**WHEREAS**, the Arizona Transportation Enhancement Program ("ATEP"), sponsored by the Arizona Department of Transportation in connection with the Maricopa Association of Governments, is seeking proposals from state and local agencies for projects relating to all aspects of transportation enhancement; and

**WHEREAS**, the Council of the City of Avondale (the "City Council") desires to submit a project to be considered by ATEP for funding in the form of a reimbursable grant; and

**WHEREAS**, the ATEP procedures require that the City Council certify, by resolution, (i) its approval of submission of an application for grant funds in support of the City of Avondale Hill Street Project Enhancement Funds Round 18 (the "Project") from ATEP (the "Application"), (ii) the availability of matching funds, including any overmatch that may be required, (iii) a commitment to fund necessary Project development activities (including local project management), if applicable, (iv) a commitment that the Project will be ready for advertisement within three years, (v) a commitment to pay for all cost overruns related to the Project, (vi) a commitment to reimburse the Arizona Department of Transportation/Federal Highway Administration for all federal funds used in the event the Project is canceled by the City of Avondale, (vii) its commitment to pay the Arizona Department of Transportation for any related formal review, and (viii) a commitment to enter into a Joint Project Agreement ("JPA") for the purpose of maintaining the completed Project; and

**WHEREAS**, the Finance and Budget Director has determined that the transfer of appropriations from the $12,000.00 from Account No. 304-1273-00-8420, 107th Ave – Indian School to RID to Account No. 304-1252-00-8420 Hill Street Extension Improvements is necessary to fully fund the cash match commitment of the Application (the "Reallocation").

**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 (i) hereby approves the submission of the Application to be considered by ATEP for funding in the form of a reimbursable grant and (ii) has identified available matching funds totaling 5.7% of the total grant amount and any overmatch required, (iii) commits to funding necessary Project development activities (including local project management), if applicable, (iv) commits to ensuring that the Project will be ready for advertisement within three years, (v) authorizes payment for any cost overruns associated with the Project, (vi) agrees to reimburse the Arizona Department of Transportation/Federal Highway Administration for all federal funds used in the event the Project is canceled by the City of Avondale, (vii) authorizes payment of related administrative review fees to the Arizona Department of Transportation and (viii) agrees to enter into a JPA for the purpose of maintaining the completed Project.

SECTION 3. The Reallocation of $12,000.00 from Account No. 304-1273-00-8420, 107th Ave – Indian School to RID to Account No. 304-1252-00-8420 Hill Street Extension Improvements is hereby approved.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit all documents and any other necessary or desirable instruments in connection with the Application, to execute any resulting grants and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

1228593.1

# CITY COUNCIL REPORT

**SUBJECT:**
Resolution 2900-510 - Gila River Indian Community Grant Proposal for a Police Prisoner Transport Van

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Janeen Gaskins, Grants Administrator (623)333-1025

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt a Resolution supporting the submittal of a grant proposal to the Gila River Indian Community for funds to assist with the purchase of a Police Prisoner Transportation Van in the amount of $89,925.

**BACKGROUND:**

The City of Avondale has been operating the City's Detention Facility for more than 8 years. This facility provides full time services to the Avondale community and when necessary serves other surrounding communities and their respective public safety departments. With this facility, Police Officers have the option of placing suspects in a secure setting located in close proximity to their patrol areas. To date the City has one Police Prisoner Transportation Van to accommodate more than 3,000 prisoner transports per year.

**DISCUSSION:**

Each year the Avondale Police Detention Facility transports approximately 3,000 prisoners to and from various public safety agencies, court and assisting our patrol units within Maricopa County. These prisoner transports are either related to newly arrested subjects or subjects having to be moved between detention facilities for court activities. Facility personnel have contributed 861 patrol assists in the last year which relieve the Police Officer of his or her duties with prisoner bookings and transports. Thus, allowing the Police Officer to spend more time patrolling the community and less time transporting prisoners. Avondale is requesting $89,925 from the Gila River Indian Community to purchase an additional Prisoner Transportation Vehicle. Avondale's current fleet consists of one transport van with a primary function of inter-facility and court transport for daily prisoner operations. When this transport vehicle is out of service, patrol cars must be utilized. This often requires use of multiple patrol cars which increases mileage and fuel consumption.

The Gila River Indian Community's (GRIC) policy is to limit the distribution of their revenues to nearby cities, towns and counties, including the City of Avondale. GRIC has identified five areas of priority funding including public safety, transportation facilities, healthcare services, economic development and education. It is also the GRIC policy that the City requesting funds submit a resolution of support from their City Council for the grant proposal.

This project falls in line with City Council's 2009-2010 Goals by improving public safety in the community.

**BUDGETARY IMPACT:**

If funds are granted for the Avondale Police Department to purchase a Prisoner Transport Van, staff will adhere to the following time line: Within 30 - 60 days of receipt of funding from Gila River Indian

Community staff will issue a request for proposals. After a vendor is selected, a purchase order will be generated within 30 days. It will take approximately 6-9 months to receive the new van.
The Avondale Police Department will fund fuel and maintenance costs for this vehicle within its existing budget. In addition, the department will have to budget for the replacement cost of the vehicle, which has a life expentancy of approimately 4 years. The City of Avondale will request $89,925 from the Gila River Indian Community Grant. There are no match requirements for these funds.

## RECOMMENDATION:

Staff recommends that the City Council adopt a Resolution supporting the submittal of a grant proposal to the Gila River Indian Community for purchase of a Prisoner Transport Van in the amount of $89,925.

## ATTACHMENTS:

**Click to download**

- Resolution 2900-510

**RESOLUTION NO. 2900-510**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR GRANT CONSIDERATION BY THE GILA RIVER INDIAN COMMUNITY.

**WHEREAS**, the Gila River Indian Community (the "Community") is accepting applications for Proposition 202 funding from state and local agencies for projects relating to all aspects of public safety; and

**WHEREAS**, the City of Avondale desires to purchase additional police transportation equipment for the protection of Arizona residents and such equipment purchase may be eligible for Community funding; and

**WHEREAS**, the Council of the City of Avondale (the "City Council") desires to submit a grant application for funds to assist with the purchase of a Police Prisoner Transportation Van in the amount of $89,925.00 (the "Application") to be considered by the Community for funding.

**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 approves the submission of the Application for consideration by the Community.

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

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

# CITY COUNCIL REPORT

**SUBJECT:**
Resolution 2901-510 - Gila River Indian Community Grant Proposal for the Family Advocacy Center

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Janeen Gaskins, Grants Administrator (623)333-1025

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt a Resolution supporting the submittal of a grant proposal to the Gila River Indian Community for funds to assist with services rendered to victims by the Family Advocacy Center in the amount of $200,000.

**BACKGROUND:**

The Southwest Family Advocacy Center is a joint venture amongst three police departments from the Cities of Avondale and Goodyear and the Town of Buckeye. The three police chiefs of the agencies agreed to meet the needs of their respective citizens by joining resources and developing the Southwest Family Advocacy Center. The advocacy center is a multidisciplinary facility which houses detectives from each of the aforementioned agencies, Child Protective Services workers, a forensic interviewer, mental health therapists, a prosecuting attorney and forensic medical professionals from St. Joseph's Hospital and Scottsdale Health Care. The purpose of the advocacy center is to provide quality investigations of abuse in a manner that is sensitive and appropriate for crime victims. Since opening in May 2008, the Advocacy Center has provided services to more than 850 victims and their families.

**DISCUSSION:**

Each year the Family Advocacy Center provides approximately 400 victims and witnesses with services related to sexual and physical abuse crimes. These services include; forensic interviews, forensic medical exams, confrontation calls, victim advocacy and mental health counseling. When the Advocacy Center was originally founded by Avondale, Goodyear and Buckeye, staff did not anticipate that other West Valley law enforcement agencies would need services and was not prepared for the increased case load. The SWFAC philosophy has been to “not turn away any victims”, and thus we have been seeking partnerships with the other West Valley law enforcement agencies for the past year. Unfortunately, the economic conditions, specifically budget cuts and reductions by all cities and police departments are prohibiting them from contributing to the operating budget of SWFAC. In order to continue to provide services at the advocacy center to Surprise, El Mirage, Tolleson, Peoria, Wickenburg and MSCO the SWFAC is seeking funding for the operations budget through the Gila River Indian Community Grant.

The purpose of this grant project is twofold; 1) to provide advocacy center services to surrounding communities and law enforcement agencies in Maricopa County including the cities of Surprise, Wickenberg, Tolleson, El Mirage, Peoria, and unincorporated MCSO jurisdictions and 2) to hire a part-time victim advocate to provide comprehensive services to child victims of physical and sexual abuse; adult victims of sexual assault, domestic violence and elder abuse; and non-offending members of the victims' families. These services will assist victims in regaining stability in their lives and helping them to exert their rights.

The Gila River Indian Community's (GRIC) policy is to limit the distribution of their revenues to nearby cities, towns and counties, including the City of Avondale. GRIC has identified five areas of priority funding including public safety, transportation facilities, healthcare services, economic development and education. It is also the GRIC policy that the City requesting funds submit a resolution of support from their City Council for the grant proposal.

This project falls in line with City Council's 2009-2010 Goals by improving public safety in the community.

**BUDGETARY IMPACT:**

The City of Avondale will be requesting $200,000 from the Gila River Indian Community Grant. There are no match requirements for these funds.

**RECOMMENDATION:**

Staff recommends that the City Council adopt a Resolution supporting the submittal of a grant proposal to the Gila River Indian Community to support the Family Advocacy Center in the amount of $200,000.

**ATTACHMENTS:**

**Click to download**

- Resolution 2901-510

**RESOLUTION NO. 2901-510**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE SUBMISSION OF AN APPLICATION FOR GRANT CONSIDERATION BY THE GILA RIVER INDIAN COMMUNITY.

**WHEREAS**, the Gila River Indian Community (the "Community") is accepting applications for Proposition 202 funding from state and local agencies for projects relating to all aspects of public safety; and

**WHEREAS**, the City of Avondale desires to enhance and continue victim services provided by the Southwest Family Advocacy Center for the protection of Arizona residents and such services purchase may be eligible for Community funding; and

**WHEREAS**, the Council of the City of Avondale (the "City Council") desires to submit a grant application for funds to assist with the services rendered to victims by the Southwest Family Advocacy Center in the amount of $200,000 (the "Application") to be considered by the Community for funding.

**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 approves the submission of the Application for consideration by the Community.

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

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

# CITY COUNCIL REPORT

**SUBJECT:**
Ordinance 1411-510 - Repealing Chapter 14 of the Avondale Municipal Code, Massage Establishments

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

City Council will consider an ordinance repealing Chapter 14 of the Avondale Municipal Code, Massage Establishments.

**DISCUSSION:**

At the Council Work Session of April 12, 2010, staff presented to Council information regarding the history of the Massage Establishment Ordinance and its applicability to today's business environment.

It was explained that in 2003 the State of Arizona preempted the City's ability to regulate massage therapists. While in 2007 the ordinance was updated to remove the language regarding the regulation and licensing of massage therapists, it retained the regulation of establishments. Council agreed with Staff that since Massage Establishments are licensed as business, an additional layer of regulation was not necessary and directed staff to prepare the ordinance to repeal Chapter 14 of the Municipal Code.

**RECOMMENDATION:**

Staff is recommending adoption of an ordinance repealing Chapter 14 of the Avondale Municipal Code, Massage Establishments.

**ATTACHMENTS:**

**Click to download**

- Ordinance 1411-510

**ORDINANCE NO. 1411-510**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE CITY CODE BY DELETING CHAPTER 14, MASSAGE ESTABLISHMENTS, IN ITS ENTIRETY AND RESERVING SAID CHAPTER FOR FUTURE USE.

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

SECTION 1. The Avondale City Code, Chapter 14, Massage Establishments, is hereby deleted in its entirety and reserved for future use.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Ordinance 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 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

# CITY COUNCIL REPORT

**SUBJECT:**
Ordinance 1412-510 - Dedication of Easement to SRP for the Avondale Boulevard and Encanto Boulevard Improvement Project

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council adopt an ordinance dedicating an Overhead and Underground Power Distribution Easement to Salt River Project (SRP) that is requested for the Avondale Boulevard and Encanto Boulevard Improvement Project and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**BACKGROUND:**

As a part of the FY09-10 CIP, the City plans to construct roadway widening improvements and install a traffic signal at the intersection of Avondale Boulevard and Encanto Boulevard (see attached vicinity map). Staff contracted with Dibble Engineering for the design of the street improvement project. There are existing SRP overhead electric lines at the intersection of Avondale Boulevard and Encanto Boulevard which are within the widened roadway corridor. These facilities will be relocated to the outside of the roadway corridor as part of this project.

**DISCUSSION:**

The dedication of the easement to SRP is necessary to relocate existing overhead power facilities for the proposed roadway improvements along Avondale Boulevard. The easement is located within existing public rights-of-way (see attached exhibit).

**BUDGETARY IMPACT:**

The proposed dedication of the easement to SRP will have no budgetary impact on the City.

**RECOMMENDATION:**

Staff recommends that the City Council adopt an ordinance dedicating an Overhead and Underground Power Distribution Easement to Salt River Project (SRP) that is requested for the Avondale Boulevard and Encanto Boulevard Improvement Project and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

**Click to download**

- Vicinity Map
- Ordinance 1412-510

# VICINITY MAP

## CITY OF AVONDALE

**Right-of-Way Acquisition**
**Avondale Blvd & Encanto Blvd Improvements**

**ORDINANCE NO. 1412-510**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, GRANTING A POWER DISTRIBUTION EASEMENT TO SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.

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

SECTION 1. An irrigation easement is hereby granted to Salt River Project Agricultural Improvement and Power District through, over, under and across ± 0.102 acres of real property, generally located along Avondale Boulevard, at the Encanto Boulevard intersection, 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 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, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 1412-510

[Salt River Project Power Distribution Easement Agreement]

See following pages.

**WHEN RECORDED MAIL TO:**

**SALT RIVER PROJECT**
Land Department/PAB400
P. O. Box 52025
Phoenix, Arizona 85072-2025

## OVERHEAD AND UNDERGROUND POWER DISTRIBUTION EASEMENT

Maricopa County
Parcel # SE ¼, Sec. 36, T2N, R1W

Agt. SCF
Job # JJ2-168
W_____ C_____

**City of Avondale,**
**an Arizona municipal corporation,**

hereinafter called Grantor, for and in consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, its agents, employees, contractors and permittees and its and their respective successors and assigns, hereinafter called the Grantee, a non-exclusive easement in, upon, over, under, across, through and along the lands hereinafter described (such lands hereinafter described being sometimes referred to herein as the "Easement Parcel"), to construct, install, reconstruct, replace, remove, repair, operate and maintain a line of poles with wires suspended thereon and all necessary and proper guys, anchorage, crossarms, braces, underground electrical conductors, underground conduits, pipes, cables, vaults, pads, switching equipment, enclosures, manholes, transformers and all other appliances, appurtenances and fixtures for the transmission and distribution of electricity, and for all other purposes connected therewith (collectively "Facilities") at such locations and elevations, in, upon, over, under, across, through and along the Grantor's Property, as Grantee may now or hereafter deem convenient or necessary from time to time, together with the right of ingress and egress to, from, across and along the Easement Parcel. Grantee is hereby authorized to permit others to use the Easement Parcel for additional Facilities jointly with or separately from the Grantee for their purposes.

The lands in, upon, over, under, across, through and along which this easement is granted are situated in the County of Maricopa, State of Arizona, and are more particularly described as:

**Grantor's Property:**

A parcel of land situated in a portion of the Southeast Quarter of Section 36, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described in Exhibit 1 of Special Warranty Deed, Instrument No. 2010-0001086, records of Maricopa County, Arizona.

***Easement Parcel:***

Said easement as described on Exhibit "A," (prepared by Salt River Project A.I. & Power District, dated 04/13/2010), attached hereto and by this reference, made a part hereof.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**CAUTION:** Facilities placed within the Easement Parcel may contain high voltage electrical equipment. Notice is hereby given that the location of underground electrical conductors or facilities must be verified as required by Arizona Revised Statutes, Section 40-360.21, et. seq., Arizona Blue Stake Law, prior to any excavation. Notice is also hereby given that any activity performed within the Easement Parcel shall comply with the Arizona Overhead Powerline Safety Law, Arizona Revised Statutes 40-360.41-45.

Grantor shall maintain a clear area that extends 3.00 feet from and around all edges of all transformer pads and other equipment pads, and a clear operational area that extends 12.00 feet immediately in front of all transformer and other equipment openings. No obstruction, trees, shrubs, fixtures or permanent structures shall be placed within said areas.

Grantor shall not construct, install or place, or permit to be constructed, installed or placed any building or other structure, plant any trees, drill any well, store materials of any kind, or alter ground level by cut or fill, within the area of the Easement Parcel.

Grantee shall have the right (but not the obligation) to trim, cut and clear away trees, brush or other vegetation on the Easement Parcel whenever in its judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

In the event Grantee records a document to formally abandon the easement granted herein, all Grantee's rights hereunder shall cease, except the right to remove any and all property placed upon the Easement Parcel within a reasonable time subsequent to such abandonment.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, administrators, executors, personal representatives, legal representatives, successors (including successors in ownership and estate), assigns and lessees of the Grantor and Grantee.

The individual executing this document represents and warrants: (i) that he or she is authorized to do so on behalf of Grantor; (ii) that he or she has full legal power and authority to bind Grantor in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority (whether from any partner, owner, spouse, shareholder, director, member, manager, creditor, investor, developer, governmental authority, judicial or administrative body, association, or other person or entity); and (iii) that the execution, delivery, and performance by Grantor of this document and all others relating to the easement will not constitute a default under any agreement to which Grantor is a party. The individual executing this document shall indemnify, defend and hold harmless Grantee for, from and against any and all losses, costs, expenses, liabilities, claims, demands, and actions of any kind or nature, including court costs and attorneys' fees, arising or accruing as a result of the falsity of any of his or her representations and warranties contained in this document.

IN WITNESS WHEREOF, **City of Avondale,** an Arizona municipal corporation, has caused its name to be executed by its duly authorized representative(s), this _____ day of _____, _____.

**City of Avondale,**
an Arizona municipal corporation,

By _____

Its _____

By _____

Its _____

STATE OF _____ )
) ss
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this ____ day of _____, _____ by _____ and _____, as _____ and _____, respectively, of **City of Avondale,** an Arizona municipal corporation, on behalf of such corporation.

My Commission Expires:

_____

_____
Notary Public

_____
Notary Stamp/Seal

**Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1132 and 11-1133 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and (A)(3).**

Cimage/JJ2-168/City of Avondale OHUGE/kmf/042610

# EXHIBIT "A"

## LEGAL DESCRIPTION
## SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Overhead Electric Easement
Assessor Parcel: Right-of-Way
Section 36, T2N, R1W

Job Number: JJ2-168
Job Name: Avondale/Encanto Blvd Improv.
Date: 13-April-2010

A portion of the Southeast Quarter of Section 36, Township 2 North, Range 1 West, Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

**COMMENCING** at the East Quarter corner of said Section 36, being an aluminum cap flush, and from which the Southeast corner of said Section 36, being a brass cap in hand hole, bears South 00 degrees 06 minutes 59 seconds West, a distance of 2631.99 feet (Basis of Bearing);

thence South 00 degrees 06 minutes 59 seconds West along the east line of the Southeast Quarter of said section 36, a distance of 65.91 feet;

thence departing said east line, North 89 degrees 53 minutes 01 seconds West, a distance of 42.50 feet to the **POINT OF BEGINNING**;

thence South 00 degrees 06 minutes 59 seconds West along a line being parallel with and 42.50 feet west of the east line of the Southeast Quarter of said section 36, a distance of 321.69 feet;

thence departing said parallel line, South 41 degrees 09 minutes 42 seconds East, a distance of 30.32 feet;

thence North 00 degrees 06 minutes 59 seconds East along a line being parallel with and 22.50 feet west of the east line of the Southeast Quarter of said section 36, a distance of 23.43 feet;

thence departing said parallel line, South 89 degrees 53 minutes 01 seconds East, a distance of 8.00 feet;

thence South 00 degrees 06 minutes 59 seconds West along a line being parallel with and 14.50 feet west of the east line of the Southeast Quarter of said section 36, a distance of 196.88 feet;

thence departing said parallel line North 89 degrees 53 minutes 01 seconds West, a distance of 8.00 feet;

thence North 00 degrees 06 minutes 59 seconds East along a line being parallel with and 22.50 feet west of the east line of the Southeast Quarter of said section 36, a distance of 161.32 feet;

thence departing said parallel line, North 41 degrees 09 minutes 42 minutes West, a distance of 42.44 feet;

thence North 00 degrees 06 minutes 59 seconds East along a line being parallel with and 50.50 feet west of the east line of the Southeast Quarter of said section 36, a distance of 324.71 feet;

thence departing said parallel line, South 89 degrees 53 minutes 01 seconds East, a distance of 8.00 feet to the **POINT OF BEGINNING.**

This easement contains 4452 square feet more or less.

Points denoted "found" herein were observed during a survey conducted during the month of March, 2010. No survey of the parent parcel was conducted to facilitate the drafting of this description. Resultant measurements shown herein were determined from record documents as noted.

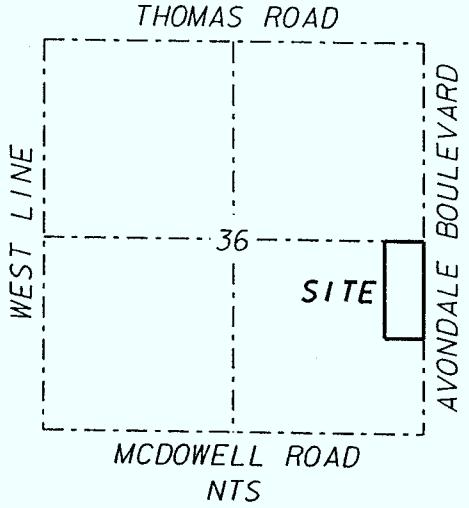
**END OF DESCRIPTION**

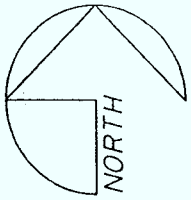
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
32224
STAN
DICKEY
Date Signed 4/19/10
ARIZONA, U.S.A.

REGISTRATION
EXPIRES: 03-31-13

# EXHIBIT "A"

## VICINITY MAP




NTS

## LEGEND

NOTE: SYMBOLS MAY NOT BE TO DRAWING SCALE, SO AS TO BETTER ENHANCE GRAPHICAL REPRESENTATION

| | |
|---|---|
| -·-·-·-·-·- | SECTION AND CENTERLINE |
| ——— | PROPERTY LINE |
| ▨ | LIMITS OF 8' EASEMENT |
| (M) | MEASURED |
| (R) | RECORD |
| (C) | CALCULATED |
| MCR | MARICOPA COUNTY RECORDER |
| NTS | NOT TO SCALE |
| POB | POINT OF BEGINNING |
| POC | POINT OF COMMENCEMENT |
| R/W | RIGHT-OF-WAY |

SRP JOB #
JJ2-168

## NOTE

THIS EXHIBIT IS INTENDED TO ACCOMPANY AN EASEMENT, IT IS NOT A SURVEY AND SHOULD NOT BE CONSTRUED AS SUCH.

EQUIPMENT PAD(S) ARE A PART OF THE EASEMENT UNLESS OTHERWISE NOTED.

## CAUTION

THE EASEMENT LOCATION AS HEREON DELINEATED MAY CONTAIN HIGH VOLTAGE ELECTRICAL EQUIPMENT, NOTICE IS HEREBY GIVEN THAT THE LOCATION OF UNDERGROUND ELECTRICAL CONDUCTORS OR FACILITIES MUST BE VERIFIED AS REQUIRED BY ARIZONA REVISED STATUES, SECTION 40-380.21, ET. SEQ., ARIZONA BLUE STAKE LAW, PRIOR TO ANY EXCAVATION.

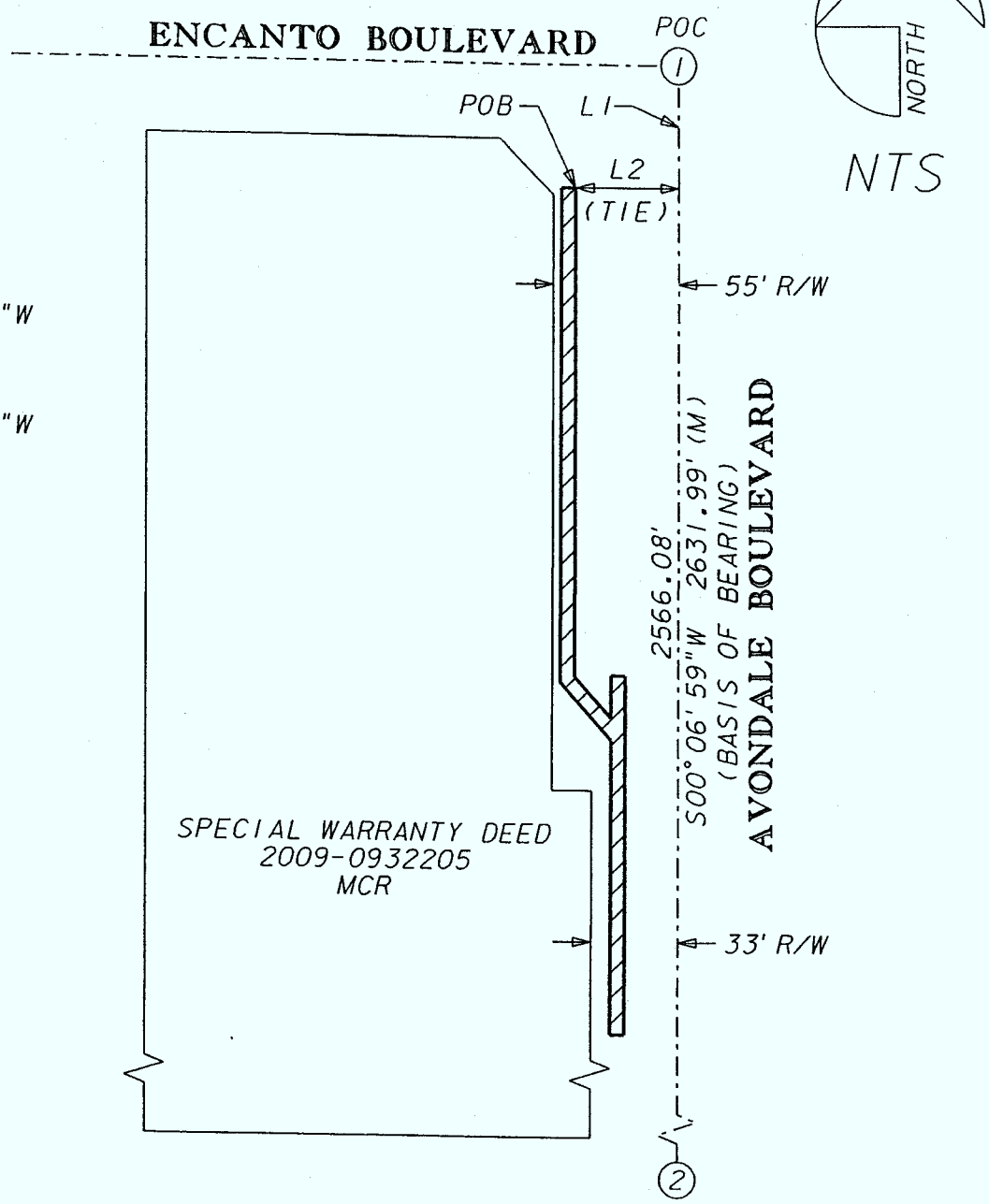
SALT RIVER PROJECT A.I.
& POWER DISTRICT

AVONDALE/ENCANTO BLVD IMPROV.
SE1/4 SEC 36 T2N R1W

OVERHEAD ELECTRIC
POWER LINE RIGHT-OF-WAY
MARICOPA COUNTY, ARIZONA

| | | | |
|---|---|---|---|
| DESIGNED | SILVESTRO | AGENT | FURROW |
| DRAWN | RAUSER | APPROVED: | |
| DATE | 4-13-10 | CHECKED BY: | KG |
| SCALE | NTS | SHEET | 3 OF 5 |

# EXHIBIT "A"




(1) EAST QUARTER CORNER SECTION 36, FOUND ALUMINUM CAP FLUSH.

(2) SOUTHEAST CORNER SECTION 36, FOUND BRASS CAP IN HAND HOLE.

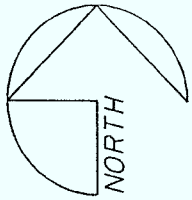
AVONDALE/ENCANTO BLVD IMPROV.

SE1/4 SEC 36 T2N R1W

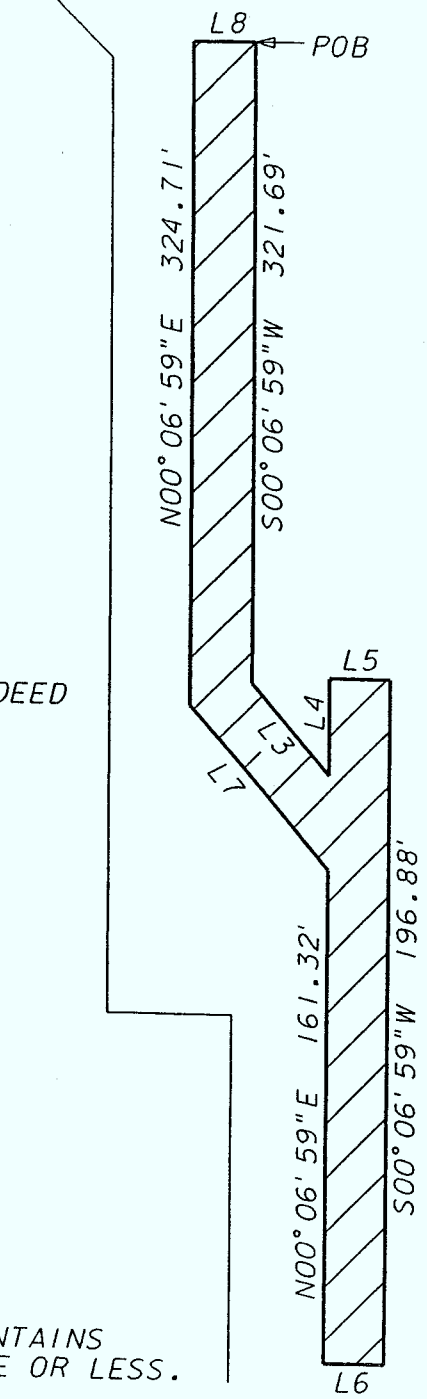
OVERHEAD ELECTRIC
POWER LINE RIGHT-OF-WAY
MARICOPA COUNTY, ARIZONA

| | | | |
|---|---|---|---|
| DESIGNED | SILVESTRO | SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT | AGENT FURROW |
| DRAWN | RAUSER | | APPROVED: |
| DATE | 4-13-10 | | CHECKED BY: KG |
| SCALE | NTS | | SHEET 4 OF 5 |

# EXHIBIT "A"




NTS




SPECIAL WARRANTY DEED
2009-0932205
MCR

L3
S41° 09' 42"E
30.32'

L4
N00° 06' 59"E
23.43'

L5
S89° 53' 01"E
8.00'

L6
N89° 53' 01"W
8.00'

L7
N41° 09' 42"W
42.44'

L8
S89° 53"01' E
8.00'

THIS EASEMENT CONTAINS
4452 SQUARE FEET MORE OR LESS.

AVONDALE/ENCANTO BLVD IMPROV.

SE1/4 SEC 36 T2N R1W

OVERHEAD ELECTRIC
POWER LINE RIGHT-OF-WAY
MARICOPA COUNTY, ARIZONA

| | | | |
|---|---|---|---|
| DESIGNED | SILVESTRO | SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT & POWER DISTRICT | AGENT FURROW |
| DRAWN | RAUSER | | APPROVED: |
| DATE | 4-13-10 | | CHECKED BY: KG |
| SCALE | NTS | | SHEET 5 OF 5 |

# CITY COUNCIL REPORT

**SUBJECT:**
Tree City USA Application

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Sammi Curless, Economic Development Specialist (623)333-1412

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting City Council approval for Mayor Lopez Rogers to sign the Tree City USA application as required for submission.

**BACKGROUND:**

At the April 5 worksession, the City Council reqested that staff move forward to finalize and submit the City's initial Tree City USA recognition application. The Tree City USA program is sponsored by the Arbor Day Foundation in cooperation with the United States Department of Agriculture Forest Service and the National Association of State Foresters which provides direction, technical assistance, public attention, and national recognition for urban and community forestry programs in 3,400 communities across the United States including twenty-one (21) in Arizona. To be eligible for recognition, the City must meet four standards established by The Arbor Day Foundation and the National Association of State Foresters. These standards are:

1. Establish a tree board or department.
2. Adopt a tree care ordinance.
3. Provide financial information that the City's forestry annual budget is at least $2 per capita.
4. Conduct an Arbor Day observance and issue a proclamation.

**RECOMMENDATION:**

Staff recommends that the City Council authorize the Mayor to sign the Tree City USA application as required for submission.

**ATTACHMENTS:**

**Click to download**

No Attachments Available

# CITY COUNCIL REPORT

**SUBJECT:**
Professional Service Agreement - Buxton Company for a Retail Development Strategy Plan

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Daniel Davis, Economic Development Director (623)333-2411

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a Professional Services Agreement with Buxton Company for a Retail Development Strategy Plan in the amount of $75,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

Staff has worked with representatives from our local retail centers and real estate brokers to identify retailers and restaurants that would be a good fit for the Avondale community. During the past couple of years it has been increasingly competitive to recruit new retailers into our market, especially national chains. In an effort to maximize our potential and identify, select, and recruit new retailers, staff believes it is essential that we use the best technical and analytical resources to achieve our retail development goals. To this end, the City of Avondale issued a Request for Proposals (RFP) seeking responses from qualified firms interested in providing for the creation and implementation of a retail development strategy plan to stabilize and maximize the sales tax base potential for the City. The City received two (2) proposals from nationally recognized firms that specialize in this service. A competitive scoring and interview process was conducted in cooperation with our Finance and Procurement Office. Buxton Company was the highest rank firm selected by the committee.

**DISCUSSION:**

The selected vendor, Buxton will conduct a retail assessment of the City's trade area and provide a profile of the trade area's customers' buying habits. Additional customer analytics such as lifestyle, media habits and purchase behavior will be developed to assist staff in soliciting businesses to consider locating their establishments within the City. These assessments will provide staff information in determining strategic investments and provide the critical data necessary in working with leasing agents on the appropriate product mix when seeking to fill vacant retail spaces and retain existing businesses. In addition, Buxton that will support staff at retail conferences by making specific introductions and contacts with targeted firms. The assessment will take into consideration more than just population and standard demographics, but also assess the competition, retail leakage, cannibalization, retail trends and market viability. Customers today shop by convenience, measuring distance based on time, not mileage. One of the analytical tools that Buxton will employ is a custom drive time analysis to determine Avondale's trade area. This custom analysis is developed using an in house database supported by their knowledge and expertise of individual retail client's actual trade areas. The resulting drive time trade area information will accurately depict consumer shopping patterns rather than the traditional trade rings. Buxton's has extensive public sector experience assisting municipalities, counties and economic development groups. Buxton's community retail expansion strategy has assisted more than 450 public sector clients nationwide, resulting in the development of more than 20 million square feet of retail space.

## BUDGETARY IMPACT:

The funding for the Retail Development Strategy Plan is available in the Economic Development Opportunities Fund No. 101-6700-6180

## RECOMMENDATION:

Staff recommends that the City Council approve a Professional Services Agreement with Buxton Company for a Retail Development Strategy Plan in the amount of $75,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

## ATTACHMENTS:

**Click to download**

- PSA

**PROFESSIONAL SERVICES AGREEMENT**
**BETWEEN**
**THE CITY OF AVONDALE**
**AND**
**BUXTON COMPANY**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of May 3, 2010, between the City of Avondale, an Arizona municipal corporation (the "City") and Buxton Company, a Texas corporation (the "Consultant").

RECITALS

A. The City issued a Request for Proposals "Request for Proposals for Retail Development Strategy Plan (ED 10-046)" (the "RFP"), attached hereto as Exhibit A and incorporated herein by reference, seeking proposals from vendors for the creation and implementation of a retail development strategy plan to stabilize and maximize the sales tax base potential for the City.

B. The Consultant submitted a proposal in response to the RFP (the "Proposal"), attached hereto as Exhibit B and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant for retail development strategy plan services (the "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. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until March 1, 2011.

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

3. Compensation. The City shall pay Consultant an amount not to exceed $75,000.00 for the Services at the rates as set forth in the Fee Proposal, attached hereto as Exhibit D and incorporated herein by reference.

4. Payments. The City shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

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

6. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire City residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

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

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

9. Performance Warranty. Consultant warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

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

11. Insurance.

11.1 General.

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

b. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

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

d. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

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

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

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

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

i. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies

are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of the Consultant's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

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

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

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

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

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

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

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

11.2 Required Insurance Coverage.

a. Commercial General Liability. Consultant shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate and a $2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent Consultants, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

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

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

d. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

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

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

13. Termination; Cancellation.

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

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

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

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

13.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to 150% of the gratuity.

13.6 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 Consultant 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 Consultant shall relieved of any subsequent obligation under this Agreement.

14. Miscellaneous.

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

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

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

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

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

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

Consultant agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

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

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

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

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

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

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

14.13 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 Consultant any amounts Consultant owes

to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

b. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Consultant any amounts Consultant owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

14.14 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.
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
Facsimile: (602) 340-1538
Attn: Andrew J. McGuire, Esq.

If to Consultant: Buxton Company
2651 South Polaris Drive,
Fort Worth, Texas 76137
Facsimile: (817) 332-3686
Attn: Mary Lou Jacobs

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.

14.15 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons

requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.

14.16 Records and Audit Rights. Consultant'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 Consultant and its subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Consultant and its subcontractors are complying with the warranty under subsection 14.17 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (a) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (b) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 14.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant 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 for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. Consultant 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 Consultant or its subcontractors reasonable advance notice of intended audits. Consultant 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.

14.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant 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). Consultant'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.

14.18 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Consultant 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 Consultant submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 13.2 above.

14.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of the Agreement, the Scope of Work, the Fee Proposal, the RFP and the Consultant's Proposal, the documents shall govern in the order listed herein.

14.20 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**" | "**Consultant**" |
| --- | --- |
| CITY OF AVONDALE, an Arizona municipal corporation | BUXTON COMPANY, a Texas corporation |
| _____ | By:_____ |
| Charles P. McClendon, City Manager | |
| ATTEST: | Name:_____ |
| _____ | Its:_____ |
| Carmen Martinez, City Clerk | |

(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 BUXTON COMPANY, a Texas corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BUXTON COMPANY

[RFP]

See following pages.

# REQUEST FOR PROPOSALS
# FOR
# RETAIL DEVELOPMENT STRATEGY PLAN

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323

## SOLICITATION INFORMATION AND SELECTION SCHEDULE

| | |
|---|---|
| Solicitation Number: | **ED 10-046** |
| Solicitation Title: | **Retail Development Strategy Plan** |
| Release Date: | **January 5, 2010** |
| Advertisement Dates: | **January 5 & 12, 2010 – West Valley View**<br>**January 8, 2010 – Arizona Business Gazette** |
| **NON-MANDATORY**<br>Pre-Submittal Conference: | **NOT APPLICABLE FOR THIS SOLICITATION** |
| Final Date for Inquiries | **January 15, 2010** |
| Proposal Due Date and Time: | **January 20, 2010**<br>**3:00 p.m.** (local time, Phoenix, Arizona) |
| Shortlist Announced for Oral Interviews: | **January 26, 2010** |
| *Oral Interviews (if necessary): | **February 1, 2010** |
| Target City Council Award Date: | **March 1, 2010** |
| Anticipated Agreement Start Date: | **March 2, 2010** |
| City Representatives: | **Dan Davis** **ddavis@avondale.org** **623-333-2411**<br>**Loretta Browning** **lbrowning@avondale.org** **623-333-2029** |

* In the event that a Vendor can not be selected based solely on Proposals submitted, Oral Interviews may be conducted at the City's sole discretion.

** The City of Avondale reserves the right to amend the solicitation schedule as necessary.

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## I. RFP PROCESS; AWARD OF AGREEMENT

1. Purpose; Scope of Work. The City of Avondale (the "City") is issuing this Request For Proposals (this "RFP") from qualified, firms ("Vendors") interested in providing for the creation and implementation of a retail development strategy plan (the "Services") to stabilize and maximize the sales tax base potential for the City as more particularly described in the Scope of Work attached to the sample Professional Services Agreement as Exhibit C (the "Services"), and incorporated herein by reference. In accordance with the City's Procurement Code, the City will accept sealed proposals ("Proposals") for the Services specified in the Scope of Work in the sample Professional Services Agreement.

The selected Vendor will conduct a retail assessment of the City's trade area and provide a profile of the trade area's customers' buying habits. Additional customer analytics such as lifestyle, media habits and purchase behavior will be developed to assist staff in soliciting businesses to consider locating their establishments within the City. These assessments will inform elected officials in determining strategic investments and City staff in working with leasing agents on the appropriate product mix when seeking to fill vacant retail spaces and retain existing businesses. In addition, the City seeks a vendor that will support staff at retail conferences by making specific introductions and contacts with targeted firms.

The assessment should take in to consideration more than just population and standard demographics, but also asses the competition, retail leakage, cannibalization, retail trends and market viability.

The City seeks a partner that will personalize its guidance and professional services to meet the specific needs of the City. This needs to be more than ongoing insight into key industry topics via e-newsletter, webcasts and other interactive tools, although these basic services are also required. The selected Vendor will be able to provide support to staff attending the International Council of Shopping Centers (ICSC) annual Las Vegas conference by providing access to booth space and facilitating contacts with targeted firms.

2. Preparation/Submission of Proposal. Vendors are invited to participate in the competitive selection process for the Services outlined in this RFP. Responding parties shall review their Proposal submissions to ensure the following requirements are met.

2.1 Irregular or Non-responsive Proposals. The City shall consider as "irregular" or "non-responsive" and reject any Proposal not prepared and submitted in accordance with this RFP, or any Proposal lacking sufficient information to enable the City to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions shall be cause for rejection. Proposals may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City:

a. Vendor does not meet the minimum required skill, experience or requirements to perform or provide the Service.

b. Vendor has a past record of failing to fully perform or fulfill contractual obligations.

c. Vendor cannot demonstrate financial stability.

d. Vendor's Proposal contains false, inaccurate or misleading statements that, in the opinion of the City Manager or authorized designee, is intended to mislead the City in its evaluation of the Proposal.

2.2 Submittal Quantities. Interested Vendors must submit **one (1) original** and **four (4) copies (five (5) total submittals)** of the Proposal. In addition, interested parties must submit **one (1) original copy** of the Proposal on a CD-ROM (or electronic media approved by the City) in printable Adobe or Microsoft Word format (or other format approved by the City). Failure to adhere to the submittal quantity criteria shall result in the Proposal being considered non-responsive.

2.3 Required Submittal. The Proposal shall be submitted with a cover letter with an **original ink** signature by a person authorized to bind the Vendor. Proposals submitted without a cover letter with an **original ink signature** by a person authorized to bind the Vendor shall be considered non-responsive. The Proposal shall be a maximum of **fifteen (15)** pages to address the Proposal criteria (excluding resumes, the Vendor Information Form, but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2" x 11") with criteria information shall be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 1/2" x 11", showing a proposed Project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or Proposal criteria responses. The minimum allowable font for the Proposal is **11 pt**. Failure to adhere to the page limit and size criteria and font size shall result in the Proposal being considered non-responsive. Telegraphic (facsimile), electronic (e-mail) or mailgram Proposals will not be considered.

2.4. Vendor Responsibilities. All Vendors shall (a) examine the entire RFP, (b) seek clarification of any item or requirement that may not be clear, (c) check all responses for accuracy before submitting a Proposal and (d) submit the entire Proposal by the Proposal Due Date and Time. Late Proposals will not be considered. A Vendor submitting a late Proposal shall be so notified. Negligence in preparing a Proposal confers no right of withdrawal after the Proposal Due Date and Time.

2.5. Sealed Submittals. All Proposals shall be sealed and clearly marked with the RFP number and title**, Retail Development Strategy Plan (ED 10-046)**, on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Proposal. The City is not responsible for the pre-opening of, post-opening of, or the failure to open, any Proposals not properly addressed or identified.

2.6. Pricing. The Vendor shall submit the same number of copies of the Fee Proposal as described in Section I, 2.2 in a separate, sealed envelope enclosed with the Vendor's Proposal. Pricing shall be inclusive of all of the Services in the Scope of Work as described in the Professional Service Agreement in Exhibit C. A sample Fee Proposal is attached to the Professional Service Agreement as Exhibit D.

2.7. Address. All Proposals shall be directed to the following address: City Clerk, 11465 West Civic Center Drive, Suite 200, Avondale, Arizona 85323, or hand-delivered to the City Clerk's office by the Proposal Due Date and Time indicated on the cover page of this RFP.

2.8. Pricing Errors. If price is a consideration and in case of error in the extension of prices in the Proposal, the unit price shall govern. Periods of time, stated as number of days, shall be calendar days.

2.9. Proposal Irrevocable. In order to allow for an adequate evaluation, the City requires the Proposal to be valid and irrevocable for **90** days after the Proposal Due Date and Time indicated on the cover of this RFP.

2.10 Amendment/Withdrawal of Proposal. At any time prior to the specified Proposal Due Date and Time, a Vendor (or designated representative) may amend or withdraw its Proposal. Any erasures, interlineations, or other modifications in the Proposal shall be initialed in **original ink** by the authorized person signing the Proposal. Facsimile, electronic (e-mail) or mailgram Proposal amendments or withdrawals will not be considered. No Proposal shall be altered, amended or withdrawn after the specified Proposal Due Date and Time.

3. Cost of Proposal Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in responding to this RFP. All materials and documents submitted in response to this RFP become the property of the City and will not be returned.

4. Inquiries.

4.1 Written/Verbal Inquiries. Any question related to the RFP shall be directed to one of the City Representatives whose names appear on the cover page of this RFP. Questions shall be submitted in writing or via e-mail by the close of business on the Final Date for Inquiries indicated on the cover page of this RFP or submitted verbally (A) at the Pre-Submittal Conference on the date indicated on the cover page of this RFP (if such Pre-Submittal Conference is held) or (B) after the Pre- Submittal Conference but before the Final Date for Inquiries indicated on the cover page of this RFP. In the event the City is closed on the Final Date for Inquiries, the Vendor shall submit the question(s) to one of the City Representatives via e-mail or voicemail. Any inquiries related to this RFP shall refer to the number and title, page and paragraph. However, the Vendor shall not place the RFP number and title on the outside of

any envelope containing questions, because such an envelope may be identified as a sealed Proposal and may not be opened until after the Proposal Due Date and Time.

4.2 Inquiries Answered. Written questions will be read and answered at the Pre-Submittal Conference on the date indicated on the cover page of this RFP. Verbal or telephone inquiries directed to City staff **will not be answered**. Within two (2) business days following the Pre-Submittal Conference, answers to all questions received in writing or via e-mail or verbally at the Pre-Submittal Conference will be mailed, sent via facsimile and/or e-mailed to all parties who obtained an RFP package from the City and who legibly provided their mailing address, facsimile and/or e-mail address to the City. No questions, submitted in any form, will be answered after the final date for inquiries listed on the cover of this RFP.

5. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFP. This conference may be designated as mandatory or non-mandatory on the cover page of this RFP. Additionally, if the Pre-Submittal Conference is designated as mandatory, failure to attend shall render that Vendor's Proposal non-responsive. Vendors are strongly encouraged to attend those Pre-Submittal Conferences designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFP in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this RFP or any apparent omission or discrepancy should be presented to the City at this conference. The City will then determine if any action is necessary and may issue a written amendment or addendum to the RFP. Oral statements or instructions will not constitute an amendment or addendum to this RFP. Any addendum issued as a result of any change in this RFP shall become part of the RFP and must be acknowledged in the Proposal submittal. Failure to indicate receipt of the addendum shall result in the Proposal being rejected as non-responsive.

6. Payment Requirements; Payment Discounts. Any Proposal that requires payment in less than 30 calendar days shall not be considered. Payment discounts of 30 calendar days or more will be deducted from the Proposal price in determining the low Proposal. However, the City shall be entitled to take advantage of any payment discount offered by the Vendor provided payment is made within the discount period.

7. Federal Excise Tax. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.

8. Public Record. All Proposals shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.

9. Confidential Information. If a Vendor believes that a Proposal or protest contains information that should be withheld from the public record, a statement advising the City Representative of this fact shall accompany the submission and the information shall be identified. The information identified by the Vendor as confidential shall not be disclosed until the City Representative makes a written determination. The City Representative shall review the

statement and information and shall determine in writing whether the information shall be withheld. If the City Representative determines to disclose the information, the City Representative shall inform the Vendor in writing of such determination.

10. Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor shall (a) be licensed with the Arizona Corporation Commission to do business in Arizona and (b) have a completed Request for Vendor Number on file with the City Financial Services Department. The Vendor shall provide licensure information with the Proposal. Corporations and partnerships shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

11. Certification. By submitting a Proposal, the Vendor certifies:

11.1 No Collusion. The submission of the Proposal did not involve collusion or other anti-competitive practices.

11.2 No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

11.3 No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a City employee, officer or agent in connection with the submitted Proposal. It (including the Vendor's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other City staff. All contact must be addressed to the City's Procurement Agent, except for questions submitted as set forth in Section 4, Inquiries, above. Any attempt to influence the selection process by any means shall void the submitted Proposal and any resulting Agreement.

11.4 Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Agreement.

11.5 No Signature/False or Misleading Statement. Failure to sign the Proposal, or signing it with a false or misleading statement, shall void the submitted Proposal and any resulting Agreement.

11.6 Professional Services Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample Professional Service Agreement including the Scope of Work and other Exhibits.

12. Award of Agreement.

12.1 Selection. A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule listed on the cover page of this RFP. Proposals shall be opened at the time and place designated on the cover page of this RFP. The name of each Vendor and the identity of the RFP for which the Proposal was submitted shall be publicly read and recorded in the presence of witnesses. PRICES SHALL NOT BE READ. The Selection Committee shall award the agreement to the responsible and responsive Vendor whose Proposal is determined, in writing, to be the most advantageous to the City and best meets the overall needs of the City taking into consideration the scoring criteria set forth in this RFP. The amount of applicable transaction privilege or use tax of the city shall not be a factor in determining the most advantageous Proposal. After the City has entered into an Agreement with the successful Vendor, the successful Proposal and the scoring documentation shall be open for public inspection.

12.2 Line Item Option. Unless the Proposal states otherwise, or unless otherwise provided within this RFP, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City.

12.3 Form of Agreement. The selected Vendor will be required to execute the City's standard Professional Services Agreement in a form acceptable to the City Attorney. A sample of the standard agreement is included with this RFP. If the City is unsuccessful in negotiating an Agreement with the highest-scoring Vendor, the City may then negotiate with the second, then third, highest-scoring Vendor until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

12.4 Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFP, the City expressly reserves the right to: (i) waive any immaterial defect or informality, (ii) reject any or all Proposals or portions thereof and (iii) reissue an RFP.

12.5 Protests. Any Vendor may protest this RFP issued by the City, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the City Procurement Code.

13. Offer. A Proposal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFP and the Vendor's responsive Proposal, unless any of the terms, conditions, or specifications is modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the City has approved, a professional services agreement between the City and the Vendor in the form acceptable to the City Attorney. A sample Professional Service Agreement is included herein.

## II. PROPOSAL FORMAT; SCORING

Upon receipt of a Proposal, each submittal will be reviewed for compliance with the Proposal requirements by the Selection Committee. Proposals shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the Proposal is non-responsive. Additionally, the Selection Committee will evaluate and award points to each Proposal based upon the scoring criteria as outlined in this document. Points listed below are the maximum number of points possible for each criteria and not the minimum number that the Selection Committee may award. If necessary, the Selection Committee may conduct oral interviews with at least three (3) of the highest ranked Vendors based upon the Proposal submittal scoring.

**Section 1: General Information** **5 pts**

A. One page cover letter as described in Section I, 2.3.

B. Explain the legal organization of the Vendor. Provide identification information of the Vendor. Include the legal name, address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If the Vendor is a wholly owned subsidiary of another company, identify the parent company. Provide the name, address and telephone number of the person to contact concerning the Proposal.

C. Identify the location of the Vendor's principal office and the local work office, if different.

D. Provide a general description of the Vendor that is proposing to provide the Services, including years in business.

E. Identify any contract or subcontract held by the Vendor or officers of the Vendor that have been terminated within the last five (5) years. Briefly describe the circumstances and the outcome.

F. Identify any claims arising from a contract which resulted in litigation or arbitration within the last five (5) years. Briefly describe the circumstances and the outcome.

G. Vendor Information Form (may be attached as separate appendix).

**Section 2: Experience and Qualifications of the Vendor** **30 pts**

A. Provide a detailed description of the Vendor's experience in providing similar consulting services to municipalities or other entities of a similar size to the City; specifically relating experience with respect to conducting retail development strategy studies.

B. Provide a list of at least three (3) organizations of a similar size or similar operation to the City in which work has been performed. This list shall include, at a minimum, the following:

(i) Name of company or organization.
(ii) Contact name.
(iii) Contract address, telephone number and e-mail address.
(iv) Type of services provided.

The above information must be current, as this will be used to verify references. Inability of the City to verify references shall result in the Proposal being considered non-responsive.

**Section 3: Key Positions 20 pts**

A. Identify each key personnel member that will render services to the City including title and relevant experience required, including the proposed Project Manager.

B. Indicate the roles and responsibilities of each key position. Include senior members of the Vendor only from the perspective of what their role will be in providing services to the City.

C. If a subcontractor will be used for all work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

D. Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this project. Résumés should be attached together as a single appendix at the end of the Proposal and will not count toward the Proposal page limit.

**Section 4: Project Approach 30 pts**

A. Describe the Vendor's approach to performing the required Services in the Scope of Work described in the Professional Services Agreement in Exhibit C, and its approach to contract management, including its perspective and experience on partnering, customer service, quality control, scheduling and staff.

B. Describe any alternate approaches if it is believed that such an approach would best suit the needs of the City. Include rationale for alternate approaches, and indicate how the Vendor will ensure that all efforts are coordinated with the City's general representation.

**Section 5: Pricing 15 pts**

Vendor shall submit the same number of copies of the Fee Proposal as described in Section I, 2.6 in a separate, sealed envelope enclosed with the Vendor's Proposal with the signature of the

representative of the Vendor who is authorized to make such an offer. The Fee Proposal shall itemize all fees and costs and shall be provided in a spreadsheet format to enable the City staff to determine (A) total number of proposed labor hours, (B) key project team member(s) proposed for each task and sub-task, (C) administrative overhead and (D) travel expenses. The hourly rate, name of the team member and staff classification shall be included in the spreadsheet. Identify all other costs to billed to the Project, including project expenses (no mark-up on expenses will be allowed) and subcontractor fees.

**Total Possible Points for Proposal: 100**

## III. ORAL INTERVIEWS; SCORING

In the event that a Vendor cannot be selected based solely on the Proposals submitted, up to three Vendors may be selected for oral interviews. The selected Vendors will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFP and awarded points based upon the criteria as outlined below. Vendors may be given additional information for these oral interviews. These discussions will relate less to the past experience and qualifications already detailed in the Proposals and relate more to identification of the Vendor's program approach and to an appraisal of the people who would be directly involved in this Services for this RFP.

**Oral Interview**

| | |
|---|---|
| 10 | General Information |
| 25 | Experience and Qualifications of the Vendor |
| 20 | Key Positions |
| 45 | Proposed Services Provided |
| **100** | **Total Possible Points for Oral Interview** |

## IV. VENDOR INFORMATION FORM

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

| | |
|---|---|
| VENDOR SUBMITTING PROPOSAL | FEDERAL TAX ID NUMBER |
| PRINTED NAME AND TITLE | AUTHORIZED SIGNATURE |
| ADDRESS | TELEPHONE FAX # |
| CITY STATE ZIP | DATE |
| WEB SITE: _____ | EMAIL ADDRESS: _____ |

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

_____ Small Business Enterprise (SBE)
_____ Minority Business Enterprise (MBE)
_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

If yes, please provide details and documentation of the certification.

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BUXTON COMPANY

[Consultant's Proposal]

See following pages.

# City of Avondale, AZ
# Economic Development Department

## Request for Proposal for
## Retail Development Strategy

## Solicitation Number: ED 10-046
## Retail Development Strategy Plan

Prepared by: Mary Lou Jacobs

Prepared: January 19, 2010

Expiration Date: April 30, 2010

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# INDEX

Section 1: General Information

Section 2: Experience and Qualifications of the Vendor

Section 3: Key Positions

Section 4: Project Approach

Section 5: Pricing

Exhibits: Vendor Information Form

# Section 1: General Information

## A. Cover Letter

January 19, 2010

City Clerk
City of Avondale
11465 West Civic Center Drive, Suite 200
Avondale, Arizona 85323

Subject: Request for Proposal for Retail Development Strategy Plan
RFP Number ED 10-046

Dear Sir/Madam:

Thank you for the opportunity to respond to the Request for Proposal for the City of Avondale Retail Development Strategy Plan.

Buxton has been engaged by more than 450 public sector clients resulting in more than 20 million square feet of retail based specifically on the results of their efforts with Buxton. Just as you face unique challenges and opportunities in Avondale, each of our client cities must understand their uniqueness, but more importantly, then be able to capitalize on the opportunities associated with these market characteristics. Our public sector clients have been able to achieve amazing results using our tools for retail identification and recruitment.

Using our proprietary methodologies, Buxton will collect and analyze your community's trade area information and give it to you in a format that is easy-to-use and appealing to real estate executives and developers. The best information, however, is useless without a plan for using it. Much more than data collection, Community*ID* is an execution strategy that can help you build or revitalize your existing marketing and economic development program.

We look forward to bringing our retail expertise and resources to bear on your behalf.

Sincerely,

David Glover
Chief Financial Officer
Buxton Company

## B. Buxton's Legal Organization

Name: Buxton Company
Address: 2651 South Polaris Drive, Fort Worth, TX 76137
Legal Form: Buxton is classified as an "S Corporation".
Buxton was incorporated on March 1, 1994 in Fort Worth, TX

## C. Buxton's Principal Office

2651 South Polaris Drive, Fort Worth, TX 76137

## D. General Description of Buxton

Since 1994, Buxton has been the industry leader in consumer analytics for the retail industry. Our focus now includes retailers, city governments, healthcare organizations and consumer packaged goods manufacturers. Buxton draws from its individual- and household-level data to determine lifestyles and buying habits to clearly identify the consuming habits of any trade area. This is used by retailers to make site selection decisions, and by the public sector in retail recruitment. Among our 1,900 clients are retailers FedEx Office, New Balance Shoes, HEB and Vitamin Shoppe as well as over 450 communities seeking to expand their retail sectors.

## E. Contracts awarded Buxton have not been terminated within the last five (5) years.

## F. Buxton has no claims arising from a contract which resulted in litigation or arbitration within the last five (5) years.

## G. Vendor Information Form (attached as separate appendix).

## Section 2: Experience and Qualifications of the Vendor

### A. Detailed description of Buxton's experience in providing similar consulting services to municipalities and other entities of a similar size to the City.

Buxton's public sector division helps municipalities, counties and economic development groups identify retailers and restaurants that are a natural fit for a market through consumer analytics. Designed specifically for use in community economic development programs, Buxton's Community*ID* retail expansion strategy has assisted more than 450 public sector clients nationwide, resulting in the development of more than 20 million square feet of retail space. We integrate our technical capabilities with more than 500 cumulative years of retail management and local economic development experience to help municipalities achieve their retail goals.

More than simply providing data, Community*ID* supplies custom marketing materials and strategies targeting the unique location requirements of retailers, developers and commercial real estate brokers. Community*ID* clients achieve outstanding success using our tools for retail identification, selection and recruitment. And our clients benefit from our unique understanding of retail site selection from the retailer's point of view. The combination of technical expertise and professional guidance gives municipalities the capacity to immediately implement an effective retail development program

Buxton has worked with communities of all sizes, including larger communities such as South Bend, IN (population 110,000), Denton, TX (population 120,000), Hesperia, CA (population 80,000) and Kingsport, TN (population 45,000).

### B. Organizations of a similar size or similar operation to the City in which work has been performed by Buxton.

City of Denton, TX
Linda Ratliff
Director of Economic Development
101 S. Locust, Suite 500
Denton, TX 76201
940-349-8303
Linda.ratliff@cityof denton.com
Type of service provided: CommunityID (same as proposal to City of Avondale, AZ)

City of South Bend, IN
Bill Schalliol
Economic Development Planner
1200 County City Building

South Bend, IN 46601
574-235-5842
bschalli@southbendin.gov
Type of service provided: CommunityID (same as proposal to City of Avondale, AZ)

City of Hesperia, CA
Lisa LaMere
Analyst
15776 Main Street
Hesperia, CA 92345
760-947-1910
llamere@cityofhesperia.us
Type of service provided: CommunityID (same as proposal to City of Avondale, AZ)

Montgomery County Economic Development
Joseph Tuss
Director
451 West 3rd Street, 10th Floor
Dayton, OH 45422
937-225-5021
tussj@mcohio.org
Type of service provided: CommunityID (same as proposal to City of Avondale, AZ)

City of Kingsport, TN
Jeff Fleming
Assistant City Manager
225 W. Center Street
Kingsport, TN 37660
423-229-9381
fleming@ci.kingsport.tn.us
Type of service provided: CommunityID (same as proposal to City of Avondale, AZ)

## Section 3: Key Positions

**A & B: Key Project Personnel – see below**
**C. There will be no subcontractor for this project**

**Key Project Personnel**
Team members for your project will include Buxton personnel with strong retail and economic development backgrounds as well those from operations: Senior Vice President and Client Services representative.

**Janet Ehret – Project Manager -** Client Services Associate
Should Buxton be awarded the project by the City, she will be the project manager to ensure that the highest level of service is delivered in a timely manner. Janet has worked on Community*ID* projects with more than 250 municipalities throughout the United States. Prior to joining Buxton, Janet was with the Real Estate Department at RadioShack. Janet graduated from Mississippi State University with a major in marketing.

**Mary Lou Jacobs -** Territory Business Manager, Community*ID* Division
Mary Lou works with proactive cities throughout the western U.S. to recruit retailers to their trade area. Mary Lou will be a key contact with the City, working closely with the project manager. Mary Lou received her B.A. degree from Texas Christian University and is a member of International Council of Shopping Centers (ICSC).

**Philip Davis -** Manager/Senior GIS Analyst, Community*ID* Division
As senior analyst for the Community*ID* division, Philip oversees every aspect of Community*ID* projects in Buxton's GIS department. His duties include supervising daily operations, working with clients, managing projects and serving as a liaison between analysts and the sales team. Philip has managed the GIS function for more than 350 Community*ID* projects. Philip graduated from the University of North Texas with a degree in Geography.

**Chris Briggs -** Director of Client Services, Community*ID* Division
As director of client relations for the Community*ID* division, Chris works to align public sector partner needs with Buxton's ever-evolving capabilities. In this role he also serves as a liaison between Buxton's public sector partners and analytic staff.

Chris' extensive background with Buxton includes working in Senior GIS Analyst positions with the Community*ID*, Customer*ID* and Healthcare*ID* divisions. This experience has

instilled within Chris a unique perspective as to what Buxton's tools and insights can do to help its public sector partners in their efforts to create better communities. Chris graduated from the University of North Texas. He was named the UNT College of Arts and Sciences Alumni of the Year in 2007, and he was recognized as the UNT Geography Outstanding Alumni for 2007. Chris served as a private sector partner on the planning committee for the 2009 International City Managers Association conference in Montreal.

**Amy Buxton,** Senior Vice President, Community*ID* Division - Western Region
Amy brings more than 18 years of marketing, retail and business development experience to her position. Prior to joining Buxton, Amy held positions with the Colleyville (Texas) Chamber of Commerce, Baylor Health Care System and Andersen. Amy has worked with numerous communities to establish or enhance their retail recruitment & retention strategies and has been a featured presenter at many organizations, including the Texas Municipal League, the Urban Land Institute, the National League of Cities, and the League of California Cities. She is also a past board member of Junior Achievement. Amy holds a bachelor's degree in communications from Baylor University. Amy will oversee the activities of the team assigned to the Avondale project.

**Bill R. Shelton, CEcD -** Partner, Community*ID* Division
For more than 20 years, Bill worked for the Fort Worth Chamber of Commerce, serving 16 years as its president. He is a Certified Economic Developer and is past chair of the American Economic Development Council. A founding member of the Texas Economic Development Council, he has served as the organization's president. Bill was honored with a lifetime membership to the International Economic Development Council. Bill's professional service also includes serving as dean of the Basic Economic Development Course at Texas A&M University. Bill holds a bachelor's degree in marketing from the University of Texas at Austin, and he completed post-graduate studies at Texas A&M University. His experience will be a valuable resource during the Avondale project.

**Harvey H. Yamagata -** Partner, Buxton
Clients benefit from the expertise Harvey has gained during 35 years in retail, including leadership roles in brick and mortar, catalog and website retailing. His 20-year career at Tandy Corporation covered the time when the company grew from $350 million to $3.5 billion in sales and took him from retailing in Europe to opening distributors in Asia. He headed the marketing efforts of the RadioShack Business Products division at a time when they held the major share in the burgeoning personal computer market. Harvey received a bachelor's degree from the University of Wisconsin and a master of business administration degree from Texas Christian University. Harvey will act as a resource for the Avondale project team.

## Section 4: Project Approach

Once you have engaged Buxton to work with you in developing Community*ID*, a project team will be assigned to guide you through the entire process—from initial data collection to final presentation of the results. The detailed approach set forth below will address the required Services in the Scope of Work described in the Professional Services Agreement in Exhibit C. We have partnered with numerous public sector clients in their retail sector strategy development and are confident that the steps below will provide the best contract project management, customer service, quality control and timely delivery.

**Staff Visits**
During visits to the community, Buxton's staff is able to make clear and candid assessments of the community's strengths, weaknesses and potential. Our daily involvement with over a thousand retail and restaurant clients in finding optimal locations keeps us current on retail location trends. This provides a rational and analytical basis for helping Avondale decide how to best focus resources on the most promising retail opportunities.

**Data Collection**
Buxton uses over 250 consumer and business databases that are updated throughout the year, and in some cases, every month. Although it is possible to obtain these databases for less expense on a community or regional basis, Buxton buys and is licensed to use the complete U.S. datasets. With this information Buxton will compare Avondale's potential location to the universe of all retail locations operating in the U.S.

**Identify Market Influencers**
All communities have special and often unique features that impact the local retail market and have to be taken into consideration to fully understand the market potential of the community. Such influencers include larger ethnic populations, significant new or expanded developments, military bases, universities and colleges, destination tourist attractions, prisons, medical facilities or major employers.

After identifying these market influencers in your community, Buxton will quantify and qualify their influence on the retail market and help to match retailers that can capitalize on these customer bases.

These four major components comprise the Community*ID* process. Each component is explained in detail as follows:

**1. Researching and Verifying Avondale's Retail Trade Area**
The location decision process for all retailers begins with the collection, analysis and evaluation of numerous location variables such as demand density, customer buying habits, economic trends, competition, traffic volumes, and available sites, to name a few.

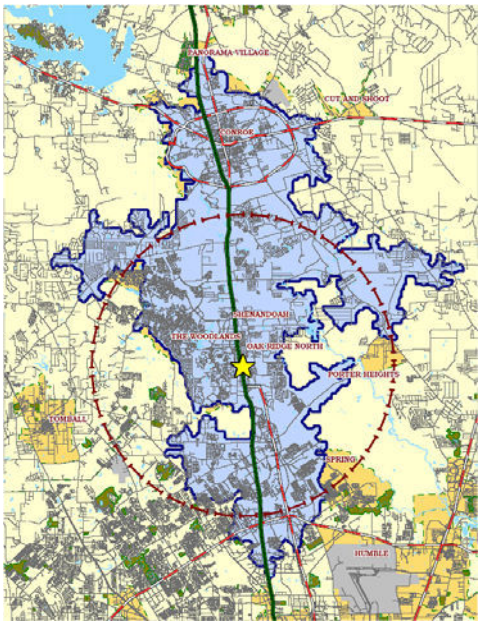
The Community*ID* process for Avondale will also start with the in-depth collection of data using the same location variables that we use for our retail clients to qualify sites for the location of their retail stores and restaurants. One goal is to define current retail situations in Avondale, in the trade area and in any neighboring communities that impact on Avondale's retail environment. The other goal is to understand the community's expectations and desires. This analysis includes personal visits to the community, collection of data components necessary to conduct the analysis and identification of market influencers.

**Drive-Time Trade Area Definition**

Customers today shop by convenience, measuring distance based on time, not mileage. Community*ID* will employ a custom drive-time analysis to determine Avondale's trade area. An example of a drive-time trade area is shown in Figure1.

This custom analysis is developed using an in-house database supported by our knowledge of individual retail client's actual trade areas. The resulting drive-time trade area map will be a polygon that more accurately depicts consumer shopping patterns than trade rings. To assure the accuracy of the drive-time trade area, the draft maps are reviewed with community leaders and verified before proceeding with the next step.

Figure 1.Example - Drive-Time Trade Area




**2. Evaluating Avondale's Retail Potential**

The purpose of the evaluation phase is to understand what makes Avondale distinctive and valuable from a retailer's viewpoint and scrutiny.

Our evaluations capitalize on Buxton's knowledge about the retail marketplace and the location requirements and expectations of retailers. Combining this knowledge with our economic development competencies allow us to evaluate and recommend proven community practices. Our evaluations do not rely on dated government research or national/state statistics, all of which fail to reflect local realities. Rather, we implement our real-world experience gained from working with municipalities that have opened more than 20 million square feet of new or expanded retail space. We know how to help Avondale sharpen your retail marketing strategy, aggressively market the city and improve your competitive performance.

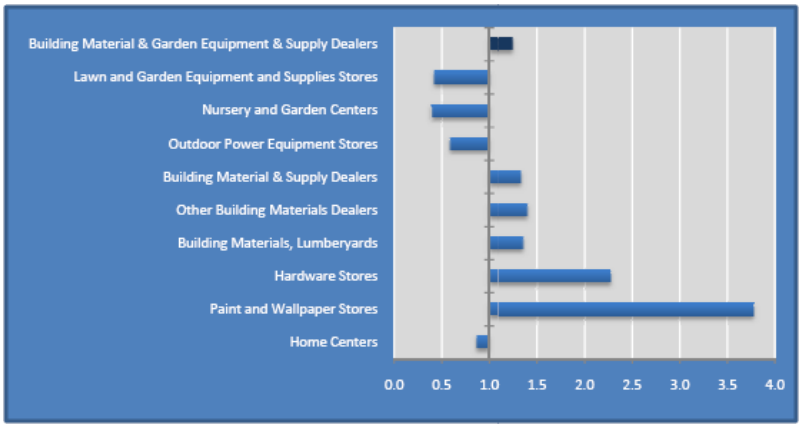
**Retail Leakage/Supply Analysis**

The Retail Leakage/Supply Analysis provides an estimate of retail dollars flowing in or out of the trade area.

The two main components of this analysis are: 1) current sales (supply) by retail store type, in dollar amounts, and 2) estimated sales potential (demand) for retail store type, in dollar amounts. We first calculate a sales gap index that illustrates your ability to capture your residents' expenditures. An example of this index is shown in Figure 2.

The sales gap index provides a relative comparison of leakage/surplus and an estimate of the dollars that are being spent outside the trade area (leakage) and the amount of dollars coming in from outside the trade area (surplus). This report can be run via SCOUT at any location within the map view.

Figure 2.Example - Sale Gap Index



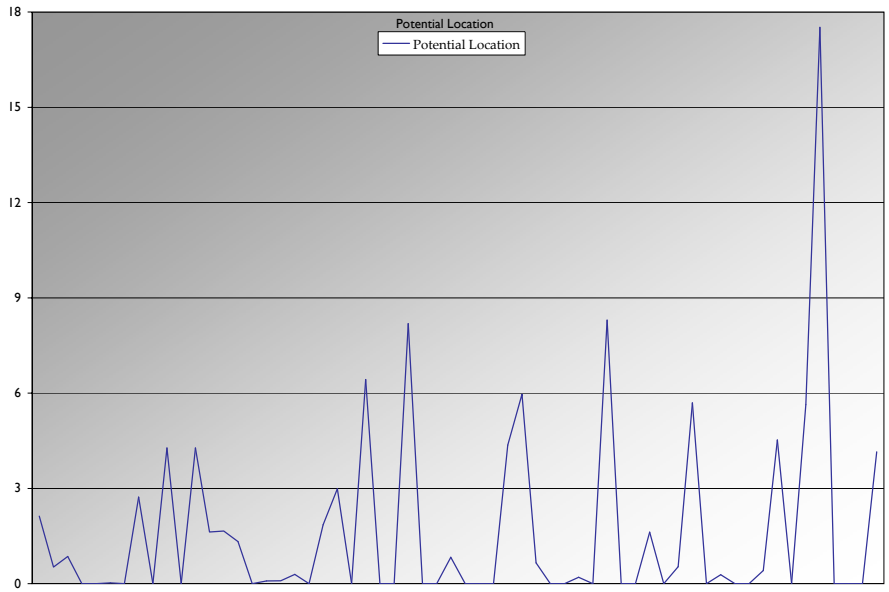

**Customer Profiling**

The Community*ID* process will identify and analyze all the households in Avondale's drive-time trade area. Based on more than 75,000 categories of lifestyles, purchase behaviors and media reading and viewing habits (psychographics), the households in your trade area are assessed to

gain an understanding of the types of retailers that would be attracted to your community. Our in-house databases include both traditional demographic data and the most current psychographic lifestyle information for over 120 million households in the United States (as well as up to seven individuals living in each of these households).

Each household in a trade area falls into one of 60 market segments reflecting the buying habits of customers in the household. The blue line in Figure 3 graphically profiles the households in a city's trade area.

Figure 3: Example - Psychographic Profile




**Retail Site Assessment**

Buxton will analyze up to three (3) distinct retail locations, selected by Avondale. Based on our collective experience in retail locations, the following factors are considered:

- Psychographic analysis of households in trade area
- Demand for retail goods and services
- Site setting, situation and configuration
- Growth plans and relevant development
- Retail goals of the community

Avondale to select the retail site to be used for retail matching.

Buxton will develop a demand density profile of Avondale's trade area. Demand density measures the bottom-line value of the customers in the trade area—who they are, how many there are and what they buy. One of the significant advantages of Buxton is our ability to take the demand

density data and to creatively translate it into a proactive market strategy tailored to take advantage of Avondale's strengths and to achieve its retail goals.

