CITY COUNCIL AGENDA

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

REGULAR MEETING
April 18, 2011
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 UNSCHEDULED PUBLIC APPEARANCES

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

3 CONSENT AGENDA

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

a. APPROVAL OF MINUTES
Regular Meeting of April 4, 2011

b. LIQUOR LICENSE TEMPORARY EXTENSION OF PREMISES - MANNY'S MEXICAN RESTAURANT
City Council will consider a request by Mr. Manny Lafarga for a Temporary Extension of Premises to the Series 12 Restaurant License to sell all spirituous liquors at Manny's Restaurant to be used in conjunction with a Cinco de Mayor event scheduled for Thursday, May 5, 2011 from 12:00 pm to 12:00 am. The Council will take appropriate action.

c. PURCHASE AGREEMENT - PHILIPS HEALTHCARE FOR CARDIAC MONITORS
City Council will consider a request to approve the Purchase Agreement with Philips Healthcare for the purchase of cardiac resuscitation equipment in the amount of $55,169.64 for the purpose of fulfilling the Public Safety Stabilization Program Grant requirement and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. PROFESSIONAL SERVICES AGREEMENTS - CONSULTANT REGISTERED SURVEYING INC. FOR TOPOGRAPHIC SURVEY SERVICES
City Council will consider a request to approve a Professional Services Agreement with Consultant Registered Surveying Inc. for topographic survey services for several capital improvement projects in the amount of $15,960 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. FIRST AMENDMENT TO PURCHASE AGREEMENT - IKON OFFICE SOLUTIONS, INC.
City Council will consider a request to approve the First Amendment to the Purchase Agreement with Ikon Office Solutions, Inc. for the purchase of 4 copiers in the amount of $40,196.17, and authorize the Mayor or City Manager and City Clerk to authorize the necessary documents. The Council will take appropriate action.

f. DESIGN AND CONSTRUCTION CONTRACT - SALT RIVER PROJECT FOR THE AVONDALE BOULEVARD & I-10 TRAFFIC INTERCHANGE PROJECT

City Council will consider a request to approve a Design Services and Construction Contract with Salt River Project to design and construct electrical improvements for the Avondale Boulevard and I-10 Traffic Interchange Improvement Project in the amount of $54,690.87 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. FIRST AMENDMENT TO CONTRACT – AREA AGENCY ON AGING (2011-05-AVO)

City Council will consider a request to approve the first Amendment to the Area Agency on Aging Contract (2011-05-AVO) in the amount of $6,500 for the purchase of a food steamer and supplies for the Multipurpose Center Operations and authorize the Mayor or City Manager and City Clerk to execute the contract documents. The Council will take appropriate action.

h. FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT - TECHNISOURCE, INC.

City Council will consider a request to approve the First Amendment to the Professional Services Agreement with Technisource, Inc., a Subsidiary of SFN Group, Inc., in the amount of $59,800.00 for consulting and training services related to the City's Human Resources, Payroll and Benefits software and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

i. FIRST AMENDMENT TO PURCHASE AGREEMENT - FACILITEC, INC.

City Council will consider a request to approve the First Amendment to the Purchase Agreement with Facilitec, Inc. to purchase additional office furniture and services for an adjusted contract amount not to exceed $100,000 and authorize the Mayor or City Manager and City Clerk to execute the contract documents. The Council will take appropriate action.

j. RESOLUTION 2968-411 - INTERGOVERNMENTAL AGREEMENT WITH AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44

City Council will consider a resolution authorizing an Intergovernmental Agreement with the Avondale Elementary School District No. 44 for the design, construction, and installation of two compound water meters, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

k. RESOLUTION 2966-411- CONSOLIDATING THE SOCIAL SERVICES ADVISORY BOARD AND NEIGHBORHOOD AND FAMILY SERVICES COMMISSION

City Council will consider a resolution consolidating the Social Services Advisory Board with the Neighborhood and Family Services Commission and amending and restating the Neighborhood and Family Commission By-laws. The Council will take appropriate action.

l. ORDINANCE 1456-4111 ACCEPTING A DEDICATION OF RIGHT-OF-WAY AND 1455-411 ABANDONING A RIGHT-OF-WAY EASEMENT ON THE SOUTH SIDE OF WESTERN AVENUE WEST OF CENTRAL AVENUE

Staff is requesting that the City Council adopt an ordinance accepting the dedication of real property for use as public right-of-way and an ordinance abandoning a right-of-way easement that is no longer necessary for public use located on the south side of Western Avenue west of Central Avenue, and authorize the Mayor or City Manager, City Clerk to execute the appropriate documentation.

4 PUBLIC HEARING AND RESOLUTION 2965-411 - 2011-2012 ANNUAL ACTION PLAN

City Council will hold a public hearing and consider a resolution approving the 2011/2012 Annual Action Plan containing recommended allocations for 2011/2012 CDBG and HOME funds and authorizing its submission to the U.S. Department of Housing and Urban Development. The Council will take appropriate action.

5 CONTRIBUTIONS ASSISTANCE PROGRAM AND SUBCOMMITTEE APPOINTMENT

City Council will consider a request to approve the Contributions Assistance Program funding

guidelines and appoint a subcommittee to review applications and make funding recommendations. The Council will take appropriate action.

6 **PUBLIC HEARING – RESOLUTION 2967-411 AND ORDINANCE 1453-411 - ZONING ORDINANCE TEXT AMENDMENT TO SECTIONS 1, 2, 5, 8, 9, 11, AND 12 AND CITY CODE TEXT AMENDMENT TO CHAPTER 19.**

City Council will hold a public hearing and consider a resolution declaring as a public record a document entitled "Avondale Zoning Ordinance Administration and Procedures Provisions", and an ordinance adopting the aforementioned document as Section 1 of the Zoning Ordinance with affiliated changes to Sections 2, 5, 8, 9, 11, and 12 of the Zoning Ordinance and Chapter 19 of the Avondale City Code. The Council will take appropriate action.

7 **ADJOURNMENT**

Respectfully submitted,

Carmen Martinez

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:
APPROVAL OF MINUTES

MEETING DATE:
April 18, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Regular Meeting of April 4, 2011

ATTACHMENTS:

Click to download

No Attachments Available

CITY COUNCIL REPORT

SUBJECT:
Liquor License Temporary Extension of Premises - Manny's Mexican Restaurant

MEETING DATE:
April 18, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City Council will consider a request by Mr. Manny Lafarga for a Temporary Extension of Premises to the Series 12 Restaurant License to sell all spirituous liquors at Manny's Restaurant to be used in conjunction with a Cinco de Mayo event scheduled for Thursday, May 5, 2011 from 12:00 pm to 12:00 am.

DISCUSSION:

Manny's Mexican Restaurant has held a Series 12 Restaurant License to sell all spirituous liquors since early 2005. In 2006 the owner, Manny Lafarga, applied for and was granted a temporary extension of premises, however he did not use the permit due to cancellation of the event.

This year Mr. Lafarga is once again planning on holding a special event for Cinco de Mayo. The event is scheduled for Thursday, May 5, 2011 from 12:00 pm to 12:00 am. Staff has met with Mr. Lafarga to review the specifics of the event and are recommending approval of the request.

RECOMMENDATION:

Staff is recommending approval of a request from Mr. Manny Lafarga for a Temporary Extension of Premises to the Series 12 Restaurant License to sell all spirituous liquors at Manny's Restaurant to be used in conjunction with a Cinco de Mayor event scheduled for Thursday, May 5, 2011 from 12:00 pm to 12:00 am.

ATTACHMENTS:

Click to download

- Application
- Site Plan
- Departmental Review

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix, AZ 85007-2934
www.azliquor.gov
(602) 542-5141

APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT

THIS APPLICATION MUST BE RETURNED TO THE DEPARTMENT OF LIQUOR

☐ Permanent change of area of service – Give specific purpose of change: _____

☑ Temporary change for date(s) of: 5-5-11

1. Licensee's Name: Lafarga (Last) Manuel (First) J (Middle)
2. Mailing Address: Po Box 35 (City) Litchfield Pk (State) AZ (Zip) 85340
3. Business Name: Mannyi Mexican Restaurant **LICENSE #:** _____
4. Business Address: 12345 W. Indian School Rd (City) Maricopa (COUNTY) AZ (State) 85392 (Zip)
5. Business Phone: (623) 935 3406 Residence Phone: ([redacted]
6. Do you understand Arizona Liquor Laws and Regulations? ☑ YES ☐ NO **FAX #** (623) 935 3302
7. Have you received approved Liquor Law Training? ☐ NO ☑ YES When? 2005
8. What security precautions will be taken to prevent liquor violations in the extended area? we will have Security, one Avondale PD, specific fenced in area for this event
9. Does this extension bring your premises within 300 feet of a church or school? ☐ YES ☑ NO PD will be checked regularly.
10. IMPORTANT: ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.

******After completing sections 1-9, take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.**

This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

_____ (Authorized Signature) _____ (Title) _____ (Agency)

I, Manuel Lafarga (Print full name), being first duly sworn upon oath, hereby depose, swear and declare, under penalty of perjury, that I am the APPLICANT making the foregoing application. I have read this application and the contents and all statements are true, correct and complete.

X _____ (Signature of Owner or Agent)

State of Arizona County of Maricopa
SUBSCRIBED IN MY PRESENCE AND SWORN TO before me this date 6th (Day) April (Month) 2011 (Year)

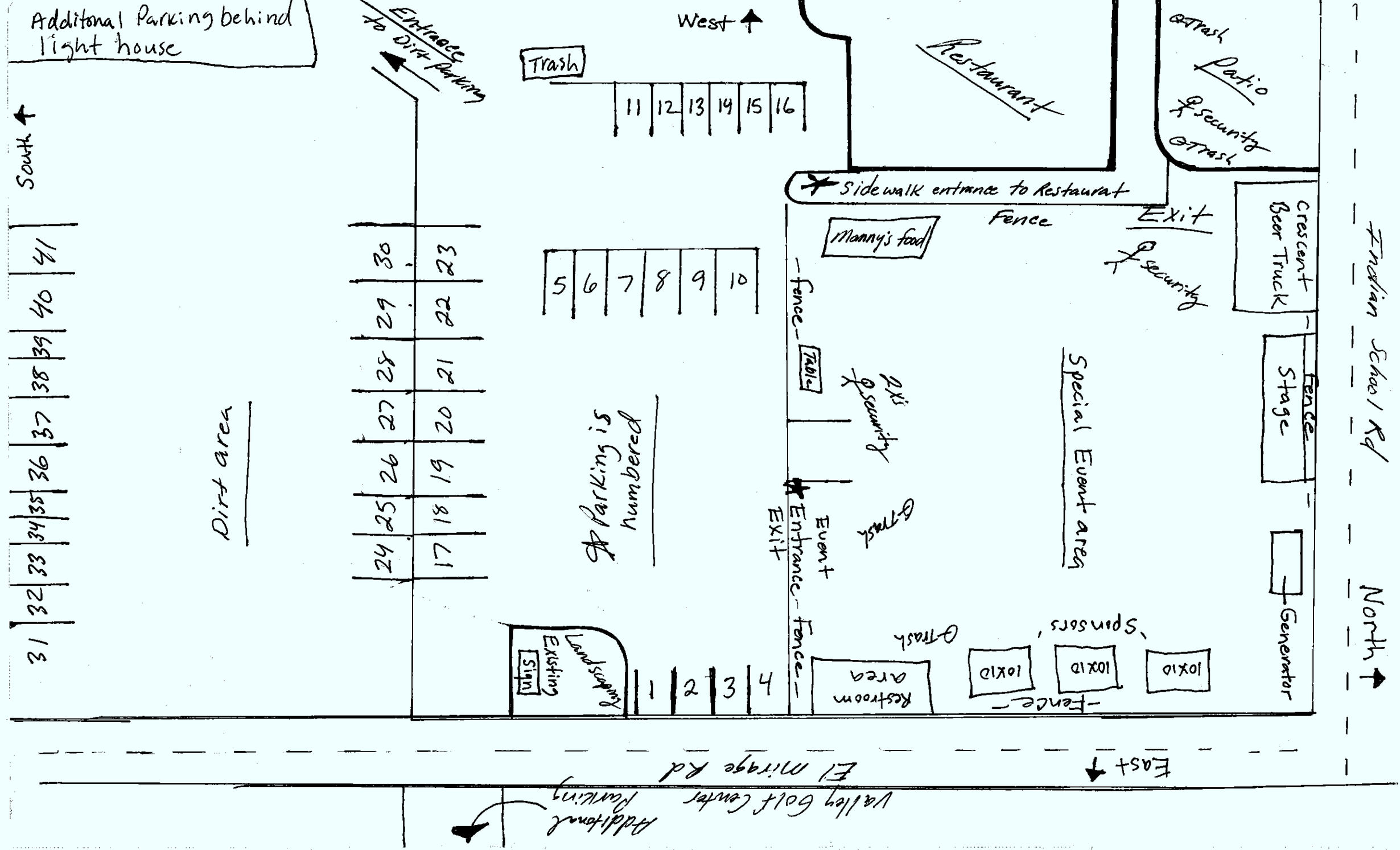
My commission expires on: April 20, 2012 _____ (Signature of NOTARY PUBLIC)

Investigation Recommendation ☐ Approval ☐ Disapproval by: _____ Date: _____

Director Signature required for Disapprovals _____ Date: _____

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

LIC 0105 05/2009 ***Disabled individuals requiring special accommodation, please call the Department (602) 542-5027.**


Additonal Parking behind light house
Entrance to Dirt Parking
West
Trash
11 12 13 14 15 16
Restaurant
Trash
Patio
Security
Trash
Sidewalk entrance to Restaurant
Fence
Exit
Security
Crescent Beer Truck
Mommy's food
South
41
40
39
38
37
36
35
34
33
32
31
30
29
28
27
26
25
24
23
22
21
20
19
18
17
5 6 7 8 9 10
Dirt area
Parking is numbered
-fence-
Table
Exit Security
Entrance
Exit
Event
Trash
Special Event area
Fence
Stage
Generator
Sponsors
10x10
10x10
10x10
-fence-
Trash
Restroom area
-fence-
1 2 3 4
Landscaping
Existing Sign
Indian School Rd
North
East
Valley Golf Center
El Mirage Rd
Additional Parking

Avondale AZ
City Clerk's Department

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:
☒ SPECIAL EVENT LIQUOR LICENSE

(APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT)

ROUTING:
☒ POLICE DEPARTMENT
☐ FIRE DEPARTMENT
☐ FINANCE DEPARTMENT

APPLICANT'S NAME: MANUAL J. LAFARGA

ORGANIZATIONS NAME: MANNY'S MEXICAN RESTAURANT

EVENT ADDRESS: 12345 W. INDIAN SCHOOL RD.

CITY: AVONDALE **STATE:** AZ **ZIP CODE:** 85392
PURPOSE OF EVENT: CINCO DE MAYO 5-5-11 EVENT

DEPARTMENTAL COMMENTS:

☑ **APPROVED**
☐ **DENIED**

SIGNATURE 4/7/11 **DATE**

Police Chief
TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: APRIL 18TH, 2011
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: TUESDAY, APRIL 12,2011

Avondale
City Clerk's Department

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

☒ SPECIAL EVENT LIQUOR LICENSE

(APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT)

ROUTING:

☐ POLICE DEPARTMENT

☒ FIRE DEPARTMENT

☐ FINANCE DEPARTMENT

APPLICANT'S NAME: MANUAL J. LAFARGA

ORGANIZATIONS NAME: MANNY'S MEXICAN RESTAURANT

EVENT ADDRESS: 12345 W. INDIAN SCHOOL RD.

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

PURPOSE OF EVENT: CINCO DE MAYO 5-5-11 EVENT

DEPARTMENTAL COMMENTS:

☒ **APPROVED**

☐ **DENIED**

Roger Pool

SIGNATURE

4/12/11

DATE

FIRE MARSHAL

TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: APRIL 18TH, 2011

PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: TUESDAY, APRIL 12,2011

Avondale AZ
City Clerk's Department

DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:
☒ SPECIAL EVENT LIQUOR LICENSE

(APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT)

ROUTING:
☐ POLICE DEPARTMENT
☐ FIRE DEPARTMENT
☒ FINANCE DEPARTMENT

APPLICANT'S NAME: MANUAL J. LAFARGA

ORGANIZATIONS NAME: MANNY'S MEXICAN RESTAURANT

EVENT ADDRESS: 12345 W. INDIAN SCHOOL RD.

CITY: AVONDALE **STATE:** AZ **ZIP CODE:** 85392
PURPOSE OF EVENT: CINCO DE MAYO 5-5-11 EVENT

DEPARTMENTAL COMMENTS:

☑ **APPROVED**
☐ **DENIED**

Teresa Gilmore Clark
SIGNATURE

4/11/11
DATE

Privilege Tax Auditor
TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: APRIL 18TH, 2011
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: TUESDAY, APRIL 12,2011

CITY COUNCIL REPORT

SUBJECT:
Purchase Agreement - Philips Healthcare for Cardiac Monitors

MEETING DATE:
April 18, 2011

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

City staff is requesting City Council's approval to purchase cardiac monitors from Philips Healthcare in the amount of $55,169.64 for the purpose of fulfilling the Public Safety Stabilization Program Grant requirement.

BACKGROUND:

On November 18, 2010, Avondale's Fire Department received City Council's approval to submit and accept grant funding from the Public Safety Stabilization Program (CFDA #84.397). This program is administered by the Governor's Office of Economic Recovery and is part of the American Recovery Reinvestment Act of 2009 (ARRA).

DISCUSSION:

Funding in the amount of $62,250 has been awarded to Avondale for the immediate purchase of four cardiac monitors. The typical life-span of a cardiac monitor is five to seven years.The goal of this project is to provide essential care to people during medical emergencies.

BUDGETARY IMPACT:

Avondale's Fire Department has selected Philips Healthcare as the preferred vendor. The city is electing to purchase the cardiac monitors through the City of Phoenix Contract with Philips Healthcare which includes provisions for Cooperative Purchasing, saving the city time and expense of developing individual specifications and advertising. The City of Phoenix bidding process meets the Avondale Procurement requirements. The cost of the equipment exceeds $50,000 and therefore requires City Council's approval to proceed with the purchase of the equipment. The grant award amount is $62,250 and the cost of the monitors is $55,169.64. Remaining funds will be reallocated for accessories associated with the monitors upon the grantors approval. Line items associated with the project are 247-6323-00-8630.

RECOMMENDATION:

Staff recommends that the City Council approve the Purchase Agreement with Philips Healthcare for the purchase of cardiac resuscitation equipment in the amount of $55,169.64 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Purchase Agreement

PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHILIPS HEALTHCARE,
A DIVISION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

THIS PURCHASE AGREEMENT (this "Agreement) is entered into as of April 4, 2011, between the City of Avondale, an Arizona municipal corporation (the "City") and Philips Healthcare, a division of Philips Electronics North America Corporation (the "Vendor").

RECITALS

A. After a competitive procurement process, the City of Phoenix, Arizona ("Phoenix"), entered into Contract No. 120702 dated March 7, 2007, as amended by Amendment No. dated April 5, 2007, Amendment No. 2 dated April 19, 2007, Amendment No. 3 dated April 19, 2007, Amendment No. 4 dated September 5, 2007 and Amendment No. 5 dated June 18, 2009, for the Vendor to provide cardiac resuscitation equipment (collectively, the "Phoenix Contract"). The Phoenix Contract is attached hereto as Exhibit A and incorporated herein by this reference.

B. The City is permitted pursuant to Section 25-24 of the City Code to make purchases under the Phoenix Contract without further public bidding, and the Phoenix Contract permits its cooperative use by other public entities including the City.

C. The City desires to purchase cardiac resuscitation equipment (the "Equipment") from the Vendor under the terms and conditions of the Phoenix Contract for a lower cost than would otherwise be available.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until such time as delivery of the Equipment is made and accepted, invoices are paid and the Equipment warranty obligations (if any) are satisfied.

2. Scope of Work. Vendor shall provide to the City the Equipment and under the terms and conditions of the Phoenix Contract and in the quantities and configurations as set forth in the Quotation, attached hereto as Exhibit B, and incorporated herein by reference.

3. Compensation; Payment. The City shall pay Vendor an aggregate amount not to exceed $55,169.64 for the Equipment at the prices set forth in the Quotation.

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

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

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

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

8. Indemnification; Insurance. The City shall be afforded all of the rights, privileges and indemnifications afforded to the City of Phoenix under the Phoenix Contract, and such rights, privileges and indemnifications shall accrue and apply with equal effect to the City under this Agreement including, but not limited to, the Vendor's obligation to provide the indemnification and insurance.

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

"**City**"	"**Vendor**"
CITY OF AVONDALE, an Arizona municipal corporation	PHILIPS HEALTHCARE, a division of Philips Electronics North America Corporation
_____	By:_____
Charles P. McClendon, City Manager	
ATTEST:	Name:_____
_____	Title:_____
Carmen Martinez, City Clerk	

1457068.1

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____ 2011, 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 _____, 2011, by _____ as _____ of Philips Healthcare, a division of Philips Electronics North America Corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

EXHIBIT A
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHILIPS HEALTHCARE,
A DIVISION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

[Phoenix Contract]

See following pages.

120702..

CITY OF PHOENIX
Purchasing Division

INVITATION FOR BID
IFB 07-131 (TH)

PORTABLE MONITOR DEFIBRILLATORS - REQUIREMENTS CONTRACT

CONTACT PERSON
Theresa Hayes
Procurement Supervisor
602-261-8989
theresa.hayes@phoenix.gov

TABLE OF CONTENTS

Instructions to Bidders — **Section I**

- Solicitation Response Checklist
- Introduction
- Schedule of Events
- Obtaining a Copy of the Solicitation and Addenda
- Preparation of Bid
- Compliance with Affirmative Action Requirements
- Addenda
- Licenses
- Certification
- Submission of Bid
- Withdrawal of Offer
- Bid Results
- Award of Contract
- Bid Incentive SBE Firms
- Bid Incentive Joint Venture SBE Firms
- City's Right to Disqualify for Conflict of Interest
- Bidder's Compliance with Health, Environmental and Safety Requirements

Standard Terms and Conditions — **Section II**

- Definition of Key Words Used in the Solicitation
- Contract Interpretation
- Contract Administration and Operation
- Costs and Payments
- Contract Changes
- Risk of Loss and Liability
- Warranties
- City's Contractual Rights
- Contract Termination

Special Terms and Conditions — **Section III**

Scope — **Section IV**

Submittals — **Section V**

CITY OF PHOENIX
Purchasing Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

Please read this before continuing on to the bid document.

SOLICITATION RESPONSE CHECK LIST

In order for your response to be considered, your firm must be in compliance with the Phoenix City Code, Chapter 18, Article V pertaining to Affirmative Action Programs, prior to the solicitation opening due date. **Failure to comply with the reporting requirements of this ordinance will result in your response being rejected.**

Check off each of the following as the necessary action is completed.

☐ 1. **The requirements of City of Phoenix Affirmation Action Program Ordinance G-3472 have been met. Compliance forms are available at ftp://www.phoenix.gov/pub/payf/attachb.pdf. If currently in compliance, do not resubmit forms.**

☐ 2. All forms have been signed. All of Section V, Submittals, is included.

☐ 3. The prices offered have been reviewed.

☐ 4. The price extensions and totals have been checked.

☐ 5. Any required drawings or descriptive literature have been included.

☐ 6. The delivery information block has been completed.

☐ 7. If required, the amount of the bid surety has been checked and the surety has been included.

☐ 8. Review the insurance requirements, if any, to assure you are in compliance.

☐ 9. The specified number of copies of your offer has been included.

☐ 10. Any addenda have been signed and are included.

☐ 11. The mailing envelope has been addressed to:
City of Phoenix, Purchasing, 8th Floor, 251 W. Washington Street, Phoenix, AZ 85003.

The mailing envelope clearly shows:
Your company name and address, the solicitation number, and the bid opening date.

☐ 12. The response will be mailed in time to be received no later than 2:00 p.m. local Arizona time.

☐ 13. Request for Consideration of Alternate Terms.

1. INTRODUCTION

The City of Phoenix invites sealed bids for portable monitor defibrillators for a five-year period commencing on or about March 1, 2007, in accordance with the specifications and provisions contained herein.

This solicitation is available in large print, Braille, audio tape, or computer diskette. Please call (602) 262-7181/Fax (602) 534-1933 or TTY (602) 534-5500 for assistance.

2. SCHEDULE OF EVENTS

Bid Due Date:	February 2, 2007 at 2:00 p.m. Local Arizona Time
Bid Submittal Location:	Calvin Goode Building City of Phoenix Finance Department Purchasing Division 251 W. Washington Street, 8th Floor Phoenix, AZ 85003

3. OBTAINING A COPY OF THE SOLICITATION AND ADDENDA

Interested bidders may download the complete solicitation and addenda from http://www.phoenix.gov/FINBIDS. Internet access is available at all public libraries. Any interested bidders without Internet access may obtain this solicitation by calling (602) 262-7181 or picking up a copy during regular business hours at the City of Phoenix Finance Department, Purchasing Division, 251 W. Washington Street, 8th Floor, Phoenix, AZ.

4. PREPARATION OF BID

4.1 All forms provided in Section V, Submittal, must be completed and submitted with your bid. It is permissible to copy Section V forms if necessary. Erasures, interlineations, or other modifications of your bid shall be initialed in original ink by the authorized person signing the bid. No bid shall be altered, amended or withdrawn after the specified bid due time and date. The City is not responsible for bidder's errors or omissions. All time periods stated as a number of days shall be calendar days.

Any deviation from this solicitation shall be clearly stated and identified in a separate section titled Request for Consideration of Alternate Terms and must be included with your submittal. Submission of additional terms, conditions or agreements with your proposal may result in rejection of your bid.

4.2 It is the responsibility of all bidders to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
B. Study and carefully correlate Offeror's knowledge and observations with the IFB document and other related data.

C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which an Offeror has discovered in or between the IFB document and such other related documents.

4.3 The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Bidder is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.

4.4 Bidders are reminded that the specifications stated in the solicitation are the minimum level required and that bids submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Bids offering less than the minimums specified are not responsive and should not be submitted.

4.5 Bid responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Bids submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.

4.6 If provisions of the detailed specifications preclude an otherwise qualified bidder from submitting a bid, a written request for modification must be received by the Deputy Finance Director at least seven (7) calendar days prior to the bid opening. The City may issue an addendum to this solicitation of any approved specification changes.

4.7 Prices shall be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price shall prevail unless obviously in error.

4.8 Prices offered shall not include applicable state and local taxes. The city will pay all applicable taxes. **For the purposes of determining the lowest cost, the city will not take the tax into consideration.** Taxes must be listed as a separate item on all invoices.

5. COMPLIANCE WITH AFFIRMATIVE ACTION IN EMPLOYMENT REQUIREMENTS

Bidders must be in compliance with Phoenix City Code, Chapter 18, Article V, as amended, Affirmative Action Program, **at the time of the bid due date**. Failure to comply with the reporting requirements of this Ordinance will result in your bid being rejected. Firms are also responsible for maintaining their eligibility during the life of any contract and failure to do so may result in termination of the contract. An Affirmative Action form is available on line at www.phoenix.gov/BUSINESS/affactio.html or by contacting the Purchasing Division at (602) 262-7181. Any questions in regard to this Affirmative Action Program should be directed to the Affirmative Action Contract Compliance Section of the Equal Opportunity Department, (602) 262-6790. The City of Phoenix extends to each individual, firm, Vendor, Supplier, Contractor and subcontractors an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of disadvantaged and/or minority-owned or women-owned businesses to reflect both the industry and community ethnic composition.

6. ADDENDA

The City of Phoenix shall not be responsible for any oral instructions made by any employees or officers of the City of Phoenix in regard to the bidding instructions, plans, drawings, specifications, or contract documents. Any changes to the plans, drawings and specifications will be in the form of an addendum, which will be available at http://www.phoenix.gov/FINBIDS or by calling (602) 262-7181. The bidder shall acknowledge receipt of an addendum by signing and returning the document with the bid submittal.

7. LICENSES

If required by law for the operation of the business or work related to this Bid, Bidder must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

8. CERTIFICATION

By signature in the offer section of the Offer and Acceptance page, bidder certifies:

- The submission of the offer did not involve collusion or other anti-competitive practices.
- The bidder shall not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The bidder 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 public servant in connection with the submitted offer.

9. SUBMISSION OF BID

Bids must be in the actual possession of the Purchasing Division on or prior to the exact time and date indicated in the Schedule of Events. Late bids shall not be considered. The prevailing clock shall be the City Finance Department, Purchasing Division's clock.

Bids must be submitted in a sealed envelope and the following information should be noted on the outside of the envelope:

Bidder's Name
Bidder's Address (as shown on the Certification Page)
IFB Number
IFB Title

All bids must be completed in ink or typewritten. Include the number of copies indicated in the Submittal section.

10. WITHDRAWAL OF OFFER

At any time prior to the solicitation due date and time, a bidder (or designated representative) may withdraw the bid by submitting a request in writing and signed by a duly authorized representative. Facsimiles, telegraphic or mailgram withdrawals shall not be considered.

11. BID RESULTS

Bids will be opened on the bid due date, time and location indicated in the Schedule of Events at which time the name of each bidder and the prices shall be read. Bids and other information received in response to the Invitation for Bid shall be shown only to authorized City personnel having a legitimate interest in them or persons assisting the City in the evaluation. Bids are not available for public inspection until after award recommendation has been posted on the City's website.

A preliminary bid tabulation will be posted on the Purchasing Division's website, www.phoenix.gov/FINTABS within five (5) calendar days of the bid opening. The information on the preliminary tabulation will be posted as it was read during the bid opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the bids an award recommendation will be posted on the website. No further notification will be provided to unsuccessful bidders.

Protest of an award recommendation must be filed within seven (7) calendar days after the award recommendation is posted on the website. Protests shall be in writing and filed with the Deputy Finance Director and must include all of the following:

- The name, address and telephone number of the protester;
- The signature of the protester or its representative;
- Identification of the IFB number;
- A detailed statement of the legal and factual grounds of protest including copies of relevant documents; and,
- The form of relief requested.

12. AWARD OF CONTRACT

Unless otherwise indicated, award(s) will be made to the lowest responsive, responsible bidder(s) who are regularly established in the service contained in this solicitation and who have demonstrated the ability to perform the required service in an acceptable manner. Factors that will be considered by the City include:

- Technical capability of the Bidder to accomplish the scope of work required in the Solicitation. This includes performance history on past and current government or industrial contracts.
- Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation.
- Safety record.

Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all bids or portions thereof; or (3) reissue a solicitation.

A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Bids do not become contracts until they are executed by the Deputy Finance Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, unless any of the terms, conditions, or specifications are modified by an addendum or contract amendment.

13. BID INCENTIVE FOR PRODUCTS/SERVICES OFFERED BY A CERTIFIED SMALL BUSINESS ENTERPRISE (SBE)

In accordance with the Phoenix City Code 18-204 a 5% bid incentive will be given to local (Maricopa County) certified SBE firms competing for contracts valued up to $250,000 in annual value or a 2.5% bid incentive for contracts over $250,000 but under $500,000 in annual value. In determining the lowest responsive and responsible bid or proposal any bid or proposal submitted by a local certified SBE firm shall be adjusted by reducing the price(s) of such bidder or proposer by the applicable bid incentive provided the SBE firm was certified at the time of the bid opening. This adjustment shall be solely for the purpose of establishing the apparent low bidder or

proposer. The actual value of any contract awarded shall be the amount of the actual bid or proposal submitted by the SBE. To be eligible for the price preference SBE firms must be certified as such, by the City's Equal Opportunity Department, **prior to the bid opening date and time**, under the conditions set forth in Article VIII of the Phoenix City Code as amended.

Notice: The process of becoming a certified SBE Firm by the Equal Opportunity Department takes several weeks. Please contact the Equal Opportunity Office at (602) 262-6790.

14. BID INCENTIVE FOR JOINT VENTURES INVOLVING CERTIFIED SBE FIRMS

In accordance with the Phoenix City Code 18-204, any qualified joint venture shall receive a 5% bid incentive when competing for contracts valued up to $250,000, or a 2.5% bid incentive for contracts over $250,000 but under $500,000, when local certified SBE participation equals or exceeds thirty-five percent (35%) of the Joint Venture (JV). The SBE Joint Venture partner must be responsible for a clearly defined portion of the work to be performed. This portion must be set forth in detail separately from the work to be performed by the non-SBE JV partner.

The SBE JV partner's work must be assigned a commercially reasonable dollar value and use its own employees and equipment. The SBE JV partner must share in the ownership, control, management and administrative responsibilities, risks, and profit of the JV, in direct proportion to its stated level of JV participation. The SBE JV partner must perform work that is commensurate with its experience. The SBE JV partner must be certified local Vendor by the City's Equal Opportunity Department at the time of the bid opening.

To be considered for Joint Venture status, the bidder must state in the bid response the bidder's intention to perform the contract under a Joint Venture arrangement with a certified local SBE firm and must have applied for Joint Venture Certification by the City's Equal Opportunity Department **prior to the bid opening date and time**. The price preference will not be applied to bids or proposals submitted on a joint-venture basis if the application for certification was not received by the Equal Opportunity Department prior to the bid opening date and time. Contact (602) 261-8551; FAX (602) 261-534-1785, to apply for certification as an SBE Joint Venture.

15. CITY'S RIGHT TO DISQUALIFY FOR CONFLICT OF INTEREST

The City reserves the right to disqualify any bidder on the basis of any real or apparent conflict of interest that is disclosed by the bid submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any bidder submitting a bid herein waives any right to object now or at any future time, before any body or agency, including but not limited to, the City Council of the City of Phoenix or any court.

16. BIDDER'S COMPLIANCE WITH HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS

The Bidder's products, services and facilities shall be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of the City representatives, the bidder shall provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training and records, permits, etc.) applicable to services requested.
- A list of all Federal, State and local citations or notice of violations (including but not limited to EPA, OSHA, Maricopa County) issued against the Bidder or their subcontractors including dates, disposition and resolutions.

The City further reserves the right to make unannounced inspections of the Bidder's facilities (during normal business hours).

1. DEFINITION OF KEY WORDS USED IN THE SOLICITATION

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of proposal as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the bidder fails to provide recommended information, the City may, at its sole option, ask the bidder to provide the information or evaluate the offer without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions shall apply:

"Bidder"	Any person or firm submitting a competitive bid in response to a solicitation such as an Invitation for Bid (IFB) or Request for Quotation (RFQ).
"Buyer"	City of Phoenix, City Purchasing Division staff person responsible for the solicitation.
"Days"	Means calendar days unless otherwise specified.
"City"	The City of Phoenix
"Contractor"	The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.
"Contract"	The legal agreement executed between the City of Phoenix, AZ and the Contractor.
"Contract Representative"	The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor's performance under this contract.
"Deputy Finance Director"	The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.
"Offer"	Means bid or quotation.
"Solicitation"	Means an Invitation for Bid (IFB) or Request for Quote (RFQ).
"Suppliers"	Firms, entities or individuals furnishing goods or services directly to the City.
"Vendor"	A seller of goods or services.

2. CONTRACT INTERPRETATION

2.1 APPLICABLE LAW: This Contract shall be governed by the law of the State of Arizona, and suits pertaining to this Contract shall be brought only in Federal or State courts in Maricopa County, State of Arizona.

2.2 IMPLIED CONTRACT TERMS: Each and every provision of law and any clause required by law to be in the Contract shall 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 Contract shall forthwith be physically amended to make such insertion or correction.

2.3 CONTRACT ORDER OF PRECEDENCE: In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following shall prevail in the order set forth below:

A. Special terms and conditions
B. Standard terms and conditions
C. Statement or scope of work
D. Specifications
E. Attachments
F. Exhibits
G. Instructions to Bidders
H. Other documents referenced or included in the Invitation for Bid.

2.4 ORGANIZATION – EMPLOYMENT DISCLAIMER: The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor's obligations under the agreement are considered to be City's employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor shall have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and shall save and hold the City harmless with respect thereto.

2.5 SEVERABILITY: The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

2.6 NON-WAIVER OF LIABILITY: The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.

2.7 PAROLE EVIDENCE: This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the

terms of this agreement. No course of prior dealings between the parties and no usage in the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

3. CONTRACT ADMINISTRATION AND OPERATION

3.1 RECORDS: All books, accounts, reports, files and other records relating to the contract shall be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City.

3.2 PUBLIC RECORD: All bids submitted in response to this invitation shall become the property of the City and become a matter of public record available for review pursuant to Arizona State law.

If a bidder believes that a specific section of its bid response is confidential, the bidder shall isolate the pages marked confidential in a specific and clearly labeled section of its bid response. The bidder shall include a written statement as to the basis for considering the marked pages confidential including the specific harm or prejudice if disclosed and the City Purchasing Division will review the material and make a determination.

3.3 CONFIDENTIALITY OF RECORDS: The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the City.

3.4 AFFIRMATIVE ACTION: Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended.

Any supplier/lessee in performing under this Contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

3.5 **LICENSES AND PERMITS:** Contractor shall keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

3.6 **ADVERTISING:** Contractor shall not advertise or publish new releases concerning this contract without the prior written consent of the Deputy Finance Director, and the City shall not unreasonably withhold permission.

3.7 **EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and shall not be used or released by the Contractor or any other person except with prior written permission by the City.

3.8 **OWNERSHIP OF INTELLECTUAL PROPERTY:** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be considered work for hire and the City shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the City requesting the issuance of this contract shall own (for and on behalf of the City) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the City, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the City and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the City. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any other entity without the express written authorization of the City. If by operation of law, the Intellectual Property is not owned in its entirety by the City automatically upon its creation, then Contractor agrees to assign and hereby assigns to the City the ownership of the Intellectual Property. The Contractor agrees to take such further action and execute and deliver such further agreements and other instruments as the City may reasonably request to give effect to this section 3.8.

It is expressly agreed by Contractor that these covenants are irrevocable and perpetual.

3.9 **HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities shall be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City.

At the request of City representatives, the Contractor shall provide the City:

- Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract

- A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.

The City shall have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City shall also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement.

3.10 COMPLIANCE WITH LAWS: Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances when performing under this Contract regardless of whether or not they are referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance.

Because the Contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

3.11 CONTINUATION DURING DISPUTES: Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor shall continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.

3.12 EMERGENCY PURCHASES: The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

3.13 STRICT PERFORMANCE: Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

4. COSTS AND PAYMENTS

4.1 PAYMENT TERMS: The City shall make every effort to process payment for the purchase of material or services within 30 calendar days after receipt of a correct invoice unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the bid.

4.2 PAYMENT DEDUCTION OFFSET PROVISION: Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

4.3 LATE SUBMISSION OF CLAIM BY CONTRACTOR: The City will not honor any invoices or claims which are tendered one (1) year after the last item of the account accrued.

4.4 DISCOUNTS: Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

4.5 NO ADVANCE PAYMENTS: Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received.

4.6 FUND APPROPRIATION CONTINGENCY: The Vendor recognizes that any agreement entered into shall commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Vendor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Phoenix, which fiscal year ends on June 30 of each year, shall be subject to the approval of the budget of the City of Phoenix providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.

4.7 MAXIMUM PRICES: The City shall not be invoiced at prices higher than those stated in any contract resulting from this bid. Bidder certifies, by signing this bid that the prices offered are no higher than the lowest price the Bidder charges other buyers for similar quantities under similar conditions. Bidder further agrees that any reductions in the price of the goods or services covered by this bid and occurring after award will apply to the undelivered balance. The bidder shall promptly notify the City of such price reductions.

4.8 F.O.B. POINT: All prices are to be quoted F.O.B. delivered, unless otherwise specified elsewhere in this solicitation.

5. CONTRACT CHANGES

5.1 CONTRACT AMENDMENTS: Contracts shall be modified only by a written contract amendment signed by the Deputy Finance Director and persons duly authorized to enter into contracts on behalf of the Contractor.

5.2 ASSIGNMENT - DELEGATION: No right or interest in this contract nor monies due thereunder shall be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor shall be made without prior written permission of the Deputy Finance Director, which may be withheld for good cause. Any assignment or delegation made in violation of this section shall be void.

5.3 NON-EXCLUSIVE CONTRACT: Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Phoenix. The City reserves the right to obtain like goods or services from another source when necessary.

5.4 AUTHORIZED CHANGES: The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery schedule, or both. Any claim for adjustment shall be deemed waived unless asserted in writing within thirty (30) days from the receipt of the change. Price increases or extensions of delivery time shall not be

binding on the City unless evidenced in writing and approved by the Deputy Finance Director prior to the institution of the change.

6. RISK OF LOSS AND LIABILITY

6.1 TITLE AND RISK OF LOSS: The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction shall not release seller from any obligation hereunder.

6.2 ACCEPTANCE: All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract shall be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance shall conform to the cancellation clause set forth in this document.

6.3 GENERAL INDEMNIFICATION: Contractor shall indemnify, defend, save and hold harmless the City of Phoenix and 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 Contractor 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 Contractor 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 Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the City.

6.4 INDEMNIFICATION – PATENT, COPYRIGHT AND TRADEMARK. The Contractor shall indemnify and hold harmless the City against any liability, including costs and expenses, for infringement of any patent, trademark or copyright or other proprietary rights of any third parties arising out of contract performance or use by the City of materials furnished or work performed under this contract.

The Contractor agrees upon receipt of notification to promptly assume full responsibility for the defense of any suit or proceeding which is, has been, or may be brought against the City of Phoenix and its agents for alleged infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark or appearance of goods by reason of the use or sale of any goods furnished under this contract and the Contractor further agrees to indemnify the City against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from the bringing of such suit or proceedings including any settlement or decree of judgment entered therein. The City may be represented by and actively participate through its own

counsel in any such suit or proceedings if it so desires. It is expressly agreed by the seller that these covenants are irrevocable and perpetual.

6.5 **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure shall not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this provision, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.

6.6 **LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the project manager.

6.7 **DAMAGE TO CITY PROPERTY:** Contractor shall perform all work so that no damage to the building or grounds results. Contractor shall repair any damage caused to the satisfaction of the City at no cost to the City.

Contractor shall take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor shall repair and finish to match existing material as approved by the City at Contractor's expense.

7. WARRANTIES

7.1 **GUARANTEE:** Unless otherwise specified, all items shall be guaranteed for a minimum period of one (1) year from date of acceptance by the City against defects in material and workmanship. At any time during that period, if a defect should occur in any item that item shall be replaced or repaired by the Contractor at no obligation to the City except where it be shown that the defect was caused by misuse and not by faulty design.

7.2 **QUALITY:** Contractor expressly warrants that all goods or services furnished under this contract shall conform to the specifications, appropriate standards, and will be new and free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which City intends to use the goods or services, Contractor warrants that goods or services furnished will conform in all respect

to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to City, its successors, and assigns.

7.3 **RESPONSIBILITY FOR CORRECTION:** It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for specification or legal compliance. In the event of any call back, Contractor agrees to give the City first priority. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with full refund within 30 calendar days after notice of non-compliance and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.

7.4 **LIENS:** Contractor shall hold the City harmless from claimants supplying labor or materials to the Contractor or his subcontractors in the performance of the work required under this contract. Contractor shall provide written certification that all liens against materials and labor have been satisfied, before the City will make payment.

7.5 **QUALITY STANDARDS OF MATERIAL AND SERVICES:** If desired by the City, items/services bid shall be subjected to testing, dissection or analysis by a recognized testing laboratory or consultant selected by the City to determine that the material(s) submitted for bid conform to the bid specifications. The cost of testing, dissection or analysis shall be borne by the bidder.

7.6 **REPAIR AND REPLACEMENT PARTS:** Repair or replacement parts for existing equipment may be accomplished by the Contractor using other than original equipment manufacturer's (OEM) parts. However, all parts or equipment furnished must be equal or exceed that of the original equipment manufacturer(s) in material and warranty.

7.7 **WORKMANSHIP:** Where not more specifically described in any of the various sections of these specifications, workmanship shall conform to all of the methods and operations of best standards and accepted practices of the trade or trades involved, and shall include all items of fabrication, construction or installation regularly furnished or required for completion of the services. All work shall be executed by personnel skilled in their respective lines of work.

8. CITY'S CONTRACTUAL RIGHTS

8.1 **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

8.2 **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.

8.3 **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.

8.4 **ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Bidder.

8.5 **DEFAULT:** In case of default by the bidder, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.

8.6 **COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City shall have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

8.7 **ESTIMATED QUANTITIES OR DOLLAR AMOUNTS (REQUIREMENTS CONTRACTS ONLY):** Quantities and dollar amounts listed are the City's best estimate and do not obligate the City to order or accept more than City's actual requirements during period of this agreement, as determined by actual needs and availability or appropriated funds. It is expressly understood and agreed that the resulting contract is to supply the City with its complete actual requirement for the contract period, except that the estimated quantity shown for each bid item shall not be exceeded by 10 percent without the express written approval of the Deputy Finance Director, Purchasing Division. Any demand or order made by any employee or officer of the City of Phoenix, other than the Deputy Finance Director, Purchasing Division or designated representative, for quantities in excess of the estimated quantities and dollar amounts shall be void if the written approval of the Deputy Finance Director was not received prior to the Contractor's performance.

8.8 **COST JUSTIFICATION:** In the event only one response is received, the City may require that the bidder submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the bid price is fair and reasonable.

9. CONTRACT TERMINATION

9.1 **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

9.2 **CONDITIONS AND CAUSES FOR TERMINATION:** This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City shall be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of

termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller shall submit detailed cost claims in an acceptable manner and shall permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.

The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:

In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;

In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;

In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality.

Contractor fails to furnish the required service and/or product within the time stipulated in the contract;

In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.

9.3 **CONTRACT CANCELLATION:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

1. **FOB POINT**
Prices quoted shall be FOB destination and delivered, as required, to the following point(s): City of Phoenix, Fire Support Services, 2625 S. 19th Avenue, Phoenix, AZ 85009.

2. **PRICE**
All prices submitted shall be firm and fixed for the initial contract period. Price adjustments will be considered annually provided the adjustments are submitted in writing with thirty (30) calendar days advanced notice. Requests shall be accompanied with written documentation from the manufacturer confirming the price increase. The City of Phoenix will be the sole judge in determining the allowable increase amount. Price adjustment requests shall be sent to Theresa Hayes, 251 W. Washington, 8th Floor, Phoenix, AZ 85003.

3. **AWARD**
Award will be made on an "all or none" basis. Prices must be shown for each item listed. Bids submitted without individual item prices listed will be considered as non-responsive and rejected.

4. **METHOD OF ORDERING (CONTRACT ORDER RELEASE)**
Individuals specifically authorized by the Deputy Finance Director, Purchasing Division, will place verbal orders direct to Contractor without a purchase order number but must provide a contract order release (COR) number to the Contractor at the time of verbal order placement. Contract order releases will not be mailed to the Contractor. Vendor invoices, packing slips, and delivery tickets must contain the City COR number. A written purchase order will not be issued.

5. **METHOD OF INVOICING (VENDOR INVOICE)**
Invoice must include the following:

A. City purchase order number, requisition number, or contract agreement number.
B. Items listed individually by the written description and part number.
C. Unit price, extended and totaled.
D. Quantity ordered, back ordered, and shipped.
E. Applicable tax.
F. Invoice number and date.
G. Requesting department name and "ship-to" address.
H. Payment terms.
I. FOB terms.

6. **METHOD OF PAYMENT (CONTRACT ORDER RELEASE)**
Payment to be made from Vendor's invoice, and a copy of the signed delivery invoices, submitted to cover items received and accepted against the contract release. Invoices must contain the CR number. The invoice shall be included with each delivery or promptly mailed directly to the ordering department.

7. **INDEMNIFICATION:**
(COMMODITY PURCHASE – COMMODITY SHIPPED)
Contractor shall indemnify, defend, save and hold harmless the City of Phoenix and 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 Contractor 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 contractor 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 Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the City.

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

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

MINIMUM SCOPE AND LIMITS OF INSURANCE: Vendor 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.

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

General Aggregate	$2,000,000
Products – Complete Operations Aggregate	$1,000,000
Personal and Advertising Injury	$1,000,000
Each Occurrence	$1,000,000

ADDITIONAL INSURANCE REQUIREMENTS: The policies are to contain, or be endorsed to contain, the following provisions:

The Vendor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract 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, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to City of Phoenix, Deputy Finance Director/Purchasing, 251 West Washington, Phoenix, Arizona 85009-2299.

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 City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Vendor shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

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

All certificates required by this Contract shall be sent directly to City of Phoenix, Deputy Finance Director/Purchasing, 251 West Washington, Phoenix, Arizona 85009-2299. The City project/contract number and project description are to be noted on the certificate of insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.

APPROVAL: Any modification or variation from the insurance requirements in this Contract must have prior approval from the City of Phoenix Law Department, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.

8. **OPTION TO EXTEND**
The City may, at their option and with approval of the Contractor, extend the period of this agreement up to two additional year(s), in increments of one year.

9. **COOPERATIVE AGREEMENT**
Vendor agrees to extend all terms and conditions of his offer to any govenmental entity or Fire Department in, Arizona, and hereby agrees to supply the products/services as described in Section IV, Scope of this bid, to the applicable city(s). The applicable city(s) will submit their orders directly to the successful bidder(s). Invoices shall be tendered to the applicable city(s) in their prescribed form and payment shall be made by them.

10. **EMERGENCY TWENTY-FOUR HOUR SERVICE**
Emergency twenty-four (24) hour service is to be provided by Contractor at no additional cost. The Contractor shall provide an emergency contact person and phone number who is authorized to release material to the City of phoenix during non-business hours, in the event of an emergency repair requirement. Any changes in contacts must be promptly submitted to the City.

11. **EQUIPMENT DEMONSTRATION**
The City may, at its discretion, require a demonstration of the equipment or material offered as part of the evaluation process. The equipment or material shall be provided by the vendor at no cost to the City for a period of time deemed sufficient to properly evaluate the product. The exact time period, conditions and terms of the evaluation shall be established at the time a demonstration is requested.

12. **EVALUATION LITERATURE**
Vendor shall include with submittal all technical and/or detailed product brochures for the City's use to evaluate the product(s) offered.

13. **MANUALS**
All complete operating and parts manuals are to be furnished upon delivery at no additional cost to the City. Manuals shall show all portable monitor defibrillator specifications and mechanical troubleshooting.

The Phoenix Fire Department plans to purchase approximately 105 manual cardiac monitor defibrillators and related support equipment such as battery chargers. These monitor defibrillators are for use by Phoenix Fire Department paramedics under the direction of the Fire Department Physician. The department plans to establish a requirements contract for monitor defibrillators, parts, and supplies. The 105 defibrillators is an immediate need. The purchases of these items in subsequent years is unknown at this time, but will most likely be less than 10 per year. The Phoenix Fire Department has a quantity of 70 Medtronic LifePack 12 defibrillators for trade in.

The defibrillators are to meet or exceed the following specifications. The make and model number listed is to indicate the performance standard. See Section I, Instructions to Bidders, Section 4, Preparation of Bid, Paragraphs 4.4 and 4.5. The City of Phoenix will make the sole determination as to the acceptability of any product.

105 each Philips HeartStart MRx ALS Monitor (model M3536A) with the following features:

- Pulse oximetry, non-invasive blood pressure monitoring, end tidal CO2 (A03)
- Non-invasive pacing (B01)
- 12-lead ECG acquisition (B02)
- Wide printer (B04)
- Q-CPR feedback system (B08)
- Data Card (C03)
- Lithium ion battery (C05)
- 5/5 Grabber ECG sets (C10)
- Instruction guide (LP-1)
- Standard pad cable (TER)
- Standard one year warranty (W01)
- Extended silver service year two through five warranty (A02, A12)
    - Technician response (in person) to Phoenix Fire Department Logistics by the next business day after a reported problem
    - A 24-hour, 365.25 days per year service with telephone response within two hours of request. A contact name and phone number must be provided at the time of contract award.
    - Parts and labor included
    - Pickup and drop-off at Phoenix Fire Department Logistics
    - Exclusions only for intentional damage
- Wireless interface with the ROAM-IT e-PCR electronic patient care records system

70 each – 2-Bay analyzer for HS lithium ion batteries (989803-135301)

5 each – 4-bay analyzer for HS lithium ion batteries (989803-135331)

210 each – Lithium ion battery modules (989803-129011)

On-site train-the-trainer training for Phoenix Fire Department paramedics is required. The approximate length of training is to be at least three (3) days.

On-site maintenance training for Phoenix Fire Department members is required. The approximate length of training is to be at least two (2) days.

A fixed price per hour of labor, a discount off of list for parts and any other charges associated with non-warranty repairs is required.

Assistance with the deployment of the monitor defibrillators is required. The presence of a product manufacturer staff member in Phoenix for at least 14 days during the launch of the monitor defibrillator into field use in Phoenix is required.

Initial purchase described above plus requirements contract for approximately ten (10) or less units per year.

Discount from list price for:

- Commonly used supplies (pads, electrodes, and paper)
- Batteries
- Cables
- All other parts and supplies
- Future upgrades

Trade-in for 70 Medtronic LifePack 12 monitor defibrillators.

Please submit one original and three copies of the Submittal (Section V). **Please submit only Section V, do not submit a copy of the entire IFB document.** This offer will remain in effect for a period of 120 calendar days from the bid opening date and is irrevocable unless it is in the City's best interest to do so.

1. **BID PRICE SCHEDULE**

Note: Prices offered shall not include applicable state and local taxes. The city will pay all applicable taxes. **For the purposes of determining the lowest cost, the city will not take tax into consideration.** Taxes must be listed as a separate item on all invoices.