**3. Matching Retailers and Restaurants to Avondale's Market Potential**

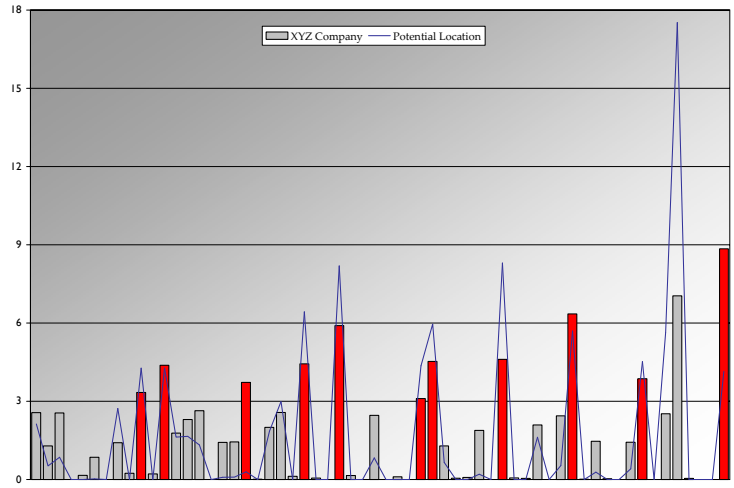
Once the site for retail matching has been selected and the consumer profiles in Avondale's trade area have been determined, the Community*ID* process will match these profiles against the customer profiles of 5,000+ retailers in our proprietary database.

In Figure 4, the blue line indicates the customer profile of households in a community's trade area. The red bar represents a specific retailer's customer profile. A similarity between the two profiles as shown in Figure 4 analyzed using Buxton's proprietary retail matching algorithm concludes that this site is an opportunity for a specific retailer to open a successful store.

This matching results in a list of possible retailers. To develop the preliminary retail match list, Buxton analyzes a number of factors about each possible retailer to qualify it. This analysis is designed to eliminate those retailers that for any reason would not be a candidate for Avondale. Considered in this analysis are such factors as, verification of a retailer currently operating or expanding into your market, location of operations in similar cities, and competition and cannibalization from nearby locations.

Once this analysis is complete, the preliminary list of retailers will be discussed and reviewed with Avondale. All retail matches will be available to Avondale with the ability to select twenty (20) specific retailers for contact information.

Figure 4: Example - Trade Area Consumers Matched with Retailer Customer Profile




**4. Delivering Avondale's Marketing Packages**

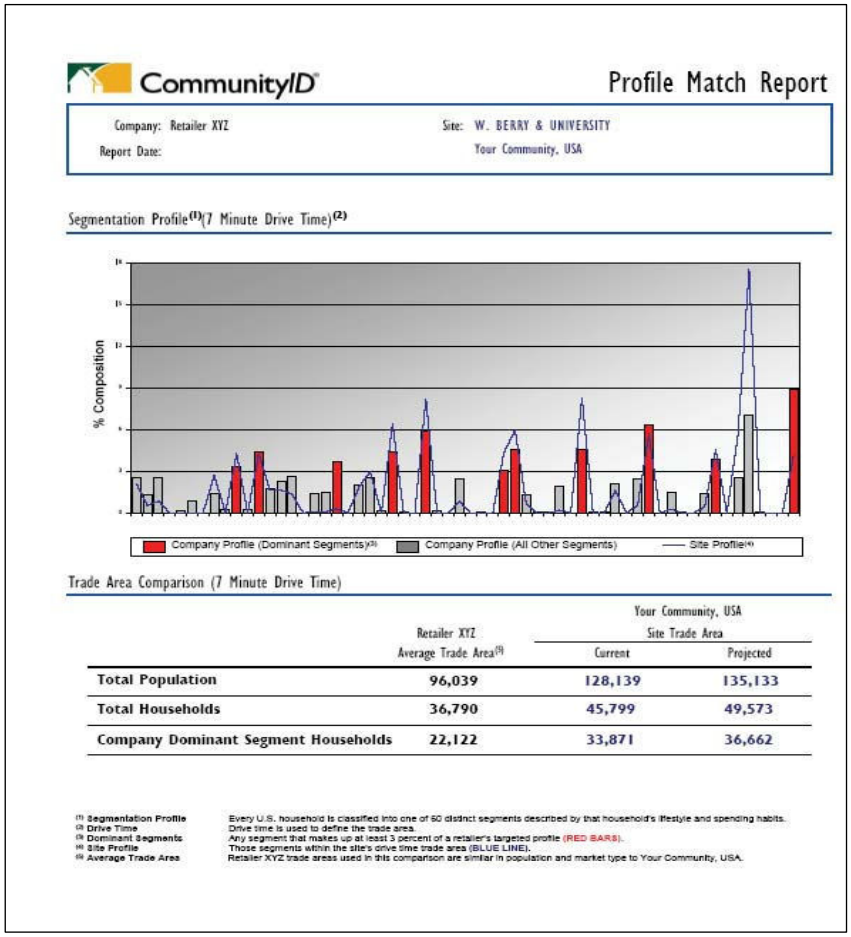
Buxton will assemble individualized marketing (pursuit) packages for each targeted retailer. At Avondale's request, Buxton will customize each marketing package for presentation to individual

retailers, developers, real estate brokers or potential franchisees. Because it is tailored to the specific needs of the target audience, each marketing package is ready to use as collateral marketing materials providing compelling and precise information that demonstrates Avondale's qualifications as a location.

Each marketing package contains:

1. Map of the retail site and trade area
2. Map of retailer's potential customers
3. Retailer match report that compares the site's trade area characteristics with the retailer's locations in similar trade areas
4. Demographic and psychographic profiles of the households in the trade area

Community*ID* targets not only specific companies but also the individual in the company who has the responsibility for location decisions. To provide the best possible reception when Avondale contacts the targeted retailer, Buxton notifies each company that Avondale has been qualified by Buxton as a potential viable location for a store, restaurant or development and should expect to be contacted by a representative of the city.



CommunityID Profile Match Report

Company: Retailer XYZ
Report Date:
Site: W. BERRY & UNIVERSITY
Your Community, USA

Segmentation Profile[1](7 Minute Drive Time)[2]



Trade Area Comparison (7 Minute Drive Time)

| | Retailer XYZ Average Trade Area[5] | Your Community, USA Site Trade Area Current | Your Community, USA Site Trade Area Projected |
|---|---|---|---|
| Total Population | 96,039 | 128,139 | 135,133 |
| Total Households | 36,790 | 45,799 | 49,573 |
| Company Dominant Segment Households | 22,122 | 33,871 | 36,662 |

[1] Segmentation Profile — Every U.S. household is classified into one of 60 distinct segments described by that household's lifestyle and spending habits.
[2] Drive Time — Drive time is used to define the trade area.
[3] Dominant Segments — Any segment that makes up at least 3 percent of a retailer's targeted profile (RED BARS).
[4] Site Profile — Those segments within the site's drive time trade area (BLUE LINE).
[5] Average Trade Area — Retailer XYZ trade areas used in this comparison are similar in population and market type to Your Community, USA.

Figure 5: Example - Retail Match Report (Retail Match Report summarizes a city's location advantages for a specific retailer).

**5. Hospitality Analysis and Assessment**

The purpose of this analysis is to provide an understanding of the City's ability to support and attract certain regional/national hoteliers. The following scope outlines the process by which this will be done:

1. Establishment of trade area for study based upon drive times
2. Factors considered in the assessment include, but are not limited to:
    - Psychographic analysis of households
    - Existing hoteliers (both local and regional/national) in the trade area and surrounding region
    - Occupancy rates
3. Evaluation of counties and geographies to identify those comparable to the area. This is a critical step in the process of communicating to potential hoteliers that your opportunity can be compared to their existing experience. Some of the parameters utilized to create the list of similar communities will include the following:
    - Population
    - Population growth
    - Employment (by SIC)
    - Workplace segmentation
    - Distance to interstate
    - Road density scores

Avondale will receive a list of regional/national hoteliers that match the trade area along with the analysis indicating their suitability.

**6. Automotive Analysis and Assessment**

The purpose of this analysis is to provide an understanding of the City's ability to support and attract certain regional/national hoteliers. The following scope outlines the process by which this will be done:

1. Establishment of trade area for study based upon drive times
2. Factors considered in the assessment include, but are not limited to:
    - Psychographic analysis of households
    - Existing new automobile dealers

Using brand specific consumer behavior, Buxton will be able to identify which specific product type(s) will be the best fit for Avondale. The propensity of the consumer base within the trade area will be identified and matched to auto dealerships that fit the needs of the consumer best.

We will be able to identify whether your market trends toward a specific brand of vehicle, and prove a sustainable consumer base within the market.

Avondale will receive is an assessment of all viable auto dealerships, as indicated by the trends of the Avondale trade area.

**Deliverables**
Community*ID* deliverables will be presented to Avondale via SCOUT, an electronic format (described below). Hard copies of all Community*ID* deliverables including marketing packages are available upon request.

SCOUT is an online marketing system that will allow you to effectively use Community*ID* by enabling you to showcase your best retail site to achieve maximum results. You can access Community*ID* reports via SCOUT to reproduce maps, site-specific data and generate your own custom marketing presentations.

With SCOUT you are directly tied to Avondale password protected data, maintained and updated in Buxton's databanks. Using your computer you can tailor reports and presentations and immediately respond to questions or information requests from retailers or developers. SCOUT allows you to:

- Graphically display and count the households that appeal to specific target retailers
- Create a Leakage/Surplus Analysis report for any location in your community
- Manage all your retail-specific data, from maps to photos to zoning information, in a central location
- Merge your community's existing marketing materials with Community*ID*
- Select the information that best makes your case
- Store and retrieve information on retail buildings and sites
- Organize all relevant retail information in a central data center
- Present all materials electronically to recruit retailers and developers

Beginning in the third year, a complete refresh will be provided using updated data.

Deliverables include the following:

- Drive Time Trade Area Map
- Retail Site Assessment – includes Retail Leakage/Supply Analysis and Customer Profile
- Retail Match List
- Marketing (Pursuit) Packages
- An electronic presentation highlighting the Community*ID* process and findings will be a part of the deliverables. It is designed for local presentations to chambers of commerce, civic clubs and other groups interested in the retail development of Avondale.

**Project Timeline**
The estimated time to complete the project is 60 business days from the project launch date. Certain stages of the project require input and response from the City, which may affect the final completion date.

## Section 5: Pricing

See separately enclosed sealed envelope.

## IV. VENDOR INFORMATION FORM

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

Buxton
VENDOR SUBMITTING PROPOSAL

75-2541014
FEDERAL TAX ID NUMBER

David Glover, CFO
PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

2651 South Polaris
ADDRESS

817·332·3681 817·332·3686
TELEPHONE FAX #

Fort Worth, TX 76137
CITY STATE ZIP

1/19/10
DATE

WEB SITE: buxtonco.com

EMAIL ADDRESS: dglover@buxtonco.com

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

_____ Small Business Enterprise (SBE)
_____ Minority Business Enterprise (MBE)
_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise? NO

If yes, please provide details and documentation of the certification.

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BUXTON COMPANY

[Scope of Work]

See following pages.

## SCOPE OF WORK

**I. Comprehensive retail market analysis for the City of Avondale (the "City").** Working with the Economic Development Department, the City's elected officials, private developers, land owners and available market and census data, the Consultant will prepare an assessment and analysis of the City of Avondale's retail, hospitality, and automotive sales trade area and profile the consumer's buying habits in the trade area. The assessment should take into consideration population and household growth, retail competition, existing retail firms, retail leakage and surplus, retail trends, market viability, and retail development in comparable cities:

A. Analysis of retail supply in the City, including:

1. Supply shortages in City's market.

2. Identification of key locational vacancies.

3. Survey/inventory of large scale retailers strengths and weaknesses.

4. Survey/inventory of small scale retailers strengths and weaknesses.

5. Impact of externalities such as price of energy, real estate and regional economics.

6. Analysis of "critical mass" in retail supply.

7. Analysis of the City as a "place" that contributes to competitive strength.

8. Evaluation of competitive areas (in the City and in the regional trade area).

B. Analysis of retail demand in the City, including:

1. Changes in demand with demographic changes within the City and in the region.

2. Consumer demand and purchasing power in the City.

3. Changes in demand with changes in residential mix.

4. Impact of the changing identity of the City.

Product: Detailed market analysis that will explain the present retail, hospitality, and automotive sales market in terms of supply, demand and key retail locations and agglomerations. The analysis will explain how this market might be more effectively exploited. A primary focus and product of this analysis is how the proposed changes in the City will affect retail demand. Detailed analysis of

storefront improvements, streetscape, photo inventory will not be required in this analysis.

**II. Prepare a strategy for the City's retail marketing efforts that will be based on the results of section I and incorporate the following elements:**

A. Identify any aspects of the City that are unique and give the City a competitive advantage.

B. Identify possible activities that could provide the City with a possible competitive advantage.

C. Provide four to five examples of other communities that have successfully employed similar retail strategies.

D. Discuss how the specific, identified developments (like the American Sports Center Development) could serve as a means to attract a critical retail mass to the City.

E. Prepare comprehensive strengths/weaknesses/opportunities/threats – that will assess these characteristics as they apply to the City.

F. Describe the strategy of how large-scale retail, main street retail and the relationship of the opportunities at the emerging City Center can be combined into a comprehensive retail effort.

G. Articulate a series of specific actions that the City, private retailers and land owners can take to bring new retail to the City. This action plan must be specific, realistic and based in real time.

Product: Consultant shall prepare a detailed retail market development strategy that will utilize the information and opportunities identified in section I. This will be a real-time action plan with specific actions that will achieve measurable results. This plan will be developed in collaboration with the City.

**III. Implementation Plan**. The Consultant will prepare a final implementation and retail development action plan that will incorporate the previous two sections and further describe the specific, short and long terms, steps that must be taken to realize the retail revitalization of the City. This analysis will summarize, but not be limited to, a comprehensive analysis of market conditions and how the unique aspects of the City can be exploited to its best advantage. These steps will not be general recommendations but will be specific and measurable actions that will help to realize this revitalization strategy. Specific actions could be taken individually or collectively by the City of Avondale, and may include the following:

A. Outline of short term objectives and schedule.

1. Finalization of retail strategy and presentation to City Council and stakeholders.

2. Preparation of marketing material for both general presentation and specific targeted firms that present likely matches for locating or expanding into the City.

3. Recommend specific retailers and restaurants that match the City of Avondale's customer profile.

4. Match customer profiles with profiles of specific retailers and restaurants that would consider the City of Avondale for a location expansion.

5. Prepare custom marketing packages for each of the retailers and restaurants identified .and determine the identity of the individual from within the company that will make location business decisions.

6. Provide a web-based data information and marketing tool to assist in the identification and recruitment efforts.

EXHIBIT D
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
BUXTON COMPANY

[Fee Proposal]

See following page.

City of Avondale
Economic Development Department
Request for Proposal for Retail Development Strategy Plan
Solicitation Number ED 10-046

# Fee Proposal

(Section 5: Pricing)

This proposal is a single set fee for the entire project,

| | |
|---|---|
| **Total Cost:** | $ 75,000.00 |

Payment Schedule

| | |
|---|---|
| 1. Due 31 days from execution of this agreement | 37,500.00 |
| 2. Due 31 days from delivery of retail site assessment | 27,500.00 |
| 3. Due 31 days from delivery of retail marketing packages | 10,000.00 |

SCOUT will be delivered for one-year with this agreement and includes the following:

1. Waived - Monthly maintenance fee of $1,000 per month
2. Waived - Set Up fee of $3,000

After the first year there will be a $1,000 per month SCOUT maintenance fee. The first year begins upon completion of the project. Avondale may cancel SCOUT at any time with thirty (30) days written notice.

There are no additional charges within the scope of this project, including travel associated with the presentation of this project or negotiation of this agreement. Direct travel costs will be charged for any work outside the scope of this project, and only if it has been pre-approved and mutually agreed upon by the City.

Key Project Members:
Janet Ehret - Project Manager
Mary Lou Jacobs - Territory Business Manager, Key Project Contact
Philip Davis - Manager/Senior GIS Analyst - Project Lead
Chris Briggs - Dir. of Client Services - Project Team Member
Amy Buxton - Sr. VP, CommunityID Division - Project Team Member
Bill Shelton, CEcD - Partner, CommunityID Division - Project Team Key Resource
Harvey Yamagata, Partner, Buxton - Project Team Key Resource

Respectfully,

David Glover
Chief Financial Officer
Buxton Company
2651 S. Polaris Drive
Fort Worth, TX 76137

(Signature)

# CITY COUNCIL REPORT

**SUBJECT:**
Ordinance 1410-510 - Authorization to Accept the Goodyear Farms Cemetery

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Rogene E. Hill, Assistant City Manager (623)333-1012

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff requests that City Council consider a motion to approve acceptance of the Goodyear Farms Cemetery and the Cemetery Trust Fund from SunCor Development Company and authorize the Mayor, City Manager, City Attorney and City Clerk to execute the necessary documents for the conveyance of the property and trust fund to the City of Avondale.

**BACKGROUND:**

Suncor Development Company has asked that the City Council consider accepting ownership of the Historic Pioneer Cemetery, also known as the Goodyear Farms Cemetery located in Avondale. SunCor will also convey with the property approximately $244,000 remaining in the Cemetery Trust Fund. In addition, SunCor has agreed to augment the Trust Fund with $55,500, which represents the City's final payment to SunCor pursuant to the development agreement between SunCor and the City of Avondale for Dysart Commons Center.

SunCor Development Company, under directions from its Board and parent company, Pinnacle West Capital Corporation, is divesting substantially all of its real estate holdings. To date, some of the golf courses and its mid-rise condos in Tempe have sold and its mortgage company has been wound down. Currently on the market are its remaining homebuilding, golf course, and urban development operations and assets, along with its commercial land holdings in the west valley. SunCor's workforce has been reduced substantially to core employees. It has not been determined at this time what SunCor's remaining and continued operations will be. Among the holdings that SunCor must relinquish is the Goodyear Farms Cemetery located in Avondale.

Pioneer Cemetery was established to serve as a burial ground for employees of Goodyear Farms and the Wigwam Resort in Litchfield Park. A large number of those buried in Pioneer Cemetery were victims of the Great Flu Epidemic of 1918.

When Goodyear Farms, a subsidiary of Goodyear Tire and Rubber, went out of business, Westinghouse purchased the 12,000 acre farm for development by SunCor Development. This purchase included the 4.5 acre cemetery, known as the Historic Pioneer Cemetery. Employees with five years of service at the Farm and their spouses were eligible for burial at this site. The General Letter outlines the rules for determining burial eligibility. (See attachment A). The Cemetery is located just south of Indian School along Santa Fe Trail in Avondale. Probably less than 70 former employees of the Goodyear Farm have burial rights in the cemetery. On average there are two to three burials per year. Staff recommends using SunCor's contractor to open and close the graves. If that contract cannot be assigned to the City, staff will bid this work to obtain a provider who can keep the costs in line with the $350.00 fee currently being charged to the families.

Staff estimates maintenance costs at approximately $8,900 per year. These costs will be paid from the Trust Fund. The augmented Trust Fund of approximately $300,000 with careful investment of the funds should sustain maintenance and operation costs for well over 25 years.

**DISCUSSION:**

This Historic Cemetery is a cultural heritage treasure located in Avondale. The Avondale Municipal Arts Committee and the Litchfield Historic Society support this proposal. Attached is a recent article that explains the history of this historic site. On Saturday, April 10th well over 70 persons representing the families of persons buried there and other community members painted, raked and did general clean up of the cemetery grounds. The turn out was indicative of the general community support of this historic site.

By accepting SunCor's offer to transfer the Cemetery and the Trust Fund to the City a significant piece of Avondale's cultural heritage will be preserved. SunCor has been a good steward of the Cemetery, which in the future might be eligible for grant funding and together with community fundraising the trust may grow to make the cemetery self sustaining. The Centennial Committee has recommended this site as a Centennial project for 2012.

The Cemetery Committee, comprised of former Goodyear Farm employees, will continue to review all requests for burial. They will act as the ultimate arbiters of burial rights by using the guidelines established by the Goodyear Farms. A recent field survey will be used to determine available burial plots.

**BUDGETARY IMPACT:**

The Trust Fund of approximately $244,000 and the additional $55,500 will support maintenance and operations in the near term. Efforts will be ongoing to increase the trust through community fund raising and grant opportunities with the goal of the Cemetery becoming self sustaining.

**RECOMMENDATION:**

Staff requests that the City Council approve a motion to accept ownership of the Goodyear Farms Cemetery and the Cemetery Trust Fund from SunCor Development Company and authorize the Mayor, City Manager, City Attorney and City Clerk to execute the necessary documents for the conveyance of the property and trust fund to the City of Avondale.

**ATTACHMENTS:**

**Click to download**

- Ordinance 1410-510

**ORDINANCE NO. 1410-510**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACQUISITION OF REAL PROPERTY FOR USE AS A CEMETERY.

**WHEREAS**, Article 1, Section 3 of the Avondale City Charter authorizes the City of Avondale (the "City") to acquire real property in fee simple or any lesser interest, inside or outside its corporate limits for any City purpose, when the public convenience requires it and in accordance with the provisions of State law; and

**WHEREAS**, the City is authorized by ARIZ. REV. STAT. §§ 9-240(B)(9) and (11) to establish, improve and maintain cemeteries and regulate the burial of the dead therein; and

**WHEREAS**, the City Council desires to authorize the acquisition of certain real property for use as a cemetery.

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

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

SECTION 2. The acquisition of certain real property, generally located along the west side of Santa Fe Trail, south of Indian School Road, in Avondale, Arizona, commonly known as the Goodyear Farms Cemetery and as more particularly described in Exhibit A attached hereto and incorporated herein by reference, is hereby authorized.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision of portion hereof shall be deemed separate, distinct, and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

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

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 1410-510

[Legal description of Goodyear Farms Cemetery]

See following pages.

**KEOGH** ENGINEERING, INC
Keogh Engineering, Inc.
14150 W. McDowell Rd. • Goodyear Arizona 85395
(623) 535-7260 • Fax (623) 535-7262 • E-mail: keoeng@qwest.net
Civil Engineers | Land Surveyors

LEGAL DESCRIPTION
SUNCOR DEVELOPMENT CO.
OUR JOB NO. 20000
6 APRIL 2010

CEMETERY PARCEL

A TRACT OF LAND LOCATED IN THE NORTH HALF OF SECTION (26) TWENTY - SIX, TOWNSHIP (2) TWO NORTH, RANGE (1) ONE WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, STATE OF ARIZONA.

BEGINNING AT THE NORTH QUARTER OF SAID SECTION (26) TWENTY - SIX; THENCE, SOUTH 00°15' 42" WEST, ALONG THE NORTH-SOUTH MID-SECTION LINE OF SAID SECTION AT A DISTANCE OF 828.25 FEET TO A POINT, SAID POINT BEING THE TRUE POINT BEGINNING;

THENCE SOUTH 00°15' 42" WEST, AT A DISTANCE OF 700.00 FEET; THENCE NORTH 89°49' 26" WEST, AT A DISTANCE OF 289.74 FEET; THENCE NORTH 00°15' 42" EAST, AT A DISTANCE OF 700.00 FEET; THENCE SOUTH 89°49' 26" EAST, AT A DISTANCE OF 289.74 FEET, TO THE POINT OF BEGINNING.

DESCRIPTION
Dictated
Typed
Proof-1
Proof-2 DFK
KEOGH ENGINEERING, INC.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
10846
DENNIS FRANK
KEOGH
DATE SIGNED 4/6/10
ARIZONA U.S.A.
EXPIRES 6/30/2012

# CITY COUNCIL REPORT

**SUBJECT:**
Western Avenue Business Renovation Program Update

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Gina Montes, Neighborhood and Family Services Director (623)333-2727

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

The purpose of this item is to provide City Council an update on the Western Avenue Business Renovation Program.

**BACKGROUND:**

The Neighborhood and Family Services Department provides funding to renovate businesses along Western Avenue from the Community Development Block Grant (CDBG). A total of 7 businesses are participating in the program which makes improvements to the exteriors of buildings and may also be used to correct code violations. Renovations may include exterior painting, business signs, awnings, windows, doors, exterior lighting, handicapped accessibility, canopy repair and installation, architectural enhancements, repairs to exterior walls and other items related to compliance with the building code or property maintenance code.

Program implementation began in January 2009 with outreach to all businesses along the Western Avenue target area between Central and Dysart. City staff met with interested business owners to discuss their interest and possible projects. The businesses were required to provide an updated business plan to qualify for the program. The Maricopa Community College District's Small Business Development Center (SBDC) provided technical assistance to businesses in the preparation of their business plans. Other program requirements include being current on taxes, a current City of Avondale business license and compliance with City codes.

A unique aspect of the Avondale program is the use of one architect to oversee design. Circle West Architects received the contract to design improvements for each building and to supervise construction, which will be performed by a third party licensed general contractor. That construction contract is currently being procured with the assistance of the Finance Department. Bid openings are scheduled for May 6, 2010.

The program functions as a loan which will be forgivable over a five year period, contingent upon continued maintenance of the building. A lien will be placed on each property to secure the 5-year term.

**DISCUSSION:**

Staff have worked since the program inception with the owners and tenants of seven properties on Western Avenue to prepare design concepts for exterior renovations. These improvements will support recent public and private investments made along Western Avenue.

**BUDGETARY IMPACT:**

A total of $176,704 in Community Development Block Grant (CDBG)funding has been allocated for

this program. No match is required for the use of CDBG funding.

**RECOMMENDATION:**

This report is for information and discussion only.

**ATTACHMENTS:**

**Click to download**

No Attachments Available

# DEVELOPMENT SERVICES

**SUBJECT:**
Classic Sign for Schneider Theater Building (SG-10-18)

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

---

**REQUEST:** "Classic Sign" approval for a replica of the original "AVON" Theater sign on the façade of the Schneider Theater Building

**PARCEL SIZE:** 6,000 Square Feet

**LOCATION:** 16 E. Western Avenue (Exhibits A and B)

**APPLICANT:** City of Avondale Department of Neighborhood and Family Services; Project Manager: Ruth Clark (623) 333-2724

**OWNER:** Schneider Family Trust; Contact: Lila Schneider (623) 932-2526

**BACKGROUND:**

The 6,000 square foot parcel is Lot 7 of Hill's Subdivision Unit 1, recorded in April, 1936. The property remained under Maricopa County jurisdiction until it was incorporated as part of Avondale's original town site on December 16, 1946.

The existing Schneider Theater building, originally known as the AVON Theater, opened on the site in July 1946. The building was used as a movie theater for nearly eight years, from its opening in 1946 through April 1954. Subsequent to the theater's closure, the building underwent extensive internal renovations (and less extensive external renovations) and has been used as a grocery store, department store, alternative school, and VFW Hall. The building has been used as a reception hall for weddings and other events from 2006 until present.

The theater was designed in the Art Deco architectural style; perhaps its' most unique feature is a streamlined fin which extends upward approximately thirteen feet from the top of the building's canopy, projecting above the roofline. While in operation as a theater, the building's fin contained white letters arranged vertically, spelling out "AVON" (Exhibit C). The lettering was removed sometime after the building was converted from a theater, although the specific date in which the sign was removed is uncertain. Presently, the fin contains no signage.

The Applicant's Narrative (Exhibit D) contains supplementary information pertaining to this history of this building, including additional photographs, newspaper clippings, and aerials.

**SUMMARY OF REQUEST:**

1.The building's current owners, the Schneider Family Trust, are participating in the Western Avenue Exterior Renovation grant program which utilizes federal Community Development Block Grant (CDBG) funds to complete exterior renovations on buildings located within Old Town Avondale. As part of the renovations to the theater's façade, the architect has proposed to replicate the original

AVON Theater sign on the building's Art Deco streamlined fin. The replica sign will be constructed of individual fabricated aluminum letters and uplit from a fixture mounted on the building canopy; the letters will be replicated to match the original theater sign as closely as possible.

2.The Avondale Zoning Ordinance defines a Classic Sign as, “A sign that is determined by the City Council to be of extraordinary significance to the City's history and identity and that possesses unique physical design characteristics.” Per Section 910, Classic Signs may be allowed despite the fact they may not meet all current Sign Ordinance requirements. In this instance, the proposed “AVON” sign does not meet the following two requirements:

- Section 905.A.7 states that, “No sign or sign structure shall extend above a building's parapet except within the City Center (CC) Zoning District.” The proposed sign is out of conformance with this requirement since the fin extends above the parapet by roughly nine feet and the property is located outside of the City Center.

- Section 911.A.1 prohibits abandoned signs, which are defined in the Ordinance as any sign that “no longer correctly directs a person to or advertises a bona fide business, leesor, owner, product, activity conducted, or product available on the premises where such sign is displayed.” From a technical perspective, since the proposed “AVON” sign is advertising a theater which is no longer in existence, it would fall under the definition of an abandoned sign.

3.In order for a Classic Sign to be approved, the sign must meet four criteria. The list of criteria and staff's analysis can be found within the Analysis section of this report.

4.If this request is approved by the City Council, the AVON sign will be considered a conforming sign in perpetuity. As such, it will not be subject to the non-conforming sign provisions found within the City's Sign Ordinance.

**PARTICIPATION:**

In regards to Classic Signs, the Zoning Ordinance requires that notification of the Planning Commission public hearing be published in the local newspaper; no mailing, posting, or neighborhood meeting is required for this application type. A notice of the Planning Commission public hearing for this case was published in the West Valley View on March 30, 2010. No comments were received and no persons spoke on the item at the Planning Commission meeting.

Classic Signs are not public hearing items for the City Council; as such, no notifications were required in advance of the May 3rd meeting date.

**PLANNING COMMISSION ACTION:**

The Planning Commission conducted a public hearing on April 15, 2010, and voted 6-0 to recommend approval of this request subject to the following stipulations (Exhibit E):

1.The design, construction, and maintenance of the proposed Classic Sign shall be in conformance with the applicant's narrative date stamped March 22, 2010.

2.Administrative approval of a standard sign permit application shall be required prior to installation of the Classic Sign.

Chairman Iwanski was excused from the meeting.

**ANALYSIS:**

The Zoning Ordinance, Section 910.A.2, contains four required findings to be met in order to approve a Classic Sign. These findings, with staff analysis, are as follows:

**1.The sign must be one of the following: (1) at least twenty-five (25) years old, (2) be a replica**

**of a sign that had been displayed for at least ten (10) years prior to 1970 and for which photographic or illustrative evidence of the sign to be reproduced exists, *OR* (3) be a replica of a sign which had previously served a historic building and for which photographic or illustrative evidence of the sign to be reproduced exists.**

- The original "AVON" sign was displayed on the fin of the theater building for at least eight years, from its opening in 1946 through 1954, when the theater closed. Since the City is not aware of any photographs of the building in the two years immediately following the theater's closing (1955-1956), it is unclear if the sign was immediately removed from the building or remained on display for a period of time thereafter.

- Although Avondale does not currently have any registered historical buildings, the Arizona State Historic Preservation Office (Officer Jim Garrison) has identified the building as being significant enough to warrant registration on the National Registry of Historic Buildings.

- Photographic evidence of the sign to be reproduced exists and is included in this report as Exhibits C and D.

**2.The sign must be located within the City's Revitalization Area.**

- The Revitalization Area is bounded by Van Buren Street to the north, Lower Buckeye Road to the south, the Agua Fria River to the east, and the City's border with Goodyear to the west. The site is located on Western Avenue near Central Avenue, in the heart of the Revitalization Area.

**3.The sign must possess unique physical characteristics, such as configuration, message, color, texture, etc.**

- Original Art Deco architecture and signage is becoming increasingly rare, especially outside of larger metropolitan downtowns. This building's combination of vertically configured letters on a streamlined movie theater marquee fin is uncommon and unique to the area.

- The scale and location of the sign can also be considered unique physical characteristics. The sign's scale is unique for the area as it was, historically, one of the only large signs not related to an automobile-related use along Western Avenue. The location of the theater sign near the original Avondale town site's primary intersection - Western Avenue (Originally named Arizona Boulevard) and Central Avenue (Originally named First Avenue) - provided a visual cue and served as a gateway into Avondale's original downtown.

**4.The sign must be of extraordinary significance to the City's history and identity regardless of the use identified by the sign.**

- The AVON sign and theater building are locally significant. The AVON was the only movie theater operating in Avondale in the late 1940s and early 1950s, and one of only a few throughout the whole southwest valley. Some residents who lived in Avondale and the surrounding communities while the theater was open continue to associate the Schneider Building with the AVON Theater, despite the fact that the sign has been removed for over fifty years.

- A replica of the original sign will contribute to Western Avenue's historic character.

***Conclusion:***

Based on the information provided by the applicant, the public input received and the analysis of the required criteria by staff, staff recommends approval of the requested Classic Sign.

**FINDINGS:**

1.The proposed sign meets all four criteria for Classic Signs, as established in Zoning Ordinance Section 910.A.2.

**RECOMMENDATION:**

The City Council should **APPROVE** Application SG-10-18, subject to the following two (2) stipulations:

1.The design, construction, and maintenance of the proposed Classic Sign shall be in conformance with the applicant's narrative date stamped March 22, 2010.

2.Administrative approval of a standard sign permit application shall be required prior to installation of the Classic Sign.

**PROPOSED MOTION:**

I move that the City Council accept the findings and **APPROVE** Application SG-10-18, a request for a Classic Sign on the façade of the Schneider Theater Building, subject to the two (2) stipulations recommended by the Planning Commission.

**ATTACHMENTS:**

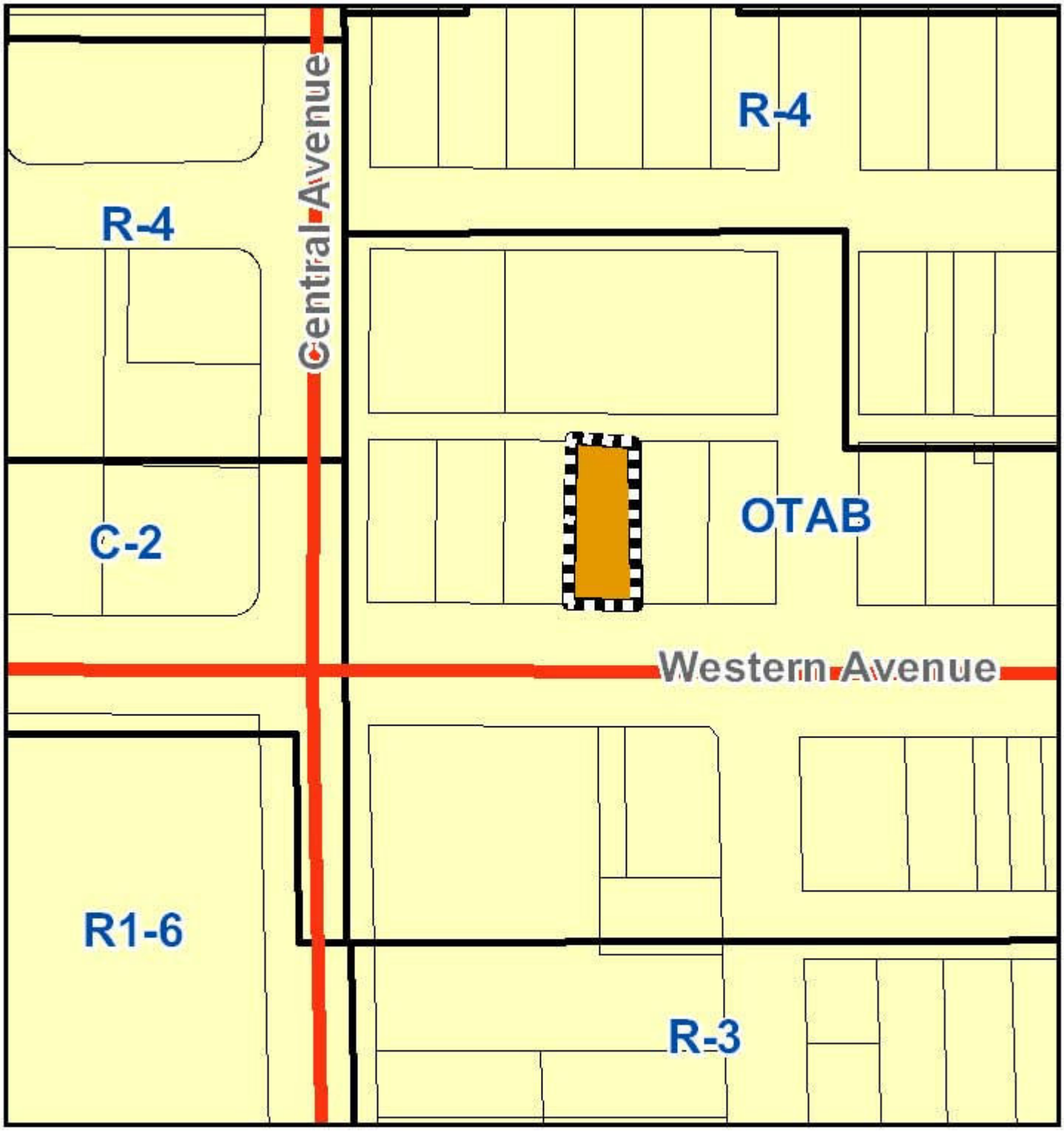
**Click to download**

- Exhibit A - Zoning Vicinity Map
- Exhibit B - Aerial Photograph
- Exhibit C - Photograph of AVON Theater (circa 1953)
- Exhibit D - Applicant’s Narrative, date stamped March 22, 2010 (Part 1 of 2)
- Exhibit D - Applicant's Narrative, date stamped March 22, 2010 (Part 2 of 2)
- PLACEHOLDER FOR Exhibit E - Draft Planning Commission Meeting Minutes, April 15, 2010 Regular Meeting

**PROJECT MANAGER:**

Ken Galica, Planner II (623) 333-4019

Exhibit A




# Zoning Vicinity Map

Avondale

Schneider Theater Building

Exhibit B

# Aerial Photograph

Avondale

Subject Property

N

AVON
ROBERT STACK IN WAR PAINT
ALEX NICOL / CHAMP FOR A DAY
ROBERT STACK IN WAR PAINT
ALEX NICOL / CHAMP FOR A DAY

Exhibit D

CITY OF AVONDALE
MAR 22 2010
DEVELOPMENT SERVICES

# Application for Classic Sign Designation

Schneider Theater Building
16 E Western Avenue
Avondale, AZ 85323

The Schneider family is participating in the Western Avenue Exterior Renovation grant program, which will utilize federal Community Development Block Grant (CDBG) funds to complete exterior renovations on buildings along Western Avenue between Dysart and Central. The Schneider Theater building has the original Art Deco theater projecting upwards from the marquee. Historic photos show the theater was called "Avon Theater." Replacing the "AVON" letters will re-create the historic sign, which is unusual along Western Avenue in that it creates identity for the original downtown street and is a higher, larger sign than the other original buildings along Western Avenue, Avondale's original downtown.

## History of Building:

The incorporation of the neighboring cities of Goodyear and Avondale took place in December 1946. This movie theater was formally opened in July 1946 as the Avon theater at Avondale. It is an Art Deco style movie theater "constructed of concrete block and has steel beams to give utmost protection. It is all concrete floored to insure maximum sanitation and safety. The new Avon Theater is equipped with the newest type of equipment and sound system and should compare favorably with the finest theatres in the state...The new Avon Theatre provides ample paved parking area…It is the plan of the Avon Theatre to become a civic center for this area and invites the civic bodies of the Westside to place their plans before the manager, Mr Charles Wilson.[1]"

The Avon Theater averaged eight movie features a week from July 1946 through April 1954, when it closed its doors after seven years of operation. High cost of converting theatre equipment to 3-D and Cinemascope pictures was cited by the owner as the reason for closing the business. The building was sold to new owners E. R. Schneider and Richard Rhodes in April 1954. According to the newspaper article, a new floor was laid over the slanting movie theater floor and a new front facade was to be installed.[2] According to the family, the building was modified when the theater use was discontinued. The sloping interior floor was filled in and a dropped ceiling put in the interior. The movie poster display area and ticket booth were removed from the front building and its entryway doors were relocated to their present position.[3] The "fin" of the AVON sign was not altered. The "fin" of the Art Deco building rises approximately 13 feet from the top of the marquee.

Moe's Food Fair used the building after the new owners remodeled it. *The Westside Weekly* newspaper has an advertisement for Moe's Food Fair on Thursday, August 26, 1954. A later photo from Jerry Squire's Avondale History Book shows Jeff's Food Fair as the tenant. That photo shows

[1]."New Avon Theater At Avondale Books Outstanding Pictures," *Westside Enterprise*, July 26, 1946.
[2] "Avon Theatre To Be Remodeled," *The Westside Weekly*, April 29, 1954.
[3] Vicki Velasquez, Oral interview with Ruth Clark, 03-15-2010

the "Avon" letters had been removed from the fin.[4] As seen in a 2009 photo of the building, the fin has not been changed with the exception of the removal of the letters "AVON."

## *Criteria:*

**A. Be a replica of a sign which had previously served a historic building and for which photographic or illustrative evidence of the sign to be reproduced exists.**

The historic photo (Exhibit A) is from the book *Images of America: Avondale* by Jerry Squire and the City of Avondale. There is no date but the two movies on the matinee, War Paint and Champ for a Day were released in 1953.

**B. Be located within the city's Revitalization Area**

Please see map attached as Exhibit B showing the location of this building in the Revitalization Area.

**C. Possess unique physical design characteristics, such as configuration, message, color, texture, etc.**

This building was the only movie theater in the Goodyear, Avondale, Tolleson area in the late 1940s and early 1950s. Its two story massing and gateway location near the intersection of Central and Western Avenue are unique. The majority of buildings along Western Avenue between Dysart and the Goodyear boundary are under 1000 SF and one story buildings without historical significance.

The sign was unique for the area. According to the State Historic Preservation Officer when reviewing the historic photo, the AVON letters appear to be white neon, calling out an Art Deco – Hollywood glamour that the movies could signify for the Avondale – Goodyear - Tolleson community. The sign's scale is unique for the area as one of the only non auto related large signs along Western Avenue. Its location at the Central Avenue/Western Avenue intersection provided a visual cue for the gateway of the original downtown area.

**D. Be of extraordinary significance to the City's history and identity, regardless of the use identified by the sign.**

This building was the only movie theater in the Goodyear, Avondale, and Tolleson area in the late 1940s and early 1950s. The Arizona State Historic Preservation Officer, Jim Garrison, has identified this building as significant enough to warrant registration on the National Registry of Historic Buildings.[5]

The sign contributes to Western Avenue's historic character and the reproduction of the AVON letters will provide a visual cue to the history of the area. Movies were an important social and entertainment option in the 1940s and 1950s prior to the advent of televisions in residences.

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[4] *Images of America: Avondale* by Jerry Squire and the City of Avondale. Arcadia Publishing, 2008.
[5] Garrison, Jim. Tour of Old Town Avondale with Ruth Clark. December 2008.

*Application:*

## Plans for sign maintenance, renovation and /or possible reconstruction:

Please reference the following specification divisions and sections from attached construction drawings (Exhibit C) as follows:

### 1.3 Submittals

### Part 3 3.1 General Installation Provisions

PART 3 – EXECUTION

3.1 GENERAL INSTALLATION PROVISIONS

A. Inspection of Conditions: Require installer of each major component to inspect both substrate and conditions under which Work is to be performed. Do not proceed until unsatisfactory conditions have been satisfactorily corrected.
B. Manufacturer's Instructions: Comply with manufacturer's installation instructions and recommendations, to the extent that those instructions and recommendations are more explicit or stringent than requirements contained in Contract Documents.
C. Inspect materials or equipment immediately upon delivery and again prior to installation. Reject damaged and defective items.
D. Provide attachment and connection devices and methods necessary for securing Work. Secure Work true to line and level. Allow for expansion and building movement.
E. Visual Effects: Provide uniform joint widths in exposed Work. Arrange joints in exposed Work to obtain best visual effect. Refer questionable choices to Architect for final decision.
F. Recheck measurements and dimensions, before starting each installation.
G. Install each component during weather conditions and Project status that will ensure best possible results. Isolate each part of completed construction from incompatible material as necessary to prevent deterioration.
H. Coordinate temporary enclosures with required inspections and tests, to minimize necessity of uncovering completed construction for that purpose.
I. Mounting Heights: Where mounting heights are not indicated, install individual components at standard mounting heights recognized within industry for particular application indicated. Refer questionable mounting height decisions to Architect for final decision.

### Cleaning + Protection

3.2 CLEANING AND PROTECTION

A. During handling and installation, clean and protect construction in progress and adjoining materials in place. Apply protective covering where required to ensure protection from damage or deterioration at Substantial Completion.
B. Clean and maintain completed construction as frequently as necessary through remainder of construction period. Adjust and lubricate operable components to ensure operability without damaging effects.
C. Limiting Exposures: supervise construction activities to ensure that no part of construction, completed or in progress, is subject to harmful, dangerous, damaging, or otherwise deleterious exposure during construction period.

## Section 01701: Execution and Closeout Requirements

## Final Cleaning

3.4 FINAL CLEANING

A. Complete the following cleaning operations before requesting inspection for certification of Substantial Completion:
   1. Remove labels that are not permanent.
   2. Clean transparent materials, including mirrors. Remove excess glazing compounds. Replace chipped or broken glass.
   3. Clean exposed finishes to a dust-free condition, free of stains, films, and foreign substances. Sweep concrete floors broom clean.
   4. Vacuum carpeted surfaces and wax resilient flooring.
   5. Wipe surfaces of mechanical and electrical equipment. Remove excess lubrication. Clean plumbing fixtures. Clean light fixtures, lamps, globes, and reflectors.
   6. Clean Project site, yard, and grounds, in areas disturbed by construction activities. Sweep paved areas; remove stains, spills, and foreign deposits. Rake grounds to a smooth, even-textured surface.

## Closeout Procedures

3.5 CLOSEOUT PROCEDURES

A. Substantial Completion: Before requesting Substantial Completion inspection, complete the following:
   1. Prepare a list of items to be completed and corrected (punch list), the value of items on the list, and reasons why the Work is not complete.
   2. Advise Owner of pending insurance changeover requirements.
   3. Submit specific warranties, maintenance service agreements, and similar documents.
   4. Obtain and submit releases permitting Owner unrestricted use of the Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases.
   5. Submit Record Drawings, Specifications, operation and maintenance manuals, property surveys, and similar final record information.
   6. Deliver tools, spare parts, extra materials, and similar items.
   7. Make final changeover of permanent locks and deliver keys to Owner.
   8. Complete startup testing of systems.
   9. Remove temporary facilities and controls.
   10. Submit changeover information related to Owner's occupancy, use, operation, and maintenance.
   11. Complete final cleaning requirements, including touchup painting.
   12. Touch up and otherwise repair and restore marred exposed finishes to eliminate visual defects.
B. Submit a written request for inspection for Substantial Completion. On receipt of request, Architect will proceed with inspection or advise Contractor of unfulfilled requirements. Architect will prepare the Certificate of Substantial Completion after inspection or will advise Contractor of items that must be completed or corrected before certificate will be issued.
C. Request inspection for Final Completion, once the following are complete:
   1. Submit a copy of Substantial Completion inspection list stating that each item has been completed or otherwise resolved for acceptance.
   2. Instruct Owner's personnel in operation, adjustment, and maintenance of products, equipment, and systems.
D. Request reinspection when the Work identified in previous inspections as incomplete is completed or corrected.
E. Submit a written request for final inspection for acceptance. On receipt of request, Architect will proceed with inspection or advise Contractor of unfulfilled requirements. Architect will prepare final Certificate for Payment after inspection or will advise Contractor of items that must be completed or corrected before certificate will be issued.

## 3.6 Demonstration and Training

3.6 DEMONSTRATION AND TRAINING

A. Engage qualified instructors to instruct Owner's personnel to adjust, operate, and maintain systems, subsystems, and equipment not part of a system. Include a detailed review of the following:
   1. Include instruction for basis of system design and operational requirements, review of documentation, emergency procedures, operations, adjustments, troubleshooting, maintenance, and repairs.

## Sign Maintenance Plan

Follow manufacturer's recommendations of cleaning and maintenance.

- Also, clean and wash dirt and debris on a regular basis through the year.
- Check on electrical fixtures and connections on a regular basis through out the year.
- Check on structural connections on a regular basis throughout the year.

This property is a scheduled participant in the Western Avenue Exterior Renovation Grant program, which includes ongoing maintenance of the building and signage within the contract

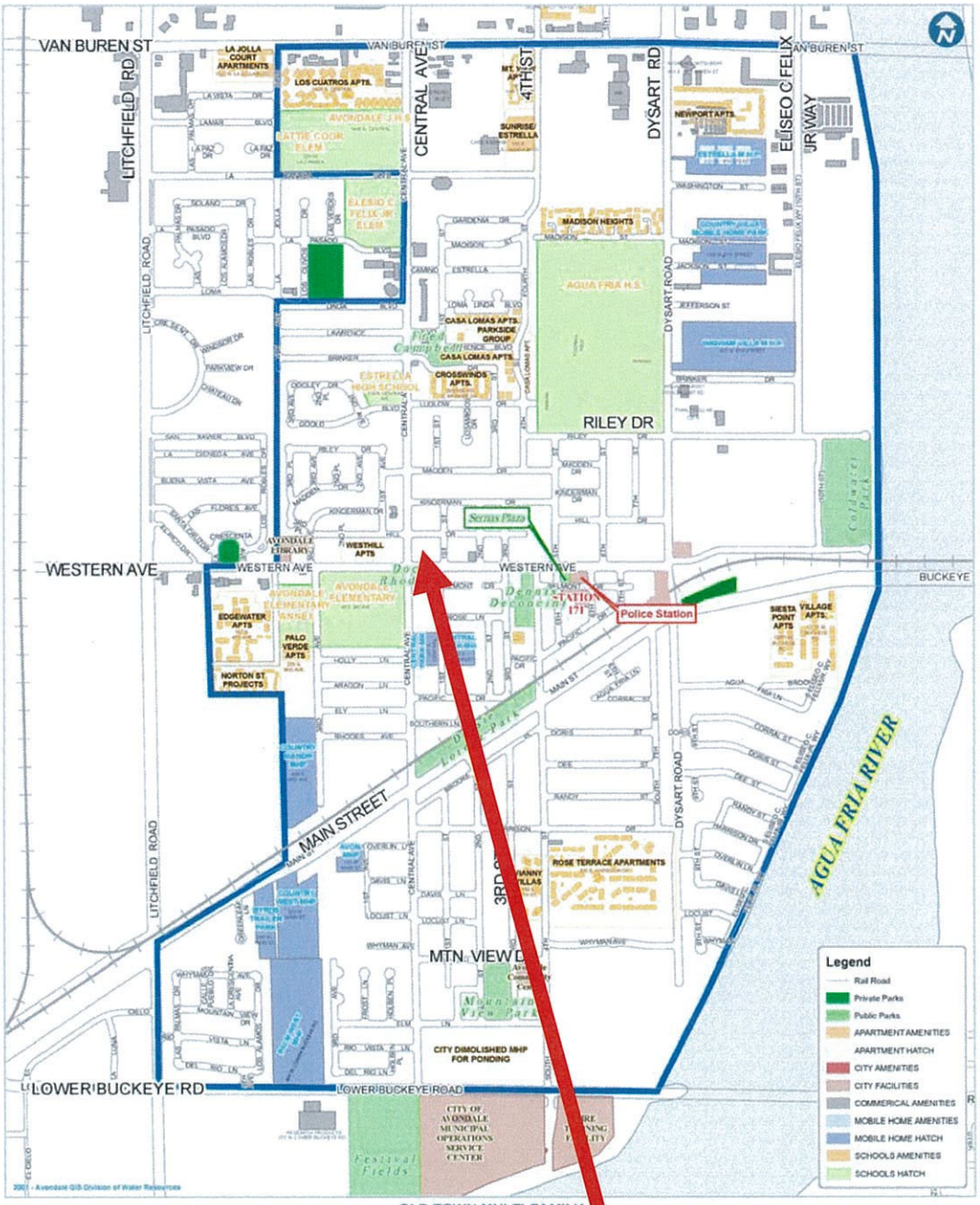
**(Item 5 from the Contract.)Maintenance of the Facade**. The Property Owner will, at all times, maintain the Facade in a good and sound state of repair to ensure the structural soundness and the safety of the Structure and the Facade and will ensure that the Facade retains its appearance consistent with the Updated Facade provided however, that the Property Owner may update or upgrade signage on the Property so long as the updated or upgraded signage complies with the City's Sign Ordinance. This maintenance obligation shall require replacement, repair and reconstruction according to City building standards within a reasonable time whenever necessary to have the external nature of the Structure at all times appear to be the same as the Updated Facade, except as otherwise approved in advance in writing by the City in its sole discretion.[6]

## *Required Enclosures*

Plan review fee - $30. Please invoice the Neighborhood and Family Services Department, City of Avondale, attention Ruth Clark, Revitalization Project Manager

[6] PROGRAM GRANT AGREEMENT, Western Avenue Business Exterior Improvement Grant, March 2010.

## *Exhibit B: Building is within Revitalization Area*




OLD TOWN MULTI-FAMILY

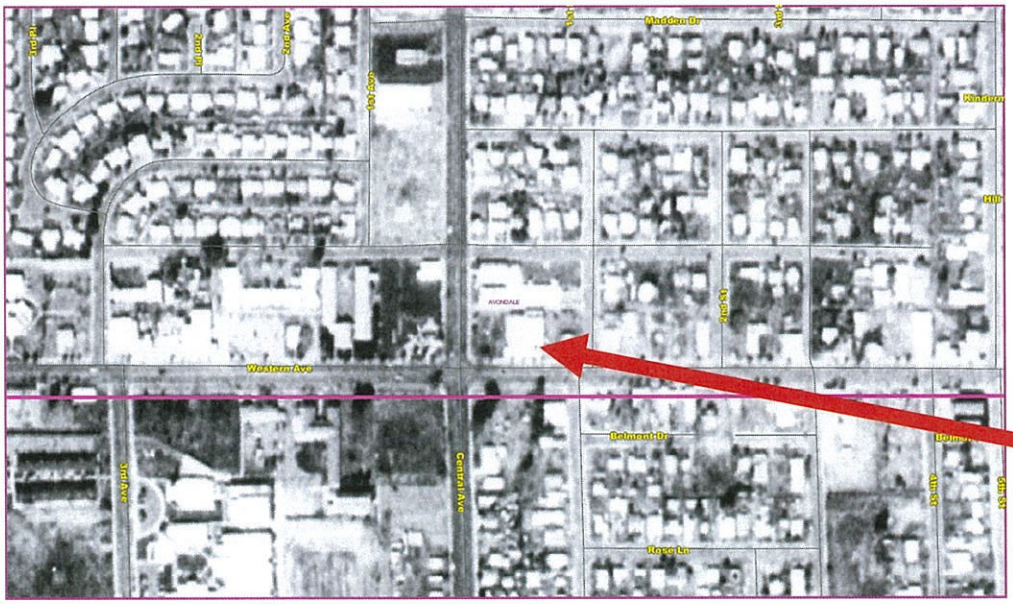
**Building location: 16 E Western Avenue**

***Site Plan***

CENTRAL AVENUE
1ST STREET
WESTERN AVENUE
500-17-001
500-17-003
500-17-007
500-17-008

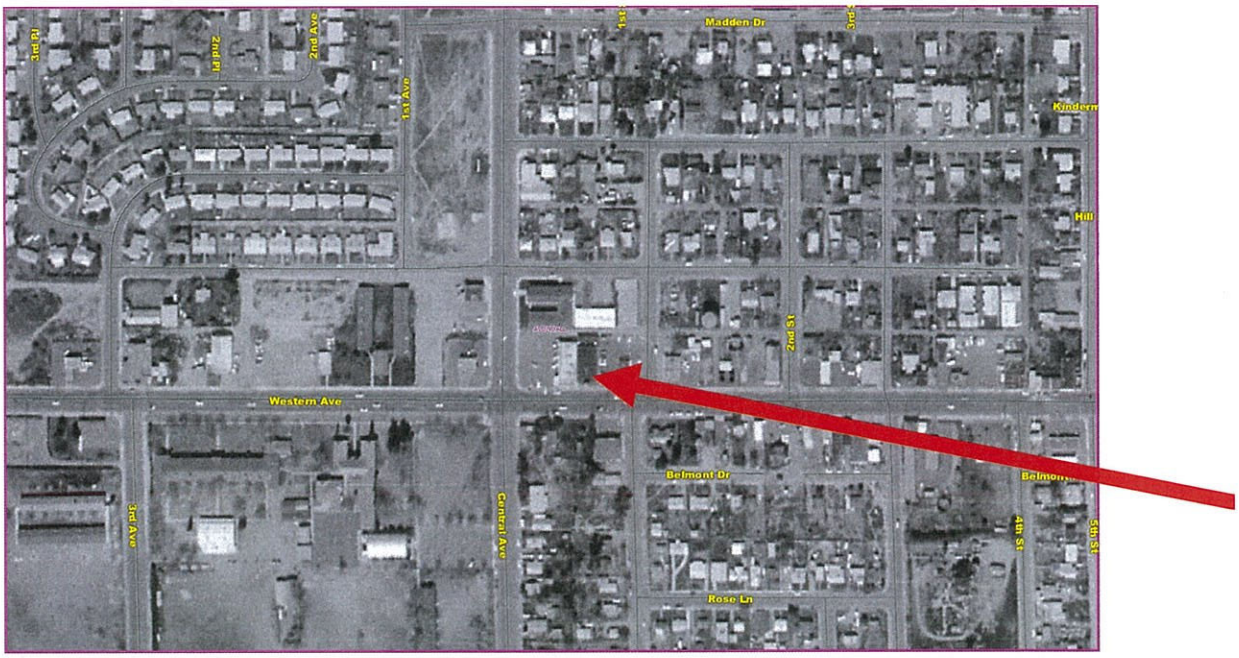
*Aerial Photographs of Site verifying building history*[7]

*2008-2009*

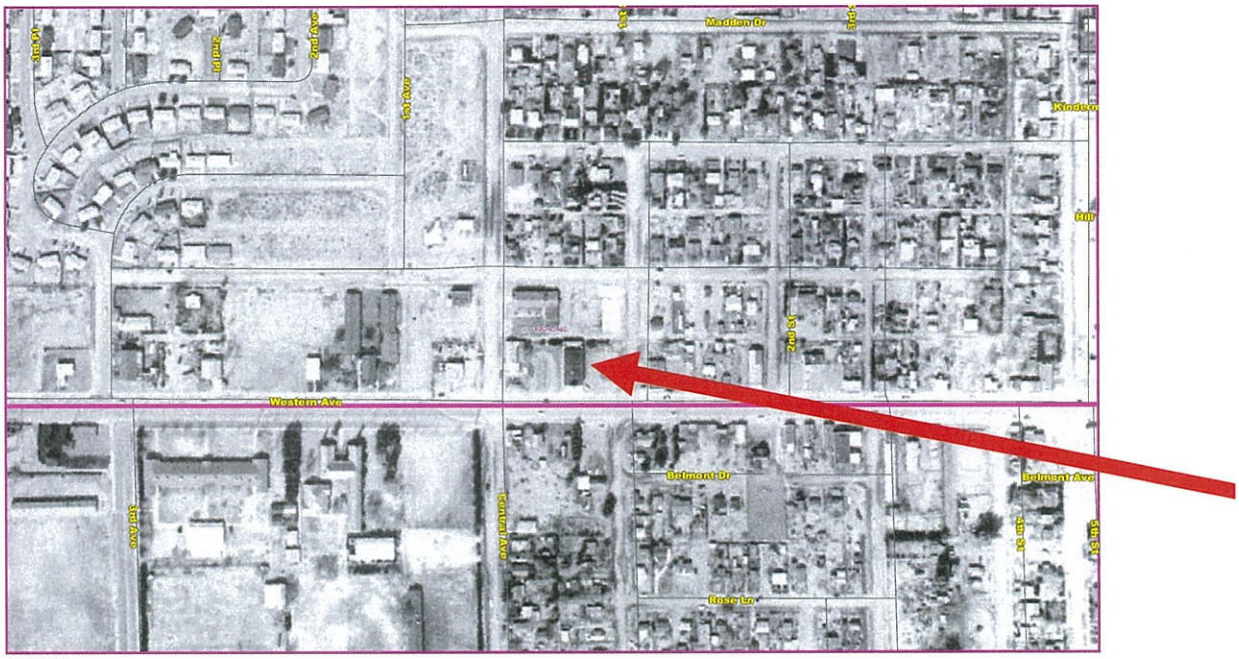



*1992-1993*

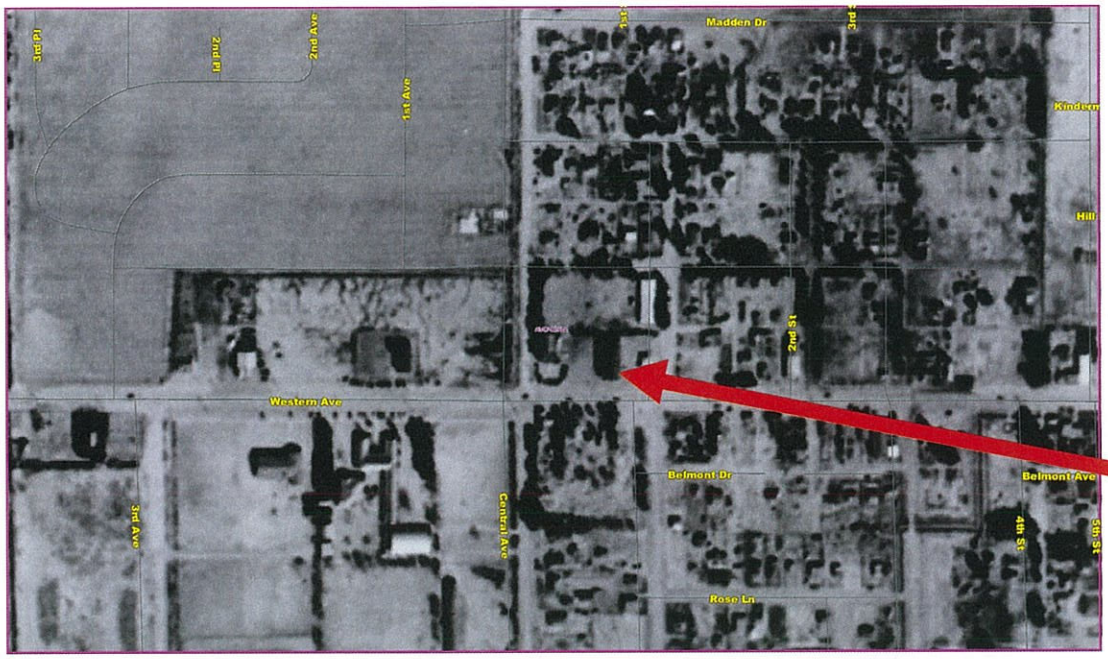
[7] Maricopa County Flood Control District Aerial Maps, http://www.fcd.maricopa.gov/Maps/gismaps/, 3-15-2010.


1st Pl
2nd Pl
2nd Ave
1st Ave
1st
Madden Dr
3rd
Kindern
Hill
2nd St
Western Ave
Belmont Dr
Belmon
3rd Ave
Central Ave
4th St
5th St
Rose Ln

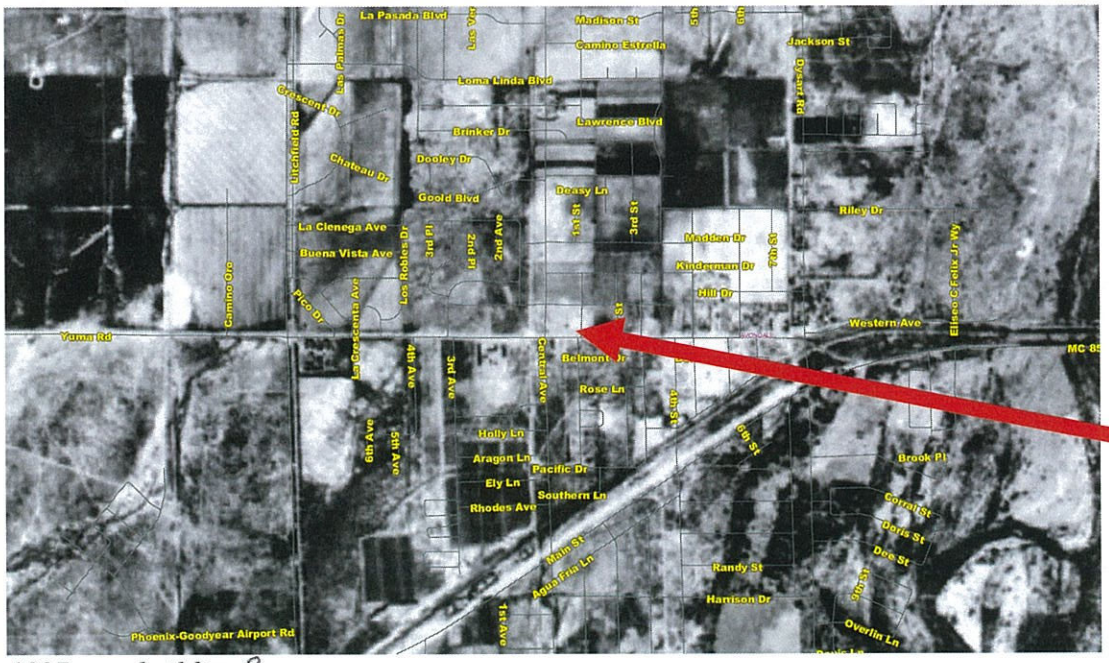
*1969*


1st Pl
2nd Pl
2nd Ave
1st Ave
1st
Madden Dr
3rd
Kindern
Hill
2nd St
Western Ave
Belmont Dr
Belmont Ave
3rd Ave
Central Ave
4th St
5th St
Rose Ln

*1959*




*1949*

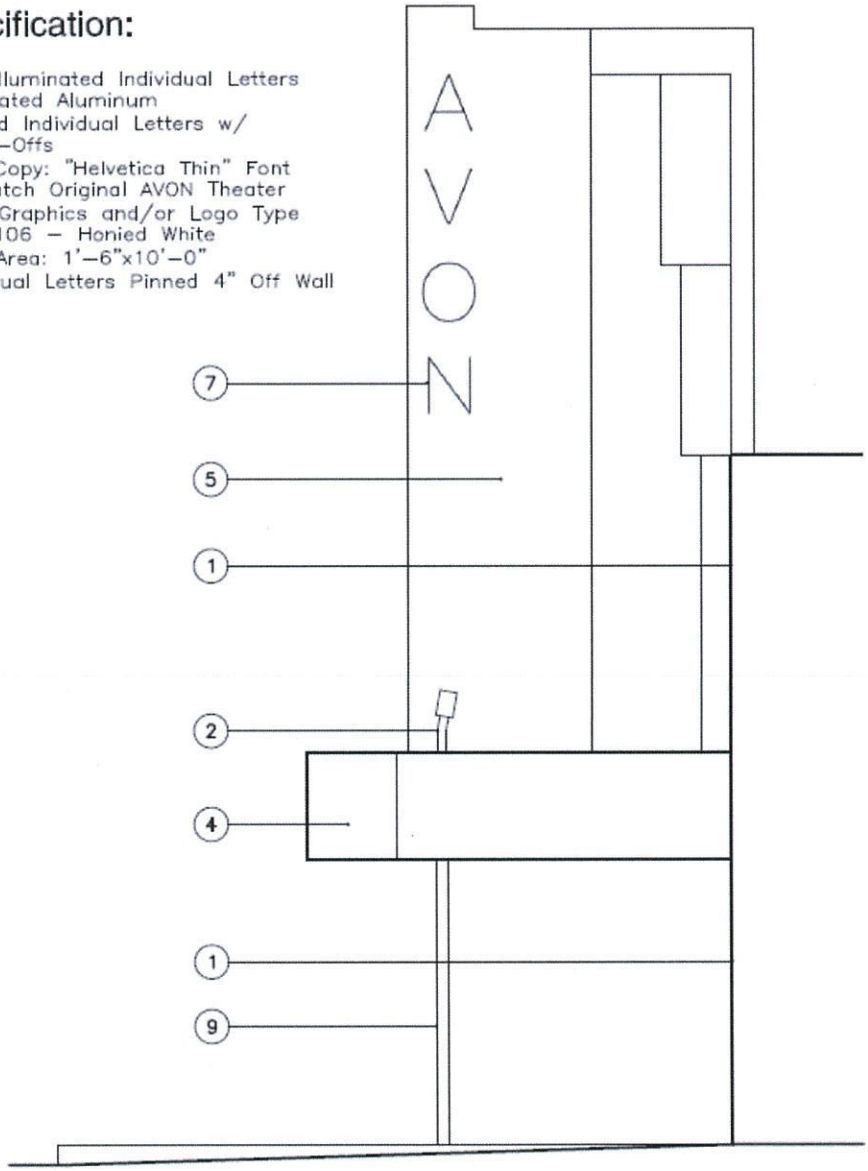



*1937 – no building?*

***Exhibit D: Excerpt from construction documents showing Avon Theater sign detail***

## AVON Sign Specification:

| | |
|---|---|
| ILLUMINATION: | Non–Illuminated Individual Letters |
| MATERIALS: | Fabricated Aluminum |
| CONSTRUCTION: | Applied Individual Letters w/ Stand–Offs |
| LETTER STYLE: | Sign Copy: "Helvetica Thin" Font |
| LOGO: | To Match Original AVON Theater Logo Graphics and/or Logo Type |
| COLOR: | SW 7106 – Honied White |
| SIZE: | Max. Area: 1'–6"x10'–0" |
| INSTALLATION: | Individual Letters Pinned 4" Off Wall |




1 **Side Elevation**

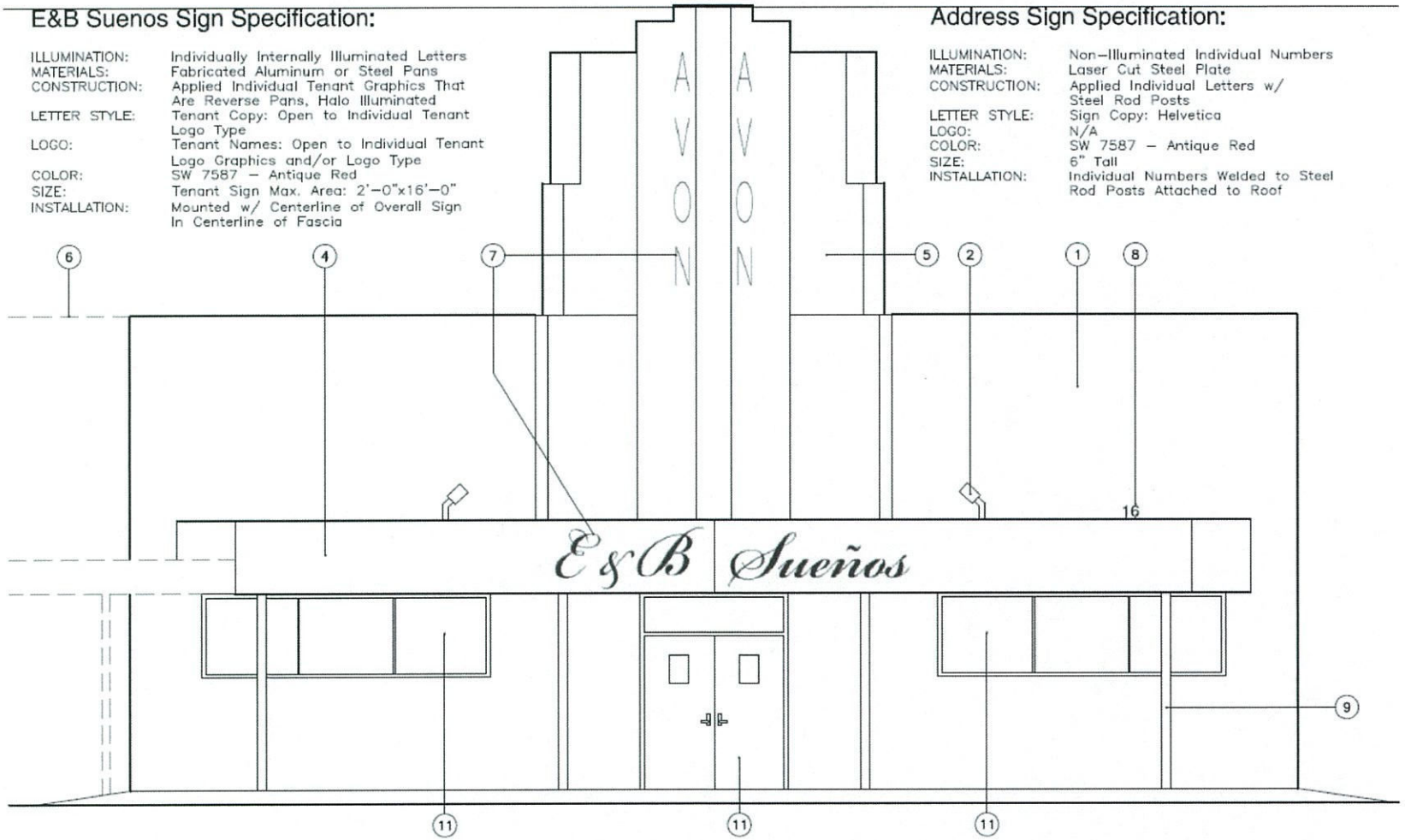
Scale: 1/4"=1'–0"

## E&B Suenos Sign Specification:

| | |
|---|---|
| ILLUMINATION: | Individually Internally Illuminated Letters |
| MATERIALS: | Fabricated Aluminum or Steel Pans |
| CONSTRUCTION: | Applied Individual Tenant Graphics That Are Reverse Pans, Halo Illuminated |
| LETTER STYLE: | Tenant Copy: Open to Individual Tenant Logo Type |
| LOGO: | Tenant Names: Open to Individual Tenant Logo Graphics and/or Logo Type |
| COLOR: | SW 7587 – Antique Red |
| SIZE: | Tenant Sign Max. Area: 2'–0"x16'–0" |
| INSTALLATION: | Mounted w/ Centerline of Overall Sign In Centerline of Fascia |

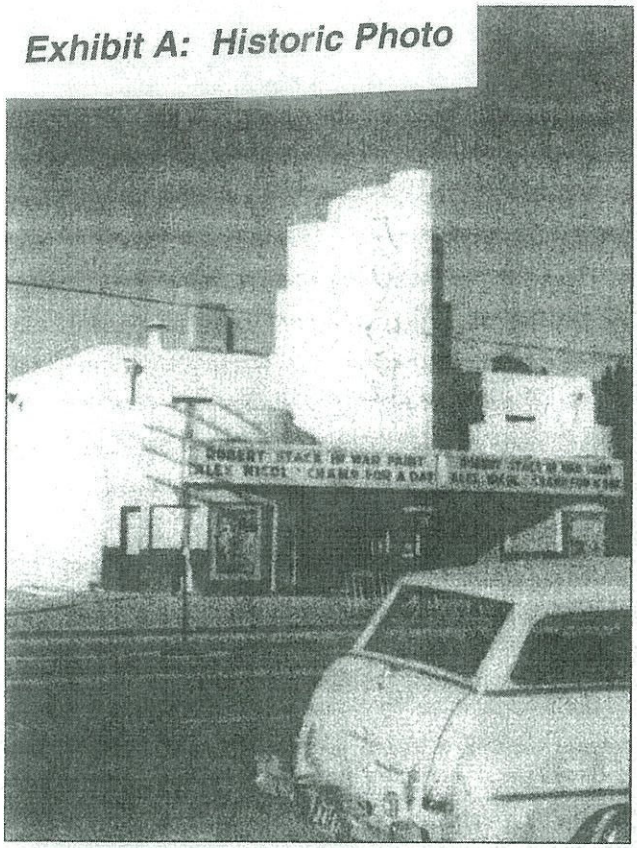
## Address Sign Specification:

| | |
|---|---|
| ILLUMINATION: | Non–Illuminated Individual Numbers |
| MATERIALS: | Laser Cut Steel Plate |
| CONSTRUCTION: | Applied Individual Letters w/ Steel Rod Posts |
| LETTER STYLE: | Sign Copy: Helvetica |
| LOGO: | N/A |
| COLOR: | SW 7587 – Antique Red |
| SIZE: | 6" Tall |
| INSTALLATION: | Individual Numbers Welded to Steel Rod Posts Attached to Roof |

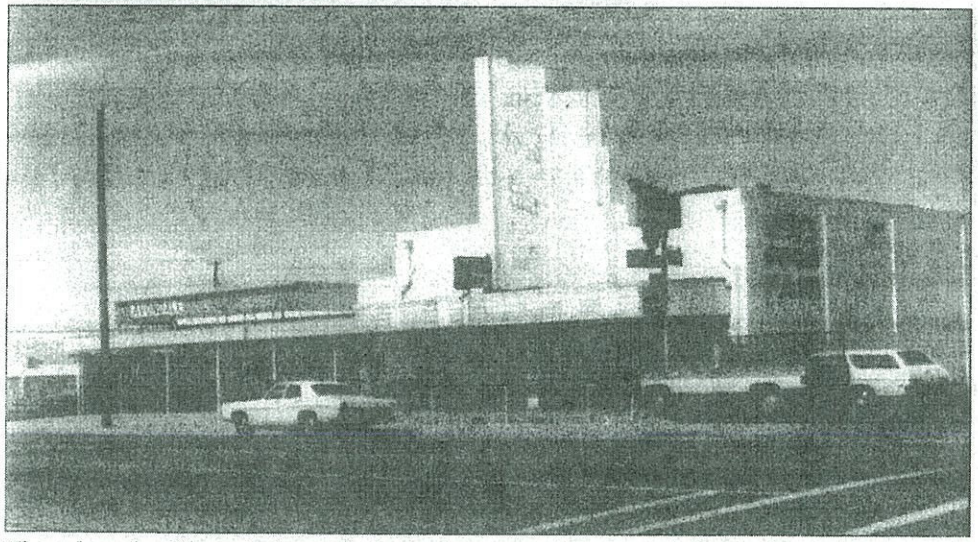



3 **Front Elevation**
Scale: 1/4"=1'–0"

## Exhibit A: Historic Photo

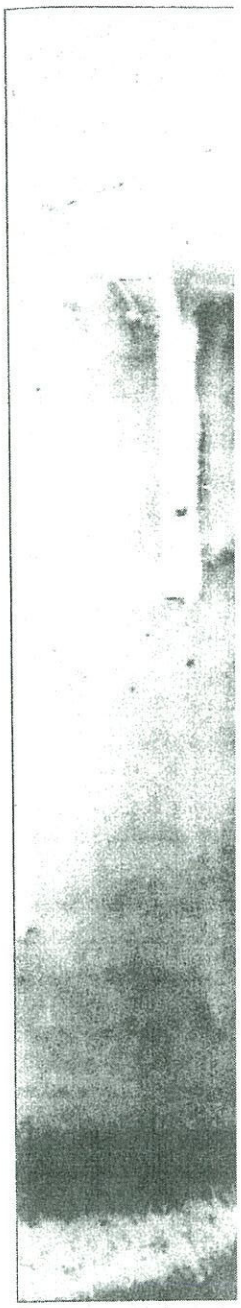



The old Avondale Theater had various uses over the years. Of course, the first was as a theater, but at the moment, it is a reception hall used for weddings and other gatherings. In the past, the movie theater would provide hours of entertainment. There were no televisions or video games, so evenings and Saturdays were often spent watching the big screen. The Schneider family later leased the theater to Moe's and later Jeff's Food Fair. The marquee features Robert Stack starring in *War Paint* and Alex Nicol starring in *Champ for a Day*. (Courtesy City of Avondale.)



This is how the old movie theater looked in later years. After it was Jeff's Food Fair, the Kings used it for a department store. From there, an alternative school leased the building. It subsequently became the VFW Hall and today is a reception hall. (Courtesy City of Avondale.)





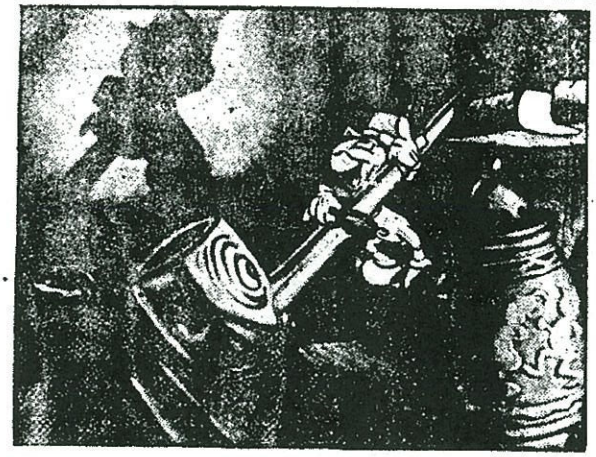
John Summers was born ir
following the crops with h
army in World War II and r
"Corky" and Pat. Pat would
uncommon to come home
or that there was a new tel

2010 Photograph

***Exhibit D: Local Newspaper Articles and Advertisements about the Avon Theater Building***

Friday, July 26, 1946

# NEW AVON THEATRE AT AVONDALE BOOKS OUTSTANDING PICTURES



This week marks the formal opening of the new McCormick-Nace Theatre at Avondale, the modern Avon Theatre. The new Avon Theatre is constructed of concrete block and has steel beams to give utmost protection. It is all concrete floored to insure maximum sanitation and safety. The new Avon Theatre is equipped with the newest type of equipment and sound system and should compare favorably with the finest theatres in the state. The theatre opened last Wednesday for preliminary testing and initial presentation but a grand program of the "best in movies" is planned for the inaugural season as a formal welcome to the many people of the fast growing Westside. The new Avon Theatre at Avondale will give only the best in movies as it has the choice of the entire product of all the studios.

The initial ewek of "movie bests" includes such wonderful presenations as the re-lease of "Home In Indiana" this Wednesday and Thursday. Followed on Friday and Saturday by a selected program for the children of the Westside, the famous Walt Disney film entitled "Pinocchio," plus a second full length feature entitled "And Then There Were None," a truly grand murder drama by 20th Century Fox films.

Sunday we have two action hits. On Tuesday and Wednesday, July 29-30, the Avon Theatre presents two top hits on the same program; Gene Tierney in "Dragonwyck", and William Powell in "Hoodlum Saint." The first week of showing is climaxed by the Paramount super hit, "Road To Utopia."

These are only the programs of the first complete week and you can look forward to 52 weeks a year of this type of entertainment at the new Avon Theatre at Avondale. The Avon Theatre will average eight features a week and the people of the Westside are assured that all the best products of all the major studios will be shown at Avondale. The new Avon Theatre provides ample paved parking area and invites its patrons to enjoy this service. The concessions are equipped to furnish you with the nationwide, sensational taste thrill, frozen custard and freshly popped corn. It is the plan of the Avon Theatre to become a civic center for this area and invites the civic bodies of the Westside to place their plans before the manager, Mr. Charles Wilson.

The new Avon Theatre will be staffed with residents of the Westside. Mr. H. J. Anderson of Tolleson, will act as supervisor with the capable assistance of Mr. Charles Wilson as manager. The Westside has generously attended the McCormick-Nace theater at Tolleson and the Avon Theatre at Avondale is the direct result of this enthusiasm over past years. The new Avon Theatre now becomes an outstanding landmark of this area and sets a new pace and style of construction for the area.

## NURSING CLINIC TO BE HELD IN AVONDALE AREA FOR PUBLIC

The Public Health Nurse in the Avondale-Litchfield area will hold office hours as follows:

Thursday—1:00 p. m. to 4:00 p. m.

The Nurses' office will be in the Community Center Hall across from Litchfield High School on avenue J. She will be available for consultation on the following:

Prental—Diet, personal hygiene, layette and general Prental care.

Infant—Feeding, training and general problems in Well-Baby supervision.

Immunization—From six months of age for following: Smallpox, any age; Diphtheria, thru nine (9) years; Whooping Cough, thru three (3) years.

Tuberculosis— Tuberculin Skin Testing and referrals for Chest x-rays.

Communicable Disease — Problems concerning contagion.

Crippled Children—Consultation and referral service.

Maricopa County Health Unit,
Ruth C. Mackert, R. N.
Public Health Nurse.


# Westside

Politically Independent

Devoted to the Interest of: TOLLESON - AVONDALE - COLD

VOLUME FIVE — Litchfield Park, Arizona


## Uncle Sam Says.

Isn't easy chair you have, friend. This is real comfort. I'll bet you are one of my nephews whose family life rests on a firm foundation of United States Savings Bonds. Every banker, every merchant, every spiritual leader in this community will tell you that I'm right. The first material possession any right-thinking, right-acting citizen acquires is savings. United States Savings Bonds are safe savings which grow in amount of $1 for every $3 invested at the end of ten years.

*U. S. Treasury Department*

### MARRIAGE LICENSES

Marriage licenses were issued in Phoenix last week to the following couples: Hugh R. Durnal, 22, Tolleson; Gladys Cobb, 28, Phoenix. Paul Eugene Nes Smith, 17; Fannie Patricia Cowan, 15, both of Avondale.

Pvt. George C. Mendez, son of Alfredo Mendez, has recently completed basic training and is being assigned to occupation troops as a 40 mm automatic gunner.

## Couples Club Enjoys Swim

The Couples Club of the Avondale Community Church met at the Litchfield Park picnic grounds and pool at 6:30 p. m. July 21st for a picnic supper followed by a swim. All business was dispensed with and the evening was devoted exclusively to eating, visiting and swimming. Those attending were Mr. and Mrs. Carl Anderson, Perry Burdick, Jess Burt and family, Bill, Dave, Dan and Chickie; J. H. Chapple and Ronnie; Ferris Crosley and Carol Ann; Hubert Duncan and daughters, Denise and Sara Jo; Charles Kibler, Jim King and Rosemary; Abe Steele, Don Vahue and daughters, Donna Marie and Joyce Ann; Ben Veneklasen and Mickey. Also attending were about twenty members of the Youth Fellowship who, after the supper and an evening in the swimming pool, enjoyed a watermelon "bust".

The next meeting of the Couples club will be August 4th, at the home of Carl and Vida Anderson, 112 Las Robles.

## Light Vote Marks Westside Balloting

The democratic primary was run off last Tuesday with little interest being shown in any of the contests. Hottest race was that for state senator which saw Marvin Smith and O. L. McDaniel come out on top.

Ed Oglesby, incumbent supervisor won easily from N. J. George. Sid Spain at times pressed John King for the constable post, with a write-in campaign for Vern Sesion never getting up enough steam. Arthur Webster, incumbent J.P. was unopposed and received a substantial vote of confidence.

In the contests for state representatives, Thornton Je[illegible] won over Jim Callan and [illegible] for the 14th district. In d[illegible] 22 Armstrong won witho[illegible] trouble over Brown.

## Mrs. Irene Combs Passes Away

Avondale — Funeral services were held Saturday morning for Mrs. Irene Combs, 76, who died Thursday morning in a Phoenix hospital. She was the wife of the late Joseph R. Combs, Glendale rancher, and had been a resident of Arizona since 1902.

She is survived by six sons, Martin, James M., W. K. Combs,

## Avondal[illegible] Hurt Sav[illegible] Children

Avondale—Fr[illegible] Rebecca Adria[illegible] grandmother, su[illegible] injured right h[illegible] cued one grand[illegible] car about to be [illegible] onrushing train [illegible] tempting to sav[illegible] child. The car, [illegible] Kenneth, 17, [illegible] smashed at the [illegible] after stalling on[illegible] tunately, none of[illegible] serious.

Mrs. Adrian [illegible] granddaughter, [illegible] rian, and trying t[illegible] Adrian, 2, throu[illegible] dow when the p[illegible] the stalled car, [illegible] the car as it wa[illegible] by the train and [illegible] received cuts on [illegible]

## Ben Upso[illegible] Family R[illegible]

Avondale—Ben [illegible] last Sunday fro[illegible] where he attende[illegible] ion at the home [illegible] Beside having a f[illegible] so had a chance [illegible] back there. Only [illegible]

Present at the [illegible] Upson and daug[illegible] Kankakee, Ill.; F[illegible] four sons from T[illegible] Upson from Poin[illegible] Mr. and Mrs. M[illegible] Tulsa, Okla.; Et[illegible] Denver; and Mrs. [illegible] ter from Little Ro[illegible]

Donald Richard [illegible] was discharged fr[illegible] California.


WITH NEW, HIGHER ARMY PAY, THOUSANDS ARE ENLISTING!

"MAKE IT A MILLION!"

NEW PAY SCALE

| In Addition to Clothing, Food, Lodging, Medical and Dental Care, and Liberal Retirement | Starting Base Pay Per Month | MONTHLY RETIREMENT INCOME AFTER: 20 Years' Service | 30 Years' Service |
|---|---|---|---|
| Master Sergeant or First Sergeant | $165.00 | $107.25 | $185.63 |

TOLLESON TAXI

24-Hr. Service

Phone 9-5405

25c Anywhere in Tolleson

DEER[illegible] AUT[illegible]

A QUIC[illegible] SYNTHI[illegible] FOR US[illegible] TRACTO[illegible] PRE-WA[illegible] IMPROV[illegible] COLORS[illegible] BRUSH[illegible]

look forward to 52 weeks a year of this type of entertainment at the new Avon Theatre at Avondale. The Avon Theatre will average eight features a week and the

Infant—Feeding, training and general problems in Well-Baby supervision.

Immunization—From six months of age for following: Smallpox,

Communicable Disease — Problems concerning contagion.

Crippled Children—Consultation and referral service.

Maricopa County Health Unit,
Ruth C. Mackert, R. N.
Public Health Nurse.


**WITH NEW, HIGHER ARMY PAY, THOUSANDS ARE ENLISTING!**

**"MAKE IT A MILLION!"**

## NEW PAY SCALE

In Addition to Clothing, Food, Lodging, Medical and Dental Care, and Liberal Retirement Privileges.

★

In addition to pay shown at right: 20% Increase for Service Overseas. 50% if Member of Flying or Glider Crews. 5% Increase in Pay for Each 3 Years of Service.

| | Starting Base Pay Per Month | MONTHLY RETIREMENT INCOME AFTER: 20 Years' Service | 30 Years' Service |
|---|---|---|---|
| Master Sergeant or First Sergeant | $165.00 | $107.25 | $185.63 |
| Technical Sergeant | 135.00 | 87.75 | 151.88 |
| Staff Sergeant | 115.00 | 74.75 | 129.38 |
| Sergeant | 100.00 | 65.00 | 112.50 |
| Corporal | 90.00 | 58.50 | 101.25 |
| Private First Class | 80.00 | 52.00 | 90.00 |
| Private | 75.00 | 48.75 | 84.38 |

Get all the facts at your nearest Army Camp or Post, or U. S. Army Recruiting Station.

29-31 W. Jefferson
Phoenix, Arizona

A GOOD JOB FOR YOU
U. S. Army
CHOOSE THIS FINE PROFESSION NOW!



**TOLLESON TAXI**

24-Hr. Service

Phone 9-5405

25c Anywhere in Tolleson

25c per mile outside of Tolleson

●

No charge for extra passengers to the same destination



**Tolsun Theatre**
Tolleson, Arizona
H. J. Anderson, Mgr.

Friday-Saturday
LOIS COLLIER in
"GIRL ON THE SPOT"
and
"CISCO KID IN MEXICO"

Sunday Only
Walt Disney's Pinocchio
SEE IT NOW! ...so you'll have time to see it often!
New Characters to take their places with all DISNEY IMMORTALS!
and a Grand Thriller
"AND THEN THERE WERE NONE"

Monday-Tuesday
BOB HOPE - BING CROSBY
and DOROTHY LAMOUR in
"ROAD TO UTOPIA"

Wednesday-Thursday
GENE TIERNEY in
"DRAGONWYCK"
and WILLIAM POWELL in
"HOODLUM SAINT"

**Avon Theatre**
Avondale, Arizona
Chas. Wilson, Mgr.

Friday-Saturday
Walt Disney's Pinocchio
Second Feature
"AND THEN THERE WERE NONE"

Sunday Only
2 New Action Hits
LOIS COLLIER in
"GIRL ON THE SPOT"
and
"CISCO KID IN MEXICO"

Monday-Tuesday
WILLIA MPOWELL in
"HOODLUM SAINT"
and GENE TIERNEY in
"DRAGONWYCK"

Wednesday-Thursday
BOB HOPE - BING CROSBY,
"ROAD TO UTOPIA"



**Litchfield Park —THEATRE—**
Admission 16 - 40 - 50c

Wednesday Only, July 31
WILLIAM POWELL
ESTHER WILLIAMS
in
"The Hoodlum Saint"
Plus
NEWS & CARTOON

Friday Only, August 2
"Northwest Trail"
In Color
with
BOB STEELE
JOHN LITEL
JOAN WOODBURY
also
"Miss Susie Slagle's"
with
VERONICA LAKE
SONNY TUFTS
JOAN CAULFIELD
Plus
"ZORRO'S BLACK WHIP"
No. 10



For REAL PROMPT Relief from MUSCULAR ACHES-PAINS
Easier To Apply Than Mustard Plaster!
JUST RUB ON MUSTEROLE


Brown.

## Mrs. Irene Combs Passes Away

Avondale — Funeral services were held Saturday morning for Mrs. Irene Combs, 76, who died Thursday morning in a Phoenix hospital. She was the wife of the late Joseph R. Combs, Glendale rancher, and had been a resident of Arizona since 1902.

She is survived by six sons, Martin, James M., W. K. Combs, Dale L., Wiley A., and John O. Combs; two daughters, Mrs. Lettie Rice and Mrs. Madalene Burroughs. And twenty-five grand children and eight great grand-children.

### FATHER OF TOLLESONITE DIES

Tolleson — Elsworth Allison Dougles, husband of Eva Dougles and father of Mrs. L. F. Thompson, Marlow, Granville, Edgar Allison and Theodore R. Douglas, passed away Friday and funeral services were held Saturday afternoon.


**COLDWATER THEATRE**
Prices: Adults 25; Children 12 (Including Tax)

Friday, Saturday, July 26-27
"Spook Town"
with DAVE O'BRIEN
Also Chap. 3—
"THE FIGHTING MARINES"

Sunday, Monday, July 28-29
"Town Went Wild"
with
FREDDIE BARTHOLOMEW
Also Chap. 2—
"WILD BILL HICKOK"

Tues., Wednes., July 30-31
"Dead Or Alive"
with TEX RITER

Thursday, Aug. 1
"What's Buzzin' Cousin"
with FREDDIE MARTIN


July 26, 1941

COTLAND HAS BEEN
THE ATLANTIC AT
TWO YEARS.

## Tolleson Heavy Mellon Shipper

Tolleson—As the highest number of carloads of honeydew melons left the state for this year, Tolleson was rated as one o fthe heaviest shipping points. A number of casabas and watermelons also went out this year.

## Avondale Men Enlist

Avondale—Two Avondale men enlisted in the armed forces last week, it was announced by the local recruiting officers in Phoenix. Herbert L. Horney enlisted in the marines on Monday. On Thursday Ray L. Benton signed up with the army.

## AVONDALE MEN RECEIVE DISCHARGE

Avondale — Last Wednesday Ino Aragon was discharged from the navy. His brother, Pat Aragon, came home last week on a twelve day furlough from San Diego to meet him.

Also on Wednesday, J. C. Herington, it was announced, had recently received his honorable discharge from the navy.


**TOLLESON TAXI**

24-Hr. Service

Phone 9-5405

25c Anywhere in Tolleson

25c per mile outside of Tolleson

No charge for extra passengers to the same destination

**Litchfield Park THEATRE**

Admission 16 - 40 - 50c

Wednesday Only, Aug. 14

BUD ABBOTT and LOU COSTELLO in

**"Little Giant"**

plus

NEWS & CARTOON

Friday Only, Aug. 16

ROY ROGERS and TRIGGER in

**"UTAH"**

also

**"Girl On The Spot"**

with LOUIS COLLIER and JESS BARKER

**AVON THEATRE**

—Avondale, Arizona—

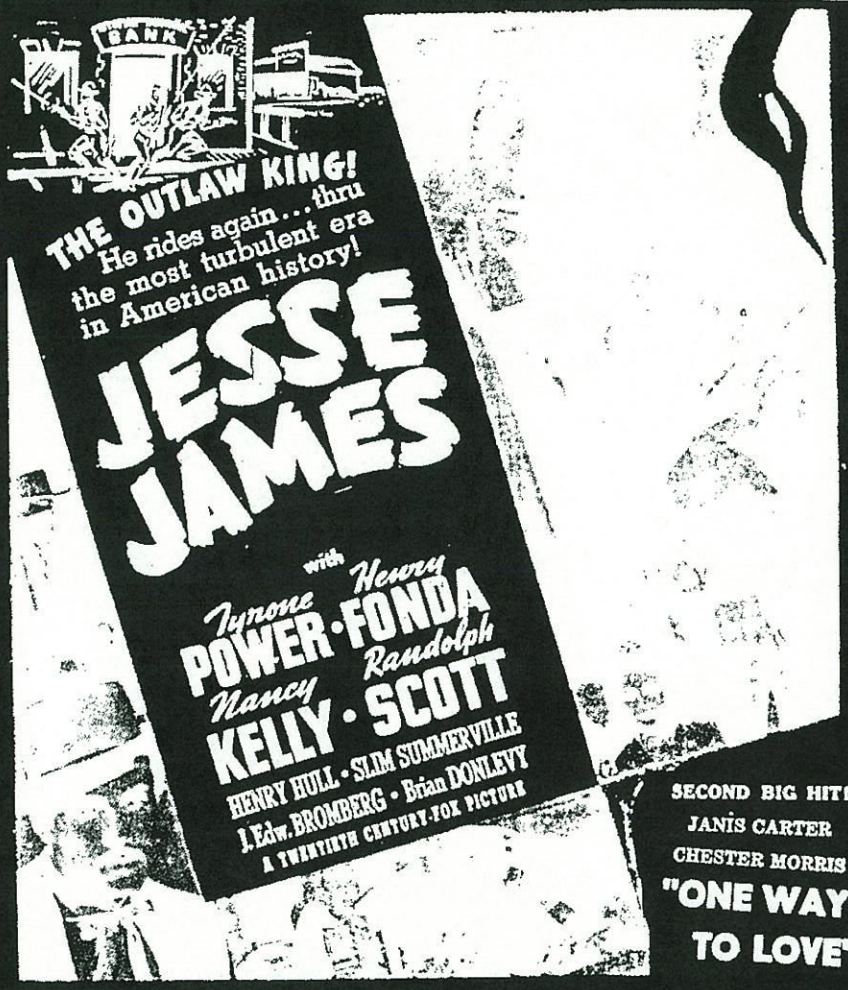
FRI., SAT., AUG. 9-10

NOTE! These programs show at both of the Theatres — but on different dates. Please note dates carefully.

**TOLSUN THEATRE**

—Tolleson, Arizona—

SUNDAY ONLY, AUG. 11



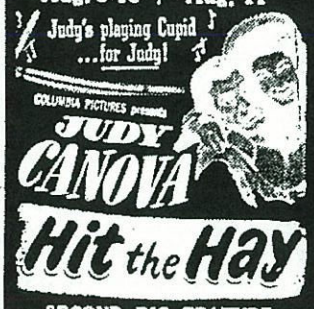

SECOND BIG HIT!

JANIS CARTER

CHESTER MORRIS

**"ONE WAY TO LOVE"**

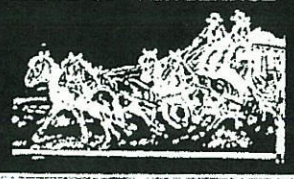
TOLSUN Fri - Sat. Aug. 9-10 | AVON Sun. Only Aug. 11




SECOND BIG FEATURE

KERBY GRANT and FUZZY KNIGHT in

**"TRAIL OF VENGEANCE"**



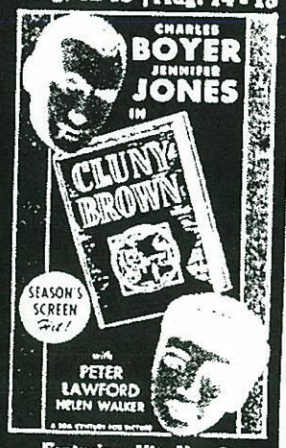
TOLSUN

Saturday shows start at 3:00 p. m. Sunday shows start at noon.

AVON

Saturday shows start at 3:00 p. m. Sunday shows start at 2:00 p. m.

TOLSUN Mon - Tues. Aug. 12-13 | AVON Wed.- Thur. Aug. 14 - 15




Featuring Hit No. 2

EDDIE BRACKEN and ELLA RAINES in

**"HAIL THE CONQUERING HERO"**

AVON THEATRE

Mon., Tue., Aug. 12-13

GREAT DOUBLE

**"RONDEZVOUS 24"**

with WILLIAM GARGAN and MARIE PALMER

Soul;" a solo by Joann Swanson "Were You There", accompanied by Lillie Ann Badley; and concluding with the whole chorus bringing their rendition of "God So Loved The World".

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# T.U.H.S. Has Jr.-Sr. Prom

Paradise Inn was the scene of the Tolleson Union High School Junior-Senior Prom last Saturday night from 9-12 o'clock midnight. The theme of the dance was "Dancing In The Dark"; and the music was furnished by Bob Austin and his Quartete. Sponsors for the affair were Mr. Dom Patrone, Mr. John Palmer, and Mrs. Carrie Marabel.

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## Results Of Agua Fria League Track Meet

The Agua Fria League held their spring track meet last week at Dysart school. Winner of the meet was Peoria with 159 points.

Second high was Dysart with 141, and Avondale was third with 96½. Tolleson got 54, and Litchfield Park 38½.

High for the boys in the grammar school meet was Dysart with 89 points, second was Peoria with 69, followed by Avondale, 46½; Tolleson, 43; and Litchfield 26½.

Peoria came in first in the girls division with 90 points; Dysart, 2nd, 52; Avondale, 50; Litchfield, 12; and Tolleson, 11.

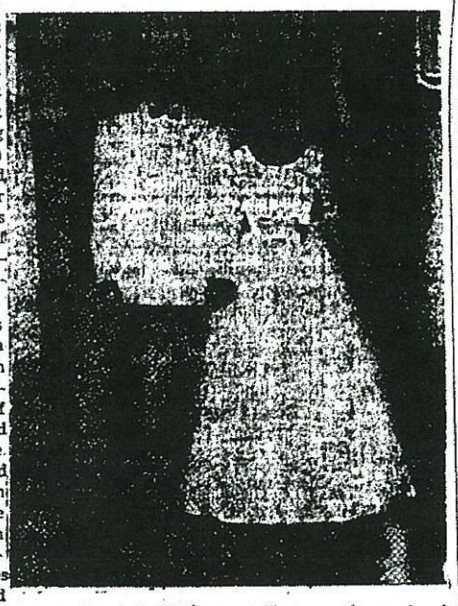

AVON theatre
AVONDALE
FRI. & SAT.
LUCILLE BALL
and
DESI ARNAZ
in M-G-M's hilarious comedy
"THE LONG, LONG TRAILER"
ALL IN GORGEOUS COLOR
AUDIE MURPHY
Ride Clear Of Diablo
SUN. ONLY
TONY CURTIS
Beachhead
Royal African Rifles


of Litchfield High School, announced Thursday that Miss Belen Soto and Laddie Coor are valedictorian and salutatorian of the 1954 graduating class at Litchfield high School. Miss Soto has a grade average of 1.42 and Laddie Coor, 2nd highest ranking student, has a grade average of 1.75.

Belen is the daughter of Mr. and Mrs. Ramon Soto of Litchfield Elementary School, graduating as salutatorian of her class. Miss Soto has attended Litchfield High School all fours years and has been very active in Girls' League. She was secretary of this organization last year and is president this year. Also she is co-editor of the 1954 school annual, Wickiup.

Laddie Coor is the son of Mr. graduating from Avondale Elementary School. He was president of his class during his first three years attendance at Litchfield High and is now student body president. He has earned varsity letters for three years in both football and baseball, is a member of the band, co-editor of the school paper, Desert Howl; and photo editor of the Wickiup. Laddie was state winner of the State Oratorical Contest sponsored by the American Legion and Arizona Republic.

# Pendergast-Smith Wedding Held Thursday At West End Church



A double ring ceremony was held Thursday evening, April 15, in the West End Baptist Church uniting Laurel Dawn Pendergast and Dale Harber Smith. Rev. Jess F. Lee, pastor of the church, performed the marriage.

The bride was dressed in a floor-length gown with a fitted bodice of white satin and chantilly lace. Tulle covered the white satin skirt, and the yoke of illusion net and long tapering sleeves were trimmed with pearls. Her fingertip veil was fastened to a close fitting cap. Mrs. Smith carried a bridal bouquet of white rose buds and cluster of white rose buds with orange blossoms over her bible.

Miss Sharon Turnbull, maid of honor, of Klondike, Ariz., wore a ballerina-length dress of blue silk organza with matching accessories, and she carried a nosegay of pink rose buds.

The bride was given away by her father. Jerry C. Smith, brother of the bridegroom, acted as best man. Cecil Pendergast, Jr., brother of Mrs. Smith, conducted the ushering. Jeanette Green, accompanied by John Akin at the organ, sang "Because", and "I Love You Truly".

Approximately 100 guests attended the reception afterwards at the Pendergast school auditorium. The bridegroom's parents, Mr. and Mrs. Orville C. Smith of Riverside, Calif., were present, as were other out-of-town guests including Mrs. Burton Huff, Ajo; Patsy Finley, Pasadena; Mr. and Mrs. Eugene Ashley, Rivera, Calif.; and Lt. and Mrs. Robert Russell of Virginia.

Mrs. Smith is the daughter of Mr. and Mrs. Cecil Pendergast of Lat. 22. She graduated from Tolleson Union High, and is now a sophomore at Arizona State College at Tempe where she is majoring in Home Economics.

Dale Smith attended Brigham Young before entering ASC at Tempe. He is a member of the Sun Devil Band and is affiliated with Kappa Kappa Psi, and the Marketing Club. He will graduate in June with a B.A. degree in marketing and advertising. The couple will live at ASC and then to California until he enters the service.

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## Representatives From State Employment Office In Tolleson

Two representatives from the State Employment office were in Tolleson last Friday and Saturday registering the unemployed farm laborers. The situation seems to be easing up some in this area; but as an all over situation it shows the greatest influx of unemployed farm help in quite some time. It is all due to industrial lay-offs; as people from all walks of life are following the trend to go "back to the farm." It is a critical situation; and all states are represented in the tabulation.

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A sarcastic tongue is always dangerous—especially to the person who possesses it.

# Tolleson F.F.A. Score

On last Thursday, April 15, 22 members of the Tolleson F.F.A. participated in the Field Day and Judging Contests at the University of Arizona in Tucson. Climaxing the days activities, the boys heard an inspiring talk by E. Ray Cowden, local farmer and rancher, on "Your Personal Challenge." Also at the banquet which was held in the ballroom of the Student Union Building at the University, members received awards and recognition for the field day contests.

The parliamentary procedure demonstration team received second place award and was composed of Gary Marshall, Augie Pendergast, Alan Moseley, Jim Brand, Howard Hardon, Harry Kruse, John Caudle, Mike Swenson, and Charles Finley, advisor.

The agricultural economics contest was won by the Tolleson team composed of Jim Brand who placed second in the individual award, and also Augie Pendergast. The agronomy team placed second with Don Edwards placing first as individual and Robert Cahoon receiving honorable mention, and 9th place.

The dairy team individual awards won by Tolleson were Robert York, fifth, and Delbert Henry tied for 9th. The Entomology team placed fifth, with John Caudle receiving 5th individual award, and Dan Burt being the other member of the team.

In the horticulture contest, Bill Caudle placed 6th on the individual basis. The livestock team placed ninth and was composed of Augie Pendergast, Harry Kruse, Gary Roberts, and Jim

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Last ad - April 22, 1954

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# The Westside WEEKLY

UNIVERSITY OF ARIZONA LIBRARY 1954

XI 44

GE I GOODYEAR, ARIZONA, THURSDAY, APRIL 29, 1954 NUMBER 42

## ent-Son Banquet At Tolleson h School Honors Westsiders

The annual "Parent-Son" banquet was given by the Tolleson F.F.A. in the school cafeteria last Friday night, April 23rd, at 7:30 o'clock. Jim Brand was general chairman of the event; with Alan Moseley food chairman; and Augie Pendergast program chairman.

The program included installation of new officers; a ceremony to bestowe honorary chapter farmer degrees on various people in the community who were; Mr. Harold Cypert, Mr. John Evans, Mr. Eugene Ely and Mr. Charles Finley. A saxophone solo by Alan Moseley accompanied by Patty Gray, and a talk of Ray Benbow of Mesa on "Making the Most of Our Opportunities".

Officers installed were; Alan Moseley, president; John Johnston, vice-president; Jim Stanton, secretary; Bob York, treasurer; Harry Kruse, reporter, and Dan Burt, sentinel.

Those receiving other awards were: Parliamentary Team; Gary Marshall, Augie Pendergast, Alan Moseley, Jim Brand, Howard Hardon, John Caudle, Harry Kruse and Mike Swenson; Star Chapter Farmer was Delbert Henry, Harry Kruse, runnerup; the Dairy Farming went to Harry Kruse; Farm Mechanics to Gary Marshall; Howard Hardon, runnerup; Farm Electrification to Howard Hardon, Alan Moseley, runnerup; Soil and Water Management to Delbert Henry; and Public Speaking to Harry Kruse.

Gordon Hall from Chandler Chapter was a guest of the Tolleson chapter.

## .H.S. Chooses nior Maid Cotton

ary Jane Roberds was chos- Jr. Maid of Cotton at Tolle- Union High School last week the faculty. Their selection based on being photogenic; ing perfect health, pleasing sonality, poise, and attractive earance. Miss Roberds will go Westward Ho Hotel in Phoe- on May 6th to compete with r high school Cotton Maids the state title. With this rd will go a trophy, a ten cotton wardrobe, and a n modeling at Sue Size- chool in Phoenix.

## Police Hold sting Meeting

members of the Junior Club witnessed an inter- demonstration of wrestling well Burton at their meet- st week. More new mem- joined the organization, and ports program is getting un- ay. Four more officers were d.

e swimming team scheduled eeting for Saturday. Jim ton will act as instructor for boys. Boxing matches have heduled April 29. There

## Tolleson Lions Honor Ladies

Last Thursday night marked "Ladies Night" for the Tolleson Lions' Club. They met at the Stagecoach Stop Cafe for what turned out to be another of those delightful "April Fish" parties; the menu even being scrambled up in such a manner that you didn't know what you were getting to eat until it was served to you. Fish games with prizes of fishing equipment; a door prize with similar prize; a dance by Miss Zada Boles pupils, Janice Mitchell and Bruce West; and

This eager group of Litchfield Grade School students pose in costume during rehearsal of the school's annual spring pageant which is being held tomorrow night.

## Shirley Mattox Fund Now $1,432; Benefit Wrestling Match Nets $708.81

Louis Oen, member of the Shirley Mattox Fund in charge of finances, reports that the donations amounted to $1,432. by Saturday noon. Of that sum the benefit wrestling matches Tuesday night contributed $708.81.

The school children under Mary Elma Ludlow have donated $87.19 to help pay for Shirley's care. By Saturday, Bert Fireman had contributed $585, donated by his readers from all over the valley.

Harry Rex announced that nurses for Shirley have been paid for around the clock for eleven days. She underwent her first operation Saturday to prepare for later skin grafting.

The benefit Tuesday was most successful under the direction of Bruce Gillespie. The auction of donations from local stores was conducted by John Brunk of Phoenix. Donations for Shirley may be given to any person mentioned in this story.

## Avon Theatre To Be Remodeled

Avondales Avon motion picture theatre closed its doors Sunday night after seven years of operation. High cost of converting theatre equipment to 3-D and Cinemascope pictures was blamed by the owner, J. B. McCormick, Jr., for closing the only theatre in the Area.

The theatre is to be remodeled by the new owners J. R. Schneider, and Richard Rhodes. A new floor will be laid over the slanting floor, and a new front will be installed.

"We are extremely sorry we cannot continue the operation of the theatre in Avondale", said Mr. McCormick, "we have great faith in the community and its growth. We thank the residents for their patronage."

"We could not continue the operation of the Avon under the present motion picture production schedule," McCormick continued, "We require seven good pictures a week, which we were unable to obtain. We could not afford to expand our theatre for 3-D and Cinemascope."

## Speakers At Forum

## Avondale Scout Participates In Haught Memorial

Saturday, April 24, Laddie Coor, Jr., an Avondale Eagle Scout, was one of the principal speakers on the Edd Row Haught

## Program Set For April 30th

A program featuring Neuro music and folklore will be presented Friday evening, April 30th, at 7:30 P.M. in the Avondale School Auditorium. No admission will be charged for the performance. Mrs. Madeline Hamilton will direct the first part which will feature An Indian Village. Part 1, which will depict A Happy Village, will be the Zuni Greeting Song and an Indian Dance in the Firelight. Part 2, Sadness Comes, will consist of an Indian Shuffle Dance, a Choral Reading of the Rain Chant and the Indian Rain Dance. Part 3, Happy Once More will be the Corn Grinding Song Indian Love Call Dance and Zuni Greeting Song. First, second and third grade children will be in this part of the program. The second part of the program will be under the direction of Mrs. O D. Grose and will be given by pupils of the five upper grades This part of the program will depict a Radio and TV Show of Ou

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Morning Worship 10:55 a.m.
Evening Worship 7:30 p.m.
Wednesday Bible Study 7:30 p.m.
CHARLES L. JOHNSON
Minister
COME AND WORSHIP WITH US

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**AVONDALE CON**
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SUNDAY
Sunday School—9:45 A.M.
SUNDAY

Thurs Aug 26, 1954




# THE WESTSIDE WEEKLY

A Weekly Newspaper Devoted To The Interests Of The Westside Community

Telephone Litchfield Park WEstport 5-3121

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## QUIZ 'EM

**1 BOMB . . .** Last Friday was an anniversary of the atomic bombing of Hiroshima, Japan. Which one?

**2 TAXES . . .** The new deadline for filing personal income taxes will be April 15 next year. How long has March 15 been the traditional filing day?

**3 COOLERS . . .** How much are Americans expected to spend on air conditioning units this year?

**4 TROPHY . . .** What golfers are eligible to play for the new President Eisenhower trophy in the National Celebrities tournament, Sept. 25?

**5 QUOTE . . .** Who is President of South Korea, who said: "Future talks are hopeless whether they be held at Panmunjom, Geneva or heaven itself"?

★ ★ **ANSWERS** ★ ★

*1 The ninth. 2 Since the income tax law was passed in 1913. 3 An estimated $2 billion. 4 All winners of the National Open Championship before World War II. 5 Syngman Rhee.*

**Tom Henry's "Quiz 'Em" appears every Sunday in THIS WEEK Magazine with THE ARIZONA REPUBLIC.**

## BIRTHS REPORTED

A son was born to Mr. and Mrs. Pedro De Leon, Tolleson, Aug. 13, Memorial.

A son was born to Mr. and Mrs. Venancio Urquiza, Tolleson, Aug. 13, St. Joseph's.

A son was born to Mr. and Mrs. Ernest Brand, Goodyear, Aug. 13, Luke AFB Hospital.

A daughter was born to Mr. and Mrs. Armando Rivera, Tolleson, Aug. 14, St. Joseph's

A son was born to Mr. and Mrs. Ronald Ellis, Goodyear, Aug. 15, Good Samaritan.

A son was born to Mr. and Mrs. Bobby Dickson, Goodyear, Aug. 15, Luke AFB Hospital.

A son was born to Mr. and Mrs. George Villa, Tolleson, Aug. 15, Luke AFB Hospital.

A daughter was born to Mr.

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**Excerpt of the Minutes of the regular Planning Commission meeting held February 18, 2010 at 6:30 p.m. in the Council Chambers.**

**COMMISSIONERS PRESENT**
Angela Cotera, Vice Chair
Sean Scibienski, Commissioner
Michael Long, Commissioner
David Scanlon, Commisioner
Lisa Amos, Commissioner
Grace Carrillo, Commissioner

**COMMISSIONERS EXCUSED**
David Iwanski, Chairman

**CITY STAFF PRESENT**
Tracy Stevens, Planning Manager, Development Services Department
Ken Galica, Planner II, Development Services Department
Eric Morgan, Planner II, Development Services Department
Stacey Bridge-Denzak, Planner I, Development Services Department
Christopher Schmaltz, City Attorney

**APPLICATION NO.** SG-10-18

**APPLICANT:** City of Avondale Department of Neighborhood and Family Services.
Project Manager: Ruth Clark (623) 333-2724

**PROPERTY OWNER:** Schneider Family Trust
Contact: Lila Schneider (623) 932-2526

**REQUEST:** This is a public hearing before the Planning Commission to review and solicit public input on application SG-10-18, a request for a classic sign on the marquee of the Schneider Theater Building at 16 E. Western Avenue.

Ken Galica, Planner II, Development Services Department, stated application SG-10-18, is a request for a classic sign on the marquee of the Schneider Theater building located east of the northeast corner of Western Avenue and Central Avenue. This building is within the Old Town Avondale Business District. To the north, south and northwest are residential zoning districts. West of Central Avenue is C-2 (Community-Commercial) zoning. The parcel was created in April 1936 and incorporated in December 1946. The Avon Theater opened on the site in July 1946 and had an Art Deco design with an Avon sign on the marquee's fin. The theater closed in 1954. From 1954 to the present the building has housed a wide variety of uses, to include a grocery store, department store, a Veterans of Foreign Wars' hall, and an alternative school. The building is currently being used as a reception center. Mr. Galica showed the Commissioners an aerial view of the property and covered the history of the property from Westside Weekly Newspaper back issues.

The request tonight is to replicate the original Avon sign as part of upcoming façade renovations to the building. Individually fabricated aluminum letters will be arranged vertically on the theater fin. The font will match the original font as close as possible. The sign would be up-lit from a source mounted to the building canopy.

Mr. Galica stated that the Zoning Ordinance "defined a classic sign as "A sign determined by the City Council to be of extraordinary significance to the City's history and identity and that possess unique physical design characteristics." Mr. Galica stated this definition was added to the Zoning Ordinance in December 2009. Classic signs can be approved despite not meeting all Zoning Ordinance requirements. In

this case, the proposed Avon sign does not meet two of the requirements: 1) No sign or sign structure shall extend above a building's parapet, whereas this sign's fin extends above the parapet by roughly nine feet. 2) Section 911.A.1 prohibits abandoned signs that "no longer correctly directs a person to or advertises a bona fide business, lessor, owner, product, activity conducted, or product available on the premises where such sign is displayed." The theater is not in current operation and thus falls under the definition of an abandoned sign.

A classic sign must meet four criteria to gain approval:

1. The sign must be one of the following: a) At least 25 years old. In this case, the sign does not meet this requirement. b) It must be a replica of a sign that has been displayed for at least 10 years prior to 1970 and for which photographic evidence exists. c) Be a replica of the sign which had previously served an historic building and for which photographic evidence exists.

Photographic evidence of this sign exists and the sign had been displayed prior to 1970. In this case, however, the sign was probably not displayed for at least 10 years. The Arizona State Historic Preservation Office has identified the building as being significant enough to warrant registration on the National Registry of Buildings; staff feels that finding 1.c is met.

2. The sign must be located within the City's revitalization zone. This sign is located within the revitalization area and meets this requirement.

3. The sign must possess unique physical characteristics, such as configuration, message, color, texture, etc. Staff's opinion is this sign is unique and the scale and location of the sign are unique, being at the crossroads of the original town site. This was one of the only large signs that ever existed along Western Avenue that was not devoted to an automobile-related use.

4. The sign must be of extraordinary significance to the City's history, as well as identity, regardless of the use identified by the sign. In this case, the theater was the only theater in Avondale operating in that era and one of only a few in the entire Southwest Valley at the time. The theater was a primary source of entertainment for some residents. Older residents still associate the building with the theater.

Staff recommends approval of the application subject to two routine stipulations.

Vice Chair Cotera invited questions.

Commissioner Amos asked if the original lettering of the sign was neon. Mr. Galica stated it is impossible to tell for certain since only a few photos exist, but the architect working on this project guessed that the sign was originally lit with neon.

Commissioner Amos asked what led the applicant to use aluminum lettering because she is concerned about glare. Mr. Galica explained the aluminum will be painted white, which should reduce glare. Aluminum is a very common material for these types of cutout letters.

Commissioner Scibienski referenced the stipulation that the building must be an historical building. He asked if the City has defined what an historic building is. Mr. Galica stated the City has no definition for an historic building, but perhaps it is best that way in order to leave some room for flexibility. Staff relied on the opinion given by the Arizona State Historic Preservation Office in this case.

Vice Chair Cotera asked if there is any consideration to restoring the theater. Mr. Galica replied he does not believe there are plans to restore the theater. The current business operating in the building is having success using the building as a banquet hall facility. It would take extensive renovations to the interior of the building to re-create the theater use.

Commissioner Scanlon stated the economics of running movie theaters these days has changed.

Vice Chair Cotera stated a renovated theater in Stanford, California shows old movies and its renovation revitalized the whole area.

Commissioner Carrillo asked if the sign would have white lettering on a white background. Mr. Galica explained the sign will be white-on-white just like the original sign.

Vice Chair Cotera opened the public hearing. There were no requests to speak, and Vice Chair Cotera closed the public hearing.

Vice Chair Cotera invited discussion. There were no requests to speak and Vice Chair Cotera invited a motion.

Commissioner Scibienski moved that the Planning Commission accept the findings and recommend approval of the application SG-10-18, a request for a Classic Sign on the Schneider Theater building subject to the two Staff-recommended conditions of approval. Commissioner Carrillo seconded the motion.

1. The design, construction, and maintenance of the proposed Classic Sign shall be in conformance with the applicant's narrative date stamped March 22, 2010.

2. Administrative approval of a standard sign permit application shall be required prior to installation of the Classic sign.

Vice Chair Cotera called for a vote.

ROLL CALL VOTE

| | |
|---|---|
| Chairperson Iwanski | Excused |
| Vice Chair Cotera | Aye |
| Commissioner Long | Aye |
| Commissioner Amos | Aye |
| Commissioner Carrillo | Aye |
| Commissioner Scanlon | Aye |
| Commissioner Scibienski | Aye |

The motion passed unanimously.

# DEVELOPMENT SERVICES

**SUBJECT:**
Master Site Plan Amendment - Ultimate Electronics in the Gateway Pavilions Shopping Center

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Sue McDermott, Engineering and Development Services Director (623-333-4211)

**THROUGH:** Charlie McClendon, City Manager

---

**REQUEST:** A request to amend the architecture, colors, and building materials of the approved Master Site Plan (Exhibit D).

The components of the request are:

1. Add the following colors to the Master Site Plan approved color palette - Honorable Blue Sherwin-Williams 6811, Citrus Sherwin-Williams 6906, Passive Sherwin-Williams 7064, and Olympus White Sherwin-Williams 6253.

2. Allow accent colors to frame the main entryway and suite of the former Circuit City suite, with minor adjustments to the shape of the roof line parapet and building facade, as shown.

3. Add two bands of color extending horizontally from the main entryway to the edge of the suite on the front of the building, as shown.

4. Add “Wall Commander” type wall mounted light fixtures to the Master Site Plan approved materials list, as shown with the exception that light shines downward only (no up lighting), and install the lights approximately 25 feet above grade.

5. Allow painting of bollards and doors located at the rear of the suite to match the color scheme of the front of the suite.

**PARCEL SIZE:** Approximaltey 79 acres.

**LOCATION:** Northwest Corner of 99th Avenue and McDowell Road.

**APPLICANT:** Jesse Macias, Stantec (602) 707-4655

**OWNER:** Inland Southwest Management LLC (630-218-8000 ext 2208)

**BACKGROUND:**

The Gateway Pavilions property was rezoned to Planned Area Development (PAD) by City Council on May 20, 1985. The original PAD envisioned hotels, offices, and retail uses in a unified setting. On October 1, 2001 the City Council amended the PAD to remove development standards specific to offices and hotels, and added more retail uses (Ordinance 816-01 and case number Z00-198-AM). The Gateway Pavilions Master Site Plan was approved by City Council on July 29, 2002 (case number AR-02-506) (Exhibit D), establishing unified architecture, colors, and building materials for the entire development.

**PARTICIPATION:**

The Planning Division has not received any correspondence regarding this request.

A Site Plan Amendment does not require a neighborhood meeting or public hearings.

**PLANNING COMMISSION ACTION:**

The Planning Commission held a hearing for this request at their regular meeting April 15, 2010.

The Planning Commission recommended approval by a vote of 6-0 with the following conditions:

1. The building architecture, materials, and colors proposed may be provided as an accent only for the major in-line tenant buildings identified as Majors A, B, C and D on the Gateway Pavilions Master Site Plan, provided that they conform to this Master Site Plan Amendment dated March 23, 2010, except as modified by the conditions below.

2. Facade changes shall only be approved in conjunction with a tenant occupying a suite, and such facade changes that are in substantial conformance with this amendment may be approved administratively by staff.

3. Prior to a tenant vacating any suite modified under provisions of this amendment, the suite shall be returned to the original condition that existed prior to modification unless a new tenant is occupying the vacated space immediately.

4. The applicant shall provide revised color elevations of the front and rear building facades of the Ultimate Electronics suite that accurately reflects this approved Master Site Plan Amendment.

5. A second horizontal blue band shall be added to the front building facade below the one originally proposed.

6. The existing exterior wall mounted lights on the front building facade shall remain, and the proposed Commander type wall mounted lights shall be affixed to the front building facade between the highest horizontal blue band and the roof line.

**ANALYSIS:**

The Gateway Pavilions Master Site Plan establishes unified architecture, colors, and materials for the entire 79 acre development. Overall development unity is achieved by the predominant use of earth tones as the majority facade color, and by the use of brick and stucco as the primary materials. Variety within the unified development theme is achieved by the use of architectural accents, such as varying roof lines through different sized and shaped parapets, through the pattern arrangement of the colors and materials used on buildings, and through the use of accent colors and features (Exhibit F). Specific examples of this variety of accent colors are: The purple and blue entryway of the Harkins Theaters (Exhibit F.2), the purple awning on Peter Piper Pizza (Exhibit F.2), the red metal roof on McDonalds (Exhibit F.3), the aqua-blue awnings on The Village Inn, the maroon-red awnings on Chick-Fil-A (Exhibit F.2), the gray on the Bed Bath & Beyond entryway (Exhibit F.1), and the brown over the entryway of the Borders (Exhibit F.1). These examples establish the principal of individualizing major tenant spaces through color accents, typically with colors other than earth tones.

The proposed colors individualizes the Ultimate Electronics suite and differentiates it from the other major tenants of the in-line shops. This is achieved while still maintaining the consistency of the overall color palette for the shopping center as a whole because the earth tones on the majority of the suite are maintained. Additionally, the accent colors and features used throughout the development have thus far been limited to the main entryway for others in the center, for example Peter Piper Pizza, Harkins Theaters, Bed Bath & Beyond, and Borders, or were present on the roof

or awnings on stand-alone buildings, for example McDonald's, Chick-Fil-A, and The Village Inn. However, the use of color to differentiate the main entryway for major in-line tenants may be appropriate for Ultimate Electronics The roof line change to the parapet is a minor detail that fits well within the center design, and does not increase the overall height of the buildings.

An additional building material accent proposed by the applicant is to replace the existing lighting fixtures with “Wall Commander” wall sconces (Exhibit E). The existing light fixtures are approximately 12 feet high and illuminate the walkway in front of the building. This height is considered pedestrian scale lighting. The proposed height of 25 feet above grade is less pedestrian oriented and more oriented towards illumination of the building facade, which is unlike the rest of the existing building facade lighting in the center.

Staff is recommending a condition of approval that any building facade, including light fixtures, modified by this amendment be returned to its original condition prior to vacating of the suite by a tenant, unless the suite is being occupied immediately by another tenant. The suites should be returned to their original architecture, colors, and materials when vacant. The request, amended as recommended by staff, conforms to the expressed goals of the City Council for more color in development throughout the City.

***Conclusion:***

Based on the information provided by the applicant, the public input received and the analysis by staff, staff recommends approval of the requested Master Site Plan amendment. This request meets the required criteria and will conform to the conditions of approval.

**FINDINGS:**

1. The proposed Site Plan amendment complies with the development and design standards of the Freeway Corridor Specific Plan, the Zoning Ordinance, and the Gateway Pavilions PAD.

2. The proposed Site Plan amendment complies with the design standards of the Commercial/Industrial/Multi-family Residential Design Manual.

3. The conditions of approval are reasonable to maintain the integrity of the design theme of the Gateway Pavilions development.

**RECOMMENDATION:**

The City Council should **APPROVE** application PL-10-0002 with the six recommended conditions of approval.

**PROPOSED MOTION:**

I move that the City Council accept the findings and **APPROVE** application PL-10-0002, a request for Master Site Plan Amendment for Ultimate Electronics in the Gateway Pavilions Shopping Center, subject to the six recommended conditions of approval.

**ATTACHMENTS:**

**Click to download**

- Exhibit A - Zoning Vicinity Map
- Exhibit B - Aerial Photograph 2010
- Exhibit C - Summary of Related Facts
- Exhibit D - Gateway Pavilions Master Site Plan
- Exhibit D - Gateway Pavilions Master Site Plan
- Exhibit E - Proposed Master Site Plan Amendment
- Exhibit F.1 - Gateway Pavilions Existing Conditions Photos
- Exhibit F.2 - Gateway Pavilions Existing Conditions Photos

- Exhibit F.3 - Gateway Pavilions Existing Conditions Photos
- Exhibir G - Planning Commission draft minutes of 4.15.10

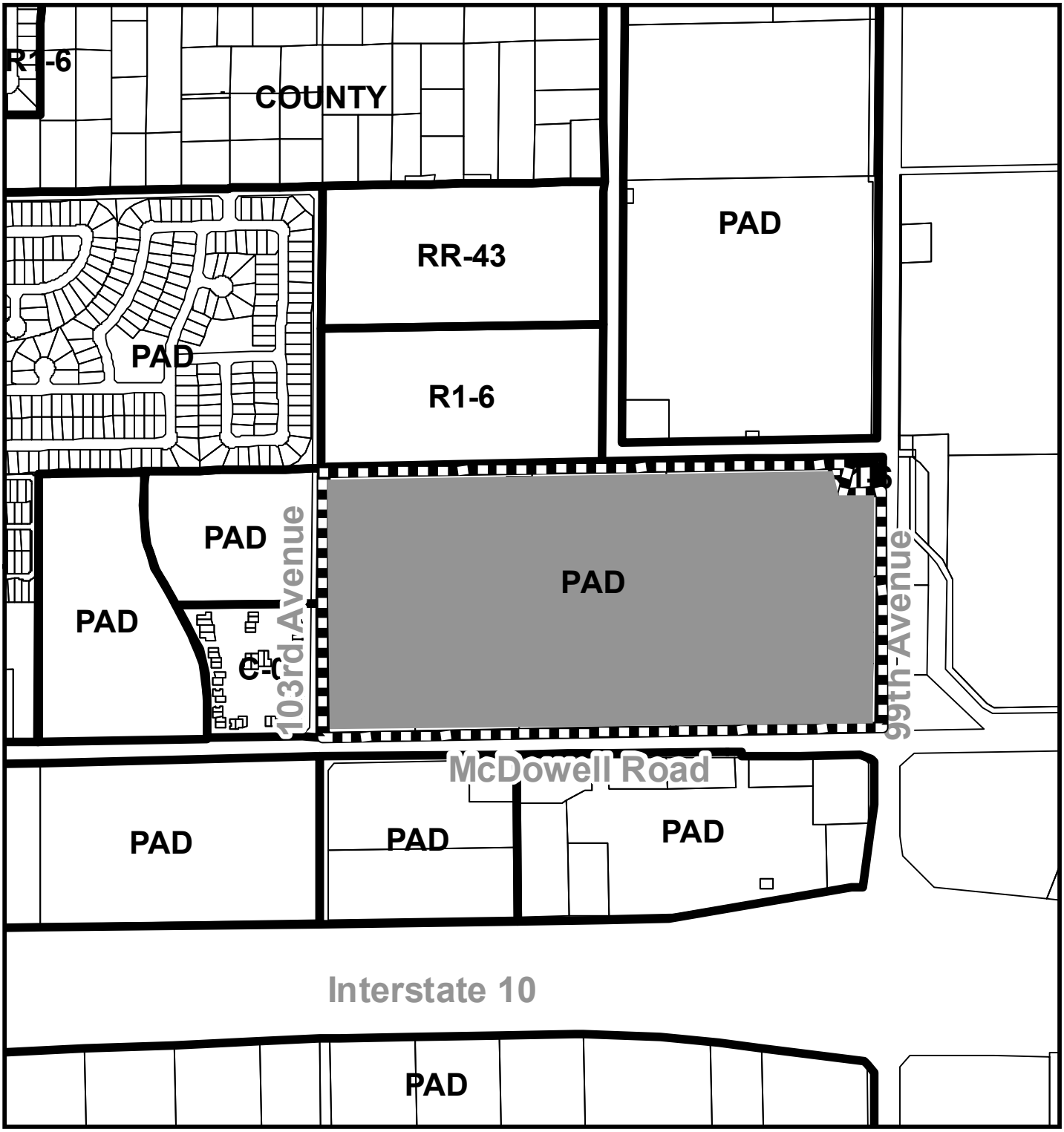
**FULL SIZE COPIES (Council Only):**

None

**PROJECT MANAGER:**

Eric Morgan, Planner II (623-333-4017)

Exhibit A




**Zoning Vicinity Map**
**Gateway Pavilions - Ultimate Electronics**
**PL-10-002**

Avondale

**Subject Property**

Exhibit B

**January 2010 Aerial Photograph**
**Gateway Pavilions - Ultimate Electronics**
**PL-10-002**

Avondale

Subject Property

N

**Exhibit C**

*SUMMARY OF RELATED FACTS*
*APPLICATION PL-10-002*

| *THE PROPERTY* | |
|---|---|
| PARCEL SIZE | Approx. 79 acres |
| LOCATION | NW corner of 99th Avenue & McDowell Road |
| PHYSICAL CHARACTERISTICS | Rectangular and relatively level surface |
| EXISTING LAND USE | Indoor retail uses, restaurants with and without a drive-thru, bank, movie theater |
| EXISTING ZONING | Planned Area Development (PAD) |
| ZONING HISTORY | Annexed 5/26/1981 |
| DEVELOPMENT AGREEMENT | No. |

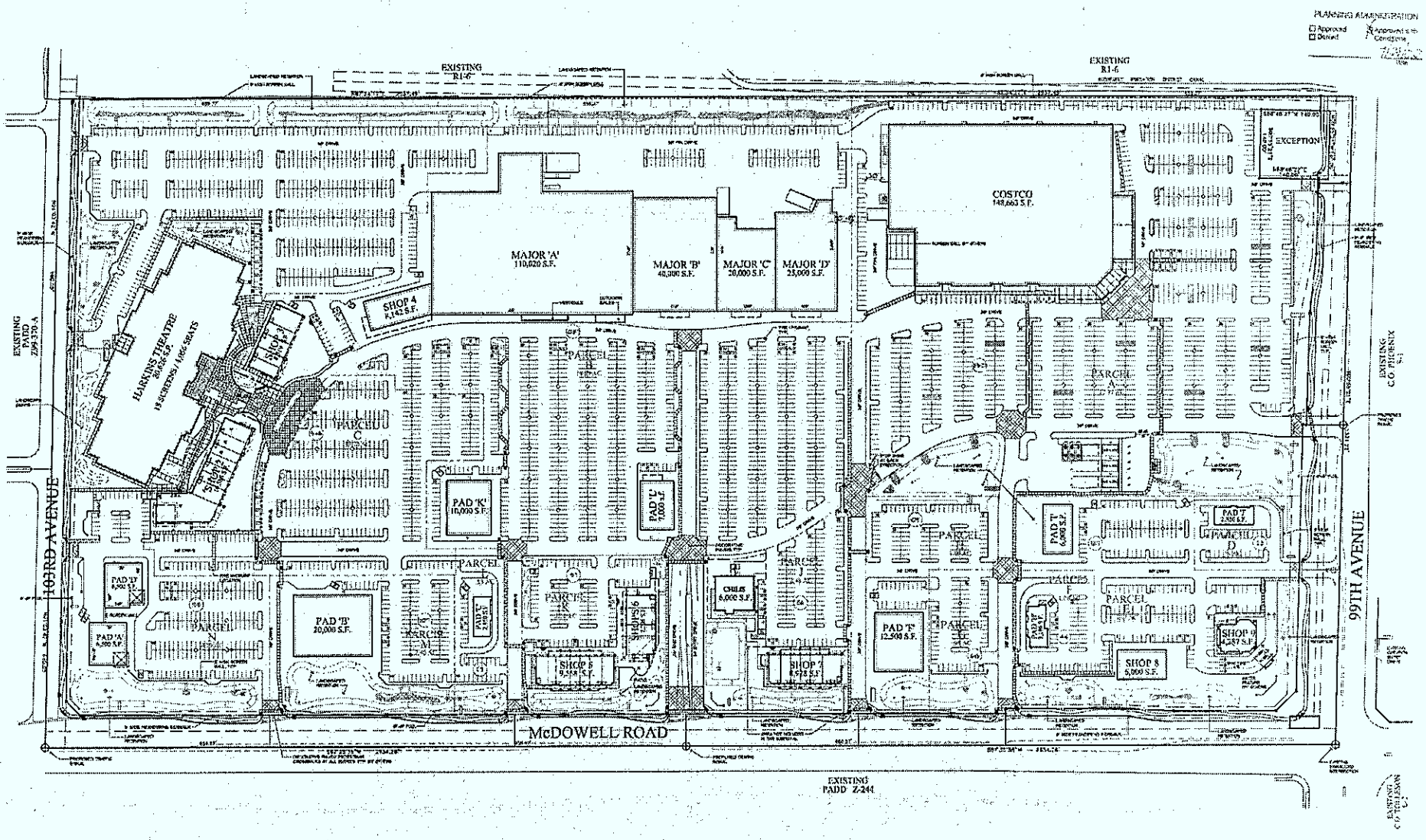
| *SURROUNDING ZONING AND LAND USE* | |
|---|---|
| NORTH | PAD – Avondale Live (movie studio, office/retail, residential uses – vacant)<br>R1-6 - CJ Studios (movie studio) |
| EAST | City of Phoenix – car wash use |
| SOUTH | PAD – Gateway Crossing (indoor retail, restaurants with and without drive-thru, and bank) |
| WEST | PAD – Village at Gateway Pavilions (single family attached residential)<br>C-O – Gateway Office Park (1-story office) |
| | |
| *GENERAL PLAN* | |
| The subject property is designated as **Commercial** on the General Plan Land Use Map. | |

| *PUBLIC SCHOOLS* | |
|---|---|
| SCHOOL DISTRICT(S) | Pendergast Elementary School District<br>Tolleson Union High School District |
| ELEMENTARY SCHOOLS | Rio Vista Elementary School |
| HIGH SCHOOL | Westview High School |

| *STREETS* | |
|---|---|
| **99th Avenue** | |
| Classification | Arterial |
| Existing half street ROW | 45 feet |
| Standard half street ROW | 65 feet |
| Existing half street improvements | 3 vehicular lanes, ½ landscaped median, curb and gutter, attached sidewalk, street lights, plus deceleration lanes |
| Standard half street improvements | 3 vehicular lanes, ½ landscaped median, bike lane, curb and gutter, attached sidewalk, street lights, plus deceleration lanes |

| *STREETS* | |
|---|---|
| **McDowell Road** | |
| Classification | Arterial |
| Existing half street ROW | 65 feet |
| Standard half street ROW | 65 feet |
| Existing half street improvements | 3 vehicular lanes, ½ landscaped median, curb and gutter, attached sidewalk, street lights, plus deceleration lanes |
| Standard half street improvements | 3 vehicular lanes, ½ landscaped median, bike lane, curb and gutter, attached sidewalk, street lights, plus deceleration lanes |

| *UTILITIES* |
|---|
| There exists a 16” water line in 99th Avenue and a 12” waterline in McDowell Road across the property width.<br><br>There is an existing 15” wastewater line in McDowell Road across the width of the property. |




# GATEWAY PAVILIONS

99TH AVE. AND MCDOWELL ROAD

AVONDALE, ARIZONA

00065-ST30C
07-01-02

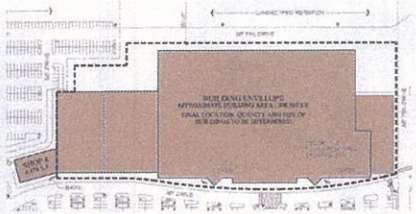
ELOPMENT

Butler Design Group
Architects & Planners

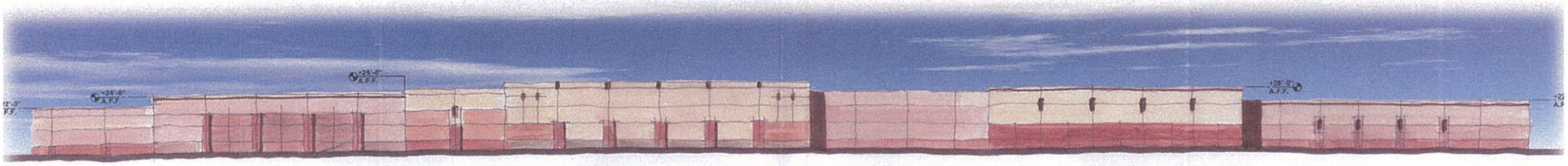
EXHIBIT D

CONCEPTUAL SOUTH ELEVATION
FUTURE IN-LINE MAJORS

ENLARGED MAJOR ELEVATION

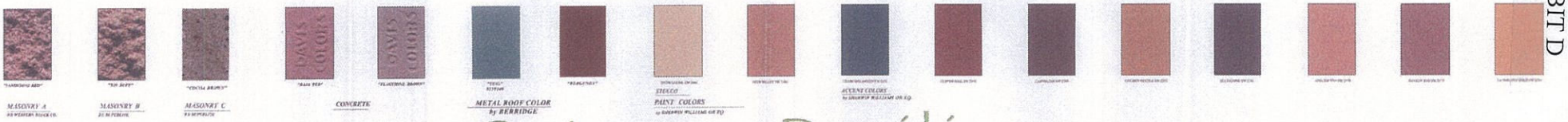


ENLARGED MAJOR AND SHOP ELEVATIONS



NORTH ELEVATION

MAIN SHOPS




# Gateway Pavilions

N.W.C 99th Avenue & McDowell
Avondale, AZ

00065

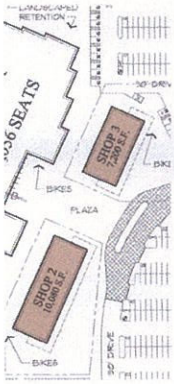
KITCHELL DEVELOPMENT

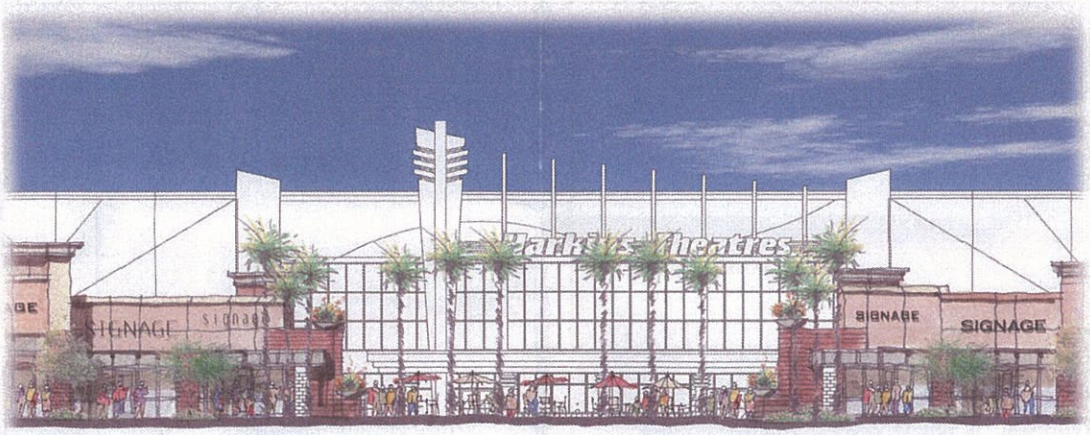
Butler Design Group Architects & Planners

EXHIBIT D

EXHIBIT D

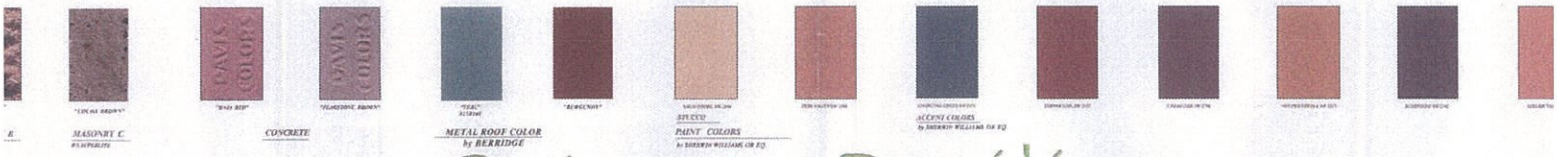
SOUTHEAST ELEVATION
SHOP 2 & 3




ENLARGED ELEVATION THROUGH COURTYARD
SHOP 2 & 3

SHOP 2 AND 3
IN FRONT OF THE HARKINS THEATER

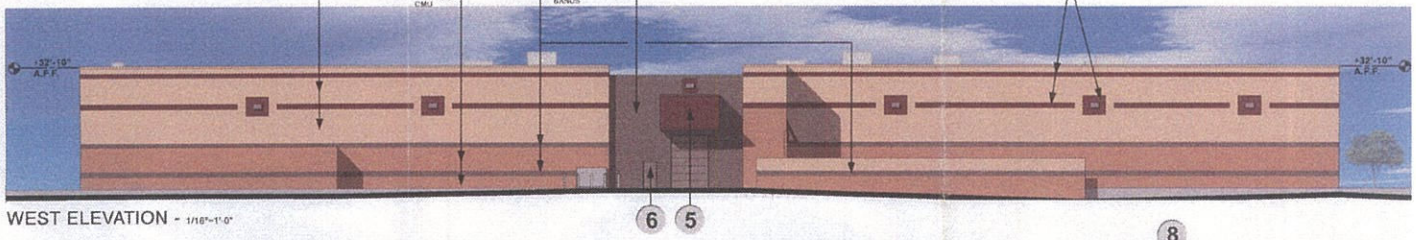



# Gateway Pavilions

N.W.C 99th Avenue & McDowell
Avondale, AZ
00065

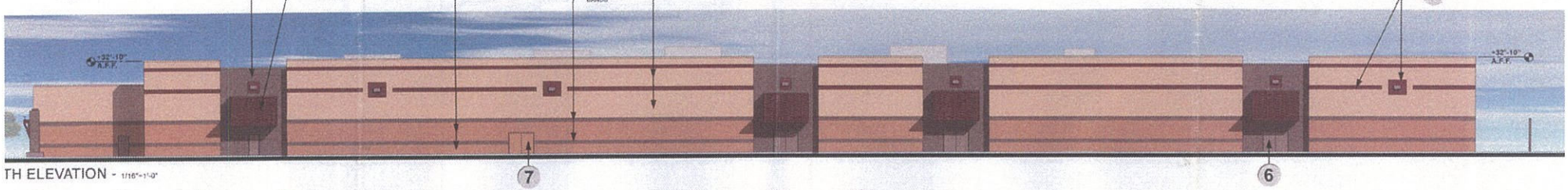
EAST ELEVATION - 1/16"=1'-0"

CORNER ELEVATION - 1/16"=1'-0"



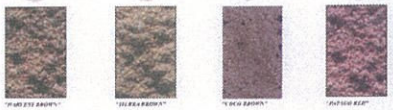

WEST ELEVATION - 1/16"=1'-0"

SOUTH ELEVATION - 1/16"=1'-0"




TH ELEVATION - 1/16"=1'-0"

1 2 3 4



MASONRY

5

METAL ROOF COLOR

6 7 8

PAINT COLORS

# Gateway Pavilions

N.W.C 99th Avenue & McDowell
Avondale, AZ

KITCHELL
DEVELOPMENT

Butler Design Architects & Plan

EXHIBIT D

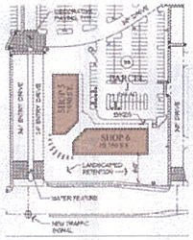
CONCEPTUAL EAST ELEVATION, SHOP 6
(NORTH ELEVAITON SIMULAR, SHOP 5)

CONCEPTUAL NORTH ELEVATION, SHOP 6
(EAST ELEVAITON SIMULAR, SHOP 5)

CONCEPTUAL WEST ELEVATION, SHOP 6
(SOUTH ELEVAITON SIMULAR, SHOP 5)

CONCEPTUAL NORTHWEST ELEVATION, SHOP 6
(SOUTHEAST ELEVAITON SIMULAR, SHOP 5)

CONCEPTUAL SOUTH ELEVATION, SHOP 6
(WEST ELEVAITON SIMULAR, SHOP 5)

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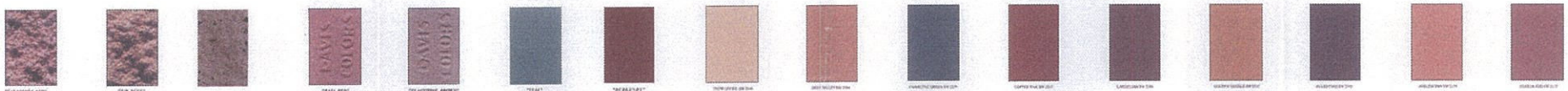


MASONRY A
MASONRY B
MASONRY C
CONCRETE
METAL ROOF COLOR by BERRIDGE
STUCCO
PAINT COLORS
ACCENT COLORS

# Gateway Pavilions

N.W.C 99th Avenue & McDowell
Avondale, AZ
00065

KITCHELL
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EXHIBIT D

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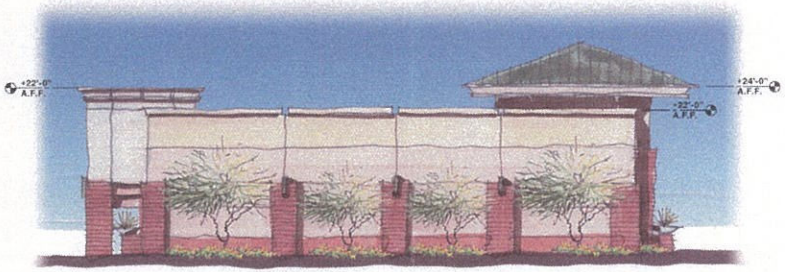
CONCRPTUAL NORTH ELEVATION