Item No.	Description	Manufacturer & Product No.	Quantity	Delivery Calendar Days ARO	Unit Price Excluding Tax	Total Price Excluding Tax
1	Monitor defibrillators	M3536A	105	30 Days ARO	$17,709.45	$1,859,492.25
2	2-bay analyzer	989803135301	70	30 Days ARO	$874.25	$61,197.50
3	4-bay analyzer	989803135331	5	30 Days ARO	$1621.75	$8,108.75
4	Lithium ion battery modules	M3538A	210	30 Days ARO	$211.25	$44,362.50
5	On site train the trainer	N/A	1	TBD	$0	$0
6	On site maintenance training	N/A	1	TBD	$0	$0
7	Deployment assistance	N/A	1	TBD	$0	$0
					Grand Total – All or None	**$1,973,161.00*** does not include trade-in's

8. Miscellaneous parts, accessories and supplies for portable monitor defibrillators

Published Price List Number MRx Price List Rev. B, Phoenix Parts List Rev. A

Date of Issue MRx Price list Rev. B 01/01/07, Phoenix Parts List Rev. A 08/09/06 DISCOUNT

Manufacturer's Name Philips Medical Systems

DISCOUNTS: 35% off future upgrades, 35% off batteries, cables & power mgmt, 30% off commonly used supplies, Additional 5% online

Bidder states delivery within 30 calendar days after receipt of order.

9 Extended Silver Service – year two (2) through five (5) payable in one year increments.

$ 0 per year X 4 years = $ 0 Total per unit

10 Additional Units (years 2 through 5)

$17,709.45* per unit X 40 (estimated quantity) = $708,378

(Price listed above for Extended Silver Service is to apply to all units purchased under this contract.)
*MRx w/SpO2, NBP, EtCO2 & applicable sensors, 12-Lead w/Cables, Pacing, 75mm Printer, Data Card, Q-CPR, 2 Li-On Batteries & Roam IT EPCR Connection

11. Labor for non-warranty repairs $ 199 per hour

Trade-in of the following:

Item No.	Description	Manufacturer & Product No.	Quantity	Unit Price Excluding Tax	Total Price Excluding Tax
12	Monitor defibrillators	Medtronic LifePack 12 With batteries and chargers	70	$4000	$280,000

Trade-in value is vaild for 120 days from Feb. 2, 2007.

2. **PAYMENT TERMS**
Bidder offers a prompt payment discount of 0 % 0 calendar days to apply after receipt of invoice or final acceptance of the products, whichever is later. If no prompt payment discount is offered, enter 0 in the % space to indicate net 30 days, otherwise payment terms shall be 2% 20 days, net 30 days; effective after receipt of invoice or final acceptance of the products, whichever is later. Payment terms offering less than 20 calendar days will not be considered in the price evaluation of your bid.

Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received.

3. **WARRANTY**
Specify the Vendor or dealership where warranty work will be done:

Vendor: Philips Medical Systems

Address: 3000 Minuteman Road

City, State and Zip Code: Andover, MA 01810

Service agreement provides on-site support. In the event on-site repair is not available or able to be completed, repairs will be done at the Andover facility.

4. **EMERGENCY TWENTY-FOUR HOUR SERVICE CONTACT**

Name: Philips Medical Response Center

Telephone Number: (800) 722-9377 Opt. 3, Opt. 1

Alternate Contact: N/A

Telephone Number: N/A

5. **CUSTOMER REFERENCE LISTING**
Contractor shall furnish the names, addresses, and telephone numbers of a minimum of three (3) firms or government organizations for which the Contractor is currently furnishing or has furnished, in the past, completed service for portable monitor defibrillators.

Company Name	Tualatin Valley Fire & Rescue
Address	20665 SW Blanton Street
Reference	Mark Stevens, EMS Chief
Telephone Number	(503) 887-0082
Email address	mark.stevens@tvfr.com

Company Name	MedicWest
Address	9 W. Delhi Avenue
Reference	Brian Rogers, VP of Operations
Telephone Number	(702) 224-5039
Email address	brian.rogers@medicwest.com

Company Name	Glendale Fire Department
Address	6835 N. 57 Drive
Reference	Dan Wintrow, Acting EMS Captain
Telephone Number	(602) 478-6254
Email address	dwindtrow@glendaleaz.com

	SECTION V - SUBMITTAL	**CITY OF PHOENIX** **Purchasing Division** **251 W. Washington Street** **8th Floor** **Phoenix, AZ 85003** **Phone: (602) 262-7181**

OFFER

TO THE CITY OF PHOENIX:
The Undersigned hereby offers and agrees to furnish the material and or service(s) in compliance with all terms, conditions, specifications, and addenda issued as a result of Invitation for Bid and any written exceptions in the offer.

Arizona Sales Tax No. _____

Use Tax No. for Out-of State Suppliers _____

City of Phoenix Sales Tax No. _____

Taxpayer's Federal Identification No. _____

THE BELOW DATE IS A MANDATORY ENTRY.
VENDORS MUST BE AA COMPLIANT AT THE TIME OF BID SUBMITTAL
NON-COMPLIANCE WILL RESULT IN SUBMITTAL BEING DEEMED NON-RESPONSIVE

Enter Affirmative Action Compliance **Expiration** Date **Call 602-262-6790 to confirm Date, registration procedures located at http://phoenix.gov/BUSINESS**	August 7, 2007

Bidder certifies that bidder has read, understands, and will fully and faithfully comply with this Invitation for Bid, its attachments and any referenced documents. Bidder also certifies that the prices offered were independently developed without consultation with any of the other bidders or potential bidders.

1/25/07	1/23/07
Authorized Signature Date	Authorized Signature Date
Steve Lacynski, Senior Vice President	Steve Pierson, Controller
Printed Name and Title	Printed Name and Title

Company Name	Philips Medical Systems North America Company
Address	2301 Fifth Avenue, Suite 200
City, State and Zip Code	Seattle, WA 98121
Telephone Number	(800) 685-0881
Company's Fax Number	(206) 664-5001
Company's Toll Free #	(800) 685-0881
Email Address	dana.gordon@philips.com (Proposal Developer)

	SECTION V - SUBMITTAL	CITY OF PHOENIX Purchasing Division 251 W. Washington Street 8th Floor Phoenix, AZ 85003 Phone: (602) 262-7181

Purchase Order Mailing Address (if different from above)

Name Same as above.

Address

City, State and Zip Code

Payment Address: (If different from above)
NOTE: Any assignment of proceeds must go through the City of Phoenix, Division of Accounts, formal assignment procedure. Please also refer to the Assignment Provision in the General Bidding Instructions and Conditions of Purchase.

Name Philips Medical Systems

Address P.O. Box 406538

City, State and Zip Code Atlanta, GA 30384-6538

2007 MAR 13 PM 1:39
CITY CLERK DEPT.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the Invitation for Bid, including all terms, conditions, specifications, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No. P-8351-12. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX, a municipal corporation
Frank Fairbanks, City Manager

DEPUTY City Clerk

Juan Salgado, Deputy Finance Director

Approved as to form this 14 day of September, 2006

Awarded this 7th day of March, 2007

This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.

IFB 07-131

Request for Consideration of Alternate Terms

Term of Contract

Philips Medical Systems can offer the City of Phoenix a 3-year, firm priced contract. Philips can also extend two, 2-year options to renew the contract with the City per the mutual agreement of both parties.

Contract Negotiation

Philips is requesting modifications to the City of Phoenix's IFB terms per the information contained in this "Request for Consideration of Alternate Terms." Philips reserves the right to enter into a good faith negotiation with the City to come to final terms for a contract. Philips' Contracts Manager is Amy Rosenleaf, who can be reached at 206-664-5113, or via E-mail at *amy.rosenleaf@philips.com*.

SECTION I – INSTRUCTIONS TO BIDDERS

mbk

16-Bidder's Compliance with Health, Environmental and Safety Requirements (p.9): ok

Bullet point #2 – Philips requests the following modifications:

- A list of all Federal, State and local citations or notice of violations (including but not limited to EPA, OSHA, Maricopa County) issued against Bidder or ~~their~~ any subcontractors working on the delivery of products or services to the City hereunder, including dates, disposition and resolutions.

Strike the last sentence, "The City further reserves the right to make unannounced inspections of the Bidder's facilities (during normal business hours)."

Add the following to replace the last sentence:

Notwithstanding the foregoing, Contractor does not provide for the City observation of factory production or pre-staging activities. Contractor manufactures its medical systems in compliance with the Quality System Regulation promulgated by the United States Food and Drug Administration, which mandates a quality system covering design and manufacturing, including testing and inspection where necessary. Medical devices released and marketed by Contractor have been determined to have been designed and manufactured in accordance with such a quality system. ok

All information contained in this proposal is confidential.

SECTION II – STANDARD TERMS AND CONDITIONS

1. Definition of Key Words Used in the Solicitation (p.10):

OK Add the following definition:

"Specifications" Means the product specifications indicated in the City's IFB 07-131 (TH).

2. Contract Interpretation

2.6-Non-Waiver of Liability (p.11):

OK Strike these terms and replace with "Reserve." Refer to clause 6.3 in Section II.

3. Contract Administration and Operation

3.1-Records (p.12):

Strike terms and replace with:

OK Contractor will retain all books, records and other documents relative to this Contract for six (6) years. Contractor will only allow access to these records in cases of a billing dispute on an order.

3.3-Confidentiality of Records (p.12):

Modify terms as follows:

The Contractor shall establish and maintain procedures and controls that are ~~acceptable to the City~~ reasonably designed ~~for the purpose of~~ to assure~~ing~~ that no confidential information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the City, and ~~Contractor also agrees that~~ any information pertaining to individual persons shall not be divulged other than to employees~~, or~~ officers or subcontractors of Contractor as needed for the performance of duties under the contract, unless otherwise agreed to in writing by the City.

Add the following terms to this section:

OK Each party shall maintain as confidential any information furnished or disclosed to one party by the other party, whether disclosed in writing or disclosed orally, relating to the business of the disclosing party, its customers and/or its patients, and this Contract and its terms, including the pricing terms under which the City has agreed to purchase the products. Each party shall use the same degree of care to protect the confidentiality of the disclosed information as that party uses to protect the confidentiality of its own information, but not less than reasonable care. Each party shall disclose such information only to its employees having a need to know such information to perform the transactions contemplated by this quotation. The obligation to maintain the confidentiality of such information shall not extend to information in the public domain at the time of disclosure, and/or information that is required to be disclosed by law or by court order.

3.7-Exclusive Possession (p.13):

OK Add the word "customized" as follows: "All customized services, information, computer program elements...by the City."

3.9-Health, Environmental and Safety Requirements (p.13):

OK Refer to Philips requested modifications and additions for clause 16 in Section I. Strike last sentence of 3.9, "The City shall have the right...of this agreement," and replace with Philips' addition in clause 16, Section I indicated above.

3.10-Compliance with Laws (p.14):

OK Strike the last sentence of the first paragraph that states, "Contractor agrees to permit...any such compliance."

3.11-Continuation During Disputes (p.14):

OK Modify terms as follows:

Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor shall continue to provide supplies and services for goods already purchased and paid for by the City hereunder ~~perform the obligations required of Contractor~~ during the continuation of any such dispute unless (a) enjoined or prohibited by an Arizona Court of competent jurisdiction or (b) such dispute relates to such supplies and services.

4. Costs and Payments

4.2-Payment Deduction Offset Provision (p.14):

Modify terms as follows:

OK Contractor acknowledges that the City Charter would requires that no payment be made to ~~any~~ the cardiac monitoring business unit of the Philips Medical Systems division of the Contractor as long as there is an outstanding obligation due to the City by this business unit. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.

4.7-Maximum Prices (p.15):

OK Strike the last three sentences and replace with the following:

The prices offered under this Contract are competitive with the prices Vendor offers to its other commercial customers taking into consideration the commercial circumstances under which such prices are offered, including but not limited to, commitments made by such customers for volume purchases, beta site arrangements, research and development arrangements and "make right" arrangements.

All information contained in this proposal is confidential.

5. Contract Changes

5.2 – Assignment Delegation (p.15):

OK Make the following modification, "No right or interest in this contract nor monies due thereunder shall be assigned in whole or in part without written permission of ~~the City~~ either party, and no delegation…"

5.4-Authorized Changes (p.15):

Make the following modifications to the first sentence:

ok The City reserves the right at any time to make reasonable changes in any one or more of the following: ~~(a) specifications; (b) methods of shipment or packing;~~ (a~~c~~) place of delivery; (b~~d~~) time of delivery; and/or (c~~e~~) quantities.

6. Risk of Loss and Liability

6.2-Acceptance (p.16):

Modify terms as follows:

OK All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract shall be held at Contractor's risk for 45 days from delivery to the City and may be returned to the Contractor prior to the end of such 45 day period. If so returned within such period, all costs are the responsibility of the Contractor. Noncompliance shall conform to the cancellation clause set forth in this document. The City shall inform Contractor in writing of any rejected materials within 45 days after delivery.

6.3-General Indemnification (p. 16):

Strike all the terms of this section, and replace with the following terms:

6.3 – Limitation of Liability and Disclaimer of Damages

ok The liability, if any, of Contractor for damages whether arising from breach of the terms in this Contract, breach of warranty, negligence, indemnity, strict liability or other tort, or otherwise with respect to the products and services is limited to an amount not to exceed the price of the product or service giving rise to the liability; provided however such limit does not apply to damages arising from personal injury, death or property damage.

DISCLAIMER. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES WHETHER ARISING FROM BREACH OF THE TERMS IN THE CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT.

6.4-Indeminfication-Patent, Copyright and Trademark (p.16):

In the second sentence of the second paragraph, modify as follows:

OK The City may be represented by and actively participate through its own counsel at its own expense in any such suit or proceedings if it so desires.

6.7-Damage to City Property (p.17):

Modify these terms as follows:

OK Contractor shall perform all work so that Contractor does not ~~no~~ damage ~~to~~ the building or grounds. ~~results.~~ Contractor shall repair any damage caused ~~to the satisfaction of the City~~ by it at no cost to the City such that the damaged property is restored to its prior condition.

Contractor shall take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor shall repair and finish to match existing material ~~as approved by the City~~ at Contractor's expense.

7. Warranties

7.1-Guarantee (p.17):

OK Strike all terms in 7.1 and replace with the following terms:

Contractor's warranty, entitled "Philips Product Warranty-Caridology and Monitoring Products-Medical Information Technology Products for Patient Monitoring Systems" (Rev. 2004-0528), is attached, and shall apply to all purchases made against this Contract.

7.2-Quality (p.17):

Strike all terms and replace with the following terms:

OK Contractor provides a specific product warranty with respect to the Contractor's products. A copy of the product warranty applicable to the products included in this Contract is attached (reference Sec. 7.1 above).

Contractor's obligations under any product warranty are limited, at Contractor's option, to the repair or the replacement of the product or a portion thereof, or to a credit or refund of a portion of the purchase price paid by the City. Any refund will be paid to the City when the product is returned to Contractor. Certain of the parts used in the manufacture or installation of, or in the replacement parts for, this product may contain refurbished components. If such components are used, they will be subject to the same quality control and inspection procedures as all other components in the product. Any product warranty is made on condition that Contractor receives written notice of a product defect during the warranty period, and within forty-five (45) days following the discovery of the defect by the City. Contractor's obligations under any product warranty do not apply to any product defects resulting from improper or inadequate maintenance or calibration by the City or its agents; City or third party supplied software, interfaces, or supplies; use or operation of the product other than in accordance with Contractor's applicable product specifications and written instructions; abuse, negligence, accident, loss, or damage in transit; improper site preparation; unauthorized maintenance or modifications to the product; or to viruses or similar software interference, resulting from the connection of the product to a network. Contractor does not provide a warranty for any such third party products furnished to the City by Contractor under this Contract; however, Contractor shall

All information contained in this proposal is confidential.

use reasonable efforts to extend to the City the third party warranty for the product. The obligations of Contractor described above are Contractor's only obligations and the City's sole and exclusive remedy for a breach of a product warranty. Repair or replacement parts do not extend the term of any warranty.

THE WARRANTIES SET FORTH IN CONTRACTOR'S WARRANTY DOCUMENT WITH RESPECT TO A PRODUCT (INCLUDING THE SOFTWARE PROVIDED WITH THE PRODUCT) ARE THE ONLY WARRANTIES MADE BY CONTRACTOR IN CONNECTION WITH THE PRODUCT, THE SOFTWARE, AND THE TRANSACTIONS CONTEMPLATED BY THIS CONTRACT, AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.3-Responsibility for Correction (p.18):

OK

Modify these terms as follows:

It is agreed that the Contractor shall be fully responsible for making any correction, replacement, or modification necessary for ~~specification~~ for Contractor's products sold hereunder to comply with Specifications and applicable laws in effect at the time Contractor submits its bid proposal. ~~or legal compliance~~. In the event of any ~~call back~~recall, Contractor agrees to give the City ~~first~~ high priority. Contractor agrees that if the product or service offered does not comply with the foregoing, the City has the right to cancel the purchase at any time with full refund within 30 calendar days after notice of non-compliance. ~~and Contractor further agrees to be fully responsible for any consequential damages suffered by the City.~~

7.5-Quality Standards of Material and Services (p.18):

OK

Strike the terms of Sec.7.5 and replace with the following:

Contractor manufactures its medical systems in compliance with the Quality System Regulation promulgated by the United States Food and Drug Administration, which mandate a quality system covering design and manufacturing, including testing and inspection where necessary. Medical devices released and marketed by Contractor are designed and manufactured in accordance with such a quality system.

8. City's Contractual Rights

8.2-Non-Exclusive Remedies (p.18):

OK

Make this clause mutual as follows:

The rights and remedies of the ~~City~~ parties under this Contract are non-exclusive.

OK

8.3-Default in One Installment to Constitute Breach (p.18):

Strike the terms of this section and replace with heading "Reserve."

8.4-On Time Delivery (p.19):

Strike the terms of this section and replace with the following language:

OK Contractor will use reasonable efforts to ship the product to the City as within 30 days after receiving a complete order. If Contractor is unable to meet the City's delivery requirements, alternative arrangements may be agreed. In the absence of such agreement, the City's sole remedy is to cancel the order.

8.5-Default (p.19):

OK Strike the terms "and may recover the excess costs…remedies as provided by law."

SECTION III – SPECIAL TERMS AND CONDITIONS

2-Price (p.21)

OK Philips shall offer firm and fixed pricing for the City of Phoenix for an initial three year term of the Contract.

7-Indemnification (p.21):

OK Strike the terms of this section and replace with Philips' language referred to in clause 6.3, Section II above.

9-Cooperative Agreement

OK Vendor will extend the MRx equipment and accessory pricing in the Contract to any state governmental entity or political subdivision (City/County) within Arizona.

All information contained in this proposal is confidential.

120702-001

CONTRACT AMENDMENT

Date: April 5, 2007
Solicitation#: IFB 07-131
SAP Contract # P- P-08351-12
City Clerk Contract #: 120702
Amendment Number: 1

CITY OF PHOENIX
Purchasing Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

Contract Title: Portable Monitor Defibrillator - Requirements Contract

Contractor: Phillips Medical Systems

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

The following has been added:

Item Number	Description	Unit Price
1.a	Monitor defibrillator without bluetooth	$ 16,059.45

CITY CLERK DEPT.
2007 JUN 18 PM 12: 04

Buyer Name: T. Hayes

ALL OTHER PRICES, TERMS, AND CONDITIONS OF THE CONTRACT WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Purchasing Division.

Signature

Chuck Little, General Manager
Typed/Printed Name and Title

Date: 4/5/07

Deputy Finance Director Juan Salgado

ATTEST:

PHOENIX ARIZONA INCORPORATED FEB 25, 1881

Deputy City Clerk

APPROVED AS TO FORM
Approved as to form this 7th day of August 2006 Assistant City Attorney, *Mary Finnerty*
"This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form of document is altered."
Page 1 of 1

(Revised 3-8-07)

120702-002

CONTRACT AMENDMENT

Date: 3/19/07
Solicitation#: IFB07-131
SAP Contract # P- P-08351-12
City Clerk Contract #: 120702
Amendment Number: #2 4/19/07

CITY OF PHOENIX
Purchasing Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

Contract Title: PORTABLE MONITOR DEFIBRILLATORS

Contractor: Philips Medical Systems North America Co.

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

Alternate terms and conditions submitted by Philips Medical Systems North America Co. are hereby accepted in their entirety.

CITY CLERK DEPT
2007 APR 20 AM 9:40

Buyer Name: Jacque Behrens

ALL OTHER PRICES, TERMS, AND CONDITIONS OF THE CONTRACT WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Purchasing Division.

Signature

Senior Manager.
Anita Rodgers, Finance & Sales Oper.
Typed/Printed Name and Title

Date: 4/19/07

Deputy Finance Director Juan Salgado

ATTEST:

PHOENIX ARIZONA INCORPORATED FEB 25, 1881

Deputy City Clerk

APPROVED AS TO FORM
Approved as to form this 7th day of August 2006 Assistant City Attorney, *Mary Finnerty*
"This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form of document is altered."
Page 1 of

(Revised 3-8-07)

120702-003

	CONTRACT AMENDMENT	CITY OF PHOENIX Purchasing Division 251 W. Washington Street 8th Floor Phoenix, AZ 85003 Phone: (602) 262-7181
	Date: 3/19/07 Solicitation#: IFB07-131 SAP Contract # P- P-08351-12 City Clerk Contract #: 120702 Amendment Number: 3	

Contract Title: PORTABLE MONITOR DEFIBRILLATORS

Contractor: Philips Medical Systems North America Co.

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

1) Alterations proposed to the scope of work by Philips Medical in their offer is accepted by the city in its entirety, with the exception of the following change:
Scope of Work, Page 4, the 2nd paragraph is replaced with the following:
Philips' quoted trade-in value for each LP12 monitor/defibrillator shall be vailid for 120 days from the full execution of Amendment No. 2 for Contract No. IFB07-131 (dated April 19, 2007). This trade-in value is contingent upon Philips' receipt of the Medtronic LifePak equipment no later than 45 days after the complete installation of the Philips' MRX defibrillator equipment. The city is responsible for insuring the equipment is made available for pick up by the Philips' Disposition Services Agent.

2) Contract term: 5 years with 2, 1 year optional extensions

3) Loaner equipment will be made available to the PFD within 48 hours, if device is removed by Philips' Field Support. Loaner device will remain on-site until repairs have been completed.

Buyer Name: Jacque Behrens

ALL OTHER PRICES, TERMS, AND CONDITIONS OF THE CONTRACT WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Purchasing Division.

Signature

Senior Manager, Anita Rodgers, Finance + Sales Oper.
Typed/Printed Name and Title

Date: 4-19-07

Deputy Finance Director/*Juan Salgado*

ATTEST:

Deputy City Clerk

CITY CLERK DEPT. 07 APR 20 AM 9:40

APPROVED AS TO FORM
Approved as to form this 7th day of August 2006 Assistant City Attorney, *Mary Finnerty*
"This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form of document is altered."
Page 1 of 1

(Revised 3-8-07)

120702-004

CONTRACT AMENDMENT

Date: September 5, 2007
Purchasing Contract #: IFB 07-131
SAP Contract # P- 08351-12
City Clerk Contract #: 120702
Amendment Number: 4

CITY OF PHOENIX
Purchasing Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

Contract Title: Portable Monitor Defibrillators

Contractor: Philips Medical Systems North America Co.

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

As of September 5, 2007, HeartStart FR2+ Defribillators and accessories have been added to this contract, per the special price list dated 9/4/07 based on Price List Effective 7/1/07 Rev. A.

HeartStart FR2+ Debibrillators are priced at list less 45%
Accessories are priced at list less 30%

CITY CLERK DEPT.
2007 SEP 14 AM 9:48

Buyer Name:T. Hayes

ALL OTHER PRICES, TERMS, AND CONDITIONS OF THE CONTRACT WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Purchasing Division.

Signature

Anita Rodgers, Sr.Mgr.Finance & Sales Oper.
Typed/Printed Name and Title

Date: 9/06/07

Deborah Phillips for Susan Perkins
Deputy Finance Director/*Susan Perkins*

ATTEST:

PHOENIX, ARIZONA · INCORPORATED FEB. 25, 1881

Deputy City Clerk

APPROVED AS TO FORM
Approved as to form this 7th day of August 2006 Assistant City Attorney, *Mary Finnerty*
"This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form of document is altered."
Page 1 of 1

(Revised 5-31-07)

120702-004

CONTRACT AMENDMENT

Date: September 5, 2007
Purchasing Contract #: IFB 07-131
SAP Contract # P- 08351-12
City Clerk Contract #: 120702
Amendment Number: 4

CITY OF PHOENIX
Purchasing Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

Contract Title: Portable Monitor Defibrillators

Contractor: Philips Medical Systems North America Co.

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

As of September 5, 2007, HeartStart FR2+ Defribillators and accessories have been added to this contract, per the special price list dated 9/4/07 based on Price List Effective 7/1/07 Rev. A.

HeartStart FR2+ Debibrillators are priced at list less 45%
Accessories are priced at list less 30%

CITY CLERK DEPT.
2007 SEP 14 AM 9:48

Buyer Name:T. Hayes

ALL OTHER PRICES, TERMS, AND CONDITIONS OF THE CONTRACT WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Purchasing Division.

Signature

Anita Rodgers, Sr.Mgr.Finance & Sales Oper.
Typed/Printed Name and Title

Date: 9/06/07

Deborah Phillips for Susan Perkins
Deputy Finance Director/*Susan Perkins*

ATTEST:

PHOENIX, ARIZONA · INCORPORATED FEB. 25, 1881

Deputy City Clerk

APPROVED AS TO FORM
Approved as to form this 7th day of August 2006 Assistant City Attorney, *Mary Finnerty*
"This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form of document is altered."
Page 1 of 1

(Revised 5-31-07)

120702-005

CONTRACT AMENDMENT

Date: June 18, 2009
Purchasing Contract #: IFB 07-131
SAP Contract # P- 08351-12
City Clerk Contract #: 120702 ~ 005
Amendment Number:

CITY OF PHOENIX
Purchasing Division
251 W. Washington Street
8th Floor
Phoenix, AZ 85003
Phone: (602) 262-7181

Contract Title: Portable Monitor Defibrillators

Contractor: Philips Medical Systems North America Co.

THE ABOVE REFERENCED CONTRACT IS AMENDED AS FOLLOWS:

The following has been deleted from this contract at the request of Philips Medical Systems.

Item 13: Heartstart FR2+ Defibrillators
Models M3860A and M3861A

Philips will continue to honor the standard five-year warranty for all currently installed FR2+AEDs, as well as the optional two year warranty extension. Supplies, training accessories, and technical support for the FR2+ will continue to be available

Buyer Name: T. Hayes

ALL OTHER PRICES, TERMS, AND CONDITIONS OF THE CONTRACT WILL REMAIN THE SAME

Contractor hereby acknowledges receipt of and agreement with the amendment. A signed copy must be returned to the Purchasing Division.

Signature

Typed/Printed Name and Title

Date: 6/19/09

Deputy Finance Director/***Susan Perkins***

ATTEST:

Deputy City Clerk

APPROVED AS TO FORM
Approved as to form this 7th day of August 2006 Assistant City Attorney, *Mary Finnerty*
"This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form of document is altered."
Page 1 of 1

(Revised 5-31-07)

EXHIBIT B
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHILIPS HEALTHCARE,
A DIVISION OF PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

[Quotation]

See following pages.

QUOTE DATE	QUOTE NUMBER	PAGE
03/28/2011	2300172476	1 / 8
LAST UPDATED 03/29/2011	**TIME** 11:57:38	
EXPIRATION DATE 05/28/2011	**INCOTERMS** FOB DESTINATION	

PAYMENT TERMS
Net 30 Days
Subject to Credit Approval

FORMAL QUOTE

Philips Healthcare
3000 Minuteman Road,MS0400
Andover, MA 01810-1099

Email PO to: bc_800fax2nd@philips.com
or
Fax PO to: 1-800-947-3299
or
Mail PO to:
Philips Healthcare
Order Processing, MS0400
Andover, MA 01810-1099

800-934-7372

CUSTOMER:
Attention: Ron Deadman, Deputy Chief

Avondale Fire-Rescue
1825 N 107th Ave
AVONDALE AZ 85392-4837
UNITED STATES

Customer Number : 94349600

SALES REPRESENTATIVE

Heather McLeod Ph: 602-740-6101

Fax: 602-325-0113

QUOTE CONTACT

Lisa Turgeon

Federal EIN: 13-3429115

ITEM	PRODUCT	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT AMOUNT (USD)	TOTAL AMOUNT (USD)
		SPECIAL COMMENTS Est Tax: $5,473.15 Post paid service contract per customer				
10	M4553B 989803147851	Easy Care Cuff, 1 Hose, Pediatric (1)	4	PCE	29.00	116.00
		Net price				116.00
20	M4555B 989803147871	Easy Care Cuff, 1 Hose, Adult (1)	4	PCE	32.00	128.00
		Agreement Discount			-37.03 %	-47.40
		Net price				80.60
		Agreement: MH437				
30	M4557B 989803147891	Easy Care Cuff, 1 Hose, Lrg Adult (1)	4	PCE	32.00	128.00
		Agreement Discount			-35.00 %	-44.80
		Net price				83.20
		Agreement: MH437				
40	M1920A 989803105531	FilterLine Set Adult/Pedi	1	PCE	271.00	271.00
		Agreement Discount			-41.00 %	-111.11

PHILIPS

Philips Healthcare
3000 Minuteman Road,MS0400
Andover, MA 01810-1099

QUOTE DATE	QUOTE NUMBER	PAGE
03/28/2011	2300172476	2 / 8

LAST UPDATED	TIME
03/29/2011	11:57:38

EXPIRATION DATE	INCOTERMS
05/28/2011	FOB DESTINATION

FORMAL QUOTE

ITEM	PRODUCT	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT AMOUNT (USD)	TOTAL AMOUNT (USD)
		Net price				159.89
		Agreement: MH437				
50	M2526A 989803129781	SMART CAPNOLINE plus, ADULT, intermed	1	SET	322.00	322.00
		Agreement Discount			-30.00 %	-96.60
		Net price				225.40
		Agreement: MH437				
60	M1192A 989803103231	SNSR SpO2 Pedi/Small adult finger	4	PCE	250.00	1,000.00
		Agreement Discount			-35.00 %	-350.00
		Net price				650.00
		Agreement: MH437				
70	M3536A 861289	HeartStart MRx ALS monitor	4	PCE	9,890.00	39,560.00
		A03 Sp02, NBP, etC02	4		8,750.00	35,000.00
		B01 Noninvasive Pacing	4		2,350.00	9,400.00
		B02 12 Lead ECG acquisition	4		3,500.00	14,000.00
		B04 Wide Printer	4		500.00	2,000.00
		B06 12-LD Trans. Bluetooth	4		2,000.00	8,000.00
		C03 Data Card	4		89.00	356.00
		C05 Lithium Ion Battery	4		325.00	1,300.00
		C21 Black soft carry case-pads	4		.00	.00
		LP3-User Video-DVD	4		25.00	100.00
		M3508A Standard Pad Cable	4		.00	.00
		W01 1-Year, on-site warranty	4		.00	.00
		Agreement Discount			-45.00 %	-49,372.20
		Promotion discount			-3,100.00	-12,400.00
		Net price				47,943.80
		Agreement: MH437				
80	989803135301 989803135301	2-Bay Analyzer For HS Li-Ion Batteries	3	PCE	1,345.00	4,035.00
		Agreement Discount			-35.00 %	-1,412.25
		Net price				2,622.75

PHILIPS

Philips Healthcare
3000 Minuteman Road,MS0400
Andover, MA 01810-1099

QUOTE DATE	QUOTE NUMBER	PAGE
03/28/2011	2300172476	3 / 8

LAST UPDATED	TIME
03/29/2011	11:57:38

EXPIRATION DATE	INCOTERMS
05/28/2011	FOB DESTINATION

FORMAL QUOTE

ITEM	PRODUCT	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT AMOUNT (USD)	TOTAL AMOUNT (USD)
		Agreement: MH437				
90	989803166021 989803166021	Adult Pre-Connect Defib Pad	2	CAS	315.00	630.00
		Agreement Discount			-35.00 %	-220.50
		Net price				409.50
		Agreement: MH437				
100	M1191B 989803144371	Reusable Adult SpO2 Sensor	4	PCE	250.00	1,000.00
		Agreement Discount			-35.00 %	-350.00
		Net price				650.00
		Agreement: MH437				
110	M3538A 989803129011	Lithium Ion Battery Module	8	PCE	325.00	2,600.00
		Agreement Discount			-35.00 %	-910.00
		Net price				1,690.00
		Agreement: MH437				
120	M3717A 989803107821	HeartStart Pediatric Plus Pads	1	CAS	155.00	155.00
		Agreement Discount			-30.00 %	-46.50
		Net price				108.50
		Agreement: MH437				
130	989803138181 989803138181	MRx Wide Printer Paper	1	CAS	430.00	430.00
		Net price				430.00
		Total Quotation List Price				120,531.00
		Less All Applicable Discounts				-65,361.36
		Total Quotation Net Price				**55,169.64**

Philips Healthcare is pleased to inform you that financing of its products and services is available to qualified applicants. To obtain more information
contact Philips Medical Capital @ 866-513-4PMC.
*
Contract information for:Phoenix, City Of

Philips Healthcare
3000 Minuteman Road,MS0400
Andover, MA 01810-1099

QUOTE DATE	QUOTE NUMBER	PAGE
03/28/2011	2300172476	4 / 8

LAST UPDATED	TIME
03/29/2011	11:57:38

EXPIRATION DATE	INCOTERMS
05/28/2011	FOB DESTINATION

FORMAL QUOTE

ITEM	PRODUCT	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT AMOUNT (USD)	TOTAL AMOUNT (USD)

*
Prices quoted are subject to and reflect
applicable discounts per the terms and
conditions of the following contract:
Contract #MH437 Expiration:Mar. 31, 2012
*
The products listed herein are part of
a Philips Promotion entitled:
More is More - 11143US
To qualify for the special discounts
noted herein, all products within the
Promotion configuration must be ordered.
No changes and/or substitutions will be
allowed. All orders for this promotion must
be received on or before 7/08/2011
The trade-in allowance quoted herein exceeds Philips' estimate of the
fair market value of the units by $3000.00. This amount may be
considered a price reduction or discount under 42 USC 1001.952(h).
*
This quotation is issued pursuant to, and any PO for the items herein
will be accepted subject to the Terms of Contract#MH437 .
If no contract is identified in the previous sentence or the products
and/or services are not covered by this contract, this quotation is
issued pursuant to, and any PO for the items herein will be accepted
subject to the Philips Terms and Conditions of Sale posted at
http://www.healthcare.philips.com/main/terms_conditions/ and the terms
herein.
*
*
Under the American Reinvestment and Recovery Act ("ARRA"), it is the
customer's responsibility to inform Philips if the contract contains any
ARRA funding. Please check the following box if any part of this
contract is funded through ARRA:
*
___ This contract is funded in whole or in part through ARRA."
*
*
All work is scheduled within normal working hours;
Monday through Friday, 8 a.m. to 5 p.m. excluding Philips
holidays.
All pricing is based on travel zones 1-3. For travel zones beyond 1-3,
consult your Philips sales rep for alternate pricing.
It is the customers responsibility to provide Philips with
the access necessary to complete the quoted work in a
continuous start to finish manner.

ITEM	PRODUCT	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT AMOUNT (USD)	TOTAL AMOUNT (USD)

Excessive delays and multiple visits will result in additional charges.
All prices are based upon 'adequate access' to work areas that are free from obstruction.
If it is determined, during the implementation that asbestos removal is required; Philips will suspend performance until the Customer remediates the asbestos.
Philips will work with the customers staff to reduce the downtime during the system transition.
*
*
Products are for USA end-use only. Taxes, if applicable, are not included unless noted but will be added to the invoice. The Purchase Order must reference the Quote Number and your Purchase Agreement. Please indicate your requested delivery date and your preference, if any, to accept and pay for partial shipments. If this quote includes Value-Added Services, they may be invoiced separately. Additional sold training must be completed within twelve months of delivery/installation. System cabling, if included, is specified at the standard grade unless noted otherwise.
*
This quote specifically excludes Licensing & Permit Fees, Prevailing Wage Compensation and Union Labor.
*
IMPORTANT NOTICE: Health care providers are reminded that if the transactions herein include or involve a loan or a discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted under any federal or state health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including but not limited to 42 CFR 1001.952(h).
*
Not binding until accepted in writing by Philips in Andover or invoiced by Philips.
*
Any purchase order or resulting agreement shall be subject to the Philips Terms and Conditions and the following terms which customer accepts.
*
For certain agreements, Philips may conduct a qualification inspection to verify that customer is suitably trained, the equipment is in serviceable condition, and all like equipment is covered by a valid Philips warranty or service agreement.
*
Any resulting agreement is subject to cancellation by Philips if

ITEM	PRODUCT	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT AMOUNT (USD)	TOTAL AMOUNT (USD)

customer fails to satisfy these conditions during the term.
*
*
Biomed Support - a new agreement for Biomeds and clinicians that want unfettered technical and clinical support, direct connection to technical engineers and discounts on parts. This agreement is great for Biomeds that make regular use of Philips technical support and genuine Philips parts, and ensures clinicians have access to clinicians when necessary. It is designed to cover an entire facility, with affordable pricing and straightforward quoting.
*
Biomed Alliance - designed for the Philips-trained Biomed department that wants to limit parts and support costs, this agreement provides unlimited parts and technical support for all products covered. If the customer would like Philips field service engineers to back them up with their support efforts, a Second Response option is available to provide an onsite field service engineer for situations where the local biomed team is not able to resolve a problem after attempting repairs and receiving guidance remotely. This agreement also provides access to clinician support.
*
Bench Repair - provides bench repair services at a Philips repair facility. This service is great for products where software and hardware reliability and compatibility are critical and factory quality repairs ensure that repairs meet current manufacturing standards. A Performance Assurance option is available for products that require annual preventive maintenance.
*
Unit Exchange - Unit Exchange provides a fast replacement of failed or problem units. Under this agreement, customers can receive a new unit as soon as the next business day. This agreement is a good fit for products where time is critical and spare units are not available.
*
Comprehensive Onsite - With Comprehensive Onsite, Philips provides onsite support for covered equipment. This agreement is good for products and for care areas where technical expertise is critical and hands on Philips engineers will support the clinical and technical needs of the department. A Performance Assurance option is available for products that require annual preventive maintenance. This agreement also provides access to remote clinician support.
*
Software Maintenance Agreement - The software maintenance agreement includes Philips highest levels of remote support and includes software upgrades and remote clinician support. PTU Standard and PTU Basic are still key components of these agreements, with PTU Standard providing

ITEM	PRODUCT	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT AMOUNT (USD)	TOTAL AMOUNT (USD)
		all installations and PTU Basic providing up to 2 installations over 5 years. Remote support includes new Remote Access services that enable Philips technical engineers to maximize system uptime through remote diagnostic tools and processes. * If the customer would like Philips field service engineers to back them up with their support efforts, a Second Response option is available to provide an onsite field service engineer for situations where the local biomed team in cooperation with Philips remote services is not able to resolve a problem in time to meet service level commitments. * Legacy Agreement Types * Gold Service - On-site maintenance and repair 8-5, M-F; Clinical Ed and upgrade discounts. * Silver Service - On-site repair 8-5, M-F. * First Response - On-site repair with biomed screening, InCenter subscription. * Co-op Response - Backup on-site repair only 8-5, M-F, InCenter subscription. * * Remote Response - Labor, parts, phone support 8-5, M-F, InCenter subscription.				

This quotation is issued pursuant to, and any PO for the items herein will be accepted subject to the Terms of any current Contract with the customer. If there is no contract in place, this quotation is issued pursuant to, and any PO for the items herein will be accepted subjected to Philips Terms and Conditions of sale posted at http://www.healthcare.philips.com/main/terms_conditions/ and the terms herein.

This quotation contains confidential and proprietary information of Philips Healthcare and is intended for use only by the customer whose name appears on this quotation.It may not be disclosed to third parties without prior written consent of Philips Healthcare

CITY COUNCIL REPORT

SUBJECT:
Professional Services Agreements - Consultant Registered Surveying Inc. for Topographic Survey Services

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Sue McDermott, P.E., Development Services Director/City Engineer, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve professional services agreements with Consultant Registered Surveying, Inc. (CRS) for topographic survey services for several capital improvement projects in the amount of $15,960 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

In order for staff to prepare in-house engineering design for capital improvement projects, topographic surveying must be completed. Topographic surveying provides coordinates and elevations for existing roadway, water, sewer, and drainage facilities. CRS has been utilized by staff in the past and award of these projects to this consultant results in total services exceeding $50,000.

DISCUSSION:

There are four (4) capital improvement projects that require topographic surveying services: Rancho Santa Fe Boulevard, Dysart Road to McDowell Road, Roosevelt Street, 99th Avenue to 107th Avenue, Western Avenue, Dysart Road to Central Avenue, and Dysart Road (west side of), Main Street to Harrison Drive.

The Rancho Santa Fe Boulevard Roadway Improvement project will reconstruct the existing pavement, remove and replace any non-compliant ADA pedestrian ramps, and remove and replace any broken curb and gutter.

The Roosevelt Street project will reconstruct the existing pavement, remove and replace any non-compliant ADA pedestrian ramps, and remove and replace any broken curb and gutter.

The Western Avenue project consists of design and construction of a storm drain system with catch basins from Dysart Road to 6th Street. This will help alleviate localized flooding. The Flood Control District of Maricopa County (FCDMC) is providing 75% of the construction costs.

The Dysart Road Landscape Improvement project will provide landscaping and landscape irrigation along the west side of Dysart Road from Main Street (MC85) to Harrison Drive.

BUDGETARY IMPACT:

Funding for these projects is available in the following CIP Street Fund Line Items:

304-1290-00-8420	Rancho Santa Fe Boulevard	$3,610

304-1289-00-8420	Roosevelt Street	$3,515
304-1007-00-8420	Western Avenue	$7,030
304-1001-00-8420	Dysart Road	$1,805

RECOMMENDATION:

Staff recommends that the City Council approve professional services agreements with Consultant Registered Surveying, Inc. (CRS) for topographic survey services for several capital improvement projects in the amount of $15,960 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
CONSULTANT REGISTERED SURVEYING INC.

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of April 18, 2011, between the City of Avondale, an Arizona municipal corporation (the "City"), and Consultant Registered Surveying Inc., an Arizona corporation (the "Consultant").

RECITALS

A. The City issued a Request for Qualifications, EN 10-057 "FY 2010/2011 Professional Consultants Selection List" and amended on April 6, 2010, by that certain Addendum No. 1 (collectively the "RFQ"), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, seeking statements of qualifications from vendors for professional consulting services.

B. The Consultant submitted a Statement of Qualifications (the "SOQ") in response to the RFQ, attached hereto as Exhibit B and incorporated herein by reference, and the City desires to enter into an Agreement with the Consultant for the Consultant to perform topographical survey services generally along (i) Dysart Road – south of MC85 to Harrison Drive (the Dysart Task"), (ii) Western Avenue – Dysart Road west to Central (the "Western Task"), (iii) Rancho Santa Fe – Dysart Road to McDowell Road (the "Rancho Santa Fe Task") and (iv) Roosevelt Street – 107th Avenue to 99th Avenue (the "Roosevelt Street Task"). The Dysart Task, the Western Task, the Rancho Santa Fe Task and the Roosevelt Task are collectively referred to herein as 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 June 30, 2011.

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

3. Compensation. The City shall pay Consultant an aggregate amount not to exceed $15,960.00 for the Services as set forth in the Scope of Work and Fee Proposal, attached hereto as Exhibit C.

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 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 RFQ number and title or this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFQ 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 RFQ 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. 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 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.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

If to Consultant: Consultant Registered Surveying Inc.
3370 North Hayden Road, Suite #123, P.M.B. 567
Scottsdale, Arizona 85251
Facsimile: (480) 874-4802
Attn: Carl Sitterley, R.L.S.

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 this Agreement, the Scope of Work and Fee Proposal, the RFQ and the Consultant's SOQ, 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.

[SIGNATURES ON FOLLOWING PAGE]

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

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

_____
Charles P. McClendon, City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

"**Consultant**"

CONSULTANT REGISTERED SURVEYING INC., an Arizona corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011, 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 _____, 2011, by _____ as _____ of CONSULTANT REGISTERED SURVEYING INC., an Arizona corporation, on behalf of the corporation.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CONSULTANT REGISTERED SURVEYING INC.

[RFQ]

See following pages.

REQUEST FOR STATEMENTS OF QUALIFICATIONS FOR FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

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

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Number:	**EN 10-057**
Solicitation Title:	**FY 2010/2011 Professional Consultants Selection List**
Release Date:	**March 25, 2010**
Final Date for Inquires and Place to Send Inquiries	**April 5, 2010** Sue McDermott, P.E., City Engineer City of Avondale Engineering Dept. 11465 West Civic Center Drive, Suite 120 Avondale, Arizona 85323 smcdermott@avondale.org
SOQs Due Date, Time and Location:	**April 15, 2010** **3:00 p.m.** (local time, Phoenix, Arizona) City of Avondale 11465 West Civic Center Drive, Suite 200 Avondale, Arizona 85323-6804
Letters to Final Listed Firms:	**June 28, 2010**
City Representatives:	**Sue McDermott** **smcdermott@avondale.org** **623-333-4200** **Loretta Browning** **lbrowning@avondale.org** **623-333-2200**

Table of Contents

Section		Page
I.	Introduction	A-1 - 3
II.	Statement of Qualifications Requirements	B-1 - 4
III.	Statement of Qualifications Format; Scoring	B-4 - 6
IV.	Award of Agreement	B-6
V.	Discipline Specialty Checklist	B-7
VI.	Vendor Information	B-8
VII.	Professional Service Agreement	C-1 - 17

I. INTRODUCTION

1. Purpose. The City of Avondale (the "City") is seeking Statements of Qualification ("SOQ") from professional consulting engineering firms ("Vendors") to be considered for a Professional Consultants Selection List aimed at capital improvement projects during the 2010/2011 and 2011/2012 Fiscal Years. Only Vendors capable of providing the requested discipline category of professional services will receive consideration. Qualified Vendors are invited to submit SOQs.

2. Discipline Categories of Projects. During Fiscal Years 2010/2011 and 2011/2012, the City plans to contract approximately twenty (20) projects per Fiscal Year for professional services for specific projects that fall within 16 (sixteen) different discipline categories listed below. The scope of work for these specific projects may include studies, site investigations, planning, preliminary design concepts, and contract document development (preparing detailed plans, schedules, designs, assembly of specifications and reports). Project duties may also involve budget estimating, engineering designs, phasing, recommendations for future infrastructure needs (master plans), improvement district administration and presentations at public meetings. Please note, all projects involving the preparation of design plans and specifications require the design plans and specifications to be sealed by a Professional registered in the State of Arizona.

The Professional Consultants Selection List discipline categories are:

- Water Distribution System – Feasibility studies, wells, distribution systems, pump stations, storage facilities and treatment plants.

- Wastewater Systems – Studies, collection and disposal system designs, treatment plants and lift stations.

- Transportation Engineering – Roadway improvement projects, master plans, transportation planning, traffic calming projects, sidewalks and intersection designs, including roundabouts.

- Traffic Engineering – Speed, volume and classification studies, traffic signal warrant studies, other traffic engineering and traffic control studies (such as All-way STOP warrant studies), pedestrian & bicycle studies, Safe Routes to School plans and studies, school crosswalk studies, traffic signal design, traffic control design such as signing and pavement marking, traffic crash analysis, design of safety improvement projects, including roundabout study, design and analysis, design of bike lane/transit/crosswalk facilities, street lights, and Intelligent Transportation Systems (ITS such as Traffic Operations Center design, variable message signs, fiber optic and conduit design, and Wireless Advanced Traffic Management Systems).

- Surveying - Including topographic surveys, boundary surveys, construction staking, as-built surveys, right-of-way and easement investigation, ALTA and preparation of legal descriptions.

- Hydrology/Hydraulic Projects – Master plans, hydrology studies and designing storm water drainage facilities.

- Plan Review Services - Includes plan review of subdivision plats, residential and commercial developments, construction plans for water, sewer, paving, drainage, street/traffic lights and grading.

- Landscape Architect - Master plans, conceptual planning, site designs, parks and public open spaces, streetscapes, bicycle and pedestrian pathway design, scenery planting and irrigation.

- Hydrogeological Engineering - Provide aquifer impact and well feasibility studies. Ability to provide well abandonment services. Design of wells; provide construction inspection/observation services during the drilling of new or replacement wells.

- GIS Programs - Services to support Geographic Information Systems Programs including: data collection and development, map compilation, transformation and systems integration.

- Geotechnical and Environmental **-** Geotechnical engineering, pavement design, materials sampling and testing, pavement evaluation, design recommendations and specifications. Environmental site assessments, compliance audits, risk evaluations and recommendations.

- Foundation and Structural Design - To include load calculations and recommendations for construction of retaining walls, steel reinforced concrete structures, small buildings, and vehicular and pedestrian bridges.

- Electrical Design and Supervisory Control and Data Acquisition (SCADA) Programming - Provide design and inspection services for electric power supply, control systems and equipment specifications. Design and programming of local SCADA systems, PLC programming, and telemetry.

- Construction Management - Provide Construction Management at Risk (CMAR) and Design Build process management or construction administration and inspection services, such as estimation, bid document preparation, QA/QC services, shop drawing review, and post design services.

- Architect - Planning and new building development, renovation, interior and exterior design and construction management of public building projects.

- Subsurface Utility Investigation - To include various types of investigation methods to verify the horizontal and vertical location of underground utilities using surface geophysical techniques such as Ground Penetrating Radar ("GPR"), electromagnetic, magnetic

or other energy fields, probing and vacuum exploration. Electromagnetic methods include the following: pipe and cable locators, inductive, conductive, active and passive modes), terrain conductivity, ground resistivity techniques, optical methods, and computer-driven algorithms coupled with data collection techniques.

II. STATEMENT OF QUALIFICATIONS REQUIREMENTS

1. Preparation/Submission of SOQ. Vendors are invited to participate in the competitive selection process for the Professional Consultants Selection Lists for Fiscal Year 2010/2011 and 2011/2012 outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

a. Interested parties must submit **one (1) original** and **eight (8) copies** (nine (9) total hardcopy submittals) and one (1) electronic copy of the SOQ.

b. The SOQ shall be submitted with a cover letter with an original ink signature by a person authorized to bind the Vendor. Any erasures, interlineations, or other modifications in the SOQ shall be initialed in original ink by the authorized person signing the SOQ.

c. The SOQ shall be a maximum of 15 pages to address the SOQ criteria (excluding the cover letter, résumés and 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, a discipline category/staffing matrix, or organizational chart and only having criteria information on one side. The cover letter, 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 SOQ criteria responses. The minimum allowable font for the SOQ is **11 pt**.

d. All Vendors shall (i) examine the entire RFQ, (ii) seek clarification of any item or requirement that may not be clear, (iii) check all responses for accuracy before submitting a SOQ and (iv) submit the entire SOQ by the official Due Date and Time. Negligence in preparing a SOQ confers no right of withdrawal after the SOQ Due Date and Time.

e. All SOQs shall be sealed and clearly marked with the SOQ title and number**, FY 2010/2011 Professional Consultants Selection List (EN 10-057)**, on the lower left hand corner of the sealed mailing envelope. A return address must also appear on the outside of the sealed SOQ. The City is not responsible fore the pre-opening of, post-opening of, or the failure to open, any SOQs not properly addressed or identified.

f. All SOQs 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 time and date indicated on the cover page of this RFQ.

g. Telegraphic (facsimile), electronic (email) or mailgram SOQs will not be considered.

2. Irregular or Non-responsive SOQ. The City will consider as "irregular" or "non-responsive" and reject any SOQ not prepared and submitted in accordance with this RFQ, or any SOQ 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.

3. Inquiries. Any question related to the RFQ shall be directed to the City Representative whose name appears on the cover page of this RFQ. Questions shall be submitted in writing by the date indicated on the cover page of this RFQ. Any correspondence related to the RFQ shall refer to the title and number, page and paragraph. However, the Vendor shall not place the RFQ number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed SOQ and may not be opened until after the Due Date and Time.

4. Late SOQs. Late SOQs will not be considered, except as provided by the City Procurement Code. A Vendor submitting a late SOQ shall be so notified.

5. Withdrawal of SOQ. At any time prior to the specified Due Date and Time, a Vendor (or designated representative) may withdraw its SOQ. Facsimile, electronic (email) or mailgram SOQ withdrawals will not be considered.

6. Amendment of SOQ. At any time prior to the specified Due Date and Time, a Vendor (or designated representative) may amend its SOQ. Facsimile, electronic (email) or mailgram SOQ amendments will not be considered.

7. Cost of SOQ Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. SOQs 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 RFQ. All materials and documents submitted in response to this RFQ become the property of the City and will not be returned.

8. Offer. An SOQ submittal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFQ and the Vendor's responsive SOQ, 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 included herein.

9. Public Record. All SOQs 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.

10. Confidential Information.

a. If a Vendor believes that a SOQ 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.

b. The information identified by the Vendor as confidential shall not be disclosed until the City Representative makes a written determination.

c. The City Representative shall review the statement and information and shall determine in writing whether the information shall be withheld.

d. If the City Representative determines to disclose the information, the City Representative shall inform the Vendor in writing of such determination.

11. 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 SOQ.

12. Certification. By submitting a SOQ, the Vendor certifies:

a. The submission of the SOQ did not involve collusion or other anti-competitive practices.

b. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

c. 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 SOQ. Failure to sign the SOQ, or signing it with a false statement, shall void the submitted SOQ and any resulting Agreement.

d. It (including the firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other staff. All contact must be addressed to the City's Procurement Agent, except for questions submitted as set forth in Section 3, Inquiries, above.

e. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached Professional Service Agreement including the Exhibits.

13. Protests. Any Bidder may protest this RFQ 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.

III. STATEMENT OF QUALIFICATIONS FORMAT; SCORING

A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule on the cover page of this RFQ. Upon receipt of an SOQ, each submittal will be reviewed for compliance with the submittal requirements by the Selection Committee. SOQs shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements may result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate and award points to each SOQ based upon the evaluation 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. Up to ten (10) of the highest rated professional consultants from each discipline category will be selected for inclusion on the Professional Consultants Selection shortlist.

These Professional Consultant Selection shortlists will be used to invite Vendors to submit proposals to provide professional services on specific project assignments. The City reserves the right to conduct formal interviews with selected Vendors depending upon the size and complexity of the specific project. The final Professional Consultant Selection List will be used by the City for at least one year and at the discretion of the City Manager for a second consecutive year.

For large or complex projects or for very specialized work, the City may use a separate Request for Proposals or Request for Qualifications process.

All processes will be conducted in accordance with ARIZ. REV. STAT. Title 34.

Section 1: General Factors and Compliance 10 pts

a. One page cover letter as described in Section II, 1(b) addressed to Sue McDermott, City Engineer.

b. Completed Discipline Specialty Check List – Please ONLY check the discipline category(ies) for which you are particularly qualified, fully addressed and desire to be considered.

c. Title sheet with the following information:
   1. Title: Statement of Interest to provide Professional Services for Capital Improvement Projects for the 2010/2011 and 2011/2012 Fiscal Years.
   2. Submitted to: City of Avondale City Clerk
   3. Submittal date: April 15, 2010 (local time, Phoenix, Arizona)

4. Submitted by: Engineering firm or Individual (submitting) include address, contract person and telephone number.

d. Provide a statement regarding the following:

1. Your firm's familiarity and capability of compliance with City's standard insurance requirements and contract documents. A sample copy of the City's Professional Services Agreement is attached hereto. A copy of the City's "Notice of Request for Proposal" which includes standard contract provisions, terms and conditions is available upon request.

2. Your firm's design philosophy and approach to developing sound engineering recommendations and your approach to problem resolution.

e. Vendor Information Form shall be attached as separate appendix and excluded from the page count limitation pursuant to Section II(1)(c).

Section 2: Vendor's relevant experience, availability and capability 50 pts

a. Provide a brief description of the firm including the number and types of personnel who would serve on projects.

b. Provide a list of relevant projects in which the firm had a significant contribution with an emphasis on local experience. Include references and telephone numbers of clients familiar with the projects.

c. Provide a general description of the company that is proposing to provide the required services. Explain the legal organization of the company.

d. Provide identification information of your firm. Include the legal name, address and legal form of the firm (e.g., partnership, corporation, joint venture, sole proprietorship). If a join venture, identify the members of the joint venture and provide all of the information required under this section for each member. If the firm 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 SOQ.

e. Identify the location of the firm's principal office and the local work office, if different.

Section 3: Personnel qualification and pertinent experience 40 pts

a. Provide the firm's general or specific experience pertaining to the Professional Consultant Selection List discipline category(ies) the firm desires to be considered for.

b. Provide a matrix listing all categories within the discipline for which the firm is qualified to provide services and identify the participating staff/key personnel. Include a matrix listing for all subcontractors.

c. Provide certifications, licenses and memberships in professional associations, societies or boards.

d. Provide a résumé for the personnel who will serve in key positions for projects, including specific experience for each person on relevant projects, the number of years the personnel has been with the present firm and the total years of experience. Résumés shall be limited to one (1) page, double-sided per résumé. Résumés shall be attached as an appendix and excluded from the page count limitation pursuant to Section II(1)(c).

Total Possible Points for SOQ Submittal: 100

IV. AWARD OF AGREEMENT

1. Award of Agreement. The selected Vendor from the Professional Consultants Selection List for each specific project 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 RFQ. If the City is unsuccessful in negotiating an Agreement with the highest-scoring firm, the City may then negotiate with the second, then third, highest-scoring firm until an Agreement is executed. City Council approval may be required. The City reserves the right to terminate the selection process at any time.

2. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFQ, the City expressly reserves the right to: (i) waive any immaterial defect or informality, (ii) reject any or all SOQs or portions thereof and (iii) reissue an RFQ.

V. DISCIPLINE SPECIALTY CHECK LIST
FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

Name of Firm _____

Address _____

City _____ State _____ Zip _____

Contact Name: _____

Title: _____

Telephone _____ Fax _____

Please check only those discipline categories for which you are particularly qualified, fully addresses, and desired to be considered.

_____ Water Distribution System

_____ Wastewater Systems

_____ Transportation Engineering

_____ Traffic Engineering

_____ Surveying

_____ Hydrology/Hydraulic Projects

_____ Plan Review Services

_____ Landscape Architects

_____ Hydrogeological Engineering

_____ GIS Programs

_____ Geotechnical and Environmental Engineering

_____ Foundations & Structural Design

_____ Electrical & SCADA Programming

_____ Construction Management

_____ Architects

_____ Subsurface Utility Investigation

VI. **VENDOR INFORMATION FORM**

By sending a Statement of Qualifications, the submitting firm certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

_____	_____
FIRM SUBMITTING SOQ	FEDERAL TAX ID NUMBER
_____	_____
PRINTED NAME AND TITLE	AUTHORIZED SIGNATURE
_____	_____
ADDRESS	TELEPHONE FAX #
_____	_____
CITY STATE ZIP	DATE
WEB SITE: _____	EMAIL ADDRESS: _____

MINORITY/WOMEN-OWNED SMALL BUSINESSES (check appropriate item):

_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)
_____ Minority Business Enterprise (MBE)
_____ Small Business Enterprise (SBE)

Has your firm 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.

REQUEST FOR STATEMENTS OF QUALIFICATIONS
FOR

FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

EN-10-057

Addendum No. 1

Date: April 6, 2010

From: Sue McDermott

Subject: Addendum No. 1 to Solicitation No. EN 10-057

Bid Deadline: **April 15, 2010**, 3:00 p.m. local time, Phoenix, Arizona

SCOPE

This Addendum forms a part of the Contract and clarifies, corrects, or modifies the original Request for Qualifications documents prepared by the City of Avondale. Acknowledge receipt of this addendum in the space provided on the attached form. This acknowledgement and addendum must accompany the submitted Statement of Qualifications. Failure to do so may subject the Vendor to disqualification.

This Addendum No. 1 consists of the modification of the RFQ, Section I, Introduction, Paragraph 2, Discipline Categories of Projects and Section II, Statement of Qualifications Requirements, Paragraph (1)(a), Preparation/ Submission of SOQ.

ADDENDUM

1. Page A-1, Section I, Introduction, Paragraph 2, is hereby amended as follows:

   2. Discipline Categories of Projects. During Fiscal Years 2010/2011 and 2011/2012, the City plans to contract approximately twenty (20) projects per Fiscal Year for professional services for specific projects that fall within 16 (sixteen) different discipline categories listed below. The scope of work for these specific projects may include studies, site investigations, planning, preliminary design concepts, and contract document development (preparing detailed plans, schedules, designs, assembly of specifications and reports). Project duties may also involve budget estimating, engineering designs, AND

phasing, recommendations for future infrastructure needs (master plans). ~~improvement district administration and presentations at public meetings.~~ Please note, all projects involving the preparation of design plans and specifications require the design plans and specifications to be sealed by a Professional registered in the State of Arizona.

The Professional Consultants Selection List discipline categories are:

- Water Distribution System – Feasibility studies, wells, distribution systems, pump stations, storage facilities and treatment plants.

- Wastewater Systems – Studies, collection and disposal system designs, treatment plants and lift stations.

- Transportation Engineering – Roadway improvement projects, master plans, transportation planning, traffic calming projects, sidewalks and intersection designs, including roundabouts.

- Traffic Engineering – Speed, volume and classification studies, traffic signal warrant studies, other traffic engineering and traffic control studies (such as All-way STOP warrant studies), pedestrian & bicycle studies, Safe Routes to School plans and studies, school crosswalk studies, traffic signal design, traffic control design such as signing and pavement marking, traffic crash analysis, design of safety improvement projects, including roundabout study, design and analysis, design of bike lane/transit/crosswalk facilities, street lights, and Intelligent Transportation Systems (ITS such as Traffic Operations Center design, variable message signs, fiber optic and conduit design, and Wireless Advanced Traffic Management Systems).

- Surveying - Including topographic surveys, boundary surveys, construction staking, as-built surveys, right-of-way and easement investigation, ALTA and preparation of legal descriptions.

- Hydrology/Hydraulic Projects – Master plans, hydrology studies and designing storm water drainage facilities.

- Plan Review Services - Includes plan review of subdivision plats, residential and commercial developments, construction plans for water, sewer, paving, drainage, street/traffic lights and grading.

- Landscape Architect - Master plans, conceptual planning, site designs, parks and public open spaces, streetscapes, bicycle and pedestrian pathway design, scenery planting and irrigation.

- Hydrogeological Engineering - Provide aquifer impact and well feasibility studies. Ability to provide well abandonment services. Design of wells; provide construction inspection/observation services during the drilling of new or replacement wells.

- GIS Programs - Services to support Geographic Information Systems Programs including: data collection and development, map compilation, transformation and systems integration.

- Geotechnical and Environmental **-** Geotechnical engineering, pavement design, materials sampling and testing, pavement evaluation, design recommendations and specifications. Environmental site assessments, compliance audits, risk evaluations and recommendations.

- Foundation and Structural Design - To include load calculations and recommendations for construction of retaining walls, steel reinforced concrete structures, small buildings, and vehicular and pedestrian bridges.

- Electrical Design and Supervisory Control and Data Acquisition (SCADA) Programming - Provide design and inspection services for electric power supply, control systems and equipment specifications. Design and programming of local SCADA systems, PLC programming, and telemetry.

- Construction Management - Provide Construction Management at Risk (CMAR) and Design Build process management or construction administration and inspection services, such as estimation, bid document preparation, QA/QC services, shop drawing review, and post design services.

- Architect - Planning and new building development, renovation, interior and exterior design and construction management of public building projects.

- Subsurface Utility Investigation - To include various types of investigation methods to verify the horizontal and vertical location of underground utilities using surface geophysical techniques such as Ground Penetrating Radar ("GPR"), electromagnetic, magnetic or other energy fields, probing and vacuum exploration. Electromagnetic methods include the following: pipe and cable locators, inductive, conductive, active and passive modes), terrain conductivity, ground resistivity techniques, optical methods, and computer-driven algorithms coupled with data collection techniques.

2. Page B-1, Section II, Statement of Qualifications Requirements, Paragraph (1)(a) is hereby amended as follows:

1. Preparation/Submission of SOQ. Vendors are invited to participate in the competitive selection process for the Professional Consultants Selection Lists for Fiscal Year 2010/2011 and 2011/2012 outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

a. Interested parties must submit **one (1) original** and **eight (8) copies** (nine (9) total hardcopy submittals) and ~~one (1) electronic copy of the SOQ~~ ONE

ORIGINAL COPY OF THE SOQ 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 SOQ BEING CONSIDERED NON-RESPONSIVE.

CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR QUALIFICATIONS

FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

EN10-057

Addendum No. 1

_____, affirms that ADDENDUM No. 1 has
(Name of Vendor/Designee)
been received and that the information contained in ADDENDUM No. 1 has been incorporated in formulating the Vendor's Offer.

_____, _____2010
Signed Date

_____
Print Name

_____
Title

_____
Company Name

_____
Address

_____
City, State, Zip Code

END OF ADDENDUM No. 1

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CONSULTANT REGISTERED SURVEYING INC.

[Consultant's SOQ]

See following pages.

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

April 15, 2010, 03:00:00 PM

Attn: Sue McDermott, PE, City Engineer
CITY OF AVONDALE, City Clerk
11465 West Civic Center Drive, Suite 200
Avondale, Arizona 85323

RE: Statement of Interest to provide Professional Services for Capital Improvement Projects for the 2010/2011 and 2011/2012 Fiscal Years. (Solicitation number, EN 10-057)

STATEMENT OF QUALIFICATIONS----COVER LETTER:

This letter is a statement of interest submitted by Consultant Registered Surveying (CRS) to provide Land Surveying Services for the City of Avondale. CRS is qualified to provide only professional Land Surveying Services in Arizona.

CRS is a six year old, Arizona Corporation completing boundary, topographic, and construction staking land surveying services. Such surveying services include providing as-built and volume certificates, completing right of way and easement research and analysis, writing legal descriptions, and preparing American Land Title Association Surveys (ALTA).

CRS is current with, and registered with, the Arizona State Board of Technical Registration Firm number 12564-0 with an annual renewal date of March 31, 2011. The Land Surveyor of record for the firm requirements for the Arizona State Board of Technical Registration is Carl Sitterley, RLS 28742.

Carl Sitterley is the sole owner of CRS, and has been registered in Arizona since 1995. Carl Sitterley is current with the Arizona State Board of Technical Registration licensing and his renewal date is March 31, 2013.

Submitted by,
CONSULTANT REGISTERED SURVEYING, INC.

Carl Sitterley, RLS 28742
President

V. DISCIPLINE SPECIALTY CHECK LIST
FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

Name of Firm Consultant Registered Surveying, Inc.

Address 8732 E. Piccadilly

City Scottsdale State AZ Zip 85251

Contact Name: Carl Sitterley, RLS

Title: President

Telephone 480-620-1382 Fax 480-874-4802

Please check only those discipline categories for which you are particularly qualified, fully addresses, and desired to be considered.

_____ Water Distribution System

_____ Wastewater Systems

_____ Transportation Engineering

_____ Traffic Engineering

__X__ Surveying

_____ Hydrology/Hydraulic Projects

_____ Plan Review Services

_____ Landscape Architects

_____ Hydrogeological Engineering

_____ GIS Programs

_____ Geotechnical and Environmental Engineering

_____ Foundations & Structural Design

_____ Electrical & SCADA Programming

_____ Construction Management

_____ Architects

_____ Subsurface Utility Investigation

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

TITLE SHEET

STATEMENT OF QUALIFICATIONS

Statement of Interest to provide Professional Services
Capital Improvement Projects for the 2010/2011 and 2011/2012 Fiscal Years.
(Solicitation number, EN 10-057)

CITY OF AVONDALE, CITY CLERK

Submitted by,
CONSULTANT REGISTERED SURVEYING, INC.

Carl Sitterley, RLS 28742
President

Submitted: April 15, 2010, 03:00:00 PM

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

STATEMENT OF QUALIFICATIONS

Statement of Familiarity with City of Avondale Insurance Requirements

CRS has previously completed several topographic surveying and construction staking projects with the City of Avondale. CRS has responded to the insurance requirements on previous projects and has negotiated revisions to the professional liability insurance requirements for the type of professional services provided to date. CRS has increased our insurance coverage to meet the $2 million dollar aggregate City of Avondale requirement. The CRS per occurrence coverage remains at $1 million dollars, however, CRS has obtained an excess umbrella insurance policy that supports a $5 million dollar limit. In addition, the CRS professional liability retro active date extends back to April of 2004.

The CRS general liability, automobile, and workers compensation insurance liabilities meet or exceed the requirements requested by the City of Avondale. CRS since providing surveying services for the City of Avondale, provided annual insurance certificates. Insurance certificates have at least a 30 day notice of cancellation and up to a 10 day notice of cancellation can be provided.

Generally speaking, each past project completed for the City of Avondale, by CRS, has required project specific insurance certificates. CRS is familiar with the "additional insured" requirements, including the "waiver of rights of recovery (subrogation)" and have successfully completed the City of Avondale requirements multiple times through the various CRS insurance carriers and policies. In addition, CRS has, within the past two years, obtained one insurance broker that carries all of the CRS insurance requirements and understands the "wavier of rights of recovery" clauses. One call to one broker, greatly aids in correctly meeting the City of Avondale insurance requirements.

Statement of Familiarity with City of Avondale Contract Documents

CRS has and will continue to respond to and respect the intent of the City of Avondale professional contracts. CRS has already responded to conflict of interest conditions, were as a common profession provider was declined by CRS to provide our surveying services on another unrelated project during a time of legal conflict.

In addition, CRS fully reads and understands the indemnification statements and due to our current company policies do not subcontract outside professional services unless required by our clients. Such subcontract services may be involved with utility bluestake markings or vacuum truck underground utility locations. All subcontracted services would be held by written contract under the same exact contract requirements as set forth in the City of Avondale contract with CRS.

Submitted: April 15, 2010, 03:00:00 PM

STATEMENT OF QUALIFICATIONS

Statement of philosophy, land surveying services

CRS has a simple philosophy and approach to providing surveying services in Arizona and Maricopa. Land Surveying is and art and science involved with collecting, observing, analyzing-evaluating, and applying evidence. The importance of evidence is paramount in making professional surveying decisions and supporting sound surveying professional services. CRS, through Carl Sitterley, RLS, believes the application of gathering evidence in the field and through records research, is best applied to the land surveying tasks at hand, by those with sufficient experience and education in the land surveying profession. Professional Land Surveying tasks are best accomplished with the experience applied **both** in the field and in the office. This philosophy applies a **field to finish approach** with one professional completing all field and office tasks associated with a project. This philosophy helps eliminate professional issues caused and associated with a lack of person to person communication and lack of project familiarity by office personnel not having intimate knowledge with field site conditions and evidence.

Statement of approach and problem (issue) resolution, land surveying services

Issue resolution is completed by CRS by first indentifying the issues that maybe present as they may be applied to the art and science of land surveying. CRS gathers evidence of measurements, written supporting documents, and most importantly, evidence of communication with interested affected participants. An engineering project issue or boundary/construction issue may not be fully realized by supporting professional providers without input from the land surveying perspective. The basis above statement of philosophy plays a big part in the problem/issue resolution process. By having the appropriate balance of land surveying experience and education applied to **both** the field and office conditions and to the communications that occur at both the field and office arenas, critical evidence and observations are efficiently applied to the resolution process. CRS has already applied this approach to several City of Avondale issues that include resolution of working with Charles Andrews to solve:

1. the curb-paving match on McDowell Road at Friendship Park, field defining curb grades and constraints for drainage and working with the contractor to complete a competent product.
2. the topo-survey of pools on new asphalt paving on 99th Ave. and McDowell and creating 0.1 ft contours that helped define the pool limits and opportunities for drainage relief.

Issue resolution first begins with listening to the project goals and limitations. Listening to the concerns presented or the goals of a project and then maybe observing undetermined concerns using experience in the field to identify potential future issues. CRS then works to communicate and resolve those issues before moneys and time are further applied to the project and the project goals.

Submitted: April 15, 2010, 03:00:00 PM

STATEMENT OF QUALIFICATIONS

Statement of relevant experience, availability, and land surveying capabilities

CRS is a one-man professional consultant company offering professional surveying services. The one-man field to finish land surveying services philosophy is accomplished using state of the art field equipment such as:

1. a robotic Trimble total station with direct reflectorless capabilities.
2. a Trimble RTK 4800 GPS system with 3 mile plus radio capability.
3. a laser level with vertical accuracy and distance range to allow vertical observations to the standards for urban surveys.
4. a lap top computer loaded with LDD2007, AutoDesk software, Trimble Geomatics software, and standard Microsoft Office software.

Field operations are fully supported with an office computer loaded with the same above software, and software for creation and viewing electronic digital images. The office is also supported with multiple modern printers and plotters that allow document printing full color or black and white in 8"x11", 11"x17" and 24"x36" sheet sizes.

CRS completes ALL work through Carl Sitterley, RLS. Prior to starting CRS in 2004, Carl Sitterley obtained surveying experience starting back in 1981 while working in surveying during the summers and one school semester off, while going to Colorado State University. Carl Sitterley spent several years, while obtaining a Forestry Degree and minor in land surveying, teaching surveying lab classes and working with techniques using old style transits, levels, and plane tables.

During summer surveying experience opportunities and, post college graduation, surveying positions, Carl Sitterley has completed a wide variety of land surveying projects. Carl Sitterley has experience completing management of surveying personnel and projects involved with:

1. Forest Service boundaries, Mineral Claim staking and retracement, General boundary surveying, and ALTA surveys.
2. Construction staking involved with heavy construction projects of dams, highways and bridges; involved with residential and commercial subdivisions, involved with commercial buildings and infrastructures; involved with urban roadway improvements and new utilities and infrastructure.
3. Topographic surveying for many different requirements of including design for roadway, pipe and utility routes, site surveys for residential and commercial site improvements, including active industrial sites such as food plants and transport facilities.
4. Consulting Surveying Services at both the field and office levels for a Major electrical and irrigation provider Salt River Project (SRP); for Arizona Department of Transportation right of way department (legal descriptions and right of way plan preparation and review); and for a local construction company as a professional consultant.

-----continued next page---

Through CRS, Carl Sitterley applies 29 years (and counting) of field and office surveying experience in a wide variety of land surveying project and education opportunities. CRS applies this experience, full time, on your projects with proper field surveying and safety equipment and with sufficient office support from software and printing capabilities.

Along the way, Carl Sitterley has obtained valuable education and training in time management and public relations. CRS has further developed time management communication techniques that allows for proactive scheduling and creative time management that allows CRS to generally meet most, if not all, project schedule requirements. The field to finish process is generally more efficient for completion of topographic surveys and creates a more competent product. CRS is generally available within a typical reasonable communication window to complete required tasks and meet for project orientation situations.

Since CRS began in March of 2004, Carl Sitterley has continued to apply his past surveying experience and education to completing the same wide variety of surveying services. Primarily, CRS completes construction staking, design topographic surveys, and boundary surveys. CRS is in strict compliance with the "Arizona Boundary Survey Minimum Standards", and applies those standards everyday to all land surveying services. CRS is a consultant surveyor for a local construction company and directs and supports their performance of surveying services in Arizona, meeting the requirements for the Arizona State Board of Technical Registration firm registration for professional services.

CRS EXPERIENCE PROJECT LIST INCLUDES:

A. 6 years, construction surveying projects with ACE ASPHALT, Tom Hayes, Mark Benedeto, Phone: 602-243-4100, projects include:

1. Ford/Volvo test track improvements, 2004
2. Avondale Business Center, Van Buren and Dysart Roads, 2004
3. Mountain Vista Hospital, Banner Gateway Hospital, Gilbert Mercy Hospital, Banner Desert Hospital, Banner Thunderbird Hospital, 2006-2008
4. West World, infrastructure improvements, 2007
5. Calendar Stix, Pima Center commercial projects2007-2008
6. Rail road projects, Shuck and Sons and Western Emulsions.2009

B. Casa Grande, street topo-surveys, Stanley and Associates, Charles Andrews 623-333-4216

C. ALTA Survey, Yuma, Arizona, Harvest Preparatory Academy, number not available

D. STARA Technologies, Date Land, Arizona, proving grounds, state land lease improvements, Glen Bailey, Phone: 480-850-1555

E. CEI, consultant many projects, legal descriptions, project surveying consulting, William Perez, Phone: 602-866-5090

F. Multiple Intersection topographic surveys and legal descriptions, Kirkham Michael, now out of business, Speak with Rod Penniman at now at AMEC, Phone: 602 343-2400.

G. Frito-Lay Plant, Casa Grande, Arizona, Tyler Mummert, Phone: 520-836-2363

Topographic Surveys, boundary surveys, legal descriptions, and construction surveys since 2007 for site improvements associated with plant improvements, solar panel improvements, bio-mass burner improvements, and water treatment plant improvements.

H. Ninyo & Moore, multiple projects involved with hazard site remediation and monitoring services. Holly Land, Steve Nowachik, Phone 602-243-1600.

I. Plains Mid-Stream Canada, LPG services, Glendale site, topographic survey, boundary surveys, and legal descriptions since 2008, multiple sites. Paul Gabura, Phone: 403-451-1094

STATEMENT OF QUALIFICATIONS

Statement General Company Description and legal organization

CONSULTANT REGISTERED SURVEYING, INC.: Arizona S-Corporation,

Owned and Operated by Carl Sitterley, RLS, President
8732 E. Piccadilly
Scottsdale, Arizona
Phone: 480-620-1382

Providing Professional Land Surveying Services.

Statement of personnel qualification and pertinent experience

CRS completes ALL work through Carl Sitterley, RLS. Prior to starting CRS in 2004, Carl Sitterley obtained surveying experience starting back in 1981 while working in surveying during the summers and one school semester off, while going to Colorado State University. Carl Sitterley spent several years, while obtaining a Forestry Degree and minor in land surveying, teaching surveying lab classes and working with techniques using old style transits, levels, and plane tables.

During summer surveying experience opportunities and, post college graduation, surveying positions, Carl Sitterley has completed a wide variety of land surveying projects. Carl Sitterley has experience completing management of surveying personnel and projects involved with:

5. Forest Service boundaries, Mineral Claim staking and retracement, General boundary surveying, and ALTA surveys.
6. Construction staking involved with heavy construction projects of dams, highways and bridges; involved with residential and commercial subdivisions, involved with commercial buildings and infrastructures; involved with urban roadway improvements and new utilities and infrastructure.
7. Topographic surveying for many different requirements of including design for roadway, pipe and utility routes, site surveys for residential and commercial site improvements, including active industrial sites such as food plants and transport facilities.
8. Consulting Surveying Services at both the field and office levels for a Major electrical and irrigation provider Salt River Project (SRP); for Arizona Department of Transportation right of way department (legal descriptions and right of way plan preparation and review); and for a local construction company as a professional consultant.

Through CRS, Carl Sitterley applies 29 years (and counting) of field and office surveying experience in a wide variety of land surveying project and education opportunities. CRS applies this experience, full time, on your projects with proper field surveying and safety equipment and with sufficient office support from software and printing capabilities.

Along the way, Carl Sitterley has obtained valuable education and training in time management and public relations. CRS has further developed time management communication techniques that allows for proactive scheduling and creative time management that allows CRS to generally meet most, if not all, project schedule requirements. The field to finish process is generally more efficient for completion of topographic surveys and creates a more competent product. CRS is generally available within a typical reasonable communication window to complete required tasks and meet for project orientation situations.

Since CRS began in March of 2004, Carl Sitterley has continued to apply his past surveying experience and education to completing the same wide variety of surveying services. Primarily, CRS completes construction staking, design topographic surveys, and boundary surveys. CRS is in strict compliance with the "Arizona Boundary Survey Minimum Standards", and applies those standards everyday to all land surveying services. CRS is a consultant surveyor for a local construction company and directs and supports their performance of surveying services in Arizona, meeting the requirements for the Arizona State Board of Technical Registration firm registration for professional services.

Statement of certifications, licenses, and professional association memberships

Carl Sitterley, RLS Arizona no. 28742, since 1995
NICET level III certification, expired.

Performing surveying services under the Arizona State Board of Technical Registration Firm no. 12564-0.

Professional Associations:

Arizona Professional Land Surveyors, Member since 1995, no. 102897
National Society of Professional Surveyors, ID no. 37603
American Council of Engineering Companies, of Arizona no. unknown.

Capital Improvement Projects for the 2010/2011 and 2011/2012 Fiscal Years. (Solicitation number, EN 10-057)

Submitted: April 15, 2010, 03:00:00 PM

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

APPENDIX "A"

RESUME'S

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

CARL SITTERLEY, RLS
PRESIDENT

SUMMARY:

Mr. Carl Sitterley is a Registered Land Surveyor (R.L.S.) in the State of Arizona. His educational background includes a Bachelor of Science Degree in Natural Resource Management (Forestry) and a Minor in Land Surveying obtained from Colorado State University. Mr. Sitterley has worked with many of ADOT's Construction Districts in addition to ADOT's various design and support sections. He has also worked with numerous cities and counties, along with the National Forest Service, Arizona State Parks, the State Land Department, and the Bureau of Reclamation. His experience includes writing legal descriptions, preparing plats, A.L.T.A. and boundary surveys, temporary construction easements, title research, results of survey, right of way determination, right of way plans, review and calculations.

Mr. Sitterley has over 29 years experience in Right of Way, Design and Boundary Land Surveying. His strength comes with a wide variety of experience in his professional career including; Design, Boundary – Right of Way Surveys, Topographic Surveys, and Construction Staking on highway projects, residential subdivisions and commercial projects.

EDUCATION:

1986, Bachelor of Science in Natural Resources Management (Forestry), Minor in Land Surveying, Colorado State University, Fort Collins, Colorado.

REGISTRATION: Arizona Registered Land Surveyor, No. 28742. ---1995

EXPERIENCE: (Note, Surveying Career started in June 1981)

3/04 – Present

Consultant Registered Surveying, Inc., Scottsdale, Arizona
(480) 620-1382
President/Owner: (Est. Company 3/04 – *Present)*
Mr. Sitterley, R.L.S. is in charge of all Survey Contracts for Consultant Registered Surveying, Inc. This includes both field and office completion of all projects using modern Trimble GPS and Robotic one-man field equipment, and office computer processing with Land Development Desktop 2008, Trimble Geomatics Office 1.62, Microsoft office, and COX high-speed internet access.

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

APPENDIX "B"

VENDOR INFORMATION FORM

ADDENDUM NO.1 FORM

AFFIRMATION

VI. VENDOR INFORMATION FORM

By sending a Statement of Qualifications, the submitting firm certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

Consultant Registered Surveying
FIRM SUBMITTING SOQ

20-0789604
FEDERAL TAX ID NUMBER

Carl Sitterley, President
PRINTED NAME AND TITLE

Carl Sitterley
AUTHORIZED SIGNATURE

8732 E. Piccadilly
ADDRESS

480-620-1382 480-874-4802
TELEPHONE FAX #

Scottsdale AZ 85251
CITY STATE ZIP

4/15/2010
DATE

WEB SITE: N/A

EMAIL ADDRESS: csitterley-crs

MINORITY/WOMEN-OWNED SMALL BUSINESSES (check appropriate item):

_____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)
_____ Minority Business Enterprise (MBE)
_____ Small Business Enterprise (SBE)

Has your firm 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.

CITY OF AVONDALE
ACKNOWLEDGMENT OF ADDENDA RECEIVED
REQUEST FOR QUALIFICATIONS

FY 2010/2011 PROFESSIONAL CONSULTANTS SELECTION LIST

EN10-057

Addendum No. 1

Consultant Registered Surveying, affirms that ADDENDUM No. 1 has
(Name of Vendor/Designee)
been received and that the information contained in ADDENDUM No. 1 has been incorporated in formulating the Vendor's Offer.

[signature], 4/15/ 2010
Signed Date

Carl Sitterley
Print Name

President
Title

Consultant Registered Surveying.
Company Name

8732 E. Piccadilly
Address

Scottsdale, AZ 85251
City, State, Zip Code

END OF ADDENDUM No. 1

8/98 – 3/04	**Consultant Engineering, Inc.,** Phoenix, Arizona (602) 866-5090 Survey Manager/Vice President: (Est. Survey Dept. *3/00 – 3/04)* Right of Way Technician (*8/98 – 3/00)*
5/97 – 7/98	**Wood/Patel Associates,** Phoenix, AZ (602) 335-8500. **AND**
1/94 – 5/97	**David Evans and Associates, Inc.**, Phoenix, AZ (602) 678-5151. Project Surveyor *(5/97 – 7/98)* Project Surveyor, Project Manager, Client Manager *(2/96 – 5/97)* Chief Of Parties *(7/95 - 8/96)* Survey Office Tech *(11/94 - 7/95)* Party Chief *(1/94 - 11/94)*
5/88 - 1/94	**W.E.I / Urban Engineering, Inc.,** Phoenix, Arizona **AND**
2/87 - 5/88	**Lemme Engineering, Inc.,** Phoenix, Arizona (602) 841-6904. Survey Coordinator *(11/92 - 1/94)* Party Chief *(4/89 - 11/92)* Instrument Person (*2/87 - 5/88) (5/88 - 4/89)*
6/86 - 11/86	**Triangle Surveys, Inc.,** Livingston, Montana. Warren Latvala owner Instrument Person
6/81 - 6/86	**Other Survey Positions**: Rod - Instrument Person (summers 1981-1983, fall 1983) Survey Lab Instructor (1985-1986 school year) Colorado State University.

PERSONAL HIGHLIGHTS:

Through completion of above experience, Mr. Sitterley has become familiar with various computer software, including Autocadd, Land Development Desk Top Rel 2007: Trimble, Geomatic Office (TGO) Rel. 1.62; Starnet least squares adjustment software; MS Excell, MS Word; Tripod Data Systems (TDS). He has worked with Lietz SET3, Nikon TOPGUN, TopCon GTS4B and Many Wild Total Station Theodolites. His primary data collector experience is with the TDS survey loaded into HP-48 calculators, but has worked with Sokkia SDR33's. Mr. Sitterley **currently** uses Trimble GPS - RTK 4800 units, Trimble Robotic 5600 units, both combined with the Trimble TSCE data controller.

Mr. Sitterley values his experience completing projects field to finish. He works to understand the clients needs through questions and professional presentation. Mr. Sitterley applies common sense with experience to determine the surveying service that needs to be provided and works to communicate to the client the services requested. Mr. Sitterley places great importance on the field data importance when completing topographic or boundary surveys. Field data is the primary product that a Land Surveyor provides. Evidence of existing utilities or survey monuments are sometimes subtle and require experience and an inquisitive mind to seek and acquire. Trained and variable experience combined with thourgh professional research and judgement is the product Mr. Sitterley offers as a professional service.

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CONSULTANT REGISTERED SURVEYING INC.

[Scope of Work and Fee Proposal]

See following pages.

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
E-mail:
csitterley-crs@cox.net

Attn: Charles W. Andrews, P.E., Senior Engineering Project Manager
CITY OF AVONDALE
11465 W. Civic Center Drive
Avondale, AZ 85323

March 15, 2011

RE: Surveying Scope of Services, Cost Proposal Dysart Road south of MC85 to Harrison Drive. Topographic Survey, (Dysart Wall) control ground coordinates tied to Avondale horizontal and vertical datum.

Dear Charles,

Your request is for CRS to complete a design topographic survey of the west half roadway improvements along a roadway corridor just south of MC85 at the beginning of a block wall and continue southerly to Harrison Drive. The purpose of the survey is for landscape improvements and review of the multiple power and telephone pole positions. CRS will locate the existing paving and other surface improvements on approximate 50 ft stations (intervals that respond to a competent model) that will indicate a good analysis of the topographic and dirt surface conditions. In addition, CRS will show topographic features such as underground water, sanitary, and storm drain facilities; and other miscellaneous topographic items that would concern landscape improvements. Additional observations will be observed to ensure a competent DTM, such as at grade breaks or variable paving areas such as valley gutters, etc.. In addition, CRS will locate existing visible indications of electric, telephone, and television communications including any bluestake markings and observable surface utility facilities. CRS has not included with this scope of service, obtaining as-built utility maps or for requesting bluestake markings. Bluestake markings, if desired, are the responsibility of the City of Avondale. If provided by Avondale, CRS can use utility as-built maps to determine if any utility facilities are buried under the asphalt or dirt surfaces. CRS would then use a metal detector to search for such indicated hidden utility improvements.

CRS will also research the recorded subdivision and survey maps and further locate any potential survey monuments that may be found along the alignment.

CRS will complete a DTM, and provide the 3D files in AutoCad 2007 format. This includes a standard "xml" file for the 3D modeling data base. The control for the site is the City of Avondale horizontal and vertical control datum. CRS will set local site survey control points along the route that maybe used to reset any disturbed survey markers during the future construction phase.

(continued next page)

Estimate:
CRS anticipates one work days or 2.0 hours of travel, 08 hours of field topo-survey observations, 1 hours of control observations and survey monument observation, and 08 hours office time to process the topo-survey and control data and provide Avondale with a surveying package complete with sealed rough plots, ASCII point file and CAD files stated above.

Total time anticipated 19.0 hours.

CRS invoices both field and office surveying services at an hourly rate of $95.00 per hour and anticipates this portion of the project to be a not-to-exceed fee of $1,805.00.

Daily reports will be completed for all of the daily surveying tasks.

Please call with questions.

Submitted,
CONSULTANT REGISTERED SURVEYING, INC.

Carl Sitterley, RLS
President

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

Attn: Charles W. Andrews, P.E., Senior Engineering Project Manager
CITY OF AVONDALE
11465 W. Civic Center Drive
Avondale, AZ 85323

March 3, 2011

RE: Surveying Scope of Services, Cost Proposal Western Avenue, Dysart Road west to Central. Topographic Survey, control ground coordinates tied to Avondale horizontal and vertical datum.

Dear Charles,

Your request is for CRS to complete a design topographic survey of the roadway improvements along a detailed downtown Avondale corridor. The purpose of the survey is for roadway drainage review and future drainage mitigation improvements. CRS will locate the existing paving and other surface improvements on approximate 25 to 50 ft stations (intervals that respond to a competent model and short block intervals) that will indicate a good analysis of the drainage for the site area. In addition, CRS will show topographic features such as underground water, sanitary, and storm drain facilities; existing buildings, larger trees, open lot surfaces, and other miscellaneous topographic items that would concern placement of new catch basins and new storm drain pipes. Additional observations will be observed to ensure a competent DTM, such as at grade breaks or variable paving areas such as valley gutters, etc.. Paving observations will be taken to approximately 100 feet north and south of the curb returns on adjacent side street intersections or extended drive way entrances off of the street. Due to the drainage patterns known at this time, and an existing storm drain catch basin at the dead end of Belmont Drive east of 7th Street, CRS will complete the topo-survey to include 7th Street south approximate 300 feet from Western Avenue and include the Belmont Drive dead end and some observations west of 7th street to confirm flow direction. CRS will make observations on Dysart Road to indicate surface flow from or to Western Drive and will make further observations of the existing storm drain pipes in this area and/or use the information from past observations for the Stanley Associates topo-survey completed in 2006-2007 by CRS. Further, CRS will locate building limits along the down town Western Corridor, including any available finish floor elevations, from Dysart Road west to just past 4th Street (the high point or crowning point of the street flow). CRS is aware, from our meeting and field visit, of the main building at the northeast corner of Western and 6th Street that has some flooding issues. This building will be observed with a definite degree of certainty. In addition, CRS will locate existing visible indications of electric, telephone, and television communications including any bluestake markings and observable surface utility facilities. CRS has not included with this scope of service, obtaining as-built utility maps or for requesting bluestake markings. Bluestake markings are not recommended at this time in this clean down town area. If provided by Avondale, CRS can use utility as-built maps to determine if any utility facilities are buried under the asphalt surface. CRS will use a metal detector to search for such indicated hidden utility improvements.

CRS will also research the recorded subdivision and survey maps and further locate any potential survey monuments that may be found along the alignment.

(continued next page)

CRS will complete a DTM, and provide the 3D files in AutoCad 2007 format. This includes a standard "xml" file for the 3D modeling data base. The control for the site is the City of Avondale horizontal and vertical control datum. CRS will set local site survey control points along the route that maybe used to reset any disturbed survey markers during the future construction phase.

CRS has developed two cost estimates. The requested limits for the first estimate includes the Western Avenue roadway alignment from Dysart Road west to just west of 4th Street (the stated high point for surface flow). The first limits also includes the above stated Belmont Drive and 7th Street for drainage review.

The limits for the second estimate extends west to Central Avenue, however, only top curb gutter and paving crown lines will be observed to just understand the drainage flow patterns. Walks, buildings, and decorative curb limits, etc. will not be observed in this second estimate.

First Estimate: Western Ave. alignment from 4th St. east to Dysart Rd., & Belmont Dr.
CRS anticipates four work days or 8.0 hours of travel, 24 hours of field topo-survey observations, 8 hours of control observations and survey monument observation, and 18 hours office time to process the topo-survey and control data and provide Avondale with a surveying package complete with sealed rough plots, ASCII point file and CAD files stated above. Please note, the survey control in 2nd estimate area will be set with this estimate also.

Total time anticipated 50.0 hours.

CRS invoices both field and office surveying services at an hourly rate of $95.00 per hour and anticipates this portion of the project to be a not-to-exceed fee of $4,750.00.

Second Estimate: Western Ave. alignment from 4th St. west to Central Ave.
CRS anticipates an additional two work day or 4.0 hours of travel, 14 hours of additional field topo-survey observations, and an additional 6 hours office time to process the topo-survey data and provide Avondale with a surveying package the same above survey package that would include this second area.

Total 2nd area estimated time anticipated 24.0 hours.

CRS invoices both field and office surveying services at an hourly rate of $95.00 per hour and anticipates this second portion of the project to add to the not-to-exceed fee $2,280.00.

Total Estimate both areas:
The not-to-exceed fee of **$4,750.00,** for the First estimate area, plus the not-to-exceed fee $0,2,280.00, for the Second estimate area, sums to a **Total not-to-exceed fee =$7,030.00**

Daily reports will be completed for all of the daily surveying tasks.

Please call with questions.

Submitted,
CONSULTANT REGISTERED SURVEYING, INC.

Carl Sitterley, RLS
President

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, P.M.B. 567
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

Attn: Charles W. Andrews, P.E., Senior Engineering Project Manager
CITY OF AVONDALE
11465 W. Civic Center Drive
Avondale, AZ 85323

March 2, 2011

RE: Surveying Scope of Services, Cost Proposal Rancho Santa Fe, Dysart Road to McDowell. Topographic Survey, control ground coordinates tied to City of Avondale horizontal and vertical control datum.

Dear Charles,

Your request is for CRS to complete a design topographic survey of the asphalt paving and both sides of curbs. The purpose of the survey is for asphalt roadway improvements that may include new median curbs and traffic control. CRS will locate the existing paving on approximate 50 ft stations (intervals that respond to a competent model) at the curb lines and approximate 25 ft stations along the center crown line, yellow stripe lines, dashed lane lines and along any bike or edge lines. Additional observations will be observed to ensure a competent DTM, such as at grade breaks or variable paving areas such as valley gutters, etc.. Observations will be taken to the curb returns on adjacent side street intersections or drive way entrances up to the curb returns off of the street. This topo-survey does NOT include observations into the Dysart Road and McDowell Road intersections, and will only be completed to the Santa Fe Road curb returns. In addition, CRS will locate existing visible manholes, water valves, gas valves and other visible surface utility facilities. If provided by Avondale, CRS can use utility as-built maps to determine if any utility facilities are buried under the asphalt surface. CRS will use a metal detector to search for such indicated hidden utility improvements. CRS will also research the recorded subdivision and survey maps and further locate any potential survey monuments that may be found along the alignment.

CRS will complete a DTM, curb to curb, and provide the 3D files in AutoCad 2007 format. This includes a standard "xml" file for the 3D modeling data base. The control for the site is the city of Avondale horizontal and vertical control datum. CRS will set local site survey control points along the route that maybe used to reset any disturbed survey markers during the future construction phase.

CRS anticipates three work days or 6.0 hours of travel, 16 hours of field topo-survey observations, 4 hours of GPS control observations and survey monument observation, and 12 hours office time to process the topo-survey and control data and provide Avondale with a surveying package complete with sealed rough plots, ASCII point file and CAD files stated above.

(continued next page)

Total time anticipated 38.0 hours.

CRS invoices both field and office surveying services at an hourly rate of $95.00 per hour and anticipates this project to be a **not-to-exceed fee of $3,610.00**.

Daily reports will be completed after completion of the daily surveying tasks.

This project does not include location of bluestake marking, location of any walk ways, location of trees or landscaping or other topography outside the back of curbs. However, walk ramps at curbs will be noted.

Please call with questions.

Submitted,
CONSULTANT REGISTERED SURVEYING, INC.

Carl Sitterley, RLS
President

County Parcels

Sheet 1 of 5

number Sheet 2

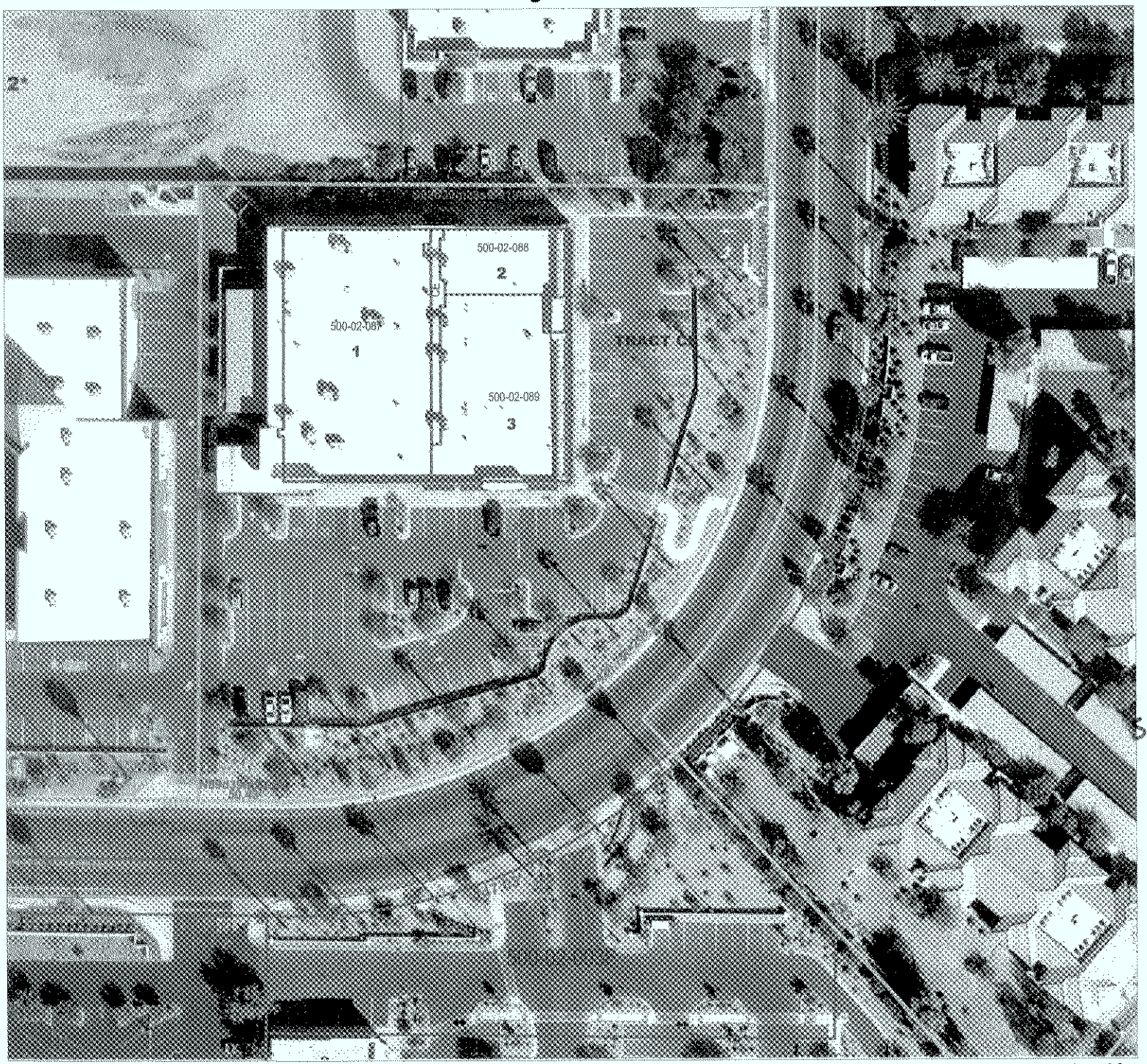
County Parcels match Sheet 1

sheet 2 of 3

match Sheet 3

County Parcels

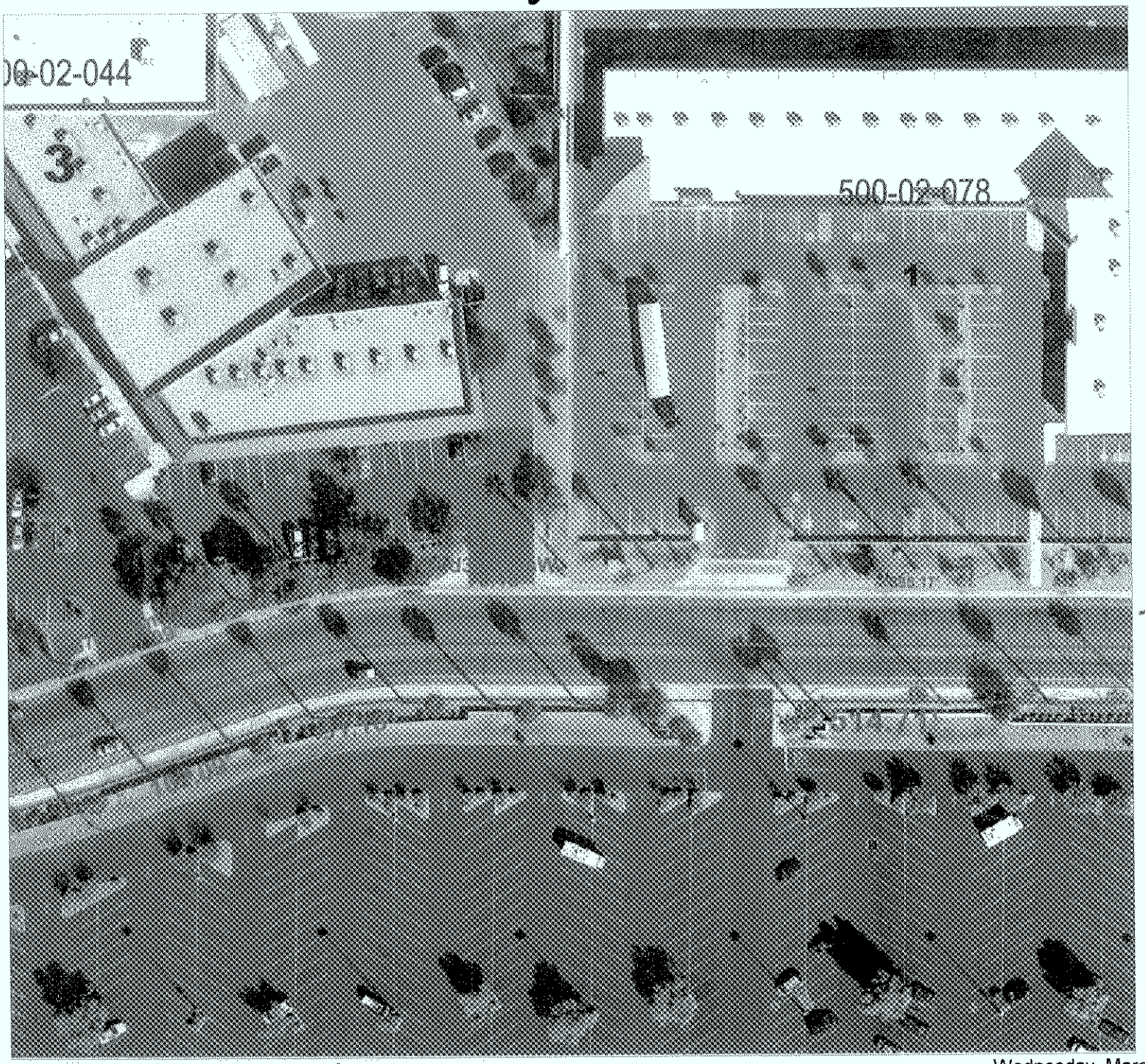
↑ match Sheet 2



Sheet 3 of 5

match Sheet 4

County Parcels



match Sheet 3

Sheet 4 of 5

match Sheet 5

County Parcels

match sheet 4

Sheet 5 of 5

http://www.maricopa.gov/Assessor/GIS/Maps/assessor.mwf

Wednesday, March 02, 2011 5:07 PM

CONSULTANT REGISTERED SURVEYING INC.
CARL SITTERLEY, R.L.S.

MAILING ADDRESS: 3370 N. Hayden, Suite #123, **P.M.B. 567**
Scottsdale, Arizona 85251
OFFICE ADDRESS: 8732 E. Piccadilly Rd.
Scottsdale, Arizona 85251

PHONE: (480) 620-1382
FAX: (480) 874-4802
E-mail: csitterley-crs@cox.net

March 3, 2011

Attn: Charles W. Andrews, P.E., Senior Engineering Project Manager
CITY OF AVONDALE
11465 W. Civic Center Drive
Avondale, AZ 85323

RE: Surveying Scope of Services, Cost Proposal Roosevelt Street, 107th Ave. to 99th Ave.. Topographic Survey, control ground coordinates tied to City of Avondale horizontal and vertical control datum. Contingency fee for topo-survey between 107th Ave. to 105th Ave.

Dear Charles,

Your request is for CRS to complete a design topographic survey of the asphalt paving and both sides of curbs (edge of asphalt and shoulder if no curb). The purpose of the survey is for asphalt roadway improvements that may include new median curbs and traffic control. CRS will locate the existing paving on approximate 100 ft stations (intervals that respond to a competent model) at the curb lines and approximate 50 ft stations along the center crown line, yellow stripe lines, dashed lane lines and along any bike or edge lines. Additional observations will be observed to ensure a competent DTM, such as at grade breaks or variable paving areas such as valley gutters, etc.. Observations will be taken to the curb returns on adjacent side street intersections or drive way entrances up to the curb returns off of the street. This topo-survey does NOT include observations into the 107th Avenue or 99th Avenue intersections, and will only be completed to the Roosevelt Street curb returns. In addition, CRS will locate existing visible manholes, water valves, gas valves and other visible surface utility facilities. If provided by Avondale, CRS can use utility as-built maps to determine if any utility facilities are buried under the asphalt surface. CRS will use a metal detector to search for such indicated hidden utility improvements. CRS will also research the recorded subdivision and survey maps and further locate any potential survey monuments that may be found along the alignment.