CONCRPTUAL EAST ELEVATION



CONCRPTUAL SOUTH ELEVATION

## PAD 'A'

FREESTANDING MINI-MAJOR

CONCRPTUAL WEST ELEVATION

CONCRPTUAL SOUTH ELEVATION

CONCRPTUAL EAST ELEVATION

CONCRPTUAL NORTH ELEVATION

## PAD 'C'

FAST FOOD / DRIVE THRU

MASONRY A — MASONRY B — MASONRY C — CONCRETE — METAL ROOF COLOR by BERRIDGE — STUCCO — PAINT COLORS — ACCENT COLORS

# Gateway Pavilions

N.W.C. 99th Avenue & McDowell
Avondale, AZ

00065

KITCHELL DEVELOPMENT

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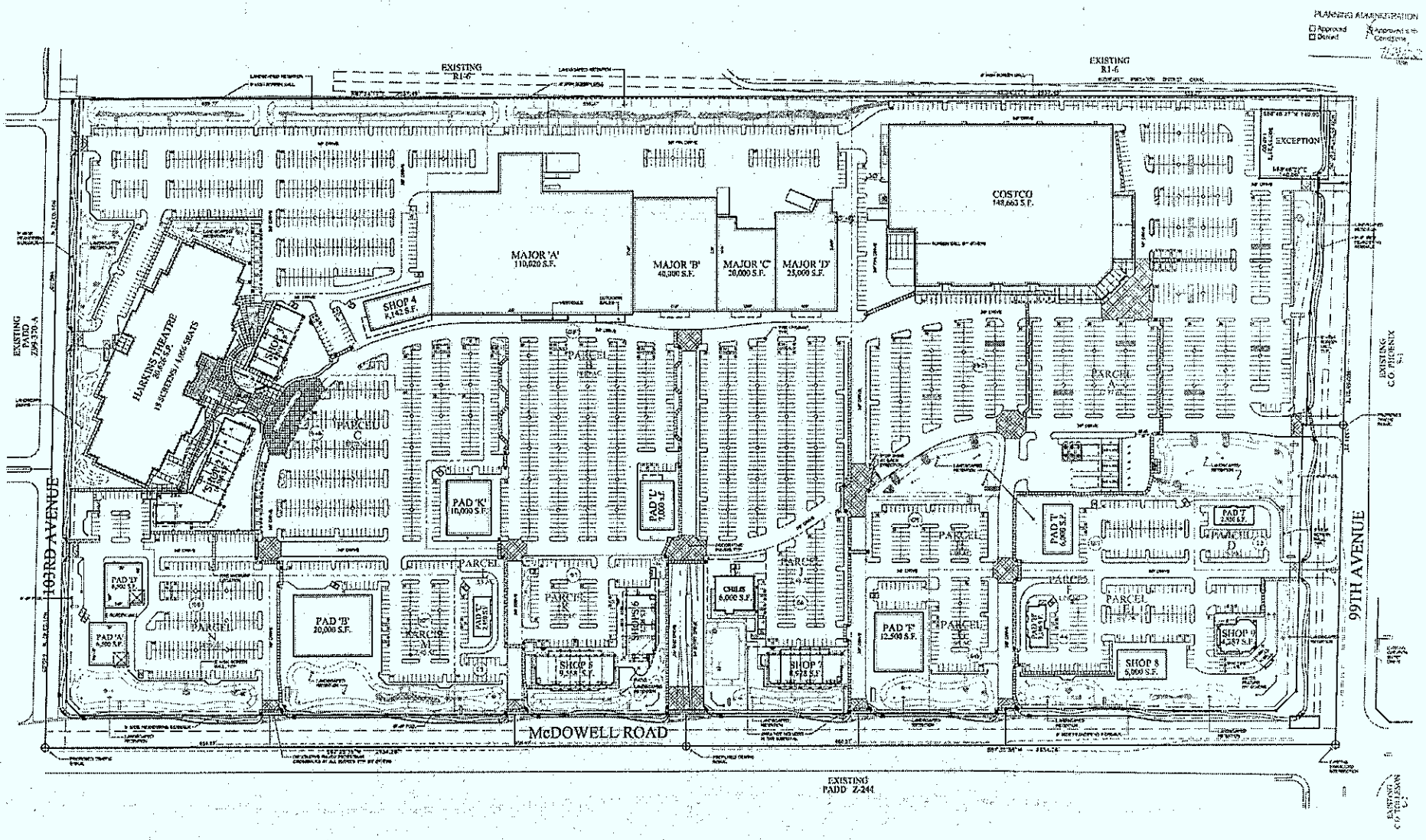


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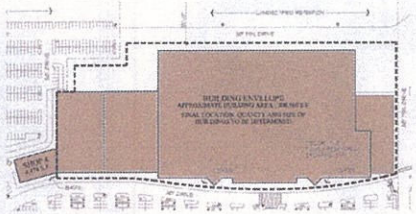

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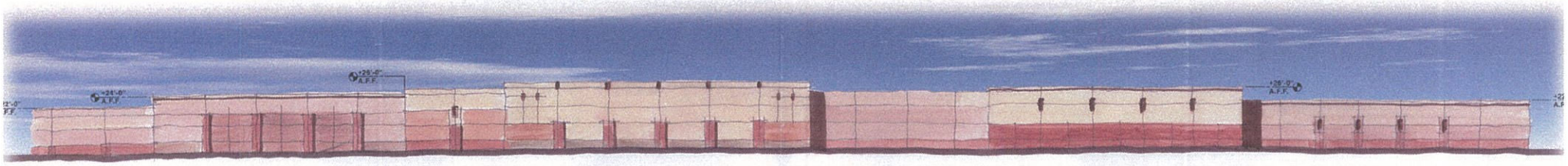

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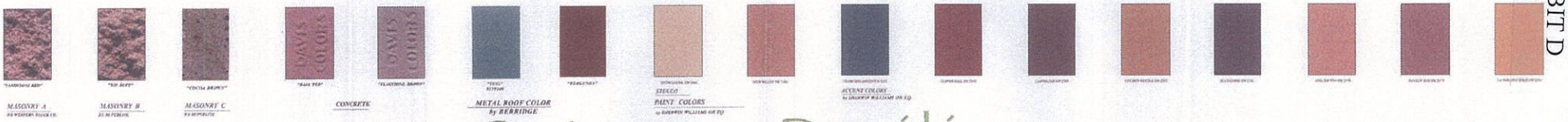


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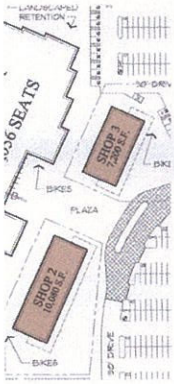


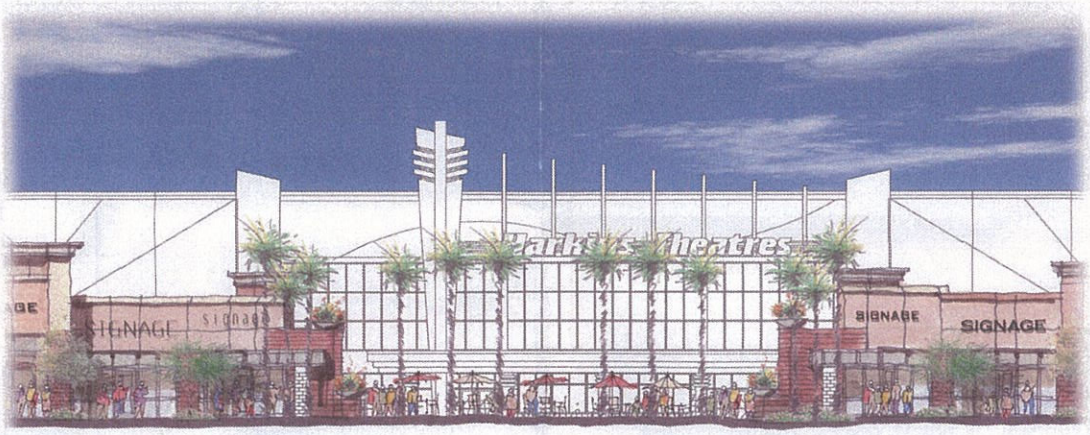


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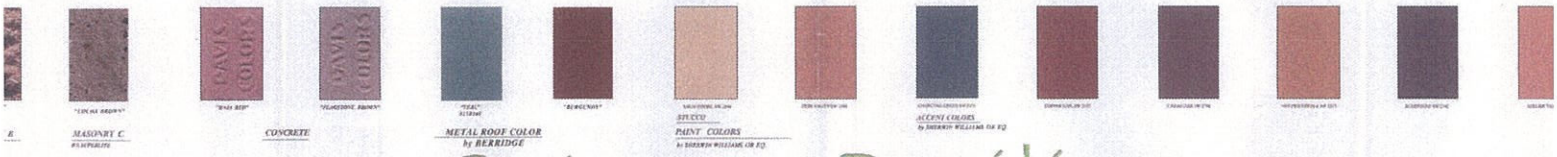


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Avondale, AZ
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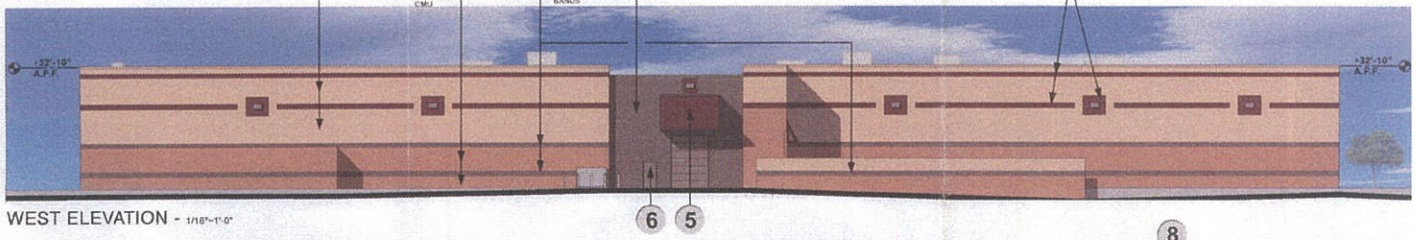


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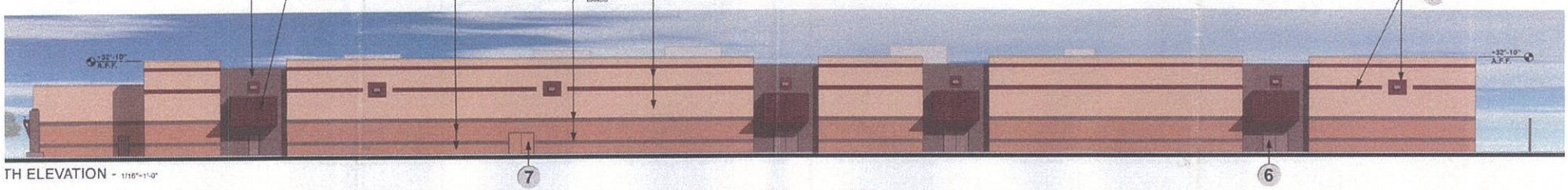


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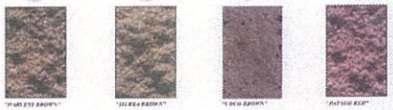

MASONRY

5

METAL ROOF COLOR

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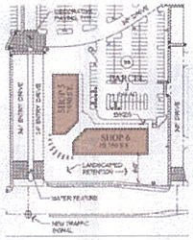


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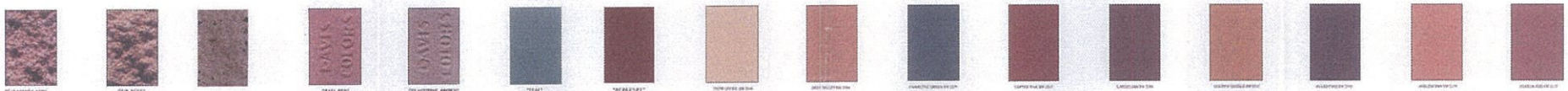


MASONRY A
MASONRY B
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METAL ROOF COLOR by BERRIDGE
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# Gateway Pavilions

N.W.C 99th Avenue & McDowell
Avondale, AZ
00065

KITCHELL
DEVELOPMENT

EXHIBIT D

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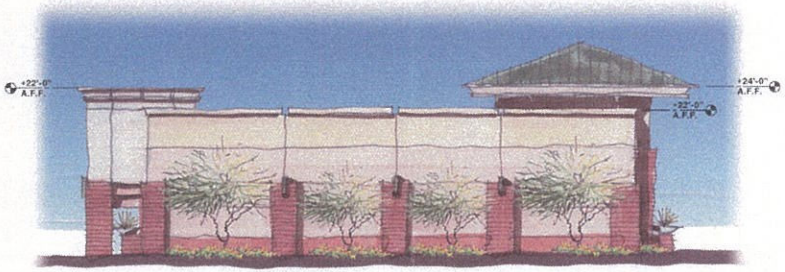
CONCRPTUAL NORTH ELEVATION

CONCRPTUAL EAST ELEVATION



CONCRPTUAL SOUTH ELEVATION

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FREESTANDING MINI-MAJOR

CONCRPTUAL WEST ELEVATION

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## PAD 'C'

FAST FOOD / DRIVE THRU

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# Gateway Pavilions

N.W.C. 99th Avenue & McDowell
Avondale, AZ

00065

KITCHELL DEVELOPMENT

Butler Design Group
Architects & Planners

EXHIBIT D

EXHIBIT E

**Stantec Architecture Inc.**
8211 South 48th Street
Phoenix AZ 85044-5355
Tel: (602) 438-2200
Fax: (602) 431-9562

Stantec

March 22, 2010

**Mr. Eric Morgan**
Planner II
City of Avondale
Development Services Department
11465 W. Civic Center Drive, Suite 110
Avondale, AZ 85323

**Reference: Proposed Ultimate Electronics Tenant Improvement**
**Gateway Pavillions Retail Center**
**10140 E. McDowell RD.**
**Avondale, AZ**
**Stantec Job #: 2007869010**

Dear Eric:

Please accept this submittal for the Master Site Plan Amendment for the proposed Ultimate Electronics Tenant Improvement within the Gateway Pavilions Retail Center. Subsequent to several staff meetings we have participated in regarding our proposed Exterior Remodel for said project, we feel we have achieved an architecturally aesthetically pleasing product that will complement the existing retail center and at the same time, provide a much needed identity component that the center shop buildings is currently lacking.

We are proposing to keep the existing Entry Tower height and width while incorporating a very handsome new entry component. We are proposing to keep the two adjacent tower elements (pylons) with existing height's, color and materials to maintain the existing compatibility to center. We are also proposing a colored band on the sides of the entry tower that complement the overall intent while keeping the overall intent of the adjacent tenants such as the Harkins Theatres. As you know we have reduced the proposed width of new entry component and banding based on our coordination meetings in an effort to make sure our proposed modifications complement the existing center.

We are very excited about being incorporated into the Gateway Pavilions Retail Center and I am sure staff and Planning Commissioners and City Council members will also agree that Ultimate Electronics will be a great addition to an already successful center in City of Avondale. Ultimate Electronics is unparalleled in customer service and brings the best products in the industry at competitive prices providing an unmatched shopping experience to all of our customers.

In conclusion we are very excited to be proposing a new store and new retail opportunity in this area with a high quality Tenant Improvement both interior and exterior.

We look forward to working with you and look forward to seeing this project to completion. Please don't hesitate to contact me if you have any questions or need additional information/clarification.

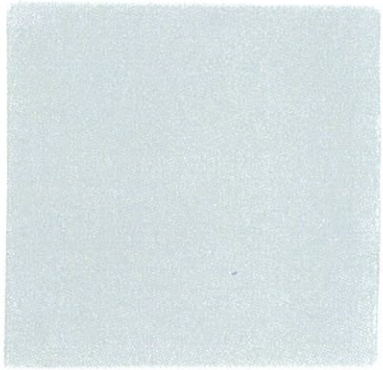
Sincerely,

**STANTEC ARCHITECTURE INC.**

Jesse Macias
Principal
Tel: (602) 707-4655
Fax: (602) 431-9562
Jesse.macias@stantec.com

EIFS - P4 - SW6811
HONORABLE BLUE

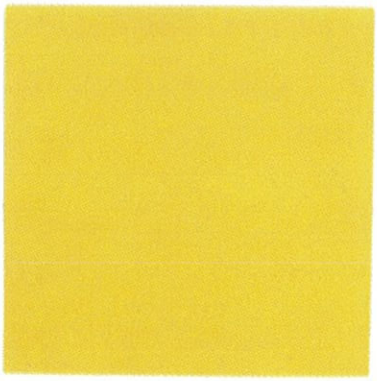
EIFS - P2 - SW6906
CITRUS



P11 - SW7064
PASSIVE



P14 - SW6253
OLYMPUS WHITE



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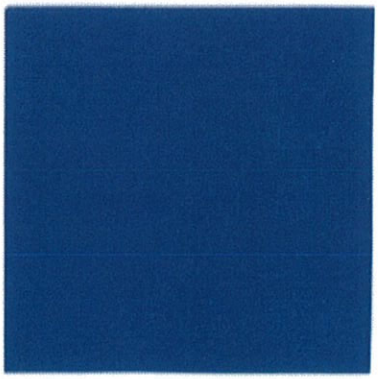


P4 - SW6811
HONORABLE BLUE

ULTIMATE
ELECTRONICS APPLIANCES
TVS • GAMES • COMPUTERS • MOVIES

**AVONDALE, AZ**
EXTERIOR MATERIAL
& FINISH SAMPLES

existing

proposed exterior design

ULTIMATE®

# AVONDALE AZ – PROPOSED EXTERIOR DESIGN

2010.04.20

existing

proposed exterior design

ULTIMATE®

# AVONDALE AZ – PROPOSED EXTERIOR DESIGN

2010.04.20

yellow 2" strong of existing /
blue 4" strong of yellow

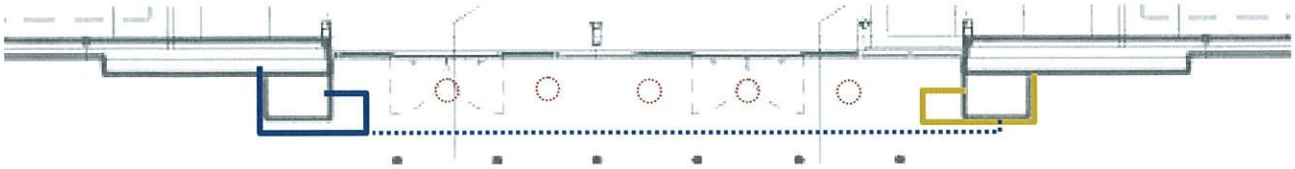
existing wall plane – pnt to
match side panels

height to match existing
entry element

replace lights with
standard ulte sconce

paint mullions p-14

blue/yellow built inward – cover
part of first pane of glass



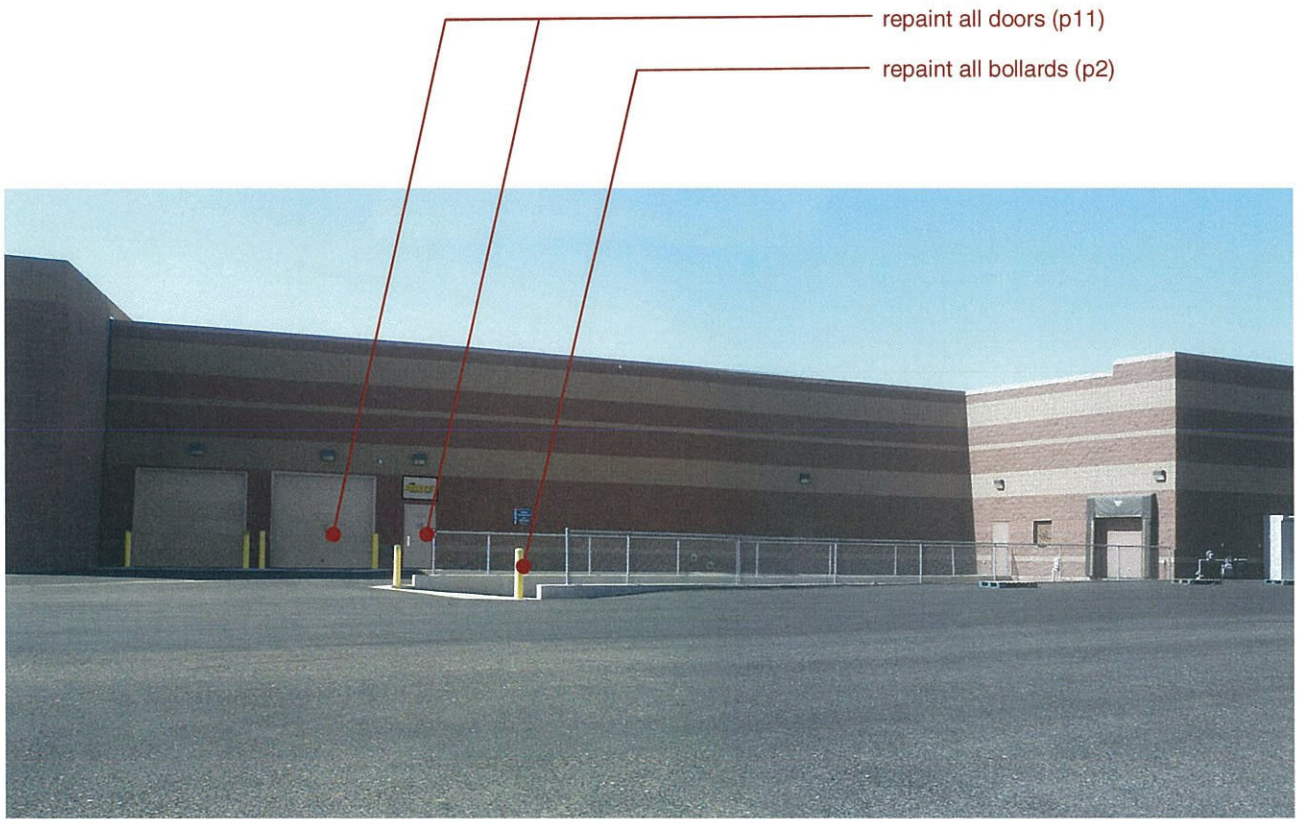
plan concept

ULTIMATE®

AVONDALE AZ – PROPOSED EXTERIOR DESIGN

2010.04.20

existing




proposed exterior design

ULTIMATE®

# AVONDALE AZ – PROPOSED EXTERIOR DESIGN

2010.04.20

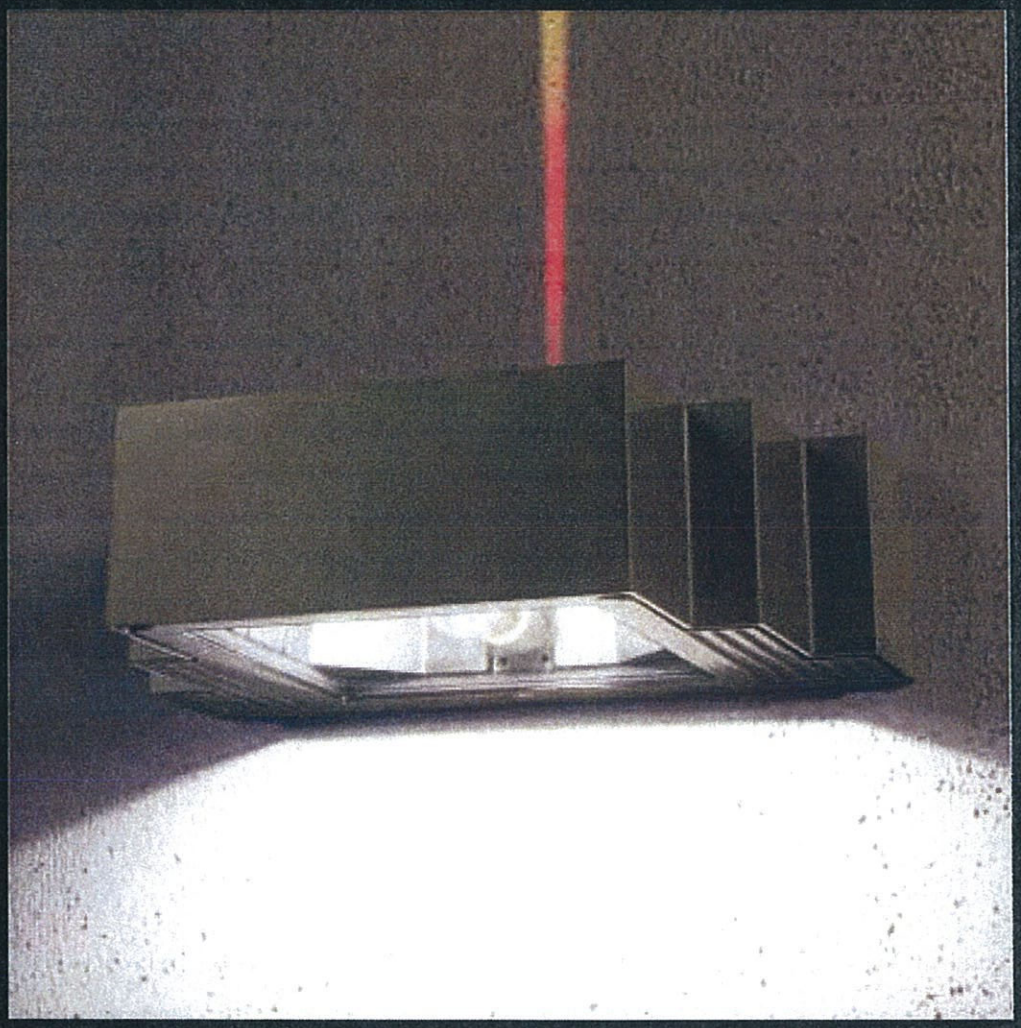
WALL MOUNTED

**WC**
SERIES

# Wall Commander™

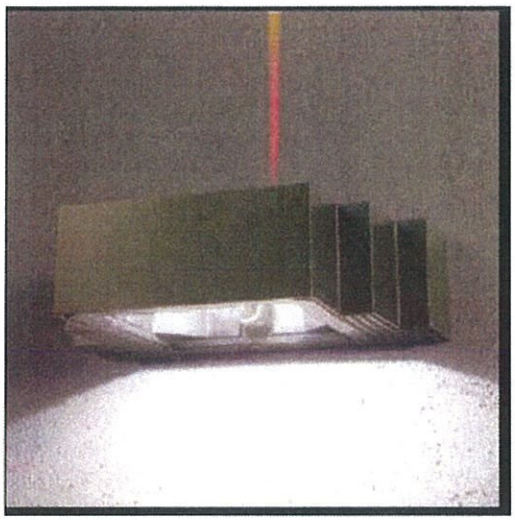
**Up/Down Wall Mounted Luminaires**

42 - 400 Watt



KIM LIGHTING

# ULTIMATE ELECTRONICS EXTERIOR WALL SCONCE



| UP / DOWN | ▲ Type II | ▲ Type III | ▲ Type IV | Secondary ▲ Grazer |
|---|---|---|---|---|
| ▼ Type II | n/a | n/a | n/a | ☐ WC18UGD2 |
| ▼ Type III | n/a | n/a | n/a | ☐ WC18UGD3 |
| ▼ Type IV | n/a | n/a | n/a | ☐ WC18UGD4 |
| Secondary ▼ Grazer[2] | ☐ WC18U2DG | ☐ WC18U3DG | ☐ WC18U4DG | ☐ WC18UGDG |

☐ 320PMH120
☐ 320PMH208
☐ 320PMH240
☐ 320PMH277
☐ 320PMH347
☐ 320PMH480

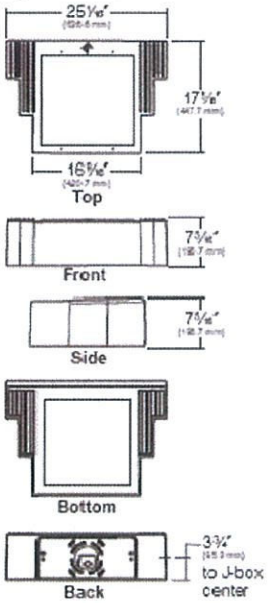
ED-28, Clear

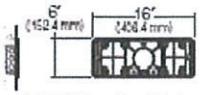
Mogul Base

M-154 / M-132

## Specifications

150 to 400 watt
Mogul Base Lamps




**WC18 Mounting Plate**
Must be securely attached to wall outside the J-box perimeter

**Housing and Lens**

The complete housing fastens to a mounting plate with keyhole slots freeing both hands for securing and wiring. Access to field splice is through back of housing.

**For UP and UP/DOWN model:** One-piece die-cast, low copper (<0.6% Cu) aluminum alloy. Lens (Up model) and top lens (Up/Down model) is flat ¼" thick tempered glass mounted flush with top of housing for water run off, and is silicone sealed.

**For DOWN model:** Two-piece die-cast, low copper (<0.6% Cu) aluminum alloy. Top of housing is closed with a die-cast plate with cooling fins to dissipate heat. The top plate is secured by fasteners and sealed with silicone gasketing around the perimeter.

**Access Door (UP model):** One-piece die-cast, low copper (<0.6% Cu) aluminum alloy with integral stainless steel pin hinges. Two stainless steel thumb latches secure the frame to the housing.

**Lens Frame (DOWN and UP/DOWN model):** One-piece die-cast, low copper (<0.6% Cu) aluminum alloy with integral stainless steel pin hinges. Two stainless steel thumb latches secure the frame to the housing. Sealing is provided by a one-piece molded silicone gasket between the glass lens and the reflector flange. Clear flat lens is ¼" thick tempered glass secured to lens frame with retainer clips.

**Reflector Module**

All sockets are mogul base rated 4KV with molded silicone lamp stabilizers. All models are factory prewired with quick-disconnect plug for mating to the ballast module.

**For all models:** Specular Alzak® optical segments rigidly mounted within a die-cast aluminum enclosure that attaches to the housing by stainless steel hinge and latches. The Wall Grazer and Spot systems include black louver vanes that run parallel to the lamp arc for controlling the hot spot directly behind the luminaire, and the spill light into the atmosphere.

**Electrical Module:** High power factor ballasts are mounted to a rigid aluminum tray and secured to the housing with screws and key hole slots. Factory prewired with quick-disconnect plugs for mating to the reflector module and incoming leads.

**Mounting Plate:** Standard mounting plate is attached to wall (by others) outside the junction box perimeter. All mounting plates are die-cast aluminum with reinforced ribs. Two studs are provided in each plate with flange nuts to allow luminaire mounting by key hole slots. Sealant must be applied (by others) between mounting plate and mounting surface to insure a dry junction box.

**Finish/Color:** Finish is Super TGIC thermoset polyester powder coat paint, 2.5 mil nominal thickness, applied over a titanated zirconium conversion coating. A.S.T.M. 2500 hour salt spray test endurance rating. Standard colors are Black, Dark Bronze, Light Gray, Stealth Gray®, Platinum Silver, or White. Custom colors are available.

**CAUTION:** Fixtures must be grounded in accordance with national, state and/or local electrical codes. Failure to do so may result in serious personal injury.

Exhibit F.1

Gateway Pavilions
In-line Major Tenants

Gateway Pavilions
Stand-alone Tenants

Harkins Theaters

Harkins Theaters

Costco

PetCo

Peter Piper Pizza

Exhibit F.3

Gateway Pavilions

Pads along McDowell Road

Multi-tenant Buildings Across from the In-line Major Tenants

**PLANNING COMMISSION**
**REGULAR MEETING**

**CITY COUNCIL CHAMBERS**
**11465 W. CIVIC CENTER DR.**
**AVONDALE, AZ 85323**

**Thursday, April 15, 2010**
**6:30 P.M.**

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## I. CALL TO ORDER

The Regular Meeting was called to order at approximately 6:30 p.m. by Vice Chair Cotera.

## II. ROLL CALL

The following members and representatives were present:

COMMISSIONERS PRESENT
Angela Cotera, Vice Chair
Michael Long, Commissioner
Lisa Amos, Commissioner
Grace Carrillo, Commissioner
David Scanlon, Commissioner
Sean Scibienski, Commissioner

COMMISSIONER ABSENT
Chairperson David Iwanski

CITY STAFF PRESENT
Tracy Stevens, Planning Manager, Development Services Department
Ken Galica, Planner II, Development Services Department
Stacey Bridge-Denzak, Planner I, Development Services Department
Eric Morgan, Planner II, Development Services Department
Chris Schmaltz, City Attorney

## VIII. OTHER BUSINESS

5. PL-10-0002: Jesse Macias of Stantec is requesting a Master Site Plan Amendment of the Gateway Pavilions Shopping Center for Ultimate Electronics. The property is located at the NWC of 99th Avenue and McDowell Road. Staff Contact: Eric Morgan.

Eric Morgan, Planner II, Development Services Department, stated this is a request to amend the Gateway Pavilions Master Site Plan regarding the architecture, building materials, and colors for the Ultimate Electronics suites. Gateway Pavilions is located at the northwest corner of 99th Avenue and McDowell Road and consists of approximately 79 acres. The property was rezoned to Planned Area Development (PAD) on May 20, 1985. The original PAD envisioned hotels and offices. An amendment was made to the PAD zoning on October 1, 2001 to add retail uses, such as the movie theater and restaurants. The Gateway Pavilions Master Site Plan was approved on July 29, 2002.

The applicant is requesting to add to the approved color palette the colors of Honorable Blue and Citrus, change the shape of the lintel along the top of the building, change the color pattern around the entryway, add a blue band to the façade, and change the lighting fixtures and placement.

Staff considers the applicant's color request to be an accent to the building which will still preserve the overall integrity and design of the center. The purpose of the request is to individualize the suite without overwhelming the design of the entire development. Honorable Blue and Citrus are Ultimate Electronics' corporate colors. The Harkins Theater has purple and blue at their entryway. The Peter Piper Pizza has a purple awning. Chick-Fil-A has a darker awning, McDonald's has a near-red roof, and the Village Inn has aqua awnings. Each main entryway of the in-line tenants adjacent to Ultimate Electronics is unique in shape, color and architecture. Borders and Bed Bath & Beyond both use colors within the spectrum of earth tone as accents above their entryways. Staff believes that the overall development achieves a uniform design by consistent use of the colors and material for the majority of the building area.

Staff supports the request to change the color pallet and the color scheme around the entryway. The request for the blue band across the front façade is not supported by Staff for three reasons: 1) The color band intrudes into the earth tone façade of the suites, which lessens the overall unity of the whole development; 2) The color band extends the width of the suite, but would stop abruptly at the boarder of the suites on either side; and 3) The location of this color band is not an accent to the entryway of the building and is out of character for the established center. Staff has placed a stipulation removing the band from the request. Another applicant request is a color treatment of Honorable Blue and Citrus on the rear portion of the building, on the bollards and doors associated with the Ultimate Electronics suite. Staff supports this as accents to the building while preserving the primary color scheme of a unified development design. The applicant is also requesting to add Wall Commander type, wall-mounted light fixtures to the front facade. The applicant proposes to locate these light fixtures approximately 13 feet higher on the building than the existing light fixtures. This is not supported by Staff because the proposed height of 25 feet above grade for the light fixtures is less pedestrian-oriented and more oriented toward illumination of the building façade. Staff is proposing a

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condition of approval that requires the Wall Commander wall scones be installed at the same height and in the same location as the existing light fixtures.

Staff finds that the request meets three standards of approval: 1. The proposed Site Plan amendment complies with the development and design standards of the Freeway Corridor Specific Plan, the Zoning Ordinance, and the Gateway Pavilions PAD. 2. The proposed Site Plan amendment complies with the design standards of the Commercial/Industrial/ Multi-Family Residential Design Manual. 3. The conditions of approval are reasonable to maintain the integrity of the design theme of the Gateway Pavilions development. Staff believes the third condition will be met if the six Staff-recommended stipulations are approved. The applicant's representative, Jesse Macias with Stantec, is present tonight.

Vice Chair Cotera invited questions.

Commissioner Scanlon asked if Staff has visited other Ultimate Electronic stores in the Valley and if all their stores have the same color scheme. Mr. Morgan replied that Staff looked at several Ultimate Electronic stores in the Valley and in Tucson online. All the stores vary in their specific color schemes, but all possessed their corporate colors of blue and yellow predominantly. Staff did not find any Ultimate Electronic stores that were placed within an in-line shopping center as the one the Commission is looking at tonight.

Commissioner Amos referenced Stipulation No. 5, "Prior to a tenant vacating any suite modified under provisions of this amendment, the suite shall be returned to the original condition that existed prior to modification unless a new tenant is occupying the vacated space immediately." She asked if the onus is on the building owner rather than the tenant to return the building to its original condition. Mr. Morgan replied the approval tonight is for an amendment to the PAD development as a whole and the onus is on the property owner. If the property owner fails to comply with Stipulation No. 5, it is the property owner that can be cited by Code Enforcement each day until the stipulation is complied with.

Commissioner Scibienski asked at what time the proposal for the light fixtures to be placed higher up on the building façade came in to staff, as none of the exhibits the Commissioners received shows this. Mr. Morgan referenced Exhibit E depicting the existing light placement and the requested light placement. He stated that this request was received after all the original material was submitted, but was incorporated into the packet. Commissioner Scibienski stated the lights look like they are placed in a pyramid pattern. Mr. Morgan stated that the schematic was difficult to read due to the small font.

Vice Chair Cotera asked if the Ultimate Electronics store sign would be illuminated at nighttime. Mr. Morgan informed the Commissioners that the request before the Commissioners tonight did not include approval of the sign. He is not aware of what the

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sign package for Gateway Pavilions allows, but he would guess the sign will have internal illumination.

Vice Chair Cotera stated the Ultimate Electronics store will have the only facade in the development where the colors go down the columns, and she is concerned that by taking the colors down to bottom, the character of the Ultimate Electronics will not match the other stores. She feels it will degrade the high quality look of the property. Mr. Morgan replied that Staff had originally specified that the blue and yellow colors could only be allowed in the sign field above the main entryway, which is approximately 128 square feet. The applicant's original request was for the colors to extend even wider on the main entryway, occupying approximately half of the columns on each side, as well as for two color bands on the front façade wall. There was discussion with staff where the use of color was reduced somewhat. The item is now before Planning Commission.

Vice Chair Cotera stated she is excited that the applicant is coming to Avondale, but she is concerned that in these difficult economic times, the City will change the character too much.

Commissioner Scibienski pointed out that the Harkins Theater has a teal color from the top to the bottom of the building. He does not disfavor the blue band and disagrees with Staff's opinion because the colors on the other stores do not appear to be cohesive either. Mr. Morgan pointed out features of the cohesive use of colors on the buildings. Commissioner Scibienski stated the tan colors have distinct differences.

Vice Chair Cotera stated that is comparing the colors of tan and sand, and the colors of sand and blue, and to her that is a distinct difference.

Commissioner Amos noted the change in the cornice above the entrance and asked if the tenant vacates the property, will the cornice have to be changed back. Mr. Morgan stated the stipulation requires the building to be returned to its original state of design, architecture, materials, color, and lighting in the case of a tenant vacating the suite.

Vice Chair Cotera asked if a tree depicted in the slides by Ultimate Electronics would be removed. Mr. Morgan stated the tree had been removed and the Commission could ask the property owner what happened to the tree. Staff did not authorize the tree to be cut down.

Commissioner Scibienski referenced the Best Buy store across the street from the subject property, stating that store has a blue palette similar to Ultimate Electronics. He does not believe the applicant's request is out of character with the area. Mr. Morgan stated the Best Buy has blue and yellow colors which do not occupy as much of the frontage of the building. Also, the center across the street from the subject property was designed with the Best Buy as the major tenant in mind.

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Vice Chair Cotera invited the applicant to address the Commission.

Jesse Macias, Stantec Architecture, 8211 S. 48th St., Phoenix, AZ, thanked Staff for their hard work. He stated there is no other Ultimate Electronics in the West Valley and they are glad to come into Avondale. He showed the Commission slides of Ultimate Electronics stores in other areas of the country. He showed the Commission a slide of the Ultimate Electronics building proposed in their original submittal to the City and stated that in a pre-application meeting with Staff, they revealed a concern about the blue banding. In subsequent submittals, the applicant narrowed the entry feature and proposed two blue bands. In further Staff meetings, the concerns about the blue banding remained. The applicant then made another submittal to the City with the entry feature narrowed even more.

Mr. Macias noted that times have changed since the shopping center was built around the Harkins Theater, who used their corporate colors and their icon that stands above the parapet. It is for this reason that they request to amend the Master Site Plan. He noted that these are difficult times in the market, and while they are proud to come to Avondale with their proposal, they do want to come in with their corporate identity. He pointed out that with any other tenant, there will never be side-by-side banding because the adjacent stores are bordered by two masonry features. They do not feel their proposal completely deviates from the shopping center. Mr. Macias noted the corporate identity of McDonald's has been allowed and the identity of the Village Inn with the lime green color has been allowed on all four sides of the building. Red Robin has also used their corporate Red Robin Red. Now Ultimate Electronics wants to establish a customer base with their identity. He compared their entry feature with that of Best Buy. He showed the Commission a rendering of their light fixtures, stating they are proposing to keep the three light fixtures depicted in the slide and then add another light fixture in between the existing fixtures to create ambience and a wall wash. He compared their desired light fixtures with that of Peter Piper Pizza and Harkins Theater. They do not feel they are proposing anything that will set precedence.

They propose to keep the existing entryway, the colored band on the sides of the entry tower, and to keep their desired light fixture arrangement. He stated that the property owner can address the stipulation with regard to reverting the space back to its original state if they vacate the property. However, they are not looking for an exit strategy. He invited questions from the Commissioners.

Vice Chair Cotera asked if the Ultimate Electronics sign would be very bright. Mr. Macias replied that the sign lighting was not part of this submittal and they are aware they have to stay within the 128 feet. They are not proposing a back-lit cabinet sign. They will use individual channel letters that will be internally illuminated. He does not

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believe their sign will be any different than that of the other tenants in the shopping center.

Vice Chair Cotera commented that the Harkins Theater is set back, so their colors represent a subtle difference. The Ultimate Electronics color palette is not a subtle difference. The Best Buy features do not extend to the ground. Her concern is that Ultimate Electronics will present a different character than every other tenant in the area. She asked if the applicant would consider toning down their colors at this point. Mr. Macias stated the proposal they have submitted is the one they want. They have already made many amendments since the original submittal. He noted that one feature of the Best Buy does extend to the ground. He agrees that Harkins Theater is set back, and from the freeway, the first thing one sees is the Harkins Theater. They want to come into Avondale with their corporate identity to establish a customer base. He reiterated that from their original submittal to the present, they have made many compromises and they feel they have a very nice proposal.

Vice Chair Cotera noted the benefits of the presence of the Harkins Theater and of the location at the intersection of two freeways.

Commissioner Carrillo noted that if the applicant gets their signage, they will have visibility from that. Mr. Macias stated they do not believe they can put their signage on the freeway sign. They are proposing to have their sign on the freestanding sign for the shopping center that is off of McDowell Road. Best Buy has freeway frontage and two freeway signs, plus the freestanding sign for the center.

Commissioner Carrillo asked if the Commission does not approve the proposal as submitted, will the applicant not come to Avondale. Mr. Macias stated he would defer to Mr. Boxer from Ultimate Electronics to make that decision. They have taken several submittals back to Corporate Headquarters and believe they have narrowed the entryway as much as they can and have cut the banding as much as possible.

Vice Chair Cotera asked if the sign plan for the shopping center will come before the Planning Commission. Mr. Morgan stated the sign plan was already approved previously, and that the sign for Ultimately Electronics would be an administrative review by staff for conformance to the sign plan.

Vice Chair Cotera asked if Gateway Pavilions has a freeway pylon sign. Mr. Morgan stated the shopping center has three pylon signs that are all north of McDowell Road.

Vice Chair Cotera asked about the sign lettering, as they appear very flat. Mr. Morgan stated the rendering is making the letters look flat. Vice Chair Cotera stated she is looking for consistency in the signs in the shopping center.

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Attorney Schmaltz suggested the Commission turn their attention to the application before the Planning Commission tonight. The signage is not before the Commission tonight.

Vice Chair Cotera opened the public hearing.

Dan Gardner, 11454 N. 53rd PL., Scottsdale, AZ, stated he is President and Owner of Phoenix Commercial Advisors, a real estate brokerage company that specializes in retail tenants and retail shopping center owners. He gave the Commission an overview on what retailers are doing across the board. Currently in Phoenix are 300 vacant boxes at 10,000 square feet and above. Last year only 59 were leased. Having a national retailer come into Avondale is a great opportunity. Retailers such as Savers and Dollar General are backfilling some of the vacant space today. In this environment, it is important for major retailers to have everything fall in line. They are struggling to get major retailers to come into Phoenix because many centers are not doing well. Lowe's and other major retailers are hurting in this area. Avondale is competing with Southern California, Denver, etc. Ultimate Electronics is competing for the number of stores that they can do. Part of their program is to use their formula that they know works with the corporate identity. In Phoenix they have seen cities refuse to allow a retailer their corporate identity and the retail centers remain vacant. Ultimate Electronics is saying they need their identity. They have other options up and down the I-10. The question is, does Avondale want a retailer that will do the volume of Ultimate Electronics and bring in the quality jobs. Avondale will have to compromise on what they would like the Gateway Pavilions center to look like, but at the end of the day, what Avondale will receive is more than worth it.

Bruce Boxer, 321 W. 84th, Thornton, CO, Director of Real Estate with Ultimate Electronics, stated Ultimate Electronics needs a consistent corporate image. The submittal to the City represents the remodel that all their stores are going to look like. Each store hires 50 to 60 people. Warehouse delivery drivers make $11.00 to $13.00 per hour. Sales Associates earn $11.00 an hour, plus commission, with an average wage of $35,000 to $40,000. Sales Partners earn an average salary of $45,000 to $50,000, plus commission. Sales Managers earn an average salary of $50,000 to $60,000, plus commission. General Managers make $60,000 to $80,000, plus a bonus. Each new store is budgeted to spend $500,000 on advertising, plus $100,000 on a grand opening. Ultimate Electronics will be pumping a lot of money into this economy. Consumer Reports in December 2009 rated 23 big box electronic suppliers. Ultimate Electronics was rated 4 behind the Apple store. Best Buy was 18. Wal-Mart was 23. His job is risk manager and he has to determine the pluses and minuses of every site. Identity and visibility is a big part. They want to look as big as Best Buy and not like a store front. Mr. Boxer noted that the location is 1,000 feet off of McDowell Road. The freeway pylon sign is full and they will not get any pylon signage on I-10. Their pylon sign will be on 99th Avenue. When he looks at risk and makes a recommendation to Corporate, it

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is all about presence. While the blue band may seem silly, it gives Ultimate Electronics the presence they are looking for. They want to be on a level playing field with their competition and they need Avondale's help with that.

Vice Chair Cotera asked if the blue band was a deal breaker. Mr. Boxer stated they are 1,000 feet back from the road with only 100 feet of visibility coming down McDowell Road, and that is why the blue band and the lighting is so important to them. Some people at Corporate are iffy about this site. If he has to return to Corporate, there is a good chance he will get orders to search for a new location.

Vice Chair Cotera stated she thinks the two blue bands are more attractive than just the one.

Vice Chair Cotera invited a motion.

Commissioner Long moved that the Planning Commission accept the findings and recommend approval of application PL-10-0002, a request to amend the Gateway Pavilions master site plan for tenant, Ultimate Electronics, façade modification to reflect proposed external design as shown on Exhibit E. Commissioner Amos seconded the motion.

Vice Chair Cotera invited discussion.

Commissioner Scibienski stated he would like include the six recommended conditions of approval by staff, omitting Conditions of Approval: "2) The colors identified on Exhibit E are approved only for the main entryway front façade of the building tenant space identified in this application" and 3) "Replacement wall-mounted lighting fixtures shall be at the same height as existing fixtures."

Vice Chair Cotera stated she feels Staff has given the Planning Commission good recommendations. She does not want to see the wall-mounted lighting fixtures up so high. She thinks the Commission should leave it up to City Council.

Commissioner Amos stated she agrees with Vice Chair Cotera that the two blue bands look better than the one blue band.

Commissioner Scibienski asked Vice Chair Cotera for clarification.

Vice Chair Cotera stated she is divided on the matter and is ready to pass the issue onto City Council to decide. She would approve every stipulation but Stipulation No. 2. "The colors identified on Exhibit E are approved only for the main entryway front façade of the building tenant space identified in this application."

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The Commissioners discussed the lighting fixtures.

Commissioner Scibienski stated he thinks the buck stops with the Planning Commission rather than passing it on to the Council. His preference is to approve the request with the blue banding, and he is open to the Planning Commission telling the Council to decide if they want two blue bands or one blue band. He is okay with the narrower entrance.

Vice Chair Cotera asked about the lighting.

City Attorney, Chris Schmaltz, reminded the Commissioner that there is a motion and a second on the floor.

The Commissioners discussed the motion and the stipulations.

Commissioner Long stated he is not opposed to amending his motion.

Vice Chair Cotera asked Commissioner Long if he was amendable to amending his motion to include all of the Staff-recommended stipulations except Nos. 2 and/or 3.

Commissioner Long stated he is amenable to including all of the Staff-recommended stipulations except Nos. 2 and 3.

The Commissioners discussed the Conditions of Approval.

Attorney Schmaltz clarified that Stipulation No. 2 eliminates the blue bands and restricts the blue color to only the entryway. Stipulation No. 3 eliminates the proposed higher lighting fixtures. The motion could be amended to reflect approval with Staff-recommended stipulation Nos. 1, 4, 5, and 6.

The Commissioners discussed the blue bands.

Commissioner Long moved to amend his motion to include Stipulations Nos. 1, 4, 5, 6 and the approval for the second blue band stripe.

Ms. Stevens clarified that Stipulation No. 1 specifically states for an "accent only" at the entryway and needed amending as well.

Commissioner Long moved to amend No. 1 and add the Stipulation Nos. 4, 5, 6, and two bands.

Ms. Stevens stated that the only thing that needs to be removed from Stipulation No. 2 is the words "at the entryways."

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Attorney Schmaltz stated the proposal tonight is to keep the three pedestrian level lights and add two higher light fixtures. This is not necessarily reflected in Exhibit E, so if the Commission is in agreement, he would suggest they add it to the motion.

Commissioner Long made a motion to approve the application of PL-10-0002, a request to amend the Gateway Pavilions master site plan, to include Staff recommendation No. 1, excluding "accent only at the entrance way," and Nos. 4, 5, 6, and to include approval for two bands of blue on the building, and retaining the pedestrian lights. Commissioner Amos seconded the motion.

1. The building architecture, materials, and colors proposed may be provided as only for the major in-line tenant buildings identified as Majors A, B, C and D on the Gateway Pavilions Master Site Plan, provided that they conform to this Master Site Plan Amendment dated March 23, 2010, except as modified by the conditions below.

4. Façade changes shall only be approved in conjunction with a tenant occupying a suite, and such façade changes that are in substantial conformance with this amendment may be approved administratively by Staff.

5. Prior to a tenant vacating any suite modified under provisions of this amendment, the suite shall be returned to the original condition that existed prior to modification unless a new tenant is occupying the vacated space immediately.

6. The applicant shall provide reviewed color elevations of the front and rear building façades of the Ultimate Electronics suite that accurately reflects this approved Master Site Plan Amendment.

Vice Chair Cotera called for a vote.

ROLL CALL VOTE

| | |
|---|---|
| Chairperson Iwanski | Excused |
| Vice Chair Cotera | Aye |
| Commissioner Long | Aye |
| Commissioner Amos | Aye |
| Commissioner Carrillo | Aye |
| Commissioner Scanlon | Aye |
| Commissioner Scibienski | Aye |

The motion passed unanimously.

Commissioner Carrillo asked if Staff can follow-up on the missing tree from the Ultimate Electronics.

DRAFT

# DEVELOPMENT SERVICES

**SUBJECT:**
Public Hearing, Resolution 2904-510 and Ordinance 1413-510 - Zoning Ordinance Text Amendment to Section 12, Landscape, Walls and Fences (TA-09-2)

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Sue McDermott, Community Development and Engineering Director (623)333-4211

**THROUGH:** Charlie McClendon, City Manager

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**REQUEST:** This is a public hearing before the City Council to review and solicit public input on TA-09-02, a request to amend Section 12 of the City of Avondale Zoning Ordinance, Landscape, Walls and Fences in order to support the City's Tree City USA application effort and continue the City's commitment to landscaping standards Citywide.

**PARCEL SIZE:** Citywide

**LOCATION:** Citywide

**APPLICANT:** City of Avondale

**OWNER:** City of Avondale

**BACKGROUND:**

Section 12, Landscape, Walls and Fences was originally adopted on June 15, 2009 by the City Council. Today, as part of the City's desire to become a Tree City USA, recognized by the Arbor Day Foundation, Section 12, Landscape, Walls and Fences, is amended in order to meet certain Tree City USA criteria. It is important to note that a majority of the current landscape ordinance conforms to Tree City USA standards. As part of an internal staff review, other items in Section 12 have been brought to light that should also be included in order to clarify and further define current text, incorporate additional design ideals, and alleviate potential development cost concerns. The planning staff initiated this text amendment for two reasons: To provide an opportunity for recognition as a “Tree City” and to update the landscape ordinance to maintain beautification standards throughout the City.

**SUMMARY OF REQUEST:**

In order to become a Tree City USA as well as fine-tune the existing text in Section 12, the following items described below have been addressed in this amendment. This Section is currently organized into nine subsections. However, the majority of the subsections will be renumbered. The following amendments are proposed:

<u>Section 1202, Applicability</u>: This amendment includes language clarifying that the single-family and two-family residences are exempt from the landscaping requirements, however each must meet the walls and fencing requirements with the exception of materials; clarifying that the City Center Zoning District should comply with plant material and maintenance requirements, but not Section 12 design requirements (planting design will continue to meet the City Center Zoning District and the City Center Specific Plan standards); and, eliminating the redundancy for building alteration criteria.

Section 1203, General Landscape Provisions: These amendments include adding the "Caliper" definition to this section (as well as keeping it in the Section 1209, Definitions), clarifying the use of river rock, and allowing for the use of turf for aesthetic purposes at commercial and business park developments. Another modification includes the adding the term "Zoning Administrator"; "or authorized designee". This update occurs in other subsections throughout the document as well.

Section 1204, Landscape Design Standards: These amendments include adding shade at pedestrian connections; the removal of the additional tree requirements for Commercial and Employment Zoning Districts, due to a sufficient amount of tree requirements elsewhere within this ordinance; adding new tree requirements for right-of-way landscaping to beautify the city's boulevards and streetscapes; clarifying medians with respect to other City standards; redefining "Street Frontage" as "Landscape Setback" and updating its criteria; simplifying enhanced arterial intersection expectations; clarifying Land Use Buffer criteria; adding parking lot layout standards; and, eliminating retention basin requirements that are covered by other City standards. As mentioned, the right-of-way tree requirements have been added to further enhance the City's streetscapes and reinforce the intent of the Tree City USA designation. Also, eliminating tree requirements at commercial and employment developments will not result in a reduction in the already required number of trees at a development; it relieves the additional number of trees required within these two Zoning Districts thereby considering potential cost concerns from the development community.

Section 1205, Landscape Plans and 1206, Landscape Inspections: These subsections only include amendments to "Zoning Administrator" clarification.

Section 1207, Walls and Fences: This amendment includes defining stucco finish as smooth; clarifying walls at property lines; amending pillar criteria at ornamental fencing; and, allowing for natural screens at parking lots, but no more than 40% of the overall required length. It also renames "Wire Fencing" to "Vinyl-coated Chain Link Fence" and clarifies walls required as land use buffers by removing the word "screen".

Section 1208, Maintenance: This subsection adds natural screen walls to plant material replacement requirement.

Section 1209, Definitions: Two new definitions are added to meet one of the Tree City USA requirements-- "Street Tree" and "Park Tree". In addition, the entire subsection (originally 1203) has been moved to the end of Section 12 in order to be moved at a later date when Section 1, Administration of the Zoning Ordinance is amended. This simplifies the organization of Section 12 as well as the Zoning Ordinance in its entirety.

The amended version of Section 12 can be found as Exhibit A of this report. It is a clean version of the proposed document. Exhibit B of this report is the strike-through version, which outlines the proposed changes in comparison to the current Section.

**PARTICIPATION:**

A Neighborhood Meeting was held on February 25, 2010 at 6 pm. Prior to the meeting; a draft of the proposed Ordinance was distributed via email to all persons on the Zoning Ordinance Public Distribution List, which includes residents, developers, and other interested parties. It was also posted on the Planning Division's web site. One person attended the Neighborhood Meeting and provided comments at attached. (Exhibit C). The comments focused on the issue of tree-topping in commercial areas. The existing Section 12 addresses prohibiting tree-topping anywhere in the City, therefore these comments are addressed in the ordinance.

A City Council Work Session was held on April 5, 2010 at 6 pm to present and solicit comments and suggestions from Council on the draft Ordinance amendments. Specific questions pertained to the

amount of on-site trees required, and the significance of the requirement of trees within the right-of-way. Both concerns were addressed with the City Council, and overall the Council expressed their support for the amendment.

An advertised Planning Commission public hearing was held on April 15, 2010 at 6:30 pm to present the draft Ordinance amendments. Specific items were raised regarding the ADWR species list, shade enhancements, and the amount of additional on-site trees required. All concerns were addressed to the satisfaction of the Commission, and overall staff was commended on their efforts to support recognition of landscaping in the public realm.

A notice for the City Council public hearing was published in the West Valley View on April 13, 2010. No further comments have been received.

The draft has also been provided to the Environmental Affairs Commission for review and comment. No comments have been sent to staff for consideration and/or inclusion into the current draft as included in this report. Please note that The Environmental Affairs Commission initiated the Tree City USA effort.

**PLANNING COMMISSION ACTION:**

The Planning Commission conducted a public hearing on April 15, 2010 and voted 6-0 to recommend **APPROVAL** of this request to City Council.

**ANALYSIS:**

Staff has identified a number of items to be accomplished with this text amendment, several of the more significant items are:

1. Eliminating the questions of when, to whom, and to what degree the Section applies.
2. Defining public trees and emphasizing their importance in the landscape.
3. Creating standards that enhance the quality of landscapes in the City.
4. Creating standards that are mindful of cost to the development community.

It is important that the Zoning Ordinance to be clear in regards to applicability, especially for the Avondale resident. The Ordinance is amended to clarify that Agricultural uses and single-family and two-family residences are exempt from the landscape and maintenance requirements. Furthermore, Agricultural uses and single-family and two-family residences are required to meet all wall and fence requirements except for the subsection that refers to wall articulation and materials, 1207(B)(4). Last, City Center developments shall rely on the City Center Specific Plan for design implementation, but the Zoning Ordinance for material and maintenance standards.

The Tree City USA standards focus on the importance of trees within public landscapes. In order to make this clear and inclusive, the current Ordinance needs to define all trees in the public realm; currently it includes right-of-way trees only. Therefore, definitions for “Park Tree” and “Street Tree” are proposed for Section 12. This recognizes that street, park, and any trees in public places are subject to quality, maintenance, and removal standards set forth in Zoning.

In spirit with the Tree City USA initiative, City staff revisited current landscape design requirements in order to support the City's constant effort to manage landscape beautification standards, while at the same time evaluating affects on the development community. First, staff incorporated a shade requirement either by structure or tree canopy when the distance between a primary building entrance and nearest point of entry to the site exceeds 150 feet. This will encourage a pedestrian-friendly site as well as potentially add distinct rows of trees for visual interest and comfort.

At rights-of-way, new tree and plant material requirements are proposed in order to enhance the streetscape experience for both the automobile and the pedestrian. Tree-lined streets offer a desirable boulevard effect, and provide shade for the pedestrians utilizing the sidewalks. Similarly,

median and arterial intersection requirements are coordinated with Engineering's standards to eliminate conflicts between regulations.

To further clarify and strengthen design standards, staff suggests to rename the planting zone behind the right-of-way from “street frontage” to “landscape setback” in order to be clear that it is a landscape zone separate from the right-of-way (it is measured from the back of the right-of-way line). Additional planting requirements are included in order to work in concert with the proposed right-of-way enhancements for a unified and attractive streetscape.

Parking lot layout standards are included in this Amendment for consideration. Currently parking lot islands are required every 12 parking spaces. This amendment proposes one island every 10 spaces; this standard can be found in nearby communities. Considering that the landscape coverage calculation increased last June, more opportunities for planted areas are needed. This allows for that additional placement of material. Also, increasing the number of parking lot islands will allow for additional shade to help reduce the heat-effect caused by large expanses of pavement and provide for additional relief for parked cars during the summer months and reduce the scale of paving typically perceived at parking lots.

Two requirements have been eliminated. First, the amendment proposes to eliminate required landscape improvements by Zoning Districts for Commercial and Employment developments; Single-family Residential Zoning District and Multi-Family Zoning District requirements shall remain. The landscape ordinance currently requires sufficient and specific amounts of trees for the net site area, parking islands areas, right-of -way, and landscape setback. On-site and off-site tree requirements, increased tree caliper standards, and increased landscape area requirements still remain in the Ordinance. Overall, this will provide for a more thoughtful design process inclusive of current standards.

And, retention basin design requirements in Section 12 have been eliminated. This is covered by other City standards. Section 12 will still require that basins be planted and not occupy more than 50% of the landscape setback area.

Finally, with respect to wall and fencing standards, column-spacing requirements have been amended to allow for consideration when long lengths of fencing are proposed. Columns were originally required at 20-foot intervals. The modification allows for varied spacing depending upon the length of the fence. This still allows for improved fencing aesthetics, yet eases the potential costs.

In general, the modifications do not compromise the intent of the landscaping standards set forth originally with the adoption of Section 12. It has been adjusted to accommodate everyone who shall use it: residents, property owners, and City staff. And, in terms of community impacts, this text amendment continues to uphold the recently adopted standards of the existing Section 12, Landscape, Walls and Fences which was drafted to improve the quality of landscapes within the City. It also allows for the opportunity for the City to receive a national recognition that builds upon its image as a quality community.

In conclusion, based on the public input received and the analysis by staff, staff recommends that the City Council ADOPT text amendment TA-09-02 to Section 12, Landscape, Walls and Fences.

**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 an increased standard of design for all development.

**RECOMMENDATION:**

Staff recommends that City Council hold a public hearing and **ADOPT** a resolution declaring as a

public record that certain document filed with the City Clerk and entitled the "City of Avondale Landscape, Walls and Fences Regulations" and **ADOPT** an ordinance adopting the same.

## ATTACHMENTS:

**Click to download**

- Exhibit B
- Exhibit C
- Resolution 2904-510
- Ordinance 1413-510
- Section 12

## PROJECT MANAGER:

Stacey Bridge-Denzak, 623-333-4015

EXHIBIT B

# CITY OF AVONDALE

# LANDSCAPE, WALLS AND FENCES REGULATIONS

# SECTION 12 LANDSCAPE, WALLS AND FENCES

~~Sections~~

~~1201 Purpose~~
~~1202 Applicability~~
~~1203 Definitions~~
~~1204 General Landscape Provisions~~
~~1205 Landscape Design Standards~~
~~1206 Landscape Plans~~
~~1207 Landscape Inspections~~
~~1208 Walls and Fences~~
~~1209 Maintenance~~

## 1201 PURPOSE

The purpose of this Section 12 is to provide standards and regulations for the installation of landscaping, walls and related materials for all new and expanded development within the City of Avondale. The standards and regulations of this Section 12 shall promote the following objectives:

A. To promote the general welfare of the community.

B. To effectuate attractive and logical development.

C. To aid in the enhancement of property values.

D. To create an attractive appearance along city streets.

E. To complement the visual effect of buildings.

F. To provide buffers between various land uses and protection from intense activities and to avoid or reduce negative impacts regarding visual, sound, privacy and/or glare to and from land uses.

G. To aid in conserving water by encouraging the use of varieties of plants, trees and shrubs indigenous to arid regions which are characterized by low-water consumption.

## 1202 APPLICABILITY

A. ~~The~~Except as specifically set forth herein, all of the provisions of this Section 12 shall apply to the following:

1. All new development or construction.

2. All building exterior remodeling, alterations, additions or expansions that:

a. Increase the number of stories in a building on the lot.

b. Increase by more than ten percent (10%) or ten thousand (10,000) square feet, whichever is less, the combined floor areas of all buildings on the lot.

c. Increase the ~~building or~~ parking coverage on the lot by more than two thousand (2,000) square feet.

3. All changes of occupancy in the use or development of land which require the approval of a site plan, minor land division or subdivision plat by the City.

~~4. The standards and regulations of this Section 12 shall be held to be the minimum requirements necessary for the promotion of the objectives set forth in Section 1201 above.~~

B. ~~These~~The provisions of this Section 12 shall not apply to the following:

1. Lots or sites within an approved and unexpired Planned Area Development (PAD) which has been approved with its own landscape plan and/or written landscaping standards prior to the adoption of this Section.

2. Site Plans that include landscaping approved and/or submitted for review prior to the adoption of this Section.

3. Lots or sites subject to the provisions governing amendment to approved site plans, set forth in Section ~~106, Site Plan Review.~~1.

~~1203 Definitions~~

~~As used only in this Section 12, the following terms shall have the meaning ascribed to them below:~~

~~A. "Arizona Nursery Association (ANA)" means a professional trade organization dedicated to the promotion and advancement of the nursery industry for its members and the public they serve.~~

~~B. "Cacti" means any family of plants that have fleshy stems and branches with scales or spines instead of leaves and is capable of storing water and requiring no supplemental irrigation.~~

~~C. "Caliper" means a standard measurement for trees based on the diameter of a tree trunk as measured a specific distance above the ground based on the type of tree. Measurement standards vary between single trunk and multi-trunk tree forms. Tree calipers for standard (single) trunk trees shall be measured at the widest point within the first four (4) to six (6) inches above the soil line for trees with four (4) inch caliper and less; and six (6) to twelve (12) inches for trees greater than four (4) inch caliper. Tree caliper for multi-trunk trees shall be measured at the widest point within the first six (6) inches above origination point of the second largest trunk or six (6) inches above ground if all trunks originate from the soil. Caliper of multiple~~

trunk trees shall be determined by taking the average caliper of its two (2) largest trunks.

C. Agricultural uses and single-family and two-family residences and their accessories shall comply with the walls and fences requirements of this Section with the exception of Subsection 1207(B)(4). Agricultural uses a single-family and two-family residences and their accessories shall be exempt from the landscape and maintenance requirements of this Section 12.

D. "Crown" means the branches, twigs and leaves that make up the foliage portion of the tree. The crown is measured by its crown spread diameter, which is the average of the widest branch spread and that perpendicular to it.

D. For all development within the City Center Zoning District, landscaping shall meet or exceed the development standards for street design, street trees, parks, open space, landscaping, and overall design and development guidelines as set forth in the City Center Specific Plan; provided, however, that the provisions of Subsections 1203, 1205, 1206 and 1207 shall be applicable to developments within the City Center Specific area.

E. "Evergreen Tree or Shrub" means a tree or shrub of a species which normally retains its leaves/needles throughout the year.The standards and regulations of this Section 12 shall be held to be the minimum requirements necessary for the promotion of the objectives set forth in Section 1201 above.

F. "Fence" means a barrier that serves to enclose an area intended to prevent intrusion or maintain inclusion at the boundary's limits. A fence shall not be considered or used in place of a required landscape screen.

G. "Groundcover, Vegetative" means living landscape materials characterized by horizontal as well as vertical growth but which generally do not exceed eighteen (18) inches in height. The intent of groundcover plants, when properly installed, is to form a continuous cover over the ground.

H. "Groundcover, Non-vegetative" means landscape materials that are not living. These materials include, but are not limited to decomposed granite, gravel, crushed rock, boulders, river rock or other similar materials. Pavements shall not be not considered groundcovers for the purposes of this Section.

I. "Landscape Architect" means a person registered to practice landscape architecture in the State of Arizona.

J. "Landscape Buffer" means a landscape area located on the perimeter of a site that serves to screen the visual impacts caused by the differences in use.

K. "Landscape Maintenance Schedule" means a submitted and approved document describing the planting and irrigation protection plan that will cover a planting installation's short term and long term maintenance requirements.

L. "Landscape Material" means any materials, vegetative and non-vegetative, used for the purpose of landscape improvements which may include, but shall not be limited

~~to, the following: trees, shrubs, groundcovers, turfs, vines, berms, non-vegetative groundcover materials, irrigation equipment, fences and walls.~~

~~M. "Landscape Plan" means a graphic representation of the development site indicating the location of all existing and proposed landscape improvements to be present on the site at the completion of the construction of the project. Such landscape plans shall consist of preliminary and final plans as set forth herein that includes all site elements that may impact the location of landscape materials.~~

~~N. "Landscaping" means an exterior improvement of property in accordance with an approved landscape plan and utilizing approved landscape materials.~~

~~O. "Maintenance" means the process of keeping a landscape healthy, clean, safe and attractive by landscape irrigation management, general care of landscape areas including but not limited to weeding, erosion control and revegetation, turf care maintenance, ornamental pest control, seasonal flower color programs, professional tree care and water feature maintenance.~~

~~P. "Multiple Trunk Tree" means a tree with more than one main trunk. To be considered a multiple trunk tree, additional trunks should originate either from the soil line or no higher than twelve (12) inches above ground. Any tree that has additional trunks (scaffold branches) higher than twelve (12) inches are not considered multiple trunk trees.~~

~~Q. "Palm Tree" means a vertical palm that can reach twenty (20) feet or greater in height upon maturity.~~

~~R. "Plant Material" means all vegetative landscaping material.~~

~~S. "Retention Basin" means a basin designed for the retention of stormwater, having a depth in excess of eighteen (18) inches and has a permeable surface.~~

~~T. "Shrub" means a woody plant which has several stems that rise from the ground level.~~

~~U. "Tree" means a woody plant that has a single or multiple trunk(s) at ground level~~

~~V. "Tree Height" means a tree measurement from the ground to the topmost portion of the tree. On small, multi-trunked trees, tree height is measured to the top of the main body of the crown.~~

~~W. "Tree Topping" means the cutting back of limbs to a point between branch collars/buds, larger than one inch in diameter within the tree's crown. Also referred to as hat racking, heading and pollarding.~~

~~X. "Turf" means continuous plant coverage consisting of grass species that is mowed to maintain an established height.~~

~~Y. "View Fencing" means decorative wrought iron fence panels with vertical pickets that present an opening of four (4) inches or less and are designed as an integral part of the wall.~~

~~Z. "Wall" also referred to as "screen wall" means a solid barrier designed and constructed so as to conceal areas used for refuse, mechanical equipment, parking and service and loading bays from street and public view and to separate potential incompatible land uses.~~

~~AA. "Xeriscape" means a landscaping method that maximizes the conservation of water by the use of site-appropriate plants and an efficient watering system.~~

## ~~1204~~1203 GENERAL LANDSCAPE PROVISIONS

A. Planting Criteria.

1. All trees and plant material used within the City shall conform to the most current version of the Arizona Department of Water Resources ("ADWR") "Low Water Use/Drought Tolerant Plant List."

2. All trees sizes shall be in accordance with the standards as described by the Arizona Nursery Association's "Recommended Average Tree Specifications."

3. Plants shall be placed in such a way as to maximize survivability~~ (i.e. low water use plants should not be placed in drainage ways).~~.

4. The following plant material varieties shall be prohibited:

   a. Invasive plants and noxious weeds including, but not limited to, Desert Broom (Baccharis sarothroides), Salt Cedar or Tamarisk (Tamarix sp.), Giant Reed (Arundo donax), Mexican Palo Verde (Parkinsonia aculeata), Buffelgrass (Pennisetum ciliare), Fountain Grass (Pennisetem setaceum, African Sumac (Rhus lancea), Russian Olive (Elaeagnus angustifolia) and Tree of Heaven (Ailanthus altissma).

   b. Mulberry Trees (Morus sp.).

   c. Olive Trees (Olea europaea) with the exception of the Swan Hill™ and Wilson™ Olive varieties.

5. Plant material that meets the planting criteria as set forth herein, but which is not found on the current ADWR Low Water Use/Drought Tolerant Plant List may be found acceptable, subject to by approval of the Zoning Administrator or authorized designee. Any material considered an invasive species shall not be permitted.

6. Tree Size Minimum Standards.

a. All single trunk trees shall be two (2) inch caliper minimum size. Tree calipers for single trunk trees shall be measured at the widest point within the first four (4) to six (6) inches above the soil line for trees with four (4) inch caliper and less; and six (6) to twelve (12) inches for trees greater than four (4) inch caliper.

b. All multi-trunk trees shall be one and one-half (1-1/2) inch caliper minimum. Tree caliper for multi-trunk trees shall be measured at the widest point within the first six (6) inches above origination point of the second largest trunk or six (6) inches above ground if all trunks originate from the soil. Caliper of multiple trunk trees shall be determined by taking the average caliper of its two (2) largest trunks.

c. All trees shall be specified in the schedule of plant material (required as part of the Preliminary Landscape Plan and the Final Landscape Plan) by caliper, height and by any other relevant features which defines the exact plant material being proposed. Trees specified by nursery container sizes only shall not be accepted.

d. All Mexican Fan Palms (Washington Robusta), California Fan Palms (Washingtonia Filifera) and Queen Palms (Cocos Plumosa) shall have a minimum eight (8) foot trunk height measured from the base of the trunk to the base of the fronds.

7. Trees shall have crowns that are full and symmetrical, meet the caliper and height criteria as specified on the drawings and meet or exceed industry standards. Shrubs shall be full with strong root growth and meet the criteria as specified on the drawings.

8. Shrub and Vegetative Groundcover Minimum Criteria.

a. All shrubs shall be no less than five gallon in size.

b. All groundcover shall be no less than 5-gallon in size. Four (4) 1-gallon container plants may be substituted for one (1) 5-gallon container plant.

9. No artificial plant materials may be used to satisfy the requirements of this Section, with the exception of artificial turf at recreational facilities if approved by the Zoning Administrator or authorized designee.

B. Ground Level Treatment.

1. General.

a. All landscaped areas shall be composed of a combination of plant materials and non-vegetative ground cover designed to accomplish the objectives set forth in Section 1201 above and to the minimum standards as set forth below.

b. All landscaped areas shall be finished with a natural topping material including but not limited to the following: turf, groundcover, planting, decomposed granite, river run rock, expanded shale, native stone or bark as set forth herein. A post-emergent herbicide shall be applied to the ground after the placement of non-vegetative ground cover materials in any landscaped area to prevent weeds.

2. Materials.

a. Decomposed Granite shall be three-quarter (3/4) inch select material or larger and installed a minimum of two (2) inch depth.

b. Any river rock material ~~must be~~used as non-vegetative groundcover that is embedded in concrete shall be to a depth of two-thirds (2/3) the dimension of the rock to prevent its removal or relocation. Each rock shall not be spaced further than three-quarter (3/4) inch from another rock. When installed in loose form, material depth shall be no less than four (4) inches, and if removed shall be reinstalled at the owner's expense.

c. The use of turf shall be restricted according to the provisions as set forth herein. Sod shall be specifically cultivated to thrive in the conditions present at the particular site. The use of non-native and/or high water consumptive turf is discouraged. The applicant must provide information regarding the composition of a sod as part of the detailed plant list as required. The use of seed for turf installation shall be prohibited.

d. Other non-vegetative groundcover materials may be used subject to approval by the Zoning Administrator or authorized designee.

3. The installation of turf shall be limited to the following uses: single-family residences and their accessories, outdoor recreation facilities including parks and golf courses, schools, churches, resorts, and retention basins and basin slopes. Turf may also be utilized at commercial and business park developments, provided that such turf shall not occupy more than 25% of the landscape area.

C. Irrigation.

1. All landscaping shall be serviced with a permanent underground automated irrigation system designed in compliance with the "Minimum Standards for Landscape Irrigation" as published by the Arizona Chapter of the American Society of Irrigation Consultants. A backflow prevention assembly shall be provided and caged according to standard details adopted by the City. All irrigation systems and landscaped areas shall be designed, constructed and maintained so as to promote water conservation and prevent water overflow or seepage into the street, sidewalk or parking areas.

2. Any areas requiring restoration of natural vegetated areas shall require irrigation for at least three (3) years, unless the Zoning Administrator or authorized designee determines that the vegetation has become sufficiently established at an earlier date.