CRS will complete a DTM, curb to curb, and provide the 3D files in AutoCad 2007 format. This includes a standard "xml" file for the 3D modeling data base. The control for the site is the city of Avondale horizontal and vertical control datum. CRS will set local site survey control points along the route that maybe used to reset any disturbed survey markers during the future construction phase.

CRS has developed two cost estimates. The requested limits for the first estimate includes the roadway alignment from 105th Avenue east to 99th Avenue. The limits for the second estimate as a contingency fee will be from 107th Avenue east to 105th Avenue.

(continued next page)

Estimate for alignment from 105th Avenue east to 99th Avenue

CRS anticipates three work days or 6.0 hours of travel, 10 hours of field topo-survey observations, 4 hours of GPS control observations and survey monument observation, and 8 hours office time to process the topo-survey and control data and provide Avondale with a surveying package complete with sealed rough plots, ASCII point file and CAD files stated above. Please note, the survey control in the contingency area will be set with this estimate also.

Total time anticipated 28.0 hours.

CRS invoices both field and office surveying services at an hourly rate of $95.00 per hour and anticipates this portion of the project to be a **not-to-exceed fee of $2,660.00**.

Daily reports will be completed after completion of the daily surveying tasks.

This project does not include location of bluestake marking, location of any walk ways, location of trees or landscaping or other topography outside the back of curbs. However, walk ramps at curbs will be noted.

Contingency added estimate for alignment from 107th Avenue east to 105th Avenue

CRS anticipates an additional one work day or 2.0 hours of travel, 4 hours of additional field topo-survey observations, and an additional 3 hours office time to process the topo-survey data and provide Avondale with a surveying package the same above survey package that would include this area.

Total additional time anticipated 09.0 hours.

CRS invoices both field and office surveying services at an hourly rate of $95.00 per hour and anticipates this contingency portion of the project to add to the **not-to-exceed fee $0,855.00**.

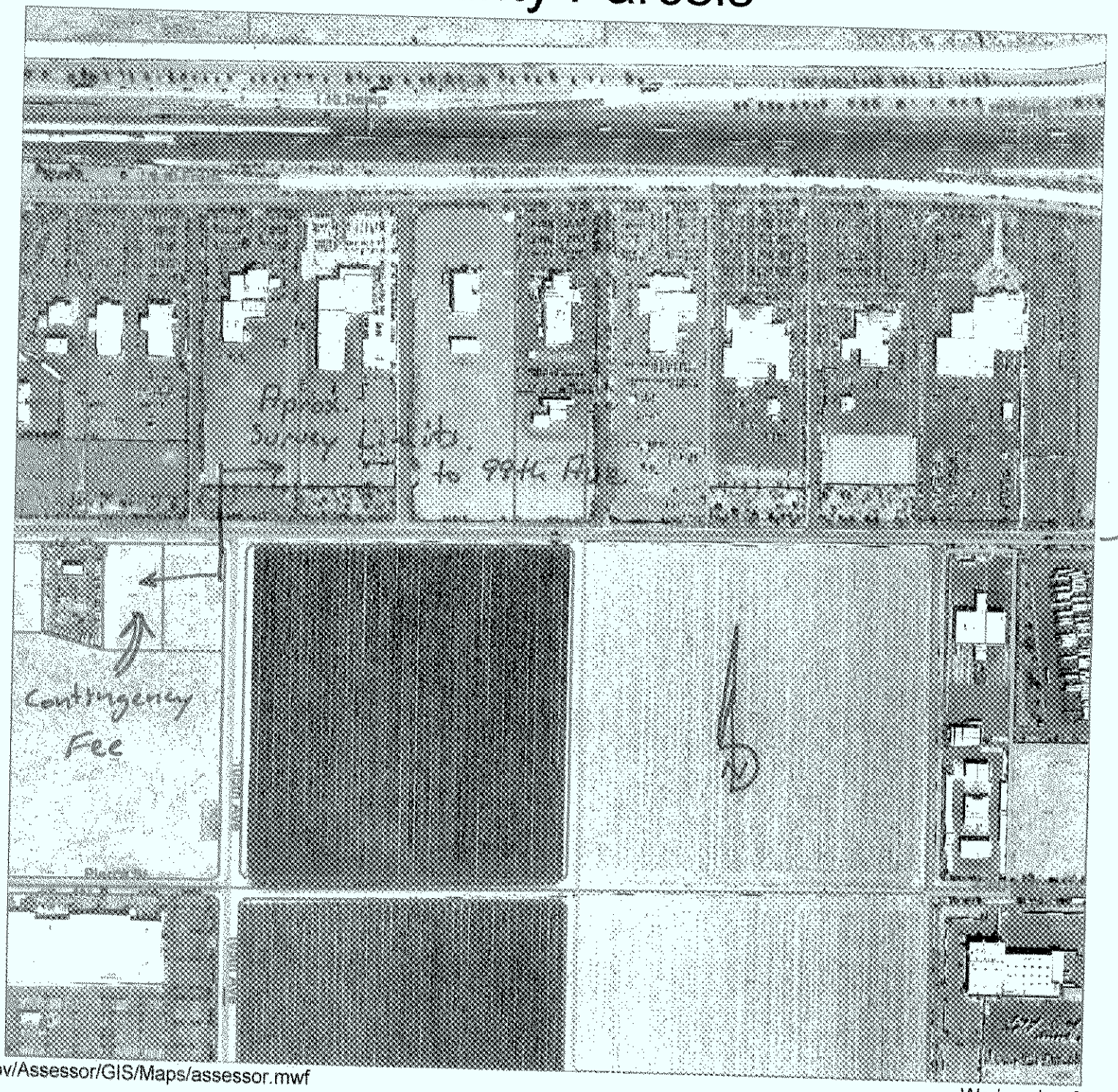
Total not-to-exceed fee of $2,660.00, plus contingency not-to-exceed fee $0,855.00 =**$3,515.00**

Please call with questions.

Submitted,
CONSULTANT REGISTERED SURVEYING, INC.

Carl Sitterley, RLS
President

County Parcels



http://www.maricopa.gov/Assessor/GIS/Maps/assessor.mwf

Wednesday, March 02, 2011 7:33 PM

CITY COUNCIL REPORT

SUBJECT:
First Amendment to Purchase Agreement - Ikon Office Solutions, Inc.

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Kevin Artz, Finance & Budget Director (623) 333-2011

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve an amendment to a Purchase Agreement with Ikon Office Solutions for the purchase of 4 copiers in the amount of $40,196.17, and authorize the Mayor or City Manager and City Clerk to authorize the necessary documents.

BACKGROUND:

The printer/copier fund was established to provide for the on-going maintenance and supplies for the City's printing needs. In addition, there is a capital component to fees, so that when a copier needs to be replaced there are funds available. As Departments print or make copies, the Department is charged an internal fee per page to recover the cost of maintenance, paper, toner, and eventually the replacement of the copier.

Many of the Xerox copiers that were purchased in 2003 are reaching the end of their useful life. Funds have been accumulated over the past 8 years in the Copier Fund and are available to replace the aging Xerox machines.

DISCUSSION:

In January 2011, the City entered into a contract with Ikon Office Solutions to purchase 12 copiers for the Police Department. Staff has determined there is adequate funding to replace 3 additional copiers from the Copier Fund and purchase 1 new copier for the Library. Additional funding will be available in the Copier Fund beginning next fiscal year, allowing additional copiers to be replaced in the future.

The contract amendment will allow the City to purchase (3) Ricoh MP6501 color copiers and (1) Ricoh MP4501 color copier. The total for the contract amendment is $40,196.17. The Copiers are available from Ikon Office Solutions through State Contract EPS060122-3.

BUDGETARY IMPACT:

Funding is available in the Printer/Copier fund (604-5300-00-8010) for the 3 replacement copiers. Funding for the new copier in the Library will come from 101-8100-00-8010. The total purchase price is $40,196.17.

RECOMMENDATION:

Staff recommends that Council approve an First Amendment to the Purchase Agreement with Ikon Office Solutions, Inc. for the purchase of 4 copiers in the amount of $40,196.17, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Quote
- First Amendment to Purchase Agreement

IKON Document Efficiency At Work.®
A RICOH COMPANY

Doug Roeckner
Major Account Executive

IKON Office Solutions, Inc.
1910 W.University Drive
Tempe, AZ. 85281
480 379-7463 Phone
480 379-8678 Fax
droeckner@ikon.com

3/31/2011

City of Avondale

Ricoh Copier Pricing
State Contract EPS060122-3

(1) Ricoh MPC4501 Color MFP	@	$7,889.00	$ 7,889.00
(3) Ricoh MPC6501 Color MFP	@	$9,629.00	$28,887.00
Subtotal			$36,776.00
9.3% Sales Tax			3,420.17
Total			**$40,196.17**

(See attached quotes)

FIRST AMENDMENT
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
IKON OFFICE SOLUTIONS, INC.

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (this "First Amendment") is made as of April 18, 2011, between the City of Avondale, an Arizona municipal corporation (the "City"), and IKON Office Solutions, Inc., an Ohio corporation (the "Contractor").

RECITALS

A. The City and the Contractor entered into a Purchase Agreement dated January 24, 2011, to purchase copying machine equipment, supplies and maintenance services from the Contractor (the "Agreement").

B. The City has determined that it is necessary to purchase additional copying machine equipment for City facilities (the "Additional Equipment").

C. The City and the Contractor desire to enter into this First Amendment to (i) provide for the purchase of the Additional Equipment and (ii) increase the compensation due to the Contractor as consideration for the Additional Equipment.

AGREEMENT

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

1. Scope of Work. The Contractor shall provide the Additional Equipment as set forth on the Quote, attached hereto as Exhibit A and incorporated herein by reference.

2. Compensation. The City shall pay Contractor an aggregate amount not to exceed $40,196.17 for the Additional Equipment at the rates as set forth in the Quote, attached hereto as Exhibit A.

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 First Amendment, the Contractor affirmatively (a) asserts that the City is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement and (b) waives any and

all claims, known or unknown, related to the Agreement and occurring prior to this First Amendment.

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

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

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

_____
Charles P. McClendon, City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

"Contractor"

IKON OFFICE SOLUTIONS, INC., an Ohio corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011, 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 _____, 2011, by _____ as _____ of LEE ENGINEERING, 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 A
TO
FIRST AMENDMENT
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
IKON OFFICE SOLUTIONS, INC.

[Quote]

See following pages.

Doug Roeckner
Major Account Executive

IKON Office Solutions, Inc.
1910 W.University Drive
Tempe, AZ. 85281
480 379-7463 Phone
480 379-8678 Fax
droeckner@ikon.com

3/31/2011

City of Avondale

Ricoh Copier Pricing
State Contract EPS060122-3

(1)	Ricoh MPC4501 Color MFP	@	$7,889.00	$ 7,889.00
(3)	Ricoh MPC6501 Color MFP	@	$9,629.00	$28,887.00
	Subtotal			$36,776.00
	9.3% Sales Tax			3,420.17
	Total			**$40,196.17**

(See attached quotes)

Doug Roeckner
Strategic Account executive
Desert Southwest Area
1910 West University Drive
Tempe, AZ 85281
Telephone 480-379-7463
Fax 480-379-8678

3/24/2011

Ricoh MPC4501 Color - Purchase Pricing
State Contract # EPS060122-3

Ricoh Model MPC4501 Color	**Purchase Price**	**Monthly service**
45 Pages Per Minute B/W	$7,889.00	$90 per month
45 Pages Per Minute Color		color copies @ $.064/copy
Automatic Document Feeder		
Automatic 2 Sided Copying		
Paper Feed 550 x 2		
PB3040 2-Tray Paper 550 x 2		
SR3030 Finisher w/Punch unit		
Network Print/Scan		
Fax Option w/32MB memory		
Data Overwrite Security Software		
Equitrac compatible		
Start-Up Supplies		
Power Supply Filter		
9.3% sales tax	$733.68	
Total	**$8,622.68**	
Optional PB3050 2000 Sheet Tray	**$111.00**	

Monthly Service Pricing includes all parts and labor, all supply items except paper and unlimited B/W copies. All color copies are @ $.064/copy

Doug Roeckner
Strategic Account executive
Desert Southwest Area
1910 West University Drive
Tempe, AZ 85281
Telephone 480-379-7463
Fax 480-379-8678

3/24/2011

Ricoh MPC6501 Color - Purchase Pricing
State Contract # EPS060122-3

Ricoh Model MPC6501 Color	**Purchase Price**	**Monthly service**
65 Pages Per Minute B/W	$9,629.00	$104 per month
65 Pages Per Minute Color		color copies @ $.05/copy
Automatic Document Feeder		
Automatic 2 Sided Copying		
Paper Feed 1550 x 2		
Paper Feed 550 x 2		
SR4010 Finisher w/Punch unit		
Network Print/Scan		
Data Overwrite Security Software		
Fax Option w/32MB memory		
Equitrac compatible		
Start-Up Supplies		
Power Supply Filter		
9.8% sales tax	$895.50	
Total	**$10,525.50**	

Monthly Service Pricing includes all parts and labor, all supply items except paper and unlimited B/W copies. All color copies are @ $.05/copy

tax rate is 9.3%

CITY COUNCIL REPORT

SUBJECT:
Design and Construction Contract - Salt River Project for the Avondale Boulevard & I-10 Traffic Interchange Project

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Sue McDermott, P.E., Development Services Director/City Engineer, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a design services and construction contract with Salt River Project (SRP) to design and construct required electrical improvements for the Avondale Boulevard and I-10 Traffic Interchange Improvement Project in the amount of $54,690.87 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

On February 9, 2009, Council approved a Professional Services Agreement with URS Corporation to provide design services for the Avondale Boulevard and I-10 Traffic Interchange Improvement Project. This project will widen Avondale Boulevard impacting the existing electrical lines and junction boxes. The above ground features will be relocated behind the new curb and gutter. The median will also be relocated and the streetlights that are within the median will be moved. SRP will design new service connections to the streetlights as well.

DISCUSSION:

During the relocation work for SRP electrical transformers, it was determined that there is not a backup feed to Hilton Hotels. While the transformers are deactivated and replaced at their new location, SRP will need a temporary power feed to the hotel. This contract will cover the design and construction by SRP to ensure Hilton has uninterrupted electrical service during the construction. Once construction is complete, this temporary overhead feed will be removed.

SCHEDULE:

A tentative schedule is as follows:

Begin Construction - April 2011
End Construction - May 2011

BUDGETARY IMPACT:

Funding in the amount of $54,690.87 is available in CIP Street Fund Line Item No. 304-1152-00-8420 (Avondale Blvd Bridge Widening North of I-10).

RECOMMENDATION:

Staff recommends that the City Council approve a design services and construction contract with Salt River Project (SRP) to design and construct required electrical improvements for the Avondale Boulevard and I-10 Traffic Interchange Improvement Project in the amount of $54,690.87 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- SRP Construction Services Contract
- Vicinity Map

Construction Services Contract (Municipal Distribution)

CUSTOMER IMPROVEMENTS
XCT 341
P.O. Box 52025
Phoenix, AZ 85072-2025

SRP Contact: Vincent Silvestro
Contact Phone: (602) 236-0432
Contact Fax:
Date: 04/06/2011

ATTN: Chris Hamilton
City of Avondale
11465 W. Civic Center Drive
Avondale, AZ 85323

CUSTOMER COPY

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):

Job Name:	AVONDALE BLVD & I-10 SHOEFLY		
SRP Job #:	HCP04311	SRP Work Order #:	81198506
Customer Job #:			
Location:	AVONDALE BLVD/I-10, AVONDALE		

City 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:

Description	Amount	Survey	Trench, Conduit
CIAC fee:	$54,690.87	SRP	SRP
Scope:	SRP to build temporary shoofly to Hilton Hotel while KJ6-7011 is being constructed.		

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.

Construction Services Contract (Municipal Distribution) (Continued)

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.

Customer's Legal Business Signature: _____

Company Name: _____

Printed Name: _____ **Title:** _____

Address: _____ **Phone:** _____

_____ **Date:** _____

SRP Authorized Signature: _____ **Phone:** _____

Printed Name: Vincent Silvestro **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. 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 CITY 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. 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 this Term and Condition.

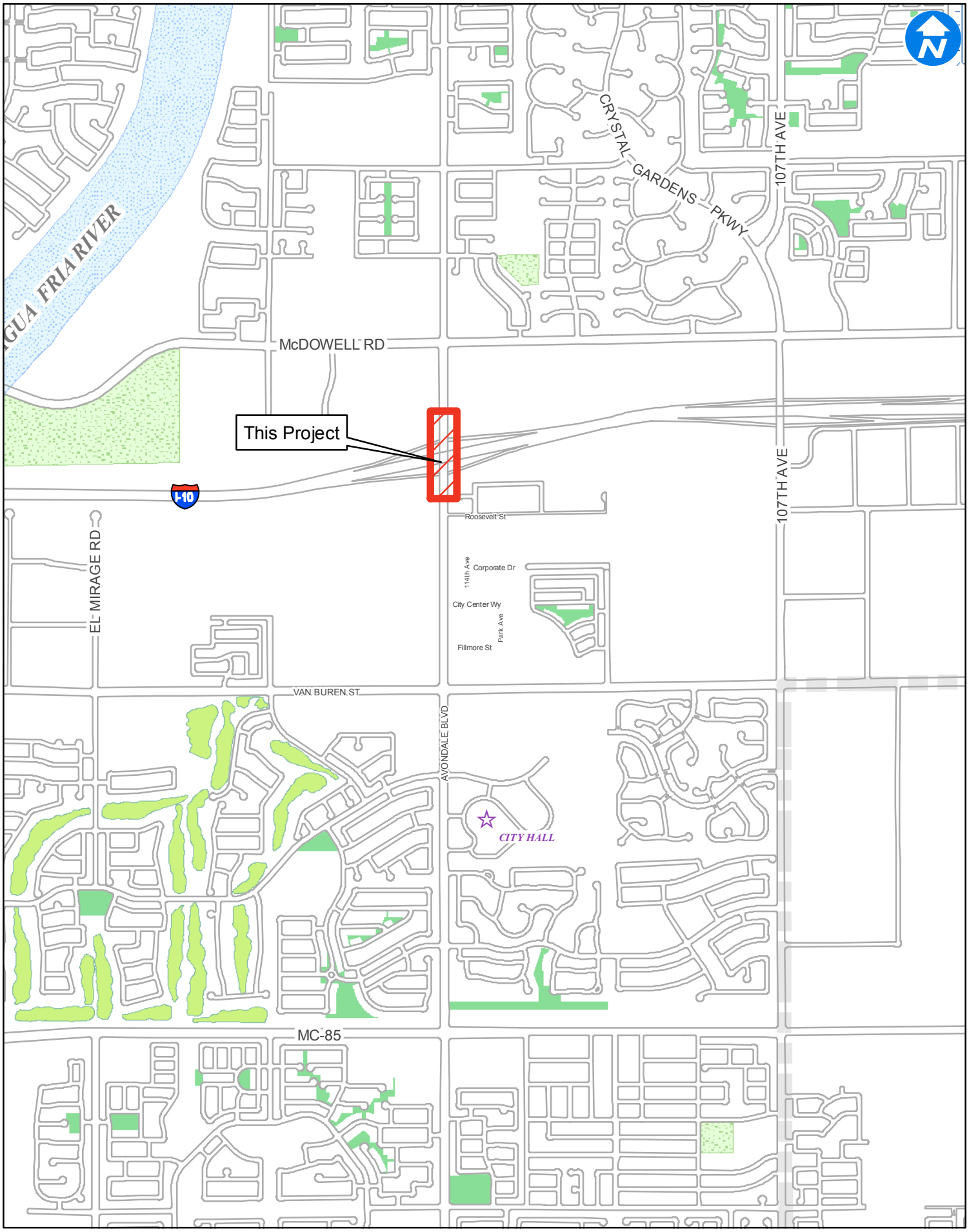
10. CITY, upon demand, shall reimburse SRP for the costs of relocation of facilities found to be installed at the wrong location or grade due to CITY-requested changes in property lines, easement grade, and/or errors in staking, trenching, or survey when such work is performed by CITY or a contractor retained by CITY.

11. 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.

12. 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.

13. 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.

14. 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.



Map Produced by Avondale Water Resources/GIS Division

City of Avondale
Avondale Blvd & I-10 TI Improvements

CITY COUNCIL REPORT

SUBJECT:
First Amendment to Contract – Area Agency on Aging (2011-05-AVO)

MEETING DATE:
April 18, 2011

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 first Amendment to the Area Agency on Aging (AAA) contract (2011-05-AVO) in the amount of $6,500 for the purchase of a food steamer and supplies for the Multipurpose Center Operations (MCO); 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 (21) 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 $6,500 of program enhancement funds for FY 2010-2011. This additional funding is a one-time allocation. These funds will be used for enhanced programming and services to include the following:

The food steamer will streamline kitchen operations by reducing cooking time for meals and a Wii Game System will be purchased for the addition to MCO operation. The Wii will allow more seniors to participate in physical activities.

BUDGETARY IMPACT:

The amendment will increase the AAA contract in the amount of $6,500. The funds will be allocated in the following manner:

Kitchen Food Steamer	$6,000
Wii Game System	$500
Total	**$6,500**

RECOMMENDATION:

Staff recommends that the City Council approve the first Amendment to the Area Agency on Aging (AAA) contract (2011-05-AVO) in the amount of $6,500 for the purchase of a food steamer and supplies for the Multipurpose Center Operations (MCO); and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

ATTACHMENTS:

Click to download

- AAA Contract for Services Amendment (2011-05-AVO)

CONTRACT FOR SERVICES BETWEEN

AMENDMENT #1

2011-05-AVO

Area Agency on Aging, Region One, Incorporated *AND* **City of Avondale**
1366 E. Thomas Road, Suite 108 **11465 W Civic Center Drive**
Phoenix, Arizona 85014 **Avondale, Arizona 85323**
602-264-2255 fax 602-230-9132 **623-333-2420 fax: 623-333-0270**

EFFECTIVE DATE OF THIS AMENDMENT: March 1, 2011
.

PURPOSE OF THE AMENDMENT:

1. Increase Area Agency funding for Congregate Meals by $6,000 from $82,586 to $88,586 for the purchase of a steamer.

2. Increase Area Agency funding for Multipurpose Center Operations by $500 from $20,100 to $20,600 for the purchase of center supplies.

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

Signature Date
Mary Lynn Kasunic, President & CEO
Area Agency on Aging Director

CITY OF AVONDALE

Signature Date
Charles McClendon, City Manager

CONTRACT SUMMARY

FIXED PRICE WITH PRICE ADJUSTMENT

CONTRACT #: 2011-05-AVO

CONTRACTOR: City of Avondale

TYPE: *Amendment #1*

CONTRACT TERM: July 1, 2010 to June 30, 2011

Contract Reimbursement Ceiling for all Services: **TOTAL: $ 307,064**

CONTRACT OPERATING BUDGET

REVENUE	Congregate Meals	Home Delivered Meals	Multipurpose Operations	Transportation	TOTAL
Area Agency	88,586	154,607	20,600	43,271	307,064
Project Income	7,500	3,000	-	900	11,400
Non-Fed Inkind	14,767	11,346	10,734	-	36,847
Non-Fed Cash	12,967	54,655	2,950	14,151	84,723
Other Federal	-	-	-	-	-
TOTAL	123,820	223,608	34,284	58,322	440,034
EXPENSES					
Personnel	25,234	105,086	11,880	27,040	169,240
ERE	21,813	23,269	5,967	4,434	55,483
Prof&Outside	-	-	200	-	200
Travel	-	3,100	-	9,100	12,200
Space	23,317	22,026	13,684	-	59,027
Equipment	6,000	-	-	-	6,000
Materials/Supl	45,290	59,693	2,108	-	107,091
Operating Svc	2,166	10,434	445	17,748	30,793
Indirect	-	-	-	-	-
TOTAL	123,820	223,608	34,284	58,322	440,034
Units	14,000	23,500	619	7,500	
Unit Rate	$ 8.84	$ 9.52	$ 55.39	$ 7.78	

COMMUNICATION PAGE
(not an integral page of the Contract)

City of Avondale
Contract FY 2011 Amendment #1
#2011-05-AVO

3/28/11 EMAILED TO: fmccoy@avondale.org
smontague@avondale.org

CITY COUNCIL REPORT

SUBJECT:
First Amendment to Professional Services Agreement - Technisource, Inc.

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Cherlene Penilla, Human Resources Director (623) 333-2218

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve the first amendment to the Professional Services Agreement with Technisource, INC., A Subsidiary of SFN Group, INC., in the amount of $59,800.00 for consulting and training services related to the City's Human Resources, Payroll and Benefits software and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The Lawson Human Resource, Payroll, Benefits software and Kronos Timekeeping Systems were purchased in 2008 and fully implemented in 2009.

On June 2, 2010, there was a complete failure of the Lawson payroll function. The Lawson support desk was contacted immediately. Lawson support was unable to resolve the issue and subsequently advised payroll staff to manually process the City's payroll.

The payroll was ultimately completed and all employees received a paper paycheck; however, there were no direct deposits, no union dues were processed, no police or other type of specialty pay could be processed and several employees were not taxed properly for taxable life insurance.

On June 3, 2010 Lawson advised City staff that there was a bug in the payroll system due to an upgrade completed on May 30, 2010 by Lawson. Lawson further advised that they were working on a patch to fix the bug and informed the payroll staff that they would provide a “work around” to allow us to process the next payroll. However, we were still unable to close the failed payroll process. There were numerous attempts to have Lawson assist us with closing the failed payroll.

On June 7, 2010 the City Manager authorized an emergency procurement for the payroll support services from Technisource. Subsequently, Technisource agreed to provide services to the City of Avondale for our payroll system. Technisource ultimately worked with payroll staff to trouble shoot the failed payroll and assist in resolving issues resulting from the failure.

DISCUSSION:

Technisource has continued to provide support and training to payroll, Human Resources and Finance and Budget staff throughout the fiscal year (2010/2011).

The Lawson system is now scheduled for a comprehensive upgrade to multiple components of the Lawson Human Resources, Payroll and Benefits software. The Information Technology Department and their consultant for technical support services will begin this major upgrade to the Lawson system in April 2011. When the technical upgrade has been completed Human Resources staff will

begin testing the system in a test environment over several months. During the testing phase staff will require the expert assistance of a functional consultant to manage and resolve any problems created by the comprehensive upgrade to our system. Technisource will assist staff with resolving these issues prior to moving production over to the upgraded Lawson Human Resources, Payroll and Benefits system.

BUDGETARY IMPACT:

Funding for this work is in the Human Resources Department Budget 101-5700-00-6180

RECOMMENDATION:

Staff recommends that the City Council approve the first amendment to the contract with Technisource INC., A Subsidiary of SFN Group, INC., for consulting and training services related to the City's Human Resources Payroll and Benefits software and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- PSA Amendment

FIRST AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
TECHNISOURCE, INC., A SUBSIDIARY OF SFN GROUP, INC.

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "First Amendment") is made as of April 18, 2011, between the City of Avondale, an Arizona municipal corporation (the "City") and Technisource, Inc., a subsidiary of SFN Group, Inc., a Delaware corporation (the "Consultant").

RECITALS

A. The City and Consultant entered into a Professional Services Agreement dated June 21, 2010 for design services for consulting and training services related to the City's Payroll Software (the "Agreement"). Capitalized terms shall have the same meaning as in the Agreement unless otherwise specified herein.

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

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

AGREEMENT

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

1. Term of Agreement. The term of the Agreement is hereby extended through June 30, 2012.

2. Compensation. The Consultant's total compensation under the Agreement shall be increased by no more than $59,800.00 from $51,720.00 to $111,520.00 as consideration for the Additional Services.

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

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

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

"**City**"	"**Consultant**"
CITY OF AVONDALE, an Arizona municipal corporation	TECHNISOURCE, INC., A SUBSIDIARY OF SFN GROUP, INC., a Delaware corporation
_____	By:_____
Charles P. McClendon, City Manager	
ATTEST:	Name:_____
_____	Title:_____
Carmen Martinez, City Clerk	

(ACKNOWLEDGEMENTS)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2011, by _____ as _____ of TECHNISOURCE, INC., A SUBSIDIARY OF SFN GROUP, INC., a Delaware corporation, on behalf of the corporation.

_____
Notary Public in and for the State of _____

My Commission Expires:

_____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

CITY COUNCIL REPORT

SUBJECT:
First Amendment to Purchase Agreement - Facilitec, Inc.

MEETING DATE:
April 18, 2011

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 first Amendment to the purchase agreement between the City of Avondale and Facilitec, Inc. to purchase additional office furniture and services; and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

BACKGROUND:

The City of Avondale (the City) entered into a Purchase Agreement with Facilitec, Inc. on August 23 2010 to purchase furniture, products, and services for the Northwest Public Safety Facility. The original compensation to Facilitec from the City was not to exceed $70,072.74.

Facilitec was selected after a competitive bid process through the State of Arizona (Contract EPS070112-10-A2). The City is permitted to purchase furniture, products and services under the State Contract without further public bidding.

DISCUSSION:

Approval of this contract will provide a resource to purchase additional office furniture when required and cubicle alteration services as the need arises in facilities throughout the City. These services are required when staff are relocated or as department workspace re-configuration is determined to improve operations.

BUDGETARY IMPACT:

The amendment will increase the contract by $29,927.26. The total adjusted contract amount will not exceed $100,000. All funds for the purchase of furniture and services will be available through the appropriate department budget responsible for the purchase.

RECOMMENDATION:

Staff recommends that the City Council approve the first Amendment to the purchase agreement between the City of Avondale and Facilitec, Inc. to purchase additional office furniture and services; and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

ATTACHMENTS:

Click to download

- Facilitec PBA (First Amendment)

FIRST AMENDMENT
TO
PURCHASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
FACILITEC, INC.

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (this "First Amendment") is entered into as of April 18, 2011, between the CITY OF AVONDALE, an Arizona municipal corporation (the "City"), and Facilitec, Inc., an Arizona corporation ("Contractor").

RECITALS

A. The City and the Contractor entered into a Purchase Agreement dated August 23, 2010, to purchase furniture, products and services from the Contractor for the City's Northwest Public Safety Facility (the "Agreement").

B. The City has determined that it is necessary to purchase additional furniture, products and services for City facilities (the "Additional Furnishings and Services").

C. The City and the Contractor desire to enter into this First Amendment to (i) provide for the purchase of Additional Furnishings and Services and (ii) increase the compensation due to the Contractor as consideration for the Additional Furnishings and 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 parties hereby agree as follows:

1. Scope of Work. The Contractor shall provide the Additional Furnishings and Services on an as-needed basis pursuant to purchase orders issued by the City, at the rates and under the terms and conditions of the Agreement.

2. Compensation. The City shall pay Contractor an aggregate amount not to exceed $29,927.26 for the Additional Furnishings and Services at the rates as set forth in the Agreement and in the quantities as set forth in purchase orders issued by the City.

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 First Amendment, the Contractor affirmatively asserts that the City is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement.

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

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

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

_____
Charles P. McClendon, City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

"**Contractor**"

FACILITEC, INC., an Arizona corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGEMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____ 2011, 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 _____, 2011, by _____ as _____ of FACILITEC, INC., an Arizona corporation, on behalf of the corporation.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

CITY COUNCIL REPORT

SUBJECT:
Resolution 2968-411 - Intergovernmental Agreement with Avondale Elementary School District No. 44

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Sue McDermott, P.E., Director of Development Services/City Engineer, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution authorizing an Intergovernmental Agreement (IGA) between the City of Avondale and the Avondale Elementary School District (AESD or District) No. 44 for the design, construction, and installation of two (2) compound water meters, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

In order to ensure protection of the public water system, a citywide audit of non-residential accounts is being conducted. On September 13, 2010, a letter was sent to AESD regarding a deficiency in backflow prevention on their site.

On December 23, 2010, AESD submitted improvement plans for a new District Administration Building on the northwest corner of their site. The plans proposed a new cross-connection to the public water main, north of the existing on-site system. Water service to the new building was proposed to be provided from the existing on-site system. The intent of the proposed cross-connection was to loop the existing on-site system thereby minimizing the possibility of an interruption in service.

Due to the complexity of the on-site water system, the proposed improvements, and the desire of the City to eliminate the potential for cross-connection, staff is recommending that AESD install three (3) backflow prevention devices at each of the connections (1 to the north, 2 to the south) to the on-site system. The backflow prevention devices are to be placed immediately adjacent to the public right-of-way on AESD's property.

In order to meet current standards, staff is also recommending that AESD install three (3)-6” compound meters. Placement of the meters shall be between the new backflow prevention devices and the public water system. Because two (2) of the three (3) compound meters are for the existing on-site system, and the City desires to bring the existing site to current standards, the City is proposing to reimburse the contractor for the installation of two (2) of the compound meters.

Because the AESD would like to resolve the cross-connection issues and loop their on-site system, and the City would like to locate their meters per current standards, an Intergovernmental Agreement (IGA) is necessary.

DISCUSSION:

The proposed IGA with AESD establishes the District's and the City's responsibilities.

Per the IGA, AESD will:

- Loop the existing system.
- Install the three (3) recommended backflow prevention devices.
- Install the three (3) recommended compound meter installations.
- Be responsible for the transportation impact fee.
- Be responsible to operate and maintain the water system on their site including all 3 of the new backflow prevention assemblies.

The City will:

- Reimburse AESD for two (2) of the three (3) proposed compound meter installations at a cost not to exceed $65,330.
- Reimburse AESD for the design costs for two (2) of the three (3) meters at a cost not to exceed $1,700.
- Be responsible for the water/sewer impact fee in the amount of $35,743.
- Be responsible for operation and maintenance of the public water system within the public right-of-way which includes all three (3) of the new 6” compound meters, pending acceptance.

BUDGETARY IMPACT:

Funding in the amount of $35,743 for the water/sewer impact fee is available in Public Works Operating Budget, 501-9110-00-6190.

Funding in the amount of $67,030 for the cost of design and installation of 2 compound meters is available in CIP Water Fund Line Item, 514-1057-00-8520, Citywide Water Improvements.

In accordance with the IGA, upon project completion the City will reimburse the AESD for all costs incurred by the AESD to construct and install these improvements at an amount not to exceed $67,030.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution authorizing an Intergovernmental Agreement (IGA) between the City of Avondale and the Avondale Elementary School District (AESD or District) No. 44 for the design, construction, and installation of two (2) compound water meters, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

- Vicinity Map
- 2968-411

VICINITY MAP

CITY OF AVONDALE

Michael Anderson Elementary

RESOLUTION NO. 2968-411

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44 OF MARICOPA COUNTY RELATING TO THE INSTALLATION OF COMPOUND WATER METERS AND BACKFLOW PREVENTION DEVICES, AND OPERATION AND MAINTENANCE OF ON-SITE WATER UTILITY INFRASTRUCTURE.

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

SECTION 1. The Intergovernmental Agreement with Avondale Elementary School District No. 44 of Maricopa County relating to the installation of compound water meters and backflow prevention devices and operation and maintenance of on-site water utility infrastructure (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A.

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 cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, April 18, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2968-411

(Agreement)

See following pages.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44
AND
THE CITY OF AVONDALE

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is executed this 18th day of April, 2011, between the City of Avondale, an Arizona municipal corporation (the "City"), and Avondale Elementary School District No. 44 of Maricopa County, Arizona, a political subdivision of the State of Arizona (the "District").

RECITALS

A. The District will construct new administrative office facilities on District property adjacent to the District's Michael S. Anderson Elementary School (the "School") and existing administrative office facilities located at 235 West Western Avenue, Avondale, Arizona 85323 (the "New District Office").

B. The District has agreed to install certain compound water meters, backflow prevention devices and related appurtenances to serve the New District Office and improve domestic and fire emergency water service to the School (the "Improvements").

C. The District has agreed to assume, subject to the provisions of this Agreement, all liabilities and obligations for maintenance and operation of on-site water utility infrastructure now or hereafter installed and serving the School and New District Office (the "On-Site Maintenance").

D. The City wishes to waive certain fees relating to the Improvements and reimburse the District for installation of some of the Improvements as set forth in this Agreement.

E. The District and the City each has funding available from lawfully available sources to provide for each party's costs associated with this Agreement.

F. The District, as authorized under ARIZ. REV. STAT. §§ 11-951, *et seq.*, and 15-342(13), and the City, as authorized under ARIZ. REV. STAT. § 11-952 and the Avondale City Charter, Article I, Section 3, desire to enter into this Agreement to establish the parties' rights and responsibilities with respect to the Improvements and the On-Site Maintenance.

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 District hereby agree as follows:

1. Definitions.

A. "Compound Meter" means the concrete vault, lid, meter, piping, valves, operators and all related appurtenances necessary to install a functioning inline compound meter as depicted on the Meter Detail, attached hereto as Exhibit A and incorporated herein by reference.

B. "Backflow Prevention Device" means a reduced pressure backflow prevention device as depicted on City of Avondale Standard Detail No. A1325 as adopted in the 2008 City of Avondale Supplement to MAG Standard Specifications and Details for Public Works Construction, attached hereto as Exhibit B and incorporated herein by reference.

2. District's Obligations. The District shall:

A. Design Consultant. Procure, engage and pay for the services of a qualified professional consultant to design a site plan for the installation and incorporation of three Compound Meters and three Backflow Prevention Devices into existing water utility infrastructure serving the School and New District Office (the "Site Plan"). The Site Plan shall depict the locations of (i) two Compound Meters and related appurtenances, if any, which shall be installed in the public right-of-way generally near the southwestern corner of the real property upon which the School and New District Office are situated, and the locations of (ii) two Backflow Prevention Devices and related appurtenances, if any, which shall be installed in or upon a portion of the real property upon which the School and New District Office are situated most nearly adjacent to said southwestern Compound Meters. The Site Plan shall also depict the location of (i) a third Compound Meter and related appurtenances, if any, which shall be installed in the public right-of-way generally near the central portion of the northern boundary of the real property upon which the School and New District Office are situated, and the location of (ii) one Backflow Prevention Device and related appurtenances, if any, which shall be installed in or upon a portion of the real property upon which the School and New District Office are situated most nearly adjacent to said northern Compound Meter. Upon completion of the Site Plan, and upon acceptance of same by the City, the Site Plan shall be attached hereto as Exhibit C and incorporated herein by reference.

B. Compound Meter Installation. Install three new Compound Meters in accordance with this Agreement and with such requirements as the City may determine.

C. Backflow Prevention Device Installation. Install three new Backflow Prevention Devices in accordance with this Agreement and with such requirements as the City may determine.

D. Invoice City for Limited Design Reimbursement. Upon completion of the Site Plan and upon acceptance of the Site Plan by the City, invoice the City for reimbursement of the District for the cost to design the Site Plan up to a total amount not to exceed $1,700.00.

E. Invoice City for Limited Installation Reimbursement. Upon completion of installation and upon acceptance by the City of those Compound Meters which are to be installed

in the public right-of-way generally near the southwestern corner of the real property upon which the School and New District Office are situated, invoice the City for limited reimbursement of the District for installation of said Compound Meters in an amount not to exceed $30,000.00 per Compound Meter.

F. District's Responsibility for Costs. Be responsible for all costs and expenses associated with (i) installation, maintenance and operation of all three Backflow Prevention Devices described in this Agreement, (ii) installation of the two Compound Meters and any related appurtenances which shall be installed in the public right-of-way generally near the southwestern corner of the real property upon which the School and New District Office are situated, and which costs are above and beyond the City's reimbursement obligations described below, and (iii) installation of the third Compound Meter and any related appurtenances which shall be installed in the public right-of-way generally near the central portion of the northern boundary of the real property upon which the School and New District Office are situated.

3. City's Obligations. The City shall:

A. Limited Design Reimbursement. Reimburse the District for the design of the Site Plan up to a total amount not to exceed $1,700.00.

B. Limited Installation Reimbursement. Reimburse the District for the cost of installation of the two Compound Meters and any related appurtenances, which Compound Meters shall be installed in the public right-of-way generally near the southwestern corner of the real property upon which the School and New District Office are situated, in an amount not to exceed $30,000 per Compound Meter for a total not to exceed $60,000 for the two Compound Meters described in Section 2(A)(i).

C. Payment. Pay the District within 30 days of invoice for installation of the two Compound Meters described in Section 2(A)(i), and for production of the Site Plan, attached hereto as Exhibit C, as described in Section 2(A) and Section 3(A).

D. Limited Impact Fee Waiver. Waive development impact fees for water and sewer utility functions which would otherwise be incurred as a result of development of the New District Office.

E. Water Service. Operate and maintain the public water supply, Compound Meters and any related appurtenances up to the Backflow Prevention Devices.

4. Existing On-Site Improvements Abandoned. Upon acceptance of the Compound Meters by the City, the City hereby permanently abandons any and all ownership of, interest in and responsibility for any water utility infrastructure, including without limitation, water meters, water pipes and water lines, located on or in the School and real property upon which the School and New District Office are located. This provision shall not apply to any water pipes or lines between the Compound Meters and Backflow Prevention Devices to the extent that such water pipes and lines are located on or in the real Property upon which the School and New District Office are located.

5. Maintenance.

A. City Maintenance. Upon acceptance of the Compound Meters by the City, the City shall maintain and operate the Compound Meters and all water lines in the public right-of-way. The City shall also maintain any portion of water line or pipe extending from the Compound Meters to the Backflow Prevention Devices. This Section shall survive the termination of this Agreement.

B. District Maintenance. Subject only to the limited exception described in Section 5(A), the District shall be responsible for all On-Site Maintenance at District's sole cost and expense, which shall include, without limitation, maintenance of all Back Flow Prevention Devices and any water utility infrastructure now or hereafter installed or located in, upon or across the real property upon which the School and New District Office are located. This Section shall survive the termination of this Agreement.

6. Insurance.

A. Coverage. The parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement, including but not limited to public entity insurance. The acquisition of insurance or the maintenance and operation of a self insurance program may fulfill the insurance requirement.

B. Additional Insured. District shall require any consultant, contractor, or subcontractor whom it may engage in the performance of any obligations arising under this Agreement to provide the City with insurance coverage under such policies and in such amounts as the City may require in its sole and absolute discretion.

7. Term. The term of this Agreement shall be from the date first set forth above until June 30, 2012, subject to annual appropriations, unless it is terminated sooner pursuant to the terms of this Agreement.

8. Further Acts. Each of the Parties hereto shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

9. Termination. In addition to any lawfully available remedies for breach of this Agreement, this Agreement may be terminated by either party with or without cause by providing the other party with 60 days' written notice of its intention to terminate this Agreement. To the extent necessary, within ten working days of termination of this Agreement, all property not otherwise disposed of per the terms of this Agreement shall be returned to its original owner.

10. Conflict of Interest. Each party reserves all rights that it may have to cancel this Agreement for possible conflicts of interest under ARIZ. REV. STAT. § 38-511.

11. Non-appropriation. The performance by the parties to the Agreement of its obligations under the Agreement is subject to the actual availability of funds appropriated by each party for such purposes. Each party to the Agreement shall be the sole judge and authority in determining the availability of funds under the Agreement and each party shall keep the other party fully informed as to the availability of funds for its obligations. The obligation of each party to fund any obligation pursuant to the Agreement is a current expense of such party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the party. If either party fails to appropriate money sufficient to meet its obligations as set forth in the Agreement during any immediately succeeding fiscal year, the Agreement shall terminate at the end of the then-current fiscal year and each party to the Agreement shall thereafter be relieved of any subsequent obligation under the Agreement.

12. Assignment. Neither party may assign, sublet, mortgage, or encumber any right or interest under this Agreement without the prior written consent of the other party, which either party may withhold in its absolute and sole discretion.

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

If to the District: Avondale Elementary School District No. 44
235 West Western Avenue
Avondale, Arizona 85323
Attn: Jill Barragan

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

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

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. Severability. In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the remaining terms shall remain effective, provided that the elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

15. Time is of the Essence. Time is of the essence with regard to the performance of all of the parties' obligations under this Agreement.

16. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, understandings, and agreements between the parties concerning such matters.

17. Nondiscrimination. Each party agrees to comply with all applicable federal, state, county, and city laws, ordinances and regulations. Neither party shall discriminate in its activity under this agreement against any worker, employee, student, or any member of the public because of race, creed, color, religion, sex, or national origin.

18. Indemnification. To the fullest extent permitted by law, the District 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 District, 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. The District shall require any consultant, contractor, or subcontractor whom it may engage in the performance of any obligations arising under this Agreement to provide the City with insurance coverage as set forth in Section 6, above, and Indemnification pursuant to this Section.

19. Relationship and Workers' Compensation. Except as otherwise provided by law in the performance of duties and activities under this Agreement, all parties hereto will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associate of each other. The officers, employees, agents or subcontractors of one party shall not be deemed or construed to be the employees or agents of the other party. Each party shall remain

responsible for the supervision of their respective staff and shall maintain adequate workers' compensation insurance as required by law.

20. Waivers. No provision of this Agreement may be waived or modified, except by a writing signed by the party against whom such waiver or modification is sought to be enforced. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties' permitted successors and assigns.

21. Arizona Law. This Agreement shall be construed under the laws of the State of Arizona without regard to its conflict of law provisions and any suit or other action relating hereto shall only be brought in courts located in Maricopa County, Arizona.

22. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within ten days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with

23. No Strict Construction. This Agreement shall be interpreted and enforced according to the fair meaning of its terms and shall not construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions.

24. Amendment. This Agreement may be changed, waived or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver or termination is sought.

25. Captions. Captions and section headings used herein are for convenience only and are not a part of the Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing the Agreement.

26. Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each counterpart shall be deemed an original of this Agreement.

27. Immigration Law Compliance.

A. Under the provisions of ARIZ. REV. STAT. § 41-4401, each party hereby warrants to the other that the each party and all of its subcontractors (if any) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulation that relate to their employees and ARIZ. REV. STAT. § 23-214 (A) (hereinafter "Contractor Immigration Warranty").

B. A Breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject the breaching party to penalties up to and including termination of this Agreement at the sole discretion of the non-breaching party.

C. Each party retains the legal right to inspect the papers of any contractor or subcontractor employee of the other party who works on this Agreement to ensure that the contractor or subcontractor is complying with the Contractor Immigration Warranty.

D. Each party may, at its sole discretion, conduct random verification of the employment records of the other party and any of its subcontractors to ensure compliance with Contractor Immigration Warranty.

E. A party will not be considered in material breach of this Agreement or the Contractor Immigration Warranty if the party establishes that it has complied with the employment verification provision prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by ARIZ. REV. STAT. § 23-214, (A).

F. The provisions of this Section 27 (subsections A through E) of this Agreement must be included in any contract that a party enters into with any and all its contractors or contractors or contractors or subcontractors who provide service under this Agreement or any subcontract.

G. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, each party warrants that it does not have a scrutinized business operation as defined in ARIZ. REV. STAT. §§ 35-391 and 35-393 in either Sudan or Iran.

[SIGNATURES ON FOLLOWING PAGE]

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

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

By:_____
Marie Lopez Rogers, Mayor

Date:_____

ATTEST:

_____
Carmen Martinez, City Clerk

"**District**"

AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44 OF MARICOPA COUNTY, ARIZONA, a political subdivision of the State of Arizona

By:_____
Dr. Cathy Stafford, Superintendent

Date:_____

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

_____
William J. Sims
Attorney for the District

_____
Andrew J. McGuire
Attorney for the City

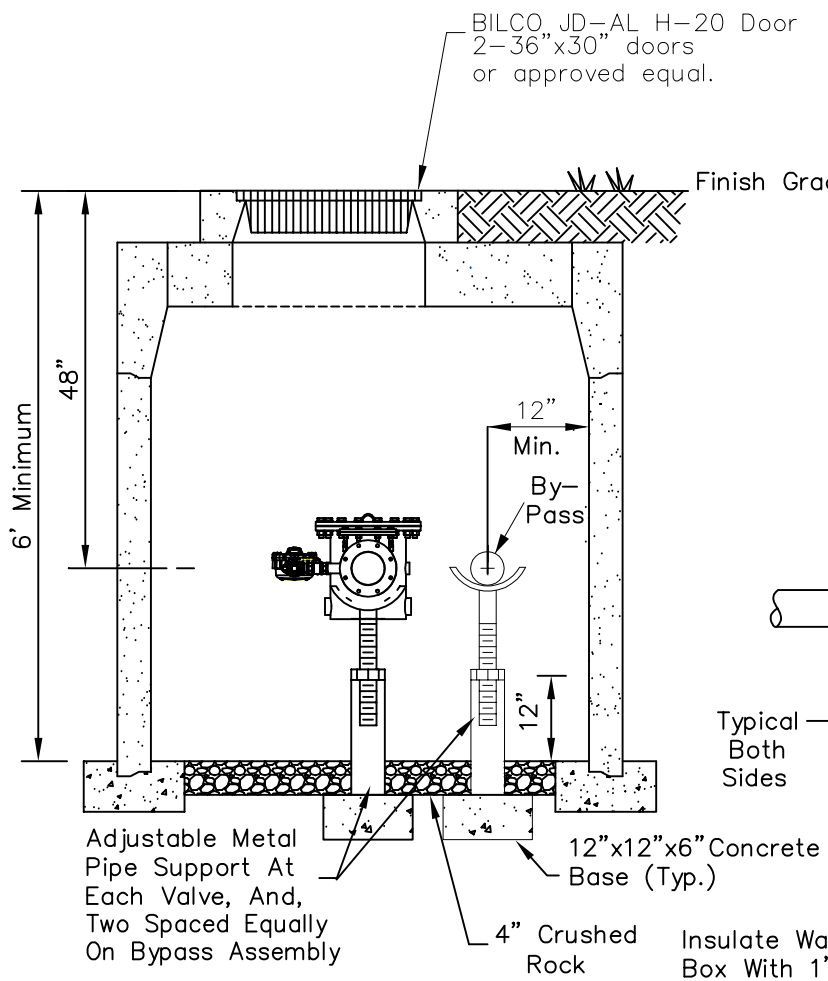
EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44
AND
THE CITY OF AVONDALE

[Meter Detail]

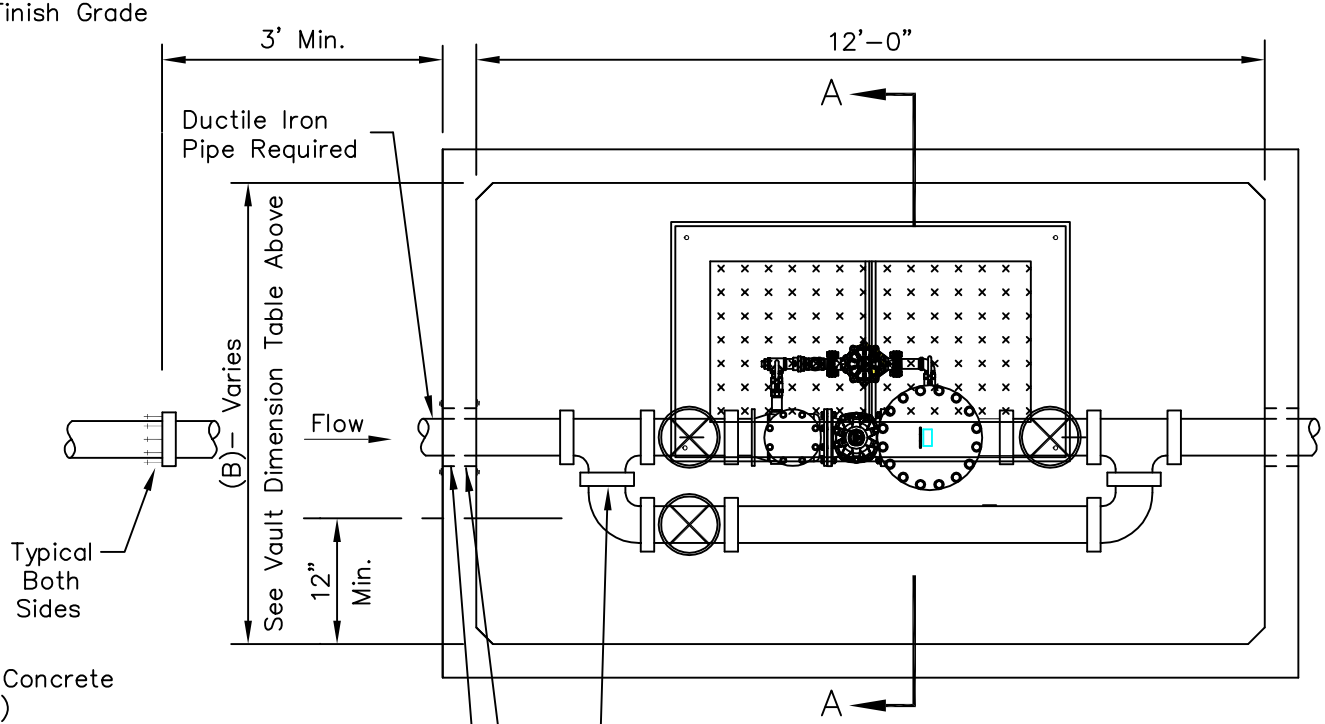
See following pages.

NOTE: Meter Vaults To Be Pre-Cast Concrete Unless Otherwise Approved By Water Operations. See MAG Std Detail 321 For Vault Construction.

VAULT DIMENSION TABLE		
MAIN SIZE	6"	8"
(A)	12'-0"	12'-0"
(B)	6'-0"	8'-0"



SECTION A-A

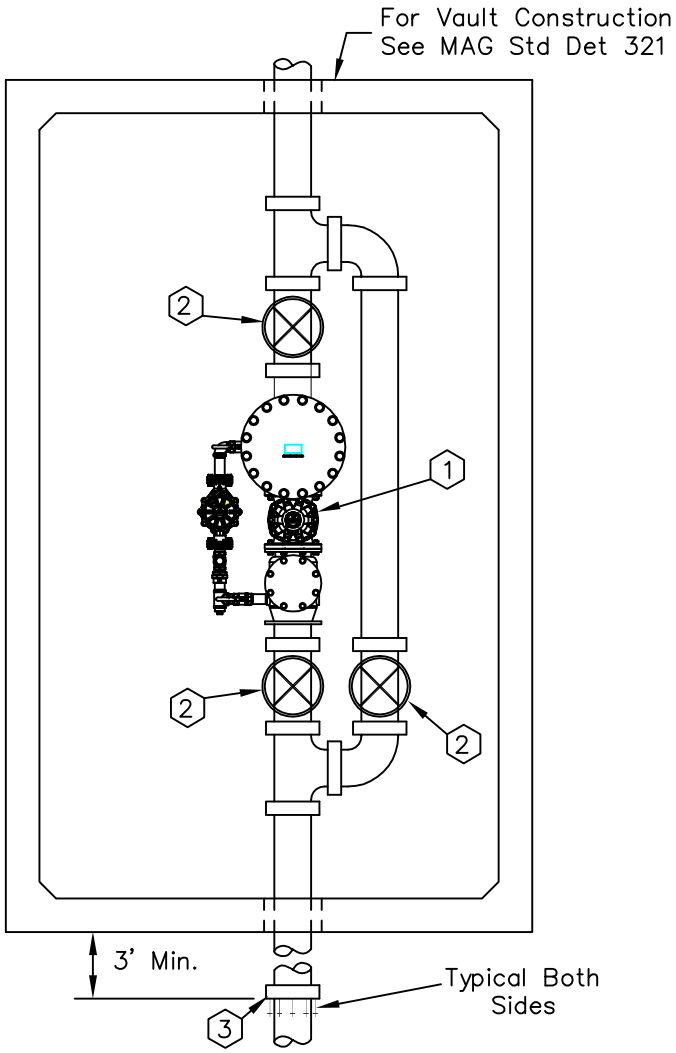


PLAN

VAULT INSTALLATION

SHEET 1 OF 2

DETAIL NO.	City of Avondale Standard Details	APPROVED BY:	6" or 8" WATER METER	DETAIL NO.
Axxxx				Axxxx



COMBINATION DOMESTIC/
FIRE LINE METER

KEY NOTES

1. Turbine Meter (High flow/Low flow) Badger FSAA–01, AMCO FSM 3 or approved equal.
2. Resilient Wedge Gate Valve, Flanged, With Hand Wheel, Open Left, With Non–Rising Stem.
3. Adaptor

NOTES

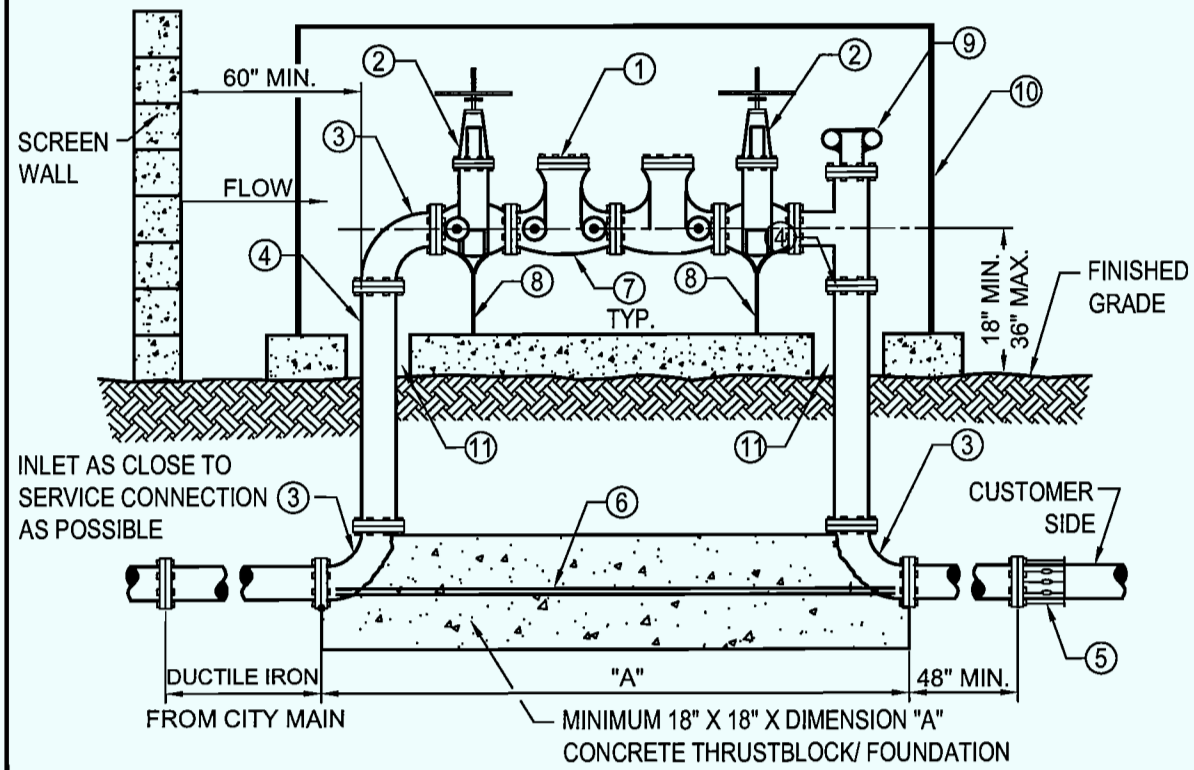
1. For Larger Meters Special Vault Design Is Required.
2. Use Of Remote Reading Device At Option Of Utility.
3. An Approved Backflow Prevention Assembly Shall Be Required Downstream Of The Water Meter. See COA STD. DET. A1325

DETAIL NO.	City of Avondale Standard Details	APPROVED BY:	6" or 8" WATER METER	DETAIL NO.
Axxxx				Axxxx

EXHIBIT B
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44
AND
THE CITY OF AVONDALE

[Backflow Prevention Device]

See following pages.



LIST OF MATERIALS

1. APPROVED DOUBLE CHECK VALVE BACKFLOW PREVENTION ASSEMBLY.
2. RESILIENT SEATED O.S. & Y GATE VALVE.
3. 90° ELL. FLANGED D.I.P. 4" THRU 10"
4. PIPE SPOOL. FLANGED D.I.P. 4" THRU 10"
5. FLANGED ADAPTER (WHEN REQUIRED)
6. 3/4" ZINC COATED THREADED ROD, BOLT TO FLANGES AS SHOWN, TYPICAL BOTH SIDES
7. TEST COCKS WITH BRASS PLUGS OR ADAPTERS WITH CAPS INSTALLED (4 REQUIRED)
8. ADJUSTABLE INDUSTRIAL GRADE METAL PIPE SUPPORTS (PER CITY APPROVAL), AND HARDWARE, MOUNTED TO CONCRETE SLAB.
9. FIRE DEPARTMENT CONNECTION CONSISTING OF TWO 2.5" FEMALE INLETS WITH NATIONAL STANDARD FIRE THREAD, BREAKAWAY COVERS, AND CHECK VALVE.
10. INSTALL 6" THICK CONCRETE PAD, ENCLOSURE, AND HARDWARE. ENCLOSURE SHALL BE A GUARD SHACK GS-8 MODEL OR APPROVED EQUAL.
11. BLOCK OUT CONCRETE SLAB TO ACCOMMODATE PIPE AND FLANGE DIAMETER.

NOTES:

1. CONTACT THE CITY OF AVONDALE WATER RESOURCES DEPARTMENT FOR LATEST LIST OF APPROVED BACKFLOW PREVENTION ASSEMBLIES OR CERTIFIED TESTERS.
2. BACKFLOW PREVENTERS MUST BE TESTED BY A CERTIFIED TESTER BEFORE FINAL APPROVAL IS ISSUED.
3. BACKFLOW PREVENTERS SHALL BE PAINTED LIGHT TAN OR A COLOR TO MATCH THE BUILDING OR SCREEN WALL. FIRE DEPARTMENT CONNECTION SHALL BE PAINTED RED. DO NOT PAINT THE NAME PLATE OR ANY BRASS PARTS ON THE ASSEMBLY.
4. SCREENING WALL, GUARD POSTS (IF REQUIRED BY FIRE DEPARTMENT) AND LANDSCAPING MATERIALS SHALL MAINTAIN A MINIMUM 36 INCH CLEARANCE FROM THE ASSEMBLY.
5. FINISHED GRADE UNDERNEATH THE BACKFLOW PREVENTER SHALL BE AT 95% COMPACTION.
6. CALL CITY OF AVONDALE ENGINEERING DEPARTMENT A MINIMUM OF 24-HOURS IN ADVANCE FOR UNDERGROUND INSPECTION BEFORE BACK FILLING TRENCH.
7. TAMPER SWITCHES ON EACH VALVE TIED TO THE BUILDING FIRE ALARM SYSTEM SHALL BE IN ACCORDANCE WITH FIRE DEPARTMENT POLICY.
8. DETECTABLE MARKING TAPE TO BE APPROVED BY THE CITY OF AVONDALE FIRE DEPARTMENT TO BE PLACED ALONG THE FULL LENGTH OF THE FIRE LINE ON THE CUSTOMER SIDE FROM THE BACKFLOW/FIRE DEPARTMENT CONNECTION ASSEMBLY TO THE BUILDING IS REQUIRED.
9. BACKFLOW PREVENTION/FIRE DEPARTMENT CONNECTION ASSEMBLY SHALL BE LOCATED WITHIN 150 FEET OF A FIRE HYDRANT THAT IS ATTACHED DIRECTLY TO A CITY MAIN.
10. IDENTIFICATION TAGS OR SIGNS IDENTIFYING THE OCCUPANCY OR OCCUPANCIES SERVED BY THE ASSEMBLY MAY BE REQUIRED AT THE DISCRETION OF THE FIRE DEPARTMENT.

DETAIL NO.			
A1325	CITY OF AVONDALE STANDARD DETAIL	FIRE PROTECTION DOUBLE CHECK VALVE BACKFLOW PREVENTION ASSEMBLY 4 INCHES THRU 12 INCHES	APPROVED BY: Daniel W. Fitzhugh DATE: 04-07-08

EXHIBIT C
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44
AND
THE CITY OF AVONDALE

[Site Plan]

See following page(s).

To be attached upon City's acceptance of Site Plan.

CITY COUNCIL REPORT

SUBJECT:
Resolution 2966-411- Consolidating the Social Services Advisory Board and Neighborhood and Family Services Commission

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Gina Montes, Neighborhood & Family Services Director (623) 333-2727

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution consolidating the Social Services Advisory Board with the Neighborhood and Family Services Commission NFSC) and amending the NFSC Bylaws.

BACKGROUND:

The Social Services Advisory Board was created in the 1990s as the Community Action Program Advisory Board to support the Community Action Program. This board was renamed by the City Council in 2003 to the Social Services Advisory Board to represent the full range of programs within the Social Services Division.

The City Council created the Neighborhood and Family Services Commission in 2006 with the creation of the Neighborhood and Family Services Department. The Commission was charged with advising the department on resident needs on the full range of department programs, including social services. Over time, the activities of the Commission and Board increasingly overlapped. In addition, the Care1st Avondale Resource and Housing Center has become a focal point for human services organizations in the department. These two trends coupled with the decrease in Social Services staff led to the proposal to merge the two bodies.

DISCUSSION:

Historically the Social Services Advisory Board was comprised of representatives of human services organizations who provided service to residents of the community. Their role on the Advisory Board was to provide input on the types of programs needed by residents of all communities served by the Community Action Program (Avondale, Goodyear, Litchfield Park and additional unincorporated parts of Maricopa County). Another role of the Advisory Board was to participate in the planning and execution of several special events, including an annual health and resource fair and Make a Difference Day. The creation of the Care1st Avondale Resource and Housing Center has provided another outlet for health and other resource referrals. In addition, the Youth Division has worked with the Youth Advisory Commission to participate in Global Youth Service Day and other service projects. The work of the Social Services Advisory Board became more advisory in nature, rather than hands-on, thereby becoming more like the NFS Commission.

Currently, there are two residents who serve on both the Advisory Board and the NFS Commission. The Commission currently receives updates on social services and provides direction on proposed events and services. With minor changes to the NFS Commission Bylaws, the Commission will be able to absorb the duties of the Advisory Board. During the March 7, 2011 Work Session, City Council provided direction to make all current Advisory Board members part of the NFS Commission.

The size of the Commission will expand by 4 and return to 11 members by attrition.

BUDGETARY IMPACT:

There is no additional cost to the General Fund as a result of this item.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution consolidating the Social Services Advisory Board with the Neighborhood and Family Services Commission and amending and restating the Neighborhood and Family Commission By-laws.

ATTACHMENTS:

Click to download

- Resolution 2966-411

RESOLUTION NO. 2966-411

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, CONSOLIDATING THE CITY OF AVONDALE SOCIAL SERVICES ADVISORY BOARD WITH THE CITY OF AVONDALE NEIGHBORHOOD AND FAMILY SERVICES COMMISSION AND AMENDING AND RESTATING THE CITY OF AVONDALE NEIGHBORHOOD AND FAMILY SERVICES COMMISSION BY-LAWS.

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

SECTION 1. The City of Avondale Social Services Advisory Board is hereby consolidated with the City of Avondale Neighborhood and Family Services Commission.

SECTION 2. The City of Avondale Neighborhood and Family Services Commission By-laws, Amended and Restated April 18, 2011, are hereby adopted in the form attached hereto in Exhibit A, and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to 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, April 18, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 2966-411

[City of Avondale Neighborhood and Family Services Commission By-laws]

See following pages.

CITY OF AVONDALE
NEIGHBORHOOD AND FAMILY SERVICES COMMISSION
BYLAWS

I. Name.

The name of this organization shall be the *Neighborhood and Family Services Commission* (the "Commission").

II. Powers and Duties of the Commission.

It shall be the duty of this Commission to serve as an advisory commission to the City Council for the purpose of identifying Neighborhood and Family issues and the possible resources to meet these needs through collaboration with community groups, agencies, other cities and similar organizations. The Commission will recommend strategies to strengthen families and neighborhoods and provide staff with input on a variety of community projects and programs. The Commission shall have the authority to appoint ad hoc committees as necessary to accomplish the Commission's mission.

The Commission is charged with advising the staff of the Neighborhood and Family Services Department as they work to support, nurture and develop strong families and the neighborhoods in which they live.

The departmental functions that will interrelate with this Commission are: Social Services, Youth Development, Code Enforcement, Community Development Block Grant Program Administration, Housing Services including rehabilitation and revitalization, and Transit.

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

Youth Development Program Development and Review
- Mentoring for emotional development, social skills and decision making skill
- Anger management, relational aggression (bullying issues)
- After School Programs including homework support, social skills, responsibility and work ethic training
- Teen Truancy programs
- Teen Pregnancy programs
- Gang and Drug prevention strategies

Neighborhoods Programs
- Neighborhood Safety – Neighborhood Watch
- G.A.I.N. event
- Criminal abatement strategies
- Code Enforcement and maintenance strategies
- Graffiti Program Development
- Section 8 – Education and Solutions to behavioral issues
- Rentals and CC&R issues, training for rental property owners
- Neighborhood traffic problems and solutions

Transit & Bike Routes Programs

- Reviewing future transit service plans
- Evaluating transit routes and bus stops
- Planning bike route connectivity and bicycle usage programs
- Promoting van pools, car pools and other demand management techniques

CDBG & HOME Programs

- Annual Plan Evaluation
- Reviewing the assessment of community needs and priorities
- Recommending the 15% CDBG allocation to public services
- Outreach and participation in housing redevelopment strategies and activities
- Evaluating fair housing activities and recommending fair housing outreach strategies

Social Services and Community Action Program (CAP)

- Identifying social service needs of the community to include the CAP service area of Avondale, Goodyear, Litchfield Park and designated unincorporated parts of Maricopa County
- Finding resources to meet these needs through collaboration with other community organizations
- Participating in outreach and special events in support of social service needs
- Acting in harmony with Maricopa County Community Action Program policies

III. Membership and Composition.

A. Number of Commission Members. The Commission shall be composed of eleven voting members (collectively, the "Members"). The Commission shall also have up to two alternate members ("Alternate Members") who shall attend and may participate in Commission meetings but shall not vote on any matter before the Commission.

B. Membership Eligibility and Appointment. 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. Every effort shall be made to obtain representation from all the neighborhoods in Avondale. Additionally, every effort shall be made to recruit at least one low-income resident as a member.

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 Commission 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 and qualified.

F. Attendance. All Members and Alternate Members are required to attend all Commission 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 cause; 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 Commission.

H. Consolidation. Effective as of April 18, 2011, the City Council approved consolidation of the Social Services Advisory Board (the "SSAB") with the Commission. Upon consolidation, all current members of the former SSAB will automatically become members of the Commission for a period of time equal to their respective terms on the SSAB. During this transition period, the total Commission membership shall be increased by the number of former SSAB members who choose to serve on the consolidated Commission. The transitioned SSAB members shall serve as voting members of the Commission until the dates that would have been the conclusion of their respective terms on the SSAB, after which time the total Commission membership shall return to 11 members and two alternates.

IV. Commission Officers and Staff.

A. Chairperson and Vice-Chairperson. At the first regularly scheduled Commission meeting of each calendar year, the Commission 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 Commission meetings, (ii) decide all points of order and procedure, (iii) appoint work groups if necessary and coordinate the work of the work groups, (iv) serve as a representative of the Commission to other governmental units on such matters as have been approved and designated by the Commission and (v) perform any duties as required by law, ordinance or these Bylaws. The Chairperson shall have the right to make motions, second motions and vote on all matters before the Commission. 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

Commission 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 Commission 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, who must be present to vote.

E. City Staff Liaison. The Director of Neighborhood and Family Services or authorized designee shall serve as the City Staff Liaison to furnish support to the Commission as requested or required to advise and furnish professional and technical advice.

F. Legal Counsel. The Commission 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 Commission's duties.

V. Commission Meetings.

A. Frequency. Commission 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 Commission Meetings. Additional Commission meetings may be held on the call of the Chairperson or the request of two or more Members by giving notice to all the Members and 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. Commission 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 Commission 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. Alternate Members may not vote at any Commission 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 Commission 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 Commission is subject to the Arizona Open Public Meeting Law.

VI. Special Committees.

The Commission may create special committees for specific purposes. Such committees shall be subject to the provisions of the open meeting law. Any special committee created by the Commission shall automatically dissolve when its work is done and after its final report has been accepted by the Commission.

VII. Amendments.

By the affirmative vote of a two-thirds majority, the Members may recommend amendments to these Bylaws. The Commission will forward any such recommendation for amendments to the City Council for its approval.

CITY COUNCIL REPORT

SUBJECT:
Ordinance 1456-4111 Accepting a Dedication of Right-of-Way and 1455-411 Abandoning a Right-of-Way Easement on the South Side of Western Avenue West of Central Avenue

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Sue McDermott, P.E., Development Services Director/City Engineer, 623-333-4211

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt an ordinance accepting the dedication of real property for use as public right-of-way and an ordinance abandoning a right-of-way easement that is no longer necessary for public use located on the south side of Western Avenue west of Central Avenue, and authorize the Mayor or City Manager, City Clerk to execute the appropriate documentation.

BACKGROUND:

On June 5, 1984, a 23.5 foot easement was granted by the Avondale School District to the City of Avondale for Western Avenue right-of-way purposes. This strip is located about 56 feet into the school property and is not suitable for current or future right-of-way purposes. The easement interferes with proposed expansion of school facilities. The strip also leaves a gap in the right-of-way. A portion of Avondale School District property in that gap extends into the roadway improvements of Western Avenue. A new and different strip of right-of-way is needed to complete the 55 foot wide right-of-way required on the south half of Western Avenue at this location.

DISCUSSION:

This action essentially exchanges unnecessary right-of-way for right-of-way needed nearby. The new right-of-way property to be dedicated is a 22 foot wide approximately 864 foot long strip located parallel with and 33 feet south of the centerline of Western Avenue. This new right of way extends from Central Avenue on the east to 3rd Avenue on the west covering an area of 0.436 acres.

BUDGETARY IMPACT:

The proposed granting and abandoning of these right-of-ways will have no budgetary impact on the City.

RECOMMENDATION:

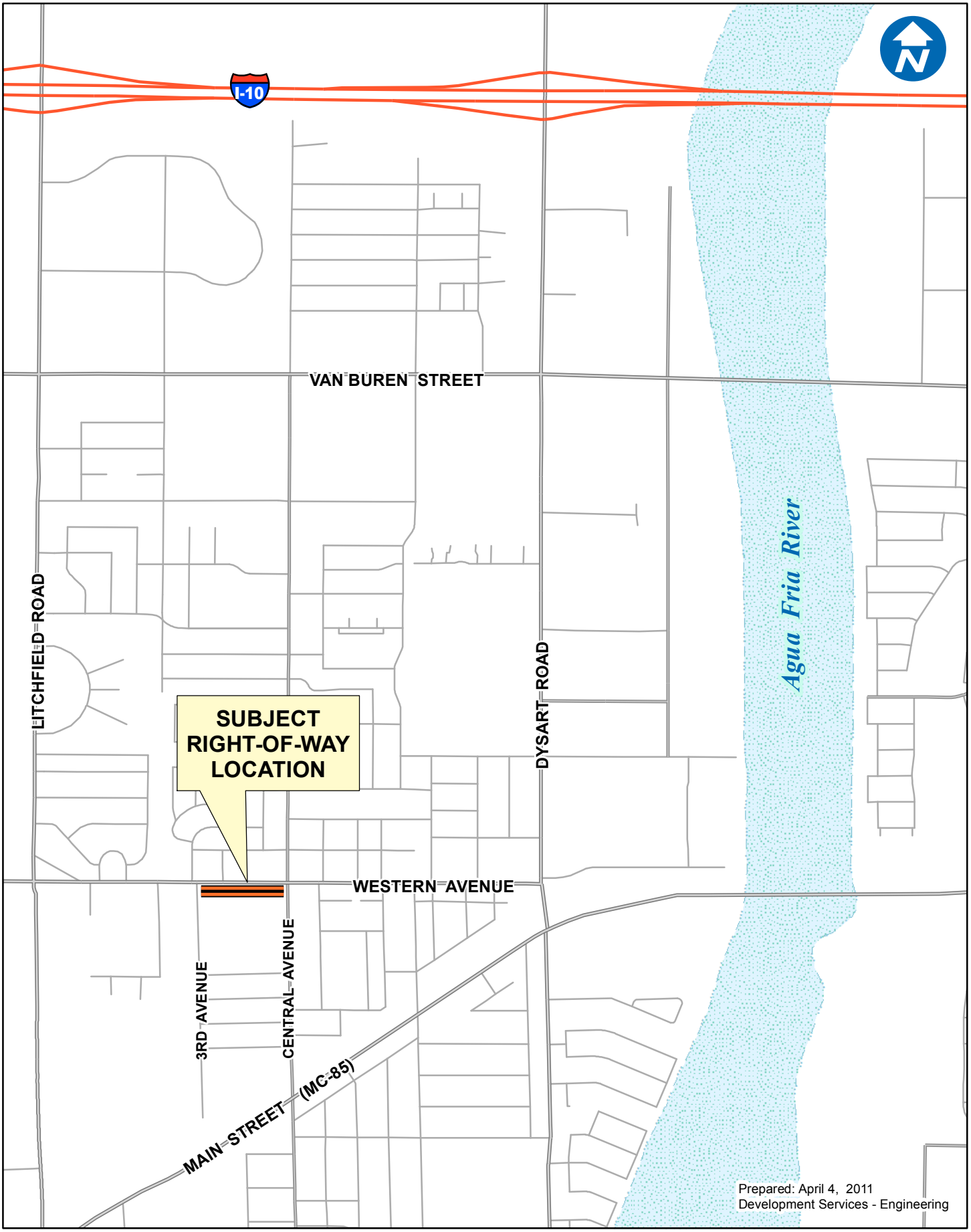
Staff recommends that the City Council adopt an ordinance accepting the dedication of real property for use as public right-of-way and an ordinance abandoning a right-of-way easement that is no longer necessary for public use located on the south side of Western Avenue west of Central Avenue, and authorize the Mayor or City Manager, City Clerk to execute the appropriate documentation.

ATTACHMENTS:

Click to download

- Vicinity Map
- 1456-411
- 1455-411

VICINITY MAP



0 500 1,000 2,000 Feet

WESTERN AVENUE RIGHT-OF-WAY DEDICATION AND ABANDONMENT

ORDINANCE NO. 1456-411

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ACCEPTING THE DEDICATION OF REAL PROPERTY FOR USE AS PUBLIC RIGHT-OF-WAY.

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

SECTION 1. The ± 0.436 acre parcel of real property, generally located along the southern right-of-way line for Western Avenue, immediately west of Central Avenue, as more particularly described and depicted in the Special Warranty Deed attached hereto as Exhibit A and incorporated herein by reference, is hereby accepted by the City of Avondale from Avondale Elementary School District #44 for public use.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, April 18, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 1456-411

[Special Warranty Deed]

See following pages.

When Recorded Mail To:

City Clerk
City of Avondale
11465 West Civic Center Drive, Suite 200
Avondale, Arizona 85323

SPECIAL WARRANTY DEED

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

GRANTOR: Avondale Elementary School District No. 44 of Maricopa County, Arizona, a political subdivision of the State of Arizona

GRANTEE: City of Avondale, an Arizona municipal corporation (the "City")

Grantor, for valuable consideration, receipt of which is hereby acknowledged, hereby conveys to City all right, title and interest in the following real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto:

See Exhibit A attached hereto and incorporated herein by reference.

SUBJECT TO all existing taxes, assessments, liens, encumbrances, reservations in patents, covenants, conditions, restrictions, rights-of-way, easements and leases of record and all matters that a physical inspection of the properties would reveal.

Grantor hereby binds itself and its successors to warrant and defend the title as against all acts of Grantor herein and none other, subject to the matters above set forth.

DATED:_____, 2011.

"**Grantor**"

AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44 OF MARICOPA COUNTY, Arizona, a political subdivision of the State of Arizona

By:_____

Title:_____

Name:_____

ACCEPTED BY:

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

By:_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

(ACKNOWLEDGMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011, by _____, _____of AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44 OF MARICOPA COUNTY, Arizona, a political subdivision of the State of Arizona, on behalf of the District.

_____
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 _____, 2011, by Marie Lopez Rogers, the Mayor of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

_____
Notary Public in and for the State of Arizona

My Commission Expires:

_____

EXHIBIT A
TO
SPECIAL WARRANTY DEED

[Legal Description and Map]

See following pages.

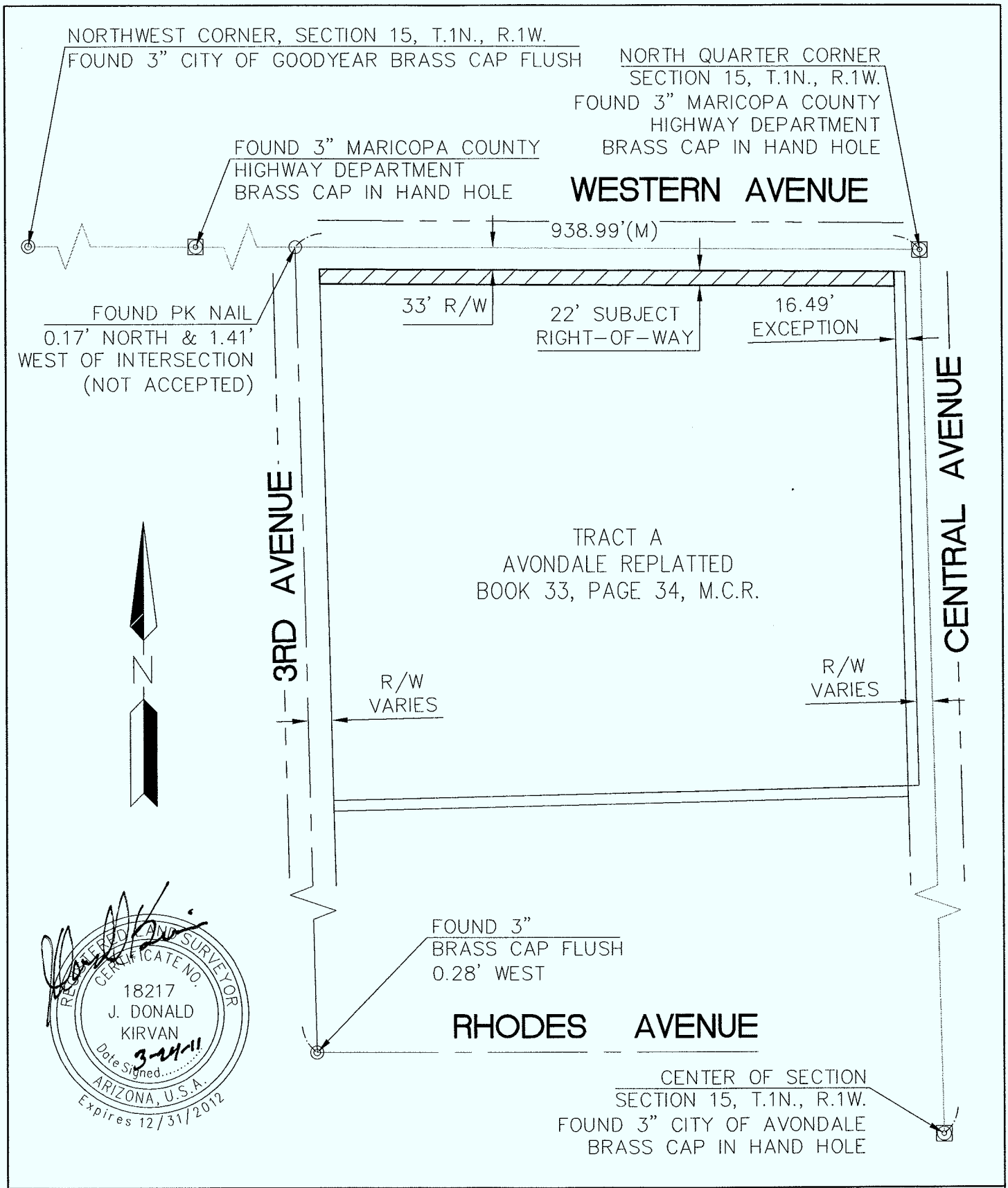
EXHIBIT
22' RIGHT-OF-WAY STRIP
LEGAL DESCRIPTION

The north 22.00 feet of Tract A, Avondale Replatted, as recorded in Book 33, Page 34 Records of Maricopa County, Arizona, being a portion of the Northwest quarter of Section 15, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT the east 16.49 feet thereof.

Prepared by: HilgartWilson
1661 East Camelback Road
Suite 275
Phoenix, AZ
Job No. 1092
March 16, 2011

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
18217
J. DONALD
KIRVAN
Date Signed 3-24-11
ARIZONA, U.S.A.
Expires 12/31/2012



PROJ.#:	1092	22' RIGHT-OF-WAY STRIP	hilgartwilson ENGINEERS • PLANNERS • SURVEYORS 1661 E. CAMELBACK RD., STE. 275 PHOENIX, AZ 85016 PH 602.490.0535 FAX 602.325.0161
DATE:	2011		
SCALE:	03/16/11		
DRAWN BY:	JDL	EXHIBIT	
CHECKED BY:	JDK		

U:\1000\1092\SURVEY\DOCS\1092 22' RIGHT-OF-WAY STRIP.dwg 3/15/2011 3:40 PM

ORDINANCE NO. 1455-411

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ABANDONING A RIGHT-OF-WAY EASEMENT RELATED TO WESTERN AVENUE THAT HAS BEEN FOUND TO BE NO LONGER NECESSARY FOR PUBLIC USE AS RIGHT-OF-WAY.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale (the "City") to dispose of its acquired property as the City's interests may require; and

WHEREAS, the City Council has determined that a certain right-of-way easement located across real property owned by the Avondale Elementary School District #44 (the "School District"), as more particularly described and depicted in that certain document recorded in the Office of the Maricopa County Recorder at document No. 86-563932 (the "Easement"), is located in an area of the School District's property that is not suitable for current or future use as public right-of-way; and

WHEREAS, the Council of the City of Avondale (the "City Council") has determined that it is necessary and appropriate to abandon the unnecessary Easement in order to enable the School District to complete expansion of its facilities; and

WHEREAS, in connection with its expansion of facilities, the School District will be dedicating to the City certain real property for use as a portion of the right-of-way for Western Avenue adjacent to the School District property.

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 Easement, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference, is hereby (i) declared to be no longer necessary for public use as right-of-way and (ii) abandoned.

SECTION 3. Upon recordation of this Ordinance in the office of the Maricopa County Recorder, the Easement shall be forever extinguished and all right and title to the real property described therein shall vest in the School District.

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

PASSED AND ADOPTED by the Council of the City of Avondale, April 18, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 1455-411

[Easement]

See following pages.

19860563932_2

Unofficial Document

When recorded, return to:

City of Avondale ☐

EASEMENT

AVONDALE SCHOOL DISTRICT

, Grantors

for and in consideration of the sum of One Dollar and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant to the CITY OF AVONDALE, a political subdivision of the State of Arizona, its successors and assigns, a permanent easement and right-of-way, for the following purposes, namely: The right to enter upon the hereinafter described land and grade, level, fill, drain, pave, build, maintain, repair and rebuild a road or highway, together with such bridges, culverts, ramps and cuts as may be necessary, on, over, under, and across the ground embraced within the right-of-way situated in the CITY OF AVONDALE, County of Maricopa, State of Arizona, and described as follows:

WESTERN AVE. RIGHT-OF-WAY

The South 23.50 feet of the North 56.50 feet of Tract A, AVONDALE REPLATTED, as recorded in Book 33 of Maps, Page 34, records of Maricopa County, Arizona;

EXCEPT any part thereof lying East of the following described line:

BEGINNING at point on the North line of said Tract A a distance of 16.50 feet West of the Northeast corner thereof;
thence Southerly to a point on the South line of said Tract A a distance of 16.28 feet West of the Southeast corner thereof, said point being the Terminus of the line herein described.

RECORDED IN OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA
OCT 15 1986 -11 00
KEITH POLETIS, County Recorder
FEE 8.00 PGS 2 D.E.

To have and to hold the said easement and right-of-way unto City of Avondale, a political subdivision of the State of Arizona and unto its successors and assigns forever, together with the right of ingress and egress to permit the economical operation and maintenance of said public highway and all incidents thereto.

And the Grantors hereby covenant that they are lawfully seized and possessed on this aforementioned tract or parcel of land; that they have a good and lawful right to sell and convey it; and that they will warrant the title and quiet possession thereto against the lawful claim of all persons.

The said easement to include the right to cut back and trim such portion of the branches and tops of the trees now growing or that may hereafter grow upon the above described premises, as may extend over said right-of-way, so as to prevent the same from interfering with the efficient maintenance and operation of said public highway.

In the event the right, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted all rights herein granted shall cease and revert to the grantors, their heirs or assigns.

Wherever in the foregoing instrument the plural is used it will be read as singular, and when necessary, and wherever words indicating gender are employed, they will apply to either masculine, feminine or neuter as the context requires.

Dated this 5th day of June, 1984.

William J. Wade (Seal) Earl G. Rhodes (Seal)
Pat Aragon (Seal) (Seal)
Ronnie E. Morales (Seal) (Seal)

CITY OF AVONDALE
STATE OF ARIZONA
County of MARICOPA } ss.

This instrument was acknowledged before me this 5th day of June, 1984, by William J. Wade, Pat Aragon, Ronnie E. Morales, Earl G. Rhodes

Notary Public

My commission expires 5-31-84

86 563932

Unofficial Document

CITY OF AVONDALE
525 NORTH CENTRAL AVENUE
AVONDALE, ARIZONA 85323

CITY COUNCIL REPORT

SUBJECT:
Public Hearing and Resolution 2965-411 - 2011-2012 Annual Action Plan

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Gina Montes, Neighborhood & Family Services Director (623) 333-2727

THROUGH: Charlie McClendon, City Manager

PURPOSE:

HUD is expected to allocate approximately $550,000 in Community Development Block Grant (CDBG) funds and $160,000 in Home Investment Partnership (HOME) funds to the City of Avondale for Fiscal year 2011 which begins on July 1, 2011 and extends through June 30, 2012. To be eligible to receive the funds the City of Avondale must complete the Annual Action Plan. Staff is seeking City Council approval of the Annual Action Plan which contains recommended budget allocations for CDBG and HOME funds by activity. Council is also requested to hold a public hearing on the plan.

BACKGROUND:

The City of Avondale receives annual allocations of HOME and CDBG funds from HUD. The federal objective of the CDBG program is to "develop viable urban communities by providing decent housing, a suitable living environment and economic opportunities for low- and moderate-income persons." The objective of HOME program is to "create affordable housing opportunities for low-income persons." City of Avondale goals and objectives with respect to CDBG and HOME are defined in the 5-Year Consolidated Plan which was approved by City Council in April 2010.

DISCUSSION:

The Consolidated Plan identifies the housing, economic and social development needs of low-income and special needs persons and prescribes strategies to address them. HUD requires that local governments involve the public in completing their Annual Action Plans. Neighborhood and Family Services (NFS) held an extensive public participation process to receive input for the Annual Action Plan. The first public hearing was held on December 7, 2010. Further input was received by the Neighborhood and Family Services Commission CDBG Subcommittee on January 5, 2011. Following these forums a draft Annual Action Plan was made available to the public for a 30-day comment period beginning on March 1, 2011 and ending March 31, 2011. Data gathered from the public participation process did not reflect a change in community priorities which remain as follows: Housing Rehabilitation, Infrastructure in Low-income Neighborhoods, Homeownership, Public Services for Special Needs Populations, Job Training and Economic Development.

On April 4, 2011 staff presented the proposed Annual Action Plan to City Council with the following recommended allocations for CDBG funding: Street Reconstruction - $200,000, Emergency Home Rehabilitation - $142,000, Youth Public Services - $45,000, Western Ave Small Business Assistance - $50,000; Block Watch Assistance - $1,000. Recommended allocations for HOME funds was for Owner Occupied Substantial Housing Rehabilitation in the amount of $152,000.

BUDGETARY IMPACT:

The use of $160,000 in HOME funds will require a 25% non-federal match from the City of Avondale of $40,000 which has been included in the 2011-12 budget. CDBG funds do not require match.

RECOMMENDATION:

Staff recommends that Council hold a public hearing and adopt Resolution No. 2965-411 approving the 2011/2012 Annual Action Plan and authorizing its submission to HUD.

ATTACHMENTS:

Click to download

- Resolution 2965-411
- 2011-2012 CDBG and HOME Allocations by Activity

RESOLUTION NO. 2965-411

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE 2011/2012 ANNUAL ACTION PLAN PORTION OF THE 2010-2014 CONSOLIDATED PLAN AND AUTHORIZING ITS SUBMISSION TO THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR RECEIPT OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS.

WHEREAS, Title 1 of the Housing and Community Development Act of 1974, as amended, establishes a Community Development Block Grant ("CDBG") program for the purpose of developing viable urban communities by providing decent housing and a suitable living environment, expanding economic opportunities and preventing and/or eliminating conditions of slum and blight, principally for persons of low and moderate income; and

WHEREAS, the City of Avondale (the "City") desires to receive CDBG funds and to continue to carry out CDBG-funded programs; and

WHEREAS, the U.S. Department of Housing and Urban Development ("HUD") is prepared to provide approximately $550,000 in CDBG funds to the City for Fiscal Year 2011/2012; and

WHEREAS, the Code of Federal Regulations, 24 CFR Part 91 (issued by HUD) requires the submission to HUD and subsequent approval by HUD of a multi-year Consolidated Plan and an Annual Action Plan as a condition of receiving CDBG funds; and

WHEREAS, the City of Avondale 2010-2014 Consolidated Plan (the "Consolidated Plan") was approved by Council of the City of Avondale (the "City Council") on April 19, 2010 and by HUD in June, 2010; and

WHEREAS, the City prepared an updated 2011/2012 Annual Action Plan element of the Consolidated Plan listing activities to be funded in the 2011/2012 program year; and

WHEREAS, the City has completed public participation requirements in accordance with 24 CFR Part 91, including (i) public hearings held on December 7, 2010, and January 26, 2011, at which an opportunity for public comment was available, (ii) a 30-day comment period beginning March 1, 2011 and extending through March 31, 2011, during which time comments were able to be received from City residents for incorporation into the 2011/2012 Annual Action Plan and (iii) an additional public hearing held by the City Council on April 18, 2011.

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

SECTION 1. The 2011/2012 Annual Action Plan portion of the 2010-2014 Consolidated Plan and the allocation of funding to the activities to be undertaken described below are hereby approved and authorized for submission to HUD.

2011/2012 CDBG Annual Action Plan Allocations	
Activity	*Amount Proposed
Administration	$110,000
Street Improvements	$200,000
Fair Housing	$2,000
Emergency Home Repair	$142,000
Youth Public Services	$45,000
Block Watch Assistance	$1,000
Western Avenue Small Business Assistance	$50,000
Total Grant	*$550,000
* Estimated grant amount; actual amount to be provided by HUD in May, 2011.	

SECTION 2. The City Council hereby finds that expenditures as set forth in the 2011/2012 Annual Action Plan are necessary and appropriate and further, that said expenditures for the CDBG program will serve to assist low- and moderate-income individuals/families (no less than 70 percent as described in federal regulations) and/or serve to prevent or eliminate conditions of slum or blight in the community.

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

PASSED AND ADOPTED by the Council of the City of Avondale, April 18, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

1414129.2

City of Avondale 2011/2012 Annual Action Plan Allocations

CDBG FY 11/12 Proposed Allocations:

Activity	Allocation Amount*
Administration	$110,000
Street Improvements	$200,000
Fair Housing	$2,000
Emergency Home Repair	$142,000
Youth Public Services	$45,000
Block Watch Assistance	$1,000
Western Avenue Small Business Assistance	$50,000
TOTAL	$550,000*

HOME FY 11/12 Proposed Allocations:

Activity	Allocation Amount*
Administration	$8,000
Substantial Home Repair	*$152,000*

*Estimated grant amount based on prior year allocations; actual amount to be provided by HUD May 2011.

CITY COUNCIL REPORT

SUBJECT:
Contributions Assistance Program and Subcommittee Appointment

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Gina Montes, Neighborhood & Family Services Director (623) 333-2727

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve the Contributions Assistance Program funding guidelines. Contributions Assistance funding of $50,000 as included in the fiscal year 2011-12 budget will be used for distribution to eligible non-profit agencies to provide health and human services to the residents of Avondale. Staff is also requesting that Council appoint a subcommittee to review applications and make funding recommendations.

BACKGROUND:

The Contributions Assistance Program allocates funding to non-profit agencies that provide health and human services to residents of Avondale. In FY 2011 the program provided funding to nine West Valley agencies who provided a wide range of human services to Avondale residents.

DISCUSSION:

Funding recommendations will be based on a composite of staff technical review of the submitted applications and selection by the Council sub-committee members of the activities they believe best meet local community needs. Fiscal Year 2011 Subcommittee members requested a more qualitative review of applications be provided by staff in addition to the technical review. The following is the recommended minimum requirements for applicants to be considered:

1. Applicants must provide direct services which improve the health and welfare of Avondale residents.
2. Applicants that received previous funding must be current in their reporting and have submitted timely and accurate quarterly reports.
3. Applicants must demonstrate the ability to generate revenue from other sources.
4. Requests must be for funding that supports direct and measurable services.

BUDGETARY IMPACT:

A total of $50,000 was included in the fiscal year 2011-12 budget for the Contributions Assistance Program.

RECOMMENDATION:

Staff recommends that City Council approve the Contributions Assistance Program funding criteria. Staff is also requesting that Council appoint a subcommittee to review applications and make funding recommendations.

ATTACHMENTS:

Click to download

No Attachments Available

DEVELOPMENT SERVICES

SUBJECT:
Public Hearing – Resolution 2967-411 and Ordinance 1453-411 - Zoning Ordinance Text Amendment to Sections 1, 2, 5, 8, 9, 11, and 12 and City Code Text Amendment to Chapter 19.

MEETING DATE:
April 18, 2011

TO: Mayor and Council

FROM: Sue McDermott, Development Services Director/City Engineer (623) 333-4211

THROUGH: Charlie McClendon, City Manager (623) 333-1015

REQUEST: Approval of a comprehensive Text Amendment to Zoning Ordinance Section 1, **Administration and Procedures** (TA-08-6) with affiliated changes to Sections 2, 5, 8, 9, 11, and 12 of the Zoning Ordinance and Chapter 19 of the City Code.

LOCATION: Citywide

APPLICANT: City of Avondale

BACKGROUND:

- As part of the Zoning Ordinance comprehensive update, staff is proposing amendments to Section 1**, Administration and Procedures**.Section 1 establishes the foundation for the Zoning Ordinance by establishing the purpose and applicability of zoning regulations, creating processes to which zoning and development review are required to adhere, and establishing enforcement policies for Zoning Ordinance violations. Additionally, Section 1 contains a comprehensive list of definitions for terms found throughout the Zoning Ordinance.

The current and existing Section 1 (Exhibit A) is currently organized into the following fourteen subsections summarized below:

- Section 101**, Purpose and Applicability:** Arizona statute authorizes municipalities to adopt zoning regulations to promote public health, safety, and welfare. This subsection establishes the overall purpose for the regulations contained within the Avondale Zoning Ordinance. Additionally, this subsection:
    - Establishes the City's zoning districts;
    - Institutes a method of determining boundaries of zoning districts;
    - Creates transition rules for development projects in progress;
    - Specifies that land uses not listed as permitted are prohibited;
    - Provides a severability clause which allows the overall Zoning Ordinance to remain valid even when specific provisions are invalidated by court action or state or federal legislation.

- Defines non-conforming buildings, uses, and lots, and establishes rules for properties with this status in regards to expansion, repair, etc.

- Section 102**, Definitions:** This section contains a list of definitions for terms used throughout the Zoning Ordinance. Currently, definitions are also contained in several Zoning Ordinance sections in addition to Section 1. All definitions will be relocated to Section 1 as part of the proposed amendment.

- Section 103**, Administrative Bodies:** This section establishes the structure of the Planning Commission, Board of Adjustment, and the office of the Zoning Administrator, and establishes the powers and duties of these bodies. In addition, this section specifies the powers and duties of the City Council in planning and zoning matters.

- Section 104**, City Codes, Plans, and Standards:** This section specifies the other codes to which development of property is required to adhere. This list includes national/international building, mechanical, plumbing, fire, and electrical codes, as well as local/state documents such as the Maricopa Association of Governments Specifications and the State of Arizona subdivision regulations.

- Section 105**, Development Review Procedures:** This section requires all development, with certain exceptions, to obtain a building permit in conformance with Zoning Ordinance requirements prior to construction or alteration. This section also requires development projects be reviewed at a pre-application conference before submittal of an application.

- Section 106**, Site Plan Review:** This section establishes the requirements for Site Plan and Design Review. The current provisions currently allow for administrative approval of all site plans, although it has been City policy to bring site plans for properties zoned Planned Area Development (PAD) forward for Planning Commission recommendation and City Council approval. This section also currently specifies that site plans are valid for one year and does not define any procedures for processing a time extension for expiring approvals. In addition, Section 106 discusses when Site Plan applications are required, what types of plans will be required to be submitted, which City Departments will review the proposed development plans, the appeal process in the event a Site Plan is not approved, and notification requirements for surrounding property owners.

- Section 107**, Reserved:** This section is currently unused.

- Section 108**, Conditional Use Permits:** This section establishes the purpose, procedure, and required findings for Avondale's Conditional Use Permit (CUP) process. This subsection also specifies the effective date of CUP approvals (30 days after approval), expiration time frames (24 months), and the processes to extend, modify, or revoke a previously approved CUP.

- Section 109**, Zoning Ordinance Amendments:** This section establishes the process and procedure for amending the Zoning Ordinance, including both text amendments and map amendments (rezonings). This subsection also sets the parameters (e.g. height, letter size, etc.) for public notice signs that are posted on properties to advertise upcoming hearings on rezonings or other public hearing items.

- Section 110**, Application and Fees:** This section contains a list of items required with all application submittals. Additionally, Section 110 specifies that a fee schedule for applications is to be adopted by the City Council.

- Section 111**, Notification of Public Hearings:** This section details when mail and newspaper advertisements are required prior to Planning Commission and City Council meetings for public hearing items and the form that those notices/advertisements must take.

- Section 112**, Citizen Review Process:** This section creates the City's neighborhood meeting process.

- Section 113, **Temporary Use Permits:** This section specifies which uses require temporary use permits, establishes the process for obtaining a temporary use permit, and lists the conditions which temporary use permits have to adhere to (e.g. hours of operation, etc.).

- Section 114**, Enforcement:** This section establishes the process for enforcement of zoning regulations in addition to specifying penalties for zoning ordinance violations.

SUMMARY OF REQUEST:

1. The proposed Section 1**, Administration and Procedures,** includes fifteen subsections listed below, one of which is empty and has been reserved in the event a future amendment is required. Three subsections are new (shown in bold); the remainder are existing subsections which may have been renamed for clarity.

- 101 Title, Authority, Jurisdiction, and Purpose (Renamed from “Purpose and Applicability)
- 102 Enforcement
- 103 Definitions
- 104 Reserved
- 105 Development Review Procedures
- **106 Administrative Actions (NEW)**
- 107 Design Review (Renamed from “Site Plan Review”)
- **108 Administrative Relief (NEW)**
- 109 Conditional Use Permit
- 110 Zoning Ordinance Text Amendment (Separated from Map Amendments)
- 111 Zoning Ordinance Map Amendment (Separated from Text Amendments)
- **112 Variances and Appeals (NEW)**
- 113 Neighborhood Meeting (Renamed from “Citizen Review Process)
- 114 Public Notification (Renamed from “Notification of Public Hearings”)
- 115 Applications and Fees (Renamed from “Applicant and Fees”)

2.The proposed text amendment deletes the following subsections currently part of Section 1:

- Subsection 103**, Administrative Bodies:** This section details the responsibilities, duties, and requirements of the City Council, Board of Adjustment, and Planning Commission in land use and development processes. The language pertaining to Planning Commission and the Board of Adjustment has been relocated to Chapter 19, Planning and Development, of the Avondale Municipal Code to allow the City's elected officials control over the rules and regulations for all of the City's boards and commissions.

- Subsection 104**, City Codes, Plans, and Standards:** This existing subsection lists the other codes and plans by which development needs to comply in the City of Avondale, including specific building, plumbing, electrical, and fire codes. Because the City is always in the process of evaluating new codes and the codes can change to better reflect the interests of the City, this list was removed. A new provision was added to Section 101.C which requires adherence to other City documents which are not prone to being replaced, such as the General Plan, Specific Plans, Subdivision Regulations, Design Manuals, and General Engineering Requirements Manual.

- Subsection 113, **Temporary Use Permits:**Temporary Use Permits are no longer issued since the City created new regulations for Seasonal Sales and Special Events as part of the previously adopted amendment to Section 7, Supplementary Regulations, in 2010.

3.Proposed amendments to Section 101, **Title, Authority, Jurisdiction, and Purpose**, include:

- The section is currently titled “Purpose and Applicability.” The title change is proposed to better encompass the various components of this subsection.

- Addition of the following existing zoning districts to the list of established zoning districts: RR-18 (Rural Residential), MH (Mobile Home Park), OTAB (Old Town Avondale Business), CBD (Cashion Business), CC (City Center), MSED (Major Sports & Entertainment), and SUD (Special Use Overlay). Each of these districts was not previously included in this list because they were created and adopted after Section 1 was last comprehensively updated in 1990.

- Clarification that when a zoning district boundary line is located within or along a street or other right-of-way, or within a channelized waterway, the boundary line will be the centerline of that right-of-way or channelized waterway (Proposed provision 101.F.2).

- Deletion of transition rules (Existing provision 101.F) which effectively specified that, as long as a PAD development plan, site plan, and/or building permit had been approved and remained valid, any previously approved plans that were no longer consistent with the latest Zoning Ordinance standards would remain valid until the plan or permit expired. This section was deemed unnecessary due to existing state law of a similar nature; the City will continue to honor previously approved plans so long as the approvals have not expired.

- Revision of regulations regarding the expansion of non-conforming (i.e. “grandfathered”) uses and buildings, including:

    - Deletion of the existing provision which limits the amount of routine repair and maintenance that a non-conforming building can receive over the course of a given year (Existing provision 101.L.2.d).

    - Deletion of the existing provisions (101.L.2.c) which prohibits non-conforming buildings damaged beyond 50 percent of their replacement value from being rebuilt. The proposed new provision (101.G.b) allows a non-conforming building to be rebuilt in its entirety if reconstruction is completed within one year.

    - Deletion of the existing provision (101.L.2.b) which allowed for the expansion of non-conforming buildings up to 25 percent of the floor area that was existing at the time they became non-conforming with City Council approval of a Conditional Use Permit. The proposed new provision (101.G.1.c) prohibits expansion of non-conforming buildings unless the expanded area conforms to all current development standards, with a single exception that non-conforming single-family residences can be expanded into required setbacks so long as the expansion does not encroach further into the required setback than the existing building.