## ~~1205~~1204 LANDSCAPE DESIGN STANDARDS

A. General.

1. Design Manuals.

   a. All landscaping for single-family residential development shall meet or exceed the guidelines for landscaping as set forth in the City's Single-Family Residential Design Manual.

   b. All landscaping for commercial, employment and/or multi-family development projects shall meet or exceed the guidelines for landscaping as set forth in the City's Commercial/Industrial/Multi-Family Design Manual.

2. All development projects shall provide landscaping in all portions of the development site not required for buildings, structures and loading and vehicular access ways in accordance with the required landscape improvements as set forth herein.

3. Areas covered by decomposed granite or similar material, excluding retention basin bottoms, shall not have open spaces in between plants that exceed more than seven (7) feet in any direction as measured between plant canopies at maturity.

4. Plant material shall be utilized to aid screening of parking, dumpster enclosures, outdoor storage areas, alleys, infrastructure such as utility cabinets, transformers ~~and~~, backflow preventors, and service and utility areas. The property owner shall coordinate this screening requirement with the appropriate utility authorities to avoid planting conflicts.

5. When the primary entrance of a building is more than one hundred fifty (150) feet from the nearest point of a public sidewalk, and the entrance is accessed by a pathway traversing a parking lot, then an overhead shade structure or tree canopy is required along the pathway. Shade elements may include opaque structures (e.g., arbor, pergola, portico, awning, canopy) and/or shade trees planted with a minimum of one (1) tree provided for every twenty-five (25) feet of lineal pathway. Tree location and spacing shall be established through the development plan review.

6. Landscaping shall be designed and maintained in accordance with the height, location and sight visibility requirements as set forth herein.

~~6.~~7. A minimum of sixty-five percent (65%) of all shrub material shall be arranged in massings. Shrubs shall be massed together with no less than five (5) shrubs per massing. Each shrub will be placed no further apart than fifty percent (50%) of the mature size of the selected material. ~~Distances between shrub massings shall not~~

~~exceed seven (7) feet in any direction.~~ For the purpose of this Section 12, two (2) vines may be substituted for a required shrub when located adjacent to a solid wall.

~~7.~~8. Groundcover material shall be arranged in massings. A groundcover massing shall cover a minimum area of three hundred (300) square feet. Each groundcover plant shall be placed no further apart than fifty percent (50%) of the mature size of the selected material. Distances between groundcover massings shall not exceed seven (7) feet in any direction.

~~8.~~9. Mounding and contouring of landscaped areas shall be required. Slopes shall not exceed a four to one (4:1) side slope ratio~~ unless bank stabilization methods are implemented~~.

~~9.~~10. Landscaped areas shall not be used for parking of vehicles, display of merchandise or other uses detrimental to the landscaping.

~~10.~~11. A minimum of fifteen percent (15%) of plant material shall be cacti or other succulents. Thorny plants and cacti shall not be planted where their mature spread would be closer than four (4) feet from any walkways or parking area curbing.

B. Required Landscape Improvements per Zoning Districts

1. ~~Commercial Zoning Districts. For all development within the Commercial Zoning Districts (R-O, C-O, C-1, C-2, C-3) a minimum of one (1) tree per five hundred (500) square feet of required on-site landscaped areas shall be provided. This number of trees shall not include the trees required in a landscape buffer, parking lot, street frontage or right-of-way planting as specified in this Section 12.~~

~~2. Employment Zoning Districts. For all development within the Employment Zoning Districts (CP, A-1) a minimum of one (1) tree per four hundred (400) square feet of required on-site landscaped areas shall be provided. This number of trees shall not include the trees required in a landscape buffer, parking lot, street frontage or right-of-way planting as specified in this Section 12.3.~~ Single-family Residential Zoning Districts. For all development within the Single-Family Residential Zoning Districts (AG, R1-35, R1-15, R1-8, R1-6, R1-5) a minimum of three (3) trees per dwelling unit shall be provided. One (1) of the required trees per lot shall be placed in commonly held and maintained landscaping areas between the lot and any drive or street that serves as an access for the lot, if such common area exists.

~~4.~~2. Multi-family Residential Zoning Districts. For all development within the Multi-family Residential Zoning District (R-2, R-3, R-4) a minimum of one and one-half (1-1/2) trees per dwelling or guest unit shall be provided. This number of trees shall not include the trees required in a landscape buffer, parking lot, ~~street frontage~~landscape setback or right-of-way planting as specified in this Section 12.

~~5.~~3. City Center District.~~a.~~ For all development within the City Center District, landscaping shall meet or exceed the design guidelines and requirements for street design, street tree criteria, parks, open space, landscaping and overall design and development guidelines as set forth in the City Center Specific Plan.

~~b. All landscape material shall meet or exceed the requirements as set forth herein.~~

~~c. All landscape maintenance standards shall meet or exceed the requirements as set forth herein. An approved Landscape Maintenance Schedule shall be submitted and approved as set forth herein.~~

C. Required Landscape Areas

1. General. All development projects shall provide on-site landscaped areas located in accordance with the following standards and requirements:

   a. For CP development within the Employment Zoning District, landscaped areas shall be provided on the site in an amount equal to or greater than fifteen percent (15%) of the ground floor area of all buildings or ten percent (10%) of the net site area, whichever is greater.

   b. For A-1 development within the Employment Zoning District, landscaped areas shall be provided on the site in an amount equal to or greater than ten percent (10%) of the ground floor area of all buildings or five percent (5%) of the net site area, whichever is greater.

   c. For all developments within the Multi-family Residential Zoning Districts (R-2, R-3, R-4), landscaped areas shall be provided on the site in an amount equal to or greater than twenty percent (20%) of the net site area; and shall be increased by five percent (5%) for each additional floor over one-story to a maximum of fifty percent (50%) of the net site area.

   d. For all development within all other zoning districts, landscaped areas shall be provided on the site in an amount equal to or greater than twenty percent (20%) of the net site area.

   e. Future building pads within a phased development shall be improved with decomposed granite as specified ~~below~~herein.

   f. ~~Street frontage~~Landscape Setback requirements shall be as specified below.

2. Street Right-of-Way Landscaping.

   a. The landscaping of all street rights-of-way contiguous with the proposed development site not used for street pavement, curbs, gutters, sidewalks, transit facilities or driveways or other facilities as required shall be landscaped as set forth herein.

   b. The installation of street trees shall be required in an amount equal to or greater than one (1) tree and five (5) shrubs for every thirty (30) feet of street frontage. This minimum quantity of trees shall be located in the street right-of-way landscaped area and shall be designed and located to enhance the proposed development project and street frontage. Trees must be planted in areas greater than six (6) feet in width when such areas are located between the back of curb and the face of a meandering or detached sidewalk.

   c. No trees shall be located within the established public utilities easement. Shrubs and groundcover are permissible.

~~c.~~ d. Median landscaping shall be designed~~,~~ with colorful and contrasting plant and pavement materials planted and maintained in such a way so as not to obstruct visibility at median breaks or to create safety issues. Paving materials shall be integrated with planting to create a unique roadway feature. Paving shall be colorful, interlocking concrete pavers or cobbled paving as approved by the Zoning Administrator or authorized designee.

~~d.~~ e. The minimum width for a planted median is ~~five~~six (~~5~~6) feet. Median width is measured from the back of median curb to back of median curb.

~~e.~~ f. Medians less than ~~five~~six (~~5~~6) feet in width shall not be planted. Ground level treatment shall be decorative material as approved by the Zoning Administrator or authorized designee.

~~f.~~ g. Medians ~~five~~six (~~5~~6)~~ feet~~ to ten (10) feet in width shall have no trees unless otherwise approved by the Zoning Administrator or authorized designee; provided, however, that in no event shall trees be planted in a median with a width less than eight (8) feet. Shrubs shall be provided at one (1) per two hundred and fifty (250) square feet of area and shall meet the requirements as set forth herein.

~~g~~h. Medians greater than ten (10) feet in width shall have a minimum number of trees provided at one (1) tree per twenty-five (25) linear feet of median length~~; provided that there shall be no less than three (3) trees in a single median~~. Trees shall meet the requirements as set forth herein. Shrubs shall be provided at one (1) per two hundred and fifty (250) square feet of area and shall meet the requirements as set forth herein.

i. For medians in arterial roadways that will be built in phases, landscaping shall be located to minimize future relocation of trees, pavers and irrigation.

~~3. Street Frontage.~~

3. Landscape Setback.

a. Landscaping shall be planted along all street frontage in a designated landscape setback~~ zone~~ as approved through the development plan review process. The landscape setback shall be measured from the back of the right-of-way line to the nearest building, structure, on-site parking or outdoor storage area. Shrubs and groundcover may be integrated into the right-of-way street trees landscape.

b. Parking and maneuvering areas shall not be permitted in the landscape setback except access drives and access walkways.

c. ~~Landscaping installed in the street frontage shall not be used to satisfy the aggregate~~Plantings in the landscape setback may be integrated into the right-of-way landscaping adjacent to this area~~ requirements as set forth herein~~.

d. The landscape setback shall be a minimum width along a particular street frontage and shall be established and maintained along all classified streets between any building and/or structure, on-site parking area or outdoor storage area and the nearest point of the property line. Landscape setbacks shall be as follows:

~~i.~~1) Single-family residential developments: For arterial streets, a landscape setback of thirty (30) feet shall be required. For collector streets, a landscape setback of fifteen (15) feet shall be required.

~~ii.~~2) Multi-family, commercial and employment developments: For arterial and collector streets, a landscape setback of twenty (20) feet shall be required; provided, however, that a larger landscape setback is encouraged and any additional landscape setback provided may be used to satisfy the aggregate site design area requirements as set forth in Section 7 of this Zoning Ordinance.

~~iii.~~3) The landscape setback requirements shall not be applied to ~~individual single-family lots, the City Center~~the OTAB District and ~~the OTAB~~Cashion District ~~requirements~~.

e. The installation of ~~street~~ trees, shrubs and vegetative groundcover shall be required ~~for all applicable projects~~ in an amount equal to or greater than one (1) tree and ten (10) shrubs for every twenty (20) feet of street frontage and vegetative groundcover as required to meet a minimum of sixty-five percent (65%) of the total street frontage landscaped area. This minimum quantity of trees, shrubs and vegetative groundcover ~~shall be located in the street right-of-way landscaped area and~~ shall be designed and located to enhance the proposed development project and ~~the streetscape.~~street frontage.

f. All ~~street frontage~~ landscaping located in the landscape setback adjacent to driveway exits, street intersections and sight visibility easements shall be designed, installed and maintained in a manner that preserves sight line visibility.

4. Arterial Intersections.

~~a. At the intersection of two (2) arterial roads, a planting easement shall be provided at each corner. The planting easement shall cover the area contained within a triangle drawn as follows: Beginning at the point where lines drawn from the back of the street curbs adjacent to each corner intersect (the "Starting Point") and measuring fifty (50) feet along each street curb from the Starting Point (each such point being referred to as an "End Point") and then completing the triangle by connecting the End Points.~~

a. Landscaping shall be enhanced at arterial intersections as determined through development review.

b. Landscape and planting materials shall be provided in this landscape easement in quantities not less than those required for a median greater than ten (10) feet in width, as set forth above.

c. All landscape treatments within this planting easement shall meet the requirements adopted by the City relating to sight visibility.

5. Land Use Buffers.

a. Minimum landscape buffers shall be required along all property lines of a site developed for Multi-family Residential, Commercial or Employment Zoning Districts or uses when such property lines are "contiguous" with any Single-family Residential use or Single-family Residential Zoning District. For the purpose of this subsection ~~1205~~1204(C)(5), contiguous shall include properties separated only by an alley. Buffers shall be required as follows:

~~i.~~1) Fifteen (15) feet where any Multi-family Zoning District or use abuts a Single-family Zoning District or use.

~~ii.~~2) Twenty-five (25) feet where any Commercial Zoning District or use abuts a Single-family Residential Zoning District or use.

~~iii.~~3) Thirty-five (35) feet where any Employment Zoning District or use abuts a Single-family Residential Zoning District or use.

~~iv.~~4) Forty (40) feet where any loading docks, trash enclosures and service drives abut a Single-family Residential Zoning District or use.

b. No landscape buffers shall be required for Multi-family residential uses contiguous with other Multi-family Zoning Districts or uses; provided, however, that a screen wall shall be required at the property boundaries.

c. The landscape buffer areas as set forth herein shall provide a vegetative screen improved with a minimum of one (1) screening tree spaced at each fifteen (15) foot interval of the property boundary being screened.

d. A landscape buffer screen wall shall be designed and constructed in accordance with the provisions as set forth herein and shall be required along all property lines of a site developed for multiple-family, residential, commercial or employment uses when such property lines are contiguous with or separated only by an alley from a Single-family Residential development or zoning district.

e. Parking and maneuvering areas shall not be permitted in the landscape buffer.

6. Parking Lot Landscaping and Parking Structures.

a. Parking lots shall have landscape treatments that provide shade and allow for natural surveillance. Except as otherwise provided in this Section, a minimum of fifteen percent (15%) of all parking lot areas shall be landscaped. This requirement is exclusive of any on-site landscape area requirement as set forth herein.

~~b. Parking lots shall be designed and constructed in accordance with Section 8, Off Street Parking.~~

b. Parking islands shall be installed at least every ten (10) consecutive parking spaces; such islands shall be a minimum of five (5) feet wide and contain a minimum of fifty (50) square feet in area.

~~c. All parking lots shall be separated from adjacent residential uses or zoning districts by a twenty (20) foot landscaped strip planted with a minimum of one (1) tree every fifteen (15) linear feet and a screen wall as specified herein.~~

c. Parking areas shall include a minimum of twenty (20) foot wide landscaped medians to divide large parking fields into groupings of 200 parking spaces or less. Medians must be oriented for pedestrian use and navigation and must include sidewalks. The Zoning Administrator or authorized designee may waive this requirement for any project where buildings or pedestrian plazas serve to break the parking field into groupings of 200 spaces or less.

d. A minimum of one (1) tree shall be provided for every five (5) parking spaces, exclusive of perimeter landscaping and street trees. Trees must be planted within landscape planting islands throughout the parking lot.

e. Landscape planting islands shall include, at the time of installation, a minimum of (a) one (1) tree, three (3) shrubs and five (5) groundcovers for a planting island with parking on only one side and (b) two (2) trees, three (3) shrubs and five (5) groundcovers for a planting island with parking on more than one side. All groundcovers in parking lot landscape planting islands shall not exceed two (2) feet in height and be of a species that will not grow to interfere with natural surveillance of the parking lot.

f. Tree trunks shall not be placed closer than fifteen (15) feet, measured horizontally, from a light source. Trees and lighting shall be located to avoid conflicts with one another and to avoid conflicts with existing and proposed structures.

g. Shrubs and trees shall not be planted within the two (2) feet overhang at the head of a parking stall.

h. Parking structures shall have perimeter landscaping, consistent with building setbacks and which shall be designed to provide partial screening of walls and vehicle lights, shade along sidewalks and natural surveillance into parking structures.

7. Retention Basins. All on-site water retention areas, other than paved surfaces shall be entirely landscaped and shall ~~comply with the following criteria:a. The retention areas shall~~ not occupy more than fifty percent (50%) of the on-site street frontage landscape setback area, unless approved by the Zoning Administrator or authorized designee where shallow depths for multi-use are proposed for the basin.

   ~~b. All retention areas shall maintain slopes no steeper than a six to one (6:1) ratio when adjacent to public rights of way or where there is pedestrian access to that portion of the basin. Side slopes adjacent to walls, fences, hedges and other areas with limited pedestrian access may have side slopes up to a four to one (4:1) ratio.~~

   ~~c. Provide a minimum five (5) foot wide level area at the top of the basin slope.~~

   ~~d. No sidewalk or walkway shall be located closer than five (5) feet to the top of any adjacent basin slope.~~

8. Building Frontage.

   a. Foundation planting shall be required adjacent to buildings fronting on public streets. A minimum of fifty percent (50%) of the building frontage shall be landscaped as set forth herein.

   b. Foundation planting shall include trees, shrubs and groundcover. The minimum width for any foundation planting area shall be ten (10) feet. Vehicle overhang is not permitted.

   c. Foundation planting may include a level bed, raised planters, planted pots with trees and shrubs or a combination of these treatments.

9. Site Visibility Easements. All landscaping and landscaping materials installed in a City of Avondale Sight Visibility Triangle and/or within an Arizona Department of Transportation Sight Distance Triangle shall be installed and maintained so that no shrub or groundcover shall exceed two (2) feet in height and all trees shall be limbed up to seven (7) feet clear.

## ~~1206~~1205 LANDSCAPE PLANS

A. General Landscape Plan Requirements. Landscape plan submittals consisting of a preliminary landscape plan, a final landscape plan and a landscape maintenance schedule shall be prepared, submitted and approved for all applicable development projects in accordance with the procedures and requirements set forth herein and as required under Section 1 of this Zoning Ordinance. All plans shall be stamped and signed by a registered Landscape Architect licensed in the State of Arizona.

B. Preliminary Landscape Plan. The Preliminary Landscape Plan shall illustrate the site layout and amenities (including all walls within the landscape areas), plant material and plant locations. The Preliminary Landscape Plan shall include the following information:

1. Proposed locations for all landscaping material, organic and inorganic, used on the site.

2. A specific schedule of all plant material, which shall be identified by common and botanical name and shall clearly indicate the quantities and sizes of each to be installed.

3. Preliminary locations of all easements on the site including, but not limited to, public utility easements, drainage easements, roadway easements and United States of America irrigation easements.

4. A completed planting data sheet.

5. Site lighting locations for coordination purposes.

6. Locations of all above grade detention/retention stormwater basins.

7. All preliminary utility locations that impact the locations of any plant material including but not limited to transformers, backflow preventers and light and sign poles.

8. Any other pertinent information as requested by the Zoning Administrator or authorized designee as necessary to evaluate the landscaping.

C. Final Landscape Plan. The Final Landscape Plan shall be submitted concurrently with all other required site improvement and construction plans at the time of application for a building permit. Any alterations to the approved Preliminary Landscape Plan must be approved by the Zoning Administrator or authorized designee prior to the Final Landscape Plan submittal. The following information shall be added to the Final Landscape Plans for review:

1. Revised locations, if any, for all landscaping material, organic and inorganic, used on the site.

2. Any revisions to the schedule of plant material.

3. Final locations of all easements on the site, including but not limited to public utility easements, drainage easements, roadway easements and United States of America irrigation easements.

4. Final utility locations including but not limited to transformers, backflow preventors, lights and all signs.

5. A sheet of landscape details and corresponding construction notes. All required City notes are to be shown on all sheets.

6. An irrigation plan, irrigation detail plan and corresponding sheet of irrigation construction notes shall be provided indicating the layout and details of the irrigation system including the type and location of all materials utilized.

7. A Landscape Maintenance Schedule, including, at a minimum:

   a. A landscape maintenance narrative that describes the theme of the selected plant palette and the overall design intent (i.e. preserving the natural characteristics of each material).

   b. The approved plant list including plant size, irrigation emitter allocation and specific plant maintenance notes.

   c. A monthly maintenance schedule describing seasonal maintenance requirements per material such as, but not limited, to fertilization, pruning and irrigation adjustments.

8. Any other pertinent information as requested by the Zoning Administrator or authorized designee as necessary to evaluate the Final Landscape Plans.

### ~~1207~~1206 LANDSCAPE INSPECTIONS

A. All projects required by this Section 12 to be landscaped must be inspected and receive approval from the Zoning Administrator or authorized designee prior to a Certificate of Occupancy being issued by the City. Such inspections shall be requested by the applicant at least forty-eight (48) hours in advance.

B. The Zoning Administrator or authorized designee shall refuse to approve any project not meeting the provisions set forth herein. The Zoning Administrator or authorized designee shall also reject landscape materials that are substandard as to size, condition or appearance.

C. The applicant may request ~~a pre-~~an inspection of materials either on site or at the supplier; provided, however, that any such pre-inspection shall only provide assurance as to the type of landscape materials and shall not constitute an acceptance of the final landscaping as installed.

### ~~1208~~1207 WALLS AND FENCES

A. In all locations where walls are either required by this subsection or desired by the property owner, the walls shall conform to all provisions as set forth herein.

B. General Wall and Fence Design Standards.

1. All landscape walls and fences for single-family residential development shall meet or exceed the guidelines for landscaping as set forth in the Single-Family Residential Design Manual for the City of Avondale.

2. All landscape walls and fences for Commercial, Employment and/or Multi-family development projects shall meet or exceed the guidelines for landscaping as set forth in the Design Manual for Commercial/Industrial/Multi-Family for the City of Avondale.

3. All walls and fences shall meet all current building code material and construction standards. Minimum finished wall thickness shall be no less than six (6) inches.

4. All walls shall be articulated to create visual interest by means such as but not limited to a change in plane, curves, material accents, regularly spaced pillars or sculptural insets.

   a. All walls along arterial or collector streets, except Perimeter Walls at Single-family Residential Developments described in subsection ~~1208~~1207(E) below, with a continuous length greater than one hundred and fifty (150) feet shall use an undulating pattern at minimum intervals of fifty (50) feet to provide variety and visual interest. The undulation depth parallel to the street line shall be a minimum of three (3) feet.

   b. ~~Walls shall be opaque and linear when separating one property from another.c.~~ A minimum of three (3) different materials is required for every wall on site. Materials shall be masonry block that is six (6) or eight (8) inches wide, concrete, precast concrete, stone or a similar solid, durable, equal or better quality material and shall conform to the following:

      ~~i.~~1) Wall materials shall match the primary building on-site and related site features.

      ~~ii.~~2) Color variation shall not constitute a change in materials. Textural variation shall constitute a change in materials for up to two (2) materials.

      ~~iii.~~3) Material accents, sculptural insets and other aesthetic wall enhancements shall be considered a separate material use as approved by the Zoning Administrator or authorized designee.

      ~~iv.~~4) Walls that are completely veneered with stone, brick or finished with other similar quality materials may be excluded from this requirement if approved by the Zoning Administrator or authorized designee.

      ~~v.~~5) Concrete and masonry walls shall be stuccoed with a smooth finish and painted to match the primary on-site buildings; provided,

however, that the use of stuccoed walls is limited to fifty percent (50%) of the required wall lengths.

~~vi.~~6) Split-faced, grid or similar decorative types of block shall not be stuccoed and/or painted.

5. Walls shall be opaque and linear when separating one property from another.—All walls shall have a decorative cap not to exceed the maximum wall height allowed. Solid concrete or precast concrete walls shall be articulated so a wall cap is represented.

6. An ornamental iron fence with veneered and capped, masonry pillars may be approved as a substitute for an opaque wall if the wall is not required for visual screening such as for land use buffer requirements, service areas, trash enclosures, outdoor storage areas or parking areas.

   a. Pillars shall be spaced ~~no greater than twenty-five (25) feet on center.~~as follows:

      1) 1 pillar/25 feet (minimum 2) if less than 100 linear feet.

      2) 1 pillar /50 feet (minimum 4) if 100-1000 linear feet.

      3) 1 pillar/100 feet (minimum 20) if greater than 1000' linear feet.

      4) A reduction in pillars may be allowed for fencing greater than 1000 linear feet if fencing is not visible from a public street as determined by the Zoning Administrator or authorized designee.

   b. The fence and pillar treatment as set forth herein may be used where a Multi-family Residential development is contiguous with other Multi-family Residential Zoning Districts or uses.

7. Gates: In those instances where a wall is erected as an enclosure, a gate of equal height shall be required in order to secure the enclosure. The gate shall be an opaque, non-wooden material and shall be compatible with the design of the buildings and related site features.

8. ~~Wire~~Vinyl-coated Chain Link Fencing: The use of ~~wire~~vinyl-coated chain link fencing is restricted to single-family residential lots and recreational sport courts (i.e. tennis, basketball, volleyball, etc.) and shall be vinyl coated. The height limitation may be exceeded when fencing is built around tennis courts along the rear and side yards only and by approval of the Zoning Administrator or authorized designee. Vinyl coating for ~~wire~~ fencing shall be black, dark brown or dark green.

9. Barbed Wire Fences: Barbed wire shall be prohibited except for temporary construction sites in all zoning districts, provided that the barbed wire is located six

(6) feet or more above grade. If barbed wire has not been removed from the site at the time of final inspection, a certificate of occupancy shall not be issued.

C. General Wall and Fence Height Standards.

1. The maximum height of any freestanding wall or fence shall be measured from the highest adjacent finished surface of the ground, paving or sidewalk within twenty (20) feet of the base of the wall.

2. Walls in a required front yard building setback, including walls for single-family dwellings, shall be three (3) feet-six (6) inches maximum in height. An increase in the maximum height may be permitted subject to review and approval by the Zoning Administrator or authorized designee. Notwithstanding this authority, the maximum height that may be approved is six (6) feet. For all heights above three (3) feet-six (6) inches, the property owner shall demonstrate that a natural surveillance to the street will be maintained by incorporating openings, providing transparent materials or varying height/materials.

3. In areas behind a required front yard building setback and within the required rear and side yards, including walls for single-family dwellings, the maximum height of walls shall be six (6) feet, except where a taller wall is necessary to screen service areas. For single-family uses, the maximum height shall be eight (8) feet when adjacent to an arterial road.

4. A masonry wall shall be required for through lots with rear lot lines adjacent to an arterial street, and the maximum height of such rear wall shall be eight (8) feet.

5. All walls shall be subject to review and approval through development plan review. Any wall in excess of six (6) feet shall require a building permit, as required by the City's adopted Building Code.

D. Land Use Buffer ~~Screen~~ Walls. ~~Screen walls~~Walls required in landscape buffers as set forth herein shall be located along all common property lines and shall meet the following height requirements:

1. Six (6) feet when a screen wall separates a Single-family Residential District or use from a Commercial and/or Multi-family Residential District or use. The Zoning Administrator or authorized designee may determine that an 8 (eight) foot wall may be warranted in certain cases.

2. Eight (8) feet when a screen wall separates a Single-family Residential District or use from an Employment District or use.

3. Six (6) feet when along interior property lines separating individual development sites.

E. Perimeter Walls at Single-family Residential Developments.

1. Perimeter walls shall be architecturally enhanced with landscaping and materials that complement the development's architecture, provide a distinct design that represents the specific community and meet the intent of design standards as specified herein.

2. Eight (8) foot tall, six (6) inch thick walls required along all arterials.

3. Six (6) foot tall, six (6) inch thick walls are required along all collectors and local streets.

4. Perimeter walls shall stagger at least once every one hundred (100) feet, with a design that employs a design/pattern every six hundred (600) feet and a column every three hundred (300) feet. A minimum of a four (4) inch pilaster cap and four (4) inch block cap is required.

5. Accent materials shall be brick, stone, tile, travertine or other materials ~~sustainable~~durable in a desert environment.

6. All perimeter walls shall be constructed concurrent with the associated phase of development.

7. Theme walls shall be installed in all areas visible from public view with enhanced landscaping to compliment the architecture and related on site features.

8. View ~~fencing~~fences shall be integrated into a development along open space areas with wrought iron or other decorative materials that promote views corridors and safety.

F. Parking Lot Screens. All on-site parking areas adjacent to any street shall be screened from street ~~view~~views according to the provisions as set forth herein. This standard can be met through the use of the following screening methods, which may be used individually or in combination:

1. Parking lot screen walls shall be a minimum of three (3) feet-6 (six) inches in height constructed of masonry or concrete, be a minimum of six (6) inches in thickness and incorporate offsets and relief as specified herein. Fifty percent (50%) of all required walls shall have specialty details, decorative materials, surface articulation and/or aesthetic interest.

2. Open areas or portals for natural surveillance and pedestrian access to the site shall be provided as required by the Zoning Administrator or authorized designee.

3. Earth berms, if used in lieu of or in conjunction with screen walls, shall have a maximum slope of four to one (4:1) ratio~~ and minimum width of twenty-five (25) feet~~. Berms are allowed only when there is sufficient area to create a three-foot, six-inch (3'6") tall berm.

4. A landscape berm or natural screen wall may be used in conjunction with a manmade screen wall, but for only forty (40) percent of the required wall length as

approved by the Zoning Administrator or authorized designee. The natural wall must meet the screening and height requirements as specified herein.

G. Outdoor Storage Areas. All outdoor storage areas for materials, vehicles, trailers, equipment, trash or other similar items shall be enclosed by a masonry or concrete wall with an opaque gate to screen the view of these uses from public rights-of-way and adjoining residential, commercial and mixed-use districts. This wall and gate shall be a minimum of eight (8) feet tall but not to exceed ten (10) feet tall, measured from the highest adjacent grade within twenty (20) feet or street curb, whichever is higher.

H. Service Areas. All service bays, loading docks, delivery and refuse areas shall be screened from street view by a minimum of a six (6) foot high masonry wall. Site conditions and surrounding uses will be used to determine maximum height of walls adjacent to loading areas, service bays, mechanical equipment, etc. that are required to be screened.

I. Utility Cabinets. All utility cabinets including but not limited to transformers, shall be screened by architectural metal fencing, walls that match nearby perimeter or screen walls, berming and/or dense landscaping as determined at development plan review. Screening shall not conflict with access requirements.

J. Alleys. Screening requirements along alleys shall be the same as for land use buffers.

K. Manufactured Homes. Perimeter boundaries of all manufactured home parks shall contain a screening and security wall that conforms to the criteria and requirements as set forth herein.

~~1209~~1208 MAINTENANCE

A. Landscaped areas shall be maintained as follows:

1. All landscape material shall be maintained according to the standards as set forth herein on the approved Landscape Maintenance Schedule.

2. All landscape areas and material shall be maintained in a healthy, neat, clean and weed-free condition.

3. Permanent modifications and/or removal of existing landscaping, other than necessary for utility, infrastructure, or other repairs caused by unforeseen damages, shall require prior approval by the Zoning Administrator or authorized designee. Any approved landscaping that has been permanently removed for any reason without the Zoning Administrator's or authorized designee's approval shall be reported to Code Enforcement and a Notice of Violation may be issued. Material replacement shall be in kind and not less than the minimums as set forth herein, at the owner's expense. Planting shall be replaced per the approved landscape plan.

4. Any plant material determined by the Zoning Administrator or authorized designee to be unhealthy or in decline shall be replaced in kind and not less than the minimums as set forth herein, at the owner's expense. This includes but is not limited to natural screen walls.

5. Plant material shall be pruned according to the approved Landscape Maintenance Schedule. Plants shall not be severely pruned such that the natural growth pattern or characteristic forms are significantly altered.

6. Tree topping is prohibited. Any tree that has been altered by this measure shall be immediately removed and replaced in kind with a new tree, at the owner's expense.

7. Landscape areas on-site, as well as in the adjacent right-of-way, shall be maintained by the owner or owner's association (if applicable), and shall be maintained as approved in the Landscape Maintenance Schedule. Any areas designated and intended for the purposes of on-site stormwater retention shall be maintained and reserved for that primary purpose. Any alteration or deterioration of those areas shall be considered a violation of this Section 12.

B. Landscaping and irrigation systems shall be maintained in accordance with the Landscape Maintenance Schedule submitted according to Subsection ~~1206~~1205(C)(7) and as approved by the City.

C. Every wall or fence shall not be allowed to become and remain in a condition of disrepair, damage or unsightliness or in any condition that violates any provision of this Zoning Ordinance or other applicable City code, ordinance or regulation. Any wall or fence, or a portion of either, that is removed for any purpose or by any means whatsoever, shall be restored to its original or upgraded condition relative to construction, material and finish.

## 1209 DEFINITIONS

As used only in this Section 12, the following terms shall have the meaning ascribed to them below:

Arizona Nursery Association (ANA): The professional trade organization dedicated to the promotion and advancement of the nursery industry for its members and the public they serve.

Cacti: Any family of plants that have fleshy stems and branches with scales or spines instead of leaves and is capable of storing water and requiring no supplemental irrigation.

Caliper: A standard measurement for trees based on the diameter of a tree trunk as measured a specific distance above the ground based on the type of tree.

Crown: The branches, twigs and leaves that make up the foliage portion of the tree. The crown is measured by its crown spread diameter, which is the average of the widest branch spread and that perpendicular to it.

Evergreen Tree or Shrub: A tree or shrub of a species which normally retains its leaves/needles throughout the year.

Fence: A barrier that serves to enclose an area intended to prevent intrusion or maintain inclusion at the boundary's limits. A fence shall not be considered or used in place of a required landscape screen wall.

Groundcover, Vegetative: Living landscape materials characterized by horizontal as well as vertical growth but which generally do not exceed eighteen (18) inches in height. The intent of groundcover plants, when properly installed, is to form a continuous cover over the ground.

Groundcover, Non-vegetative: Landscape materials that are not living. These materials include, but are not limited to, decomposed granite, gravel, crushed rock, boulders, river rock or other similar materials. Pavements shall not be not considered groundcovers for the purposes of this Section.

Landscape Architect: A person registered to practice landscape architecture in the State of Arizona.

Landscape Buffer: A landscape area located on the perimeter of a site that serves to screen the visual impacts caused by the differences in use.

Landscape Maintenance Schedule: A submitted and approved document describing the planting and irrigation protection plan that will cover a planting installation's short term and long term maintenance requirements.

Landscape Material: Any materials, vegetative and non-vegetative, used for the purpose of landscape improvements which may include, but shall not be limited to, the following: trees, shrubs, groundcovers, turfs, vines, berms, non-vegetative groundcover materials, irrigation equipment, fences and walls.

Landscape Plan: A graphic representation of the development site indicating the location of all existing and proposed landscape improvements to be present on the site at the completion of the construction of the project. Such landscape plans shall consist of preliminary and final plans as set forth herein that includes all site elements that may impact the location of landscape materials.

Landscaping: An exterior improvement of property in accordance with an approved landscape plan and utilizing approved landscape materials.

Maintenance: The process of keeping a landscape healthy, clean, safe and attractive by landscape irrigation management, general care of landscape areas including but not limited to weeding, erosion control and revegetation, turf care maintenance, ornamental pest control, seasonal flower color programs, professional tree care and water feature maintenance.

Multiple Trunk Tree: A tree with more than one main trunk. To be considered a multiple trunk tree, additional trunks should originate either from the soil line or no higher than twelve (12) inches above ground. Any tree that has additional trunks (scaffold branches) higher than twelve (12) inches are not considered multiple trunk trees.

Natural Screen Walls: A uniform, double row of evergreen plants planted closely together to create a consistent visual barrier. Natural screen walls shall only be used in conjunction with parking lot screens.

Palm Tree: A vertical palm that can reach twenty (20) feet or greater in height upon maturity.

Park Tree: Any tree, shrub, bush and all other woody vegetation in public parks and all other public lands owned by the city, or to which the public has free access as a park.

Plant Material: All vegetative landscaping material.

Retention Basin: A basin designed for the retention of stormwater, having a depth in excess of eighteen (18) inches and has a permeable surface.

Shrub: A woody plant which has several stems that rise from the ground level.

Street Tree: Any tree, shrub, bush, and all other woody vegetation on public rights-of-way land lying between property lines on either side of all streets, avenues, or boulevards, within the city.

Tree: A woody plant that has a single or multiple trunk(s) at ground level

Tree Height: A tree measurement from the ground to the topmost portion of the tree. On small, multi-trunked trees, tree height is measured to the top of the main body of the crown.

Tree Topping: The cutting back of limbs to a point between branch collars/buds, larger than one inch in diameter within the tree's crown. Also referred to as hat racking, heading and pollarding.

Turf: Continuous plant coverage consisting of grass species that is mowed to maintain an established height.

View Fence: Decorative wrought iron fence panels with vertical pickets that present an opening of four (4) inches or less and are designed as an integral part of the wall.

Wall, also referred to as screen wall: A solid barrier designed and constructed so as to conceal areas used for refuse, mechanical equipment, parking and service and loading bays from street and public view and to separate potential incompatible land uses.

Xeriscape: A landscaping method that maximizes the conservation of water by the use of site-appropriate plants and an efficient watering system.

Document comparison by Workshare Professional on Monday, March 29, 2010 8:38:15 AM

| **Input:** | |
|---|---|
| Document 1 ID | interwovenSite://GRPHX_SQL/Phoenix/1015103/8 |
| Description | #1015103v8<Phoenix> - CODE - ZO CH 12 - Landscape v8 |
| Document 2 ID | interwovenSite://GRPHX_SQL/Phoenix/1209680/2 |
| Description | #1209680v2<Phoenix> - CODE - ZO CH 12 - Landscape v2 (2010 Tree City Amendments - AJM 3/25) |
| Rendering set | Standard |

| **Legend:** | |
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| Insertion | |
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| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| **Statistics:** | |
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| | Count |
| Insertions | 153 |
| Deletions | 142 |
| Moved from | 37 |
| Moved to | 37 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 369 |

# EXHIBIT C: Neighborhood Meeting Comments 2-25-10

This document represents my concern about the revision of Section 12 of the Avondale Zoning Ordinance. Although I agree with more trees, I have seen businesses do some really horrible things to trees in the past few years because those trees block their business sign. Examples are included:

Do you see the olive trees in front of this Holiday Inn on 2nd Avenue and Osborn Road in Central Phoenix?

When this hotel was being renovated they chopped the entire top off each olive tree and since then the landscapers have rounded them into tiny balls on top. I call them lollipop olive trees.

This mini-storage cut the tops off every tree in front and next to their property. Now they trim every tree to look like a shrub.

These "trees" are just west of their property.

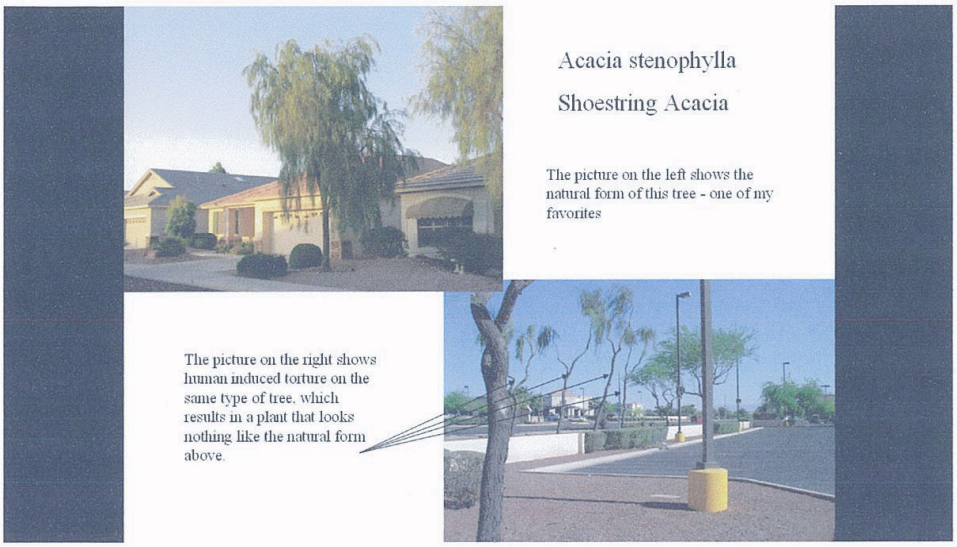
Not every tree in this complex has been topped but I suspect this dentist requested to have these Palo Blanco trees topped. The interesting thing is the landscape architect did a great job if attempting to pick trees that would not hide the buildings. Palo Blanco is a very light and airy tree.

While driving to this dentists office to take the picture I noticed the tiny Mulga tree in between the larger Mulga tree and the highly pruned Mesquite. I suspect this tree is small because it was covering signage.

The Palo Brea trees in front of this credit union were topped a few years ago (the tree had no branches or leaves). I suspected they got in trouble for this because even though these trees are very dense they have not been topped again. They did not seem to understand that their action would make the tree more dense. However, the Acacia trees in front of the sign (there are two of them) are frequently rounded and topped to keep them small.

My concern is that putting in an ordinance which will require the planting of trees around the businesses will result in a lot of topped trees around Avondale. I don't know how Scottsdale does it, but on Pima north of the 101 there is a plant buffer between the roads and the businesses and the businesses do not top the trees even though you can't see the businesses through them. My guess is that the buffer is in the right-of-way and cutting those trees would be trespassing. Is there a way something can be built into the ordinance which would prohibit the horrible things I have shown in the pictures?

One more example on the last page to keep in mind.




The shoestring Acacia trees in the lower right picture are in front of the Walgreens on Indian School and 107th Avenue. I guess they did not like that the trees were blocking their store.

**RESOLUTION NO. 2904-510**

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 "CITY OF AVONDALE LANDSCAPE, WALLS AND FENCES REGULATIONS."

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

SECTION 1. The certain document entitled the "City of Avondale Landscape, Walls and Fences Regulations," 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, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

**ORDINANCE NO. 1413-510**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE ZONING ORDINANCE, SECTION 12, LANDSCAPE, WALLS AND FENCES REGULATIONS, AND ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT KNOWN AS THE CITY OF AVONDALE LANDSCAPE, WALLS AND FENCES REGULATIONS.

**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 April 15, 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 a public hearing on this Ordinance on May 3, 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 certain document known as the City of Avondale Landscape, Walls and Fences 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. 2904-510 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. Any person who fails to comply with any provision of the Landscape, Walls and Fences 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 Landscape, Walls and Fences 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 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, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

# CITY OF AVONDALE

# LANDSCAPE, WALLS AND FENCES REGULATIONS

# SECTION 12 LANDSCAPE, WALLS AND FENCES

## 1201 PURPOSE

The purpose of this Section 12 is to provide standards and regulations for the installation of landscaping, walls and related materials for all new and expanded development within the City of Avondale. The standards and regulations of this Section 12 shall promote the following objectives:

A. To promote the general welfare of the community.

B. To effectuate attractive and logical development.

C. To aid in the enhancement of property values.

D. To create an attractive appearance along city streets.

E. To complement the visual effect of buildings.

F. To provide buffers between various land uses and protection from intense activities and to avoid or reduce negative impacts regarding visual, sound, privacy and/or glare to and from land uses.

G. To aid in conserving water by encouraging the use of varieties of plants, trees and shrubs indigenous to arid regions which are characterized by low-water consumption.

## 1202 APPLICABILITY

A. Except as specifically set forth herein, all of the provisions of this Section 12 shall apply to the following:

1. All new development or construction.

2. All building exterior remodeling, alterations, additions or expansions that:

   a. Increase the number of stories in a building on the lot.

   b. Increase by more than ten percent (10%) or ten thousand (10,000) square feet, whichever is less, the combined floor areas of all buildings on the lot.

   c. Increase the parking coverage on the lot by more than two thousand (2,000) square feet.

3. All changes of occupancy in the use or development of land which require the approval of a site plan, minor land division or subdivision plat by the City.

B. The provisions of this Section 12 shall not apply to the following:

1. Lots or sites within an approved and unexpired Planned Area Development (PAD) which has been approved with its own landscape plan and/or written landscaping standards prior to the adoption of this Section.

2. Site Plans that include landscaping approved and/or submitted for review prior to the adoption of this Section.

3. Lots or sites subject to the provisions governing amendment to approved site plans, set forth in Section 1.

C. Agricultural uses and single-family and two-family residences and their accessories shall comply with the walls and fences requirements of this Section with the exception of Subsection 1207(B)(4). Agricultural uses a single-family and two-family residences and their accessories shall be exempt from the landscape and maintenance requirements of this Section 12.

D. For all development within the City Center Zoning District, landscaping shall meet or exceed the development standards for street design, street trees, parks, open space, landscaping, and overall design and development guidelines as set forth in the City Center Specific Plan; provided, however, that the provisions of Subsections 1203, 1205, 1206 and 1207 shall be applicable to developments within the City Center Specific area.

E. The standards and regulations of this Section 12 shall be held to be the minimum requirements necessary for the promotion of the objectives set forth in Section 1201 above.

## 1203 GENERAL LANDSCAPE PROVISIONS

A. Planting Criteria.

1. All trees and plant material used within the City shall conform to the most current version of the Arizona Department of Water Resources ("ADWR") "Low Water Use/Drought Tolerant Plant List."

2. All trees sizes shall be in accordance with the standards as described by the Arizona Nursery Association's "Recommended Average Tree Specifications."

3. Plants shall be placed in such a way as to maximize survivability.

4. The following plant material varieties shall be prohibited:

a. Invasive plants and noxious weeds including, but not limited to, Desert Broom (Baccharis sarothroides), Salt Cedar or Tamarisk (Tamarix sp.), Giant Reed (Arundo donax), Mexican Palo Verde (Parkinsonia aculeata), Buffelgrass (Pennisetum ciliare), Fountain Grass (Pennisetem setaceum, African Sumac (Rhus lancea), Russian Olive (Elaeagnus angustifolia) and Tree of Heaven (Ailanthus altissma).

b. Mulberry Trees (Morus sp.).

c. Olive Trees (Olea europaea) with the exception of the Swan Hill™ and Wilson™ Olive varieties.

5. Plant material that meets the planting criteria as set forth herein, but which is not found on the current ADWR Low Water Use/Drought Tolerant Plant List may be found acceptable, subject to by approval of the Zoning Administrator or authorized designee. Any material considered an invasive species shall not be permitted.

6. Tree Size Minimum Standards.

   a. All single trunk trees shall be two (2) inch caliper minimum size. Tree calipers for single trunk trees shall be measured at the widest point within the first four (4) to six (6) inches above the soil line for trees with four (4) inch caliper and less; and six (6) to twelve (12) inches for trees greater than four (4) inch caliper.

   b. All multi-trunk trees shall be one and one-half (1-1/2) inch caliper minimum. Tree caliper for multi-trunk trees shall be measured at the widest point within the first six (6) inches above origination point of the second largest trunk or six (6) inches above ground if all trunks originate from the soil. Caliper of multiple trunk trees shall be determined by taking the average caliper of its two (2) largest trunks.

   c. All trees shall be specified in the schedule of plant material (required as part of the Preliminary Landscape Plan and the Final Landscape Plan) by caliper, height and by any other relevant features which defines the exact plant material being proposed. Trees specified by nursery container sizes only shall not be accepted.

   d. All Mexican Fan Palms (Washington Robusta), California Fan Palms (Washingtonia Filifera) and Queen Palms (Cocos Plumosa) shall have a minimum eight (8) foot trunk height measured from the base of the trunk to the base of the fronds.

7. Trees shall have crowns that are full and symmetrical, meet the caliper and height criteria as specified on the drawings and meet or exceed industry standards. Shrubs shall be full with strong root growth and meet the criteria as specified on the drawings.

8. Shrub and Vegetative Groundcover Minimum Criteria.

   a. All shrubs shall be no less than five gallon in size.

   b. All groundcover shall be no less than 5-gallon in size. Four (4) 1-gallon container plants may be substituted for one (1) 5-gallon container plant.

9. No artificial plant materials may be used to satisfy the requirements of this Section, with the exception of artificial turf at recreational facilities if approved by the Zoning Administrator or authorized designee.

B. Ground Level Treatment.

1. General.

a. All landscaped areas shall be composed of a combination of plant materials and non-vegetative ground cover designed to accomplish the objectives set forth in Section 1201 above and to the minimum standards as set forth below.

b. All landscaped areas shall be finished with a natural topping material including but not limited to the following: turf, groundcover, planting, decomposed granite, river run rock, expanded shale, native stone or bark as set forth herein. A post-emergent herbicide shall be applied to the ground after the placement of non-vegetative ground cover materials in any landscaped area to prevent weeds.

2. Materials.

a. Decomposed Granite shall be three-quarter (3/4) inch select material or larger and installed a minimum of two (2) inch depth.

b. Any river rock material used as non-vegetative groundcover that is embedded in concrete shall be to a depth of two-thirds (2/3) the dimension of the rock to prevent its removal or relocation. Each rock shall not be spaced further than three-quarter (3/4) inch from another rock. When installed in loose form, material depth shall be no less than four (4) inches, and if removed shall be reinstalled at the owner's expense.

c. The use of turf shall be restricted according to the provisions as set forth herein. Sod shall be specifically cultivated to thrive in the conditions present at the particular site. The use of non-native and/or high water consumptive turf is discouraged. The applicant must provide information regarding the composition of a sod as part of the detailed plant list as required. The use of seed for turf installation shall be prohibited.

d. Other non-vegetative groundcover materials may be used subject to approval by the Zoning Administrator or authorized designee.

3. The installation of turf shall be limited to the following uses: single-family residences and their accessories, outdoor recreation facilities including parks and golf courses, schools, churches, resorts, and retention basins and basin slopes. Turf may also be utilized at commercial and business park developments, provided that such turf shall not occupy more than 25% of the landscape area.

C. Irrigation.

1. All landscaping shall be serviced with a permanent underground automated irrigation system designed in compliance with the "Minimum Standards for Landscape Irrigation" as published by the Arizona Chapter of the American Society of Irrigation Consultants. A backflow prevention assembly shall be provided and caged according to standard details adopted by the City. All irrigation systems and landscaped areas shall be designed, constructed and maintained so as to promote water conservation and prevent water overflow or seepage into the street, sidewalk or parking areas.

2. Any areas requiring restoration of natural vegetated areas shall require irrigation for at least three (3) years, unless the Zoning Administrator or authorized designee determines that the vegetation has become sufficiently established at an earlier date.

## 1204 LANDSCAPE DESIGN STANDARDS

A. General.

1. Design Manuals.

a. All landscaping for single-family residential development shall meet or exceed the guidelines for landscaping as set forth in the City's Single-Family Residential Design Manual.

b. All landscaping for commercial, employment and/or multi-family development projects shall meet or exceed the guidelines for landscaping as set forth in the City's Commercial/Industrial/Multi-Family Design Manual.

2. All development projects shall provide landscaping in all portions of the development site not required for buildings, structures and loading and vehicular access ways in accordance with the required landscape improvements as set forth herein.

3. Areas covered by decomposed granite or similar material, excluding retention basin bottoms, shall not have open spaces in between plants that exceed more than seven (7) feet in any direction as measured between plant canopies at maturity.

4. Plant material shall be utilized to aid screening of parking, dumpster enclosures, outdoor storage areas, alleys, infrastructure such as utility cabinets, transformers, backflow preventors, and service and utility areas. The property owner shall coordinate this screening requirement with the appropriate utility authorities to avoid planting conflicts.

5. When the primary entrance of a building is more than one hundred fifty (150) feet from the nearest point of a public sidewalk, and the entrance is accessed by a pathway traversing a parking lot, then an overhead shade structure or tree canopy is required along the pathway. Shade elements may include opaque structures (e.g.,

arbor, pergola, portico, awning, canopy) and/or shade trees planted with a minimum of one (1) tree provided for every twenty-five (25) feet of lineal pathway. Tree location and spacing shall be established through the development plan review.

6. Landscaping shall be designed and maintained in accordance with the height, location and sight visibility requirements as set forth herein.

7. A minimum of sixty-five percent (65%) of all shrub material shall be arranged in massings. Shrubs shall be massed together with no less than five (5) shrubs per massing. Each shrub will be placed no further apart than fifty percent (50%) of the mature size of the selected material. For the purpose of this Section 12, two (2) vines may be substituted for a required shrub when located adjacent to a solid wall.

8. Groundcover material shall be arranged in massings. A groundcover massing shall cover a minimum area of three hundred (300) square feet. Each groundcover plant shall be placed no further apart than fifty percent (50%) of the mature size of the selected material. Distances between groundcover massings shall not exceed seven (7) feet in any direction.

9. Mounding and contouring of landscaped areas shall be required. Slopes shall not exceed a four to one (4:1) side slope ratio.

10. Landscaped areas shall not be used for parking of vehicles, display of merchandise or other uses detrimental to the landscaping.

11. A minimum of fifteen percent (15%) of plant material shall be cacti or other succulents. Thorny plants and cacti shall not be planted where their mature spread would be closer than four (4) feet from any walkways or parking area curbing.

B. Required Landscape Improvements per Zoning Districts

1. Single-family Residential Zoning Districts. For all development within the Single-Family Residential Zoning Districts (AG, R1-35, R1-15, R1-8, R1-6, R1-5) a minimum of three (3) trees per dwelling unit shall be provided. One (1) of the required trees per lot shall be placed in commonly held and maintained landscaping areas between the lot and any drive or street that serves as an access for the lot, if such common area exists.

2. Multi-family Residential Zoning Districts. For all development within the Multi-family Residential Zoning District (R-2, R-3, R-4) a minimum of one and one-half (1-1/2) trees per dwelling or guest unit shall be provided. This number of trees shall not include the trees required in a landscape buffer, parking lot, landscape setback or right-of-way planting as specified in this Section 12.

3. City Center District. For all development within the City Center District, landscaping shall meet or exceed the design guidelines and requirements for street design, street tree criteria, parks, open space, landscaping and overall design and development guidelines as set forth in the City Center Specific Plan.

C. Required Landscape Areas

1. General. All development projects shall provide on-site landscaped areas located in accordance with the following standards and requirements:

   a. For CP development within the Employment Zoning District, landscaped areas shall be provided on the site in an amount equal to or greater than fifteen percent (15%) of the ground floor area of all buildings or ten percent (10%) of the net site area, whichever is greater.

   b. For A-1 development within the Employment Zoning District, landscaped areas shall be provided on the site in an amount equal to or greater than ten percent (10%) of the ground floor area of all buildings or five percent (5%) of the net site area, whichever is greater.

   c. For all developments within the Multi-family Residential Zoning Districts (R-2, R-3, R-4), landscaped areas shall be provided on the site in an amount equal to or greater than twenty percent (20%) of the net site area; and shall be increased by five percent (5%) for each additional floor over one-story to a maximum of fifty percent (50%) of the net site area.

   d. For all development within all other zoning districts, landscaped areas shall be provided on the site in an amount equal to or greater than twenty percent (20%) of the net site area.

   e. Future building pads within a phased development shall be improved with decomposed granite as specified herein.

   f. Landscape Setback requirements shall be as specified below.

2. Street Right-of-Way Landscaping.

   a. The landscaping of all street rights-of-way contiguous with the proposed development site not used for street pavement, curbs, gutters, sidewalks, transit facilities or driveways or other facilities as required shall be landscaped as set forth herein.

   b. The installation of street trees shall be required in an amount equal to or greater than one (1) tree and five (5) shrubs for every thirty (30) feet of street frontage. This minimum quantity of trees shall be located in the street right-of-way landscaped area and shall be designed and located to enhance the proposed development project and street frontage. Trees must be planted in areas greater than six (6) feet in width when such areas are located between the back of curb and the face of a meandering or detached sidewalk.

   c. No trees shall be located within the established public utilities easement. Shrubs and groundcover are permissible.

d. Median landscaping shall be designed with colorful and contrasting plant and pavement materials planted and maintained in such a way so as not to obstruct visibility at median breaks or to create safety issues. Paving materials shall be integrated with planting to create a unique roadway feature. Paving shall be colorful, interlocking concrete pavers or cobbled paving as approved by the Zoning Administrator or authorized designee.

e. The minimum width for a planted median is six (6) feet. Median width is measured from the back of median curb to back of median curb.

f. Medians less than six (6) feet in width shall not be planted. Ground level treatment shall be decorative material as approved by the Zoning Administrator or authorized designee.

g. Medians six (6) to ten (10) feet in width shall have no trees unless otherwise approved by the Zoning Administrator or authorized designee; provided, however, that in no event shall trees be planted in a median with a width less than eight (8) feet. Shrubs shall be provided at one (1) per two hundred and fifty (250) square feet of area and shall meet the requirements as set forth herein.

h. Medians greater than ten (10) feet in width shall have a minimum number of trees provided at one (1) tree per twenty-five (25) linear feet of median length. Trees shall meet the requirements as set forth herein. Shrubs shall be provided at one (1) per two hundred and fifty (250) square feet of area and shall meet the requirements as set forth herein.

i. For medians in arterial roadways that will be built in phases, landscaping shall be located to minimize future relocation of trees, pavers and irrigation.

3. Landscape Setback.

a. Landscaping shall be planted along all street frontage in a designated landscape setback as approved through the development plan review process. The landscape setback shall be measured from the back of the right-of-way line to the nearest building, structure, on-site parking or outdoor storage area. Shrubs and groundcover may be integrated into the right-of-way street trees landscape.

b. Parking and maneuvering areas shall not be permitted in the landscape setback except access drives and access walkways.

c. Plantings in the landscape setback may be integrated into the right-of-way landscaping adjacent to this area.

d. The landscape setback shall be a minimum width along a particular street frontage and shall be established and maintained along all classified streets

between any building and/or structure, on-site parking area or outdoor storage area and the nearest point of the property line. Landscape setbacks shall be as follows:

1) Single-family residential developments: For arterial streets, a landscape setback of thirty (30) feet shall be required. For collector streets, a landscape setback of fifteen (15) feet shall be required.

2) Multi-family, commercial and employment developments: For arterial and collector streets, a landscape setback of twenty (20) feet shall be required; provided, however, that a larger landscape setback is encouraged and any additional landscape setback provided may be used to satisfy the aggregate site design area requirements as set forth in Section 7 of this Zoning Ordinance.

3) The landscape setback requirements shall not be applied to the OTAB District and Cashion District.

e. The installation of trees, shrubs and vegetative groundcover shall be required in an amount equal to or greater than one (1) tree and ten (10) shrubs for every twenty (20) feet of street frontage and vegetative groundcover as required to meet a minimum of sixty-five percent (65%) of the total street frontage landscaped area. This minimum quantity of trees, shrubs and vegetative groundcover shall be designed and located to enhance the proposed development project and street frontage.

f. All landscaping located in the landscape setback adjacent to driveway exits, street intersections and sight visibility easements shall be designed, installed and maintained in a manner that preserves sight line visibility.

4. Arterial Intersections.

a. Landscaping shall be enhanced at arterial intersections as determined through development review.

b. Landscape and planting materials shall be provided in this landscape easement in quantities not less than those required for a median greater than ten (10) feet in width, as set forth above.

c. All landscape treatments within this planting easement shall meet the requirements adopted by the City relating to sight visibility.

5. Land Use Buffers.

a. Minimum landscape buffers shall be required along all property lines of a site developed for Multi-family Residential, Commercial or Employment Zoning Districts or uses when such property lines are "contiguous" with any Single-family Residential use or Single-family Residential Zoning District. For the

purpose of this subsection 1204(C)(5), contiguous shall include properties separated only by an alley. Buffers shall be required as follows:

1) Fifteen (15) feet where any Multi-family Zoning District or use abuts a Single-family Zoning District or use.

2) Twenty-five (25) feet where any Commercial Zoning District or use abuts a Single-family Residential Zoning District or use.

3) Thirty-five (35) feet where any Employment Zoning District or use abuts a Single-family Residential Zoning District or use.

4) Forty (40) feet where any loading docks, trash enclosures and service drives abut a Single-family Residential Zoning District or use.

b. No landscape buffers shall be required for Multi-family residential uses contiguous with other Multi-family Zoning Districts or uses; provided, however, that a screen wall shall be required at the property boundaries.

c. The landscape buffer areas as set forth herein shall provide a vegetative screen improved with a minimum of one (1) screening tree spaced at each fifteen (15) foot interval of the property boundary being screened.

d. A landscape buffer screen wall shall be designed and constructed in accordance with the provisions as set forth herein and shall be required along all property lines of a site developed for multiple-family residential, commercial or employment uses when such property lines are contiguous with or separated only by an alley from a Single-family Residential development or zoning district.

e. Parking and maneuvering areas shall not be permitted in the landscape buffer.

6. Parking Lot Landscaping and Parking Structures.

a. Parking lots shall have landscape treatments that provide shade and allow for natural surveillance. Except as otherwise provided in this Section, a minimum of fifteen percent (15%) of all parking lot areas shall be landscaped. This requirement is exclusive of any on-site landscape area requirement as set forth herein.

b. Parking islands shall be installed at least every ten (10) consecutive parking spaces; such islands shall be a minimum of five (5) feet wide and contain a minimum of fifty (50) square feet in area.

c. Parking areas shall include a minimum of twenty (20) foot wide landscaped medians to divide large parking fields into groupings of 200 parking spaces or less. Medians must be oriented for pedestrian use and navigation and must

include sidewalks. The Zoning Administrator or authorized designee may waive this requirement for any project where buildings or pedestrian plazas serve to break the parking field into groupings of 200 spaces or less.

d. A minimum of one (1) tree shall be provided for every five (5) parking spaces, exclusive of perimeter landscaping and street trees. Trees must be planted within landscape planting islands throughout the parking lot.

e. Landscape planting islands shall include, at the time of installation, a minimum of (a) one (1) tree, three (3) shrubs and five (5) groundcovers for a planting island with parking on only one side and (b) two (2) trees, three (3) shrubs and five (5) groundcovers for a planting island with parking on more than one side. All groundcovers in parking lot landscape planting islands shall not exceed two (2) feet in height and be of a species that will not grow to interfere with natural surveillance of the parking lot.

f. Tree trunks shall not be placed closer than fifteen (15) feet, measured horizontally, from a light source. Trees and lighting shall be located to avoid conflicts with one another and to avoid conflicts with existing and proposed structures.

g. Shrubs and trees shall not be planted within the two (2) feet overhang at the head of a parking stall.

h. Parking structures shall have perimeter landscaping, consistent with building setbacks and which shall be designed to provide partial screening of walls and vehicle lights, shade along sidewalks and natural surveillance into parking structures.

7. Retention Basins. All on-site water retention areas, other than paved surfaces shall be entirely landscaped and shall not occupy more than fifty percent (50%) of the on-site street frontage landscape setback area, unless approved by the Zoning Administrator or authorized designee where shallow depths for multi-use are proposed for the basin.

8. Building Frontage.

a. Foundation planting shall be required adjacent to buildings fronting on public streets. A minimum of fifty percent (50%) of the building frontage shall be landscaped as set forth herein.

b. Foundation planting shall include trees, shrubs and groundcover. The minimum width for any foundation planting area shall be ten (10) feet. Vehicle overhang is not permitted.

c. Foundation planting may include a level bed, raised planters, planted pots with trees and shrubs or a combination of these treatments.

9. Site Visibility Easements. All landscaping and landscaping materials installed in a City of Avondale Sight Visibility Triangle and/or within an Arizona Department of Transportation Sight Distance Triangle shall be installed and maintained so that no shrub or groundcover shall exceed two (2) feet in height and all trees shall be limbed up to seven (7) feet clear.

## 1205 LANDSCAPE PLANS

A. General Landscape Plan Requirements. Landscape plan submittals consisting of a preliminary landscape plan, a final landscape plan and a landscape maintenance schedule shall be prepared, submitted and approved for all applicable development projects in accordance with the procedures and requirements set forth herein and as required under Section 1 of this Zoning Ordinance. All plans shall be stamped and signed by a registered Landscape Architect licensed in the State of Arizona.

B. Preliminary Landscape Plan. The Preliminary Landscape Plan shall illustrate the site layout and amenities (including all walls within the landscape areas), plant material and plant locations. The Preliminary Landscape Plan shall include the following information:

1. Proposed locations for all landscaping material, organic and inorganic, used on the site.

2. A specific schedule of all plant material, which shall be identified by common and botanical name and shall clearly indicate the quantities and sizes of each to be installed.

3. Preliminary locations of all easements on the site including, but not limited to, public utility easements, drainage easements, roadway easements and United States of America irrigation easements.

4. A completed planting data sheet.

5. Site lighting locations for coordination purposes.

6. Locations of all above grade detention/retention stormwater basins.

7. All preliminary utility locations that impact the locations of any plant material including but not limited to transformers, backflow preventers and light and sign poles.

8. Any other pertinent information as requested by the Zoning Administrator or authorized designee as necessary to evaluate the landscaping.

C. Final Landscape Plan. The Final Landscape Plan shall be submitted concurrently with all other required site improvement and construction plans at the time of application for a building permit. Any alterations to the approved Preliminary Landscape Plan must be approved by the Zoning Administrator or authorized designee prior to the Final Landscape

Plan submittal. The following information shall be added to the Final Landscape Plans for review:

1. Revised locations, if any, for all landscaping material, organic and inorganic, used on the site.

2. Any revisions to the schedule of plant material.

3. Final locations of all easements on the site, including but not limited to public utility easements, drainage easements, roadway easements and United States of America irrigation easements.

4. Final utility locations including but not limited to transformers, backflow preventors, lights and all signs.

5. A sheet of landscape details and corresponding construction notes. All required City notes are to be shown on all sheets.

6. An irrigation plan, irrigation detail plan and corresponding sheet of irrigation construction notes shall be provided indicating the layout and details of the irrigation system including the type and location of all materials utilized.

7. A Landscape Maintenance Schedule, including, at a minimum:

    a. A landscape maintenance narrative that describes the theme of the selected plant palette and the overall design intent (i.e. preserving the natural characteristics of each material).

    b. The approved plant list including plant size, irrigation emitter allocation and specific plant maintenance notes.

    c. A monthly maintenance schedule describing seasonal maintenance requirements per material such as, but not limited, to fertilization, pruning and irrigation adjustments.

8. Any other pertinent information as requested by the Zoning Administrator or authorized designee as necessary to evaluate the Final Landscape Plans.

## 1206 LANDSCAPE INSPECTIONS

A. All projects required by this Section 12 to be landscaped must be inspected and receive approval from the Zoning Administrator or authorized designee prior to a Certificate of Occupancy being issued by the City. Such inspections shall be requested by the applicant at least forty-eight (48) hours in advance.

B. The Zoning Administrator or authorized designee shall refuse to approve any project not meeting the provisions set forth herein. The Zoning Administrator or authorized designee shall also reject landscape materials that are substandard as to size, condition or appearance.

C. The applicant may request an inspection of materials either on site or at the supplier; provided, however, that any such pre-inspection shall only provide assurance as to the type of landscape materials and shall not constitute an acceptance of the final landscaping as installed.

## 1207 WALLS AND FENCES

A. In all locations where walls are either required by this subsection or desired by the property owner, the walls shall conform to all provisions as set forth herein.

B. General Wall and Fence Design Standards.

1. All landscape walls and fences for single-family residential development shall meet or exceed the guidelines for landscaping as set forth in the Single-Family Residential Design Manual for the City of Avondale.

2. All landscape walls and fences for Commercial, Employment and/or Multi-family development projects shall meet or exceed the guidelines for landscaping as set forth in the Design Manual for Commercial/Industrial/Multi-Family for the City of Avondale.

3. All walls and fences shall meet all current building code material and construction standards. Minimum finished wall thickness shall be no less than six (6) inches.

4. All walls shall be articulated to create visual interest by means such as but not limited to a change in plane, curves, material accents, regularly spaced pillars or sculptural insets.

   a. All walls along arterial or collector streets, except Perimeter Walls at Single-family Residential Developments described in subsection 1207(E) below, with a continuous length greater than one hundred and fifty (150) feet shall use an undulating pattern at minimum intervals of fifty (50) feet to provide variety and visual interest. The undulation depth parallel to the street line shall be a minimum of three (3) feet.

   b. A minimum of three (3) different materials is required for every wall on site. Materials shall be masonry block that is six (6) or eight (8) inches wide, concrete, precast concrete, stone or a similar solid, durable, equal or better quality material and shall conform to the following:

      1) Wall materials shall match the primary building on-site and related site features.

      2) Color variation shall not constitute a change in materials. Textural variation shall constitute a change in materials for up to two (2) materials.

3) Material accents, sculptural insets and other aesthetic wall enhancements shall be considered a separate material use as approved by the Zoning Administrator or authorized designee.

4) Walls that are completely veneered with stone, brick or finished with other similar quality materials may be excluded from this requirement if approved by the Zoning Administrator or authorized designee.

5) Concrete and masonry walls shall be stuccoed with a smooth finish and painted to match the primary on-site buildings; provided, however, that the use of stuccoed walls is limited to fifty percent (50%) of the required wall lengths.

6) Split-faced, grid or similar decorative types of block shall not be stuccoed and/or painted.

5. Walls shall be opaque and linear when separating one property from another.—All walls shall have a decorative cap not to exceed the maximum wall height allowed. Solid concrete or precast concrete walls shall be articulated so a wall cap is represented.

6. An ornamental iron fence with veneered and capped, masonry pillars may be approved as a substitute for an opaque wall if the wall is not required for visual screening such as for land use buffer requirements, service areas, trash enclosures, outdoor storage areas or parking areas.

a. Pillars shall be spaced as follows:

1) 1 pillar/25 feet (minimum 2) if less than 100 linear feet.

2) 1 pillar /50 feet (minimum 4) if 100-1000 linear feet.

3) 1 pillar/100 feet (minimum 20) if greater than 1000' linear feet.

4) A reduction in pillars may be allowed for fencing greater than 1000 linear feet if fencing is not visible from a public street as determined by the Zoning Administrator or authorized designee.

b. The fence and pillar treatment as set forth herein may be used where a Multi-family Residential development is contiguous with other Multi-family Residential Zoning Districts or uses.

7. Gates: In those instances where a wall is erected as an enclosure, a gate of equal height shall be required in order to secure the enclosure. The gate shall be an opaque, non-wooden material and shall be compatible with the design of the buildings and related site features.

8. Vinyl-coated Chain Link Fencing: The use of vinyl-coated chain link fencing is restricted to single-family residential lots and recreational sport courts (i.e. tennis, basketball, volleyball, etc.) and shall be vinyl coated. The height limitation may be exceeded when fencing is built around tennis courts along the rear and side yards only and by approval of the Zoning Administrator or authorized designee. Vinyl coating for fencing shall be black, dark brown or dark green.

9. Barbed Wire Fences: Barbed wire shall be prohibited except for temporary construction sites in all zoning districts, provided that the barbed wire is located six (6) feet or more above grade. If barbed wire has not been removed from the site at the time of final inspection, a certificate of occupancy shall not be issued.

C. General Wall and Fence Height Standards.

1. The maximum height of any freestanding wall or fence shall be measured from the highest adjacent finished surface of the ground, paving or sidewalk within twenty (20) feet of the base of the wall.

2. Walls in a required front yard building setback, including walls for single-family dwellings, shall be three (3) feet-six (6) inches maximum in height. An increase in the maximum height may be permitted subject to review and approval by the Zoning Administrator or authorized designee. Notwithstanding this authority, the maximum height that may be approved is six (6) feet. For all heights above three (3) feet-six (6) inches, the property owner shall demonstrate that a natural surveillance to the street will be maintained by incorporating openings, providing transparent materials or varying height/materials.

3. In areas behind a required front yard building setback and within the required rear and side yards, including walls for single-family dwellings, the maximum height of walls shall be six (6) feet, except where a taller wall is necessary to screen service areas. For single-family uses, the maximum height shall be eight (8) feet when adjacent to an arterial road.

4. A masonry wall shall be required for through lots with rear lot lines adjacent to an arterial street, and the maximum height of such rear wall shall be eight (8) feet.

5. All walls shall be subject to review and approval through development plan review. Any wall in excess of six (6) feet shall require a building permit, as required by the City's adopted Building Code.

D. Land Use Buffer Walls. Walls required in landscape buffers as set forth herein shall be located along all common property lines and shall meet the following height requirements:

1. Six (6) feet when a screen wall separates a Single-family Residential District or use from a Commercial and/or Multi-family Residential District or use. The Zoning Administrator or authorized designee may determine that an 8 (eight) foot wall may be warranted in certain cases.

2. Eight (8) feet when a screen wall separates a Single-family Residential District or use from an Employment District or use.

3. Six (6) feet when along interior property lines separating individual development sites.

E. Perimeter Walls at Single-family Residential Developments.

1. Perimeter walls shall be architecturally enhanced with landscaping and materials that complement the development's architecture, provide a distinct design that represents the specific community and meet the intent of design standards as specified herein.

2. Eight (8) foot tall, six (6) inch thick walls required along all arterials.

3. Six (6) foot tall, six (6) inch thick walls are required along all collectors and local streets.

4. Perimeter walls shall stagger at least once every one hundred (100) feet, with a design that employs a design/pattern every six hundred (600) feet and a column every three hundred (300) feet. A minimum of a four (4) inch pilaster cap and four (4) inch block cap is required.

5. Accent materials shall be brick, stone, tile, travertine or other materials durable in a desert environment.

6. All perimeter walls shall be constructed concurrent with the associated phase of development.

7. Theme walls shall be installed in all areas visible from public view with enhanced landscaping to compliment the architecture and related on site features.

8. View fences shall be integrated into a development along open space areas with wrought iron or other decorative materials that promote views corridors and safety.

F. Parking Lot Screens. All on-site parking areas adjacent to any street shall be screened from street views according to the provisions as set forth herein. This standard can be met through the use of the following screening methods, which may be used individually or in combination:

1. Parking lot screen walls shall be a minimum of three (3) feet-6 (six) inches in height constructed of masonry or concrete, be a minimum of six (6) inches in thickness and incorporate offsets and relief as specified herein. Fifty percent (50%) of all required walls shall have specialty details, decorative materials, surface articulation and/or aesthetic interest.

2. Open areas or portals for natural surveillance and pedestrian access to the site shall be provided as required by the Zoning Administrator or authorized designee.

3. Earth berms, if used in lieu of or in conjunction with screen walls, shall have a maximum slope of four to one (4:1) ratio. Berms are allowed only when there is sufficient area to create a three-foot, six-inch (3'6") tall berm.

4. A landscape berm or natural screen wall may be used in conjunction with a manmade screen wall, but for only forty (40) percent of the required wall length as approved by the Zoning Administrator or authorized designee. The natural wall must meet the screening and height requirements as specified herein.

G. Outdoor Storage Areas. All outdoor storage areas for materials, vehicles, trailers, equipment, trash or other similar items shall be enclosed by a masonry or concrete wall with an opaque gate to screen the view of these uses from public rights-of-way and adjoining residential, commercial and mixed-use districts. This wall and gate shall be a minimum of eight (8) feet tall but not to exceed ten (10) feet tall, measured from the highest adjacent grade within twenty (20) feet or street curb, whichever is higher.

H. Service Areas. All service bays, loading docks, delivery and refuse areas shall be screened from street view by a minimum of a six (6) foot high masonry wall. Site conditions and surrounding uses will be used to determine maximum height of walls adjacent to loading areas, service bays, mechanical equipment, etc. that are required to be screened.

I. Utility Cabinets. All utility cabinets including but not limited to transformers, shall be screened by architectural metal fencing, walls that match nearby perimeter or screen walls, berming and/or dense landscaping as determined at development plan review. Screening shall not conflict with access requirements.

J. Alleys. Screening requirements along alleys shall be the same as for land use buffers.

K. Manufactured Homes. Perimeter boundaries of all manufactured home parks shall contain a screening and security wall that conforms to the criteria and requirements as set forth herein.

## 1208 MAINTENANCE

A. Landscaped areas shall be maintained as follows:

1. All landscape material shall be maintained according to the standards as set forth herein on the approved Landscape Maintenance Schedule.

2. All landscape areas and material shall be maintained in a healthy, neat, clean and weed-free condition.

3. Permanent modifications and/or removal of existing landscaping, other than necessary for utility, infrastructure, or other repairs caused by unforeseen damages, shall require prior approval by the Zoning Administrator or authorized designee. Any approved landscaping that has been permanently removed for any reason without the Zoning Administrator's or authorized designee's approval shall be reported to Code Enforcement and a Notice of Violation may be issued. Material

replacement shall be in kind and not less than the minimums as set forth herein, at the owner's expense. Planting shall be replaced per the approved landscape plan.

4. Any plant material determined by the Zoning Administrator or authorized designee to be unhealthy or in decline shall be replaced in kind and not less than the minimums as set forth herein, at the owner's expense. This includes but is not limited to natural screen walls.

5. Plant material shall be pruned according to the approved Landscape Maintenance Schedule. Plants shall not be severely pruned such that the natural growth pattern or characteristic forms are significantly altered.

6. Tree topping is prohibited. Any tree that has been altered by this measure shall be immediately removed and replaced in kind with a new tree, at the owner's expense.