    - Deletion of the existing provision (101.L.3.a) which allowed for the expansion of a non-conforming use up to 25 percent of the land area and/or building ground floor area existing at the time the use became non-conforming, subject to City Council approval of a Conditional Use Permit. The proposed new provision (101.G.2.a) strictly prohibits the expansion of non-conforming uses.

    - Creation of a new provision (101.G.2.c) which allows a non-conforming use up to 1 year to recommence operations after a fire, flood or other calamity forces operations to cease. Additional time beyond one year may be allowed by the Zoning Administrator if delays are caused due to circumstances beyond the control of the owner of the premises.

    - Deletion of all provisions relating to non-conforming lots (101.L.4). Non-conforming lots (i.e. lots which are smaller than minimum lot size dimensions) may be developed in

conformance with the development standards for the zoning district in which they are located. In the event that a non-conforming lot is too small to be developed in accordance with current setback requirements, a variance or administrative relief can be pursued to lessen those requirements.

4.Proposed amendments to Section 102, **Enforcement**, include:

- Relocation of this section from its current location, Section 114.
- Removal of specific fee related information.

5.Proposed amendments to Section 103, **Definitions**, include:

- Relocation of this section from its current location, Section 102.
- Currently, Section 1 includes definitions for 136 terms (Note: Exhibit A contains 130 definitions as it does not reflect certain amendments from 2006-2010 which added definitions for Medical Marijuana, Personal Wireless Service Facilities, and Animals/Livestock). An additional 126 definitions are currently located in the remainder of the Ordinance, as follows: Section 5**, Special Districts** (3 definitions); Section 8**, Parking** (12 definitions); Section 9**, Signs** (78 definitions); Section 11**, Public Art** (3 definitions), and; Section 12**, Landscaping Walls and Fences** (30 definitions). Amongst all sections, the Zoning Ordinance currently contains 263 definitions. The proposal will consolidate all Zoning Ordinance definitions into Section 103, updating, deleting, and adding definitions where necessary. In total, the proposed amendment includes definitions for 355 terms. Any definition for a term not listed below is unchanged except for possible non-substantive formatting and/or grammatical edits.
- **The proposed amendment adds definitions for the following 104 previously undefined terms**: Abutting; Adult Day Care; Amusement Park; Analogous Use; Apartment; Archaeological Resources; Assisted Living Facility; Auto Service and Diagnostic Facility; Brewery Ancillary to a Restaurant or Brewpub; Buffer; Building Footprint; Building Permit; Caretaker's Quarters; Cigar Bar/Tobacco Lounge; Commercial Center; Commercial Sporting Complex; Commercial Vehicle; Convalescent Home; Day Spa; Design Guidelines; Design Manuals; Development Review Committee; Development Services Director; Distribution; Dormitory; Dwelling (Attached); Dwelling (Detached); Dwelling (Duplex); Dwelling (Multi-Family); Dwelling (Single-Family); Dwelling (Triplex); Emergency Medical Care Facility; Extended Stay Hotel; Floor Area Ratio; Garage Sale; Gross Floor Area; Historic Building; Hospice; Hospital; Impound Lot; Independent Living Facility; Indoor Commercial Recreation/Entertainment Use; Incidental Commercial Sales; Lot (Corner); Lot (Interior); Lot (Internal); Lot (Key); Lot (Through); Lot Line (Front); Lot Line (Rear); Lot Line (Side); Manufacturing and Assembly (Light); Manufacturing and Assembly (Heavy); Massage; Massage Therapy; Massage/Day Spa; Medical Office; Mini-Storage Warehouse; New Urbanism; Night Club; Open Space; Open Space (Active); Open Space (Passive); Planning Division; Plate Line; Profession; Public Service; Public Uses; Residential Care Home; Restaurant (Fast Food); Right-of-Way; Sanitary Landfill; School (Business); School (Charter); School (Elementary); School (Pre-School); School (Primary); School (Public); School (Private); School (Secondary); School (Technical); School (Vocational, Commercial, or Trade); Seasonal Sale; Setback Line; Sidewalk Café; Special Event; Specialty Retail; Specialty Sales; Specialty Services; Substance Abuse Detoxification Center; Substance Abuse Treatment Center; Suburban Development; Surplus Store; University; Use; Urban Development; Urgent Care Center; Wine Bar; Yard (Front); Yard (Rear); Yard (Sale); Yard (Side); Zoning Administrator; Zoo.
- **The proposed amendment deletes definitions for the following 13 previously defined terms:** Automobile Wrecking; Contiguous; Court; Farm Laborer's Quarters; Mobile Home Subdivision; Multi-Family Building; Motel; Pool Hall; Restaurant (Drive-In); Rooming House;

Travel Trailer.

- **<u>The proposed amendment redefines or substantively amends the definitions for the following 35 terms:</u>** Alley; Apartment Building (formerly “Apartment House”); Automobile, Boat, Recreational Vehicle, or Motorcycle Sales and/or Leasing (formerly “Automobile, Boat, Truck and Trailer Sales Lot”); Boarding House; Carport; Conditional Use Permit; Condominium; Crown (Tree); Day Labor Hiring Center; Density; Dwelling; Family; Freeway; Garage (formerly Garage, Private); Gas Station (formerly Service Station); Group Home for Persons with a Disability (formerly Group Home for the Handicapped); Group Recovery Home; Home Occupation; Hotel; Manufactured Home Park (formerly Mobile Home Park); Mobile Home; Motor Vehicle; Nursing Home; Office; Parking Lot Aisle; Place of Worship (formerly Church); Recreational Vehicle; Restaurant without Drive Through (formerly Restaurant); Site Area (Gross); Site Plan; Subdivision; Townhouse; Trailer; Warehousing; Wholesaling.

6.Proposed amendments to Section 105, **Development Review Procedures**, include:

- Addition of a new subsection (105.B) which establishes the “Development Review Committee (DRC)”. The DRC is comprised of staff from several City Departments and Divisions, including but not limited to Planning, Building, Engineering, Police, and Fire, who review development proposals to ensure conformance with all applicable codes and ordinances. Existing subsection 106.C briefly discusses a “Site Plan Review Committee” whose scope was limited to the review of site plan applications.
- Expansion of language pertaining to the purpose, application, and closure of pre-applications. Existing Section 105.B requires pre-application conferences to be held prior to submittal of an application for any development review procedures outlined in the Ordinance. Proposed section 105.C establishes a six month deadline for application submittal following the pre-app meeting to ensure that the information provided to applicants remains current. In the event that a formal submittal is not made within the six month time frame, an additional pre-application meeting is required.

- Addition of a new provision (105.E) which gives the City the authority to close development applications which have been inactive for more than one year.

7.A new Section 106, **Administrative Actions**, is proposed. This subsection defines the powers and duties of the Zoning Administrator and establishes the process and rules for two of the more common responsibilities of that position: Providing Zoning Interpretations and Zoning Verifications. The Zoning Administrator (ZA) is the person designated by the City Manager to interpret and enforce the Zoning Ordinance. Currently, the designated Zoning Administrator is the City's Planning Manager. Duties of this position include clarifying the intent of the Zoning Ordinance when provisions conflict or are difficult to apply in unique circumstances. The formal responses to these inquiries are titled Zoning Interpretations. Also, property owners and/or potential purchasers of real estate in the City often seek written confirmation from the City on a property's zoning, applicable development standards, and information on any known building or zoning violations relating to a specific property. The formal responses to these inquiries are titled Zoning Verifications. Additionally, the ZA serves as secretary to the Board of Adjustment and Planning Commission.

8.Proposed amendments to Section 107, **Design Review**, include:

- Relocation of this section from its current location, Section 106, and renaming it from “Site Plan Review” to “Design Review” to better encompass all components of development that are reviewed at this phase.

- Addition of a new provision (107.B) creating an opportunity for the Zoning Administrator to waive the requirement for design review if it is determined that such review does not further the purposes of this ordinance.

- Addition of a new provision (107.E) specifying the Required Findings that a proposal will need to meet in order to gain approval. These findings include: 1) The proposal is in conformance with all requirements of the Zoning Ordinance and any other applicable codes, plans, and standards in place at the time the design review application is submitted; 2) The proposal is of high quality and furthers the City's aesthetic vision, and; 3) Adequate conditions of approval are imposed to ensure compatibility with the current or planned use of surrounding properties.

- Addition of a provision (107.F.1) which allows all design review applications, except for those located within the City Center, to be approved administratively, in order to streamline the plan review process, stay competitive with other jurisdictions, and further the city's goals and objectives for economic development. This section is discussed further in the staff analysis below.

- Revision of the existing provision (106.C.4) which specifies that approved site plans are valid for a period of one year. The proposed amendment increases this initial validity period to two years to provide an incentive to developers in consideration of the economic conditions.

- Addition of process rules for requesting an extension to the time condition in the event that two years pass without development of an approved site plan. As currently written, Section 106 does not state whether extensions of a site plan approval are allowed; extensions of site plans have been processed, however, under an interpretation that they are allowed. The proposal allows for up to two one-year extensions to be approved after the initial time condition elapses, provided the proposal still meets the requirements of the Zoning Ordinance and any other applicable codes, plans and standards in place at the time the site plan extension is requested, the applicant has shown good cause for delay, and that the applicant has proposed a timeline to bring about the commencement of development on the site. Approval of site plan extensions will be the responsibility of the body which approved the site plan. For example, if City Council approval of the site plan was required, City Council approval of the extension would also be required.

- Revision of the existing provision (106.D) which outlines the appeal process in the event that an applicant does not agree with the Design Review Committee's decision. Currently, this provision requires Planning Commission review and City Council approval. Under the proposed amendment (107.H), Planning Commission would become the decision making body and would have the ability to reverse or modify staff's decision.

- Non-substantive changes to verbiage for clarity and consistency.

9. A new Section 108, **Administrative Relief**, is proposed. This section creates an administrative process to provide flexibility in development standards (e.g. setbacks, etc.) in cases where adherence to development standards would hinder a development on an unusually small or irregularly shaped parcel. The proposal will allow up to a 10 percent reduction of any development standard on qualifying properties citywide; for properties located within a revitalization area, up to a 30 percent reduction could be approved if required findings have been met, most notably that the proposed improvement requiring relief will not be detrimental to the property requesting relief, any adjacent property or the City as a whole. Additionally, this process will allow the Zoning Administrator to waive non-quantitative requirements for single-family homes in a revitalization area. This process is not intended to replace the variance process, but to offer an alternative when the amount of relief requested is minimal and will promote the revitalization of properties. The amendment is proposed to encourage and incentivize development, promote infill development, and assist in the revitalization of older neighborhoods throughout the City.

10. Proposed amendments to Section 109, **Conditional Use Permit**, include:

- Relocation of this section from its current location, Section 108.

- Addition of a provision (109.A.3) clarifying that a neighborhood meeting is required for Conditional Use Permit applications and that notification of the meeting by legal advertisement, notice sign, and mailing must be completed by the applicant in accordance with the procedures in proposed Section 114.

- Non-substantive changes to verbiage for clarity and consistency.

11. Proposed amendments to Section 110, **Zoning Ordinance Text Amendment**, and Section 111, **Zoning Ordinance Map Amendment**, include:

- Separation of Zoning Ordinance Text Amendments and Map Amendments into separate subsections, since the two processes have varying requirements for public notification.

- Relocation of the Text Amendment procedures from its current location, Section 109, to Section 110, and the Map Amendment procedures from Section 109 to Section 111.

- Deletion of the current requirement (portion of 109.A) that only owners of real property located in the City can initiate Zoning Ordinance amendments. This existing requirement essentially prohibits renters/tenants (commercial or residential), prospective new businesses looking to locate in Avondale, and/or potential developers in Avondale from pursuing an Ordinance amendment.

- Addition of provisions (110.A.2 and 111 A.2) clarifying that a neighborhood meeting is required for Zoning Ordinance Amendments and specifying the notification responsibilities of the applicant. Notification requirements for Text Amendments consist only of a legal advertisement in a local newspaper. Notification of Rezonings consist of the legal advertisement as well as a notice sign on the property being rezoned, and a mailing to property owners within 500 feet of the property being rezoned.

- Deletion of the existing provisions (109.G.7, 109.I) which impose a time condition on rezonings and require City Council to initiate zoning reversions when those time conditions have expired. In regards to time conditions for Zoning, such provisions are already in place for PADs with language contained in Section 6 in order to ensure that the approved PAD is still in line with City standards. For rezonings to standard (e.g. “hard”) zoning districts, no time condition is recommended because those districts are updated to reflect current City goals as needed.

- Deletion of the existing provision (109.L) which specifies the dimensions and design of public hearing notice signs. New standards for public hearing notice signs are included in proposed Section 114, **Public Notification**.

- Non-substantive changes to verbiage for clarity and consistency.

12. A new Section 112, **Variances and Appeals**, is proposed. Information on Variances and Appeals of Zoning Administrator decisions is currently contained in Section 103, Administrative Bodies, which is proposed to be relocated from the Zoning Ordinance to the City Code. The majority of the Variance and Appeal process information currently contained in Section 103 is being relocated to this new Section. No amendments to these processes are proposed, except for the following:

- Revision of the existing provision (103.C.4.a.2) which states that the Board of Adjustment will convene for a hearing within thirty days of the acceptance of a variance application. The revised provision (112.A.1.b) will allow up to sixty days, ensuring an adequate review can be finished and all proper noticing is completed.

- Revision of the existing provision (103.C.4.b.3) which allows variance applicants one year to obtain a building permit before the granted variance expires. The revised provision (112.A.1.c)

will eliminate the expiration and instead allow a granted variance to run with the land.

- Non-substantive changes to verbiage for clarity and consistency.

13. Proposed amendments to Section 113, **Neighborhood Meeting**, include:

- Addition of new language clarifying applicant responsibilities when scheduling and hosting required neighborhood meetings.

- Addition of a provision (113.C) specifying that the applicant bears all costs associated with the neighborhood meeting.

- Addition of a provision (113.E) requiring that neighborhood meetings be held between Monday and Thursday after 6:00 P.M. to ensure the majority of residents can attend if so desired.

- Deletion of existing provisions which contain specific details and specifications of the notifications that are required prior to neighborhood meetings. All notification requirements have been condensed into Section 114, Public Notification and revised.

- Non-substantive changes to verbiage for clarity and consistency.

14. Proposed amendments to Section 114, **Public Notification**, include:

- The processes, timelines, and specifications of the various notification types (i.e. legal advertisement, mailing, notice sign) have been rewritten for greater clarity and streamlined.

- A fourth notification type has been created, entitled “Proof of Adequate School Facilities”. This notification type will be required for any rezoning application involving a residential zone or, if part of a PAD, residential component. Applicants will be required to show staff that they have met with the applicable school districts associated with the project site and a written statement from the school districts assuring that the districts can accommodate additional school-aged children.

- Non-substantive changes to verbiage for clarity and consistency.

15. Proposed amendments to Section 115, **Applications and Fees**, include:

- Addition of language stating that the City of Avondale, when acting in its official capacity, shall be exempt from application fees.

- Non-substantive changes to verbiage for clarity and consistency.

16. In addition to amending Section 1, several affiliated changes to other Zoning Ordinance sections and the City Code are also proposed. Several Zoning Ordinance sections included subsections containing definitions. As part of this proposal, the following subsections have been deleted to accommodate the centralization of all definitions in Section 1:

- Section 502.M, Major Sports and Entertainment (MSED) Zoning District Definitions.

- Section 809, Parking Definitions.

- Section 915, Sign Definitions.

- Section 1102, Public Art Definitions.

- Section 1209, Landscaping, Walls, and Fences Definitions.

Additionally, the City's legal counsel recommended against including operative language (i.e. requirements for land uses) in definitions. In order to remove operative language from definitions, the following changes to Sections other than Section 1 are proposed:

- **Section 203.G, relating to Home Occupations:** Staff's proposed definition for “Home Occupation” contained new operative language to ensure that only home businesses which did not impact the residential character of a neighborhood would be permitted. The proposed operative language included limiting the percentage of a dwelling unit which could be used for business purposes to 25 percent, prohibiting home occupations which could be classified as distributers, prohibiting the sale of merchandise/commodities on residential premises, and limiting the number of vehicles used in conjunction with the home occupation and stored on site to one. Instead of including these new provisions within the home occupation definition, the list of requirements for home occupations currently contained in Section 203.G will be supplemented.

- **Section 907.B, relating to the design of Monument Signs:** The existing definition for “Monument Sign” includes operative language which requires that the width of the top of the sign structure can be no more than one hundred twenty (120) percent the width of the base, the design of monument signs must complement the architecture of buildings on site, and that monument signs must contain the address of the building(s) they support. The proposal recommends creating a new provision 907.B.4, relating to the design of freestanding signs, which includes these requirements.

Lastly, the existing language in Section 103 which specifies the duties and requirements of the Planning Commission and Board of Adjustment in regards to land use and development processes will be deleted from the Zoning Ordinance and relocated to Chapter 19, Planning and Development, of the City of Avondale Municipal Code.

PARTICIPATION:

Staff has conducted work sessions with the City Council on April 14, 2008, September 14, 2009, November 15, 2010, and February 7, 2011 (Exhibits B, C, D, and E). Additionally, staff conducted work sessions with the Planning Commission on May 15, 2008 and April 15, 2010 (Exhibits F and G).

Planning staff held an advertised Neighborhood Meeting to discuss potential revisions to Section 1 on April 9, 2008 at 6:00 pm. At that meeting, several members of the development community attended and provided comments to staff on how to increase the speed and efficiency of the Site Plan approval process, namely by eliminating the need for Planning Commission and City Council approval.

Staff held a second advertised Neighborhood Meeting on October 6, 2009, for any interested parties to discuss the ongoing proposed changes to Section 1. No members of the public attended the second neighborhood meeting. No recent comments have been provided to staff regarding this update.

Throughout the process, staff has provided regular updates to interested parties on the City's distribution list for Zoning Ordinance text amendments. Staff has received comments from various parties throughout the process and has worked to incorporate them when feasible. Most recently, the draft was emailed to those interested parties on March 3, 2011.

A notice of the public hearing for this item at the February 17, 2011 Planning Commission meeting was published in the West Valley View on February 1, 2011. Prior to that meeting, the City Attorney requested that the item be continued to the March 17, 2011 Planning Commission meeting to allow

additional time to review and finalize the proposed text amendment. On February 17, 2011, the Planning Commission opened the public hearing and unanimously approved continuing the item. No interested parties spoke on this item at the February 17, 2011 or March 17, 2011 Planning Commission meetings.

Follwing to the Planning Commission meeting, staff received an email from an Avondale resident on April 7, 2011 (Exhibit I) requesting that the definition of "Guest House" be revised to remove language which prohibits cooking facilities in ancillary residences. The City has prohibited cooking facilities in guest houses since 1990 to prevent guest houses from transitioning into rental units. In 2006, the City created additional regulations for guest houses in an amendment to Section 203.F, Residential Districts. These new regulations also have the same intent as the kitchen prohibition, to make it difficult to use a guest home for rental purposes. For example, the regulations now prohibit separate water/utility meters for guest homes and do not allow for separate driveways or parking areas to be provided for guest homes. The regulations also specifically state that guest homes cannot be used for compensation. Due to the additional regulations added in 2006, staff agrees with the resident's conclusions that the prohibition of kitchens in guest houses is no longer neccessary and that amending the definition accordingly will provide relief to residents taking care of elderly relatives or other family. As such, staff's recommendation, below, includes an amendment to the proposed Guest House definition.

A notice of the April 18, 2011 City Council meeting was published in the West Valley View on March 29, 2011.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on March 17, 2011 (Exhibit H), and voted 6-0 to recommend approval of the request subject to the following amendments pertaining to the site plan/design review process:

- Proposed Section 107.G.1.b is moved to 107.G.1.c.
- A new Section 107.G.1.b is created, as follows: "Site plans for properties zoned PAD, shall be forwarded to the Planning Commission for its review and approval. The Development Review Committee shall include a recommendation of approval, approval subject to stipulations, or denial of said site plan."

The discussion at the meeting focused on the proposed amendment to the site plan approval process. Unanimously, Commissioners expressed their interest in maintaining their role in the site plan process for projects zoned PAD. The primary reason provided by the Commission was a responsibility to residents to ensure the community develops appropriately and to be able to influence the design of development, despite the understanding that the Commission's authority during a site plan review is limited to enforcing the zoning that is in place for a particular property. Commission expressed that there could be other ways in which time was saved without removing the Planning Commission from the process.

Commissioner Iwanski was excused from the meeting.

ANALYSIS:

Staff undertook this comprehensive amendment to Section 1 with the following primary goals in mind:

1.**Optimize the Efficiency of Development Processes:** The City's development review processes and procedures have evolved over time. For example, there have been an increasing number of occasions where a site plan approval needed to be extended beyond the initial validity period. The proposed amendment will lay out a procedure and criteria for extending site plan approvals.

Additional examples of processes which have changed, or are proposed to be changed, include:

- Pre-application meetings, which occur before an applicant submits a formal application, have progressed over time from informal meet and greet sessions to formal meetings where applicants are provided written review comments on how to bring a project into conformance with City requirements. The proposed amendment outlines the process for how pre-application meetings are to be managed.

- The City is frequently asked to provide Zoning Interpretations and Zoning Verifications to property owners, banks, and potential buyers. These official letters are used by the people or firms that request them to, secure financing and understand development rights. The current Zoning Ordinance does not set forth any procedures for the processing of these items; the proposed amendment establishes official procedures for Zoning Interpretations and Zoning Verifications.

- The proposed amendment introduces a Design Review Waiver to reduce the financial and time burden on applicants with minor requests.

- A new procedure for Administrative Relief is proposed. This process will authorize the City's Zoning Administrator to allow increases or decreases in Zoning Ordinance development standards, including but not limited to setbacks, lot size, and landscaping requirements. Administrative relief will only be granted if it can be shown that the increase/decrease will not be detrimental to the property for which it is being sought, or for any adjacent properties. The percent of the increase or decrease allowed through this process will range from 10 percent (citywide) to 30 percent (revitalization areas). Any requests to vary standards in excess of the maximum percentages will still require a Variance from the Board of Adjustment.

- Validity periods and extension processes have been clearly defined and, in many cases, extended from what is currently in place.

- Site plan/design review approval for PAD site plans, customarily a function of Planning Commission and City Council, is proposed as an administrative function. As noted at the Council work session on February 7th of this year, administratively approving site plans at the staff level saves the applicant substantial time, (up to four months) and is also an incentive for development, while keeping Avondale competitive with other cities and more specifically the west valley. In addition, the recent amendments to the zoning ordinance such as landscaping and the adoption of the design manuals provides safeguards to the City to ensure high quality development and also provides clear direction to the development community on the City's expectations. Although the Planning Commission recommended to the City Council that they become the approving body for site plans/design review for properties zoned PAD, it is staff's professional opinion that this is a deviation from existing policy, as it expands the authority of the Commission which is currently an advisory body to the City Council and will not further the goals of economic development. Planning Commission's recommendation also differs from recent Council direction provided to staff, namely that all site plans be approved administratively in order to reduce approval times and incentivize development in Avondale. In order to become a more competitive organization and a leader in the west valley it is staff's opinion that allowing for the administrative approval process will make the city more attractive to development by sustantially reducing the process as a result of eliminating Planning Commission and City Council hearings for these items. Due to the Council's previous direction on this issue to return the decision making authority on all site plans (except for City Center) to staff and thereby streamline the process, staff is recommending that the Ordinance be adopted without the Planning Commission's recommended amendments. As such, the Section 1 draft included in your packets has not been modified to reflect Planning Commission's recommendation.

2.**Citizen Review Process:** This amendment proposes minor changes to the Citizen Review Process designed to ensure that the public has ample opportunity to participate in the public hearing process. These changes include items such as the required timing of Neighborhood Meetings, size and design of public notice signs that are to be placed on the property, and the assignment of responsibilities for newspaper advertisements and public notice mailings.

3.**Update Definitions:** As the Zoning Ordinance has been updated throughout the past three years, new terms have been introduced which need to be defined to ensure their meaning and intent are clear. Similarly, over the years zoning interpretations, Planned Area Developments, and policy changes have created new or different meanings for some terms. The proposal expands the number of defined terms in the Zoning Ordinance to ensure that all related policies and regulations are enforced consistently.

The proposed amendment accomplishes the goals that were identified and constitutes an overall improvement to the Avondale Zoning Ordinance.

FINDINGS:

1. The proposed amendment meets the intent of the General Plan.
2. The proposed amendment meets the purpose and intent of the Zoning Ordinance and enabling legislation.
3. The proposed amendment constitutes an overall improvement to the Zoning Ordinance.

RECOMMENDATION:

Staff recommends that the City Council **APPROVE** Application TA-08-6, a City initiative to amend Zoning Ordinance Section 1, **Administration and Procedures,** with affiliated amendments to Zoning Ordinance Sections 2, 5, 8, 9, 11, and 12 and City Code Chapter 19, with one revision:

1. The definition for "Guest House" shall be revised to read: "A building used to house guests of the occupants of the main building, which is not rented or leased separately from the main building."

PROPOSED MOTION:

1. I move that the City Council accept the findings and **ADOPT** the Resolution declaring as a public record the document filed with the City Clerk entitled the "Zondale Zoning Ordinance Administration and Procedures Provisions, Amended and Restated April 18, 2011."
2. I move that the City Council adopt the ordinance amending the City of Avondale Zoning Ordinance Sections 1, 2, 5, 8, 9 11 and 12, and Chapter 19 of the Avondale City Code, relating to modification of Section 1 of the Zoning Ordinance and necessary affilitated changes to other sections and provisions and adopting by reference the document declared a public record by Resolution 2967-411.

ATTACHMENTS:

Click to download

- Exhibit A - Current/Existing Zoning Ordinance Section 1, Administration and Procedures
- Exhibit B - Minutes of City Council Work Session, April 14, 2008
- Exhibit C - Minutes of City Council Work Session, September 14, 2009
- Exhibit D - Minutes of City Council Work Session, November 15, 2010
- Exhibit E - Minutes of City Council Work Session, February 7, 2011
- Exhibit F - Minutes of Planning Commission Work Session, May 15, 2008
- Exhibit G - Minutes of Planning Commission Work Session, April 15, 2010
- Exhibit H - Minutes of Regular Planning Commission Hearing, March 17, 2011
- Exhibit I - Letter from Mike Demlong, dated April 8, 2011
- Zoning Ordinance - Section 1
- Resolution 2967-411

Ordinance 1453-411

PROJECT MANAGER:

Ken Galica, Planner II (623) 333-4019

EXHIBIT A

Section 1

ADMINISTRATION AND PROCEDURES

Sections:

101	**Purpose and applicability.**
102	**Definitions.**
103	**Administrative bodies.**
104	**City codes, plans, and standards.**
105	**Development review procedures.**
106	**Site plan review.**
107	**Reserved.**
108	**Conditional use permits.**
109	**Zoning ordinance amendments.**
110	**Applicant and fees.**
111	**Notification of public hearings.**
112	**Citizen review process.**
113	**Temporary use permits.**
114	**Enforcement.**

101 Purpose and applicability.

A. Title. This ordinance shall be known as "The Zoning Ordinance of the City of Avondale, Arizona."

B. Purpose.

1. In its interpretation and application, the provisions of this ordinance shall be held to the minimum requirements adopted to implement and promote the Comprehensive Plan of the City of Avondale for the protection of its citizens.

2. The purpose of this ordinance is to regulate the use of buildings, structures, and land for residence, agricultural, business, industry, and other purposes; to regulate the location, height, bulk, number of stories, and size of buildings and structures; to regulate the size and use of lots, yards, courts, and other open spaces; the percentage of lot which may be occupied; establishing standards for performance, aesthetics and design; establishing land use classifications and dividing the city into districts; adopting a map of land use districts; creating boards and defining the powers and duties of said boards; establishing procedures for changes of districts, use permits, variances, and other permits; prescribing penalties of violation of said ordinances; and repealing all ordinances in conflict therewith.

Further, such regulations are deemed necessary to lessen congestion in the streets; to provide adequate open space for light and air; to conserve property values; to assure orderly growth; to facilitate the adequate provision of transportation, water, sewer, schools, parks and other improvements; and to promote the public health, safety, and welfare.

3. Amendments of this ordinance shall be in general conformance with any adopted comprehensive or specific plan for the city.

C. Establishment of districts. In order to promote the orderly development of the city and carry out the provisions of this ordinance and in order to classify, regulate, restrict, and separate the use of land, buildings and structures, the City of Avondale is hereby divided into the following districts:

EXHIBIT A

1.	Residential Districts	
	Single Family	Agricultural (Ag)
		R1-35
		R1-15
		R1-8
		R1-6
		R1-5
	Multi-Family	R-2
		R-3
		R-4
	Mobile Home Park	R-5
	Rural Residential	RR-43
2.	Commercial Districts	
	Commercial Office	C-O
	Neighborhood Commercial	C-1
	Community Commercial	C-2
	Major Commercial	C-3
3.	Industrial Districts	
	Commerce Park	CP
	General Industrial	A-1
4.	Planned Area Development District	PAD

D. Location and boundaries of districts. The location and boundaries of use districts are established on a map entitled "The Zoning Map of the City of Avondale, Arizona" adopted by the City Council, which map accompanies and is declared to be a part of this ordinance. Where uncertainties exist with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

1. Where a district boundary line is shown by a specific dimension, such specific dimension shall control.

2. Where a district boundary line is located within or along a street, alley, right-of-way or channelized waterway, the district boundary line shall be deemed to be such street, alley, right-of-way or channelized waterway.

3. Where a district boundary line is shown approximately following lot or property lines, the district property line shall be deemed to coincide with such lot or property lines.

E. Applicability. Except as noted in subsection 101.F., transition rules, these regulations shall govern the development and use of land and structures within the corporate limits of the city. No building, structure, or land shall be developed unless in conformity with all the provisions of these regulations for the zoning district in which it is located and other applicable regulations.

F. Transition rules. In order to ensure the orderly adoption and enforcement of this ordinance, the following transition rules shall govern the applicability of the ordinance.

1. The provisions of this ordinance and any amendments shall not apply to those developments for which a building permit has been issued prior to the adoption of this ordinance, provided said building permit remains in full force and effect. In the event the building permit expires, said permit may not be extended or renewed unless all provisions of this ordinance are met.

2. A parcel of land zoned subject to a plan of development, standards or stipulations prior to the effective date of this ordinance shall be developed in accordance with the approved plan of development, standards or stipulations and shall comply with these regulations to the maximum extent possible. In the event of a conflict between the provisions of these regulations and the approved plan of development, standards or stipulations, the approved plan, standards or stipulations shall control. If the rezoning was subject to a schedule for

development, the time period for which has expired, then the development of that parcel of land shall be subject to all applicable provisions of these regulations.

3. Any uses of land, structures, or parcels which existed on the effective date of this ordinance and which do not meet the standards and regulations of this ordinance, shall be deemed non-conforming and shall be controlled by the provisions of subsection 101.L.

G. Deleted.

H. Uses not listed as permitted uses. Within any zoning district, any unspecified use which is determined by the Zoning Administrator to be more intense than those expressly permitted in the district, or permitted by a conditional use permit, shall be prohibited in that district.

I. Interpretation and enforcement.

1. This ordinance shall be interpreted by the Zoning Administrator, or his/her authorized representative.

2. The enforcing officer of this ordinance shall be the zoning enforcement officer, or his/her authorized representative to enforce the provisions of the ordinance.

J. Reserved.

K. Repeal and severability.

1. All ordinances or parts of ordinances in conflict here with are hereby repealed.

2. Should any section or provision of this ordinance be decided by the courts or be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

L. Non-conforming buildings, uses, and lots.

1. Intent. Within the districts established by this ordinance, or amendments that may later be adopted, there exist buildings, uses, and lots which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated or restricted under the terms of this ordinance or future amendment. It is the intent of this ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival.

2. Non-conforming buildings and structures. Where a building or structure lawfully exists on the effective date of this ordinance, but which could not be built under the terms of this ordinance because of restrictions on area, lot coverage, height, yards, or other requirements of the zone, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

a. A non-conforming building or structure may not be re-constructed or structurally altered during its life to an extent exceeding fifty (50) percent of its replacement value. Any such alteration shall require a conditional use permit.

b. A non-conforming building may be expanded or enlarged to an extent not exceeding twenty-five (25) percent of the building ground floor area existing at the time it became non-conforming, subject to a conditional use permit.

c. No building damaged by fire or other cause to the extent of more than fifty (50) percent of its replacement value shall be repaired or rebuilt except in conformity with the regulations of this ordinance.

d. Normal maintenance and repair may occur to a non-conforming building structure, including repair or replacement of non-bearing walls, fixtures, wiring, plumbing, and other cosmetic improvements, to an extent not exceeding ten (10) percent of the replacement cost of the building or structure over a period of twelve (12) consecutive months and provided the cubic content or square footage area of the building is not increased.

3. Non-conforming uses. Where a use of building or land lawfully exists on the effective date of this ordinance, but which building or land could not be used under the terms of this ordinance because of restrictions on the use of the building or land, such use may be continued subject to the following provisions:

a. A non-conforming use may be expanded or enlarged to an extent not exceeding twenty-five (25) percent of the land area and/or building ground floor area existing at the time it became non-conforming. Such expansion shall require a conditional use permit.

b. Whenever a non-conforming use has been discontinued or abandoned for a period of one (1) year, such use shall not thereafter be re-established and any future uses shall be in conformity with the provisions of this ordinance.

c. Once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use.

4. Non-conforming Lots. Where a legal lot of record or any lot in a final subdivision plat or PAD District approved by the City Council prior to the adoption of this ordinance has an area, width, or depth smaller than the minimum permitted by the zoning district under the terms of this ordinance, the following shall apply:

a. The yard requirements in effect for any legal lot of record or any lot in a final subdivision plat for PAD District approved prior to the adoption of this ordinance are authorized for such lots in lieu of those prescribed by this ordinance.

b. A single-family dwelling may be erected on a non-conforming lot in districts permitting such uses. Variance of side yard requirements, if required, shall be obtained through action of the Board of Adjustment.

c. A duplex or a multi-family dwelling may be erected on a non-conforming lot as described above, in districts permitting such uses, even though the lot has an area, width, or depth smaller than the minimum lot prescribed by this ordinance, provided that this section shall not authorize an increase in the number of dwelling units based on the area of the lot. If a final development plan in a PAD District or a subdivision for a multi-family or duplex project has been approved and recorded prior to the effective date of this ordinance, the number of dwelling units shown on the plat will be permitted even if greater than that authorized by this ordinance. (Ord. No. 1154-05, § 1, 11-21-05)

102 Definitions.

For the purpose of this ordinance, certain terms and words are hereby defined as follows: Words used in the present tense include the future; words in the masculine gender include the feminine and the neuter, and the singular number includes the plural, and the plural the singular; the word "shall" is mandatory and not permissive; the word "person" includes individuals, partnerships, corporations, clubs, or associations. The following words or terms, when applied in this ordinance, shall carry full force when used interchangeably: lot, plot, parcel, premises, or site; used, arranged, occupied, or maintained; sold or dispensed; construct, reconstruct, erect, alter (structurally or otherwise) but not the term maintenance. The word "used" shall be deemed also to include designed, intended or arranged to be used. Board shall mean Board of Adjustment; commission shall mean Planning Commission; council shall mean City Council.

"Accessory building:" A detached subordinate building containing an accessory use and situated on the same lot as the main building. (See Section 7 for information on accessory buildings in residential districts).

"Accessory use:" An "accessory use" is either a subordinate use of a building, other structure, or tract of land:

A. Whose use is clearly incidental and customary to the use of the principal building, or other structure or use of land, and;

B. Which is located on the same zoned lot with the principal building, other structure or use of land, and which is not a use specifically permitted in a less restricted district.

"Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas." Having a substantial portion of its stock in trade, books, magazines and other periodicals depicting, describing or relating to "specified sexual

activities" or which are characterized by their emphasis on matter depicting, describing, or relating to "specified anatomical areas", or

"Adult bookstore, adult novelty store or adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

B. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

A. Persons who appear in a state of nudity or semi-nude; or

B. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

C. Films, motion pictures, video cassettes, slides, or other photographic reproductions, which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult motel" means a hotel, motel or similar commercial establishment which:

A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

B. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

C. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.

"Adult motion picture theater" mans a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

"Alley:" A dedicated right-of-way other than a street.

"Apartment house:" Any building, or portion thereof, which is designed, built, rented, leased, let or hired out to be occupied as the residence of three (3) or more families living independently of each other and doing their own cooking in the said building.

"Apiary:" A structure where bees are kept.

"Automobile, boat, truck and trailer sales lot:" An open area used for the display, sales and/or rental of new or used automobiles, boats, trucks and trailers but where no repair repainting or remodeling is performed.

"Automobile wrecking:" The wrecking or dismantling of used motor vehicles or trailers, or the storage of, sale of, or dumping of dismantled, partly dismantled, obsolete or wrecked motor vehicles or their parts.

"Aviary:" A large enclosure for confining birds and fowl.

"Bar:" An establishment, including but not limited to a cocktail lounge, discotheque, nightclub, or tavern, the main use of which is to serve spirituous liquors for on-site consumption. Such facility may serve food, as well as, provide dancing and entertainment.

"Bed and breakfast inn:" A private residence which provides lodging and meals for guests in which (i) the host or hostess resides in the principal residence, (ii) no more than four (4) guest rooms are used for lodging at the same time and (iii) may advertise and accept reservations, but shall not hold itself out to the public to be a restaurant, hotel or motel. A bed and breakfast inn shall serve food and spirited beverages only to overnight guests. Any dwelling in which more than four (4) guest rooms are provided shall be deemed a hotel/motel.

"Block:" That property abutting one side of a street and lying between the two nearest intersecting streets, or nearest intersecting street and railroad right-of-way, unsubdivided land, waterways, but not an alley, of such size as to interrupt the continuity of development on both sides thereof.

"Boarding house:" A dwelling in which three (3), four (4), or five (5) rooms are occupied as guest rooms and in which food may be served to the occupants thereof. Any dwelling in which more than five (5) rooms are occupied as guest rooms shall be deemed to be a hotel. A boarding house shall not include buildings for persons requiring physical or mental care by reason of age, infirmity, or disease.

"Building:" Any structure, either temporary or permanent, having a roof and used or built for the shelter and enclosure of persons, animals, chattels, or property of any kind. This shall include tents, awnings, or vehicles situated on private property and used for purposes of a building.

"Building addition:" Any extension or increase in floor area or height of a structure.

"Building, closed:" A structure completely enclosed by a roof and walls of approved construction.

"Building coverage:" That portion of a lot occupied by any building or structure, including those buildings or structures not intended for human occupancy, calculated by dividing the total building ground floor area by the net site area. Open carports within parking lots in multi-family, commercial, and industrial districts shall not count toward the building coverage calculation.

"Building ground floor area:" The total area of the largest floor under roof, measured from the exterior faces of exterior walls, and not including the sum of the several floors of a multi-story building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

"Building height:" The vertical distance measured from the natural grade level to the highest level of the roof surface of flat roofs, to the deck line of mansard roofs or to the mean height between eaves and ridge for gable, gambrel or hip roofs.

"Building, main:" A building, or buildings, in which is conducted the principal use of the lot on which it is situated. In any residential district, any dwelling shall be deemed to be the main building of the lot on which the same is situated.

"Carport:" A permanent roofed structure with not more than two (2) enclosed sides used or intended to be used for automobile shelter and storage.

"Child care:" The care, supervision, and guidance of children, unaccompanied by the parent, guardian, or custodian, on a regular basis for less than twenty-four (24) hours per day, in a place other than the child's own home.

"Child care center:" Any building or portion thereof used primarily for child care for compensation including nursery schools, preschools, and day care centers.

"Church:" A permanently located building wherein persons regularly assemble for religious worship

and which is maintained and controlled by a religious body to sustain public worship, and church-related uses.

"Clinic:" A building in which one (1) or more physicians work including supplying pharmaceutical and optical needs, conducting medical tests, or other common ancillary uses to a medial office, without overnight patient occupancy.

"Club:" An association of persons (whether or not incorporated), religious or otherwise, for social purpose, but not including groups which are organized primarily to render a service carried on as a business for profit.

"Conditional use permit:" A permit granted to a property owner or leasee on a conditional basis to conduct a use allowed in a zoning district subject to certain requirements (refer to Section 108).

"Condominium:" An estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in air space.

"Consignment shop" means a retail establishment where previously-owned merchandise, such as clothing, jewelry or furniture is consigned to a dealer who collects a fee and pays the seller after the merchandise is sold, but shall not include stores selling consigned vehicles, auto parts, scrap or waste. Consignment shops are distinct from thrift stores, pawn shops and non-consignment second-hand retail stores.

"Contiguous:" In contact with.

"Corral:" A fenced area or enclosure intended for the confinement of livestock for feeding, shelter, or other purposes, not to be confused with a pasture used for the grazing of livestock.

"Court:" A space, other than a yard which is open and unobstructed to the sky, and located on the same lot with a building or group of buildings which bound it on two (2) or more sides and face each other. The width of a court shall be its least horizontal dimension.

"Day labor hiring center:" A for-profit or non-profit facility at which job seekers congregate to be hired by the day or by the job for short periods of time by third parties. Job seekers must be present to receive and accept a job offer or be transported to a job site, and typically return to the facility for payment. Related support services may be offered to job seekers while they wait onsite.

"Density:" The ratio of dwelling units per acre. In the Single-Family Districts, the density shall be based on gross site area of land to be developed, including land dedications at no cost for proposed streets, alleys, or other right-of-ways, but excluding lands dedicated prior to development. In the Multi-Family Districts, density shall be based on net site area. (see "site area").

"Dwelling:" An enclosed space providing complete, independent living facilities for a family including permanent provisions for living, sleeping, eating, cooking and sanitation.

"Employee" means, with respect to Section 10 below only, a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

"Employment agency:" A business that charges a fee for providing information and placement services to candidates seeking employment and/or clients looking for qualified candidates. Candidates register with the agency, but do not wait on-site or at a central location for full time, part time, or temporary assignments. Vocational guidance, employment counseling, resume writing, executive recruitment, payroll processing, and similar personnel services may also be offered.

"Entertainment:" An engaging or diverting presentation of, or participation in, including but not limited to, live singing, dancing, musical instrumentation, dramatic, prosaic, or poetic activities, but excluding adult live entertainment.

"Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date

for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

"Escort agency" means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Establishment" means and includes, with respect to Section 10 below only, any of the following:

A. The opening or commencement of any sexually oriented business as a new business;

B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

C. The additions of any sexually oriented business to any other existing sexually oriented business; or the relocation of any sexually oriented business.

D. The relocation of any sexually oriented business.

"Family:" A family is:

A. An individual or two (2) or more persons related by blood, marriage, or adoption and usual servants, living together as a single housekeeping unit in a dwelling unit, or

B. Not more than three (3) persons, who need not be related, living together as a single, housekeeping unit within a dwelling.

"Farm laborer's quarters:" A building used to house laborers employed by the occupants of the main building on a farm and which shall not be rented or leased separate from the main building and the main use of the land.

"Fowl:" Any of various birds related to the common domesticated chicken or a bird, such as the turkey, hen, or pheasant that is used for food or the production thereof.

"Garage, private:" A building, or portion thereof, in which only motor vehicles used by the tenants of the building, or buildings on the premises are stored or kept.

"Garage, public:" A building, other than a private garage, designed or used for servicing, repairing, or storing motor vehicles for compensation.

"Grade:" The top of curb, or top of crown of a street where no curb exists, as established at the midpoint of the front of the lot used for establishing building heights.

"Group recovery home:" A residential facility which provides residence and treatment for two (2) or more persons who are in the process of recovery and adjustment from alcoholism, mental health afflictions, or drug abuse. Such homes may also include residential services for the mentally and physically handicapped.

"Group home for the handicapped:" A dwelling shared by up to ten (10) handicapped persons who reside together as a single housekeeping unit and who receive care, supervision or counseling from one (1) or more support staff. This use includes assisted living homes, homes for the mentally ill, group care agencies and similar living arrangements for the handicapped. It does not include boarding houses, nursing homes, shelter care facilities, community correctional facilities, alcoholism and drug abuse treatment centers or other uses that are not subject to the Federal Fair Housing Act and the Arizona Fair Housing Act.

"Guest house:" A building used to house guests of the occupants of the main building, and which shall not be rented or leased, separate from the main building nor contain cooking facilities.

"Handicapped:" A person who: 1) has a physical or mental impairment that substantially limits one (1) or more major life activities to the extent that the person is incapable of living independently; 2) has a record of having such impairment; or 3) is regarded as having such impairment. This does not include a person who is illegally using or addicted to a controlled substance as defined in Section 102 of the Controlled Substance Act [21 United States Code 802].

"Home child care:" Any dwelling in which child care is provided with or without compensation as an accessory use.

"Home occupation:" An occupation or a profession customarily carried on in a dwelling unit or attached building by members of the family residing in the dwelling. The use must be clearly incidental

and secondary to the use of the dwelling for residential purposes and shall not include, among others, occupations such as beauty and barbershops, real estate offices, restaurants, kennels, commercial stables, and similar uses. Refer to subsection 202.E. for all regulations and conditions.

"Horse ranch:" A facility in which the breeding and raising of horses for sale is conducted.

"Hotel:" A building, other than a boarding house as defined herein, which contains more than five (5) guest rooms.

"Junk yard:" The use of any lot, whether inside or outside a building, for the dismantling or wrecking of automobiles or other motor vehicles or machinery, or for the storage or keeping for sale of parts and equipment resulting from such dismantling or wrecking, or for the storage or keeping junk, including scrap metals or other scrap materials.

"Kennel:" Any establishment at which dogs and cats are bred or raised for sale, or boarded, cared for, commercially, exclusive of dental, medical or surgical care.

"Laboratory:" A building, or portion thereof, used or intended to be used for experimentation, observation, testing or analysis.

"Licensee" means, with respect to Section 10 below only, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

"Livestock:" Cattle, horses, sheep, goats, and similar animals excluding swine.

"Lot:" A parcel of land, or two (2) or more contiguous parcels to be used as a unit under the provisions of this ordinance, as shown in the records of the Maricopa County Recorder's Office, and having its principal frontage on a street. In any district where a half-street has been dedicated not less than twenty-five (25) feet in width, lots facing on such half-street shall be deemed to have frontage on a street.

A. Corner lot: A lot located at the intersection of two (2) or more streets. A corner lot shall be considered to be in that block in which the lot fronts.

B. Interior lot: A lot having but one (1) side on a street.

C. Key lot: An interior lot, one side of which is contiguous to the rear line of a corner lot.

D. Through lot: A lot abutting two (2) parallel or approximately parallel streets.

"Lot line:"

A. Front: The property line of a lot shall be determined as follows:

1. Corner lot: The front property line of a corner lot shall be the shorter of the two (2) lines adjacent to the streets. Where the lines are equal, the frontline shall be that line which is obviously the front by reason of the prevailing custom of the other buildings in the block. If such front is not evident, then either may be considered the front of the lot but not both.

2. Interior lot: The front property line of an interior lot shall be the line bounding the street frontage.

3. Through lot: The front property line of a through lot shall be that line which is obviously the front by reason of the prevailing custom of the other buildings in the block. Where such front property line is not obviously evident, the Board of Adjustment shall determine the front property line. Such a lot over two hundred (200) feet deep may be considered, for the purposes of this definition, as two (2) lots each with its own frontage.

B. Rear: The rear property line of a lot is that lot line opposite to the front property line. Where the side property lines of a lot meet in a point, the rear property line shall be assumed to be a line of not less than ten (10) feet long, lying within the lot and parallel to the front property line. In the event that the property line is a curved line, then the rear property line shall be assumed to be a line not less

than ten (10) feet long, lying within the lot and parallel to a line tangent to the front property line at its midpoint.

C. Side: The side property lines of a lot are those lot lines connecting the front and rear property lines of a lot.

"Lot lengths:" The length (or depth) of a lot shall be determined as follows:

A. If the front and rear lines are parallel, the shortest distance between such lines.

B. If the front and rear lines are not parallel, the shortest distance between the midpoint of the front lot line and the midpoint of the rear lot line.

C. If the side lot lines are not parallel, the shortest distance between the front lot line and a line parallel to the front lot line, not less than ten (10) feet long lying wholly within the lot.

"Lot width:" The width of a lot shall be determined as follows:

A. If the side property lines are parallel, the shortest distance between these sidelines.

B. If the side property lines are not parallel, the width of a lot shall be the length of a line at right angles to the axis of the lot at a distance equal to the front setback required for the district in which the lot is located. The axis of a lot shall be a line joining the midpoints of the front and rear property lines.

"Maintenance:" The replacing of a part or parts of a building, which have been made unusable by ordinary wear or tear, or by the weather.

"Mobile home:" Any vehicle designed for human habitation and built on a chassis designed for being drawn upon the highways by a motor vehicle, and which is in excess of eight (8) feet in width or forty (40) feet in length, or which is, regardless of size, used as a place of residence or for a commercial purpose.

"Mobile home park:" A development providing retail spaces for occupancy by mobile homes together with certain accessory buildings and uses provided for the benefit and enjoyment of the residents of the park. Such mobile homes parks shall conform to requirements of Section 204, R-5 District.

"Mobile home subdivision:" A subdivision of land for mobile home units where the lots are owned by the mobile home owner, permitted in the Single-Family Districts as a conditional use (see subsections 202.C. and F.).

"Motor vehicle:" Any vehicle, which is self-propelled.

"Multi-family building:" See "apartment building".

"Motel:" Same as hotel.

"Non-chartered financial services:" A business, other than a state or federally chartered bank, credit union, mortgage lender or savings and loan association, that offers check cashing services and loans for payment of a percentage fee. Specifically included are check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument and loan businesses that make loans upon assignments of wages to be received.

"Non-conforming buildings and uses:" See subsection 101.L.

"Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the state of Arizona or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation, or in a structure:

A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

B. Where in order to participate in a class a student must enroll at least three days in advance of the class; and

C. Where no more than one nude or semi-nude model is on the premises at any one time.

"Nudity or a state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

"Nursing home:" Premises used for the housing of and caring for the ambulatory, aged or infirm. There shall be only incidental convalescent care not involving either trained nurses or physicians residing on the premises. There shall be no surgery, physical therapy or other similar activities, such as is customarily provided in sanitariums and hospitals.

"Office:" A place where a particular kind of business is transacted or a service is supplied, excluding retailing, according to the following:

A. A place in which functions, such as consulting, recordkeeping, or clerical work are performed, or

B. A place in which a professional occupation is performed.

"Parking lot:" A parcel of land in which members of the general public may park their motor vehicles for the purpose of utilizing and adjacent use or facility. (For further information on standards and requirements, see Section 8, off-street parking).

"Parking lot, commercial:" A parcel of land upon which members of the general public may park a motor vehicle by paying a charge or fee for said usage to the owner or his agent.

"Patio home:" An attached or detached single-family dwelling constructed with no side yard on one (1) or more sides of the lot.

"Pawn shop" means an establishment where money is loaned on security of personal property left in pawn and pledged as collateral, and where the pledged property may be sold to the public if not redeemed by the pledgor within a fixed amount of time.

"Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Pet boarding and day care facility: A commercial establishment where domestic pets are temporarily housed within separate indoor units. This does not include the breeding, raising, or sale of animals. Pet grooming, training, veterinary care, or the sale of pet products may occur as accessory uses.

"Pool hall:" An establishment containing four (4) or more pool and/or billiard tables and which may indulge in the sale of alcoholic beverages, as well as, the operation of equipment commonly found in an arcade.

"Property line;" Same as "lot line".

"Recreational vehicle:" A vehicular type unit eight (8) feet or less in width and forty (40) feet or less in length primarily designed as a temporary living quarters for recreational camping or travel use and is not designed for permanent residential or commercial purposes which either has its own motive power or is mounted on or drawn by another vehicle, including travel trailers.

"Recreation vehicle park:" Any lot, tract, or parcel of land used or offered for use in whole or in part for the rental of sites for the parking of three (3) or more recreation vehicles, but not including mobile home parks or subdivisions (See subsection 305.B.)

"Resort:" A group or groups of buildings containing more than five (5) dwelling units and/or guest rooms and providing outdoor recreational activities which may include golf, horseback riding, swimming, shuffleboard, tennis and similar activities. A resort may furnish services customarily furnished by a hotel, including a restaurant, cocktail lounge and convention facilities.

"Restaurant:" An establishment selling prepared food and drink for consumption on the premises but not providing dancing or entertainment unless approved by the granting of a conditional use permit.

"Restaurant, drive-in:" A building or structure where prepared food and drink are sold for consumption on the premises by order from and service to vehicular passengers outside the structure.

"Restaurant, drive-through:" A building or structure where prepared food and drink are sold for consumption within the interior of the building,

EXHIBIT A

within exterior dining areas, or off the premises by order from vehicular passengers outside the structure.

"Retail:" The business of selling personal property directly to the ultimate consumer for any purpose other than for resale.

"Roof:" A continuous solid sheathing cover on a structure, which provides protection from rain, wind, sun, or other natural elements.

"Rooming house:" Same as "boarding house".

"School:" An institution of learning which offers instruction through grade twelve (12) in the several branches of learning and study required to be taught in the public schools and which is licensed by the Arizona Department of Education. It does not include business colleges, nursery schools, dancing schools, riding academies or specialized trade or vocational schools.

"Semi-nude or in a semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

"Service:" Useful labor that does not produce a tangible commodity.

"Service station:" A place of business having pumps and/or storage tanks from which liquid fuel or propane and/or lubricants are dispensed at retail into a motor vehicle or an approved container. Sales and installation of auto accessories, washing, polishing, inspections, and cleaning may be carried on incidental to the sale of such fuel and lubricants, but excluding body and fender work, engine overhauling and similar activities.