7. Landscape areas on-site, as well as in the adjacent right-of-way, shall be maintained by the owner or owner's association (if applicable), and shall be maintained as approved in the Landscape Maintenance Schedule. Any areas designated and intended for the purposes of on-site stormwater retention shall be maintained and reserved for that primary purpose. Any alteration or deterioration of those areas shall be considered a violation of this Section 12.

B. Landscaping and irrigation systems shall be maintained in accordance with the Landscape Maintenance Schedule submitted according to Subsection 1205(C)(7) and as approved by the City.

C. Every wall or fence shall not be allowed to become and remain in a condition of disrepair, damage or unsightliness or in any condition that violates any provision of this Zoning Ordinance or other applicable City code, ordinance or regulation. Any wall or fence, or a portion of either, that is removed for any purpose or by any means whatsoever, shall be restored to its original or upgraded condition relative to construction, material and finish.

## 1209 DEFINITIONS

As used only in this Section 12, the following terms shall have the meaning ascribed to them below:

Arizona Nursery Association (ANA): The professional trade organization dedicated to the promotion and advancement of the nursery industry for its members and the public they serve.

Cacti: Any family of plants that have fleshy stems and branches with scales or spines instead of leaves and is capable of storing water and requiring no supplemental irrigation.

Caliper: A standard measurement for trees based on the diameter of a tree trunk as measured a specific distance above the ground based on the type of tree.

Crown: The branches, twigs and leaves that make up the foliage portion of the tree. The crown is measured by its crown spread diameter, which is the average of the widest branch spread and that perpendicular to it.

Evergreen Tree or Shrub: A tree or shrub of a species which normally retains its leaves/needles throughout the year.

Fence: A barrier that serves to enclose an area intended to prevent intrusion or maintain inclusion at the boundary's limits. A fence shall not be considered or used in place of a required landscape screen wall.

Groundcover, Vegetative: Living landscape materials characterized by horizontal as well as vertical growth but which generally do not exceed eighteen (18) inches in height. The intent of groundcover plants, when properly installed, is to form a continuous cover over the ground.

Groundcover, Non-vegetative: Landscape materials that are not living. These materials include, but are not limited to, decomposed granite, gravel, crushed rock, boulders, river rock or other similar materials. Pavements shall not be not considered groundcovers for the purposes of this Section.

Landscape Architect: A person registered to practice landscape architecture in the State of Arizona.

Landscape Buffer: A landscape area located on the perimeter of a site that serves to screen the visual impacts caused by the differences in use.

Landscape Maintenance Schedule: A submitted and approved document describing the planting and irrigation protection plan that will cover a planting installation's short term and long term maintenance requirements.

Landscape Material: Any materials, vegetative and non-vegetative, used for the purpose of landscape improvements which may include, but shall not be limited to, the following: trees, shrubs, groundcovers, turfs, vines, berms, non-vegetative groundcover materials, irrigation equipment, fences and walls.

Landscape Plan: A graphic representation of the development site indicating the location of all existing and proposed landscape improvements to be present on the site at the completion of the construction of the project. Such landscape plans shall consist of preliminary and final plans as set forth herein that includes all site elements that may impact the location of landscape materials.

Landscaping: An exterior improvement of property in accordance with an approved landscape plan and utilizing approved landscape materials.

Maintenance: The process of keeping a landscape healthy, clean, safe and attractive by landscape irrigation management, general care of landscape areas including but not limited to weeding, erosion control and revegetation, turf care maintenance, ornamental pest control, seasonal flower color programs, professional tree care and water feature maintenance.

Multiple Trunk Tree: A tree with more than one main trunk. To be considered a multiple trunk tree, additional trunks should originate either from the soil line or no higher than twelve (12) inches above ground. Any tree that has additional trunks (scaffold branches) higher than twelve (12) inches are not considered multiple trunk trees.

Natural Screen Walls: A uniform, double row of evergreen plants planted closely together to create a consistent visual barrier. Natural screen walls shall only be used in conjunction with parking lot screens.

Palm Tree: A vertical palm that can reach twenty (20) feet or greater in height upon maturity.

Park Tree: Any tree, shrub, bush and all other woody vegetation in public parks and all other public lands owned by the city, or to which the public has free access as a park.

Plant Material: All vegetative landscaping material.

Retention Basin: A basin designed for the retention of stormwater, having a depth in excess of eighteen (18) inches and has a permeable surface.

Shrub: A woody plant which has several stems that rise from the ground level.

Street Tree: Any tree, shrub, bush, and all other woody vegetation on public rights-of-way land lying between property lines on either side of all streets, avenues, or boulevards, within the city.

Tree: A woody plant that has a single or multiple trunk(s) at ground level

Tree Height: A tree measurement from the ground to the topmost portion of the tree. On small, multi-trunked trees, tree height is measured to the top of the main body of the crown.

Tree Topping: The cutting back of limbs to a point between branch collars/buds, larger than one inch in diameter within the tree's crown. Also referred to as hat racking, heading and pollarding.

Turf: Continuous plant coverage consisting of grass species that is mowed to maintain an established height.

View Fence: Decorative wrought iron fence panels with vertical pickets that present an opening of four (4) inches or less and are designed as an integral part of the wall.

Wall, also referred to as screen wall: A solid barrier designed and constructed so as to conceal areas used for refuse, mechanical equipment, parking and service and loading bays from street and public view and to separate potential incompatible land uses.

Xeriscape: A landscaping method that maximizes the conservation of water by the use of site-appropriate plants and an efficient watering system.

# CITY COUNCIL REPORT

**SUBJECT:**
Public Hearing and Resolution 2898-510 and Ordinance 1409-510 - Amending the City Code, Chapter 8, Article II, Flood Hazard Areas and adopting the City of Avondale Flood Hazard Areas Ordinance

**MEETING DATE:**
May 3, 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 amending Chapter 8, Article II Flood Hazard Areas and adopt a resolution declaring as a public record that certain document filed with the City Clerk and entitled the City of Avondale Flood Hazard Areas Ordinance.

**BACKGROUND:**

The City of Avondale first adopted an ordinance relating to the regulation of flood hazard areas in 1979. The latest revisions to Chapter 8, Article II, Flood Hazard Areas, were adopted in 2001 at which time the City adopted the State of Arizona Floodplain Management Model Ordinance.

**DISCUSSION:**

As part of the National Flood Insurance Program (NFIP), the Arizona Department of Water Resources (ADWR) is responsible for conducting community assistance visits to assess needs for coordination and to provide technical assistance for floodplain management. ADWR conducted a field visit in Avondale on June 25, 2009 and on September 29, 2009, visited again to review field findings and the existing floodplain ordinance and permitting procedures. The review is intended to help improve community compliance with the NFIP and the Arizona Revised Statutes to ensure the City is guaranteed the availability of flood insurance coverage that Federal Emergency Management Agency (FEMA) grants to its constituents.

ADWR staff determined that the City's Chapter 8, Article II, Flood Hazard Areas required updating to correspond to revisions to the State's Floodplain Management Model Ordinance that have taken place since 2001 (see attached). In summary, the revisions include clarifications in several of the definitions, addition of definitions, addition of language relating to design standards and other minor corrections and additions. None of the revisions significantly impact existing City staff procedures.

In addition to the ordinance revisions, ADWR requested that the City develop written Standard Operating Procedures (SOP) of the floodplain management responsibilities. This is to ensure compliance of development within identified Special Flood Hazard Areas. The SOP relates to small single-lot developments, large developments, commercial or large non-residential developments, substantial damage or substantial improvement, other man-made development in the floodplain, and variance requests. Staff is currently finalizing the SOP.

**BUDGETARY IMPACT:**

There is no budgetary impact at this time.

## RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance amending Chapter 8, Article II Flood Hazard Areas and adopt a resolution declaring as a public record that certain document filed with the City Clerk and entitled the City of Avondale Flood Hazard Areas Ordinance.

## ATTACHMENTS:

**Click to download**

- Floodplain Management Code - Redline
- ADWR Comments
- Resolution 2898-510
- Ordinance 1409-510
- Chapter 8

~~Article II. FLOOD HAZARD AREAS*~~

~~Sections:~~

# CITY OF AVONDALE

# FLOODPLAIN MANAGEMENT

# CODE

**Division 1. ~~Generally~~In General**

~~8-16. Findings of fact.~~
~~8-17. Statement of purpose.~~
~~8-18. Methods of reducing flood losses.~~
~~8-19. Definitions.~~
~~8-20. Scope.~~
~~8-21. Basis for establishing areas of special flood hazard.~~
~~8-22. Compliance.~~
~~8-23. Abrogation and greater restrictions.~~
~~8-24. Interpretation.~~
~~8-25. Warning and disclaimer of liability.~~

**8-1** ~~8-26.~~ **Statutory** ~~exemptions.~~ **authorization.**

~~8-27. Declaration of public nuisance.~~
~~8-28. Abatement of violations.~~
~~8-29. Unlawful acts.~~
~~8-30. Severability.~~
~~Division 2. Administration~~
~~8-31. Development permit.~~
~~8-32. Designation of the flood plain administrator; duties and responsibilities of the floodplain administrator.~~
~~Division 3. Provisions for Flood Hazard Reduction~~
~~8-33. Standards of construction.~~
~~8-34. Standards for storage of materials and equipment.~~
~~8-35. Standards for utilities.~~
~~8-36. Standards for subdivisions.~~
~~8-37. Standards for manufactured homes whether in or outside of a mobile home park or subdivision.~~
~~8-38. Standards for new and replacement mobile homes.~~
~~8-39. Standards for recreational vehicles.~~
~~8-39.1. Mobile homes in floodways.~~
~~8-40. Floodways; flood-related erosion-prone area.~~
~~Division 4. Variance Procedure~~
~~8-41. Hearing and determination by appeal board.~~
~~8-42. Variances for new construction and substantial improvement on a lot of one-half acre or less; conditions; records maintained.~~
~~8-43. Conditions for issuance of variance; notice.~~
~~**Editor's note:** Ord. No. 355, adopted Oct. 1, 1984, amended Art. II to read as herein set out in Divs. 1--4, §§ 8-16--8-43. Prior to the enactment of Ord. No. 355, Art. II contained Div. 1, §§ 8-16--8-24, Div. 2, §§ 8-31--8-33, and Div. 3, §§ 8-41--8-43, relative to the regulation of flood hazard areas, which derived from Ord. No. 275, §§ 3--11, adopted June 12, 1979.~~

~~Division 1. Generally~~

Pursuant to ARIZ. REV. STAT. § 48-3610, the City of Avondale (the "City") is authorized to adopt floodplain management regulations in conformance with ARIZ. REV. STAT. §§ 48-3603 and 48-3609 designed to promote the public health, safety and general welfare of its citizenry.

**8-2**

**~~8-16~~ Findings of fact.**

(a) The flood hazard areas of ~~Avondale~~the City are subject to periodic inundation which ~~results~~may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief~~,~~ and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses ~~are~~may be caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities~~,~~ and, when inadequately anchored, cause damage ~~uses~~ in other areas. Uses that are inadequately ~~floodproofed~~flood proofed, elevated or otherwise protected from flood damage, also contribute to the flood loss. ~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)~~

**8-3**

**~~8-17~~ Statement of purpose.**

(a) It is the purpose of this ~~article~~ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) ~~To protect~~ Protect human life and health;

(2) ~~To minimize~~ Minimize expenditure of public money for costly flood control projects;

(3) ~~To minimize~~ Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) ~~To minimize~~ Minimize prolonged business interruptions;

(5) ~~To minimize~~ Minimize damage to public facilities and utilities such as water and gas mains~~,~~; electric, telephone and sewer lines~~,~~; and streets and bridges located in areas of special flood hazard;

(6) ~~To help~~ Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize ~~future flood~~ blight areas~~;~~ caused by flooding;

(7) ~~To insure~~ Ensure that potential buyers are notified that property is in an area of special flood hazard;

(8)~~ To insure~~ Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions~~; and~~,

(9)~~ To maintain~~ Maintain eligibility for ~~state~~ disaster relief.~~ (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)~~

**8-4**

~~8-18~~ **Methods of reducing flood losses.**

(a) These regulations take precedence over any less restrictive conflicting local laws, ordinances and codes.

(b) In order to accomplish its purposes, this ~~article~~ordinance includes methods and provisions ~~for~~to:

(1)~~ Restricting~~ Restrict or ~~prohibiting~~prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or ~~in~~ flood heights or velocities;

(2)~~ Requiring~~ Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3)~~ Controlling~~ Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel ~~flood waters~~floodwaters;

(4)~~ Controlling~~ Control filling, grading, dredging, and other development which may increase flood damage; and

(5)~~ Preventing~~ Prevent or ~~regulating~~regulate the construction of flood barriers which will unnaturally divert ~~flood waters~~floodwaters or which may increase flood hazards in other areas. ~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)~~

**8-5**

~~8-19~~ **Definitions.**

(a) Unless specifically defined below, words or phrases used in this ~~article~~ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ~~article~~ordinance its most reasonable application.

*"A zone."* See "Special flood hazard area."

*"Accessory structure, low-cost and small."* A structure that is:

(1) Solely for the parking of no more than 2 cars; or limited storage (small, low cost sheds); and

(2) 120 square feet or smaller and has a value of $500.00 or less.

"*"Accessory use*" means a." A use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

"Alluvial fan flooding" means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by (i)*"Alluvial fan."* A geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high- velocity flows, (ii) active process ofdebris flows, erosion, sediment transportmovement and deposition, and (iii) unpredictable flow pathschannel migration.

"*"Apex*" means a." A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

"*"Appeal*" means a." A request for a review of the floodplain administrator'Floodplain Administrator's interpretation of any provision of this articleordinance or a request for a variance.

"*"Area of shallow flooding*" means a." A designated AO, or AH or VO Zone on the city's flood insurance rate map (firmCity's Flood Insurance Rate Map (the "FIRM") with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"*"Area of special flood hazard*" means the." The land in the floodplain within the cityCity subject to a one percent or greater chance of flooding in any given year. These areas are designated as ZonesZone A, AE, AO, AH, and A1-30 on the FIRM and other areas determined by the criteria adopted by the director of water resources.Director of the Arizona Department of Water Resources (the "ADWR"). See also "Special flood hazard area")
"Backfill" means the placement of fill material within a specified depression, hole or excavation pit below the surrounding adjacent ground level as a means of improving flood water conveyance or to restore the land to the natural contours existing prior to excavation.

"*"Base flood*" means the." A flood havingwhich has a one percent chance of being equalledequaled or exceeded in any given year. (also called the "100-year flood").

*"Base flood elevation ("BFE")."* The elevation shown on the FIRM for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

"*"Basement*" means any." Any area of the building having its floor subgrade (sub-grade - i.e., below ground level) - on all sides.
"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building supporting foundation system.
"Chief executive officer" means the city manager.

*"Building."* See *"Structure."*

*"City Council."* The City Council of the City of Avondale.

"*"Community*" means any." Any state or, area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.
"Critical feature" means an integral and readily identifiable part of a flood protection system without which the flood protection provided by the entire system would be compromised.

"*"Development*" means any." Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavatingexcavation or drilling operations andor storage of materials and equipment located within the area of special flood hazardor materials.

"*"Encroachment*" means the." The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

"*"Erosion*" means the." The process of the gradual wearing away of land masses.landmasses. This peril is not, per se, covered under the program (see flood-related erosion)Program.

"*"Existing manufactured home park or subdivision*" means a." A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabspads) is completed before the effective date of the floodplain management regulations adopted by the city.September 30, 2005.

"*"Expansion to an existing manufactured home park or subdivision*" means the." The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
"Financial assistance" means any form of loan, grant, guaranty, insurance, pavement, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance, other than general or special revenue sharing or formula grants made to states.

"*"Flood*" or "*flooding*" means a." A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) Thethe overflow of flood waters;floodwaters; (2) Thethe unusual and rapid accumulation or runoff of surface waters from any source; and/or (3) Thethe collapse or subsidence of land along the shore of a lake or any other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined byin this definition.

"Flood boundary-floodway map" means the*"Flood Boundary and Floodway Map (FBFM)."* The official map on which the Federal Emergency Management Agency ("FEMA") or the Federal

Insurance Administration (the "FIA") has delineated ~~by~~both the areas of special flood hazards and the floodway.
~~"Flood hazard boundary map (FEMA)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of flood hazards.~~

~~"~~*"Flood* ~~insurance rate map (FIRM)" means the~~*Insurance Rate Map ("FIRM")."* The official map on which FEMA or the ~~Federal Insurance Administration~~FIA has delineated both the areas of special flood hazards and the risk premium zones applicable to the ~~city~~City.

~~"~~*"Flood* ~~insurance study" means the~~*Insurance Study ("FIS")."* The official report provided by ~~the Federal Insurance Administration~~FEMA that includes flood profiles, ~~the flood insurance rate map, the flood boundary and floodway map~~Flood Insurance Rate Maps, Flood Boundary and Floodway Maps and the water surface elevation of the base flood.

~~"~~*"Floodplain*~~"~~ *or* ~~"~~*flood*~~-~~*-prone area*~~" means any~~*."* Any land area susceptible to being inundated by water from any source~~ (see definition of~~. (See also *"Flood or flooding."*)~~.~~

~~"~~*"Floodplain* ~~administrator" means the city manager of the City of Avondale~~*Administrator."* The City Manager of the City, or authorized designee, who is hereby authorized to administer and enforce the provisions of this article.

~~"~~*"Floodplain* ~~board" means the council of the City of Avondale~~*Board."* The City Council, at such times as they are engaged in the enforcement of this ~~article~~ordinance.

~~"~~*"Floodplain management*~~" means the~~*."* The operation of an overall program of corrective and ~~preventative~~preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood~~-~~ control works~~ and~~, floodplain management regulations, and open space plans.

~~"~~*"Floodplain management regulations*~~" means the provisions of this article,~~*."* The ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other ~~applications~~application of police power which control development in flood~~-~~-prone areas. This term describes federal, state ~~and~~or local regulations~~,~~ in any combination thereof, which provide standards for preventing and reducing flood loss and damage.
~~"Flood protection system" means those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within the city subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.~~

~~"~~*"Floodproofing*~~" means any~~*."* Any combination of structural and ~~non-structural~~nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

"*"Flood-related erosion*" means the*." The* collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levelslevel or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or an abnormal tidal surge, or by some similarly unusualunusually and unforeseeable event which results in flooding.

*"Flood-related erosion area or Flood-related erosion prone area."* A land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"*"Flood-related erosion area management*" means the*." The* operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including, but not limited to, emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

"*"Floodway*" means the channel*." The area* of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. (Also referred to as "regulatory floodway".*"Regulatory Floodway."*)

"*"Floodway fringe*" is that*." That* area of the floodplain on either side of the "regulatory floodway""Regulatory Floodway" where encroachment may be permitted.
"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

*"Fraud and victimization."* As related to Section 8-30(e)(4) of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the City for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the City as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"*"Functionally dependent use*" means a*." A* use which cannot perform its intended purpose unless it is located andor carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, butand does not include long--term storage or related manufacturing facilities.
"Governing body" means the city council.

*"Governing body."* The local governing unit, i.e. county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

"*"Hardship*" as*."* As related to, variances under this article means Sections 8-28(a) and 8-30(e)(2) of this ordinance, meaning the exceptional hardship that would result from a failure to grant the requested variance. The city councilCity Council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one'"s neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"*"Highest adjacent grade*" means the*."* The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"*"Historic structure*" means any*."* Any structure that is:

(a1) Listed individually in the national register of historic placesNational Register of Historic Places (a listing maintained by the departmentDepartment of interiorInterior) or preliminarily determined by the secretarySecretary of the interiorInterior as meeting the requirements for individual listing on the National Historic Register.;

(b2) Certified or preliminarily determined by the secretarySecretary of the interiorInterior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretarySecretary to qualify as a registered historic district.;

(c3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretarySecretary of the interiorInterior; or

(d4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(1A) By an approved state program as determined by the secretarySecretary of the interior;Interior or

(2B) Directly by the secretarySecretary of the interiorInterior in states without approved programs.

"*"Levee*" means a*."* A man--made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

"*"Levee system*" means a*."* A flood- protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in

~~accordance~~accord with sound engineering practices~~ and which are shown on the city's flood rate insurance map~~.

"~~"~~*Lowest floor*~~" means the~~*.*" The lowest floor of the lowest enclosed area, ~~(~~including the basement~~)~~. An unfinished or flood~~-~~ resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building~~'~~'s lowest floor~~;~~, provided that such enclosure is not built so as to render the structure in violation of the applicable ~~nonelevation~~non-elevation design requirements of this ~~article~~ordinance.

"~~"~~*Manufactured home*~~" means a~~*.*" A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when ~~connected~~attached to the required utilities. ~~For floodplain management purposes, the~~ The term "manufactured home~~ also includes mobile homes, park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.~~" does not include a "recreational vehicle."

~~"Mudslide area management" means the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including, but not limited to, emergency preparedness plans, mudslide control works and floodplain management regulations.~~

~~"Mudslide prone area" means an area with land surfaces and slopes of unconsolidated material where the history, geology and climate indicate a potential for mudflow.~~

*"Manufactured Home Park or Subdivision."* A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

*"Market value." "Market value"* shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed.

(1) The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry.

(2) The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the floodplain administrator, but shall not include economic or other forms of external obsolescence.

(3) Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

*"Mean sea level."* For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on the City's Flood Insurance Rate Map are referenced.

"~~"~~*New construction*~~" means, for~~*.*" For the purposes of determining insurance rates, structures for which the "~~"~~"start of construction~~"~~" commenced on or after the effective date of an initial ~~firm~~Flood

Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "“new construction" ” means structures for which the "“start of construction" ” commenced on or after the effective date of a floodplain management regulation adopted by the cityCity and includes any subsequent improvements to such structures.

" “*New manufactured home park or subdivision*" means a.” A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the cityCity.

" “*Obstruction*" includes.” Including, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, projectionprotection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across, or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

" “*One -hundred -year flood*" means the *or 100-year flood.*” The flood having a one percent chance of being equaled or exceeded in any given year (see "base. See *“Base flood*") .”

" “*Person*" means an.” An individual or histhe individual’s agent, a firm, partnership, association or corporation, or an agent of the aforementioned groups, or this state or its agencies or political subdivisions.
"Program" means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

" “*Program deficiency*" means a.” A defect in a community'the City’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the NFIP standards.

*“Public safety and nuisance.”* As related to Section 8-30(e)(4) of this ordinance, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

" “*Recreational vehicle*" means a.” A vehicle which is:

(a1) Built on a single chassis;

(b) Four hundred2) 400 square feet or less when measured at the largest horizontal projection;

(c3) Designed to be self--propelled or permanently towable by a light -duty truck; and

(d4) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

"*"Regulatory* flood elevation" means an*Flood Elevation (RFE)."* An elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be as determined by the criteria developed by the director of water resourcesDirector of the Arizona Department of Water Resources for all other watercourses.

"*"Regulatory floodway*" means the*."* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"*"Remedy a violation*" means to*."* To bring the structure or other development into compliance with stateState or local floodplain management regulations, or, if this is not possible, to reduce the impactimpacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federalState or Federal financial exposure with regard to the structure or other development.
"Repetitive loss structure" means a structure, covered by a contract for flood insurance issued pursuant to the National Flood Insurance Act, that has incurred flood-related damage on two occasions during any 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on average, equaled or exceeded twenty-five (25) percent of the market value of the structure at the time of each such flood event.

"*"Riverine*" means relating*."* Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"*"Sheet flow area."* *"* See "area*"Area of shallow flooding*".*"*

"*"Special flood hazard area*" means an area having special flood or flood-related erosion hazards, and shown on a FHBM or FIRM *(SFHA)."* An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on a Flood Boundary and Floodway Map or Flood Insurance Rate Map as Zone A, AO, A 1--A30, AE, A9999, or, AH.

"*"Start of construction*" includes*."* Includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, additionsaddition, placement, or other improvement was within one hundred eighty (180) days from the date of the permit date. The actual start date means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation;; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"“*Structure*" means a.” A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as; this includes a gas or liquid storage tank or a manufactured home.

"“*Substantial damage*" means damage.” Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.; or flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. This is also known as “repetitive loss.”

"“*Substantial improvement*" means any.” Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "“start of construction"” of the improvement. This term includes structures thatwhich have incurred "“substantial damage"”, regardless of the actual repair work performed. The term does not, however, include either:

1. (1) Any project for improvement of a structure to correct existing violations ofor state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. (2) Any alteration of a "“historic structure",” provided that the alteration will not preclude the structure"’s continued designation as a "“historic structure".”

"“*Variance*" means a.” A grant of relief from the requirements of this articleordinance which permits construction in a manner that would otherwise be prohibited by this articleordinance.

"“*Violation*" means the.” The failure of a structure or other development to be fully compliant with the city'City’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this articleordinance is presumed to be in violation until such time as that documentation is provided.

"“*Water surface elevation*" means the.” The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (North American Vertical Datum (NAVD) of 1988, or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"“*Watercourse*" means a.” A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.
"Watercourse master plan" means a hydraulic plan for a watercourse that examines the cumulative impacts of existing development and future encroachment in the floodplain and future development in the watershed on potential flood damages and establishes technical criteria for subsequent development so as to minimize potential flood damages for all flood events up to and including the one hundred-year flood. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 1, 6-18-01)

8-20. Scope.

## 8-6 Lands to which this ordinance applies.

This ~~article~~ordinance shall apply to all areas of special flood hazards within the corporate limits of the City~~ of Avondale. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)~~.

## 8-7

~~8-21~~ **Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by ~~the Federal Insurance administration of the Federal Emergency Management Agency~~FEMA in a scientific and engineering report entitled ~~"~~"The Flood Insurance Study ~~for the City of Avondale" with an~~(FIS) for Maricopa County, Arizona dated September 30, 2005, with accompanying ~~flood insurance rate maps and flood boundary and floodway maps~~FIRMs and FBFMs dated September 30, 2005, and all subsequent amendments and/or revisions ~~thereto~~, are hereby adopted by reference and declared to be a part of this ~~article. The Flood Insurance Study ("FIS")~~ordinance. This FIS and attendant mapping is the minimum area of applicability of this ~~article~~ordinance and may be supplemented by studies for other areas which allow implementation of this ~~article~~ordinance and which are recommended to the ~~floodplain board by the floodplain administrator. The board~~Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by ~~the federal emergency management agency and the director of water resources. The FIS, FIRMS and FBFMS are on file at the city's development services department. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 2, 6-18-01)~~FEMA and the Director of the Arizona Department of Water Resources. The FIS and FIRM panels are on file at the Avondale City Hall, Engineering Division, 11465 West Civic Center Drive, Avondale, Arizona 85323.

## 8-8

~~8-22~~ **Compliance.**

All development of land, construction of residential, commercial or industrial structures, or future development within delineated floodplain areas is subject to the terms of this ~~article~~ordinance and other applicable regulations.~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 3, 6-18-01)~~

**8-9**

8-23 **Abrogation and greater restrictions.**

This articleordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However,; provided, however, that where this articleordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)

**8-10**

8-24 **Interpretation.**

In the interpretation and application of this articleordinance, all provisions shall be: (I) considered

(A) Considered as minimum requirements, (II) liberally;

(B) Liberally construed in favor of the CITYCity; and (III) deemed

(C) Deemed neither to limit nor repeal any other powers granted under state statutes or the city charter. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 4, 6-18-01).

**8-11**

8-25 Warning and disclaimer**Disclaimer of liability.**

The degree of flood protection required by this articleordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This articleordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This articleordinance shall not create liability on the part of the City of Avondale, any officer or employee thereof, or the State of Arizona or FEMA, for any flood damages that result from reliance on this articleordinance or any administrative decision lawfully made thereunder. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 5, 6-18-01)hereunder.

**8-12**

8-26 **Statutory exemptionsexceptions.**

(a) In accordance with Arizona Revised Statutes Section 48-3609.H.ARIZ. REV. STAT. § 8-3609(H), unless expressly provided, this and any regulation adopted pursuant to this article do not affect:

(1) Existing legal uses of property or the right to continuation of such legal use. however However, if a nonconforming use of land or a building or structure is discontinued for twelve

~~(12)~~ months, or destroyed to the extent of ~~fifty (~~50~~)~~ percent of its value~~,~~ as determined by a competent appraiser, any further use shall comply with this article and regulations of the ~~city.~~City Council;

(2) Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or any regulations affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by ~~fifty per cent~~50 percent or more shall be either floodproofed or elevated to or above the regulatory flood elevation~~.~~;

(3) Reasonable repair of structures constructed with the written authorization required by ~~Arizona Revised Statues Section 48-3613.~~ARIZ. REV. STAT. § 48-3613; and

(4) Facilities constructed or installed pursuant to a ~~certificate of environmental compatibility~~Certificate of Environmental Compatibility issued pursuant to ~~Arizona Revised Statues~~ARIZ. REV. STAT. Title 40, Chapter 2, Article 6.2.

~~(b) In accordance with Arizona Revised Statutes Section~~ (b) Before any authorized construction begins for the exceptions listed below, the responsible person must submit plans for the construction to the Floodplain Board for review and comment. In accordance with ARIZ. REV. STAT. § 48-3613, written authorization shall not be required, nor shall ~~all~~ the ~~floodplain board~~Floodplain Board prohibit:

(1) The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse~~.~~;

(2) The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by ~~Arizona Revised Statutes~~ARIZ. REV. STAT. Title 45, Chapter ~~6.~~6;

(3) Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the ~~board~~Floodplain Board pursuant to regulations adopted by the ~~board~~Floodplain Board under this article~~.~~;

(4) Other construction ~~if it is determined~~upon determination by the ~~board~~Floodplain Board that written authorization is unnecessary~~.~~;

(5) Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under ~~this article.~~ARIZ. REV. STAT. Title 48, Chapter 21, Article 1;

(6) The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision~~.~~; and

(7) The construction and erection of poles, towers, foundations, support structures, guy wires~~,~~ and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

(c)~~ Before any construction authorized by subsection b of this section may begin, the responsible person must submit plans for the construction to the board for review and comment.(d)~~

In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this ~~article~~Article. If a person is found to be in violation of this ~~section~~Section, the court shall require the violator to either comply with this ~~section~~Section if authorized by the ~~board~~Floodplain Board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation including reasonable costs and attorney fees.~~ (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 6, 6-18-01)~~

**8-13 Unlawful acts.**

(a) It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing the written authorization required by ARIZ. REV. STAT. § 48-3613.

(b) Where the watercourse is a delineated floodplain, it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by ARIZ. REV. STAT. § 48-3613.

(c) Any person found guilty of violating any provision of this ordinance shall be guilty of a class 2 misdemeanor. Each day that a violation continues shall be a separate offense punishable in accordance with such classification and as otherwise described herein.

**8-14**

~~8-27~~ **Declaration of public nuisance statute.**

~~Every new structure, building, fill, excavation or~~All development located or maintained within any area of special flood hazard after August 8, 1973, in violation of this ~~article~~ordinance, is a public nuisance per se~~,~~ and may be abated, prevented or restrained by action of ~~the city. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 7, 6-18-01)~~this political subdivision.

**8-15**

~~8-28~~ **Abatement of violations.**

Within ~~thirty (~~30~~)~~ days of discovery of a violation of this ~~article, the floodplain administrator~~ordinance, the Floodplain Administrator shall submit a report to the ~~floodplain board~~Floodplain Board which shall include all information available to the ~~floodplain administrator~~Floodplain Administrator which is pertinent to said violation. Within ~~thirty (~~30~~)~~ days of receipt of this report, the ~~floodplain board~~Floodplain Board shall either:

(a) ~~(1)~~ Take any necessary action to effect the abatement of such violation; or

(b) ~~(2)~~ Issue a variance to this ~~article~~ordinance in accordance with the provisions of ~~sections 8-41 through 8-43 of this article~~Section 8-29 herein; or

(c) ~~(3)~~ Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the ~~floodplain administrator~~Floodplain Administrator within ~~thirty (~~30~~)~~ days of such order~~,~~ and ~~he~~the Floodplain Administrator shall submit an amended report to the ~~floodplain board~~Floodplain Board within ~~twenty (~~20~~)~~ days. At ~~their~~the next regularly scheduled public meeting, the ~~floodplain board~~Floodplain Board shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of ~~sections 8-41 through 8-43~~Section 8-29 herein; or

(d) ~~(4)~~ Submit to ~~the administrator of the FIA~~FEMA a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to Section 1316 of the National Flood Insurance Act of 1968 as amended. ~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 8, 6-18-01)~~

~~8-29. Unlawful acts.~~

~~(a) It is unlawful for any person to divert, retard or obstruct the flow of waters in any watercourse whenever it creates a hazard to life or property without securing the written authorization of the floodplain board. Where the watercourse is a delineated floodplain, it is unlawful to excavate or build any structure affecting the flow of waters without securing written authorization of the floodplain board.~~

~~(b) Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 9, 6-18-01)~~

**8-16**

~~8-30~~ **Severability.**

This ~~article~~ordinance and the various parts thereof are hereby declared to be severable. Should any ~~section~~Section of this ~~article~~ordinance be declared by ~~a court of a competent jurisdiction~~the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ~~article~~ordinance as a whole, or any portion thereof other than the ~~section~~Section so declared to be unconstitutional or invalid. ~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 10, 6-18-01)~~

**Division 2. Administration**

~~8-31 Development permit.~~
~~A development permit shall be obtained before construction or development, including placement of manufactured homes begins within any area of special flood hazard established in section 8-21. Application for a development permit shall be made on forms furnished by the floodplain administrator and may include, but is not limited to: (I) plans in duplicate drawn to scale showing the nature, location, dimensions and elevation of the area in question, (II) existing or proposed structures, (III) fill, (IV) storage of materials, drainage facilities and (V) the location of the foregoing. Specifically, the following information is required:~~
~~(1) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures; in Zone AO, elevation of existing highest adjacent material grade and proposed elevation of lowest floor of all structures;~~
~~(2) Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;~~
~~(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in section 8-33; and~~
~~(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 11, 6-18-01)~~

~~8-32 Designation of the flood plain administrator; duties and responsibilities of the floodplain administrator.~~

**8-17 Designation of the floodplain administrator.**

~~(a) Designation of the floodplain administrator. The city engineer~~ The City Manager, or authorized designee, is hereby appointed to administer, implement~~,~~ and enforce this ordinance by granting or denying development permits in accordance with its provisions.

**8-18 Duties and responsibilities of the floodplain administrator.**

~~(b) The duties of the floodplain administrator~~Duties of the Floodplain Administrator shall include, but not be limited to:

(~~1~~a) Permit Review ~~of~~. Review all development permits to determine that:

a. (1) The permit requirements of this articleordinance have been satisfied;

b. (2) All other required state and federal permits have been obtained;

c. (3) The site is reasonably safe from flooding;

d. (4) The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this ordinance, "“adversely affects"affect” means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point.

(b) Substantial Improvement and Substantial Damage Procedures

(1) Using FEMA publication FEMA 213, “Answers to Questions About Substantially Damaged Buildings,” develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage.

(2) Assure procedures are coordinated with other departments and divisions and implemented by City staff.

(c) Use of Other Base Flood Data

(21) When base flood elevation data havehas not been provided in accordance with section 8-21,Section 8-7 the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer section 8-33. Division 3. Any such information shall be consistent with the requirements of FEMA and the director of water resourcesDirector of the Arizona Department of Water Resources and shall be submitted to the floodplain boardFloodplain Board for adoption.
(3) Obtaining and maintaining for public inspection and make available as needed for flood insurance policies or affecting increased cost of construction coverage for repetitive loss structures:

(d) Obtain and Maintain for Public Inspection

a. (1) The certified regulatory flood elevation required in sectionSection 8-3320(c)(1);
b. The certification required in section 8-33;

c. (2) The floodproofing certification required in sectionSection 8-3320(c)(2);
d. The certified elevation required in section 8-36.
e. Permit records for repair of flood-related damage to structures on a cumulative basis over the life of the structure.

(3) The flood vent certification required in Section 8-20(c)(3);

(4) The elevation certification required for additional development standards, including subdivisions, in Section 8-23(a)(2);

(5) The floodway encroachment certification required in Section 8-27(a)(1);

(6) Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA.

(7) Obtain and maintain improvement calculations.

(e) Notification of Other Entities

(~~4~~1) Whenever a watercourse is to be altered or relocated:

~~a.~~ (2) Notify adjacent communities and the Arizona Department of Water Resources prior to ~~any~~such alteration or relocation of a watercourse, and submit evidence of such notification to the ~~Federal Insurance Administration~~FEMA through appropriate notification means; and

~~b. Require~~ (3) Assure that the flood~~-~~ carrying capacity of the altered or relocated portion of said ~~water course is~~watercourse be maintained.

(4) Base flood elevation and rate of flow due to physical alterations:

(5) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify FEMA of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(~~5~~6) Within one hundred twenty (120) days after completion of construction of any flood control protective works which ~~change~~changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, ~~require from~~ the person or agency responsible for installation of the project~~, notice~~ shall provide to the governing bodies of all jurisdictions affected by the project ~~including~~ a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the ~~director of water resources~~Director of the Arizona Department of Water Resources.

(f) Corporate Boundary Changes

Notify FEMA and the Arizona Department of Water Resources of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

(g) Map Determinations

~~(6)~~ Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (~~for example~~e.g., where there appears to be a conflict between a mapped

boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in ~~section 8-41.~~Section 8-29.

(~~7)~~ h) Remedial Actions

Take actions on violations of this ~~article~~ordinance as required in ~~section 8-28.~~Section 8-15 herein.

~~(8) Advise the flood-control district of Maricopa County and any adjunct jurisdiction having responsibility for floodplain management in writing and provide a copy of development plan for all applications for floodplain use permits or variances to develop land in a floodplain or floodway within one mile of the corporate limits of the City of Avondale. Also, advise the flood-control district of Maricopa County in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway which could affect floodplains, floodways or watercourses within the district's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to the city no later than three (3) working days after having been received by the district.~~

~~(9) Notify the administrator and director of water resources of acquisition by means of annexation, incorporation, or otherwise, of additional areas of jurisdiction. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 12, 6-18-01)~~

(i) Biennial Report

Complete and submit a Biennial Report to FEMA.

**8-19 Establishment of development permit.**

A Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in Section 8-7. Application for a Development Permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevation of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:

(a) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures;

(b) Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;

(c) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 8-20(c)(2).

(d) Base flood elevation data for subdivision proposals or other development greater than 50 lots or 5 acres; and

(e) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

## Division 3. Provisions for Flood Hazard Reduction

**8-20**

**8-33 Standards of construction.**

In all areas of special flood hazards the following standards are required:

(a) Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure. resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and

(2) All manufactured homes shall meet the anchoring standards of section 8-37(1).Section 8-24.

(b) Construction *materials*Materials and *methods.* Methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.;

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.;

(3) All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.; and

(4) Within zonesZones AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide flood watersfloodwaters around and away from proposed or existing structures are required.

(c) Elevation and *floodproofing.* Floodproofing.

(1) Residential construction.

(1) New Residential construction and, new or substantial improvement of any structure, shall have the lowest floor, including basement,

(A) In an AO Zone, elevated to or above the regulatory flood elevation. Nonresidential structures may meet the standards in section 8-33. Upon the, or elevated at least two feet above the highest adjacent grade if no depth number is specified.

(B) In an A Zone where a BFE has not been determined, elevated to or above the regulatory flood elevation or be elevated in accordance with the criteria developed by the Director of the Arizona Department of Water Resources.

(C) In Zones AE, AH and A1-30, elevated to or above the regulatory flood elevation.

(D) Upon completion of the structure, the elevation of the lowest habitable floor including basement shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator, and verified by the City's building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.
(2) New construction and substantial improvement of any structure in zone AO shall have the lowest floor, including basement, higher than the highest adjacent grade at least one foot higher than the depth number on the firm, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in section 8-33. Upon completion of the structure a registered professional engineer shall certify to the floodplain administrator that the elevation of the structure meets this standard

(2) Nonresidential construction.

(3) Nonresidential construction, new or substantial improvement, shall either be elevated in conformanceto conform with section 8-33Section 8-20(c)(1) or together with attendant utility and sanitary facilities:

a. (A) Be floodproofed below the elevation recommended under this Section 8-20(c)(1) so that below the regulatory flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. (B) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. (C) Be certified by a registered professional engineer or architect that the standards of this subsectionsection are satisfied. Such certificationscertification shall be provided to the floodplain administratorFloodplain Administrator.

(4) Require, for all3) Flood openings.

All new construction and substantial improvements of nonresidential structures, thatimprovement of accessory structures or other non-residential structures, whether attached to or detached from a residential structure, with fully enclosed areas below the lowest floor that are useableusable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed the following minimum criteria:

a. (A) Have a minimum of two openings have, on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. (B) The bottom of all openings shall be no higher than one foot above grade.

c. (C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwatersfloodwater.

(5) D)Portions of the accessory structure or other non-residential structure that are located below the regulatory flood elevation must be built using flood-resistant materials.

(E) The accessory structure or other non-residential structure must be adequately anchored to prevent flotation, collapse and lateral movement.

(F) Any mechanical and utility equipment in the accessory structure or other non-residential structure must be elevated or floodproofed to or above the regulatory flood elevation.

(G) The accessory structure or other non-residential structure must comply with floodplain encroachment provisions in Section 8-27.

(4) Manufactured homes.

Manufactured homes shall also meet the above standards and also the standards in section 8-36. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 13, 6-18-01)standards in Section 8-24.

**8-21**

**8-34 Standards for storage of materials and equipment.**

(a) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life if released due to damage from flooding is prohibited in special flood hazard areas.

(b) Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)

**8-22**

**8-35 Standards for utilities.**

(a) All new andor replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

(b) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(c) Waste disposal systems shall not be installed wholly or partially in a regulatory floodway. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)

8-36 Standards for

**8-23 Additional development standards, including subdivisions.**

(a) All preliminarynew subdivision proposals shall identifyand other proposed development (including proposals for manufactured home parks and subdivisions), greater than 50 lots or 5 acres, whichever is the lesser, shall:

(1) Identify the area of the special flood hazard area and the elevation of the base flood.

(b) All2) Identify on the final subdivision plans will provide the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood elevation, the final lowest floor and pad elevation(s)grade elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administratorFloodplain Administrator.

(eb) All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.

(dc) All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(ed) All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 14, 6-18-01)

**8-24**

8-37 **Standards for manufactured homes** whether in or outside of a mobile home park or subdivision**.**

(a) No manufactured home shall be placed in a floodway, except in an existing manufactured home park or existing manufactured home subdivision.

(b) All manufactured homes and additions to manufactured homes shall be All manufactured homes that are placed on site or substantially improved shall:

(1) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation; and

(2) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement by one of the following methods:

(~~1~~A) By providing an anchoring system designed to withstand horizontal forces of twenty-five (25) pounds per square foot and uplift forces of fifteen (15) pounds per square foot;

(~~2~~B) By providing over-the-top and frame ties to ground anchors. Specifically:

~~a.~~ (i) Over-the-top ties be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side at intermediate locations, except that manufactured homes less than fifty (50) feet long require only one additional tie per side;

~~b.~~ (ii) Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points, except that manufactured homes less than fifty (50) feet long require only four (4) additional ties per side; and

~~c.~~ (iii) All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds. ~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 15, 6-18-01)~~

(3) The requirements of this Section 8-24(b) are in addition to applicable state and local anchoring requirements for resisting wind forces.

**8-~~38~~ 25 Standards for new and replacement manufactured homes.**

The following additional standards are required for all new and replacement manufactured homes:

(1) Adequate surface drainage and access for a hauler shall be provided.

(2) all manufactured homes shall be placed on pads or lots elevated on compacted fill or on pilings so that the lowest structural member or appliance of the manufactured home is at or above the regulatory flood level. If elevated on pilings:

~~a.~~ (A) The large lots shall be large enough to permit steps;

~~b.~~ (B) The pilings shall be placed in stable soil no more than ten (10) feet apart; and

~~c.~~ (C) Reinforcement shall be provided for pilings more than six (6) feet above the ground level. ~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 16, 6-18-01)~~

**8-~~39~~ 26 Standards for recreational vehicles.**

All recreational vehicles placed on site ~~will either~~shall:

(a~~.~~) Be on site for fewer than ~~one hundred eighty (~~180~~)~~ consecutive days~~ and be~~, or

(b) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions~~,~~; or

~~b.~~ (c) Meet the permit requirements of Section 8-19 of this ~~article~~ordinance and the elevation and anchoring requirements for manufactured homes in ~~sections 8-37 and 8-38. (Ord. No. 791-01, § 17, 6-18-01)~~Sections 8-20 and 8-24.

~~8-39.1 Mobile homes in floodways.~~
~~No mobile home shall be placed in a floodway, except in an existing mobile home park or existing mobile home subdivision. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)~~
~~**Editor's note:** Ordinance No. 791-01, § 17, adopted June 18, 2001 added a new section 8-39. However, in order to keep numerical order, section 8-39 was renumbered as 8-39.1.~~

~~8-40~~

**8-27 Floodways**~~; flood related erosion-prone area.~~

~~(a) Areas designated on the city's flood rate insurance map as "floodways" are hereby~~ (a) Located within areas of special flood hazard established in Section 8-7 are areas designated as ~~regulatory~~ floodways. ~~Because~~ Since the ~~regulatory~~ floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions ~~shall~~ apply~~.~~:

(1) Encroachments, including fill, new construction, substantial improvements and other ~~developments~~development within ~~the~~a regulatory floodway are prohibited, unless ~~it has been~~a registered professional engineer or architect has demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge and such registered professional engineer or architect has certified the analysis described in this subsection.

(2) Notwithstanding any other provision of this section, encroachments within the regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that the city first applies for a conditional flood insurance rate map and floodway revision and fulfills the requirement for such revisions as established under the provision of Article 44, Code of Federal Regulations, Chapter 1, Section 65.12, and receives the approval of the Federal Insurance Administrator~~.~~

(3) ~~If subsections 8-40(1) and 8-40(2) are~~ If this Section 8-27 is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of ~~sections 8-33 through 8-39.~~Division 3.

(b) Flood related erosion-prone area.

(1) ~~The floodplain administrator~~ The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the ~~community~~City.

(2) Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.

(3) If a proposed development is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvements shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.

(4)~~ Within Zone E on the flood insurance rate map, a~~ A setback is required for all new development from ~~the~~any lake, bay, riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only. ~~(Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 555, 11-22-93; Ord. No. 791-01, § 18, 6-18-01)~~

**Division 4. Variance Procedure**

~~8-41. Hearing and determination by appeal board.~~

**8-28. Nature of variances.**

(a) The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

(b) It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the regulatory flood elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

**8-29. Appeal board.**

(a)~~ The floodplain board of the City of Avondale~~ The Floodplain Board shall hear and decide appeals and requests for variances from the requirements of this ~~article~~ordinance.

(b) The ~~floodplain board~~Floodplain Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the ~~floodplain administrator~~Floodplain Administrator in the enforcement or administration of this ~~article~~ordinance.

(c)~~ Those aggrieved by the decision of the floodplain board, or any taxpayer, may appeal such decision to the Superior Court of Maricopa county.(d)~~ In passing upon such applications, the ~~floodplain board~~Floodplain Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ~~article~~ordinance, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger ~~to~~of life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the ~~community~~City;

(5) The necessity to the facility of a waterfront location, where applicable;

(6) The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in time of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and,

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, ~~and~~ water system~~,~~ and streets and bridges.~~ (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)~~

~~8-42. Variances for new construction and substantial improvement on a lot of one-half acre or less; conditions; records maintained.~~

(d) Upon consideration of the factors of this Section 8-29 and the purposes of this ordinance, the Floodplain Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(e) Any applicant to whom a variance is granted shall be given written notice over the signature of a City official that:

(1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance that are commensurate with the increased risk resulting from the reduced lowest floor elevation up to amounts as high as $25 for $100 of insurance coverage, and

(2) Such construction below the base flood level increases risks to life and property; and

(a) 3) A copy of the notice shall be recorded in the office of the Maricopa County Recorder and shall be recorded by the Floodplain Board in a manner so that it appears in the chain of title of the affected parcel of land.

(f) The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance and report such variances issued in its biennial report submitted to FEMA.

**8-30 Conditions for variances.**

(a) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1) through (11) in section 8-41(d)elevation, provided the procedures of Divisions 2 and 3 of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(b) Upon consideration of the factors of section 8-41(d) and the purposes of this article, the floodplain board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.
(c) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88)

8-43 Conditions for issuance of variance; notice.
(a) The variance criteria set forth in this article are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this article would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners. It is the duty of the city to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the regulatory flood elevation are so serious that variances from the flood elevation or from other requirements in this article are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this article are more detailed and contain multiple

~~provisions that must be met before a variance can be properly granted. The criteria are designed to eliminate those situations in which alternatives other than a variance are more appropriate.~~
~~(b) The floodplain board of the city shall hear and decide appeals and requests for variances from the requirements of this article.(c)~~ Variances may be issued for the ~~reconstruction~~repair, rehabilitation or restoration of structures listed ~~on~~in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination ~~made by the floodplain administrator in the enforcement or administration of this article~~that the proposed repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(~~d~~c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(~~e~~d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(~~f~~e) Variances shall only be issued upon a:

(1)~~A showing~~ Showing of good and sufficient cause;

(2)~~A determination~~ Determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3)~~A showing~~ Showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in ~~section~~Section 8-~~19~~5 of this ~~article~~ordinance in the definition of ~~"functionally depended use"; and~~"Functionally Dependent Use"; and,

(4)~~A determination~~ Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public~~,~~ or conflict with existing local laws or ordinances.
~~(g) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notice will also state that the land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided for by Arizona Revised Statutes Title 26, Chapter 2, Article 2. A copy of the notice shall be recorded by the floodplain board in the office of the Maricopa County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land. (Ord. No. 355, 10-1-84; Ord. No. 408A, 6-15-87; Ord. No. 429, 4-4-88; Ord. No. 791-01, § 19, 6-18-01)~~

Document comparison by Workshare Professional on Tuesday, April 27, 2010 2:30:17 PM

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| Description | Exisiting Floodplain Code |
| Document 2 ID | interwovenSite://GRPHX_SQL/Phoenix/1168808/3 |
| Description | #1168808v3<Phoenix> - CODE - CH 8 - Floodplain Management |
| Rendering set | Standard |

| **Legend:** | |
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| Insertion | |
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| | Count |
| Insertions | 708 |
| Deletions | 746 |
| Moved from | 45 |
| Moved to | 45 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 1544 |

JANICE K. BREWER
Governor

HERBERT R. GUENTHER
Director

# ARIZONA DEPARTMENT OF WATER RESOURCES

3550 North Central Avenue, Second Floor
PHOENIX, ARIZONA 85012-2105

(602) 771-8500

December 30, 2009

The Honorable Marie Lopez Rogers, Mayor
City of Avondale
11465 W. Civic Center Drive, Suite 280
Avondale, Arizona 85323

Re: National Flood Insurance Program
Community Assistance Visit

Dear Mayor Rogers:

The Arizona Department of Water Resources (ADWR) is the state agency responsible for the coordination of the National Flood Insurance Program (NFIP). We periodically visit each NFIP participating community to assess needs for coordination and to provide technical assistance regarding floodplain management. Enclosed you will find a copy of the Community Assistance Visit (CAV) report for the City of Avondale (City) that was generated as a result of the September 21, 2009 meeting with Sue McDermott, P.E., City Engineer/Floodplain Administrator; Chris Hamilton, City Engineering Project Manager who also helped ADWR with the June 25th floodplain field tour; Charles Andrew, City Engineering; and Kathy Mathiesen, City Development Services Plan Review Engineer.

ADWR appreciates the courteous time spent with your staff to conduct the floodplain field tour and the office CAV. Most of the City staff involved in floodplain management has been there only 1-3 years, but they are familiar with the NFIP and the City's 2001 floodplain regulations. They were also familiar with the location of recent development in the City's FEMA identified 100-year floodplain called the Special Flood Hazard Area. Proving compliance of recent development is done by permitting, inspection, and a certificate of elevation or a Finished Construction FEMA Elevation Certificate. The City conducts their floodplain management with some coordination with the Flood Control District of Maricopa County (District). The 2001 floodplain regulations need to be updated; and the permitting, inspection and District coordination needs to be in written procedures to ensure future development complies with local, state, and federal floodplain management regulations. City staff is also strongly encouraged to take advantage of training opportunities that are presented in the state by the Arizona Floodplain Management Association (AFMA) and ADWR or available through FEMA's Emergency Management Institute (EMI) in Emmitsburg, Maryland.

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The cooperation by your staff and the documents provided throughout the CAV process are greatly appreciated. The CAV report Section III Findings that are serious and minor can be corrected by actions outlined in Part F – Community Action Needed. Please provide the corrected actions by February 5, 2010 to close the CAV.

The findings in the CAV report are intended to help improve community compliance with the NFIP and the Arizona Revised Statutes. Knowledge and enforcement of the local floodplain regulations will ensure the City's good standing in the NFIP to guarantee the availability of flood insurance coverage and FEMA grants to your constituents. If you have any questions or need assistance related to floodplain management, please do not hesitate to contact Brian Cosson or me at (602) 771-8649.

Sincerely,

Steve M. Dolan

Steve M. Dolan, CFM
Community Assistance
Program Coordinator

Cc: Sue McDermott, P.E., City Engineer/Floodplain Administrator
City of Avondale

Chris Hamilton, Engineering Project Manager
City of Avondale

Andrew McGuire, City Attorney
City of Avondale

Lynn Thomas, P.E., CFM, Floodplain Management Branch Manager
Flood Control District of Maricopa County

Brian Cosson, CFM, State NFIP Coordinator
Arizona Department of Water Resources

Michael Johnson, Ph.D., P.E., Assistant Director of Surface Water Division
Arizona Department of Water Resources

Patricia Rippe, Natural Hazards Program Specialist, FEMA Region IX
U.S. Department of Homeland Security

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FEDERAL EMERGENCY MANAGEMENT AGENCY

# National Flood Insurance Program

## COMMUNITY ASSISTANCE VISIT REPORT

SECTION I

| NAME OF COMMUNITY: | STATE: | NFIP ID NUMBER: | COUNTY: |
|---|---|---|---|
| City of Avondale | Arizona | 040038 | Maricopa |
| **VISIT CONDUCTED BY:** Steve Dolan, CFM | **AGENCY:** Arizona Department of Water Resources | | **DATE OF VISIT:** September 21, 2009 |

SECTION II

| NAME OF LOCAL OFFICIAL: | TELEPHONE NUMBER: |
|---|---|
| Sue McDermott, P.E. | 623-333-4211 |
| **TITLE:** City Engineer/Floodplain Administrator | **ADDRESS:** 11465 E. Civic Center Drive, Avondale, AZ 85323 |

*SECTION III – FINDINGS*

*PART A*

| | SERIOUS | MINOR | NONE |
|---|---|---|---|
| 1. Are there problems with the community's floodplain management regulations? | X | | |
| 2. Are there problems with the community's administrative and enforcement procedures? | X | | |
| 3. Are there engineering or other problems with the maps or flood insurance study? | | | X |
| 4. Are there any other problems in the community's floodplain management program? | | X | |
| 5. Are there any problems with the Biennial Report data? | | | X |
| 6. Are there any other programmatic issues or problems identified? | | X | |

7. Have structures been identified as being in violation? (Check appropriate category below)

___No violations have been identified.
_X_A potential violation or violations have been identified.
___Actions are being taken on the part of the community to remedy the violation(s) identified during the CAV.

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# *CITY OF AVONDALE*

## *PART B –NARRATIVE*

### *Background*

The City of Avondale is located in central Maricopa County to the west of the Phoenix urban area. Incorporated in 1946, the City is approximately 54.8 square miles in size and is at 968 feet in elevation. According to the 2005 census estimate, the City has a population of 69,356 residents.

The City entered the regular program phase of the NFIP on June 15, 1979. According to the NFIP Policy Statistics dated May 31, 2008, the City has 48 flood insurance policies in effect for a total coverage of $11,640,100. The average annual flood insurance premium for each policyholder is $509. According to the FEMA Community Information System (CIS), there have been four flood insurance claims or paid losses since the City joined the NFIP.

The last CAV on June 17, 2002 by the Arizona Division of Emergency Management (ADEM) identified minor problems with the maps, biennial report, and record keeping for compliance. The 2002 CAV did not include a review of the City's 2001 floodplain regulations and did not include a field tour of recent buildings constructed in the Special Flood Hazard Area to determine compliance or potential violations.

The City has FEMA floodplains and floodways along the Agua Fria River, a tributary to the Gila River. The Agua Fria River is usually dry because flows are regulated by the Lake Pleasant Dam and reservoir. Most of the City is adjacent to the river with levees to provide some degree of protection from flooding. The floodway is contained within the levees that end to the south where overflow from the river is possible. The city is affected by FEMA Zones AE with Floodway, and Zone A or Zone AH ponding areas behind the levees or the Roosevelt Irrigation District Canal. In the September 30, 2005 Flood Insurance Study is Figure 6. a photograph of Agua Fria River Flooding at U.S. Highway 80 and the Southern Pacific Railroad on December 22, 1965. The railroad bridge over the river still exists near the City.

1) <u>Floodplain Management Regulations</u>

The ADWR community file for the City contains several stand alone floodplain ordinances. It appears that the City has always done their own floodplain management and is not county-dependent to the Flood Control District (District) of Maricopa County. However, the City and the District coordinate for flood control projects and large developments that affect the designated Special Flood Hazard Areas. Most of the City staff at the CAV meeting is new so they need a good understanding of the regulations and procedures for future NFIP compliance.

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This section is a review of the floodplain management regulations to meet the provisions of the National Flood Insurance Program (NFIP) and the Arizona Revised Statutes. The City's floodplain regulations are found in Ordinance No. 791-01 that was passed and adopted by the Mayor and Council on June 18, 2001. The document has deficiencies that must be updated to remain in full compliance with Index 44 of the Code of Federal Regulations (44 CFR) and the Arizona Revised Statues (A.R.S.) 48-3601 through 3627. To correct the deficiencies refer to the State of Arizona Floodplain Management Model Ordinance (for Non-Colorado River Communities). The deficiencies are listed by state model section numbers with the City's ordinance numbers also listed. At this time the deficiencies include, but are not limited to:

Section 1.0 Statutory Authorization language is missing; Methods of Reducing Flood Losses (8-18) is missing introductory language "*These regulations take precedence over any less restrictive conflicting local laws, ordinances and codes.*"

Section 2.0 Definitions 8-19 that need to be amended:
Accessory Structure – *need to cite model language*
Development – *cites 'located within the area of special flood hazard.'*
Flood Insurance Study – (FIS), *change reference to Federal Insurance Administration to FEMA*
Floodway – *"the channel of a river" vs. "the area of a river" (model ord language)*
Manufactured Home – *amend the last part of this definition ("For floodplain management purposes...) Also, need to add statement "The term manufacture home does not include a recreational vehicle."*
Special Flood Hazard Area – *expand: "An area in the floodplain subject to a 1% or greater chance of flooding in any given year."*
Start of Construction – *add "and other proposed new development"*

Definitions to update per the state model ordinance language:
Alluvial fan flooding
Area of shallow flooding – *delete "VO zone"*
Area of special flood hazard – *need to add in AE zone*
Existing manufactured home park or subdivision – *need to insert date of City's first FIRM*
Flood Insurance Study (FIS) – *replace FIA with FEMA*
Floodplain administrator – *is it still "the City Manager"? Should include "and enforce"*
Floodplain management
Governing Body
Remedy a violation – *include "State"*
Repetitive Loss Structure – *not sure if this definition is correct and current*
Water surface elevation – *should cite NAVD 1988*

Add the following definitions: Base Flood Elevation, Manufactured Home Park or Subdivision, Market Value, and Mean Sea Level.

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Delete the following definitions: Flood Hazard Boundary Map, Mudslide area management / Mudslide prone area

Section 3.0 General Provisions.

Basis for Establishing the Areas of Special Flood Hazard 8-21

change FIA to FEMA, update name and date of FIS and FIRMs ("Maricopa County, AZ and Incorporated Areas", September 30, 2005); must cite date

Interpretation 8-24

Verify if this language still applies "or the city charter."

Disclaimer of Liability 8-25

deleted "the State of Arizona"

Statutory Exemptions 8-26

(b)(5) deleted "under ARS Title 48, Chapter 21, Article 1"

Unlawful Acts 8-29

Refer to the state model ordinance language

Abatement of Violations 8-28

(4) change FIA to FEMA

Section 4.0 Administration (Division 2)

Recommend labeling the sections similar to the state model ordinance:

Duties and Responsibilities of the Floodplain Administrator

Permit Review 8-32 (b)(1)(d)

"...will NOT increase the water surface elevation of the base flood more than one foot at any point."

Substantial Improvement & Substantial Damage Procedures

refer to state model ordinance for this missing section

Use of Other Base Flood Data 8-32 (b)(2)

change "section 8-33" to "Division 3"

Obtain and Maintain for Public Inspection 8-32 (b)(3)

refer to state model ordinance language

Notification of Other Entries 8-32 (b)(4)

change FIA to FEMA,

add language about submitting new technical data about changes to base flood elevation to FEMA within 6 months

Biennial Report - section is missing

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Section 5.0 Provisions for Flood Hazard Reduction (Division 3)
Standards of Construction
Anchoring 8-33 (a)
missing language about hydrodynamic and hydrostatic loads, effects of buoyancy

Elevation and Floodproofing 8-33 (c)
lots missing, confusing and hard to find info. Need to adopt language from model

Additional Development Standards, Including Subdivisions 8-36
use language from model ordinance

Standards for Manufactured Homes 8-37
use language from model ordinance

Floodways 8-40
does not cite certification by a PE
8-40 (a)(2)
8-40 (b) (4) Zone E

Section 6.0 Variance Procedure (Division 4)
Recommend following the state model for organization in this section:

Appeal Board 8-41, 8-42 & 8-43
8-43 (g) refer to state model language
8-42 (c) change "appeal actions" to "variance actions", add "including justification for their issuance"

Conditions for Variances 8-42 & 8-43
8-42 (a): delete "providing items (1) through (11) in section 8-41(d) have been fully considered" and replace with "providing items in Divisions 2 and 3 have been fully considered."
8-43 (c) missing language

One purpose of the Community Assistance Visit (CAV) is to revisit the floodplain management regulations for any updates. While the 2001 floodplain regulations follow an early version of the state model ordinance, corrections and updates are required to bring the ordinance into compliance with current state and federal floodplain regulations. The City is encouraged to adopt the new state model ordinance by adding community-specific information.

2) Administrative and Enforcement Procedures:

The current administrative and enforcement procedures were discussed during the September 21, 2009 CAV meeting attended by several City staff. At the time of the CAV meeting, the City Engineer who is the designated Floodplain Administrator (per the 2001 floodplain regulations 8-32) had been with the City just over a year. Two other City staff

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had been there 2-3 years and a City Engineering Project Manager who assisted ADWR with the floodplain field tour had been there nine years. Although City staff was not very experienced in floodplain management, they understood the purpose of the NFIP. Since the City is not county-dependent to the District, no District representative attended the CAV meeting. The City and the District coordinate for flood control projects and large developments that affect the designated Special Flood Hazard Areas.

During the 2009 CAV meeting, ADWR provided the following documents to improve compliance:

1) 3-page Final Inspection/Compliance Checklist;
2) 2-page Determination of Substantial Improvement or Substantial Damage;
3) 1-page Owner Improvement/Repair Affidavit.

As a requirement to close the CAV, written coordination Standard Operating Procedures (SOP) between City departments must be completed to clarify the responsibilities to ensure compliance of development within identified Special Flood Hazard Areas.

The 2001 City ordinance 8-31 requires a development permit be obtained before construction or development, including placement of manufactured homes, begins within any area of special flood hazard. And 2001 City ordinance 8-33 (C1) states new construction and substantial improvement of any structure shall have the lowest floor ...elevated to or above the regulatory flood elevation and upon completion of the structure the elevation ... shall be certified. The City Building Department was requiring a certificate of elevation, but not the Finished Construction FEMA Elevation Certificate.

Permitting:
Permits are required to ensure that proposed development projects meet the requirements in the City's floodplain regulations. The NFIP requirements are keyed to "development" in the floodplain. Development means "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials."

The permitting process for single lots and larger developments proposed within the Special Flood Hazard Area were discussed. During the past five years, City staff estimated they processed 1-2 applications per year for single lot development and one large development per year.

City staff still uses the paper Digital Flood Insurance Rate Maps (DFIRM) to "red flag" when a building is proposed within a Special Flood Hazard Area. The City GIS system does not currently have a DFIRM layer for the county-wide maps, but the District can assist.

Applicants for both single lot and large developments attend a pre-application meeting when they are informed their proposed building is within a FEMA 100-year floodplain

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called Special Flood Hazard Area (SFHA). While the applicant may be informed, it was not clear if the City provides anything in writing about the SFHA flood zone. A drainage report is required for both single lot and large developments proposed within the SFHA.

For a single residential lot, the applicant is told to take measures to get out of the floodplain or they may have to buy expensive flood insurance. During the CAV meeting, ADWR provided and explained the MT-EZ form for a Letter of Map Amendment (LOMA) that a homeowner can process if the proposed building site is on high ground.

The City was in the process of getting new permitting software so the permit application package gets routed to the appropriate department. The new permitting software could show a "red flag" when a building is proposed within a Special Flood Hazard Area.

The coordination SOP(s) should initially identify or flag developments that are proposed in the FEMA floodplain, determine who is responsible for what floodplain regulation review, specify the various floodplain inspections, and require a Finished Construction FEMA Elevation Certificate prior to issuing the building Certificate of Occupancy.

The City's single lot development process is further explained in the record-keeping section of the CAV report. None of the current staff had seen a FEMA Elevation Certificate used to prove compliance.

Large developments:
Most of the City staff at the CAV meeting was familiar with large developments proposed within Special Flood Hazard Areas. The City Engineer who is the designated Floodplain Administrator asked if a permit or FEMA Elevation Certificate was required for large developments in a floodplain? The City currently uses this permitting process:

1) Preapplication meeting used to inform the applicant they are within a Special Flood Hazard Area and to determine a method of removal from the floodplain. Removal examples mentioned were levee protection or elevate on fill.

2) Building proposal requires a preliminary plat and a drainage report that includes the method of floodplain removal from the Special Flood Hazard Area.

3) During the plat and report review by City Development Services Plan Review Engineer, the applicant is told to elevate buildings one-foot above the Base Flood Elevation, which is the Regulatory Flood Elevation (RFE) requirement in Arizona.

4) To verify the method of floodplain removal or compliance of the building to the RFE, the City requires a design engineer stamp. Note: Photo numbers 4 and 5 have as-built stamps for building elevation compliance, but there are some datum questions.

The City may require the applicant for a large development proposed within a Special Flood Hazard Area to determine a method of removal from the floodplain, but they do not specifically require a Conditional Letter of Map Revision (CLOMR) or Letter of Map

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Revision (LOMR). City staff was informed that without some type of FEMA approved Letter of Map Change (LOMC), a large development is technically still in the Special Flood Hazard Area.

The City Engineering Project Manager, who helped with the floodplain field tour photographs, remembered a handful of CLOMR/LOMRs coordinated with the District. Apparently there is no written process for this LOMC coordination with the District.

The ADWR community file contains three approved LOMCs for the City that were discussed during the CAV meeting:

- LOMR-F dated June 29, 2006 Case No. 06-09-BA01A (City not sure of location)
- LOMR-F dated October 16, 2008 Case No. 08-09-1562A (see Photo number 5)
- LOMR-APP dated July 10, 2009 Case No, 08-09-0655P (Roy's Place subdivision channelization and fill)

Large developments proposed within the Special Flood Hazard Area must also follow the City's subdivision regulations which are being updated by Development Services. City staff does not recall a CLOMR/LOMR requirement in the subdivision regulations. The City also requires detention and retention, but does not have erosion hazard setback requirements.

Manufactured Homes (MH):
The Arizona Revised Statutes requires that the bottom of the structural frame and attached utilities be elevated at or above the regulatory flood elevation. For more information about manufactured home installations please refer to FEMA Publication 85 "Manufactured Home Installation in Flood Hazard Areas."

During the floodplain field tour, few MH structures were observed and none were photographed. City staff explained there are no zoning restrictions for MH structures and they check for the type of structure and the materials. Their example was a commercial pre-fabricated modular building.

Although the city is not officially county-dependent, all residential and commercial MH structures get the frame elevation requirement from the District, according to City staff. Note that the 2001 City ordinance 8-31 requires a development permit be obtained before construction or development, including placement of manufactured homes, begins within any area of special flood hazard.

If a large Manufactured Home subdivision were proposed with the Special Flood Hazard Area, then the City would require them to follow the large development process of a pre-application meeting, floodplain removal method, plat and drainage report, buildings or MH frame elevated to the RFE, and as-built engineer stamp.

Substantial Improvement and Substantial Damage:
The purpose of the substantial improvement and substantial damage regulations is to ensure that lives and property in identified Special Flood Hazard Areas will be better

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protected from flooding. This is accomplished by bringing old or existing, non-conforming structures into compliance with current local, state, and federal floodplain management regulations.

If a structure that is located in a Special Flood Hazard Area is either damaged or improved, the City must determine if it is substantial (> 50% of market value). Not many older buildings were observed in the Special Flood Hazard Area, so the substantial improvement potential is low for old pre-FIRM buildings.

The City is encouraged to adopt the 2-page Determination of Substantial Improvement or Substantial Damage form and the 1-page Owner Improvement/Repair Affidavit that were provided to during the CAV meeting. The affidavit is one way to prevent piecemeal improvements that together can exceed the 50% rule as cumulative substantial improvements.

Cumulative substantial improvement should be considered by the City. There are existing structures in the Special Flood Hazard Area that could be improved in phases where the value of each improvement is less than the substantial improvement or 50% rule, so substantial improvement floodplain requirements are not enforced. As a result the existing structure and phased improvements remain floodprone indefinitely. To enforce cumulative substantial improvement, some Arizona communities keep track of improvements over several years or the life of the structure and when the total equals or exceeds 50% of the market value of the non-conforming structure, it must be brought into compliance as if it were new construction. Cumulative tracking is not required, but is recommended by FEMA to track improvements so older structures become floodplain compliant. Cumulative tracking is also required for structures with flood insurance policies (48 current policies) to be eligible for Increased Cost of Construction coverage or payments up to $30,000.

The City's ordinance 8-33 (C1) states new construction and substantial improvement of any structure shall have the lowest floor ...elevated to or above the regulatory flood elevation and upon completion of the structure the elevation ... shall be certified. The current City staff do not remember a substantial improvement application.

Other Development:

There was discussion about the City's process to review and approve other man-made development in all floodplains including the identified Special Flood Hazard Areas. Development includes fencing, dredging, filling, grading, paving, excavation, and drilling operations.

Fences less than or equal to six feet do not require a permit. If a block wall fence is proposed in a sloped area, the City requires blocks turned sideways or weep holes to allow the natural flow of drainage.

City staff remembers a couple drainage complaints related to floodplain development and one was for subdivision block walls installed without weep holes so residents complained

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about back yard flooding. The City has a general complaint phone line so complaints are logged-in, then distributed to the appropriate staff.

There are two sand and gravel operations in the City who has not heard of problems from the operations within the Special Flood Hazard Area.

The City Development Services Plan Review engineer attends meetings for new roadways that could potentially impact a Special Flood Hazard Area.

Inspections:
The most effective way to ensure compliance is to inspect development frequently during construction. This is particularly important in the early phases of work on a structure where errors in location or elevation of the lowest floor can occur but the cost to bring the structure into compliance is less. A strong inspection program also puts developers, builders and property owners on notice that the community will insist that projects are completed and built in accordance with local, state and federal floodplain regulations.

It is recommended that a series of three inspections occur for every project, especially any project that involves construction of a building. The first inspection should occur before ground is broken to determine that the site as identified on the proposed plans is consistent with actual ground conditions. The second inspection should occur before the installation of the lowest floor is installed to ensure it is at the height stipulated in the permit application. The final inspection should occur after grading is completed and utilities are installed and a finished construction FEMA Elevation Certificate or floodproofing certificate has been submitted and approved.

Knowledge about floodplain management requirements and coordination between the City departments and the District are critical to ensuring new construction is compliant with local, state, and federal floodplain management regulations. During the CAV meeting, ADWR provided to the City a 3-page Final Inspection/Compliance Checklist.

There were no City inspectors at the CAV meeting. City staff in attendance said the inspectors verify the floor elevations meet the construction documents (building permit, preliminary plat, drainage report, etc.) that are reviewed during the permit process. The same inspector does single lot and large developments.

Since there were no MH structures observed or photographed during the floodplain field tour, the frame and skirting inspection was explained. City staff were not aware that solid skirting that obstructs flow requires permanent flood openings. For example, solid block skirting would require openings similar to the weep holes in block wall fencing.

For large development compliance of buildings to the RFE, the City requires a design engineer stamp. The City requires as-built plans and subdivision lot "pad certs" to be sealed by a Registered Land Surveyor (RLS), but it is not clear if the City inspectors perform the tasks and apply their RLS stamp.

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Record Keeping:
Record keeping of building permits, floodplain development permits, Finished Construction FEMA Elevation Certificates, or other permit records is important to prove NFIP compliance. Keeping these records is a requirement to participate in the NFIP and there is no statute of limitations as to how long they should be kept.

The permitting and inspection procedures must be coordinated by the City and documented in Standard Operating Procedures (SOP) to meet the floodplain regulations and to guarantee the return of a certificate of elevation or Finished Construction Elevation Certificate. The procedures should include who checks the accuracy and completeness of the certificate of elevation or Elevation Certificate. The City must obtain and maintain these records indefinitely.

During the office CAV meeting, some permitting documents were discussed for the floodplain assessment photographs. After the CAV meeting, some permitting documents were provided (see photo numbers 4 and 6) including as-built certification of elevation, but no Finished Construction FEMA Elevation Certificates. The Elevation Certificate Instructions were shown to staff and none of them had ever seen an Elevation Certificate. Perhaps this is due to the City staff involved in large developments, but not single lot developments or building permits.

The FEMA Elevation Certificate or other as-built certificate of elevation is required to prove NFIP compliance. The permitting and inspection SOP should include the return of the FEMA Elevation Certificate or other as-built certificate of elevation before issuing the Certificate of Occupancy.

Variances:
The variance procedures are in the 2001 City ordinance Section 19 section 8-43. The City staff had no examples of floodplain variances.

Floodplain Assessment: During the field tour on June 25, 2009 photographs were taken of development in the City's identified Special Flood Hazard Areas. Attached are the floodplain assessment forms that request compliance documentation (building permit, Finished Construction FEMA Elevation Certificate, Certificate of Elevation, LOMR, etc.) for the six structures that are listed by the Photo Numbers:

1. 5909 127th Avenue (residential building elevated on fill) Zone AE – Resolved, no action needed because located within unincorporated Maricopa County.
2. 5916 127th Avenue (residential building elevated on fill) Zone AE – Resolved, no action needed because located within unincorporated Maricopa County.
3. 13037 Hidalgo Avenue (residential building elevated on fill) Zone AE – Resolved, no action needed because located within unincorporated Maricopa County.
4. 4239 S. Litchfield Road (Chas Roberts commercial building) Zone AE (BFE = 934 at NGVD 1929) – **Unresolved.** Confirm if the As-Built certification was done for the Finished Floor (FF 934.60) or provide a complete, finished

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construction FEMA Elevation Certificate for the non-residential building and the lowest elevation of machinery or equipment servicing the building.

5. 3400 N. Dysart Road (Coronado Professional Plaza) Zone AH – Resolved, no action needed because buildings A – H removed by a LOMR-F date: October 16, 2008 case no. 08-09-1562A.
6. 13015 Rancho Santa Fe Boulevard (Rio Santa Fe Apartments) Zone AH (EL = 983 at NGVD 1929) – **Unresolved.** Confirm the datum used to ensure the Finished Floor for the 14 buildings is at or above the Regulatory Flood Elevation (RFE = BFE = 1-foot). Determine the lowest elevation of machinery or equipment servicing the buildings.