"Setback:" The least horizontal distance between a building, structure, wall, property line or any combination thereof.

"Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

"Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

"Sign:" Any identification, illustration, description, symbol, or device which is affixed directly or indirectly upon a building, vehicle, structure, or land and which identifies or directs attention to a product, place, activity, person, institution or business (see Section 9, sign ordinance).

"Site area, gross:" The total ground area purchased by the present owner, including any proposed portions to be dedicated for public use as streets, alleys, easements, or other.

"Site area, net:" The remaining ground area of the gross site area after deleting all portions for proposed perimeter right-of-ways and alleys.

"Site plan:" A plan prepared to scale showing all the uses proposed for a specific property. The plan shall show all buildings, structures, signs, off-street parking layout, loading spaces, points of ingress and egress, fences, walks, refuse locations, and any additional information which may be necessary to clearly define the intended use of the property.

"Specified anatomical areas" means:

A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

B. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

"Specified criminal activity" means any of the following offenses:

A. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

B. For which:

1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

C. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

"Specified sexual activities" means any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

C. Excretory functions as part of or in connection with any of the activities set forth in subsections A. and B. above.

"Story:" A space in a building between the surface of any floor and the surface of the floor next above, or if there be no floor above, then the space between such floor and the ceiling or roof above.

"Street:" A public thoroughfare or right-of-way dedicated, deeded or condemned for use as such, other than an alley, which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare.

"Structure:" Any piece of work artificially built up or composed of parts joined together in some definite manner.

"Subdivision:" Land divided into four (4) or more lots, tracts or parcels of land, or, if a new street is involved, any such property which is divided into two (2) or more lots, tracts, or parcels of land, or any such property, the boundaries of which have been fixed by a recorded plat, which is divided into more than two (2) parts. "Subdivision" also includes any condominium, cooperative, community apartment, townhouse or similar project containing four (4) or more parcels, in which an undivided interest in the land is coupled with the right of exclusive occupancy of any unit located thereon.

"Substantial enlargement of a sexually oriented business" means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on the date Section 10 of this ordinance takes effect.

"Thrift store" means a retail store that specializes in the sale of previously-owned and/or used goods and merchandise that has been donated. Thrift stores are distinct from consignment shops, pawn shops and non-consignment secondhand retail stores.

"Townhouse:" An estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a separate interest in a subdivided lot.

"Trailer:" Any towed vehicle.

"Transfer of ownership or control of a sexually oriented business" means and includes any of the following:

A. The sale, lease, or sublease of the business;

B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

"Travel trailer:" See "recreational vehicle"

"Truck stop:" A service station primarily oriented to servicing of trucks and tractor trailers and which may include restaurants, retail activities, and truck repair services.

"Variance:" A license, granted by the Board of Adjustment to deviate from a regulation of the city zoning ordinance. Refer to subsection 107.C. for regulations and procedures.

"Video arcade:" An establishment having six (6) or more coin operated devices for the amusement of its patrons.

"Warehousing:" The storage of goods of any type without retailing operations on a parcel or within a structure.

"Wholesaling:" The selling of goods or merchandise to retailers or jobbers for resale to the ultimate consumer.

"Yard:" A required space on a lot other than a court, which is open and unobstructed to the sky (except as otherwise provided herein), and which is measured from a property line inward to the required setback specified herein for each zoning district. Such required yards shall be measured across the full width or across the full depth of a lot as appropriate.

A. Front yard: A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.

B. Rear yard: A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.

C. Side yard: That portion of a lot lying between the side line of the lot and a line drawn through the nearest point of a principal building extending from the front yard to the rear yard, or in the absence of either of said yards from the front to the rear lot lines respectively. (Ord. No. 1134-05, § 1, 8-15-05; Ord. No. 1133-05, § 1, 12-19-05; Ord. No. 1203-906, § 1, 9-18-06; Ord. No. 1211-1106, § 1, 11-20-06; Ord. No. 1214-1106, § 1, 11-20-06; Ord. No. 1241-107, § 1, 1-2-07)

103 Administrative bodies.

A. City Council. In addition to its other powers and duties granted by state law or municipal ordinance, the council has certain powers and duties under the provisions of this ordinance, including the following:

1. To approve, deny or approve with modifications requests for amendments to the text and map of the zoning ordinance in accordance with Section 109.

2. To approve, conditionally approve, or deny requests for conditional use permits in accordance with Section 108 of this ordinance.

3. To consider appeals from the Site Plan Review process in accordance with Section 106.

4. To hold public hearings on the matters above to allow interested parties and citizens an opportunity to be heard.

5. To initiate amendments to the text or map of the zoning ordinance as may be necessary for proper administration of the ordinance.

The City Council shall not have the power to hear and decide questions of interpretation and enforcement of the ordinance which may arise.

B. Planning Commission.

1. Creation. The Planning Commission of the City of Avondale is created by part II, chapter 19 of the Avondale City Code. The commission consists of seven (7) members appointed by the City Council who serve for three-year staggered terms. Any vacancy is filled by the council for the unexpired term. Members serve without compensation.

2. Powers and duties. The Planning Commission has the following duties:

a. To formulate, create and administer any lawful plan duly adopted by the City Council for the present and future growth of the city, pertaining to the use of land and buildings for any purpose,

EXHIBIT A

together with all incidental activities usually associated therewith and commonly known as "planning" and "zoning";

b. To make or cause to be made a continuous study of the best present and future use to which land and buildings shall be put within the city;

c. To cooperate with adjacent areas to recommend to the City Council revisions in such plans which, in the opinion of the commission, are for the best interest of the citizens of the city;

d. To promulgate rules of procedure and to supervise the enforcement of rules so promulgated by the commission and approved by the council; and

e. To advise the council in all such matters that may pertain to planning and zoning.

3. Organization. The commission selects a chairman and vice-chairman from among its members and keeps minutes of all meetings, recording the votes of its members and official actions taken. All meetings are open to the public and noticed in accordance with the provisions of this ordinance and in accordance with state law. Records and files are open to the public. The city planner or other representative shall serve as secretary to the commission.

4. Quorum and Voting. Four (4) members shall constitute a quorum. The affirmative vote of four members is necessary to recommend approval of any matter before the commission.

C. Board of Adjustment.

1. Board establishment and organization.

a. Creation: The Board of Adjustment of the City of Avondale is hereby established.

b. Appointment: The City Council shall appoint seven (7) members to the Board of Adjustment. Said members shall be residents of the City of Avondale.

c. Terms of office:

1. The normal terms of office of the board shall be three-year terms, with the terms of the members so staggered that the terms of no more than three (3) members shall expire in any one (1) calendar year, unless sooner removed by City Council. In no event shall a member serve for more than two (2) consecutive terms.

2. Notwithstanding subsection 103 C.1.c.1. above, the term of all members shall extend until their successors are appointed by the City Council. The council shall fill any vacancy for the remainder of the term.

[The next page is 363]

103 Administrative bodies.

A. City Council. In addition to its other powers and duties granted by state law or municipal ordinance, the council has certain powers and duties under the provisions of this ordinance, including the following:

1. To approve, deny or approve with modifications requests for amendments to the text and map of the zoning ordinance in accordance with Section 109.

2. To approve, conditionally approve, or deny requests for conditional use permits in accordance with Section 108 of this ordinance.

3. To consider appeals from the Site Plan Review process in accordance with Section 106.

4. To hold public hearings on the matters above to allow interested parties and citizens an opportunity to be heard.

5. To initiate amendments to the text or map of the zoning ordinance as may be necessary for proper administration of the ordinance.

The City Council shall not have the power to hear and decide questions of interpretation and enforcement of the ordinance which may arise.

B. Planning Commission.

1. Creation. The Planning Commission of the City of Avondale is created by part II, chapter 19 of the Avondale City Code. The commission consists of seven (7) members appointed by the City Council who serve for three-year staggered terms. Any vacancy is filled by the council for the unexpired term. Members serve without compensation.

2. Powers and duties. The Planning Commission has the following duties:

a. To formulate, create and administer any lawful plan duly adopted by the City Council for the present and future growth of the city, pertaining to the use of land and buildings for any purpose, together with all incidental activities usually associated therewith and commonly known as "planning" and "zoning";

b. To make or cause to be made a continuous study of the best present and future use to which land and buildings shall be put within the city;

c. To cooperate with adjacent areas to recommend to the City Council revisions in such plans which, in the opinion of the commission, are for the best interest of the citizens of the city;

d. To promulgate rules of procedure and to supervise the enforcement of rules so promulgated by the commission and approved by the council; and

e. To advise the council in all such matters that may pertain to planning and zoning.

3. Organization. The commission selects a chairman and vice-chairman from among its members and keeps minutes of all meetings, recording the votes of its members and official actions taken. All meetings are open to the public and noticed in accordance with the provisions of this ordinance and in accordance with state law. Records and files are open to the public. The city planner or other representative shall serve as secretary to the commission.

4. Quorum and Voting. Four (4) members shall constitute a quorum. The affirmative vote of four members is necessary to recommend approval of any matter before the commission.

C. Board of Adjustment.

1. Board establishment and organization.

a. Creation: The Board of Adjustment of the City of Avondale is hereby established.

b. Appointment: The City Council shall appoint seven (7) members to the Board of Adjustment. Said members shall be residents of the City of Avondale.

c. Terms of office:

1. The normal terms of office of the board shall be three-year terms, with the terms of the members so staggered that the terms of no more than three (3) members shall expire in any one (1) calendar year, unless sooner removed by City Council. In no event shall a member serve for more than two (2) consecutive terms.

2. Notwithstanding subsection 103 C.1.c.1. above, the term of all members shall extend until their successors are appointed by the City Council. The council shall fill any vacancy for the remainder of the term.

3. Members shall serve without compensation.

4. The initial appointments of the members shall be: two (2) members for one (1) year, two (2) members for two (2) years and three (3) members for three (3) years.

d. Removal for cause: The City Council may remove any member of the board for inefficiency, absenteeism, neglect of duty or malfeasance in office without board consideration and/or consent. The City Council shall file a written statement for the public record of the reason(s) for removal.

e. Absences to terminate membership:

1. If any member shall be absent from more than three (3) consecutive regular meetings or four (4) regular meetings in a calendar year, without the majority consent of the board, duly recorded in the minutes of the meeting missed by the Board member, shall thereupon cease to hold office.

2. For the purposes of this section, "absent" shall mean that the board member was not physically present, for at least seventy-five (75) percent of the time the meeting was in session.

2. Officers, meetings, rules and records.

a. Officers: The board shall annually elect, by majority vote of its members, a chair and vice-chair. In the absence of the chair, the vice-chair shall fill the role of the chair. In the event that the chair and vice-chair are absent, the board member with seniority shall fill the role of chair.

b. Meetings: Regular meetings shall be held as called by the chair. A quorum shall consist of four (4) members. The concurring vote of a majority of the board shall be necessary for all business.

c. Records: The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions.

3. Powers and duties of the board. The Board of Adjustment shall have the powers and duties as set forth in § 9-452.06.A., A.R.S. as amended.

4. Board of Adjustment decisions.

a. Processing procedures:

1. Any appeal of a decision or interpretation of the zoning administrator and any variance shall be reviewed by the board. A notice of appeal of an administrative decision or interpretation from a final decision by the zoning administrator shall be submitted to the board within fifteen (15) days from the date of the decision.

2. The board shall conduct a hearing on the appeal pursuant to the procedures established in § 9-462.06.A, A.R.S., as amended. The board shall convene for a hearing within thirty (30) days of the acceptance of the application by the development services director or authorized designee.

b. Approval criteria:

1. Appeal of decision: In an appeal to the board regarding an administrative decision or interpretation, the board's scope of review shall be limited to determining whether the decision or interpretation by the zoning administrator was in accordance with the intent and requirements of this ordinance. The board shall affirm or reverse the decision of the zoning administrator.

2. Variances: A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the hardship criteria established in § 9-462.06.G.2, A.R.S., as amended. Pursuant to § 9-462.06.H, A.R.S., as amended, no use variance or variance based upon self-imposed hardship shall be granted.

3. Validity limit: Based upon the decision of the board, the applicant may continue with development applications providing that a building permit be granted within one (1) year of the board's decision. If a building permit based upon the board's decision has not been granted within one (1) year of the decision of the board, such approval shall be null and void.

4. Appeals of board decisions: Any appeal from any decision rendered by the board shall conform to the criteria and process as established in § 9-462.06.G.2, A.R.S., as amended. Said appeal shall be filed within thirty (30) days after the board has rendered its decision.

D. Zoning administrator.

1. Creation. The office of the Zoning Administrator of the City of Avondale is hereby created with the responsibility of interpretation and enforcement of the ordinance. The zoning administrator shall be

EXHIBIT A

designated by the city manager. The enforcement of the ordinance, in the first instance, shall be the duty of the city building official or his authorized representative.

2. Powers and duties. The zoning administrator shall:

a. Interpret the ordinance, including but not limited to, clarification of intention, determination of unspecified land use, determination of zoning district boundaries, and similar matters.

b. Accomplish administrative actions, including giving notice of meetings, preparation of reports, processing appeals, providing advice to variance applicants and similar matters.

c. Serve as secretary to the Board of Adjustment.

d. Undertake similar duties as may arise from time to time in the enforcement and interpretations of the zoning ordinance.

E. Planning Department. The City of Avondale Planning Department shall, in addition to its other duties, provide support in the enforcement and administration of this ordinance, including but not limited to the following:

1. Provide recommendations on the conformance of zoning text and map amendments to the city comprehensive plan;

2. Provide review of project development plans submitted as part of zoning map amendments to assure conformance with city policies and standards;

3. Provide review of site plans to assure conformance with city policies and standards (see section 106);

4. Provide advice to applicants requesting zoning map or text amendments;

5. Conduct other administrative duties as may be required to assist the zoning administrator in the fulfillment of duties.

104 City codes, plans and standards.

A. Related documents. Nothing in this ordinance is intended to be in conflict with other codes and standards adopted by the city to regulate the use and development of property. This section hereby notifies the general public that all new buildings, uses, and development shall comply with the following additional codes and regulations and others which may be adopted in the future by the city.

1. The City of Avondale Comprehensive Plan.
2. Uniform Building Code.
3. Uniform Mechanical Code.
4. Uniform Plumbing Code.
5. National Electrical Code.
6. Uniform Fire Code.
7. Uniform Housing Code.
8. Uniform Code for Abatement of Dangerous Buildings.
9. One and Two Family Dwelling Code.
10. Regulations on Drainage and Flood Control as contained in the Avondale City Code part II, chapter 8.
11. Maricopa Association of Governments Specifications.
12. Arizona Department of Water Resources Conservation Regulations.
13. Floodplain Regulations as Adopted by Maricopa County.
14. Subdivision Regulations of the State of Arizona and the City of Avondale (part II, chapter 22 of City Code).
15. City Code of Avondale.

B. Comprehensive plan. It is the intent of the city that zoning ordinance text, map and amendments be consistent with and in general conformance to the adopted Comprehensive Plan of the City of Avondale and any specific area plans which may be adopted.

105 Development review procedures.

A. Building permit required. No building or other structure, unless excepted by the Uniform Building Code, shall be erected, moved, added to, or structurally altered without a building permit issued by the city. No building permit shall be issued except in conformity with the provisions of this ordinance, which may require approval of an appeal or variance, a text or map amendment, conditional use permit, or site plan.

B. Pre-application conference. Prior to submittal of an application for any of the development review procedures outlined herein, a preapplication conference with the Building and/or Planning Department is required to become familiar with the requirements of this ordinance and city procedures.

106 Site plan review.

A. Applicability. Prior to or concurrent with the application for a building permit for any building or use in any multifamily, commercial, or industrial district or a planned area development, a site plan shall be submitted for review and approval by the Planning Department. This requirement shall apply to:

1. All new buildings and uses of land constructed or developed after the effective date of this ordinance.

2. Existing properties when a change in the distinguishing characteristics or primary features of the use of a building or land occurs after the effective date of this ordinance. Such changes may include an increase in the size of the building or use or remodeling of an existing building. Criteria used to establish applicability may include, but is not limited to, an increase in parking requirements, a change in occupancy designation, a change in outside storage, or other similar factors.

B. Application. The site plan shall show the proposed location of buildings, parking areas, loading and refuse areas, landscaping, drives, dimensions of improvements, drainage, typical elevations of buildings, and all other improvements. The site plan shall be submitted in accordance with procedures and requirements established by the Planning Department. The department may request additional information concerning the property or waive items not necessary for the project.

C. Procedures.

1. The Planning Department shall refer the site plan to the site plan committee to determine compliance with this ordinance. The committee shall be comprised of the building official, city planner, public works director, fire chief and any other personnel designated by the city manager. The city planner shall serve as secretary to the committee.

2. The site plan review committee shall have the authority to request modifications to the site plan and may approve conditions consistent with this ordinance deemed necessary to protect the public health, safety, and welfare. A building permit shall only be issued for the project after approval of the site plan by the committee.

3. All buildings, parking areas, landscaping and other improvements shall be constructed and installed in accordance with the approved site plan prior to issuance of a certificate of occupancy for the building or use.

4. An approved site plan shall be valid for a period of one (1) year.

D. Appeals. An appeal of the site plan review committee's decision may be made within fifteen (15) days of the said decision. The appeal shall be submitted to the Planning Commission and City Council at regularly scheduled meetings. The commission shall review the site plan and make recommendation to council to approve, approve with modifications, or deny the appeal. A majority vote of council shall be necessary to make a finding on the appeal.

E. Notification of site plan review. The applicant shall furnish the names and addresses and addressed, stamped envelopes for all property owners within five hundred (500) feet of the property. The development services director or authorized designee shall be responsible for mailing a notice of site plan review within five (5) days of the receipt of the application including the addressed, stamped envelopes, by the planning division to each owner of property situated wholly or partly within five hundred (500) feet of the property to which the site plan relates.

107 Reserved.

Refer to subsection 103.C.

EXHIBIT A

108 Conditional use permits.

A. Purpose. Some uses that are not permitted by right in a zoning district may be acceptable as conditional uses. A site-specific review is required to determine if the location, design, scale and operation of the use is appropriate at given location. A conditional use permit may only be granted for the conditional uses listed in each zoning category according to the procedure set forth below.

B. Procedure.

1. The designation of a use as a conditional use in a zoning district does not convey a right or constitute an assurance that the use will be approved. Each application will be evaluated for compliance with the required findings set forth below. The burden of proof for satisfying these findings rests with the applicant.

2. A conditional use permit shall be subject to the application, fee, notification and public hearing requirements of sections 110, 111 and 112 of this ordinance. A site plan shall accompany any request.

3. The Planning Commission shall hold a public hearing and forward a recommendation to the City Council.

4. The City Council shall hold a public hearing regarding the proposed conditional use permit. Notice of the time and place of the council hearing shall be given according to section 111 of this ordinance, except that posting of the property shall not be required.

5. The City Council shall have complete discretion to approve, conditionally approve, or deny a request for a conditional use permit based upon its determination of whether the findings required by subsection 108.C. below have been met.

C. Required findings.

1. General.

a. The applicant shall have the sole responsibility for providing satisfactory information to allow the findings set forth in this subsection 108.C to be met.

b. The Planning Commission shall base its recommendation on whether or not the information provided is sufficient to meet the required findings.

c. The City Council shall consider all of the information provided and may accept or reject the Planning Commission's recommendation with respect to whether the required findings have been met. If the City Council rejects the Planning Commission's recommendation, the findings of the City Council shall be entered into the record.

2. Findings. The City Council may approve a conditional use permit only after all of the findings set forth in this subsection 108.C.2 have been met:

a. That the proposed use (i) is consistent with the land-use designation set forth in the general plan, (ii) will further the city's general guidelines and objectives for development of the area, as set forth in the general plan and (iii) will be consistent with the desired character for the surrounding area.

b. That the use will be (i) compatible with other adjacent and nearby land uses and (ii) will not be detrimental to (1) persons residing or working in the area, (2) adjacent property, (3) the neighborhood or (4) the public welfare in general.

c. That the site is adequate in size and shape to accommodate the proposed use, allow safe onsite circulation, and meet all required development standards including but not limited to setbacks, parking, screening, and landscaping.

d. That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.

e. That adequate conditions have been incorporated into the approval to insure that any potential adverse effects will be mitigated.

Noise Vibration odor

D. Conditions upon approval. The approval of a conditional use permit may be subject to conditions when necessary to mitigate the potential impacts of the use and ensure land use compatibility. These conditions may include, but are not limited to the following:

1. Additional requirements for setbacks, open space, screening, parking, lighting, and landscaping;

2. Dedication of public rights-of-way, street improvements, and the control of access points or on-site circulation to mitigate traffic impacts;

3. Limitations on the hours of operation, methods of operation, and phasing of site development;

4. Time limitations on the duration of the use or periodic review requirements.

E. Effective date. The City Council's decision shall be effective thirty (30) days after the decision is rendered.

F. Expiration.

1. Unless otherwise stipulated, a conditional use permit shall be void if the use approved therein is not commenced within twenty-four (24) months of approval.

2. A conditional use permit may be extended by the City Council. A request for extension must be made in writing and demonstrate that progress is being made towards establishing the permitted use. The process for granting an extension shall be the same as required for the original approval.

3. A conditional use permit is granted for the use and shall run with the land.

G. Modification of conditional use permit. A request to modify, expand, or otherwise change an approved conditional use permit shall be reviewed and processed according to the procedures required for a new application.

H. Revocation. An approved conditional use permit may be revoked by the City Council if the holder thereof fails to comply with the conditions or terms of approval for such conditional use permit after proper notice and hearing pursuant to section 111 of this ordinance; section 112 of this ordinance shall not apply to a hearing for revocation under this subsection 108.I. The decision of the City Council with respect to such revocation shall be final.

I. Reapplication. If a conditional use permit has been denied or revoked, no application shall be accepted by the planning and building services director for a conditional use permit that is (i) for the same or substantially similar use (ii) located on the same site and (iii) submitted within one year from the date of the final denial or revocation.

109 Zoning ordinance amendments.

A. The regulations and boundaries of zoning districts set forth in this ordinance may be amended whenever deemed necessary to best serve the public health, safety, and general welfare of the city. Amendments to the text or zoning map of this ordinance shall not be made except through the adoption of an amending ordinance by the City Council and following the procedure prescribed in this section. Requests for such amendments shall be taken to the Planning Commission by the owner or owners of real property situated in the city, by any officer, department, board, or commission of the city, or by the City Council, under its own motion.

B. A request for a zoning amendment shall first be heard by the Planning Commission who shall hold a public hearing and transmit a recommendation to the City Council containing reasons for such recommendation.

C. The City Council shall hold a public hearing and approve, approve with modifications, or deny the request for the amendment.

D. If the owners of twenty (20) percent or more either of the area of the lots included in a proposed change, or of those immediately adjacent in the rear or any side thereof extending one hundred-fifty (150) feet therefrom, or of those directly opposite thereto extending one hundred-fifty (150) feet from the street frontage of the opposite lots, file a protest in writing against a proposed amendment, it shall not become effective except by the favorable vote of three-fourths of all members of the council. If any members of the council are unable to vote on such a question because of a conflict of interest then the required number of votes for passage of the question shall be three-fourths of the remaining membership of the council, provided that such required number of votes shall in no event be less than a majority of the full membership of the council. said written protest must be submitted to the Planning Department not later than seventy-two (72) hours prior to the council hearing.

E. In the event an application is denied by the council or withdrawn after the commission hearing, the commission shall have the authority to refuse to

EXHIBIT A

accept another application for any amendment on the same property or part thereof, within one (1) year from the date of filing the initial application.

F. The recommendation of approval of any amendment by the commission shall be void if the amendment has not been adopted by the City Council within one (1) year of the commission action.

G. The commission may recommend and the council may approve an amendment conditioned upon one or more of the following in order to protect the public health, safety, and welfare.

1. Development in accordance with a specific site plan or subject to site plan approval prior to issuance of building permits.

2. Reductions in otherwise applicable lot coverage, building height, or density.

3. Increases in otherwise applicable building setbacks, lot area, parking spaces, landscaping or open space.

4. Public dedication of rights-of-way for streets, alleys, drainage and public utilities.

5. The installation of off-site improvements.

6. A schedule of development of the specific use or uses for which zoning is requested.

7. Other conditions as deemed necessary.

H. Any condition of zoning shall be set forth in the ordinance amending the zoning text or map.

I. If at the end of the time period cited in subsection 109.G.6. above development of the property has not commenced, the City Council shall initiate an amendment to the zoning map to revert the zoning classification to its prior designation unless an extension of time has been granted prior to the expiration date.

J. All conditions of zoning approval shall become part of the regulations governing the use of the property. No building permits shall be issued except in conformity with the conditions of zoning approval.

K. A zoning amendment shall be subject to the application, fee, notification, and public hearing requirements of sections 110 and 111. A site plan shall accompany any request.

L. Posting requirements and public notice sign.

1. For all applications that require a public hearing pursuant to State law and for all conditional use permits, the applicant shall be responsible for the posting and cost of a public notice sign at a prominent location on the site at least fifteen (15) days prior to the public hearing. Said sign shall be amended to include information regarding each public hearing.

2. The sign shall be four (4) feet by eight (8) feet and meet the following standards:

a. City of Avondale Public Hearing Notice: Minimum letter size of four (4) inches.

b. Proposal, project description and location: Minimum letter size of three (3) inches.

c. Time, date, location of hearing, contact for the City of Avondale (with phone number): Minimum letter size of three (3) inches.

d. The colors of the sign shall be white with black lettering.

e. All information shall be evenly spaced and organized in a readable manner with the sign being placed perpendicular to the street.

f. The sign shall be double-sided attached to posts, laminated plywood and painted with two coats of white exterior acrylic enamel.

3. It is the applicant's responsibility to keep the sign updated, free of graffiti and to remove the sign within seven days of final action by the City Council.

4. The applicant shall also submit the following information as evidence of posting prior to the prescribed fifteen-day period.

a. An affidavit by the applicant stating that all of the requirements of this subsection 106.L. have been met.

b. A picture of the sign showing the date and time at which the picture was taken. The picture shall show the sign being posted prior to the prescribed fifteen-day period.

110 Application and fees.

A. Applications. Applications for appeals, variances, conditional use permits, amendments, and PAD's shall be made on forms supplied by the Planning Department and include:

1. Legal description of the property.

2. Letter of authorization to file.

3. Filing fee per subsection B. of this section.

4. Statement of explanation of request.

5. Property map showing dimensions of property, abutting streets, buildings, fences, etc.

6. Site plan and building elevations as may be required.

7. A typed list showing the names and addresses of all owners of parcels, according to the latest county assessor's records, within one hundred fifty (150) feet of the property which is the subject of the request and a map indicating the relative location of the owners.

8. Stamped, addressed envelopes for each owner cited in section 7. above.

Incomplete applications shall not be processed.

B. Fees.

1. Fees for all applications pursuant to this section 110 shall be as determined by resolution of the City Council. A copy of the then-current adopted fee schedule shall be maintained at all times in the Development Services Department.

2. If more than one (1) type of application is requested, the fee shall be the total of all fees for all applications.

3. Fees are non-refundable once submitted to the city.

111 Notification of public hearings.

A. Notification.

1. Notification to the public of requests for appeals, variances, conditional use permits, and zoning amendments shall be in accordance with the procedures set forth in subsection 109.L of this ordinance.

2. The Planning Department shall send by first class mail not less than fifteen (15) calendar days prior to the date of each public hearing, a notice of the date, time, and place of the hearing and a summary of the request to each property owner within one hundred fifty (150) feet of the subject property submitted by the applicant, using the envelopes supplied. Amendments to the zoning ordinance text shall follow the procedures of subsection 6. below as applicable. Administrative appeals are exempt.

3. The Planning Department shall publish the request in the official, local newspaper at least once, no less than fifteen (15) days prior to the public hearing, describing the request, the general location of the request, and the date, time, and place of the hearing.

4. Where a request for a re-zoning of land abuts or affects adjacent municipalities or unincorporated areas of the county, copies of the notice of public hearing shall be transmitted to the planning agency of the jurisdiction.

5. Where a request for rezoning of land to a different classification is not initiated by the property owner, notice by first class mail shall be sent to each real property owner of the area to be rezoned and all property owners within three hundred (300) feet of the property to be rezoned. Ownership shall be established by the latest county assessor's records.

6. Where a proposed amendment to the text of the zoning code involves changes to the standards governing land uses as follows below, notice of public hearings shall be provided as prescribed in subsection A.7. below.

a. A ten (10) percent or more increase or decrease in the number of square feet or units that may be developed.

b. A ten (10) percent or more increase or reduction in the allowable height of buildings.

c. An increase or reduction in the allowable number of stories of buildings.

d. A ten (10) percent or more increase or decrease in setback or open space requirements.

e. An increase or reduction in permitted use.

7. Notice of public hearings for those amendments to the text of the Zoning Code included within one or more of the categories in subsection A.6. above shall comply with at least one of the following notification procedures.

a. Notice shall be sent by first class mail to each property owner, as shown on the latest county assessor's records whose property is directly governed or affected by the changes.

EXHIBIT A

b. Notice of the proposed changes to standards shall be included in periodic mass mailings such as utility bills or other informational or advertising materials.

c. A public notice of the proposed changes shall be published in a display ad covering not less than one-eighth (1/8) of a full page in the official local newspaper prior the first public hearing.

B. Public hearings.

1. The Planning Department or zoning administrator (in the case of appeals and variances) shall transmit a report to the board, commission, or council outlining the facts and issues of the request and a recommendation for disposition of the request.

2. In conducting the hearing, the board, commission, or council shall:

a. Maintain rules or order;

b. Hear from those persons believed to be affected by the request;

c. Hear from opponents and proponents of the request and accept exhibit;

d. Limit, as necessary, the appearance of opponents and proponents;

e. Review the staff report and recommendation;

f. Make findings and recommendations to approve, approve with modifications, or deny the request.

112 Citizen review process.

In order to encourage and enhance citizen participation in the development process and to comply with state law, the City of Avondale is establishing a citizen review process. Prior to any public hearing, except for applications to the Board of Adjustment, an applicant shall submit materials for citizen review and conduct a neighborhood meeting at least fifteen (15) days prior to the first public hearing scheduled before the Planning and Zoning Commission in the following manner:

A. Submittal requirements. As part of any application requiring a public hearing, the applicant shall submit the following information at the time of initial application to the city:

1. A narrative discussing the proposed time, place and location of the neighborhood meeting.

2. A list of names and addresses and addressed, stamped envelopes of all the property owners within five hundred (500) feet of the subject property, with an affidavit by the applicant that the list of names and addresses is accurate and complete.

3. The property owner notification letter.

4. An 8 1/2 × 11 inch reduction of the proposed neighborhood sign.

B. Neighborhood meeting requirements.

1. Notice. Notice of the neighborhood meeting shall be given at least fifteen (15) days prior to the neighborhood meeting in the following manner:

a. Written notice. A written notice of the application shall be mailed to all landowners of property within five hundred (500) feet of the subject property, and to such other persons as the development services director, or authorized designee, determines to be other potentially affected citizens.

b. Newspaper advertisement. A notice of the neighborhood meeting shall be published once in a newspaper of general circulation published or circulated in the City of Avondale.

c. Neighborhood meeting sign. The proposed site shall be posted with a neighborhood meeting sign. Said sign shall meet the following standards:

1. Said sign shall be yellow with black lettering, waterproof and have a minimum size of twenty-four (24) inches by thirty-six (36) inches with all information evenly spaced and organized in a readable manner.

2. Said sign shall include the proposal, project description, time, date, location of meeting, the names and telephone numbers citizens may call with complaints and applicant and City of Avondale contacts, including name and telephone number.

3. Said sign shall be placed on the property in a location determined by the development services director or authorized designee.

2. City responsibilities.

a. The development services director or his designee shall be responsible to review and approve the property owner notification, newspaper advertisement and neighborhood meeting sign.

b. The development services director or authorized designee shall be responsible to notify the applicant to proceed with the neighborhood meeting.

c. The development services director or authorized designee shall be responsible for mailing the property owner notifications provided by the applicant.

3. Applicant responsibilities.

a. Prior to holding the neighborhood meeting, the applicant shall receive written approval from the development services director or authorized designee.

b. The applicant shall furnish the names and addresses and addressed stamp envelopes of all the property owners within five hundred (500) feet of the property with affidavit.

c. The property owner notification letter shall be written by the applicant and approved by development services director or authorized designee prior to mailing and shall include: (i) a general explanation of the substance of the proposed application, (ii) the date, time and place scheduled for a neighborhood meeting and (iii) the City of Avondale and applicant contacts.

d. The applicant shall be responsible to post the property with the neighborhood meeting sign.

C. School district(s) notification. The applicant shall notify all applicable school district(s) not less than fifteen (15) days prior to any neighborhood meeting or public hearing on a (i) general plan amendment, (ii) new specific area plan or amendment to an existing specific area plan or (iii) rezoning request or text amendment to the zoning ordinance. The applicant shall provide the development services director with a letter from the applicable school district(s) indicating that the applicant has contacted and met with the school district. Such letter shall be submitted to the development services director not less than seven (7) days prior to any public hearing on a (i) general plan amendment, (ii) new specific area plan or amendment to an existing specific area plan or (iii) rezoning request or text amendment to the zoning ordinance.

D. Post-meeting requirements. Within three (3) business days after any neighborhood meeting, the applicant shall provide the development services director or designee with the following information:

1. A report summarizing any issues or concerns expressed at the meeting.

2. A copy of the sign-in sheet from the neighborhood meeting showing those who attended.

3. A picture of the neighborhood meeting sign showing the date and time at which the picture was taken.

4. A copy of the legal advertisement as published in the newspaper of general circulation in the City of Avondale.

113 Temporary use permits.

In addition to regulating uses, which are permanent in nature, it is the intent of this section to provide for certain temporary uses for limited periods of time. The purpose of this section is to establish the procedures and outline the review criteria, which shall be used when considering an application for a temporary use permit. All temporary uses shall be conducted so as not to be detrimental to the surrounding properties and shall be subject to the standards and regulations contained herein. No temporary use permit shall be granted until adequate assurances have been provided ensuring compliance with the provisions of this section and all other applicable city codes.

A. General regulations.

1. Every temporary use shall require a temporary use permit granted pursuant to the conditions of this section.

2. No temporary use permits shall be issued unless and until the applicant has signed an agreement with the city stating that upon cessation of the use or expiration of the permit, whichever occurs first, the premises will be promptly cleaned and restored to substantially the same condition existing prior to commencement of such use.

B. Permitted temporary uses. The following uses shall be permitted upon receiving the appropriate approvals and the granting of a temporary use permit by the city.

1. Carnivals, circuses or special events;

EXHIBIT A

2. Christmas tree sales, or similar seasonally related events;

3. Off-site construction yard, garage, shed, or trailer for construction purposes, including the parking and storage of earth moving or construction equipment;

4. Garage/yard sales in excess of sixty (60) consecutive hours or in excess of six (6) times a year. For garage/yard sales in excess of six (6) times per year the applicant shall apply for a temporary use permit for not more than a six-month period identifying specific dates for when each yard sale will take place.

5. Off-site commercial sales events;

6. Off-site retail sales of souvenirs, gifts and food incidental to a sporting event;

7. Temporary retail sales;

8. Tent revival or fellowship meetings;

9. Outdoor concerts, paid admission events and events involving the distribution of alcoholic beverages;

10. Such other uses as the city may deem to be within the intent and purpose of this section.

C. Application process, fees, noticing. Application for a temporary use permit shall be made on forms obtained from the city. Application for a temporary use permit shall be made by the property owner or a duly authorized agent and a filing fee shall be charged and collected at the time of application submittal. The city may require any additional information deemed necessary to understand the application, including site plans, as set forth in section 106 of this ordinance.

1. Those temporary uses which meet the following criteria in the opinion of the city do not require posting and may be approved subject to the appropriate conditions of subsection 113.D. below. The criteria are as follows:

a. The use and/or structure complies with all applicable codes and ordinances;

b. The use and/or structure does not interfere with pedestrian access ways, fire lanes, driveways, landscaped areas, or traffic visibility at driveways or street intersections;

c. Parking on the property is adequate to serve any existing permanent use and the temporary use; and

d. The temporary use shall not be conducted between the hours of 10:00 p.m. and 7:00 a.m.

2. Those temporary uses which do not meet the above criteria in the opinion of the city, shall be posted by the city for public notification within five (5) working days following application submittal and shall be subject to the appropriate conditions of subsection 112.D. below.

D. Review and approval. Application for a temporary use permit shall be reviewed by the city who shall approve, conditionally approve, or disapprove such application no sooner than five (5) and no later than eight (8) working days from the date of posting where applicable and no later than three (3) working days when no posting is required. Approval shall be given only when in the judgement of the city such approval is consistent with the intent and purpose of this section. The city shall notify the applicant of the decision in writing and shall state any conditions for approval or reasons for denial on said letter. All temporary use permit approvals shall be made subject to a time limit as set forth by the city. In no event shall a temporary use permit be granted for longer than six (6) months. Upon expiration of the time limit set forth at the time of approval, any continuation of the use shall require the submittal and approval of a new application. Approval shall be made subject to any further conditions deemed necessary to assure that all adverse impacts to the surrounding properties are minimized to the fullest extent possible. Conditions to be considered may include, but are not be limited to, the following:

1. Regulation of parking, dust control measures and site lighting;

2. Regulation of hours of operation;

3. Regulation of site ingress and egress;

4. Assurance of compliance with building, fire, electrical and all other appropriate codes; and

5. Such other conditions deemed necessary to carry out the intent and purpose of this section.

E. Appeals. Upon receiving notification of the decision, the applicant, any citizen or any party in interest, aggrieved by the decision may file with the city a written notice of appeal to the Board of Adjustment within seven (7) calendar days of the decision. Any appeal to the Board of Adjustment shall follow the procedures outlined in subsection 107.A. of this ordinance. Upon appeal, all material on the matter shall be filed by the city with the Board of Adjustment. The board may then review the case and based upon the information, uphold the action of the staff, remand the matter back to staff with instructions for further review or overturn the action of the staff.

F. Permit renewal. All temporary use permits shall be subject to a time limitation, as stated above. Upon expiration of any temporary use permit, any permit holder wanting to extend the length of the permit shall be required to re-apply for a new temporary use permit, as per subsection 112.C. above. Temporary use permit renewals shall be approved for a period not to exceed six (6) months. All temporary uses lasting six (6) weeks or over shall not be renewed more than once within a one-year period. Those temporary uses lasting between ten (10) calendar days and six (6) weeks shall not be renewed more than twice within a one-year period. Those temporary uses lasting less than ten (10) calendar days shall be eligible for up to (5) temporary use permits within a one-year period.

114 Enforcement.

A. General.

1. Any person violating the provisions of this ordinance shall be subject to civil and criminal penalties.

2. The owners, occupants, and authorized agents of property in violation of this ordinance may be held individually and jointly responsible for the violation, the prescribed civil and criminal penalties and for abating the violation.

3. Each day a violation of this ordinance continues shall constitute a separate civil or criminal offense unless such violation involves a billboard, as defined by this ordinance, in which case the provisions of Ariz. Rev. Stat. § 9-462.02, as amended, shall apply.

4. The procedures and remedies provided in this ordinance shall be cumulative and in addition to any other procedures and remedies to which the city may otherwise be entitled by law.

5. Any violation of this ordinance is declared to be a public nuisance, and instead of, or in addition to, any civil or criminal enforcement measure authorized by this ordinance, may be enjoined or restrained by the city as other nuisances are abated under authority of the City Charter and applicable state law.

B. Evidence of identity; penalty for failure to provide. A person who fails or refuses to provide evidence of his or her identity to a duly authorized agent of the city upon request, when such agent has reasonable cause to believe the person has committed a violation of this ordinance, is guilty of a Class I Misdemeanor. Evidence of identity shall consist of a person's full name, residence address, and date of birth.

C. Notice of violation.

1. The city shall seek voluntary compliance with the provisions of this ordinance before issuing a civil citation or criminal complaint, as applicable. This shall include a written notice of violation given to the property owner, occupant, or authorized agent for the property.

2. A notice of violation may be issued by the Code Compliance Manager, a Code Compliance Officer, the Zoning Administrator, the Chief Building Official, or the City Manager or authorized designee.

3. The notice of violation shall set forth the nature of the violation, the action required to bring the property into compliance with the ordinance, the time period provided to bring the property into compliance, and the person at the city to contact for further information.

4. The minimum time period provided for voluntary compliance shall be as follows:

a. Temporary signs and displays: Immediate compliance.

b. Unsafe signs: Two (2) calendar days (see subsection K. below).

c. Temporary uses: Two (2) calendar days.

d. Landscaping: Thirty (30) calendar days.

e. All other violations: Ten (10) calendar days.

5. The time period for compliance may be extended if the official issuing the notice of violation determines that the owner, occupant, or agent for the property is making reasonable progress toward compliance. All extensions shall be made in writing.

6. Failure of the property owner, occupant, or authorized agent of the property owner to receive a notice of violation shall not preclude the subsequent issuance of a civil citation or criminal complaint, as applicable.

7. Nothing in this section shall prevent the city from taking immediate action to protect the public from an imminent hazard to health or safety as otherwise provided by law.

D. Civil citations.

1. Unless otherwise designated as a criminal offense in this ordinance, if a violation continues past the time set forth in the notice of violation, a civil citation may be issued to the person responsible for the violation.

2. A civil citation may be issued by the Code Compliance Manager, any Code Compliance Officer, a Police Officer, or other city agent or employee duly authorized by the City Manager.

3. The citation shall include the date of the violation, the location of the property, and reference to the section(s) of the ordinance violated.

4. The citation shall direct the defendant to pay the fine imposed pursuant to subsection 114(F) of this ordinance or appear in municipal court within ten (10) days of the issuance of the citation.

5. The citation shall provide notice that if the defendant fails to pay the fine or appear in municipal court as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation. In addition, a default fee may be imposed for failure to appear as set forth in subsection 114(F) of this ordinance.

6. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

a. Hand delivering the citation to the defendant.

b. Mailing a copy of the citation by certified or registered mail, return receipt requested, to the defendant's last known address.

c. Any means allowed by the Arizona Rules of Civil Procedure for the Superior Court.

E. Civil procedure.

1. The defendant shall, within ten (10) days of the issuance of the citation, either pay the fine indicated on the citation or appear in municipal court to admit or deny the allegations contained in the citation.

a. The defendant may pay the fine in person or by mailing the citation with a check for the amount of the fine to the Avondale City Court. By paying the fine, the defendant admits the violation described in the citation and accepts responsibility for the offense.

b. The defendant may appear in person or through an attorney in the city court and either admit or deny the allegations contained in the citation. If the defendant admits the allegations, the court shall immediately enter a judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the court shall set a hearing date for trial of the matter.

2. If the defendant fails to pay the fine or appear in the city court as directed by the citation, the court shall enter a default judgment and impose the fine and default fee required by subsection 114(F) of this ordinance.

3. If the defendant fails to appear at the time and place set for trial by the court, the court shall enter a default judgment and impose the fine and default fee required by subsection 114(F) of this ordinance.

4. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Avondale City Court for civil violations of this ordinance, except as modified or where inconsistent

with the provisions of this ordinance, local rules of the city court or rules of the Arizona Supreme Court.

F. Civil penalties.

1. Any person that violates this ordinance shall be subject to a civil penalty of two hundred fifty dollars ($250.00) base fine for the first violation, five hundred dollars ($500.00) base fine for a second violation and one thousand dollars ($1,000.00) base fine for a third violation in any 24-month period. The dates of the offenses are the determining factor for calculating the 24-month period.

2. The civil fine required by this section shall not be suspended in whole or in part.

3. Any defendant that fails to pay the fine or appear in the city court as directed by a citation issued pursuant to this ordinance, or who fails to appear at the time and place set for trial of a matter arising under this ordinance, shall be subject to an additional default fee of one hundred dollars ($100.00).

4. Any judgments issued by the Avondale City Court shall be subject to all surcharges and fees imposed by state law in addition to the civil fines required by this ordinance.

5. Judgments shall be collected in the same manner as any other civil judgment as provided by law.

G. Habitual offenders.

1. A person found to be responsible for three (3) or more civil violations of this ordinance within any 24-month period shall be deemed to be a habitual offender. Responsibility may be determined by admission, by default judgment or by judgment after hearing. The dates of the offenses are the determining factor for calculating the 24-month period.

2. A habitual offender who violates the provisions of this ordinance shall be guilty of a criminal offense and subject to the penalties set forth in subsection 114(J) below for each violation in excess of three civil or criminal violations within a 24-month period.

H. Criminal complaints. The Code Compliance Manager or any other city agent or employee duly authorized by the City Manager may seek the issuance of a complaint by the Avondale City Prosecutor for criminal prosecution of a habitual offender or any person who commits a criminal offense as set forth in this ordinance.

I. Criminal procedure. Every criminal action and proceeding under this ordinance shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to misdemeanors and the Arizona Rules of Criminal Procedure.

J. Criminal penalties.

1. Upon conviction of a person for a criminal offense, including the habitual offender provisions set forth above, the court may impose any combination of the following:

a. A sentence of incarceration not to exceed six (6) months in jail.

b. A base fine not to exceed two thousand five hundred dollars ($2,500.00), exclusive of penalty assessments prescribed by law.

c. A term of probation.

2. Notwithstanding the elective penalty above, upon conviction of a habitual offender the Court shall impose a base fine of not less than one thousand dollars ($1,000.00) for each count upon which a conviction is obtained. A judge shall not grant probation to a habitual offender, or suspend any part of a sentence or fine imposed upon a habitual offender, except on the condition that the habitual offender pays the mandatory minimum fines as provided in this section.

K. Sign removal and repair.

1. The city may act to remove or repair a sign when warranted as follows:

a. Unsafe signs: The Chief Building Official or any agent or employee of the city authorized by the City Manager shall make the determination that a sign or sign structure is in an unsafe condition. If the sign owner or property owner does not comply with the notice of violation given under subsection 114(C) of this ordinance, the Chief Building Official or any agent or employee of the city authorized by the City

EXHIBIT A

Manager may have the sign removed or repaired at the expense of the sign owner or the property owner.

b. Public right-of-way and public property: The Code Compliance Manager, a Code Compliance Officer or any agent or employee of the city authorized by the City Manager may remove or cause to be removed any sign placed or erected unlawfully on public property or within the public right-of-way. Prior notice of violation may be given, but is not required. Removal of the sign does not preclude issuance of a citation as set forth in subsection 114(D) of this ordinance.

c. Temporary signs: The Code Compliance Manager, any Code Compliance Officer or any agent or employee of the city authorized by the City Manager shall have the authority to confiscate a temporary sign unlawfully displayed on private or commonly owned property when the owner or responsible party for the sign refuses or fails to comply with a notice of violation issued under subsection 114(C) of this ordinance. Removal of the sign does not preclude issuance of a citation as allowed by subsection 114(D) of this ordinance.

2. When a sign is removed by the city, a written notice of removal shall be given to the sign owner or property owner, if known, stating the reason for the removal, where the sign will be stored, how long it will be stored, the storage fee, and the name of the person to contact for further information.

3. Signs removed by the city shall be stored for five (5) business days from the date the notice of removal is given, or from the date of removal if the owner of the sign cannot be determined. Any sign not claimed within this time period shall be disposed of. The sign shall be released to the sign owner or property owner upon payment of the storage fee as established by the City Council through its annual budget or by separate resolution.

4. All costs incurred by the city for the removal or repair of a sign under this ordinance shall be reimbursed by the owner of the sign or the owner of the property on which the sign is located. The city may bring an action in municipal or superior court to recover these costs. (Ord. No. 1154-05, § 2, 11-21-05)

EXHIBIT B

Excerpt of the Minutes of the regular City Council work session held April 14, 2008 at 6:00 p.m. in the Council Chambers.

MEMBERS PRESENT
Mayor Lopez Rogers
Councilmember Jim Buster
Councilmember Frank Scott
Councilmember Chuck Wolf
Councilmember Stephanie Karlin
Councilmember Jim McDonald

MEMBER EXCUSED
Vice Mayor Ken Weise

CITY STAFF PRESENT
Charlie McClendon, City Manager
Andrew McGuire, City Attorney
Holly Ward, Community Media Relations Manager, Maricopa County Dept. of Air Quality
Margaret Boone-Pixley, Assistant Traffic Engineer
Tracy Stevens, Planning Manager, Development Services Department
Eric Morgan, Planner II, Development Services
Scott Wilken, Senior Planner, Development Services
Sammi Curless, Assistant to the Mayor and Council
Carmen Martinez, Deputy City Clerk

AMENDMENT OF SECTION 1, ADMINISTRATION AND PROCEDURES OF THE ZONING ORDINANCE

TEXT AMENDMENT FOR SECTION 2 OF THE ZONING ORDINANCE – RESIDENTIAL DISTRICTS

TEXT AMENDMENT FOR SECTION 4 OF THE ZONING ORDINANCE – INDUSTRIAL DISTRICTS

Charlie McClendon, City Manager, stated items 4, 5 and 6 would be presented together.

Tracy Stevens, Planning Manager, stated that amendments to Sections 1, 2 and 4, were part of the Zoning Ordinance update. Staff will return to the Council on May 12, 2008 for further discussion.

Ms. Stevens stated a neighborhood meeting was held on April 9, 2008 and staff is seeking feedback on some of the comments received at that meeting. She indicated that the development community recommended that the development Site Plan review process be changed to administrative function versus going through Council; the Homebuilders Association commented on the residential text amendment.

Staff recommends proposed changes to Section 1 to include:

- Amend and expand upon the existing definitions.

- Amend the Establishment of Districts to reclassify residential categories and add a Special Use Overlay District.

- Remove a clause regarding maintenance of non-conforming buildings, as the current policy discourages property maintenance.

- Introduce a new Administrative Relief Process, which will permit relief of up to 10% of a development standard (with five required findings being met).

- Site Plan extensions will be administratively approved, as well as Site Plan Amendments.

- Include language requiring maintenance of all properties, including landscaping, be maintained for the duration of the property's use.

- Introduce findings that an applicant is required to meet on the Zoning Map and Text Amendments.

Ms. Stevens reported that the Planning Division has implemented a public participation process which requires the applicant to place and purchase the legal ad in the newspaper, post the public notice sign, and mail the written notices to the owners of property within 500 feet of the subject property. Staff provides the applicant with the language and the notification. Staff is also proposing that all applications be valid for one year from the date of last submittal.

Eric Morgan, Planner II, Development Services, gave an overview on the text amendment for Section 2 of the Zoning Ordinance, Residential Districts. He stated Section 2 has three sections:

- Uses that can happen in those districts.

- Development Standards.

- Design Standards.

Mr. Morgan covered the changes to the Uses, stating Staff proposes allowing guest houses in AG, consistent with the RR-43 and RR-18 districts, and keeping guest houses as a Conditional Use in the remaining single family districts. Mr. Morgan outlined the proposed changes including: move private schools to a Conditional Use in all single family and multi-family districts; adding charter schools as a permitted use, with public

schools in conformance with state statutes; replace the term "churches" with "place of worship," and allow them as a Conditional Use in all single family districts provided that the property is located on an arterial street or at the intersection of two collector streets; moving the regulations for temporary trailers for construction or sales and model home complexes to Section 7, Supplemental Regulation; deleting cemeteries, country clubs and golf course uses since they are more appropriate in a Special Use District and are already covered by those regulations; designating public facilities as a Permitted Use in all districts instead of requiring a Conditional Use to Permitted. Mr. Morgan indicated they are also proposing to rename the R-5 to MH, Manufactured Homes, limit the use of manufactured homes to the MH district or where state law states a manufactured home has to be treated the same as a site-built home, which is permitted on single family lots.

Mr. Morgan next discussed the proposed changes to the Development Standards. He stated Staff has assigned the various Zoning Districts to land use categories. He noted that lot dimensions, coverage and setbacks have stayed pretty much the same; although, the side setbacks for R1-5, R1-6 and R1-8 single family districts have been increased from 5 feet to 8 feet, and from a total side of 15 to a total side of 18. He explained that has already been laid out in the Planned Area Development section of the Zoning Code, and so Staff decided to bring the standards up for everybody, and they would like the Council's feedback on that issue.

Next Mr. Morgan covered the changes to the Design Standards, stating developments will now be required to adhere to the recently adopted Design Manual. Open space has been redefined. Apartment complexes with 100 or more units will be required to have garages for 25% or more of the units, and all condominiums and town homes will be required to have garages.

Mr. Morgan then reviewed the text amendment for Section 4 of the Zoning Ordinance, Industrial Districts. He stated this section covers the Uses Permitted, Development Standards, and Design Standards. He pointed out that the name has been changed from Industrial Districts to Employment Districts to agree with the General Plan. Mr. Morgan stated the main change is a re-envisioning of the Commerce Park district. Staff has envisioned a Commerce Park that is more in tune with Commerce Parks around the Valley, which allow for more support services such as copy centers, sandwich shops, etc., for the workers. He explained the existing Zoning Ordinance allows outdoor storage as long as it is screened from view, the proposed amendment prohibits outdoor storage in the Commerce Park districts unless the use is specifically inherent. Mr. Morgan requested Council feedback on that issue as well as on the inclusion of sports complex facilities in the Employment districts.

Council Member Wolf stated he would not be opposed to sports complex facilities from an economic development perspective if they generate employment.

Charlie McClendon, City Manager, interjected there is flexibility through the use of the Special Use District, which would allow the Council to put a sports complex facility anywhere they chose to put a Special Use District, and it would give the Council the review rather than just allowing it outright.