During the floodplain field tour assessment, photo numbers 1. – 3. were believed to be annexed into the City who provides utility service to the residential buildings. Photo numbers 4. and 6. had as-built plans or certification of elevations, but no Finished Construction FEMA Elevation Certificates to prove compliance of the building lowest floors and machinery or equipment servicing the buildings.

3) Floodplain Maps and Flood Insurance Study:

The initial or pre-FIRM date for the City is June 15, 1979. The field tour photographs were done for the City using the new Digital Flood Insurance Rate Maps (DFIRM) and Flood Insurance Study (FIS) for the Maricopa County-wide maps with an effective date of September 30, 2005. The 2005 FIS (17 Volumes) is titled *Maricopa County, Arizona and Incorporated Areas* so it is also county-wide. For the City there are now seven 2005 DFIRM panels printed that show Special Flood Hazard Area Zone AE with Floodway, Zone A and Zone AH.

4) Floodplain Management Program:

The City does their own floodplain management and coordinates with the District for flood control projects or large developments that may impact a Special Flood Hazard Area. Most of the City staff at the CAV meeting is new to floodplain management, but they have a general understanding of the NFIP. ADWR can provide technical assistance to both the City and the District to improve floodplain knowledge and compliance. ADWR presented the FEMA Elevation Certificate training at the District on October 27 and December 18, 2009. There will be other training opportunities for City staff involved in floodplain management during year 2010 including a Substantial Damage/Substantial Improvement workshop. Visit ADWR's website for more information.

Training:
Through its courses and programs, FEMA's Emergency Management Institute (EMI) in Emmitsburg, Maryland serves as the national focal point for the development and delivery of emergency management training to enhance the capabilities of federal, state, local, and tribal government officials, volunteer organizations, and the public and private sectors to minimize the impact of disasters on the American public. EMI curricula are structured to meet the needs of this diverse audience with an emphasis on how the

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various elements work together in emergencies to save lives and protect property. Mitigation courses offered include:

E273 – Managing Floodplain Development through the National Flood Insurance Program
E278 – National Flood Insurance Program/Community Rating System
E194 – Advanced Floodplain Management Concepts
E190 - Intro to ArcGIS for HAZUS Mitigation Users
E296 – HAZUS Multi-Hazard/DMA 2000 Risk Assessment
E313 – Basic HAZUS Multi-Hazards
E360 – Mitigation Grants

These courses are provided at no cost to local community officials. FEMA also reimburses community officials for airfare, lodging and airport transportation costs. More information is available on the FEMA web site at: http://training.fema.gov/EMIWeb/EMICourses

Local workshops and training are also developed and presented by the Arizona Department of Water Resources. A list of courses is available at the site below: http://www.azwater.gov

5) Biennial Report Data:

The most recent biennial report was received by FEMA in 2003. According to the report, the community issued no permits the previous year in a Special Flood Hazard Area and granted no variances. None of the current City staff remember seeing a Biennial Report. According to the FEMA Community Information System (CIS) there was a gap in the City's biennial reports from 1995 – 2003.

6) Programmatic Issues:

The last CAV on June 17, 2002 by the Arizona Division of Emergency Management (ADEM) identified minor problems with the maps regarding the upcoming map modernization efforts and the need for the community to identify map maintenance requirements. At the 2002 CAV by ADEM, no biennial report could be located. The 2002 CAV report programmatic issue was that City officials were unaware of specific record keeping requirement of the NFIP associated with substantial improvements/substantial damage and compliance. The 2002 CAV report did not review the City's Drainage and Flood Control Ordinance No. 791-01 and did not include a floodplain field tour assessment of recent buildings in Special Flood Hazard Areas.

The City Engineering staff asked if ADWR had information about the three levees owned and maintained by Maricopa County that protect most of the City from flooding. The Provisionally Accredited Levee (PAL) process was briefly discussed with a recommendation for the City to contact the District for levee and PAL information.

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City Engineering also asked if the proposed 10-mile long levee of the Tres Rios Project by the Army Corps of Engineers would be shown on the next DFIRMs. The Tres Rios Project is south of the City at the confluence of the Agua Fria, Salt and Gila Rivers.

**PART C - HAZARD MITIGATION GRANT PROGRAM (HMGP):** The City can contact the Arizona Division of Emergency Management (ADEM) about the application process for FEMA grants: Hazard Mitigation Grant Program (HMGP), Pre-Disaster Mitigation (PDM) and Flood Mitigation Assistance (FMA). The ADEM Mitigation brochures, overview of the application process, and contact information were provided at the CAV meeting. Angela Kucherenko, FEMA Region IX, is also familiar with the FEMA grant process. Although the City has a low number of flood insurance policies and only four claims,, staff was very interested in the FEMA grants. After the CAV meeting, ADWR provided more information about the FEMA grants and the ADEM contacts.

**PART D - EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT:** N/A

**PART E - OTHER FINDINGS:** FEMA recommends that Critical Facilities (a structure that produces or stores hazardous materials; hospitals, nursing and retirement homes; police and fire stations, emergency operations centers, and facilities needed for flood response; public and private utilities) be located outside the Special Flood Hazard Area or FEMA 100-year floodplain, and elevated above or protected from the 500-year floodplain. Critical facilities were briefly discussed during the CAV meeting. The City's Wastewater Treatment Facility is located to the south in the Zone A overbank flow of the Agua Fria River near the Gila River confluence. Due to gravity flow, it is common for wastewater facilities to be in the floodplain where 500-year flood protection is recommended.

**PART F - COMMUNITY ACTION NEEDED to close the CAV by providing documents, explanation, or status by February 5, 2010:**

1. Update the deficiencies to the floodplain regulations in the City's Ordinance No. 791-01 that was adopted on June 18, 2001. Ensure that the deficiencies are corrected or updated per the State of Arizona Floodplain Management Ordinance (for Non-Colorado River communities). The deficiencies can be corrected or the City can adopt the state model ordinance by adding community-specific information.

2. Provide written Standard Operating Procedures (SOP) of the floodplain management responsibilities to ensure compliance of development within identified Special Flood Hazard Areas. Although the City is not county-dependent to Flood Control District of Maricopa County (District), there is some coordination about flood control projects, large developments, Letter of Map Change (LOMC), and the Manufactured Home frame elevation. A one page City and District coordination SOP is acceptable for each of the following:

- Small single-lot developments (include Manufactured Homes);

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- Large developments (clarify the requirement for a CLOMR/LOMR and who reviews the applications that may be part of the subdivision regulations);
- Commercial or large non-residential developments;
- Substantial Damage or Substantial Improvement (consider Cumulative Substantial Improvement);
- Other man-made development (fencing, dredging, filling, grading, excavation, etc.) in floodplains;
- Variance requests.

The coordination SOPs should provide details about the overall floodplain permitting, inspection, and record keeping processes to guarantee the return of a certificate of elevation or a Finished Construction FEMA Elevation Certificate before the Certificate of Occupancy is issued. The SOP should include who checks the accuracy and completeness of the certificate of elevation or Elevation Certificates that the City is required to keep indefinitely in their permit records.

Attachments – Floodplain Assessment photo numbers 1. – 6.

City of Avondale – September 21, 2009 CAV Meeting Participants:

Sue McDermott, P.E., City Engineer/Floodplain Administrator

Chris Hamilton, City Engineering Project Manager

Charles Andrews, City Engineering

Kathy Mathiesen, City Development Services Plan Review Engineer
City of Avondale

Steve Dolan, CFM, Community Assistance Program Coordinator
Arizona Department of Water Resources

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**City of Avondale**
**CAV-2009**
**Floodplain Assessment**

| | |
|---|---|
| **Date of Assessment:** | June 25, 2009 |
| **Photo Number:** | 1 |

| | |
|---|---|
| **Address:** | 5909 127th Avenue at Southern Avenue (confirm City annexation date) |
| **Description:** | Residential Building |
| **FIRM Panel:** | 04013C2090H Map Revised September 30, 2005 |
| **Flood Zone:** | Zone AE (BFE = 930) Flooding Source: Gila River north overbank flow |
| **Comments:** | Residential building with 3-car garage elevated 2-3 feet on a fill pad. Machinery or equipment servicing the building not visible. (Appears to be new Elevation Certificate Building Diagram 1B raised-slab-on-stem-wall-with-fill.) |
| **Action Needed:** | None. Within unincorporated Maricopa County. |

**City of Avondale**
**CAV-2009**
**Floodplain Assessment**

| **Date of Assessment:** | June 25, 2009 |
|---|---|

**Photo Number:** 2

| | |
|---|---|
| **Address:** | 5916 127th Avenue at Southern Avenue (confirm City Annexation date) |
| **Description:** | Residential Building |
| **FIRM Panel:** | 04013C2090H Map Revised September 30, 2005 |
| **Flood Zone:** | Zone AE (BFE = 930) Flooding Source: Gila River north overbank flow |
| **Comments:** | Residential building with 2-car garage elevated 2-3 feet on a fill pad. Machinery or equipment servicing the building (air conditioner) on the roof. (Appears to be new Elevation Certificate Building Diagram 1B raised-slab-on-stem-wall-with-fill.) |
| **Action Needed:** | None. Within unincorporated Maricopa County. |

**City of Avondale**
**CAV-2009**
**Floodplain Assessment**

| | |
|---|---|
| **Date of Assessment:** | June 25, 2009 |

**Photo Number:** 3

| | |
|---|---|
| **Address:** | 13037 Hidalgo Avenue east of Dysart Rd. (confirm City Annexation date) |
| **Description:** | Residential Building |
| **FIRM Panel:** | 04013C2090H Map Revised September 30, 2005 |
| **Flood Zone:** | Zone AE (BFE = 928+) Flooding Source: Gila River north overbank flow |
| **Comments:** | Residential building with garage elevated 2-3 feet on a protected fill pad. Machinery or equipment servicing the building not visible. (Appears to be new Elevation Certificate Building Diagram 1B raised-slab-on-stem-wall-with-fill.) |
| **Action Needed:** | None. Within unincorporated Maricopa County. |

March 28 05
Finaled

# City of Avondale
# CAV-2009
# Floodplain Assessment

| | |
|---|---|
| **Date of Assessment:** | June 25, 2009 |

**Photo Number:** 4

| | |
|---|---|
| **Address:** | 4239 S. Litchfield Road Parcel # 500-59-016H |
| **Description:** | Non-residential, Commercial Building (Chas Roberts) |
| **FIRM Panel:** | 04013C2090H Map Revised September 30, 2005 |
| **Flood Zone:** | Zone AE (BFE = 934 at NGVD 1929) Flooding Source: Agua Fria River |
| **Comments:** | Non-residential, commercial (office and warehouse) metal building that is elevated 2-3 feet above the grade behind the building. Machinery or equipment servicing the building not visible. City Staff provided: Building Permit # BLD04-21617 issued 20040729; Improvement Plan sheets C1 and C2 of 3 labeling Benchmark Elevation = 964.64 (FEMA Datum), 100 yr BFE = 933.0, and FF 934.60 perhaps not field corrected like PAD. As-Built Certification by RLS sealed 3-24-05. |
| **Action Needed:** | **Unresolved.** Confirm if the As-Built certification was done for the Finished Floor (FF 934.60) or provide a copy of a complete, finished construction FEMA Elevation Certificate (EC) for the non-residential building and the lowest elevation of machinery or equipment servicing the building. City Staff said the EC is kept for one year and may be scanned as a pdf. |

**City of Avondale**
**CAV-2009**
**Floodplain Assessment**

**Date of Assessment:** June 25, 2009

**Photo Number:** 5

| | |
|---|---|
| **Address:** | 3400 N. Dysart Road at W. Osborn Road |
| **Description:** | Non-residential Buildings (Coronado Professional Plaza) |
| **FIRM Panel:** | 04013C2080J Map Revised September 30, 2005 |
| **Flood Zone:** | Zone AH (EL = 1013) Flood Source: Ponding at Roosevelt Irrigation District Canal |
| **Comments:** | Several non-residential, commercial buildings that do not appear to be elevated. Machinery or equipment servicing the various buildings not usually visible. |
| **Action Needed:** | None. Buildings A - H removed from the Special Flood Hazard Area by a Letter of Map Revision Based on Fill (LOMR-F), Date: October 16, 2008, Case No.: 08-09-1562A. |

City of Avondale
CAV-2009
Floodplain Assessment

**Date of Assessment:** June 25, 2009

**Photo Number:** 6

| | |
|---|---|
| **Address:** | 13015 Rancho Santa Fe Boulevard Parcel # 500-02-12D |
| **Description:** | Non-residentialBuildings (Rio Santa Fe Apartments) |
| **FIRM Panel:** | 04013C2080J Map Revised September 30, 2005 |
| **Flood Zone:** | Zone AH (EL = 983 at NGVD 1929) Flood Source: Ponding at Agua Fria River levee |
| **Comments:** | Non-residential, commercial buildings that do not appear to be elevated (buildings in back appear lower). Machinery or equipment servicing the apartment buildings not visible. There are 14 buildings visible on the DFIRM aerial photography (dated December 2000 - December 2002). City Staff provided: Building Permit # BLD99-3664 issued 19990211; Grading and Drainage Plans sheets 1-6 of 8 with Benchmark (no datum) and Finished Floor As-Built Certification sealed October 1, 1999. |
| **Action Needed:** | **Unresolved.** Confirm the datum used to ensure the Finished Floor (F.F. elevation revised with "AB") is at or above the Regulatory Flood Elevation RFE = BFE + 1-foot (BFE = 983 at NGVD 1929). Determine the lowest elevation of machinery or equipment servicing the buildings. |

**RESOLUTION NO. 2898-510**

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 "CITY OF AVONDALE FLOODPLAIN MANAGEMENT CODE."

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

SECTION 1. That certain document entitled the "City of Avondale Floodplain Management Code" 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, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

**ORDINANCE NO. 1409-510**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE CITY CODE, CHAPTER 8, DRAINAGE AND FLOOD CONTROL, AND ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT KNOWN AS THE "CITY OF AVONDALE FLOODPLAIN MANAGEMENT CODE."

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

SECTION 1. That certain document known as the "City of Avondale Floodplain Management Code" (the "Floodplain Management Code"), three copies of which are on file in the office of the City Clerk, which document was made a public record by Resolution No. 2898-510 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 2. The City Code of the City of Avondale, Chapter 8, Drainage and Flood Control, Article I, In General, and Article II, Flood Hazard Areas, are hereby deleted, each in its entirety and replaced by inserting the Floodplain Management Code as a new Article I, Floodplain Management, Sections 8-1 through 8-30, reserving for future use Sections 8-31 through 8-43.

SECTION 3. The City Code of the City of Avondale, Chapter 8, Drainage and Flood Control, Article III, Stormwater Quality Protection, is hereby renumbered as Article II.

SECTION 4. Any person who violates any provision of the Floodplain Management Code shall be guilty of a class 2 misdemeanor. 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 City of Avondale Floodplain Management Code, 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 take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, May 3, 2010.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

# CITY OF AVONDALE

# FLOODPLAIN MANAGEMENT

# CODE

## Division 1. In General

### 8-1 Statutory authorization.

Pursuant to ARIZ. REV. STAT. § 48-3610, the City of Avondale (the "City") is authorized to adopt floodplain management regulations in conformance with ARIZ. REV. STAT. §§ 48-3603 and 48-3609 designed to promote the public health, safety and general welfare of its citizenry.

### 8-2 Findings of fact.

(a) The flood hazard areas of the City are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses may be caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage, also contribute to the flood loss.

### 8-3 Statement of purpose.

(a) It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;

(6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize blight areas caused by flooding;

(7) Ensure that potential buyers are notified that property is in an area of special flood hazard;

(8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions,

(9) Maintain eligibility for disaster relief.

**8-4 Methods of reducing flood losses.**

(a) These regulations take precedence over any less restrictive conflicting local laws, ordinances and codes.

(b) In order to accomplish its purposes, this ordinance includes methods and provisions to:

(1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

(4) Control filling, grading, dredging, and other development which may increase flood damage; and

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

**8-5 Definitions.**

(a) Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

*"A zone."* See "Special flood hazard area."

*"Accessory structure, low-cost and small."* A structure that is:

(1) Solely for the parking of no more than 2 cars; or limited storage (small, low cost sheds); and

(2) 120 square feet or smaller and has a value of $500.00 or less.

*"Accessory use."* A use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

*"Alluvial fan."* A geomorphologic feature characterized by a cone or fan-shaped deposit of boulders, gravel, and fine sediments that have been eroded from mountain slopes, transported by flood flows, and then deposited on the valley floors, and which is subject to flash flooding, high velocity flows, debris flows, erosion, sediment movement and deposition, and channel migration.

*"Apex."* A point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

*"Appeal."* A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

*"Area of shallow flooding."* A designated AO or AH Zone on the City's Flood Insurance Rate Map (the "FIRM") with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*"Area of special flood hazard."* The land in the floodplain within the City subject to a one percent or greater chance of flooding in any given year. These areas are designated as Zone A, AE, AO, AH, and A1-30 on the FIRM and other areas determined by the criteria adopted by the Director of the Arizona Department of Water Resources (the "ADWR"). See also "Special flood hazard area")

*"Base flood."* A flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").

*"Base flood elevation ("BFE")."* The elevation shown on the FIRM for Zones AE, AH, A1-30, VE and V1-V30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

*"Basement."* Any area of the building having its floor sub-grade - i.e., below ground level - on all sides.

*"Building."* See *"Structure."*

*"City Council."* The City Council of the City of Avondale.

*"Community."* Any state, area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

*"Development."* Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

*"Encroachment."* The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

*"Erosion."* The process of the gradual wearing away of landmasses. This peril is not, per se, covered under the Program.

*"Existing manufactured home park or subdivision."* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 30, 2005.

*"Expansion to an existing manufactured home park or subdivision."* The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

*"Flood or flooding."* A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of floodwaters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and/or (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

*"Flood Boundary and Floodway Map (FBFM)."* The official map on which the Federal Emergency Management Agency ("FEMA") or Federal Insurance Administration (the "FIA") has delineated both the areas of special flood hazards and the floodway.

*"Flood Insurance Rate Map ("FIRM")."* The official map on which FEMA or the FIA has delineated both the areas of special flood hazards and the risk premium zones applicable to the City.

*"Flood Insurance Study ("FIS")."* The official report provided by FEMA that includes flood profiles, Flood Insurance Rate Maps, Flood Boundary and Floodway Maps and the water surface elevation of the base flood.

*"Floodplain or flood-prone area."* Any land area susceptible to being inundated by water from any source. (See also *"Flood or flooding."*)

*"Floodplain Administrator."* The City Manager of the City, or authorized designee, who is hereby authorized to administer and enforce the provisions of this article.

*"Floodplain Board."* The City Council, at such times as they are engaged in the enforcement of this ordinance.

*"Floodplain management."* The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

*"Floodplain management regulations."* The ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other application of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

*"Floodproofing."* Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

*"Flood-related erosion."* The collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical level or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusually and unforeseeable event which results in flooding.

*"Flood-related erosion area or Flood-related erosion prone area."* A land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

*"Flood-related erosion area management."* The operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and floodplain management regulations.

*"Floodway."* The area of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. (Also referred to as *"Regulatory Floodway."*)

*"Floodway fringe."* That area of the floodplain on either side of the "Regulatory Floodway" where encroachment may be permitted.

*"Fraud and victimization."* As related to Section 8-30(e)(4) of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City Council will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the City for fifty to one-hundred years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the City as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

*"Functionally dependent use."* A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long-term storage or related manufacturing facilities.

*"Governing body."* The local governing unit, i.e. county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

*"Hardship."* As related to Sections 8-28(a) and 8-30(e)(2) of this ordinance, meaning the exceptional hardship that would result from a failure to grant the requested variance. The City Council requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

*"Highest adjacent grade."* The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*"Historic structure."* Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(A) By an approved state program as determined by the Secretary of the Interior or

(B) Directly by the Secretary of the Interior in states without approved programs.

*"Levee."* A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

*"Levee system."* A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

*"Lowest floor."* The lowest floor of the lowest enclosed area, including the basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

*"Manufactured home."* A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

*"Manufactured Home Park or Subdivision."* A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

*"Market value." "Market value"* shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed.

(1) The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry.

(2) The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the floodplain administrator, but shall not include economic or other forms of external obsolescence.

(3) Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

*"Mean sea level."* For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on the City's Flood Insurance Rate Map are referenced.

*"New construction."* For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City and includes any subsequent improvements to such structures.

*"New manufactured home park or subdivision."* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the City.

*"Obstruction."* Including, but not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

*"One-hundred-year flood or 100-year flood."* The flood having a one percent chance of being equaled or exceeded in any given year. See *"Base flood."*

*"Person."* An individual or the individual's agent, a firm, partnership, association or corporation, or an agent of the aforementioned groups, or this state or its agencies or political subdivisions.

*"Program deficiency."* A defect in the City's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations.

*"Public safety and nuisance."* As related to Section 8-30(e)(4) of this ordinance, means that the granting of a variance must not result in anything which is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

*"Recreational vehicle."* A vehicle which is:

(1) Built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projection;

(3) Designed to be self-propelled or permanently towable by a light-duty truck; and

(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*"Regulatory Flood Elevation (RFE)."* An elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be determined by the criteria developed by the Director of the Arizona Department of Water Resources for all other watercourses.

*"Regulatory floodway."* The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

*"Remedy a violation."* To bring the structure or other development into compliance with State or local floodplain management regulations, or if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or

otherwise deterring future similar violations, or reducing State or Federal financial exposure with regard to the structure or other development.

*"Riverine."* Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

*"Sheet flow area."* See *"Area of shallow flooding."*

*"Special flood hazard area (SFHA)."* An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on a Flood Boundary and Floodway Map or Flood Insurance Rate Map as Zone A, AO, A1-A30, AE, A99, or, AH.

*"Start of construction."* Includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*"Structure."* A walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

*"Substantial damage."* Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred; or flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. This is also known as "repetitive loss."

*"Substantial improvement."* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

*"Variance."* A grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

*"Violation."* The failure of a structure or other development to be fully compliant with the City's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

*"Water surface elevation."* The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

*"Watercourse."* A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**8-6 Lands to which this ordinance applies.**

This ordinance shall apply to all areas of special flood hazards within the corporate limits of the City.

**8-7 Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by FEMA in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for Maricopa County, Arizona dated September 30, 2005, with accompanying FIRMs and FBFMs dated September 30, 2005, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this ordinance. This FIS and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the Director of the Arizona Department of Water Resources. The FIS and FIRM panels are on file at the Avondale City Hall, Engineering Division, 11465 West Civic Center Drive, Avondale, Arizona 85323.

**8-8 Compliance.**

All development of land, construction of residential, commercial or industrial structures, or future development within delineated floodplain areas is subject to the terms of this ordinance and other applicable regulations.

**8-9 Abrogation and greater restrictions.**

This ordinance is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions; provided, however, that where this ordinance and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**8-10 Interpretation.**

In the interpretation and application of this ordinance, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the City; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.

**8-11 Disclaimer of liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City, any officer or employee thereof, the State of Arizona or FEMA, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**8-12 Statutory exceptions.**

(a) In accordance with ARIZ. REV. STAT. § 8-3609(H), unless expressly provided, this and any regulation adopted pursuant to this article do not affect:

(1) Existing legal uses of property or the right to continuation of such legal use. However, if a nonconforming use of land or a building or structure is discontinued for twelve months, or destroyed to the extent of 50 percent of its value as determined by a competent appraiser, any further use shall comply with this article and regulations of the City Council;

(2) Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or any regulations affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by 50 percent or more shall be either floodproofed or elevated to or above the regulatory flood elevation;

(3) Reasonable repair of structures constructed with the written authorization required by ARIZ. REV. STAT. § 48-3613; and

(4) Facilities constructed or installed pursuant to a Certificate of Environmental Compatibility issued pursuant to ARIZ. REV. STAT. Title 40, Chapter 2, Article 6.2.

(b) Before any authorized construction begins for the exceptions listed below, the responsible person must submit plans for the construction to the Floodplain Board for review and comment. In accordance with ARIZ. REV. STAT. § 48-3613, written authorization shall not be required, nor shall the Floodplain Board prohibit:

(1) The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse;

(2) The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by ARIZ. REV. STAT. Title 45, Chapter 6;

(3) Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the Floodplain Board pursuant to regulations adopted by the Floodplain Board under this article;

(4) Other construction upon determination by the Floodplain Board that written authorization is unnecessary;

(5) Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under ARIZ. REV. STAT. Title 48, Chapter 21, Article 1;

(6) The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision; and

(7) The construction and erection of poles, towers, foundations, support structures, guy wires and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

(c) In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this Article. If a person is found to be in violation of this Section, the court shall require the violator to either comply with this Section if authorized by the Floodplain Board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation including reasonable costs and attorney fees.

**8-13 Unlawful acts.**

(a) It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing the written authorization required by ARIZ. REV. STAT. § 48-3613.

(b) Where the watercourse is a delineated floodplain, it is unlawful to engage in any development affecting the flow of waters without securing written authorization required by ARIZ. REV. STAT. § 48-3613.

(c) Any person found guilty of violating any provision of this ordinance shall be guilty of a class 2 misdemeanor. Each day that a violation continues shall be a separate offense punishable in accordance with such classification and as otherwise described herein.

**8-14 Declaration of public nuisance statute.**

All development located or maintained within any area of special flood hazard after August 8, 1973, in violation of this ordinance, is a public nuisance per se and may be abated, prevented or restrained by action of this political subdivision.

**8-15 Abatement of violations.**

Within 30 days of discovery of a violation of this ordinance, the Floodplain Administrator shall submit a report to the Floodplain Board which shall include all information available to the Floodplain Administrator which is pertinent to said violation. Within 30 days of receipt of this report, the Floodplain Board shall either:

(a) Take any necessary action to effect the abatement of such violation; or

(b) Issue a variance to this ordinance in accordance with the provisions of Section 8-29 herein; or

(c) Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the Floodplain Administrator within 30 days of such order and the Floodplain Administrator shall submit an amended report to the Floodplain Board within 20 days. At the next regularly scheduled public meeting, the Floodplain Board shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Section 8-29 herein; or

(d) Submit to FEMA a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to Section 1316 of the National Flood Insurance Act of 1968 as amended.

**8-16 Severability.**

This ordinance and the various parts thereof are hereby declared to be severable. Should any Section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

**Division 2. Administration**

**8-17 Designation of the floodplain administrator.**

The City Manager, or authorized designee, is hereby appointed to administer, implement and enforce this ordinance by granting or denying development permits in accordance with its provisions.

**8-18 Duties and responsibilities of the floodplain administrator.**

Duties of the Floodplain Administrator shall include, but not be limited to:

(a) Permit Review. Review all development permits to determine that:

(1) The permit requirements of this ordinance have been satisfied;

(2) All other required state and federal permits have been obtained;

(3) The site is reasonably safe from flooding;

(4) The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this ordinance, "adversely affect" means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point.

(b) Substantial Improvement and Substantial Damage Procedures

(1) Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage.

(2) Assure procedures are coordinated with other departments and divisions and implemented by City staff.

(c) Use of Other Base Flood Data

(1) When base flood elevation data has not been provided in accordance with Section 8-7 the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer Division 3. Any such

information shall be consistent with the requirements of FEMA and the Director of the Arizona Department of Water Resources and shall be submitted to the Floodplain Board for adoption.

(d) Obtain and Maintain for Public Inspection

(1) The certified regulatory flood elevation required in Section 8-20(c)(1);

(2) The floodproofing certification required in Section 8-20(c)(2);

(3) The flood vent certification required in Section 8-20(c)(3);

(4) The elevation certification required for additional development standards, including subdivisions, in Section 8-23(a)(2);

(5) The floodway encroachment certification required in Section 8-27(a)(1);

(6) Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to FEMA.

(7) Obtain and maintain improvement calculations.

(e) Notification of Other Entities

(1) Whenever a watercourse is to be altered or relocated:

(2) Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the FEMA through appropriate notification means; and

(3) Assure that the flood carrying capacity of the altered or relocated portion of said watercourse be maintained.

(4) Base flood elevation and rate of flow due to physical alterations:

(5) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify FEMA of the changes by submitting technical or scientific data in accordance with Volume 44 Code of Federal Regulations section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(6) Within one hundred twenty (120) days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the

project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the Director of the Arizona Department of Water Resources.

(f) Corporate Boundary Changes

Notify FEMA and the Arizona Department of Water Resources of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

(g) Map Determinations

Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 8-29.

(h) Remedial Actions

Take actions on violations of this ordinance as required in Section 8-15 herein.

(i) Biennial Report

Complete and submit a Biennial Report to FEMA.

**8-19 Establishment of development permit.**

A Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in Section 8-7. Application for a Development Permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevation of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:

(a) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures;

(b) Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed;

(c) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 8-20(c)(2).

(d) Base flood elevation data for subdivision proposals or other development greater than 50 lots or 5 acres; and

(e) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

**Division 3. Provisions for Flood Hazard Reduction**

**8-20 Standards of construction.**

In all areas of special flood hazards the following standards are required:

(a) Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and

(2) All manufactured homes shall meet the anchoring standards of Section 8-24.

(b) Construction Materials and Methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage;

(3) All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and

(4) Within Zones AH or AO, adequate drainage paths shall be constructed around structures on slopes to guide floodwaters around and away from proposed structures.

(c) Elevation and Floodproofing.

(1) Residential construction.

Residential construction, new or substantial improvement, shall have the lowest floor, including basement,

(A) In an AO Zone, elevated to or above the regulatory flood elevation, or elevated at least two feet above the highest adjacent grade if no depth number is specified.

(B) In an A Zone where a BFE has not been determined, elevated to or above the regulatory flood elevation or be elevated in accordance with the criteria developed by the Director of the Arizona Department of Water Resources.

(C) In Zones AE, AH and A1-30, elevated to or above the regulatory flood elevation.

(D) Upon completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the City's building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

(2) Nonresidential construction.

Nonresidential construction, new or substantial improvement, shall either be elevated to conform with Section 8-20(c)(1) or together with attendant utility and sanitary facilities:

(A) Be floodproofed below the elevation recommended under this Section 8-20(c)(1) so that the structure is watertight with walls substantially impermeable to the passage of water;

(B) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(C) Be certified by a registered professional engineer or architect that the standards of this section are satisfied. Such certification shall be provided to the Floodplain Administrator.

(3) Flood openings.

All new construction and substantial improvement of accessory structures or other non-residential structures, whether attached to or detached from a residential structure, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must be certified by a registered professional engineer or architect to meet or exceed the following criteria:

(A) Have a minimum of two openings, on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.

(B) The bottom of all openings shall be no higher than one foot above grade.

(C) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(D) Portions of the accessory structure or other non-residential structure that are located below the regulatory flood elevation must be built using flood-resistant materials.

(E) The accessory structure or other non-residential structure must be adequately anchored to prevent flotation, collapse and lateral movement.

(F) Any mechanical and utility equipment in the accessory structure or other non-residential structure must be elevated or floodproofed to or above the regulatory flood elevation.

(G) The accessory structure or other non-residential structure must comply with floodplain encroachment provisions in Section 8-27.

(4) Manufactured homes.

Manufactured homes shall also meet the standards in Section 8-24.

**8-21 Standards for storage of materials and equipment.**

(a) The storage or processing of materials that could be injurious to human, animal or plant life if released due to damage from flooding is prohibited in special flood hazard areas.

(b) Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning

**8-22 Standards for utilities.**

(a) All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

(b) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(c) Waste disposal systems shall not be installed wholly or partially in a regulatory floodway.

**8-23 Additional development standards, including subdivisions.**

(a) All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), greater than 50 lots or 5 acres, whichever is the lesser, shall:

(1) Identify the area of the special flood hazard area and the elevation of the base flood

(2) Identify on the final plans the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood elevation, the final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

(b) All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.

(c) All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(d) All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

**8-24 Standards for manufactured homes.**

(a) No manufactured home shall be placed in a floodway, except in an existing manufactured home park or existing manufactured home subdivision.

(b) All manufactured homes that are placed on site or substantially improved shall:

(1) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation; and

(2) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement by one of the following methods:

(A) By providing an anchoring system designed to withstand horizontal forces of twenty-five (25) pounds per square foot and uplift forces of fifteen (15) pounds per square foot;

(B) By providing over-the-top and frame ties to ground anchors. Specifically:

(i) Over-the-top ties be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side at intermediate locations, except that manufactured homes less than fifty (50) feet long require only one additional tie per side;

(ii) Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points, except that manufactured homes less than fifty (50) feet long require only four (4) additional ties per side; and

(iii) All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds.

(3) The requirements of this Section 8-24(b) are in addition to applicable state and local anchoring requirements for resisting wind forces.

**8-25 Standards for new and replacement manufactured homes.**

The following additional standards are required for all new and replacement manufactured homes:

(1) Adequate surface drainage and access for a hauler shall be provided.

(2) all manufactured homes shall be placed on pads or lots elevated on compacted fill or on pilings so that the lowest structural member or appliance of the manufactured home is at or above the regulatory flood level. If elevated on pilings:

(A) The large lots shall be large enough to permit steps;

(B) The pilings shall be placed in stable soil no more than ten (10) feet apart; and

(C) Reinforcement shall be provided for pilings more than six (6) feet above the ground level.

**8-26 Standards for recreational vehicles.**

All recreational vehicles placed on site shall:

(a) Be on site for fewer than 180 consecutive days, or

(b) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

(c) Meet the permit requirements of Section 8-19 of this ordinance and the elevation and anchoring requirements for manufactured homes in Sections 8-20 and 8-24.

**8-27 Floodways**

(a) Located within areas of special flood hazard established in Section 8-7 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

(1) Encroachments, including fill, new construction, substantial improvements and other development within a regulatory floodway are prohibited, unless a registered professional engineer or architect has demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge and such registered professional engineer or architect has certified the analysis described in this subsection.

(2) Notwithstanding any other provision of this section, encroachments within the regulatory floodway that would result in an increase in base flood elevations may be permitted, provided that the city first applies for a conditional flood insurance rate map and floodway revision and fulfills the requirement for such revisions as established under the provision of Article 44, Code of Federal Regulations, Chapter 1, Section 65.12, and receives the approval of the Federal Insurance Administrator

(3) If this Section 8-27 is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Division 3.

(b) Flood related erosion-prone area.

(1) The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the City.

(2) Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.

(3) If a proposed development is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvements shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.

(4) A setback is required for all new development from any lake, bay, riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

**Division 4. Variance Procedure**

**8-28 Nature of variances.**

(a) The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

(b) It is the duty of the City Council to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the regulatory flood elevation are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

**8-29 Appeal board.**

(a) The Floodplain Board shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(b) The Floodplain Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.

(c) In passing upon such applications, the Floodplain Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger of life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the City;

(5) The necessity to the facility of a waterfront location, where applicable;

(6) The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in time of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and,

(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.

(d) Upon consideration of the factors of this Section 8-29 and the purposes of this ordinance, the Floodplain Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(e) Any applicant to whom a variance is granted shall be given written notice over the signature of a City official that:

(1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance that are commensurate with the increased risk resulting from the reduced lowest floor elevation up to amounts as high as $25 for $100 of insurance coverage, and

(2) Such construction below the base flood level increases risks to life and property; and

(3) A copy of the notice shall be recorded in the office of the Maricopa County Recorder and shall be recorded by the Floodplain Board in a manner so that it appears in the chain of title of the affected parcel of land.

(f) The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance and report such variances issued in its biennial report submitted to FEMA.

**8-30 Conditions for variances.**

(a) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, provided the procedures of Divisions 2 and 3 of this ordinance have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(b) Variances may be issued for the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(c) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) Variances shall only be issued upon a:

(1) Showing of good and sufficient cause;

(2) Determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3) Showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in Section 8-5 of this ordinance in the definition of "Functionally Dependent Use"; and,

(4) Determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

# DEVELOPMENT SERVICES

**SUBJECT:**
Time Extension for Avondale Marketplace PAD Zoning (ZE-10-1)

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

---

**REQUEST:** Extend the period allowed for commencement of development within the Avondale Marketplace PAD for one year from the date of the expiration of the previous extension, until March 20, 2011.

**PARCEL SIZE:** 54.53 Net Acres

**LOCATION:** Northwest corner of Avondale Boulevard and McDowell Road (Exhibits A and B)

**APPLICANT:** Mr. John Fox, WSCD LLC (602) 573-2895; Mr. Blake Carroll, Troast Properties of Arizona (602) 317-6170

**OWNER:** Multiple Owners: Mr. Gregory P. Troast, Troast Properties of Arizona (480) 390-4162; Mr. Lewis Patrick, Patrick Properties, Incorporated (480) 905-9180; Mr. John Fox, WSCD LLC, (602) 573-2895

**BACKGROUND:**

The subject property was annexed on February 21, 2006 and subsequently rezoned from AG (Agricultural) to PAD (Planned Area Development) on March 20, 2006 (Exhibits D, E, and F). The approved Avondale Marketplace PAD allows for a horizontally integrated mixed-use development which includes parcels devoted to retail, office, mini-storage, and high density residential uses. The General Plan and Freeway Corridor Specific Plan land use designations for this property are mixed-use. The approved PAD remains consistent with these General Plan and Freeway Corridor Specific Plan designations.

A Master Site Plan for the commercial portions of the Avondale Marketplace PAD was approved by the City Council on March 17, 2008. The site plan has since expired and City Council approval of a new site plan application will be required prior to development of the site.

The Avondale Marketplace PAD was allowed two years from the date of the original zoning approval to commence development of the first development unit; the PAD was originally set to expire on March 20, 2008. The Zoning Ordinance specifies that prior to expiration, the property owner or an authorized representative may submit an application for extension to the City; the City Council may grant up to four (4) one-year extensions of the time condition.

The first one-year time extension for the Avondale Marketplace PAD was approved by the City Council at the February 4, 2008 Regular Meeting. This first extension kept the PAD valid through March 20, 2009.

The second one-year time extension for the Avondale Marketplace PAD was approved by the City

Council on August 10, 2009 (Exhibit G). This second extension kept the PAD valid through March 20, 2010. As part of the second extension request, the Council stipulated that future development on the site would be required to comply with the City's Public Art Ordinance, Zoning Ordinance Section 11.

Approval of this third request for a one-year extension will extend the deadline for development to occur within the Avondale Marketplace PAD through March 20, 2011. Should no development occur prior to that date, the property owners or authorized representatives will be able to request a fourth and final one-year extension under the terms of the PAD Ordinance.

**SUMMARY OF REQUEST:**

The applicant is requesting that the City Council grant a one-year extension for the Avondale Marketplace PAD approval. This request represents the third extension for this particular PAD; the Zoning Ordinance allows for no more than four one year extensions to be granted. The reasons given by the applicants for needing additional time to develop the site include:

- The twelve acres of the PAD located at the southwest corner of the site were foreclosed in 2009 and have since been sold to a new owner, Mr. John Fox. As a result, property within the Avondale Marketplace PAD is now controlled by three separate owners. Because the original site plan has expired, the three property owners need additional time to develop a new site plan agreeable to each interest.

- Troast Properties of Arizona, owner of the portion of the site planned for retail/commercial uses, is attempting to resolve issues that have resulted from the failure of the bank which had been financing development of the site. Representatives of Troast Properties of Arizona are hopeful these issues will be resolved in the months ahead.

**PARTICIPATION:**

Public notifications are not required for PAD Extensions.

**PLANNING COMMISSION ACTION:**

The Planning Commission does not review requests for PAD Extensions.

**ANALYSIS:**

***Conformance with the General Plan and Freeway Corridor Specific Plan***

The property is designated as Mixed Use by the General Plan and lies within the “McDowell Road Corridor” as detailed in the Freeway Corridor Specific Plan (FCSP). Subsequent to the PAD approval in 2006, the FCSP was amended to allow buildings up to 10 stories on the subject property. The amendment to the FCSP did not impose any minimum building heights on the property, and the 30' maximum building height allowed by the PAD remains within the acceptable range. All permitted and conditional uses listed in the PAD are still considered appropriate for a property designated as Mixed Use by the General Plan. The PAD also remains in conformance with the “Boulevard Streetscape” requirements for properties within the McDowell Road Corridor. In summary, the PAD remains in total conformance with both the General Plan and Freeway Corridor Specific Plan.

***Conformance with the Zoning Ordinance and Design Manual***

Minimum development standards (e.g. setbacks, etc.) required by the PAD meet or exceed minimum requirements for comparable zoning districts with the following exceptions:

- The approved PAD requires a 25 foot building setback between a commercial building and a residential property line; the Zoning Ordinance now requires a 50 foot separation in the comparable C-2 (Community Commercial) Zoning District. The Ordinance also now requires a 25 foot wide minimum landscape buffer on commercial sites where they directly abut

residential property lines. In order to bring the PAD into conformance with the current City buffering standards, staff recommends the City Council impose a stipulation requiring current Zoning Ordinance standards be adhered to in the planning and subsequent development of the site.

- The residential sub-area does not have a zoning district in which a direct comparison can be made. The PAD allows for an attached single family residential product, commonly referred to as townhomes. Although the setbacks and lot size minimum requirements do not conform to any of Avondale's residential districts, the standards and design requirements for the residential subarea of the PAD are strong and will result in a livable townhome neighborhood.

- Uses listed in the PAD as permitted, permitted subject to conditions, or permitted with a Conditional Use Permit remain consistent with the C-2 District.

- The approved PAD requires all off-site infrastructure improvements on the perimeter of the site to be completed in the first phase of development. This requirement is consistent with the PAD Ordinance requirements.

- The approved PAD directly references the Zoning Ordinance in terms of specifying required landscaping. This language ensures that the PAD will always be in conformance with the most current landscaping requirements; since the previously approved site plan has expired, any new site plan submitted for the property will be required to meet the new landscaping requirements.

- The PAD was approved prior to the adoption of the Design Manuals, however it does contain several pages of design requirements included to ensure a quality development. Staff feels the design requirements contained within the PAD are sufficient.

- The PAD was approved prior to the adoption of the City's Public Art Ordinance. Under the terms of the Art Ordinance, the developer will be required to contribute 0.25 percent of the project's construction cost, not to exceed a maximum of $150,000.00, to the City's Public Art Fund. Compliance with the City's Public Art Ordinance was stipulated as part of the approval of the previous extension in 2009; staff recommends that this stipulation be carried over to this request.

- The PAD meets or exceeds all other Zoning Ordinance minimum requirements, including but not limited to parking, screening, and signage.

***Conclusion***

With staff recommended stipulations, the uses and development standards contained within the Avondale Marketplace PAD are in conformance with current Zoning Ordinance standards. As such, staff recommends that the expiration date of PAD zoning be extended since the overall vision for the project remains consistent with the City's goals for the McDowell Road Corridor.

**RECOMMENDATION:**

Staff recommends that the City Council approve the time extension request for the Avondale Marketplace PAD for one year from the date of expiration, until March 20, 2011, subject to the following stipulations:

1. Developers within the PAD shall be required to participate in the City's Municipal Art Ordinance.

2. Planning and development of the non-residential portions of the Avondale Marketplace PAD shall adhere to the development standards contained within the PAD Development Plan, with the following two (2)exceptions:

- A minimum 50 foot separation shall be provided between non-residential buildings and abutting residential property lines.

- A minimum 25 foot wide landscape buffer shall be provided on non-residential portions of the PAD that abut residential property lines.

**PROPOSED MOTION:**

I move that the City Council **GRANT** a time extension for the Avondale Marketplace Planned Area Development (PAD) for one year from the date of expiration, until March 20, 2011, subject to the two (2) staff recommended stipulations.

**ATTACHMENTS:**

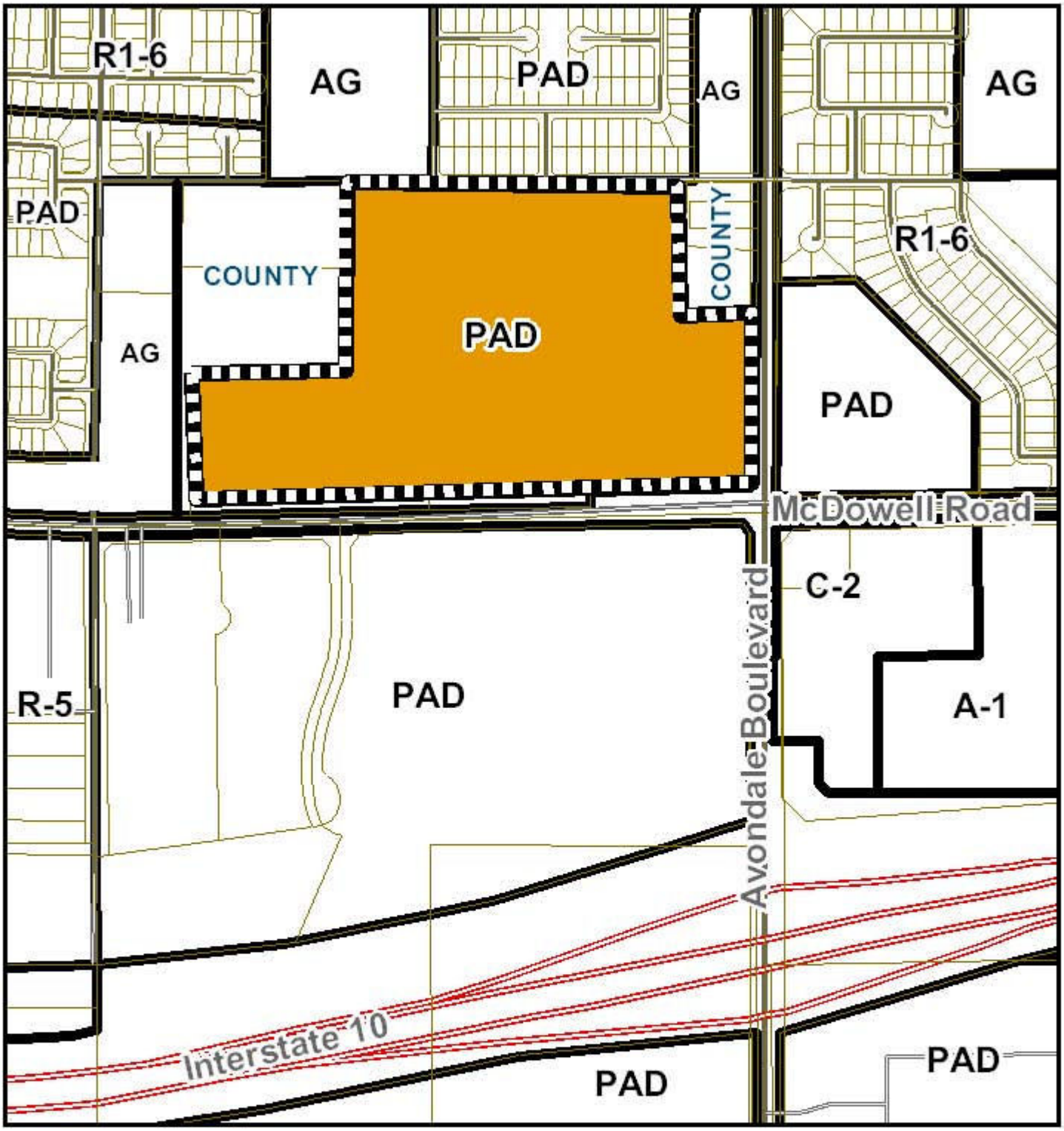
**Click to download**

- Exhibit A - Zoning Vicinity Map
- Exhibit B - Aerial Photograph
- Exhibit C - Applicant's Extension Request, email dated March 22, 2010
- Exhibit D - Approved Avondale Marketplace PAD
- Exhibit E - Ordinance 1165-106, approving the Avondale Marketplace PAD
- Exhibit F - Excerpt from City Council Minutes, Regular Meeting of March 20, 2006 (Original PAD Approval)
- Exhibit G - Excerpt from City Council Minutes, Regular Meeting of August 10, 2009 (Most Recent Extension Approval)
- Exhibit H - Summary of Related Facts

**PROJECT MANAGER:**

Ken Galica, Planner II (623) 333-4019

Exhibit A

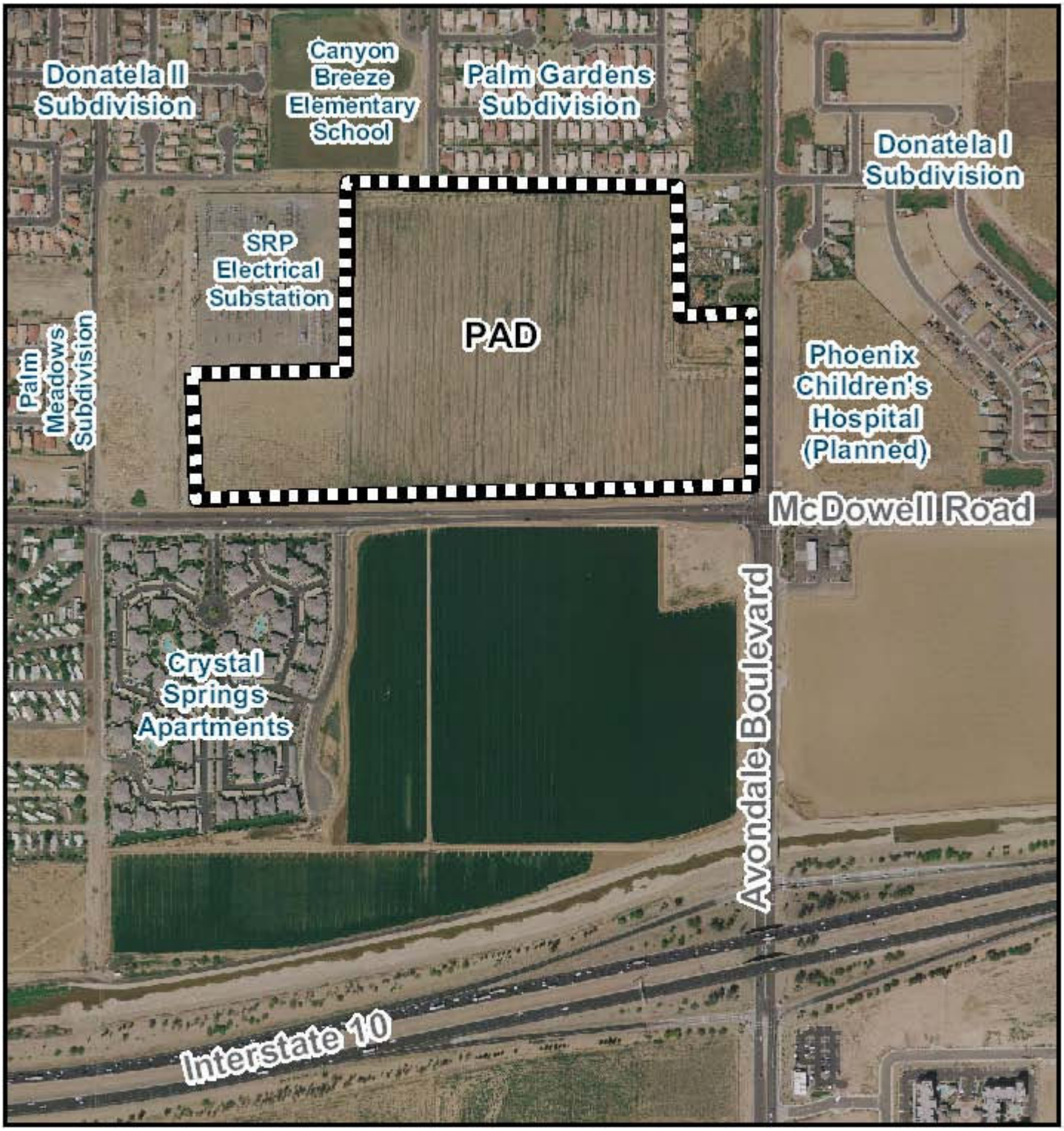



## Zoning Vicinity Map

Avondale

Subject Property

Exhibit B




## Aerial Photograph

Avondale

Subject Property

ZE-10-1

CITY OF AVONDALE
MAR 22 2010
DEVELOPMENT SERVICES

**From:** Blake Carroll [mailto:blaker8201@gmail.com]
**Sent:** Monday, March 22, 2010 4:51 PM
**To:** Kenneth Galica
**Subject:** Re: Avondale Marketplace Extensions

Narrative

Ken,

Avondale Marketplace needs the PAD Zoning Extension for several different reasons. For one, Patrick Properties lost his storage and office 12 acres to the bank and it was purchased by John Fox, so we now need the time to work through the new ownership and come up with an agreeable site plan and use for everyones piece that will work well collectively. Troast is also continuing to work through financing as it relates to the debt we are carrying on the property after our bank failed, which should be resolved soon. Hopefully we will have a revised site plan to submit on the property within the next couple of months.

Please let me know if you have any questions.

Thanks,

Blake Carroll
(602)317-6170

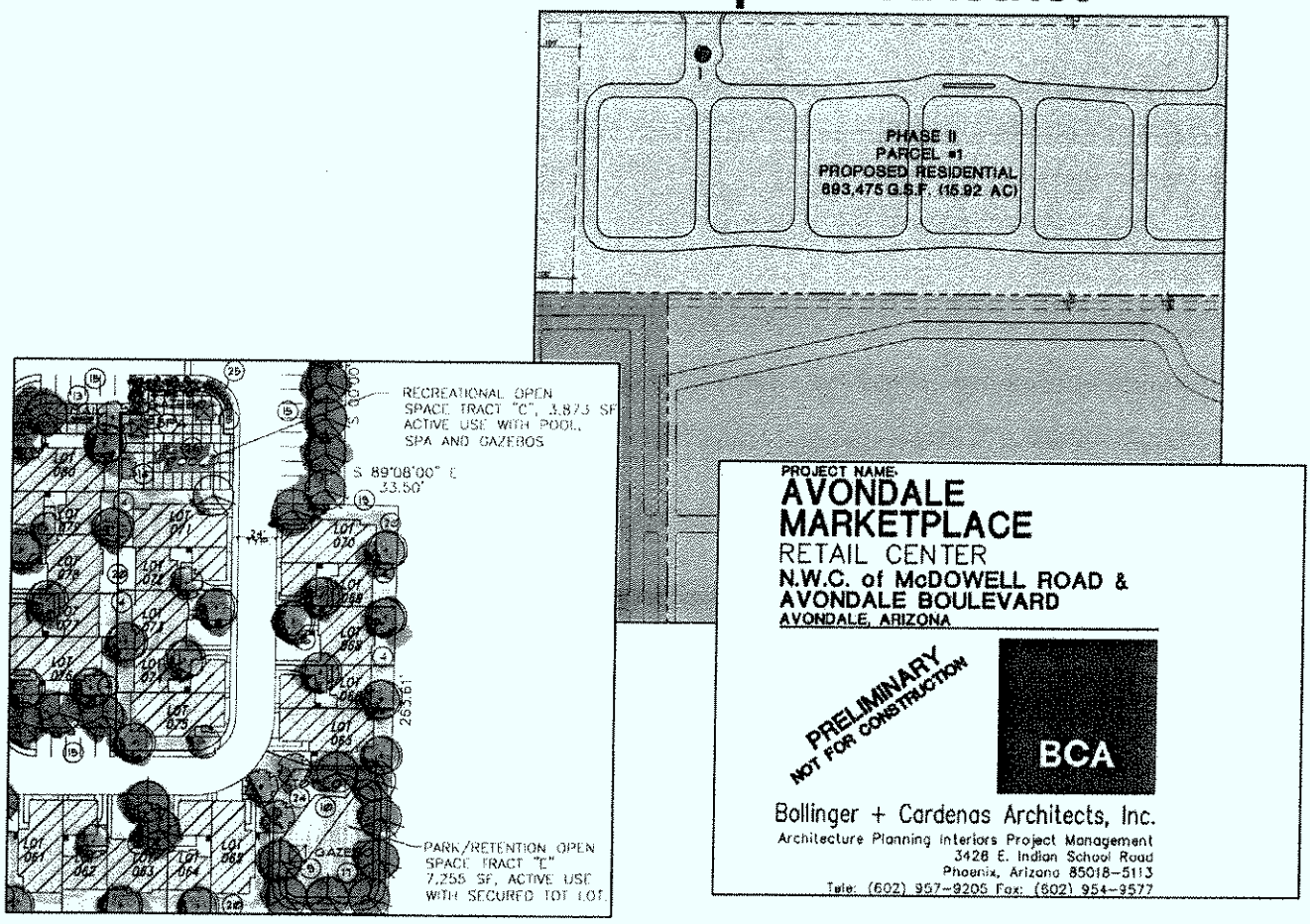
**Exhibit D**

# *Avondale Marketplace*

## Avondale, AZ

### NWC Avondale Boulevard and McDowell Road

## Planned Area Development District




**February 9, 2006**


Prepared by:
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CITY OF AVONDALE
PLANNING AND
FEB 10 2006
BUILDING SERVICES
DEPARTMENT


Z04-12




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## Project Team

| | |
|---|---|
| **Location:**<br>NWC Avondale Boulevard & McDowell Road | **Acres:**<br>54.53 Gross acres; 51.42 net acres |
| **Submitted to:**<br>City of Avondale<br>Connie Randall<br>11465 West Civic Center Drive<br>Avondale, Arizona 85323<br>623-478-3333<br>623-478-3824 FAX<br>Email: Crandall@avondale.org | **Prepared for Developer:**<br>Patrick Properties<br>P.O. Box 14136<br>Scottsdale, Arizona 85267<br>480-905-9190<br>480-905-9180 FAX<br>Contact: Michelle Sivertson<br>Email: michelle@patrickproperty.com |
| **Owner:**<br>RayRoad, LLC<br>P.O. Box 14136<br>Scottsdale, Arizona 85267<br>480-905-9190<br>480-905-9180 FAX<br>Contact: Lewis E. Patrick<br>michelle@patrickproperty.com | **Applicant:**<br>Beus Gilbert PLLC<br>4800 North Scottsdale Road Suite 6000<br>Scottsdale, Arizona 85251<br>480-429-3002<br>480-429-3100 FAX<br>Contact: Paul E. Gilbert, Esq.<br>Email: fezubia@beusgilbert.com |
| **Architect:**<br>Bollinger & Cardenas Architects, Inc.<br>3428 E. Indian School Road<br>Phoenix, AZ 85018<br>(602) 957-9205<br>(602) 954-9577 FAX<br>Contact: Boris Gaedtke<br>Email: bgaedtke@bcaarch.com | **Project Engineer:**<br>DRW Engineering, Inc.<br>10320 W. McDowell Road, Suite K1136<br>Avondale, AZ 85323<br>623-478-8800<br>623-478-8841 FAX<br>Contact: Debbie Rowe<br>Email: drowe@drwengineering.com |
| **Residential Development:**<br>Developer: Greenlight Realty<br>Contact: Ryan Harris<br>Architect: Sherbondy Art & Architecture<br>5118 N. 9th Avenue<br>Phoenix, AZ 85013<br>(602) 246-2002<br>(602) 242-2264 FAX<br>Contact: Don Sherbondy<br>Email: designstudio@cox.net | **Traffic Engineer:**<br>Kirkham - Michael<br>9201 N. 25th Avenue # 150<br>Phoenix, AZ 85021<br>602-328-6592<br>602-944-6592 FAX<br>Contact: Ashish Egrawal<br>Email: aagrawal@kirkham.com |
| **Landscape Architect:**<br>TBD | **Submitted:**<br>March 30, 2005<br>August 8, 2005<br>December 02, 2005<br>February 9, 2006 |

## Property Description

Location, Boundaries and Size

The proposed development is located at the NWC of Avondale Boulevard and McDowell Road. The property is bounded on the south by McDowell Road, on the east by Avondale Boulevard, on the north by Palm Lane and on the west to northwest by the SRP electrical substation. A Vicinity map is provided as Exhibit A and a Photo Location map is provided as Exhibit B. The project encompasses approximately 54.53 gross acres. A Legal Description is provided as Exhibit C.

The subject site is not annexed. However, A request for annexation of the subject property is pending with the City of Avondale. The request for annexation will be heard by the Council prior to the request for rezoning.

Existing and Proposed Zoning

The Property is currently vacant and is zoned Rural-43 under Maricopa County jurisdiction. The purpose of this request is to rezone the property from its current designation to allow for a Mixed-Use Planned Area Development District (PADD). This would allow for a mixed development that would accommodate neighborhood retail, residential and office uses.

Surrounding Land Uses, Zoning and Existing Conditions

To further assist in reviewing this proposal, an Aerial and Surrounding Zoning Map is provided as Exhibit D. This Exhibit illustrates the existing conditions on-site and the surrounding development.

North: The property, Palm Gardens, is developed as single-family residential homes with a PADD zoning designation. The typical lot size in this development is 6,000 square feet (55' x 110').

South: The property to the south is zoned PADD. Although most of the property south of the subject site is currently vacant, a portion of this property has been developed as multi-family residential.

East: To the east is zoned C-1 and R1-6, known as Donatela. The C-1 is currently vacant and the R1-6 is under construction with a typical lot size of 7,300 square feet (63' x 116'). At the northeast corner of the subject property, there are 3 parcels zoned Rural-43. These parcels will remain under County jurisdiction.

West: The property to the west is zoned Rural-43. This property is developed as an SRP electrical substation. Approximately 580' east of the west property, a 30' SRP electrical easement traverses Parcels 3 and 4. No structures are proposed or allowed by SRP within this easement.

## Conformance with Plans

Consistency with the City Initiated General Plan Amendment

Mayor and City Council recently approved the City initiated General Plan amendment for the property from Commercial to Mixed-Use. Referring to the General Plan, the following definition of the Mixed Use Land Use designation is provided:

> ***Mixed Use**: This use provides for a mix of high intensity uses with a retail commercial emphasis. This designation may include a maximum of 45% residential use. Mixed uses may include neighborhood and community retail, residential, hotel/motel, and employment.*

Specifically, the General Plan sets forth the objective to "encourage mixed-use development that provides nearby "captive" markets for retail uses." In order to continue to participate in these economic development efforts, the General Plan further states, that new retail developments should be strategically located near potential markets within the City. This proposed development meets this objective and satisfies these policies.

As indicated above, this development will increase the City's sales tax revenues by providing employment and retail services to both residents and visitors. This development will also provide a residential element, which will allow for a truly mixed-use development where individuals can live, work and shop.

The proposed development further meets the City's policy to encourage mixed-use development that provides nearby "captive" markets for retail uses. The proposed development will accommodate neighborhood retail, office, residential, and business park uses. Therefore, it is indeed classified as a mixed development. Furthermore, the proposed development is strategically located at the corner of two arterial streets.

Consistency with the Freeway Corridor Specific Plan (the "Plan")

The subject property is also located within the boundaries of the City's Freeway Corridor Specific Plan. The General Plan indicates that the goal for this area is to provide employment opportunities for the City's residents as well as to contribute to the City's economy and to provide services to the residents and businesses. The proposed development accomplishes these goals.

The Corridor is viewed both as a place for employment and for residence. Because of its accessibility to other metropolitan area activity centers via Interstate 10 ("I-10"), this vicinity is being planned for maximum orderly capacities in terms of the jobs it may accommodate and the people it may house.

The proposed development meets the Plan's goal and objective to encourage the full spectrum of regional and community services, employment opportunities, and residential uses to establish a "destination" location where people can live in close proximity to their work. Urban design standards and concepts established by the Plan will serve to make the Corridor a distinctive experience and setting.

The Avondale Freeway Corridor, throughout this Specific Plan, has been referred to as an area that is appropriate for mixed land use development and the proposed development will serve to accomplish this objective.

Over time, the Freeway Corridor area is expected to function as the economic heart of the City of Avondale. The proposed development helps to achieve this goal by providing office uses, residential uses, retail shopping uses and entertainment as set forth in the Plan.

Boulevard Streetscape

One of the objectives of the Freeway Corridor Plan is, in part, "to establish a distinctive image to the Corridor and the City of Avondale". To carry out this objective, the proposed development will provide increased right-of-way landscaping improvements as required by the City. The Southern Live Oak shall anchor the Boulevard theme.

The "Boulevard" streetscape concept will be comprised of consistent and repetitive use of the Southern Live Oak and complementary landscape materials. Pedestrian circulation will also be upgraded by providing wide, shaded sidewalks separated from the street by landscaping and by specially paved pedestrian street crossing. The Boulevard elements will be designed to enhance pedestrian circulation as well as comfort to promote a "pedestrian-friendly" environment. Increase right-of-way landscaping to accomplish the boulevard theme will be provided as required by the City.

## Project Description

Overall Description

The purpose of this request is to rezone the property from its current designation to allow for a mixed-use Commercial Planned Area Development District (PADD). This would allow for a mixed development that would accommodate neighborhood retail, residential and office. This proposal is in conformance with the City's proposed General Plan amendment. Avondale Marketplace is located within the boundaries of the City's Freeway Corridor Specific Plan and it is compatible and in conformance with it as well.

Data Table

| | Gross Acres | Right-of-Way | Net Acres |
|---|---|---|---|
| Acreage | 54.53 | 2.11 | 51.42 |

Master Site Plan and Site Plan Review

A Master Site Plan for the Commercial/Office development shall be processed and approved by Council following zoning approval. Master Site Plans shall encompass a minimum of 10 acres. Thereafter, each individual Commercial/Office site may process an individual site plan for administrative review and approval.

Flood Zone Determination

The subject property is located within flood zone "X", based on FIRM maps numbers 04013C2085F and 04013C2080H.

## Proposed Land Use Development Map

Proposed Land Use Development Map

The developer plans to incorporate major retail anchors, ranging from 30,000 to 100,000 square feet, with several additional retail shops and pads. Major retail anchors in excess of 100,000 square feet are permitted with a Conditional Use Permit. As a mixed-use development, Avondale Marketplace also includes a high-end attached single-family residential component. A copy of the Proposed Land Use Development Map is provided as Exhibit E.

Traffic Analysis

A Traffic Analysis for Avondale Marketplace has been provided with this submittal. As requested by staff, the Traffic Analysis utilizes the City of Avondale traffic counts.

Project Phasing

The project-phasing schedule is not definite however, immediately following Council approval it is our intent to proceed with one or two master site plan approvals for all the Commercial/Office parcels. Master site plans for the Commercial/Office Parcels shall be a minimum of 10 acres. The preliminary plat for the single-family residential will follow the first Commercial/Office site plan.

| PHASING SCHEDULE | | | | |
|---|---|---|---|---|
| Phase | Parcel # | Use | Master Site Plan | Building Plans |
| I | 3 and 4 | Commercial/Office | Spring 2006 | Spring 2006 |
| I | 2, 3 and 4 | Perimeter Streets | Spring 2006 | Spring 2006 |
| II | 1 | Residential | Summer 2006 | Summer 2006 |
| III | 2 | Commercial/Office | Spring 2006 | Fall 2006 |

The associated off-site infrastructure in McDowell and Avondale Boulevard adjacent to the PAD will be installed as part of Phase I.

## Commercial and Office Sub-Area Criteria

Allowed Uses

Referring to Exhibit E, Parcels 2, 3 and 4 constitute the Commercial Office sub-area. This area will allow various commercial and office land uses listed below provided all uses are indoor and within enclosed buildings and no single-user shall be in excess of 100,000 square feet of gross floor area.

Principally Permitted Uses – The following uses are authorized:

1. Retail sales of new merchandise within enclosed buildings;
2. Personal services:
   a. Barber shops, nail salons, beauty salons, tanning salons;
   b. Day Spa (which provides a variety of personal services such as hair styling, manicures and pedicures, makeup, facials, tanning, massage, and other related services) excluding Sexually Oriented Businesses and tattoo parlors;
3. Medical, dental, or health offices;
4. Child care center;
5. Music or dance schools;
6. Banks and financial institutions;
7. Full service restaurants, delis, coffee shops, and similar eating establishments;
8. Alterations, Tailoring;
9. Professional and administrative offices;
10. Employment agencies excluding day labor centers;
11. Veterinary hospital, office, and clinic, excluding animal boarding;
12. Schools and educational institutions;
13. Video and or music CD/DVD rental or sale.

Permitted Uses subject to Conditions – The following uses are allowed subject to the listed conditions:

1. Auto leasing:
   a. Not more than 10 vehicles stored on site;
   b. Lease vehicles shall be stored to the rear of the main anchor buildings;
2. Mini-Storage:
   a. Only located on parcel 3;
   b. No outdoor or vehicle storage;
3. Health and exercise centers:
   a. Maximum usable square footage of 3,000 square feet.
4. Laundry, cleaning, and dry cleaning establishments, limited as follows:

a. Maximum of one thousand (1,000) square feet of floor area to be occupied by or devoted to machinery to be used for laundry, cleaning, dyeing, and finishing work;
b. Retail service to individual customers only and no wholesaling of any commodity or service shall be permitted.

5. Drive-Thru facilities:
   a. Pick-up window shall be incorporated into the primary building through the use of a canopy;
   b. Pick-up window shall not face Avondale Blvd. or McDowell Rd.;
   c. All drive-thru facilities shall be reviewed and approved concurrent with the master site plan;
   d. A minimum of 75 feet of vehicle stacking measured from the menu board shall be provided;

Permitted Uses, subject to a Conditional Use Permit – The following uses may be allowed subject to Section 108, Conditional Use Permits, of the Avondale Zoning Ordinance:

1. Health and exercise centers greater than 3,000 square feet of usable floor area;
2. Any single retail use that is greater than one-hundred thousand (100,000) square feet of gross floor area;
3. Indoor Commercial/Entertainment such as Ice Skating, Roller Skating, Batting Cage, Bowling Alley, and Driving Range;
4. Automotive Supply Store, indoor.
5. Churches or similar places of worship;
6. Technical School or business school.

Accessory Uses – The following uses are allowed as accessory uses directly related to an approved use:

1. Outdoor Dining
2. ATM (Automated Teller Machine)
3. Accessory buildings, structures and uses customarily incidental to an approved use

Prohibited Uses – The following uses are prohibited:

1. Auto diagnostic, lube and tune, auto service, auto repair, auto body, or any other similar automotive use;
2. Sexually Oriented Businesses;
3. Bar, tavern, cocktail lounge, excluding restaurants, delis, or cafés;
4. Automatic, full service, or self service carwashes;
5. Car sales, new or used;
6. Day labor hiring center;
7. Gas service station;

8. Hotel or motel;
9. Self service Laundromat;
10. Liquor stores;
11. Office warehouse;
12. Outdoor display, except through a Temporary Use Permit and outdoor uses, excluding outdoor dining;
13. Shooting ranges;
14. Any use not expressly permitted herein.

Development Standards

Development standards for the Commercial/Office development are provided below.

| Standard | Commercial/Office Parcels |
|---|---|
| Minimum Lot Width | None |
| Minimum Lot Depth | None |
| Maximum Lot Coverage | None |
| [+]Maximum Height | 30' |
| McDowell Road Setback to Building/Parking | 30'/40' |
| Avondale Boulevard Setback to Building/Parking | 25'/25' |
| Interior Setback | None |
| Building Setback from a Residential Use | 25' |
| Minimum Side Yard Setback – Building | 0' |
| Minimum Rear Yard Setback | 0' |

Lighting

Exterior lighting shall be consistent throughout the project area and shall comply with the City of Avondale Outdoor Lighting Ordinance. All lighting shall be fully shielded, directed down, and have a maximum 1-foot candle at the property line. A photometric plan shall be provided with the Master Site Plan application. Additionally, the following standards shall apply:

[+] Maximum height may be exceeded by not more than 5' for parapet. Additionally, architectural embellishments may project up to 40' not used for human occupancy.

- Accent lighting of selected architectural, landscape and/or hardscape features will be allowed and is encouraged. Said lights shall be fully shielded.
- Exterior site lighting fixtures will be located and oriented to focus light inward from the residential parcel, Avondale Boulevard and McDowell Road.
- All primary light fixtures shall be metal halide
- The design of lighting fixtures and their structural support shall be of a scale and architectural design compatible with on-site buildings.
- Fixtures that illuminate large areas from a single source are prohibited.
- Pedestrian scale lighting features shall be provided in areas designed for pedestrian activities such as plazas, courtyards, pathways and seating areas, but excluding parking only areas. Such pedestrian lighting fixtures will complement the general architectural style of the development.
- The use of decorative wall-mounted sconces or light fixtures is encouraged.
- Exterior building lighting for egress and/or security will be located and oriented to focus light downward over egress and delivery doors.
- Bases for pole-mounted lighting shall be concrete and shall be integrally colored to match the shopping center.

Screening

Where screening is required by this document, a combination of elements shall be used including solid walls, berms, and landscaping. All screening, including parking lot, trash enclosure, loading and utility screening shall be architecturally compatible with the adjacent building in terms of materials and colors. Trash enclosures shall be sited away from project entrances and major circulation routes. In conformance with the Freeway Corridor Specific Plan, screen walls shall not be used for more than 25 percent of the screening along McDowell Road or Avondale Boulevard.

Parking

All development shall comply with the parking requirements, identified in Section 804 of the Zoning Ordinance. Appropriate street dedications will be provided as required by the City. A minimum of 15% of any parking area adjacent to McDowell Road shall be landscaped. Shopping cart corrals in parking lot areas shall be designed in a complementary fashion to the building they serve.

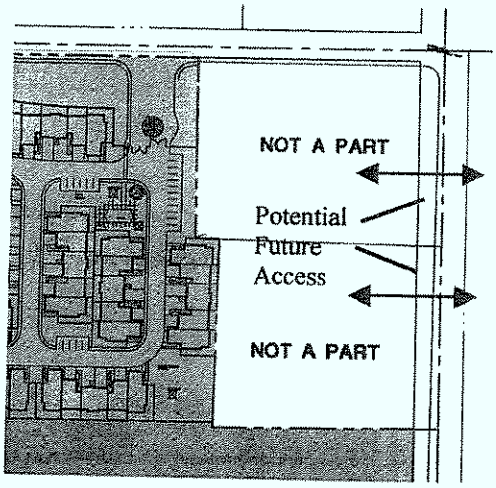
Buffers and Landscaping

The Commercial and Office parcels of Avondale Marketplace shall provide a 25' landscape buffer directly adjacent to Parcel 1, the residential parcel. No Parking shall be allowed in this buffer.

The development has been thoughtfully designed so that the commercial and office uses are easily noticeable and accessible from the two arterial streets. Further the commercial development on Parcel 3 has been designed to screen the existing SRP Substation from Avondale Boulevard, McDowell Road and the future office development on Parcel 4.

Exception Parcel Access

Future access to property outside Avondale Marketplace at the northeast portion of the site will be provided via Avondale Boulevard.




Architectural Design

The architectural design, including color and material palettes, for the Commercial and Office sub-area shall be reviewed and approved with a Master Site Plan. Architectural design shall be consistent with the following architectural elements:

- No service door, bay or loading area shall front onto Avondale Boulevard or McDowell Road.
- For all buildings at least two of these elements shall repeat horizontally. Buildings with facades greater than 100 feet in length shall include several of the elements listed below, repeated at appropriate intervals, either horizontally or vertically:
  - Color change. Recognizable, but not strongly contrasting.
  - Texture change.
  - Material change.
  - Architectural variety and interest through a change in plane such as offsets, reveals, archways or projecting ribs.

- Wall plane projections or recesses.

- Variations in rooflines or parapets shall be used to reduce the scale of the buildings. Roof size, shape, material, color and slope shall be coordinated with the scale and theme of the building.
- Service and exit doors shall be recessed and integrated into the architecture of the elevations.
- Reduction of building mass shall be achieved by using a combination of the following techniques:
  - Variation in the rooflines and form.
  - Use of ground level arcades and covered areas.
  - Use of protected and recessed entries.
  - Use of vertical elements on or in front of expansive blank walls.
  - Use of pronounced wall plane offsets and projections.
  - Use of focal points and vertical accents.
  - Inclusion of windows on elevations facing streets and pedestrian areas. Retaining a clear distinction between roof, body and base of a building.
- Roof lines, relative building heights, orientation of entrances and other major architectural elements of the buildings shall be designed within the context of the overall PADD. Building design shall complement the surrounding area, with contrast encouraged where appropriate or beneficial to the overall development.
- Service entries, site-mounted equipment, trash containers and other ancillary structures shall be screened from view, both from adjacent properties and surrounding streets.
- All buildings shall be designed and constructed so that all four sides of a building shall receive consistent architectural treatment.
- Expansive vertical surfaces shall be modulated or designed with offsets to reduce the appearance of scale.
- Any accessory buildings, enclosures, carports, and equipment, whether attached or detached from the principal building shall be of similar compatible design and materials as the principal building.
- The design of service and loading areas shall be designed as an integral part of the building architecture.
- Any roof access ladders shall be located inside the building.
- All roof drainage shall be interior roof drains.

Building Materials

The architectural design, including color and material palettes, for the Commercial and Office sub-area shall be reviewed and approved with a Master Site Plan. Building within the PADD shall be consistent with the following building materials:

- Primary buildings materials shall include: common clay brick; poured in place, tilt-up or pre-cast concrete provided that surfaces include scoring, texture or have a painted finish textured concrete or panels; stucco or EIFS (exterior insulated finish systems) type systems provided that finishes must be smooth or sand finish; integrally colored concrete block, smooth face and/or split-face block units; or other similar materials.
- All tilt or pre-cast concrete panels or smooth face block shall include methods for improving the design such as: additional color and texture, bays, windows, notched parapets, canopies, reveals, building wall undulation, corner windows, additional materials etc.
- Accent materials shall include: granite, marble, natural stone, block, brick, ceramic tile, treated wood, metal, or other similar materials.
- Roofs may be flat with parapet walls, or sloped with concrete tile, standing metal seam, or equivalent architectural materials.

The following building materials shall be prohibited:

- Exposed plain concrete block
- Exposed untreated plain concrete tilt
- Wood as a primary building material
- Corrugated metal
- Standing seam metal roofs
- Pre-engineered metal siding

Color Palette

The architectural design, including color and material palettes, for the Commercial and Office sub-area shall be reviewed and approved with a Master Site Plan. Buildings within the PADD shall be consistent with the following:

- Colors and materials should be used to create visual harmony within the PADD. The approved colors are as follows:

  - Primary building colors shall be desert hues and other "earth tones" muted shades of blues, greens, yellows, and reds found in the natural desert, and colors appearing in natural stone.
  - Accent colors on buildings shall complement the primary building colors and include combinations of desert hues, earth tones, muted shades of blues, yellows, greens, reds and colors found in natural stone. Brighter colors such as orange, red, blue, green, yellow, purple and similar colors may be used as accents on retail buildings as approved in the Site Plan review process.

Site Design

The site design for the Commercial and Office sub-area shall be reviewed and approved with a Master Site Plan. The Master Site Plan shall include a list of proposed uses. Any proposed uses requiring a Conditional Use Permit shall be reviewed and approved as part of the Master Site Plan. Unless otherwise modified by this document, the site design shall conform with the applicable City of Avondale Zoning Ordinance requirements, as amended from time to time. Parking canopies, if provided, shall be painted with complementary colors to the building it serves. Additionally, parking canopies shall not front onto McDowell Road or Avondale Boulevard.

Landscape Design

Landscaping shall meet or exceed the landscaping requirements set forth in Sections 2 and 6 of the Zoning Ordinance and the Freeway Corridor Specific Plan. All development in the commercial/office master plan shall comply with screening standards identified in Sections 2, 5 and 6 of the Zoning Ordinance as well as those identified in the Freeway Corridor Specific Plan.

The landscaping will provide for the "boulevard" streetscape for McDowell Road as required by the Freeway Corridor Specific Plan.

Infrastructure

Conceptual grading/drainage, water and sewer design shall be reviewed and approved as part of the Master Site Plan review and approval process. Water and Sewer for the Commercial Office sub-area shall be public. All infrastructure shall meet the City's requirements.

- Grading and Drainage

  The PADD site slopes from the northeast to the southwest. Preliminary grading and drainage plans will be submitted with the Master Site Plan. On-site retention basins will be designed and constructed as part of the development of each parcel or combination of parcels as approved in the Construction Plans.

- Water

  The site is served water with an 8-inch line in Palm Lane, a 16-inch line in Avondale Blvd., and a 16-inch line in McDowell Road, which extends across approximately 40% of the McDowell Rd. frontage. Additional water lines will be designed and constructed to serve individual parcels or combination of parcels as approved in the Construction Plans.

- Sewer

The site is served sewer with 10-inch and 12-inch lines in Palm Lane and a 21-inch line in McDowell Rd. The average daily sewer flows can be estimated based on the City of Avondale Engineering Design Standards Book. The exact sewer flows will not be known until Master Site Plan approval. Sewer lines will be designed and constructed as part of the development of each parcel or combination of parcels as approved in the Construction Plans.

- Fire Hydrants

Fire hydrants will be installed at spacing consistent with use and structures as required by building and fire codes. Additional fire hydrants and water lines may be required for individual parcels depending on the Master Site Plan approval. Domestic and fire flow requirements can not be calculated until Master Site Plan approval and specific users and square footages are known, however, the development of the site will meet the City of Avondale fire flow and supply requirements.

Miscellaneous

- Ownership and Maintenance

Parcel 2 will be governed by a set of Covenants, Conditions and Restrictions that will be utilized to facilitate cross-access, joint parking and drainage. The CC&R's will govern the maintenance responsibility and enforcement for all common and private areas.

Parcel 3, will be self-contained and will be responsible for retaining its own stormwater and providing for its own parking. The CC&R's will govern the maintenance responsibility and enforcement for all common and private areas.

Parcel 4, will be responsible for retaining its own stormwater and providing for its own parking however, a cross-access easement with Parcel 2 will be provided to facilitate internal circulation and reduce traffic on McDowell Road. The CC&R's will govern the maintenance responsibility and enforcement for all common and private areas.

## Sign Criteria

These sign standards are proposed for the Commercial/Office development, Parcels 2, 3 and 4. A Comprehensive Sign Plan shall be reviewed and approved as part of the Master Site Plan prior to the issuance any sign permits for the Commercial/Office Development. The Comprehensive Sign Plan shall address the architectural design, letter style and color for all signs, which shall be uniform throughout the center and complementary to the approved building architecture.

- Justificication

This project is located at a major intersection and approximately ¼-mile north of Interstate 10. This property is strategically located to not only serve local residents but also to provide complementary retail support services to the regionally situated properties adjacent to I-10. These standards are less than what is anticipated on the Regional Commercial parcels on the south side of McDowell Road. These standards are intended to be complementary to the anticipated Regional Commercial signage anticipated south of McDowell Road.

The landlord shall approve all signs, in writing, prior to installation. Sign permits for design and location must be obtained from the City of Avondale prior to the installation of any sign.

- PARCEL 2

Free-Standing Signs

The following ground signs are the only ground signs permitted on Parcel 2. All monument signage shall provide illumination of copy and logos only, with routed out metal backgrounds.

1. Free-Standing Multi-Tenant signs. Three monument identification signs, with a minimum spacing between signs of 100', shall be allowed on Parcel 2 as follows: (An additional 2' in height may be allowed for architectural embellishments)

    a. Major Entry – Two 12' – 6" tall 75 square foot signs,
        i. one (1) on Avondale Boulevard and
        ii. one (1) on McDowell Rd.
    b. Minor Entry – One 10' – 6" tall 66 square foot sign,
        i. one (1) on McDowell Rd.

1. All signs to be located 1' behind property line out of traffic visibility perimeters.

2. All metal surfaces shall be painted to match the center colors.

3. All freestanding signs will incorporate the required base landscaping per City of Avondale Zoning Ordinance Requirements.

**Parcel 2** Directional Signs

When required to assist the flow of traffic, (i.e. drive thru, exit, enter, etc.).

directional signs are permitted. Such signs shall not exceed 4.8 square feet in area or a height of 3 feet. Directional signs shall not identify businesses.

**Parcel 2 Major Tenant Wall Signs**

1. A Major store is defined as a tenant or owner with a building area exceeding 30,000 square feet.
2. A Major store will be allowed six (6) attached building signs for the South elevation. The maximum area allowed will be 1 square foot of signage per building foot frontage.
    a. A major tenant shall have a maximum height of 5' letters to identify the name of the business.
    b. Ancillary signs on the South elevation shall have a maximum copy height of 2'-0".

**Parcel 2** Shop Tenants wall Signs

Shop tenants are defined as those tenants having leased area of less than 29,999 square feet.

1. Tenant shall have one wall sign per street frontage of individual interior illuminated pan channel letters mounted on the stucco fascia. Tenants with two street fronts may have a sign on each street front.

2. Wall signs shall use integral color 1/8" Plexiglas inserts with standard 3/4" trim cap. Trimcap and returns shall be dark bronze color (Mathews # 41-313). Returns to be five inches (5") deep.

3. Maximum and minimum copy heights are as follows:

| | |
|---|---|
| Upper and Lower case letters<br>(based on the upper case letter) | maximum 36"<br>minimum 16" |
| All upper case letters | maximum 36"<br>minimum 16" |

Signs with two rows stacked shall have a maximum total height of 5' 0". Overall length of any sign not to exceed 80% of the leased frontage on which it is placed. The maximum individual letter, logo, or cabinet height shall not exceed 36" inches or 70% of the narrowest portion of the vertical fascia height on which it is placed.

4. Permanent signs.
   Wall signs: 1 square feet of sign area for each front foot of building.

5. Letter style and color shall be subject to City approval through the

Comprehensive sign plan.

6. Each sign package shall be subject to review and approval by the Developer/Landlord and the City of Avondale.

7. The overall length of any sign shall not exceed 80% of the leased frontage on which it is placed. The overall height not to exceed 70% of the narrowest portion of the vertical fascia height on which it is placed.

- PARCEL 3 and 4

Free-Standing Signs

a. Parcel 3 – One 6' tall 28 square feet monument sign.
    i. One (1)
b. Parcel 4 – One 6' tall 28 square feet monument sign.
    i. One (1)

Parcel 4 Office Tenants

Permanent Sign Area

Wall signs: 1 square feet of sign area for each foot of building frontage on the longest front. For all other building elevations, 1/2 square feet of sign area per building front.

i.e.: A building that has a 30' x 100' front will be allowed to use their 100 square feet of sign area on the length of the building that holds the 100 feet in length. The remaining other elevations will be allowed to utilize only ½ of their approximate building length for sign square footage. For example a 30' side elevation can have 15 square feet of signage. The main longest front of 100' can have 100' of square footage for signage.

Each sign shall be subject to review and approval by the Developer/Landlord and the City of Avondale.

## Residential Sub-Area Criteria

Allowed Use

Referring to Exhibit E, Parcel 1 is proposed as a single-family attached residential project.

Principally Permitted Use – The following use is authorized:

1. Attached or detached Single-Family Residential
2. Multi-Family Residential for fee simple ownership

Permitted Uses subject to Conditions – The following uses are allowed subject to the listed conditions:

1. None

Permitted Uses, subject to a Conditional Use Permit – The following uses may be allowed subject to Section 108, Conditional Use Permits, of the Avondale Zoning Ordinance:

1. None

Accessory Uses – The following uses are allowed as accessory uses directly related to an approved use:

1. Accessory buildings, structures and uses customarily incidental to an approved use

Prohibited Uses – The following uses are prohibited:

1. All uses not specifically listed herein

Development Standards

A full discussion of the proposed residential development, along with identifying exhibits is provided as Exhibit F of this document.

| Standard | Parcel 1 (Residential Parcel) |
|---|---|
| Acres | 15.92 |
| Maximum Density | 8.5 |
| Maximum Units | 135 |
| Housing Type | Rear Loaded Single Family (attached or detached)<br><br>Multi-Family (condominium or attached town houses) |
| Parking | 2 Car Garage/Unit |
| | 1 visitor parking space for every two units. |
| Minimum Lot Width | 27 feet |
| Minimum Lot Depth | 70 feet |
| Maximum Lot Coverage | 60% |
| Minimum Lot Area | 1,900 Sq. Ft. |
| [1]Maximum height | 30 feet |
| Setbacks | |
| Rear | 7 feet |
| Front | 3 feet |
| Side | 0 feet for attached units<br><br>7 feet from any adjacent building |
| From single family use or district | 15 feet for single-family (attached or detached) measured from property line.<br><br>50 feet for multi-family measured from property line |
| From Substation | 100 feet, measured from substation property line |

Architectural, Site and Development Criteria

A full discussion of the proposed residential development, along with identifying exhibits is provided as Exhibit F of this document. The residential project design shall comply with the provisions of Exhibit F.

[1] Maximum Height may be exceeded by not more than 5' for parapet or architectural embellishments.

**APPENDIX**
*Exhibit "A"*

## Vicinity Map

# VICINITY MAP

## NWC Avondale Boulevard and McDowell Road

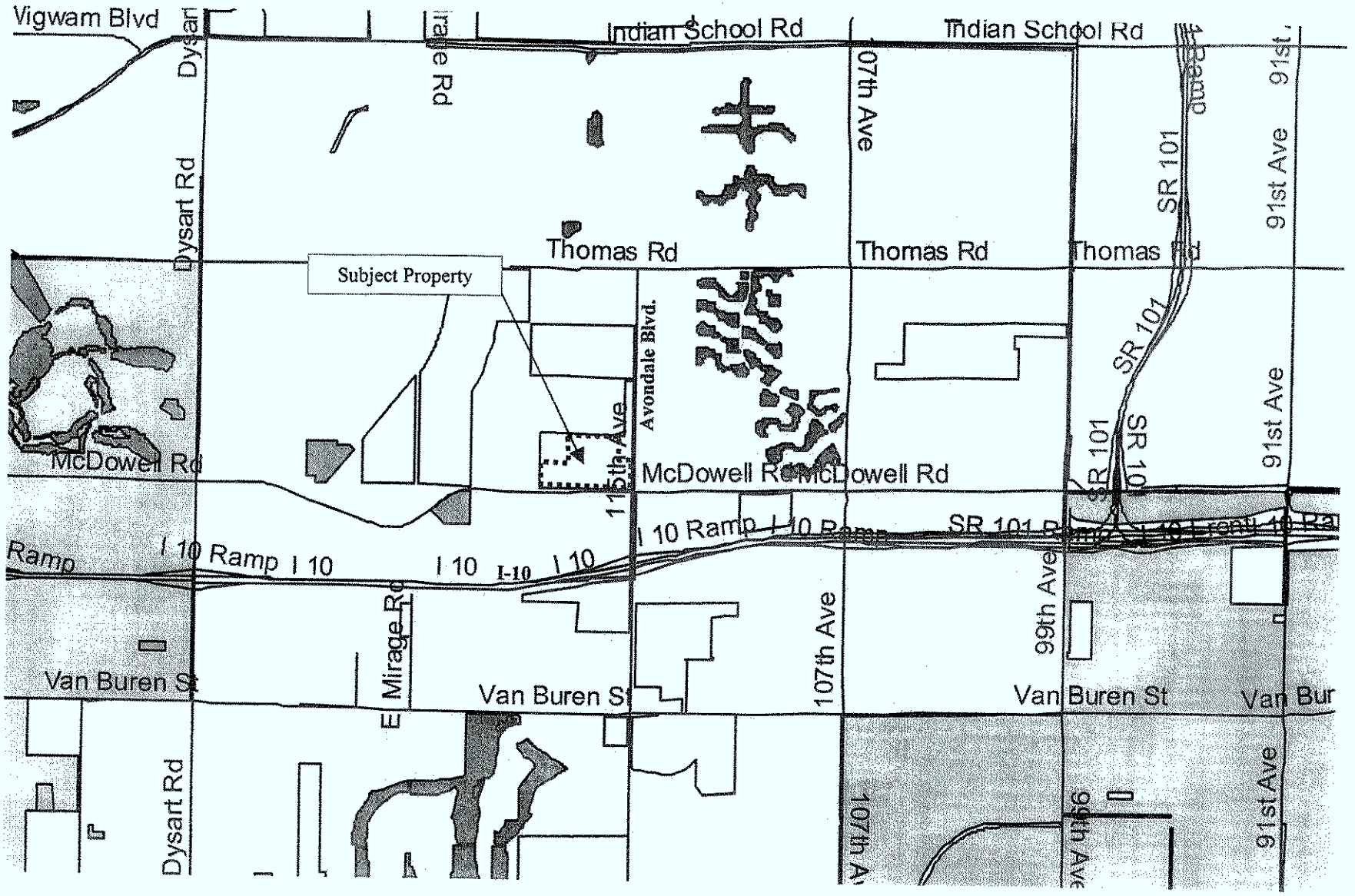
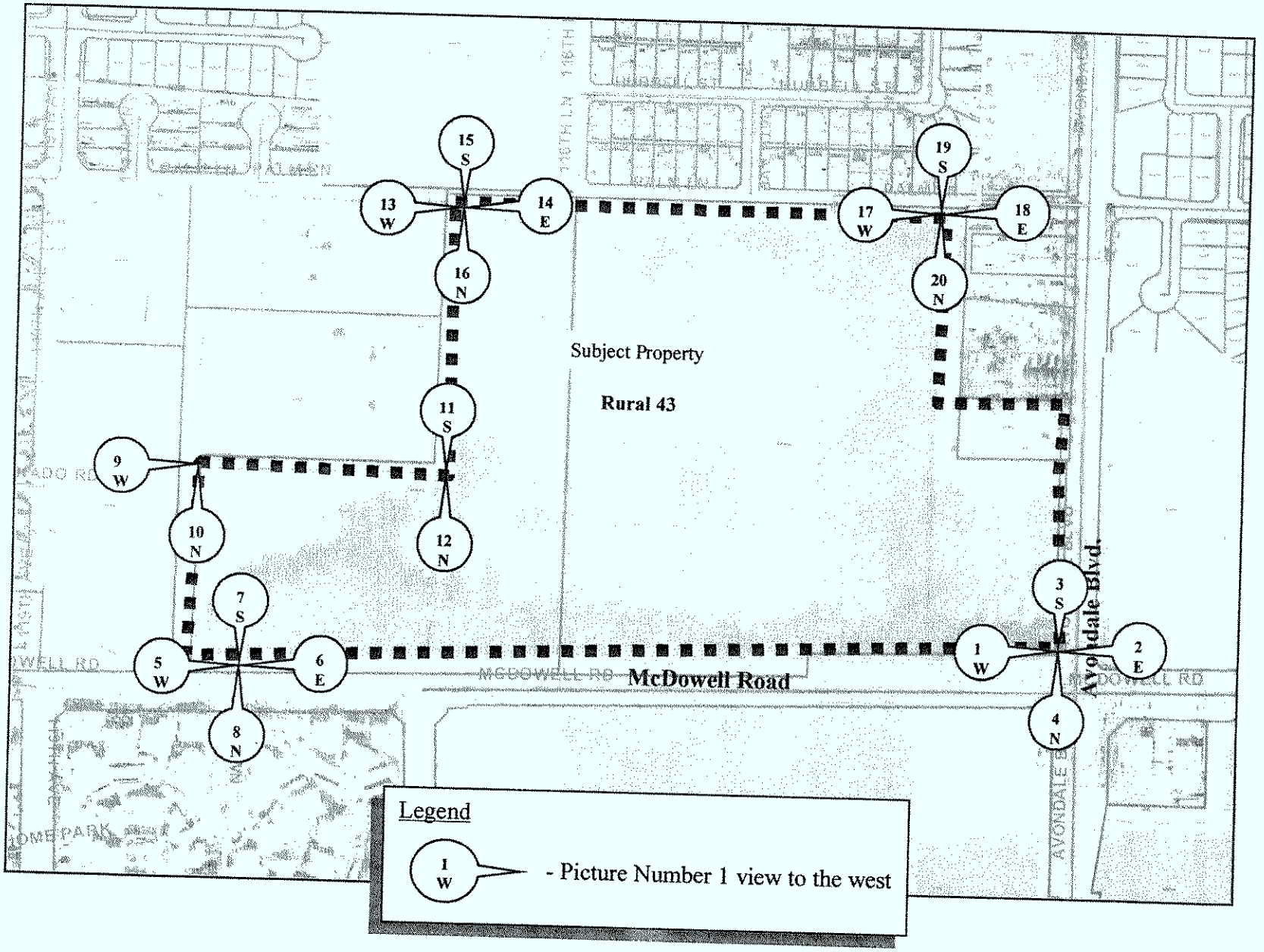


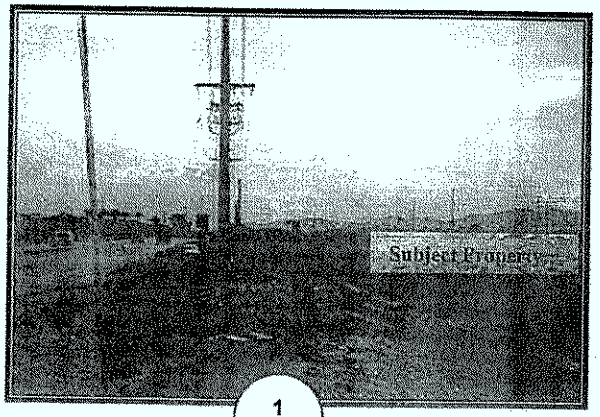
*Exhibit "B"*

## Photo Location Map

# PHOTO LOCATION MAP



# PHOTOS 1 – 6

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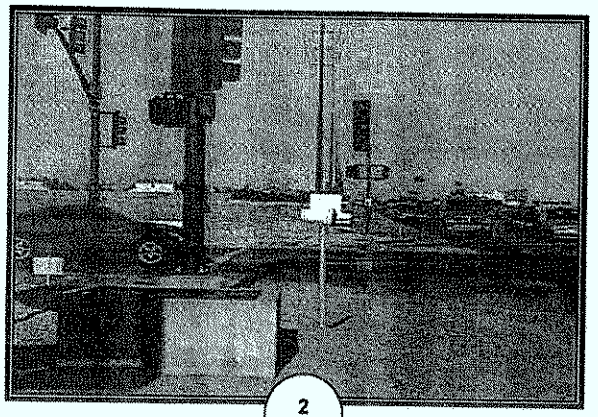

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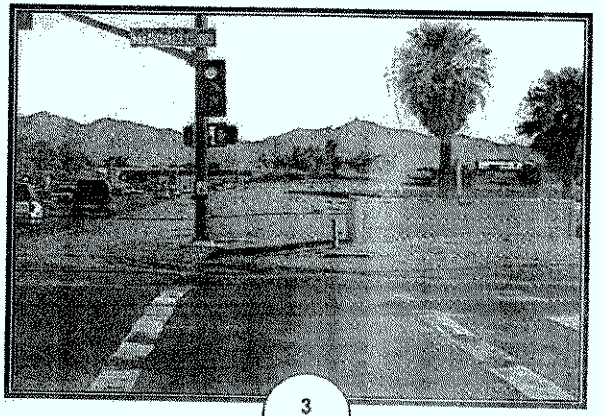

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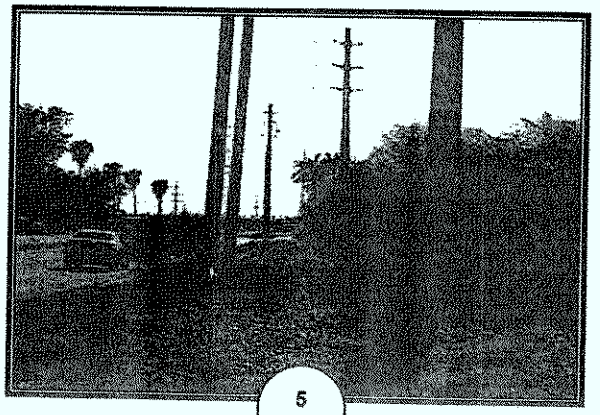

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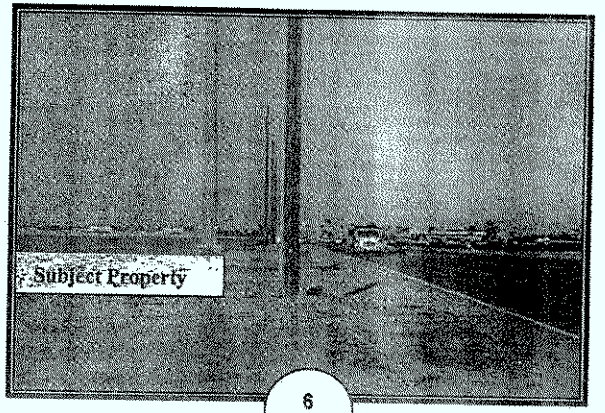


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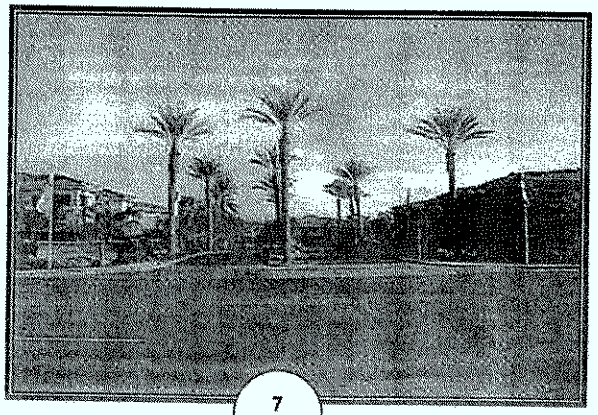

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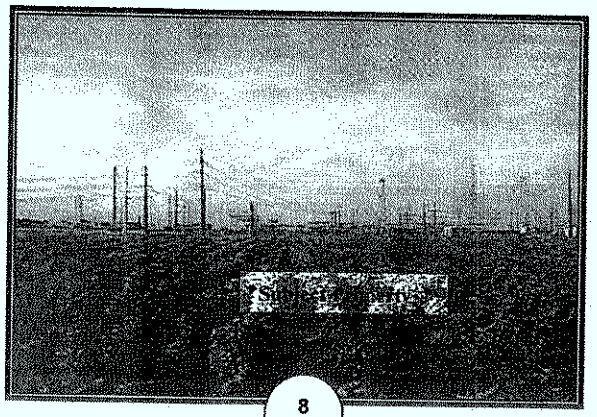

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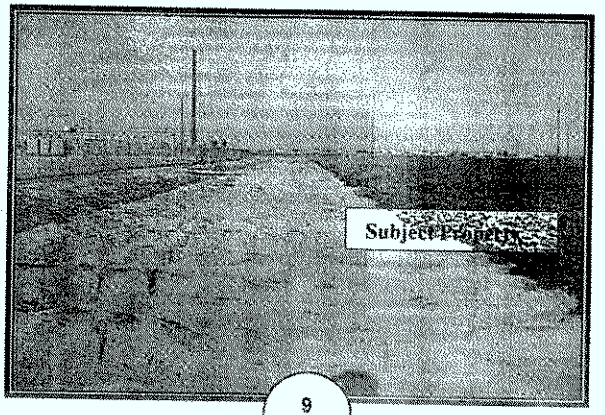


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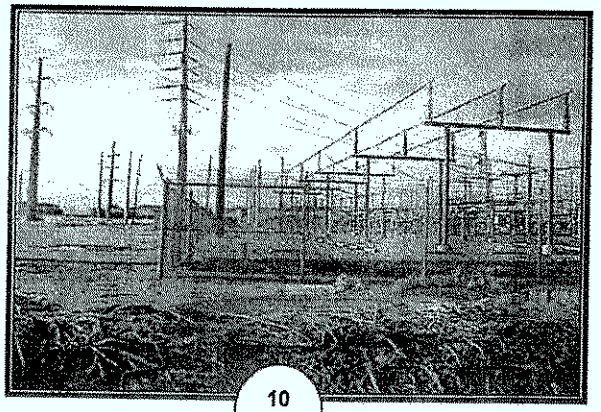

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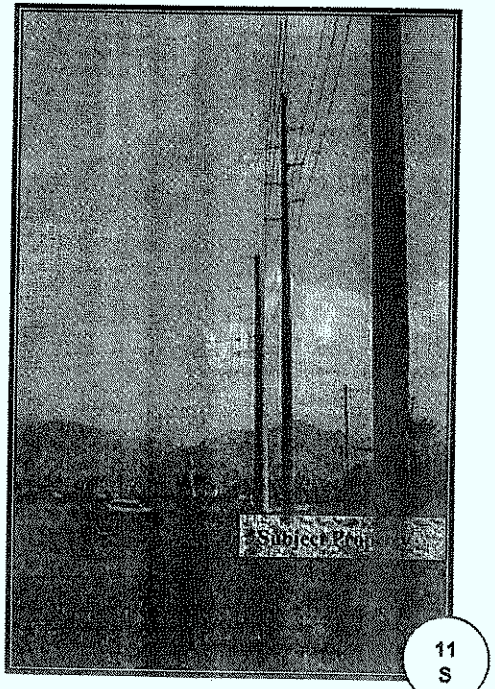

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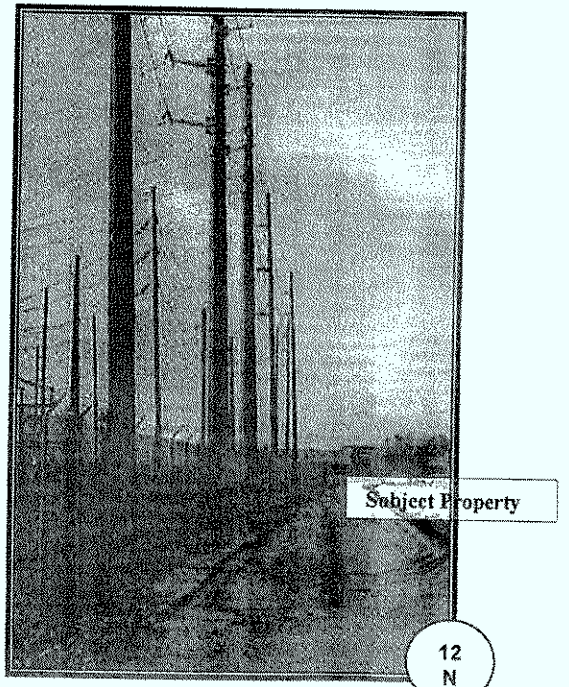


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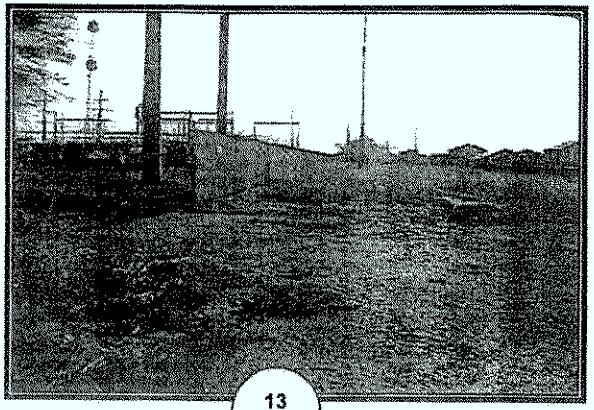
# PHOTOS 13 – 18



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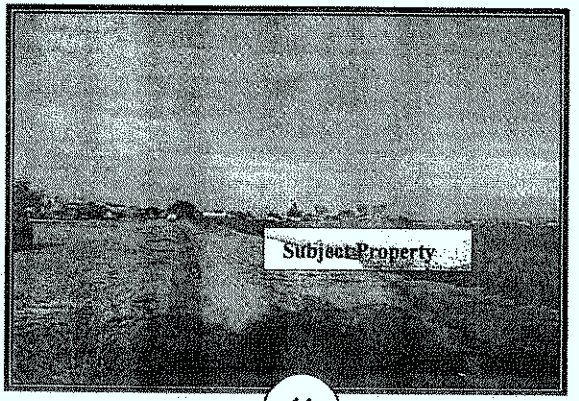


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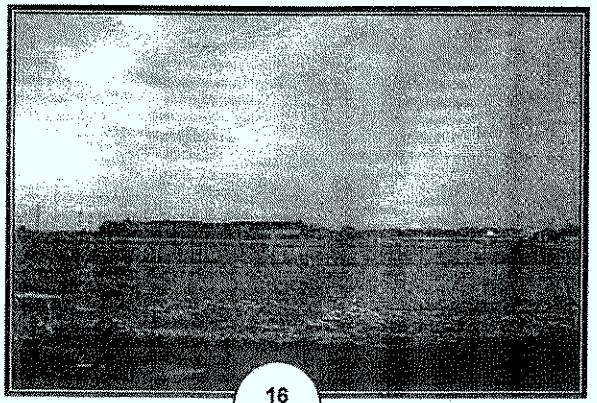

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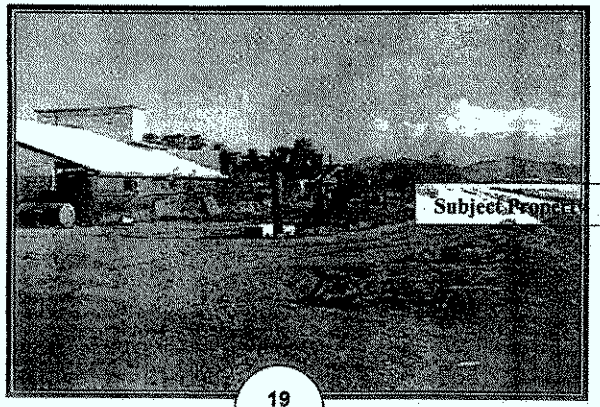
# PHOTOS 19 & 20




19
S

20
N

*Exhibit "C"*

## Legal Description

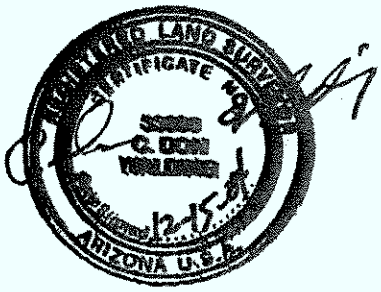
THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 36;
THENCE SOUTH 89°15'46" WEST, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 2274.13 FEET;
THENCE NORTH 00°53'09" EAST A DISTANCE OF 589.26 FEET;
THENCE NORTH 89°50'14" EAST A DISTANCE OF 610.00 FEET;
THENCE NORTH 00°53'09" EAST A DISTANCE OF 750.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 36;
THENCE NORTH 89°50'14" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 1302.54 FEET TO A POINT FROM WHICH THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 36 BEARS NORTH 89°50'14" EAST A DISTANCE OF 340.71 FEET;
THENCE SOUTH 00°00'00" WEST A DISTANCE OF 267.63 FEET;
THENCE SOUTH 89°08'00" EAST A DISTANCE OF 33.50 FEET;
THENCE SOUTH 00°46'00" WEST A DISTANCE OF 263.61 FEET;
THENCE NORTH 89°25'00" EAST A DISTANCE OF 310.76 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36 FROM WHICH THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 36 BEARS NORTH 00°00'00" EAST A DISTANCE OF 529.53 FEET;
THENCE SOUTH 00°00'00" WEST, ALONG SAID EAST LINE, A DISTANCE OF 786.74 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 2,375,280 SQUARE FEET OR 54.53 ACRES OF LAND, GROSS AREA TO CENTERLINE OF STREET, MORE OR LESS.

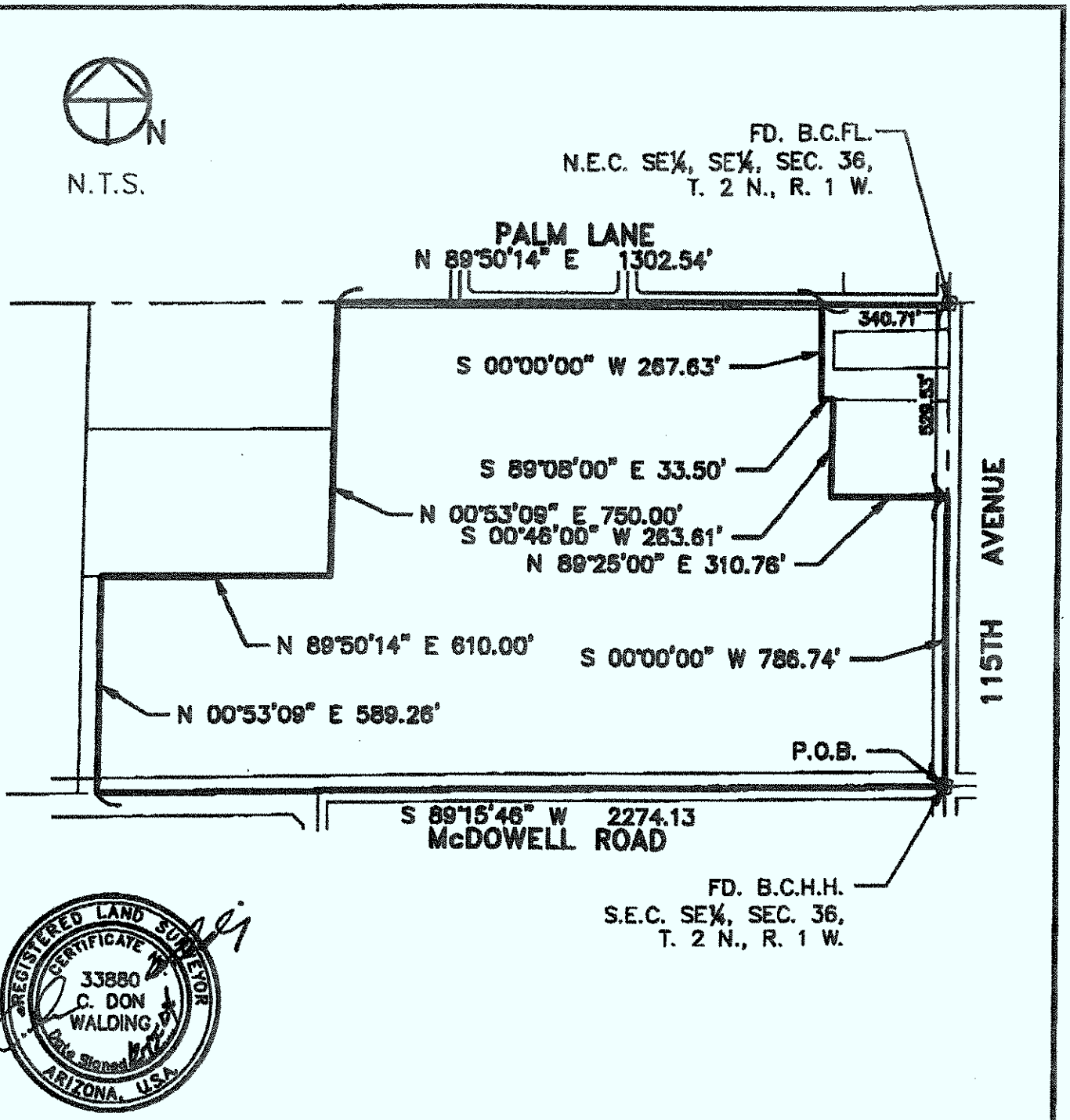
PREPARED BY:

DRW ENGINEERING
10320 W. McDOWELL RD., STE. K-1136
AVONDALE, AZ 85323




JOB NO. 04013
DECEMBER 15, 2004

*V:\04013\LEGALS\ANNEXATION.doc*







Date: 12/15/04 Job #: 04013

**DRW ENGINEERING, INC.**

10320 West McDowell Road, Suite K-1136
Avondale, Arizona 85323
(623)478-8800 FAX(623)478-8841
Email: drw@drwengineering.com

File Name: C:\DRW-JOBS\04013\04013EXH

*Exhibit "D"*

## Aerial Photo/Surrounding Zoning Map

# AERIAL and SURROUNDING ZONING MAP

## NWC Avondale Boulevard and McDowell Road

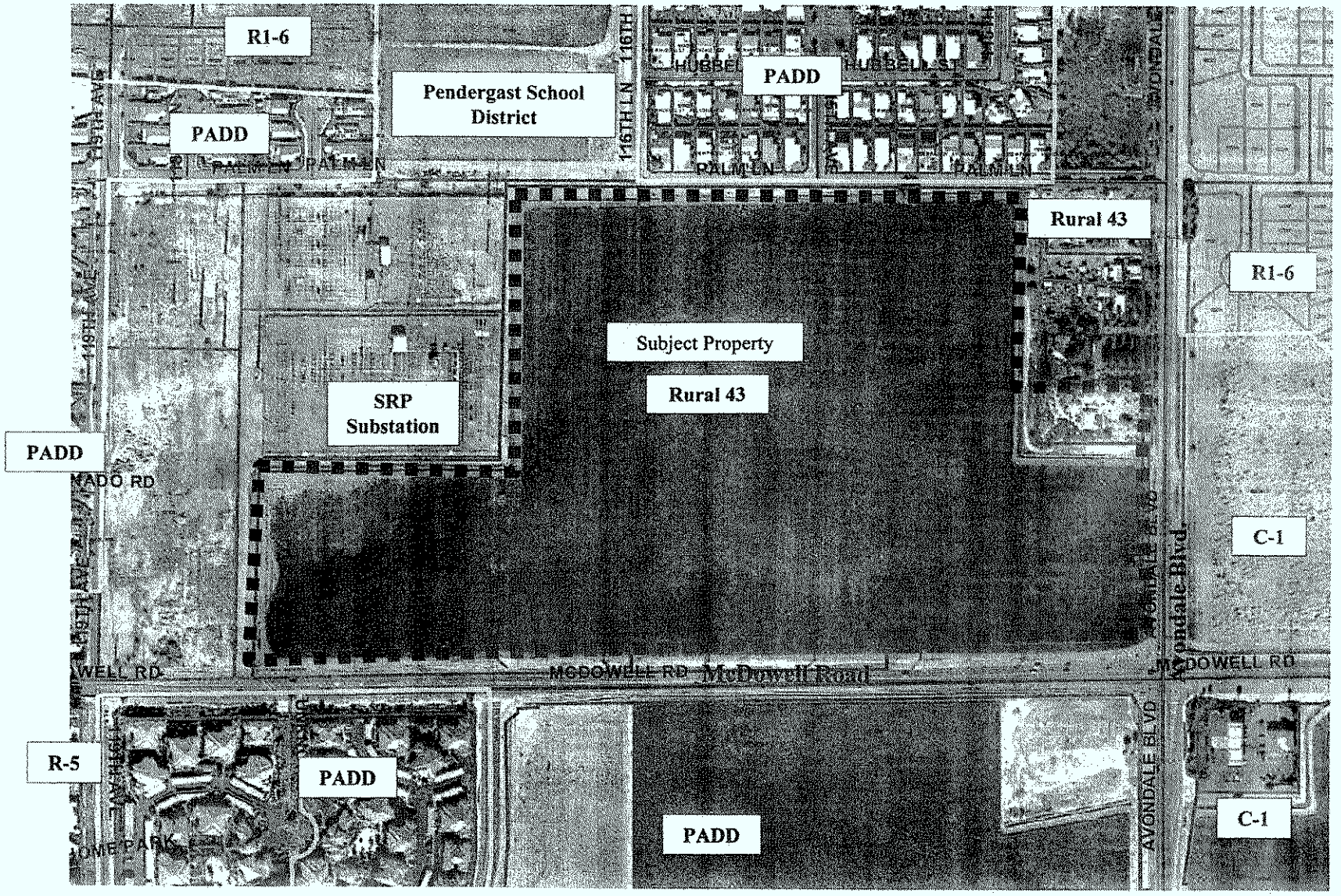
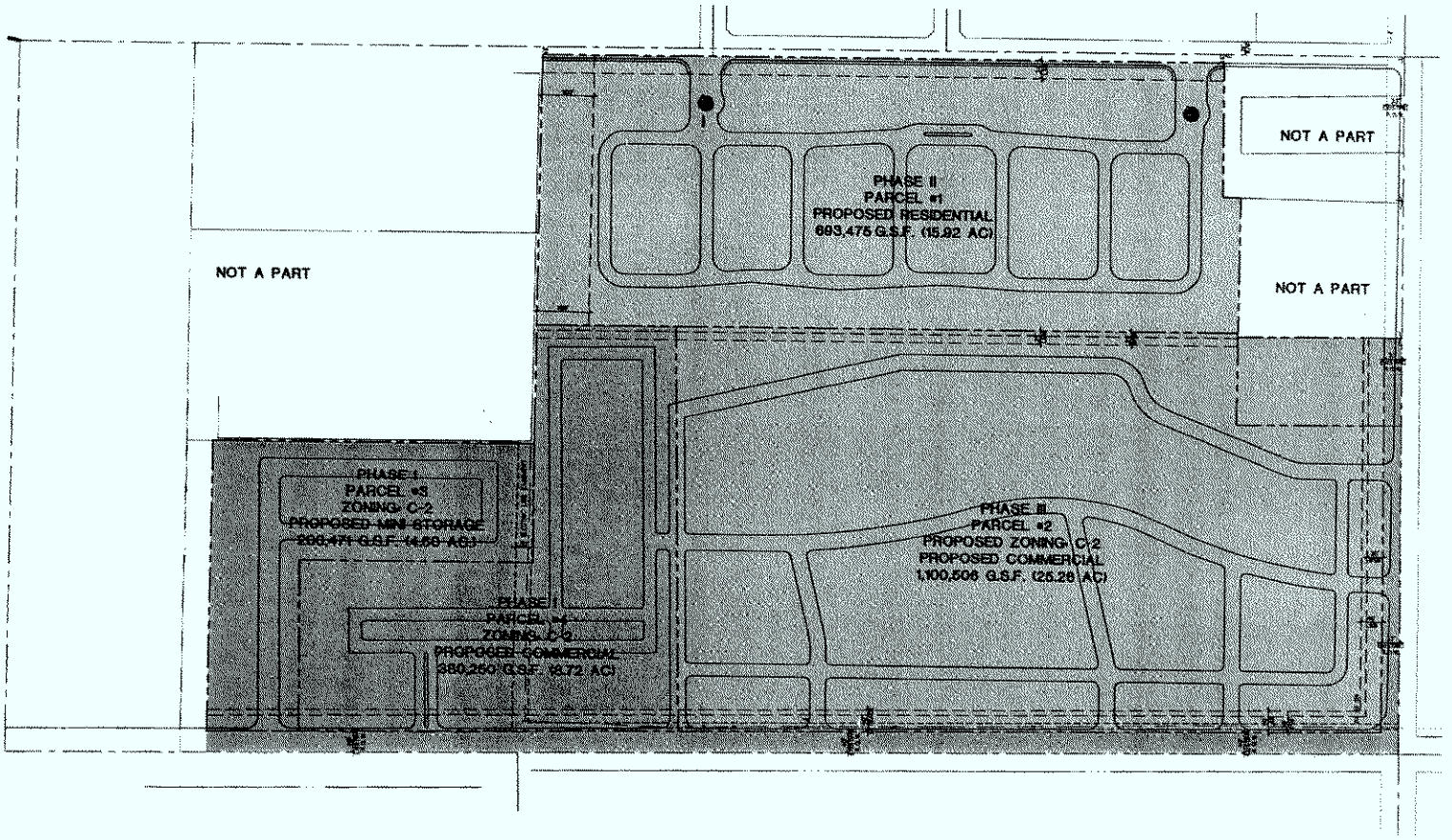
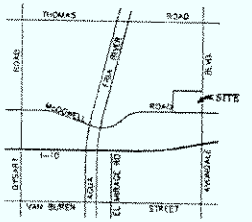


*Exhibit "E"*

## Proposed Land Use Development Map




PHASING PLAN




VICINITY MAP

SCALE: 1" = 1

OVERALL SITE DATA:

| | |
|---|---|
| EXISTING ZONING | RURAL #3 |
| PROPOSED ZONING | PAD |
| GROSS SITE AREA | 2,375,708 G.S.F. (54.53 AC.) |
| NET SITE AREA | 2,240,103 N.S.F. (51.42 AC.) |

PRELIMINARY - Not for Construction or Recording

PROJECT NAME:
**AVONDALE MARKETPLACE**
RETAIL CENTER
N.W.C. of McDOWELL ROAD & AVONDALE BOULEVARD
AVONDALE, ARIZONA

BCA

Bollinger + Cardenas Architects, Inc.
Architecture Planning Interiors Project Management
3428 E. Indian School Road
Phoenix, Arizona 85018-5113
Tele: (602) 957-9205 Fax: (602) 954-9577

PHASING PLAN

REVISIONS:

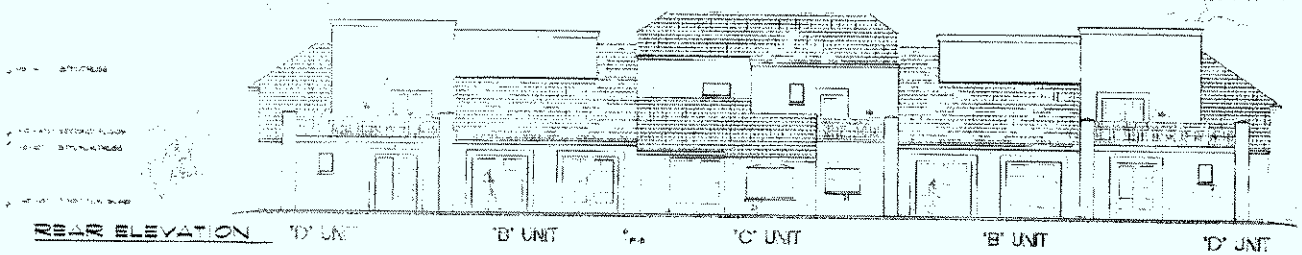
SCALE : 1"=100'-0"
DATE : 11/16/05
JOB # : 104305

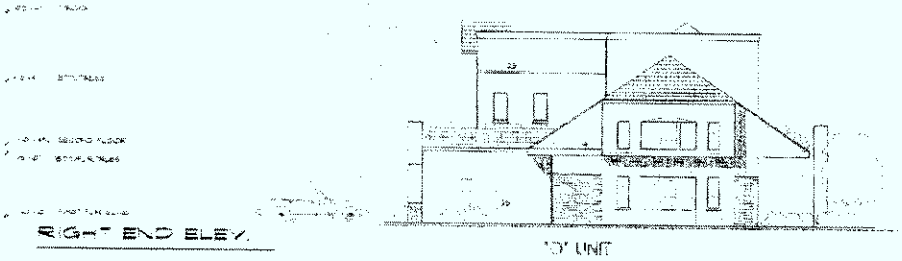
☐ SCHEMATIC DESIGN
■ DESIGN DEVELOPMENT
☐ CONST. DOCUMENTS
☐ BID/PRICING PACKAGE
☐ CONSTRUCTION ISSUE

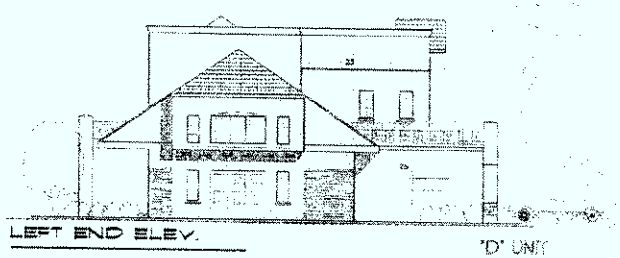
SHEET
A1.0
OF # SHEETS

*Exhibit "F"*

## Parcel 1 Residential Narrative Description and Design Criteria




## BUILDING ELEVATIONS

### KEY NOTES

1. STUCCO FINISH - THREE COAT SAND TEXTURE
2. OVERHEAD SECTIONAL GARAGE DOORS
3. CLAY BARREL ROOF TILE (3 PIECE CLASSIC MISSION STYLE)
4. LED PAINT / TRIM
5. WROUGHT IRON RAILING POSTS & BALUSTRADES
6. FRENCH STYLE PATIO DOORS
7. CONTOURED BEAM SUPPORTS (DECORATIVE)
8. BARELIED PARAPET WALL
9. CANTILEVERED EXTERIOR WALL FRAMING
10. RECESSED STUCCO SHAPE
11. ROUGH-SAWN WOOD TRIM W/ SEMI TRANSPARENT STAIN
12. NOT USED
13. POP-OUT STUCCO FIELDING
14. NO MECHANICAL EQUIPMENT ON ROOFS. THE AC CONDENSING UNIT WILL BE ON GROUND AND AIR HANDLER WILL BE LOCATED INSIDE
15. LANDSCAPE PLANTING SCHEDULE AND DETAILS, SEE LANDSCAPE PLAN
16. TUSCAN STYLE CLAY TILE
17. FINISH WOOD SILL
18. WOOD BEAMS & PILLOW
19. EPS PRECAST BAND (STUCCO)
20. CONTINUE STONE VENEER TO ALIGNMENT OF YARD FENCE
21. CUSTOM WROUGHT IRON TRELLIS

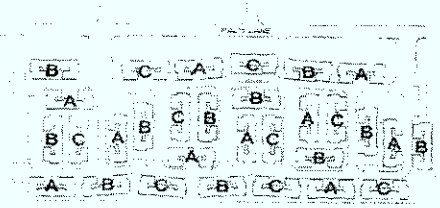
# Palm Lane Townhomes

AVONDALE, ARIZONA

7600 WEST PALM LANE

GREENLIGHT REAL ESTATE LLC

Shelbondy Art & Architecture, AIA




COLOR GROUP KEY PLAN

## EXTERIOR FINISH SCHEDULE

PLAN SYMBOL

| BUILDING LOCATION / PAINT GROUP | PLAN SYMBOL | DESCRIPTION USE | COLOR | SOURCE | QTY |
|---|---|---|---|---|---|
| GROUP A | P-1A | BUILDING BODY PAINT | LO 1555 CORNFLOWER | | 8 |
| | P-2A | BUILDING BODY PAINT | LO 1556 ONGARO | | 83 |
| GROUP B | P-1B | BUILDING BODY PAINT | LO 1558 MONTANA TAN | | 8 |
| | P-2B | BUILDING BODY PAINT | LO 1559 CINDER READY | | 1 |
| GROUP C | P-1C | BUILDING BODY PAINT | LO 1561 ARCHIVES | | 44 |
| | P-2C | BUILDING BODY PAINT | LO 1563 PEBBLE BLUE | | 27 |
| | P-3 | ENTRY DOORS (ALT.) | LO 1565 ZANZIBAR COAST | | 8 |
| | P-4 | TRIM ELEMENTS WROUGHT IRON / ROOF FASCIA | LO 1566 TAN STREET | | 36 |
| | P-5 | ENTRANCE DOORS TRIM ELEMENTS | LO 1539 SUTTER | STONE VENEER CITY OF ELDORADO | 3 |
| | SV-1 | LIMESTONE EXT. STONE VENEER | STONE VENEER LIMESTONE ANTIQUE FOT | SAN JUAN ORANGE (BRING TO BASE) | |
| | ST-1 | WOOD STAIN COLOR TIMBER CORBELS (ALT.) | DEEP TOBACCO SEMI-TRANSPARENT LO STAIN | | |
| | | ROOF TILE (FLAT CONC) | PORTLAND TILE CORPORATION CALIF. SERIES COLOR: MISSION BLEND | | |

NOTE: DOOR EXTERIOR WILL BE PAINTED SAME COLOR AS BUILDING BODY COLOR

NOTE: DOOR FRAMES WILL BE PAINTED SAME COLOR AS BUILDING BODY COLOR

## BUILDING ELEVATIONS

SCALE: 1" = 1'-0"

1 2 3 4 5 6 7 8

ZONING REVIEW

ZR 2.0

**Exhibit E**

# ORDINANCE NO. 1165-106

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 80 ACRES GENERALLY LOCATED AT THE NORTHWEST CORNER OF VAN BUREN STREET AND 103RD AVENUE AS SHOWN IN FILENAME A-03-622, REZONING SUCH PROPERTY FROM AGRICULTURAL (AG) TO PLANNED AREA DEVELOPMENT (PAD) AND IMPOSING CONDITIONS UPON SUCH CHANGE.

**WHEREAS**, the Council of the City of Avondale (the "City Council") desires to amend the City of Avondale Zoning Atlas (the "Zoning Atlas") pursuant to ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, all due and proper notices of public hearings on the intended amendment to be held before the City of Avondale Planning and Zoning Commission (the "Commission") and 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 on Thursday, December 15, 2005, on the amendment to the Zoning Atlas pursuant to such notices and as required by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the City Council held a public hearing regarding the amendment to the Zoning Atlas on January 17, 2006.

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

SECTION 1. That ± 80 acres of certain real property generally located at the northwest corner of Van Buren Street and 103rd Avenue as shown in filename A-03-622 (the "Property"), more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, are hereby rezoned from Agricultural (AG) to Planned Area Development (PAD), subject to the following conditions:

1. Development shall be in conformance with the Three Rivers Commerce Center General Development Plan date stamped December 5, 2005 except as modified by these stipulations.

2. In accordance with Section 607.A of the Zoning Ordinance, development of the first development unit shall commence within two (2) years of the date upon which the PAD zoning is approved.

3. Access to all parcels shall be provided by interior local streets only as determined at the time of master site plan approval. No parcels or individual lots shall be allowed direct access to Roosevelt Street, Van Buren Street, 103rd Avenue, or 105th Avenue.

4. Perimeter walls shall be installed adjacent to all streets. The design of all perimeter walls shall match Exhibit I. All interior screen walls shall match the architecture of the building.

5. All signage shall comply with the City of Avondale Sign Ordinance with the following exceptions:
    a. Entry monuments that identify the commerce park shall be permitted per the General Development Plan and Program and these stipulations.
    b. Each parcel shall have no more than one freestanding sign. The location of the signs shall be limited to the interior street.
    c. The provisions of Section 909.C.6 concerning a freeway pylon sign shall not apply.
    d. Sign fields for all wall signs shall be determined at time of final site plan approval. In addition, the sign cannot exceed 80% of the length or 70% of the height of the sign field.
    e. Exposed raceways shall not be permitted.
    f. Commerce park identification signs shall be provided at the intersections of all streets and the entrances into the park as determined at time of master site plan approval.

6. Automobile related uses shall only be permitted as part of a master planned automobile center with a maximum size of ten aces adjacent to Roosevelt Street.

7. All vehicle sales and leasing type uses shall be prohibited.

8. Prior to division of the property, a property owner's association shall be formed and funded for the maintenance of perimeter walls, landscaping, common open space areas, and center monument signage. A property owner's association will be formed with covenants, conditions and restrictions (CC&Rs) outlining responsibilities for maintenance of common tracts and regulations for consistency and maintenance of the project, including but not limited to landscaping, screen walls and individual signage prior to issuance of a building permit on any portion of Parcels A or B.

9. The landscaping for 103rd Avenue shall include the street tree theme.

10. Pedestrian refuge areas with a minimum of 100 square feet shall be provided for each individual lot. Each pedestrian refuge area shall include seating, landscaping and shade.

11. The developer shall provide a traffic study at the time of master site plan approval. The study shall include analysis for future traffic signals.

12. The developer shall be responsible for their proportionate share of the cost of the design and construction of any traffic signals as determined at the time of master site plan approval.

13. Street improvements shall be required as follows as determined by the City Engineer:

| Street | Right-of-way Required | Street Improvements |
|---|---|---|
| Van Buren Street | 65' half street | 3.5 travel lanes, bike lane, curb and gutter, detached sidewalks, street lights and landscaping. |
| 103rd Avenue | 40' half street | 1.5 travel lanes, curb and gutter, attached sidewalks, street lights and landscaping |
| Roosevelt Street | 35' half street | 1.5 travel lanes, curb and gutter, detached sidewalks, street lights and landscaping. |
| 105th Avenue | 40' half street | 1.5 travel lanes, bike lane, curb and gutter, attached sidewalks, street lights and landscaping |
| Pierce Street | 80' full street | 2 travel lanes, median, curb and gutter, attached sidewalks, street lights and landscaping |
| Internal Local Streets | 60' full street | 1 travel lane, curb and gutter, detached sidewalks, street lights and landscaping. |

14. Street improvements adjacent to Parcel A shall include the full length of the south half of Roosevelt Street, the full length of the east half of 105th Avenue, the full length of the west half of 103rd Avenue and the full width of Pierce Street. The improvements for all street segments adjacent to Parcel A shall include pavement, curb and gutter and streetlights. Landscaping and sidewalks shall be installed as determined at time of master site plan approval.

15. Street improvements adjacent to Parcel B shall include the full length of the north half of Van Buren Street, the full length of the east half of 105th Avenue, the full length of the west half of 103rd Avenue and the full width of Pierce Street. The improvements for all street segments adjacent to Parcel A shall include pavement, curb and gutter and streetlights. Landscaping and sidewalks shall be installed as determined at time of master site plan approval.

16. To the extent allowed by law, all Type 1 and Irrigation Grandfathered Groundwater Rights appurtenant to the property shall be properly extinguished and the resulting Assured Water Supply credits pledged to the City of Avondale's account at the Arizona Department of Water Resources prior to division of the property.

SECTION 2. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3. That the Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, January 17, 2006.

Marie Lopez-Rogers, Mayor

ATTEST:

Linda M. Farris, City Clerk

APPROVED:

Andrew J. McGuire, City Attorney

623382.2

**Exhibit F**

**City Council Regular Meeting – Excerpt of Meeting Minutes**
**March 20, 2006**

**8) PUBLIC HEARING – ORDINANCE 1174-306 – AVONDALE MARKETPLACE PAD – Z-04-12**

A public hearing and adoption of Ordinance 1174-306 rezoning from AG (Agricultural) to PAD (Planned Area Development) 54.53 acres located at the northwest corner of Avondale Boulevard and McDowell Road.

Dean Svoboda, Planning and Building Services Director, stated the property is irregularly shaped, with PAD zoning on the north and county jurisdiction on the west and east ends of the property. He said the area to the east, across Avondale Boulevard, has bee designated on the northeast corner for neighborhood commercial type uses and on the southeast corner for community commercial uses and industrial park. He noted the PAD south of McDowell Road also allows community level commercial uses. He stated the site is bordered on the west by an electrical substation and a couple exception parcels are located in the northeast corner adjacent to Avondale Boulevard, noting the development plan takes both of those conditions into consideration. He said the city's General Plan was recently amended by the Council to mixed use commercial to allow flexibility on the site to account for some of its unique contextual relationships to the substation and residential area to the north. He pointed out the General Plan on the north side of McDowell Road indicates a preference for neighborhood commercial uses rather than freeway commercial uses seen on the south side of McDowell and along Avondale Boulevard. He said the proposed plan calls for three sub-areas, a 13.3 acre area at the east end for office and mini-storage use, 16 acres that front on to Palm Lane for residential, and just over 26 acres on the corner of Avondale Boulevard and McDowell Road for commercial and office. He noted the applicant intends to make improvements to Avondale Boulevard and McDowell Road during the first phase of development. He said a number of access points have been provided and staff believes an overall circulation plan should be submitted with the first master site plan. He stated, while the circulation plan shows internal connections between the office area and commercial office area, staff believes it should also show an internal connection for the mini-storage and office area. He said there is also a need for secondary emergency access from the mini-storage area to the office commercial area. He pointed out a cross connection is not anticipated between the residential and commercial areas to prevent the mixing of commercial and residential traffic. He said, however, the stipulations provide for pedestrian circulation between the residential area and commercial property. He stated the applicant will be responsible for its proportionate share of a traffic signal at McDowell Road and Avondale Boulevard and up to 25 percent of the cost of a signal at Avondale Boulevard and Palm Lane if one is warranted.

Mr. Svoboda explained the commercial area is a combination of Commercial Office, C-2 and C-1 uses which have been tailored to meet the needs of the area and ensure compatibility. He stated the sale of new merchandise in stores measuring up to 100,000 square feet is permitted, as are personal services, medical office, banks, full service restaurants, veterinary offices, video and CD rental, auto leasing subject to conditions, mini-storage only on Parcel 3, health and fitness centers with a maximum floor area of

3,000 square feet, laundry and dry cleaning facilities subject to conditions, and drive-thru restaurants and banks subject to conditions. He said Conditional Use Permits would be required for child care facilities, larger health and exercise centers, big box users with a gross floor area over 100,000 square feet, indoor commercial entertainment, auto supply stores, business and technical schools, churches and general schools and educational institutions. He stated prohibited uses include a wide range of auto related repair, auto sales, car washes, gas stations, convenience stores, hotels and motels, self service laundries, various liquor establishments, and office warehouses. He said the design standards reflect the Freeway Corridor Specific Plan as it relates to setbacks and the boulevard concept for McDowell Road and Avondale Boulevard where the specific plan does not necessarily require it at that location. He stated a number of design guidelines are included in the PAD with the intent being to set minimums regarding the architectural character and quality and the design of the buildings. He noted, however, colors and materials will be determined at the time of master site plan review and approval. He said a sign package is also included in the proposal, calling for monument signs to accommodate the mini-storage and office parcel and three separate freestanding signs for the retail and commercial area.

Mr. Svoboda stated the residential area will accommodate either attached or detached single family houses, with a maximum density of 8.5 units per acre. He said the concept discussed to date has been similar to some of the rear-loaded single family units with private access drives to the rear; however, the actual layout and density will be determined with the Preliminary Plat. He said development standards for the residential are included in the PAD and are designed to reflect a unique rather than traditional single family product. He stated two buffers will be provided in the single family area, a 100-foot wide open space adjacent to the substation and a 50-foot landscape buffer from Palm Lane.

Mr. Svoboda said staff believes the PAD meets the requirements of the General Plan and Freeway Corridor Specific Plan as well as the requirements for PAD zoning, and will result in quality and compatible development. He stated the Planning Commission recommended approval on February 16, subject to 29 stipulations. He said staff recommends approval subject to the same stipulations except for the slightly modified language for Stipulation 29 and two additional stipulations to address Conditional Use Permit requirements and the establishment of a master theme for the project. He noted he and the applicant's representative had a discussion just before the meeting and staff is now recommending an additional stipulation which will amend the ordinance before the Council. He explained the stipulation will read, "The Preliminary Plat for the residential area may be submitted concurrent with the first master site plan for the office commercial area."

Mayor Rogers opened the public hearing on Case No. Z-04-12.

Council Member Lynch expressed concern that they will end up with a row of signs along McDowell Road. Mr. Svoboda explained there will be one monument sign allowed for the mini-storage, one for the adjacent office development on Parcel 4, and

three signs allowed for Parcel 2, one of which would be on Avondale Boulevard. He stated, given the length of the property, staff believes the number of signs will not be excessive.

Council Member Lynch asked if the two acres owned by SunCor located against the substation are included in the PAD. Mr. Svoboda said all of the property adjacent to the street alignment is somewhat problematic, explaining, although designated in the General Plan for single family development, the property is impacted by easements from the substation. He confirmed the property is not part of the subject project.

Council Member Lynch asked about the size of the single family residences. Mr. Svoboda said the size of those units has not yet been finalized. Philippe Zubia, applicant's representative, stated the buyer who had the property in escrow at the time had intended for all of the units to be a minimum of three bedrooms. Council Member Lynch asked if they envision work force housing. Mr. Zubia asked wht that term meant. Council Member Lynch explained and Mr. Zubia responded no, stating he would characterize it as move-up housing. Council Member Lynch asked about the price range. Mr. Zubia said their initial starting price was about $200,000 to $250,000.

Council Member Lynch said she has mixed emotions about the lack of vehicular access between the residential and commercial uses, stating families in the residential area will have to go all the way around the block to access the center. Mr. Zubia said residents would be able to access the site on foot through a gated entry. Council Member Lynch stated that could be difficult for a mother with several children and multiple shopping bags.

Council Member Weise expressed concern that investors will purchase the residences, stating the best way to attack the problem is for the developer to include a stipulation in the CC&Rs limiting the number of rental properties allowed in the development. He asked Mr. Zubia if the applicant would be willing to put such a stipulation in the CC&Rs. Mr. Zubia responded not at this time since they do not have a user with a finalized product yet. He offered to restrict the developer from selling more than one unit to a family, stating that would keep the property from becoming investor driven. He pointed out homebuilders typically limit investment purchases on their own. Council Member Weise asked if the applicant would agree to a stipulation requiring the homebuilder to take steps to limit investment purchases. He explained his concern is that people who have no investment in the community will purchase the properties and rent them out without concern about negative impacts to the surrounding neighborhood. Mr. Zubia said some homebuilders self regulate not only to protect themselves, but the community as well. He stated they are certainly willing to discuss the issue further and are open to adding a stipulation regulating rental properties.

Council Member Buster asked if the mini-storage facility fronts onto McDowell. Mr. Zubia responded yes; noting, however, there will be minimal frontage with the majority of the units backing onto the substation area.

Vice Mayor Wolf asked if they can discuss Council Member Weise's concern regarding rental properties at the site plan approval stage. Mr. Svoboda stated staff typically gives a cursory review of the CC&Rs at the preliminary and final plat stages. He agreed that might be a more appropriate time to address the issue since the developer may be known by then. Vice Mayor Wolf stated, while he supports a homeowner's right to rent their properties out in the future if they so choose, he agrees they need to initially control the number of investment buyers. Mr. Svoboda said there is very little the city can do in terms of zoning to address the issue, but they can work with private homebuilders and developers to encourage them to place restrictions in their CC&Rs with the understanding that the city has no power to enforce CC&Rs.

Mayor Rogers closed the public hearing on this item.

Andrew McGuire, City Attorney, read Ordinance 1174-306 by title only. Vice Mayor Wolf moved to approve the ordinance subject to an amendment adding Stipulation 32. Council Member Lynch seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

| | |
|---|---|
| Council Member Earp | Aye |
| Council Member Scott | Aye |
| Council Member Buster | Aye |
| Mayor Rogers | Aye |
| Vice Mayor Wolf | Aye |
| Council Member Lynch | Aye |
| Council Member Weise | Aye |

Motion carried unanimously.

Exhibit G

# City Council Regular Meeting – Excerpt of Meeting Minutes
# August 10, 2009

## 6 PUBLIC HEARING - PAD ZONING EXTENSION - AVONDALE MARKETPLACE PAD ZONING (Z-09-3)

A public hearing and consideration of a request from Mr. Blake Carroll of Troast Properties on behalf of the property owners for an extension until March 20, 2010 of the PAD zoning for Avondale Marketplace, located on a 54.53 acre parcel of land at the northwest corner of Avondale Blvd. and McDowell Road.

Charlie McClendon, City Manager, introduced Ken Galica to present items #6 and #7. He added that separate action by council was required.

Ken Galica, Planner II, reviewed the particulars of this item as presented in the council report.

Mayor Lopez Rogers asked if a condition could be added to this project at this point. City Attorney indicated that it is within the Council's discretion and could do so if desired.

Mayor Lopez Rogers asked the applicant's representative if they will consent to participate in public arts program that has been adopted since the original approval of this PAD zoning and master site plan.

Mr. Blake Carroll, on behalf of the applicant indicated he agreed to the additional condition on the project.

Mayor Rogers opened the public hearing. There being no requests to speak, Mayor Rogers closed the public hearing.

Vice Mayor Weise moved to approve the PAD Zoning Extension for Avondale Marketplace including the additional stipulation to include participation in the City's Municipal Arts Ordinance. Council Member Earp seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

| | |
|---|---|
| Council Member McDonald | Aye |
| Council Member Scott | Aye |
| Council Member Earp | Aye |
| Mayor Lopez-Rogers | Aye |
| Vice Mayor Weise | Aye |
| Council Member Karlin | Aye |
| Council Member Buster | Aye |

Motion carried unanimously.

*SUMMARY OF RELATED FACTS*
*APPLICATION ZE-10-1*

| *THE PROPERTY* | |
|---|---|
| PARCEL SIZE | 54.53 Net Acres |
| LOCATION | Northwest corner of Avondale Boulevard and McDowell Road. |
| PHYSICAL CHARACTERISTICS | The site is irregular in shape and generally slopes to the southwest. |
| EXISTING LAND USE | Agriculture |
| EXISTING ZONING | AG (Agricultural) |
| ZONING HISTORY | March 6, 2006 |
| DEVELOPMENT AGREEMENT | None |

| *SURROUNDING ZONING AND LAND USE* | |
|---|---|
| NORTH | PAD (Palm Garden) – single family residential |
| EAST | R-6 (Donatela I) and C-1 - Grading |
| SOUTH | PAD (Crystal Gardens Commercial) – Agricultural |
| WEST | Rural 43 (Maricopa County) - Vacant |

| *GENERAL PLAN* |
|---|
| Amended from Commercial to Mixed-Use on October 3, 2005 |

| *PUBLIC SCHOOLS* | |
|---|---|
| SCHOOL DISTRICT(S) | Pendergast Elementary and Tolleson Union High School |
| ELEMENTARY SCHOOL | Canyon Breeze Elementary School |
| HIGH SCHOOL | Westview High School |

| STREETS | |
|---|---|
| **McDowell Road** | |
| Classification | Arterial |
| Existing half street ROW | 55-65 feet |
| Standard half street ROW | 65 feet |
| Existing half street improvements | Two traffic lanes with center turn lane at the Avondale Blvd. Intersection. |
| Standard half street improvements | Three traffic lanes with center turn lane and median. Paving, curb, gutter, detached sidewalk, landscaping and street lights. Deceleration lanes as deemed necessary by City Engineering at time of final |

| | |
|---|---|
| | improvement plan approval. |
| **Avondale Boulevard** | |
| Classification | Arterial |
| Existing half street ROW | 55-65 feet |
| Standard half street ROW | 55-65 feet |
| Existing half street improvements | One traffic lane with center turn lane at McDowell Road intersection. |
| Standard half street improvements | Three traffic lanes with center turn lane and median. Paving, curb, gutter, detached sidewalk, landscaping and street lights. |
| **Palm Lane** | |
| Classification | Local |
| Existing half street ROW | 0 feet |
| Standard half street ROW | 25 feet |
| Existing half street improvements | None. |
| Standard full street improvements | 1 travel lane, paving, curb and gutter, attached sidewalks, street lights and landscaping. |

| *UTILITIES* |
|---|
| A 21" sanitary sewer runs along the entire McDowell Road frontage. A 10" and 12" sanitary sewer runs along Palm Lane.<br><br>A 12" waterline runs along McDowell Road. A 16" waterline runs along Avondale Boulevard An 8" water line runs along Palm Lane. |

# CITY COUNCIL REPORT

**SUBJECT:**
Appointment of Council Member as Clean Air Make More Ambassador

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

**FROM:** Sammi Curless, Economic Development Specialist (623)333-1412

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Mayor Lopez Rogers would like to discuss appointment of a Council Member as a Clean Air Make More Ambassador.

**BACKGROUND:**

Maricopa County Air Quality Department (MCAQ) has requested from all the County's cities and towns an elected official to serve as a Clean Air Make More Ambassador. This Ambassador will serve as an advocate for the Clean Air Make More outreach initiative.

Currently MCAQ has five elected official Ambassadors from Phoenix, Tempe, Scottsdale, Fountain Hills and Goodyear. This group met for the first time in March and is scheduled to meet on May 5 to continue determining the role of the Clean Air Ambassador and the most effective ways for the group of Ambassadors to get information on air quality issues out to the public.

**RECOMMENDATION:**

Confirm interest from a Councilmember in serving as Avondale's representative as MCAQ's Clean Air Make More Ambassador.

**ATTACHMENTS:**

**Click to download**

No Attachments Available

# CITY COUNCIL REPORT

**SUBJECT:**
EXECUTIVE SESSION

**MEETING DATE:**
May 3, 2010

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

The Council may hold an executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding the Council's position regarding potential lease agreements.

**ATTACHMENTS:**

**Click to download**

No Attachments Available