Council Member Wolf stated he is in favor of providing that kind of flexibility. Regarding outdoor storage, he indicated he is not opposed to it if the requirements are clear, such as requiring screening. Council Member Wolf commented it is prudent for council to take the time to review the Site Plan on behalf of the citizens. Tracy Stevens responded that a comment was made from the development community during the neighborhood meeting stating that having to go through the Council approval process could become an issue, since other cities only require administrative approval.

Council Member Wolf stated that three or four years ago, Avondale consistently received positive feedback on how fast cases got moved through the process and added speedy processing should be the standard. He stated hard zoned cases should come before the Council for Site Plan approval because he does not want to tell the residents that something that is coming to their neighborhood was approved without Council review. He suggested looking at the process to expedite the cases through the process such as coming directly to Council after staff approval under certain conditions or staggering Planning and Zoning in order to get it on the agenda sooner. Regarding the non-conforming buildings, Council Member Wolf stated he is not in favor of removing the clause. He suggested working with the IPMC to address issues that arise.

Council Member Wolf stated the Council needs to be cognizant when discussing residential density and residential side yard setbacks, a few years ago the Council made a significant policy decision setting those standards and putting them in the Code. He stated he would be hesitant to reduce those standards and he sees no reason why the City should be stepping back from those standards. He added that he would like to see a survey presented on May 12th of what other jurisdictions do regarding the changes that staff is proposing such as the garage requirement for apartments. He stated some of these changes could be an economic development impact if they create a significant hardship.

Council Member Buster addressed public facilities being relocated from Conditional Use to Permitted Use in all districts and asked what the code states currently. Mr. Morgan replied that the code currently lists public facilities are a Conditional Use. Council Member Buster stated he has a problem with that, as it is somewhat hypocritical because government can put a facility anywhere and the private sector has to abide by rules and standards.

Council Member McDonald stated he did not believe anyone on the Council would have a problem with a special meeting being called to review a project that had a time

sensitive timeline if it meant a great opportunity for the City. He indicated he concurred with Council Member Wolf that Council approval is important.

Council Member McDonald asked if kitchens in guest houses had been addressed in the proposed staff changes. Mr. Morgan stated that cooking is not allowed in guest houses normally and explained that the section comes from RR-18, which was recently adopted by Council to regulate guest houses. Council Member McDonald stated more feedback was needed.

Mayor Lopez Rogers stated Council would need to revisit that issue because there are questions about that.

Council Member McDonald stated he had no problem with the outdoor storage as long as there is proper screening for storage and the companies have a need for it.

Council Member Karlin addressed Section 4 of the Employment Districts, "Adult businesses are subject to Section 10A-1, Permitted Use with Conditions." She stated she believes there is an ordinance that prohibits adult businesses. Mr. Morgan, Planner II, stated that was listed because of the SOB Ordinance and the requirement for a special location for each use.

Mayor Lopez Rogers voiced agreement with Council Member Wolf on most issues. She asked for research on the process for the Site Plans and on why the development community feels the City is too slow in the process. She asked Staff to bring back timetables to the Council. She asked if the setbacks are increased or lowered. Mr. Morgan stated the setbacks are increased, as normally the minimum is five on the side yard and Staff proposes that that be eight in line with what is approved for the Planned Area Development districts. Mayor Lopez Rogers stated there are still issues Council needs to further research and discuss. She stated she was hearing no disagreement with what has been said tonight.

RESOLUTION NO. 2967-411

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 "AVONDALE ZONING ORDINANCE ADMINISTRATION AND PROCEDURES PROVISIONS, AMENDED AND RESTATED APRIL 18, 2011."

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

SECTION 1. That certain document entitled the "Avondale Zoning Ordinance Administration and Procedures Provisions, Amended and Restated April 18, 2011," 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, April 18, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

ORDINANCE NO. 1453-411

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE CITY OF AVONDALE ZONING ORDINANCE, SECTIONS 1, 2, 5, 8, 9, 11 AND 12, AND CHAPTER 19 OF THE AVONDALE CITY CODE, RELATING TO MODIFICATIONS OF SECTION 1 OF THE ZONING ORDINANCE AND NECESSARY AFFILIATED CHANGES TO OTHER SECTIONS AND PROVISIONS, AND ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT KNOWN AS THE "AVONDALE ZONING ORDINANCE ADMINISTRATION AND PROCEDURES PROVISIONS, AMENDED AND RESTATED APRIL 18, 2011."

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 March 17, 2011, after which the Commission recommended to the City Council that the actions contemplated by this Ordinance be approved; and

WHEREAS, the City Council held an additional public hearing on this Ordinance on April 18, 2011.

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

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

SECTION 2. The document known as the Avondale Zoning Ordinance Administration and Procedures Provisions, Amended and Restated April 18, 2011 (the "Administrative Provisions"), three copies of which are on file in the office of the City Clerk, which document was made a public record by Resolution No. 2967-411 of the City of Avondale, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 3. The City of Avondale Zoning Ordinance (the "Zoning Ordinance"), Section 1, Administration and Procedures, is hereby deleted in its entirety and replaced by the Administrative Provisions, which shall be inserted into the Zoning Ordinance as a new Section 1 entitled Administration and Procedures.

SECTION 4. The Zoning Ordinance, Section 2 (Residential Districts), Section 203 (Uses Permitted with Conditions), Subsection G (relating to home occupations), is hereby deleted in its entirety and replaced with the following:

G. **Home Occupations** are allowed in certain residential zoning districts, provided that in addition to all of the use limitations applicable in the zoning district in which the home occupation is located, no home occupation shall be permitted unless it complies with the following restrictions:

1. No more than twenty-five percent (25%) or four hundred (400) square feet of the floor area of the dwelling unit, whichever is less, shall be devoted to the home occupation.

2. The home occupation shall be conducted entirely within the principal dwelling unit or in a permitted accessory building thereto, and in no event shall such use be apparent from any public way.

3. There shall be no signs, no exterior display, no exterior storage of materials, and no other indication of the home occupation or variation from the residential character of the principal building.

4. No mechanical, electrical or other equipment that produces noise, electrical or magnetic interference, vibration, heat, glare or other nuisance outside the residential or accessory structure shall be used.

5. No home occupation shall be permitted which is noxious, offensive or hazardous by reason of vehicular traffic, generation or emission of noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, refuse, radiation or other objectionable emissions.

6. Any need for parking generated by the home occupation shall be off-street. The Zoning Administrator shall determine the number of parking spaces required based on the parking provisions of this section.

7. No business vehicle shall be used in connection with the home occupation for delivery of goods to or from the premises. This provision does not preclude the delivery of mail or packages by the Postal Service or other private delivery service.

8. A maximum of one vehicle used in conjunction with the home occupation is permitted to be kept, garaged, or stored at the residence.

9. There shall be no merchandise or commodity sold upon the premises.

10. If the home occupation employs persons other than the family members residing in the dwelling used for the home occupation, such other employees shall not work in the dwelling used for the home occupation.

11. Such occupation shall not require internal or external alterations or construction features or equipment or machinery not customary in residential areas.

12. The activity shall not generate traffic beyond that which is normal in its district.

SECTION 5. The Zoning Ordinance, Section 5 (Major Sports and Entertainment Districts), Subsection 502(M) (Definitions), is hereby deleted in its entirety.

SECTION 6. The Zoning Ordinance, Section 8 (Parking), Section 809 (Definitions), is hereby deleted in its entirety.

SECTION 7. The Zoning Ordinance, Section 9 (Signs), Section 907 (Permanent Sign Design, Illumination and Construction), Subsection B (Freestanding Signs), is hereby amended by adding a new paragraph 4, to read as follow:

4. The width of the top of the sign structure shall be no more than one hundred twenty (120) percent the width of the base. The design of monument signs shall complement the architecture of buildings on the site. In addition to tenant information, all monument signs shall contain the address(es) of the building(s) it supports.

SECTION 8. The Zoning Ordinance, Section 9 (Signs), Section 915 (Definitions), is hereby deleted in its entirety.

SECTION 9. The Zoning Ordinance, Section 11 (Required Public Art for New Planned Area Development (PAD), Commercial, Office, Employment and Municipal Construction), Section 1102 (Definitions), is hereby deleted in its entirety and reserved for future use.

SECTION 10. The Zoning Ordinance, (Landscape, Walls and Fences), Section 1209 (Definitions), is hereby deleted in its entirety.

SECTION 11. The City of Avondale City Code (the "City Code"), Chapter 19 Planning and Development), Article I (In General) is hereby deleted in its entirety and replaced with the following:

ARTICLE I - BOARD OF ADJUSTMENT.

Sections:

19-01 – Creation.
19-02 – Powers and duties of the Board.
19-03 – Appointment.
19-04 – Term of Office.
19-05 – Removal.

19-06 – Absences to terminate membership.
19-07 – Office, meetings, rules and records.
19-08 – 19-15 – RESERVED.

19-01 - Creation.

The Board of Adjustment of the City of Avondale is hereby established.

19-02 - Powers and duties of the Board.

The Board of Adjustment shall have the powers and duties as set forth in A.R.S. § 9-462.06(A), as amended.

19-03 – Appointment.

The City Council shall appoint five (5) members to the Board of Adjustment. Said members shall be residents of the City of Avondale.

19-04 - Term of Office.

(a) The terms of office of the board shall be three (3) year terms, with the terms of the members so staggered that the terms of no more than three (3) members shall expire in any one (1) calendar year, unless sooner removed by City Council. In no event shall a member serve for more than two (2) consecutive terms.

(b) Notwithstanding subsection 19-04(a) above, the term of all members shall extend until their successors are appointed by the City Council and qualified. The City Council shall fill any vacancy for the remainder of the term.

(c) Members shall serve without compensation.

19-05 – Removal.

The City Council may remove any member of the board for any reason pursuant to the City of Avondale City Council Rules of Procedure, Subsection 15.5(E), as amended.

19-06 - Absences to terminate membership.

(a) If any member shall be absent from more than three (3) consecutive regular meetings without the majority consent of the board, duly recorded in the minutes of the meeting missed by the Board member, shall thereupon cease to hold office.

(b) For the purposes of this section, “absent” shall mean that the board member was not physically present, for at least seventy-five (75) percent of the time the meeting was in session.

19-07 - Office, meetings, rules and records.

(a) Officers

The City Council shall annually appoint, by majority vote of its members, a chair and vice-chair for the board of adjustment. In the absence of the chair, the vice-chair shall fill the role of the chair. In the event that the chair and vice-chair are absent, the board member with seniority shall fill the role of chair. The chair shall have the power to administer oaths and take evidence.

(b) Meetings

Public meetings of the board shall be held as called by the chair. A quorum shall consist of three (3) members. The concurring vote of a majority of the board shall be necessary for all business.

(c) Records

The board shall keep a detailed record of its proceedings, including the evidence presented, deliberations of the members and a record showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions.

19-08 – 19-15 – RESERVED.

SECTION 12. The City Code, Chapter 19 (Planning and Development), Article II (City Planning Commission) is hereby deleted in its entirety and replaced with the following:

ARTICLE II – CITY PLANNING COMMISSION.

Sections:

19-16 - Established.
19-17 - Members.
19-18 - Officers.
19-19 - Meetings.
19-20 - Powers and duties.
19-21 – 19-35 – Reserved.

19-16 – Established.

A city planning commission is hereby established.

19-17 – Members.

(a) The city planning commission shall be comprised of seven (7) members.

(b) The members of the city planning commission shall be residents of the city. The members of the commission shall be appointed by the mayor subject to approval by the city council. These appointments shall be for a period of three (3) years each, with the terms of members so staggered that the terms of no more than three (3) members shall expire in any one year. Members shall not hold any other municipal or county office.

(c) In the event of the death or resignation of a member of the city planning commission, the vacancy may be filled for the unexpired term. The terms of all members shall extend until their successors are appointed and qualified. City planning commission members shall serve at the pleasure of the city council and may be removed as provided in the city council rules of procedure.

(d) All members of the city planning commission shall serve without pay. Members of such commission may be reimbursed for actual expenses incurred in connection with their duties upon approval of such expenditures by the city council.

19-18 – Officers.

The city council shall select a chairman and vice-chairman from among the appointees to the planning commission; such officers shall serve for one year and until their successors are selected by the city council. The chairman shall preside at all meetings and exercise all the usual rights, duties and prerogatives of the head of any similar organization. The chairman shall have the power to administer oaths and to take evidence. The vice-chairman shall perform the duties of the chairman in the absence or disability of the chairman.

19-19 – Meetings.

(a) Meetings of the planning commission shall be governed by the city council rules of procedure.

(b) Four (4) members of the planning commission shall constitute a quorum. The affirmative vote of four (4) members shall be required for passage of any matter before the commission. In this connection the minutes of the meetings shall reflect the "ayes" and "nays" cast on a particular measure and shall reflect the vote of each member present. A member may abstain from voting only upon a determination by the city attorney that the member has a conflict of interest under Arizona law, in which case such member shall take no part in the deliberations on the matter in question. The planning commission shall conduct its meetings in accordance with the Arizona Open Meeting Law.

19-20 – Powers and duties.

It shall be the duty of the city planning commission:

(a) To formulate, create and administer any lawful plan duly adopted by the city council for the present and future growth of the city, pertaining to the use of land and buildings for any purpose, together with all incidental activities usually associated therewith and commonly known as "planning" and "zoning".

(b) To make or cause to be made a continuous study of the best present and future use to which land and buildings shall be put within the city.

(c) In cooperation with adjacent areas, to recommend to the city council revisions in such plans which, in the opinion of the commission, are for the best interest of the citizens of the city.

(d) To advise the city council in all such matters that may pertain to planning and zoning.

(e) When required by state law, city ordinance or by request of the city council, hold public hearings and provide recommendations to the city council regarding matters pertaining to planning and zoning.

19-21 – 19-35 – Reserved.

SECTION 13. Any person who fails to comply with any provision of the Administrative Provisions shall be subject to civil and criminal penalties as set forth in Section 114 of the Zoning Ordinance (after adoption of the Administrative Provisions, the operative provisions of Section 114 will be moved to Section 102). 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 14. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Administrative Provisions 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 15. 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.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, April 18, 2011.

_____
Marie Lopez Rogers, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT C

Excerpt of the Minutes of the regular City Council meeting held September 14, 2009 at 7:00 p.m. in the Council Chambers.

MEMBERS PRESENT
Mayor Marie Lopez Rogers
Vice Mayor Ken Weise
Councilmember Jim Buster
Councilmember Jason Earp
Councilmember Stephanie Karlin
Councilmember Jim McDonald
Councilmember Frank Scott

CITY STAFF PRESENT
David Fitzhugh, Assistant City Manager
Andrew McGuire, City Attorney
Scott Wilken, Senior Planner, Development Services
Carmen Martinez, City Clerk

PROPOSED AMENDMENT TO SECTION 1 OF THE ZONING ORDINANCE

A proposed amendment to Section 1 of the Zoning Ordinance, which encompasses definitions of terms; defines the structure, powers and duties of the City's administrative bodies; outlines the City's development processes; and details the procedures for enforcement of the Zoning Ordinance.

Assistant City Manager David Fitzhugh introduced Scott Wilken to present this item.

Scott Wilken, Senior Planner, reviewed the proposed amendment to Section 1 of the Zoning Ordinance. Among other changes in the ordinance, he indicated that staff is seeking direction from Council regarding a recommendation that will allow all site plans be approved administratively. He indicated that the reason behind the recommendation is timing as developers have indicated that other cities do not have this requirement which helps them with the timing of their project. He indicated that another reason is that Council has adopted several design guidelines which staff can use to review a site plan to make sure that it conforms with Council?s expectations and vision.

Mr. Wilken indicated that another proposed amendment is for the Planning Commission to have the ultimate word on the approval of Conditional Use Permits. He indicated that there have been instances where developers have decided to not proceed with a project when they realize the amount of time it takes for an application for a conditional permit to go through the planning commission and council approval process.

Council Member McDonald indicated he does not have a problem with the recommendation to allow staff to approve site plans at the administrative level. He indicated that he believes that approval of conditional use permit applications should remain at the Council level.

Council Member Buster indicated that he understands staff?s reasoning for the recommendation, but there should be a safety valve where council should be brought into the review. Mr. Wilken indicated that if staff has any qualms about a site plan, they could deny the application and give the applicant the right to appeal to the City Council.

Council Member Earp indicated he agrees with Council Member McDonald that CUPs should be reviewed by Council. He commented that regarding the site plan approval, he believes that Council should be accountable to the citizens for developments and would not want to have administrative approval of site plans even if it is initially.

Council Member Karlin commented that Council should be the approving authority for CUPs.

Vice Mayor Weise and Council Member Scott and Mayor Rogers concurred that site plans and CUPs should be approved by City Council.

EXHIBIT D

Excerpt of the Minutes of the City Council work session meeting held November 15, 2010 at 7:00 p.m. in the Council Chambers.

MEMBERS PRESENT

Mayor Lopez Rogers and Council Members

Jim McDonald, Vice Mayor
Jim Buster
Frank Scott
Charles Vierhout
Ken Weise

EXCUSED ABSENCE

Stephanie Karlin

ALSO PRESENT

Charlie McClendon, City Manager
David Fitzhugh, Assistant City Manager
Rogene Hill, Assistant City Manager
Kevin Kotsur, Avondale Police Chief
Richard Lynch, Avondale City Judge
Ken Galica, Development Services Department
Andrew McGuire, City Attorney
Carmen Martinez, City Clerk

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

Staff seeks City Council direction regarding revisions to Section 1, Administration and Procedures of the Zoning Ordinance pertaining to site plan expirations and extensions.

Mr. McClendon stated that Council reviewed revisions to this ordinance before, but there have been subsequent discussions with applicants regarding the ability to extend site plans.

Mr. Galica said Council would consider this revision for adoption in February of 2011. Staff requests direction on the City's site plan expiration and extensions procedures. The primary reason that site plans expire is to make sure that the plan has a good chance of still being in compliance with the City's code. Without an expiration date, a plan approved in 1987 could get built in 2012, even if it no longer reflects the City's vision. The current zoning ordinance allowances for site plan offers an initial validity period of one year, vested upon approval of a building permit. The applicant has a year to submit construction documents for review. If nothing is built in that time, the permit and site plan expire. There are no site plan extension procedures currently outlined in the zoning ordinance. Absent clear direction, staff has allowed extensions on a case-by-case basis for periods of one year, with no limit on the number of extensions allowed. The primary

concern is that requests for extensions have increased dramatically over the last four years, primarily due to the ongoing economic problems. Potential amendments to Section 1 could include extending the initial validity period, outlining a process for extensions, and placing standard conditions on extensions.

Mr. Galica displayed models used by several Valley cities, as well as Alameda, California. Initial validity periods typically range from 180 days to 2 years. Tempe and Scottsdale use initial periods of one year, but allow extensions via stipulation at the time of original approval. Most cities outline a process for extensions, typically lasting one year. The approving body varies as well but typically falls to administrative review. Goodyear requires City Council approval for an extension. Conditions could include not allowing extensions when the code has changed, or only allowing them when the delay was caused by special circumstances.

Staff identified three options. The first would be to retain Section 1 regarding site plan extensions and expirations in its current form. The second would be to increase the initial validity period to two years, with up to two one-year extensions. This second option is the one recommended by staff. The third option would be to revise the initial validity period and extensions using examples from the other city models.

Council Member Weise said this proposal makes sense, given the current economic conditions. He felt Tempe's model was the best, since it works on a case-by-case basis and offers one-year extensions with a maximum of three years. He preferred that the approving body have a say on the extension.

Council Member Scott said the City should offer extensions in light of the economic downturn. He preferred two one-year extensions. Administrative approval would be acceptable since the Building Department has displayed common sense in the past, although applicants should have a chance to appeal to the Council if they are denied. If the code change involves safety issues, plans should be made current, otherwise they should be left alone. The Building staff should deny site plans that no longer fit.

Council Member Vierhout agreed with the option to use one initial year, with two one-year extensions. If the City approves a plan, it should not be changed unless a safety issue emerged. He did not feel that it would be necessary to have Council approve extensions. Allowing case-by-case extensions could be dangerous.

Vice Mayor McDonald preferred the second alternative, and agreed that code changes should be made current only if they involve safety issues. Mayor Lopez Rogers also expressed a preference for the second alternative. Two one-year extensions would help developers deal with the economic problems. Extensions should be approved by administrative review, and should not be allowed if the code is changed.

Council Member Weise clarified that alternative two is similar to what Tempe uses and he would be comfortable with staff's recommendation.

Mr. McClendon reviewed that Council seemed to express a preference for allowing administrative review if nothing was changed in the code. If the code were changed, Council would prefer to look at it again. Mr. Galica reiterated that the second alternative allows for an initial period of two years, followed by two one-year extensions.

EXHIBIT E

Excerpt of the Minutes of the City Council meeting held February 7, 2011 at 7:00 p.m. in the Council Chambers.

MEMBERS PRESENT

Mayor Rogers and Council Members

Jim McDonald, Vice Mayor
Jim Buster
Stephanie Karlin
Frank Scott
Charles Vierhout
Ken Weise

ALSO PRESENT

Charlie McClendon, City Manager
David Fitzhugh, Assistant City Manager
Eric Morgan, Development Services Department
Andrew McGuire, City Attorney
Carmen Martinez, City Clerk

SITE PLAN APPROVAL PROCESS

City Council direction regarding the Site Plan approval process.

Charlie McClendon indicated that Council asked for more information regarding the site plan approval process. He indicated that staff is currently working on the update of Section 1 of the Zoning Ordinance and the Council's feedback will be incorporated into the amendment.

Tracy Stevens, Planning Manager, indicated that historically site plans with a PAD zoning designation have been submitted to the Council for approval following review by the Planning Commission. Staff has been working with Economic Development to streamline the process to be more competitive when working with the development community. Recent amendments to the zoning ordinance such as the landscape and sign ordinance as well as the design manuals provide safeguards to the City to ensure high quality developments.

Ms Stevens listed the cities and towns that currently provide administrative approval of site plans; Gilbert and Tempe have design review boards. Mesa, Buckeye, Scottsdale and Surprise have site plan review processes that are similar to Avondale's. She indicated that staff is scheduled to present proposed amendments to Section 1 of the Zoning ordinance to the City Council on March 21st.

Council Member Weise commented that he has confidence in staff and would not have a problem with staff approving the site plans administratively. He added that

Council can still ask for updates and opined that this would allow the city to be more competitive.

Council Member Scott asked for clarification regarding the process. Ms Stevens indicated Council would still hear and approve the zoning cases and general plan amendments if applicable. Site plan approvals would be done administratively. In response to a subsequent question from Council Member Scott, Ms Stevens indicated that administrative review would reduce a project's time by about four months. Council Member Scott commented that he does not have a problem with allowing administrative approval but would like to receive updates as the Council has to respond to the citizens of Avondale.

Council Member Buster expressed confidence in staff and support for changing the process.

Vice Mayor McDonald agreed that the reduction in time to process an application is a step in the right direction. He added that regular updates will be important.

Council Member Weise commented that on occasion developers will go to Council when they do not like staff's decision. He indicated that he agrees with giving the responsibility to staff.

Council Member Vierhout expressed support for the change.

Mayor Lopez Rogers indicated that she has confidence in staff, but asked if the change would tie the hands of future councils. Mr. McClendon responded that the Council can revert the process in the future should they feel that is necessary.

EXHIBIT F

Excerpt of the Minutes of the Planning Commission Work Session held May 15, 2008 at 6:30 p.m. in the Council Chambers.

COMMISSIONERS PRESENT
David Iwanski, Chairman
Michael Demlong, Vice Chair
Al Lageschulte, Commissioner
Kevin Grimsley, Commissioner, Arrived 5:49 p.m.
Edward Meringer, Commissioner
Angela Cotera, Commissioner
Linda Webster, Commissioner - Arrived 5:32 p.m.

CITY STAFF PRESENT
Eric Morgan, Planner II, Development Services
Wendy Turner, Planner I, Development Services
Brian Berndt, Development Services Director
Tracy Stevens, Planning Manager
Claudia Whitehead, Economic Development Director
Ruth Clark, Revitalization Manager
Chris Schmaltz, City Attorney

Zoning Ordinance Section 1 Administrative Procedures

Wendy Turner, Planner I, Development Services, stated Section 1 includes 14 sections which outline the way the City is organized. Staff is proposing to reorganize the sections into a more logical manner and create new title headings to further clarify the City's development processes. Staff proposes to: • Amend and expand upon the existing definitions. • Amend the Establishment of Districts to reclassify residential categories and add a Special Use Overlay District. • Remove a clause regarding maintenance of non-conforming buildings, as the current policy discourages property maintenance. • Introduce a new Administrative Relief Process, which will permit relief of up to 10% of a development standard (with five required findings being met). • Site Plan extensions will be administratively approved, as well as Site Plan Amendments. • Include language requiring that all properties, including landscaping, be maintained for the duration of the property's use. • Introduce findings that applicants are required to meet the Zoning Map and Text Amendments.

Ms. Turner reported that the Planning Division has implemented a public participation process, which requires the applicant to place the legal ad in the newspaper, post the public notice sign, and mail the written notices to the owners of property within 500 feet of the subject property. Staff will provide the applicant with the language and the notification. Staff is also proposing that all applications shall be valid for one year from the date of last submittal. Applicants that

have not had any activity within 12 months' time will be required to hold another pre-application meeting and then submit another application.

Ms. Turner informed the Commissioners that a Neighborhood Meeting was held on April 9, 2008 and several members of the development community were present. The Site Plan review process was discussed and the development community suggested that Site Plans could be reviewed administratively. Section 108 outlines this process, and Staff is requesting direction from the Planning Commission on this issue. A Work Session with the City Council was held on April 14, 2008, and at that time they directed Staff to explore how other cities process Site Plans, and they expressed concern regarding removal of the text pertaining to non-conforming buildings.

Vice Chair Demlong stated on Page 11 under the definition of aviary it should read "an enclosure" instead of "a large enclosure." On Page 19 under guest house, he informed the Commission that the City Council was intending to remove the section that states "a guest house cannot contain cooking facilities," and asked Staff to review that further. He commented that the Zoning Ordinance is still a bit verbose and that it is difficult to read some of the definitions.

Commissioner Cotera stated on Page 6, Reconstruction or Structural Alteration of a Non-Conforming Building, the sentence contains too many negatives, and further down on that page the wording it not clear.

Chairperson Iwanski asked if Staff wanted input on Section 108. Ms. Turner stated Council had directed Staff to research that further, and Staff is requesting feedback from the Commission and Council as to if the Development Services Department can review Site Plans administratively. She reported that Staff had completed preliminary research to date and found that currently eleven cities in the metropolitan area do allow Site Plans to be approved administratively, one city requires Site Plans to be approved by the Planning Commission and City Council, and three other cities require PAD and historical district Site Plans to come before the Planning Commission and City Council. The development community has expressed that Site Plan approval through the Planning Commission and City Council is a time-consuming process.

Chairperson Iwanski encouraged the Commissioners to spend some additional time reviewing Section 108. He asked when Staff would like the Planning Commissioners' comments. Ms. Turner replied that within a month or two would be helpful.

Brian Berndt, Development Services Director, reminded the Planning Commission that the amendment to Section 4, Industrial Districts, is the first amendment going forward and comments on that section are needed as soon as possible. Section 2, Residential Districts, and Section 1, Administration and Procedures, will return to the Planning Commission in the coming months and there is no urgency.

Commissioner Cotera asked what is the reason for the 500 foot limitation under Notification of Site Plan and Design Review. Ms. Turner replied she is not sure if the Arizona State Statute requires 500 feet, but for notification purposes for other processes, the City is required to notify residents and property owners within 500 feet of a project. She stated Site Plans are done internally by Staff. On larger sized projects, the 500 feet would extend from the project boundary.

Brian Berndt, Development Services Director, interjected that it is an Arizona State Statute, so the City is following the regulations of the State. For administrative things such as this, Staff can set a boundary that may be more appropriate with the type of use or process that is being enacted. In this case, the 500 feet has been acceptable notification to the property owners.

Commissioner Cotera voiced concern that a project could go in that affects the entire neighborhood, but not all property owners in the neighborhood would be notified even though they drive by the project every day. Mr. Berndt added that Staff provides postings on the property so that those driving by can be notified. Commissioner Cotera stated she has to stop her car during rush hour traffic and walk over to the project because the writing is so small on the signs.

Chairperson Iwanski asked if projects were posted as a matter of public record at City Hall, which Mr. Berndt confirmed. Mr. Berndt added that residents can go online and register to receive the agendas on upcoming projects.

Vice Chair Demlong asked for a summary sheet of the changes to Section 108 stating the reasons behind the changes, what those changes are, and what other cites have done, as he would like to see that before the amendment comes up for a vote. Ms. Turner replied she would be happy to do that and would send it to each Commissioner.

EXHIBIT G

Excerpt of the Minutes of the Planning Commission Work Session held April 15, 2010 at 6:00 p.m. in the Council Chambers.

COMMISSIONERS PRESENT
Angela Cotera, Vice Chair
Michael Long, Commissioner
Lisa Amos, Commissioner
Grace Carrillo, Commissioner
David Scanlon, Commissioner
Sean Scibienski, Commissioner

COMMISSIONERS ABSENT
David Iwanski, Chairman (Excused)

CITY STAFF PRESENT
Tracy Stevens, Planning Manager, Development Services Department
Ken Galica, Planner II, Development Services Department
Chris Schmaltz, City Attorney

TA-08-6, Zoning Ordinance, Section I, Text Amendment – A presentation will be provided by Planning Staff to discuss proposed amendments to Section 1, Administration and Procedures, of the Avondale Zoning Ordinance.

Ken Galica, Planner II, Development Services Department, stated Section 1 of the Zoning Ordinance is titled Administration and Procedures. Staff is giving the Commission an update on this section due to the volume of information it contains. This section will be one of the last sections to be adopted because it is influenced by all the other sections. Mr. Galica stated there are 13 subsections in Section 1 which define the structure, powers and duties of the City's administrative bodies, outline the City's development procedures, and detail the procedure for enforcement of the Zoning Ordinance. Specific subsections deal with site plan review, Conditional Use Permits, and Zoning Ordinance Amendments. There is an applicant and fee section, a notification of public hearings and citizen review process subsection, and sections on Temporary Use Permits and enforcement. Section 1 also establishes definitions for terms found throughout the remainder of the Zoning Ordinance. Staff is proposing to update Section 1 with four primary goals in mind:

1. Optimize the efficiency of the development processes and procedures to encourage and incentivize development activity in Avondale.

2. Clarify and update the procedures and duties of the administrative bodies involved in development and entitlement review, such as the Planning Commission and Board of Adjustment.

3. Ensure that our citizen review procedures provide ample opportunity to citizens to review and provide input on development-related projects before they are approved.

4. Update existing definitions and add a significant number of new definitions to ensure that all terms in the Zoning Ordinance that are subject to interpretation are clearly defined.

Some specific revisions proposed by Staff include updating the Zoning District names to match the districts found in remainder of the ordinance, adding new definitions and centralizing the definitions, and clarifying the administrative duties of Staff, such as the zoning verification process. Additionally, Staff's proposal outlines the procedures for how pre-application meetings are to be processed and managed and updates the Planning Commission and Board of Adjustment procedures to match changes to the bylaws that have occurred over time. Staff is also proposing to update the citizen review process to ensure ample opportunity is provided for the public to participate in the public hearing process; these changes will include clarifying the size and appearance of public notice signs and narrowing the dates and times applicants can select for their Neighborhood Meetings in order to encourage greater attendance – for example requiring meetings be held during the week after six o'clock p.m.

Staff is proposing the addition of a new process called the Design Review Waiver, which will ease the burden on applicants that are proposing only minor changes to a site, such as adding a covered patio to an existing restaurant. Another new procedure being proposed is called Administrative Relief, which allows the Zoning Administrator or their designee to alter development standards by 10 to 15 percent from what the Zoning Ordinance allows if the applicant can meet the required findings to do such.

Staff's proposal will eliminate the Temporary Use Permit process and instead direct applicants to the City Clerk's Special Event process or the new Seasonal Sales Permit process. The Seasonal Sales Permit process will be added to Section 7, Supplementary Regulations, to provide a mechanism for evaluating Christmas tree sales, pumpkin patches, NASCAR-related sales along the roads, etc.

Staff is also considering variance extensions from the current one year to allow applicants to apply for additional one year extensions after the first one year time period expires. Staff also seeks to formalize the site plan extension process. While site plans are extended currently, there is no set process. Staff proposes that site plans be extended beyond the one year validity period if the expiring developments still satisfy the City's requirements.

Mr. Galica stated that Staff has held two Neighborhood Meetings over the past year, which yielded relatively few concerns from the development community or from any residents that attended. After tonight's Work Session, this item is scheduled for formal recommendation on June 17, 2010 and Council adoption on July 19, 2010. No formal action is required of the Planning Commission this evening.

Vice Chair Cotera invited questions.

Commissioner Scanlon asked why site plan extensions could not be granted conditioned on meeting any new requirements, such as increased landscape requirements. Mr. Galica explained that if the site plan has previously been approved, Staff will only have to review any new documents, such as the landscape plan. While site plan extensions are considered a new site plan application, anything that has not changed since the site plan was originally approved would not be critiqued again.

Commissioner Scanlon asked if the site plan extension process would be streamlined. Mr. Galica stated the site plan extension process is simple and straightforward and could already be described as streamlined.

Commissioner Scanlon asked that if a site plan previously approved was only deficient by 30 trees, could an applicant come in and just provide an appendix to the original site plan which states that the new site design is in conformance with the new requirements. Mr. Galica stated that since the plan would be changing, it would represent more than a request for an extension. Staff can consider ways to make those instances more streamlined.

Vice Chair Cotera stated that many signs for new developments regarding public meetings are difficult to see. She asked if the development website address can be large enough so people driving by can see the project name and website address and then go home and look up the project specifics on their computers. This would provide the public with more information on a site plan before a project is approved. Mr. Galica stated that is a good idea and Staff can try to redesign the signs so that website addresses will be prominent.

Commissioner Scanlon stated that some citizens don't have internet capability. He suggested that the libraries post new development website addresses so citizens can look up the information on the library's computers. Mr. Galica stated that these are good points.

Commissioner Scibienski noted that the website address for a development would be a subset of the City of Avondale's website, which is pretty long for citizens to read as they drive by. He suggested that website addresses be shortened as much as possible. He

suggested the City's website have a prominent link on the home page linking to new development plans.

Vice Chair Cotera asked if all the definitions of terms in the Zoning Ordinance can be in a tabbed appendix at the end of the document, as well as in Section 1. Mr. Galica stated that Staff has not previously considered that suggestion and asked City Attorney Schmaltz to comment.

Chris Schmaltz, City Attorney, stated he has seen definitions in Zoning Ordinances done both ways. A tabbed index stating the section and its term definitions would have the same effect without having to reorganize the entire document. In the past, the standard in Arizona has been to have all the definitions of terms at the front of the document.

Commissioner Scibienski asked how the Administrative Relief procedures are handled in other neighboring cities. It seems to him that a 10 to 15 percent variance in the hands of one person is a huge change. Mr. Galica stated Administrative Relief is not a widespread practice, but when implemented, a 10 to 15 percent variance is fairly standard. Avondale's safeguard is that the same variance findings will still be required to be met before a variance can be granted, such as, the variance request cannot be a self-imposed hardship or needed for financial purposes. The relief request must concern a physical configuration of the property.

Vice Chair Cotera invited a motion to adjourn for five minutes. Commissioner Scibienski moved to adjourn. Commissioner Scanlon seconded the motion.

EXHIBIT H

Excerpt of the Minutes of the Planning Commission Meeting held March 17, 2011 at 6:30 p.m. in the Council Chambers.

COMMISSIONERS PRESENT
Michael Long, Chairman
Angela Cotera, Vice Chair
Lisa Amos, Commissioner
Grace Carrillo, Commissioner
David Scanlon, Commissioner
Sean Scibienski, Commissioner

COMMISSIONERS ABSENT
David Iwanski, Commissioner (Excused)

CITY STAFF PRESENT
Tracy Stevens, Planning Manager, Development Services Department
Chris Schmaltz, Legal Counsel
Ken Galica, Planner II, Development Services Department
Stacey Bridge-Denzak, Planner I, Development Services Department
Linda Herring, Development Services Representative

This is a public hearing before the Planning Commission to review and solicit public input on application TA-08-6, a request to comprehensively amend Section 1 of the City of Avondale Zoning Ordinance, *Administration and Procedures*. The proposed amendment will revise procedural requirements, including but not limited to amending the City's regulations for non-conforming uses/buildings/lots, application review and approval processes, and public participation requirements. Additionally, the proposed amendment will create new processes for administrative relief and design review waivers and create new definitions for previously undefined terms used in the Zoning Ordinance.

Mr. Galica, Planner II, presented a text amendment to Zoning Ordinance Section 1 *Administration and Procedures* TA-08-6. The goals of the amendment are threefold. The first is to optimize the efficiency of the development process, and make it easier for someone to develop in Avondale. The next goal is to enhance and clarify the citizen review process. A third is to update definitions.

Mr. Galica highlighted the revised Section 1 and its 15 subsections. Subsection 101 establishes the purpose of the Zoning Ordinance, which is in line with the State of Arizona's enabling legislation, which allows cities to control land uses through zoning. Subsection 102 establishes the process used by Code Enforcement to issue notices of violation. Subsection 103 explains definitions as the City sees them. Subsection 104 is reserved for future use. Subsection 105 discusses development review procedures. Subsection 106 explains the tasks of the Zoning Administrator. Subsection 107 explains the Design Review process. Subsection 108 is a new process allowing for some

flexibility in special cases like revitalization areas. Subsection 109 establishes the conditional use permit process. Subsections 110 and 111 divide the Zoning Ordinance text and map amendments into two separate sections. Subsection 112 deals with variances and appeals. Subsection 113 discusses the neighborhood meeting requirements for applicants. Subsection 114 explains public notification requirements. Subsection 115 discusses applications and fees.

Mr. Galica stated that three subsections would either be deleted or moved to different documents. Current subsection 103, entitled *Administrative Bodies*, is being relocated to the City Code, according to standard municipal practice. Subsection 104, *City Codes, Plans and Standards*, has been deleted and a reference made that all codes adopted by the City shall be adhered to. The *Temporary Use Permits* section has been deleted due to obsolescence.

Mr. Galica highlighted changes to each section. He stated that he list of zoning districts has been updated in Subsection 101. Zoning district boundaries now extend to the street centerline instead of stopping at the property line. Transition rules have been deleted, and the City will follow the state statute. Non-conforming building use and lot regulations have been revised to eliminate spending caps. Limits have been removed on costs to replace damaged structures. The revisions now provide some flexibility for the reopening of uses affected by calamity. The expansion of non-conforming buildings and uses has been prohibited. The entire subsection on nonconforming lot provisions has been deleted.

Mr. Galica noted that Subsection 102 received very little substantive change, with only specific fee related information having been removed. Subsection 103 has become the new home of all definitions from other sections. A total of 105 new definitions have been added, 35 existing definitions have been revised, and 13 deleted. Subsection 105 establishes the Design Review Committee consisting of representatives from all departments that have any interest in development. The pre-application meeting procedures have been expanded upon.

Mr. Galica said Subsection 106 defines the powers and duties of the Zoning Administrator, including Zoning Ordinance interpretations, zoning verifications, and serving as the secretary of the Planning Commission and Board of Adjustment. Subsection 107 creates the new design review waiver process giving the Zoning Administrator some authority to waive minor additions upon review. The section also establishes required findings for design review so applicants know exactly what they need to do to get their plans approved. Administrative approval is proposed for all site plans except for those in the City Center district. This will reduce the process by at least two months. City Council is comfortable with the change, knowing that many other cities use it. The Planning Commission would be the appeal board if a site plan were denied. The initial validity period of a site plan has been increased from one to two years. An official extension process has been created for site plans allowing up to two one-year extensions from the initial approval. Council approval of the extensions would

only be required if the site plan no longer reflects current Zoning Ordinance requirements.

Mr. Galica stated that Subsection 108 provides limited flexibility and relief of development standards for small parcels, up to 10% of any standard and up to 30% in revitalization areas. This would not replace the variance process, but allows for smaller variances to be approved much more quickly.

Mr. Galica stated that the conditional use permit subsection was amended to clarify the neighborhood meeting requirement. The subsection 111 on map amendments requires posting of a sign on the property, a mailing to neighbors within 500 feet, and a legal ad. A text amendment 110 only requires a legal ad. Revisions delete a requirement that only owners of property in Avondale could file a Zoning Ordinance amendment application. This change is designed to make it easier on businesses that wish to relocate here. The expiration time condition for non-PAD rezonings has been deleted.

Mr. Galica said that subsection 112 removed the one-year expiration provision for a variance. It will now run with the land. Subsection 113 was changed to make the neighborhood meeting process clearer for applicants. Subsection 114 clarifies the process, timelines and specs for all notice types. A new type of notification has been added, the proof of adequate school facilities. Subsection 115 remained largely the same, with the exception that the City is exempted from fees when acting as its own applicant.

Mr. Galica acknowledged that affiliated changes were also made to some of the other sections, including the relocation of definitions, removal of operative language from two definitions, home occupations and monument signs, removal and relocation the administrative duties section to Chapter 19 of the Municipal Code..

Mr. Galica noted that Council reviewed the changes in four work sessions beginning in 2008. The Planning Commission reviewed changes in two work sessions. There were two neighborhood meetings. Public feedback has been incorporated throughout the process. The amendment meets the intent of the City's General Plan, and meets the purpose and intent of zoning, and constitutes an overall improvement to the Zoning Ordinance.

Commissioner Scibienski questioned the effect that removal of variances would have on properties where they are about to expire. Mr. Galica explained that the proposed changes would only affect future situations and would not be retroactive.

Commissioner Amos queried the reasoning behind allowing variances to run with the land. Mr. Galica responded that variances in Arizona are very limited in scope. Cities are allowed to vary development standards but not uses. A variance, for example could not be granted to allow a factory in a commercial district. In most cases, variances are for setbacks and building heights. The findings are very specific and burdensome on the applicants. For variances that would qualify, the assumption is that the properties are subject to unique situations that would warrant future owners to require the same variance. Mr. Schmaltz, Legal Counsel, added that variances would apply where specific

special characteristics are associated with the property itself that would warrant a variance from the zoning standards. The aspects of the property determine whether the variance should be allowed, not the desires of the owner. The removal of the time limit returns to the core idea that variances are about characteristics of the property that will not change over time.

Vice Chair Cotera expressed concern that the Planning Commission would no longer be considering site plans outside of the City Center. She said the Commission exists to ensure that the PADs conform to the City's vision. Mr. Galica explained that the intent is not to take their oversight away, but to streamline the development process. The PADs will require Commission recommendation and Council approval, and they should contain the standards that the Commission feels are sufficient to allow staff to review site plans accordingly.

Vice Chair Cotera expressed discomfort with that idea. The site plans are a big part of the public approval of very large projects, and this revision would remove public oversight. In effect, one or two people could theoretically determine how a significant portion of Avondale would look. Mr. Schmaltz responded that the changes would re-emphasize and return to the Commission their role in the rezoning process during the planning phase. Site plans are administrative. They're an implementation of the decisions that the Commission makes via zoning. This change emphasizes the Commission role as a planning body in the context of rezonings, which is where they have the most authority to make recommendations and changes. If a site plan meets the requirements of the Zoning Ordinance, the Commission has little authority to deny it. A site plan is an administrative implementation of zoning decisions. The changes do not eliminate Commission oversight, and would make the process easier for developers.

Vice Chair Cotera said that the Commission has often approved site plans with stipulations, some of which have been important. The last step is not simply administrative. Commissioner Amos added that interpretation is often required when it comes to PADs and a smaller body making those interpretations might cause some issues. Mr. Galica noted that the City Council supported the changes at their February 7, 2011 meeting, even though they had hesitations previously.

Commissioner Scanlon agreed with Vice Chair Cotera, citing that the public expects public officials to grants their imprimatur in these situations. Mr. Galica responded that when it comes to hard zones, every standard in the Zoning Ordinance is currently approved administratively. Most of the city has developed that way, without Commission or Council approval of those site plans. The Commission has influenced site plan approval through Zoning Ordinances, the design manuals, and the PADs. This change removes a technical step from the process.

Commissioner Amos said she was uncomfortable with the change because the Commission has noticed problems with certain cases. She questioned whether two months would kill development and doubted that taking the last step out of the Commission's purview would be beneficial.

Commissioner Scibienski queried whether other methods could be employed to increase the speed of the process. Perhaps the Commission could meet more often. He said Council and the Commission have confidence in the current staff, but noted that the staff would eventually change.

Vice Chair Cotera said City Council has many things to be concerned with besides site plans. Most people don't start paying attention to a project until it reaches the site plan approval phase. Zoning is more nebulous. Site plan hearings are also open to the public. This proposal would remove an important safety valve for the community, which prevents buildings from going up that seriously impact the quality of life. The Commission's job is to be a filter for City Council. Perhaps, if Council does not want site plan approval, it should be the Planning Commission's job. This solution would cut down the time requirements, while still giving the public a chance to comment. She expressed concern that the public would no longer have input after the zoning process.

Mr. Galica responded that one of the best arguments in favor of removing site plan review from the Planning Commission and Council is that if the public dislikes something the time to act on it is during the zoning process. If a faulty PAD is approved and plans come forward that meets it, the plan has to be approved because it is in compliance with zoning.

Vice Chair Cotera said if that becomes the case, the Commission should have more information up front when the zoning issues come before them because there will be no opportunity to influence projects in those zones from that point forward. There have been cases where zoning made sense but the site plans turned out to be surprising in some way.

Mr. Galica explained that when staff takes a PAD through the approval process, they consider where it differs from standard requirements, under the assumption that the standard requirements are good. Mr. Schmaltz said the Commission could include changes as part of its recommendation to Council. Vice Chair Cotera reiterated that the quality and specificity of the information provided during zoning approvals has to increase and the public's ability to provide input has to increase as well.

Commissioner Scibienski said the proposal to have the Commission provide input on City Center site plans but not site plans in the rest of the city, sends a mixed message. Mr. Galica explained that the City Center District is written with development standards that are entirely flexible. There are ranges of setbacks and building heights. When zoning is approved for a City Center property, nobody knows what it is going to look like, whereas a PAD provides a pretty good idea. When the Zoning Ordinance for City Center literally says, "to be determined at designed review," it is important that Commission and Council have input on those very subjective decisions, whereas site plan approval in other districts is a matter of reviewing whether the applicant has met the checklist of requirements.

Commissioner Scibienski said the point of a PAD is to provide more flexible zoning. Mr. Galica responded that PADs provide the flexibility to waiver from the Zoning Ordinance, but the standards are just as strong once a PAD is approved. The City Center is open to interpretation, however, even after zoning is approved.

Chair Long observed that when the Commission approves zoning, they have a general idea of what is going to go in there but have no way of knowing what the specifics are going to look like. Commissioner Amos said the changes would likely change the Commission's role to that of an appeals board, hearing complaints from people who are unhappy with staff decisions. Mr. Galica responded that for the site plans that staff already approves, which is everything outside PADs and City Center, the appeal process goes directly to City Council. There have been no appeals, however, because staff tries to arrive at a mutually agreeable compromise with applicants.

Vice Chair Cotera expressed concern that the proposal to delete the requirement that only owners of real property located in the City of Avondale initiate Zoning Ordinance amendments, could lead to rezoning abuse. Mr. Galica said this proposal pertains to text amendments far more than it does rezonings. When someone requests that a property be rezoned, they have to own it. Mr. Schmaltz added that 90% of zoning cases involve both the buyer and seller, and the buyer is the applicant who has been granted authority by the property owner to apply.

Vice Chair Cotera queried whether the plan to extend site plan approvals to two years could be revised in the event the economy revives and development begins to take off again. Mr. Galica responded that staff always evaluates the Zoning Ordinances to determine if amendments are needed. Amendments can always be issued if deemed necessary and the Commission could always suggest changes as well. One of the reasons for site plan expirations is to make sure that the plan still reflects what the City wants to see.

Vice Chair Cotera queried the options available to the Commission, should a project not meet the required proof of adequate school facilities. Mr. Galica explained that the City cannot require that a property owner give land to a school district. Mr. Schmaltz clarified that cities have no authority over schools in Arizona. All cities in Arizona are required to ensure that developers speak to a school district to make sure that property is reserved for a school. Cities cannot require a dedication, nor specifically deny an application because they are somehow not providing the schools. Zoning applications cannot be denied specifically because of the school question. Vice Chair Cotera said she just wants to make sure that housing growth and school growth are well coordinated, because that did not always happen during the last boom.

Commissioner Amos opined that the proposal to extend zones to the centerline of a street is a good change. In response to inquiry from Commissioner Scanlon, Mr. Galica explained that public high schools have set boundaries from which their students are drawn, whereas charter schools, private schools, and community colleges do not draw

from districts. The City cannot notify those types of schools of zoning proposals because there would be no way of knowing whether students plan to attend them or not.

Ms. Stevens, Planning Manager, clarified that when PADs have come before the Commission, they include a conceptual development plan with the request. This requirement is already in Section 6 of the Zoning Ordinance and the Commission will continue to see the conceptual plans. Section 1 which outlines the process is the only area that is changing. Other site plans that only have straight zoning on them have never come forward to the Commission; they've always been handled administratively.

Mr. Galica read the applicable portion of Section 604 for reference purposes, specifying what is required in a PAD narrative and development plan: introduction and opening statements, proposed uses, density, development standards, open space, architectural design, landscaping, perimeter/internal walls gates, entry designs and materials, signage, maintenance of common areas and adjacent rights of way, justification and mitigation, and exhibits to include property boundary and legal description, areas designating lot sizes densities and land uses, circulation plan, phasing schedule, a map designating phases of development, infrastructure improvements, and location and acreage of open space.

Chair Long noted no requirement for conceptual drawings. Mr. Galica confirmed that there is no requirement for an applicant to show the Commission what a building is going to look like at the PAD phase. Mr. Schmaltz added that it is a requirement at the site plan phase. Mr. Galica felt that it would be difficult for someone to produce a building conforming to the design manuals that wouldn't be approved by the Commission or City Council.

Vice Chair Cotera moved to accept the findings and recommend approval of application TA-08-6, a request to amend Zoning Ordinance Section 1, *Administration and Procedures* with affiliated amendments to Zoning Ordinance Sections 2, 5, 8, 9 11, and 12, with the amendment that the City Council either restore site plan approval to the Planning Commission or require that PAD zoning approval packages include conceptual views of the intended style to ensure adequate public oversight of PAD developments. Commissioner Scanlon seconded.

Commissioner Scanlon noted that it would be impractical to expect a developer to come in with the elevations and architectural details early in the process. It might place an unwarranted burden on developers. Vice Chair Cotera clarified that she would only be interested in a general idea of what the project would look like at build out, even if it consists only of a photo of a previous development that falls in line with the proposed new project. Commissioner Scibienski felt that the requirement would either place an undue burden on the developer or encourage them to simply submit a random photo that they have no intention of building. He preferred recommending that Council move forward as they see fit and that the Commission work within those guidelines.

Vice Chair Cotera felt it would be less burdensome to ask developers for more information up front than it would to request another month during the site approval phase. Commissioner Scibienski questioned the definition of "more information." Commissioner Amos noted that most cities keep design review at the Planning Commission. Commissioner Amos said the majority of cities surveyed are doing it the way Avondale currently does. Either they are behind the times, or this is a credible system.

Mr. Galica clarified that the Avondale proposal is not widespread. It is something that Avondale is trying to do to gain a competitive advantage over competing cities. All cities are trying to lure development and this is one way of approaching that issue.

Commissioner Amos suggested striking 107(g). Mr. Schmaltz suggested that 107(g) could be amended to read: "the City Center District or PAD," and then 107(g)1(b) could be eliminated. Vice Chair Cotera said the purpose is not to send issues to City Council, but to lend a public outlet for oversight of PAD site plans.

Vice Chair Cotera withdrew her motion. Commissioner Scanlon withdrew his second.

Commissioner Scibienski moved to accept the findings and recommend approval of application TA-08-6, a request to amend Zoning Ordinance Section 1, *Administration and Procedures* with affiliated amendments to Zoning Ordinance Sections 2, 5, 8, 9, 11, and 12, with the following amendments Section 107(g)1(b) would be changed to 107(g)1(c), and a new (g)1(b) would be introduced to read: "site plans for properties zoned PAD, shall be forwarded to the Planning Commission for its review and approval." Commissioner Scanlon seconded.

Vice Chair Cotera requested an amendment to section 107(g)1(b) saying that: "the Development Review Committee shall include a recommendation of approval, approval subject to stipulations, or denial of said site plan." Commissioner Scibienski agreed to that amendment and Commissioner Scanlon seconded it. The motion passed unanimously.

EXHIBIT I

April 8, 2011

Ken Galica
Planning Division #110
City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323

RE: A request to amend the definition of "guest house" in Section 1, Administration and Procedures, of the zoning ordinances (reference TA**-08-6).**

Mr. Ken Galica,

I respectfully request the Planning Division staff, Mayor, and Council consider modifying the current definition of a "guest house" to allow the inclusion of a kitchen.

A few years ago when the Planning Commission reviewed the Administration and Procedures (Section1), they unanimously voted to amend the definition of a guest house (and related subsections) to allow the inclusion of a kitchen. However, when the application was forwarded to the previous Council for review, the recommendation to allow a kitchen was denied.

Council decided not to modify the definition of a guest house as recommended by the Commission, concerned that allowing kitchens would allow the home to become a rental. I believe the previous Council's concern was unwarranted for two reasons and the current definition unfairly penalizes honest residents who truly need or want a guest house. The current guest house definition forbidding the installation of a kitchen, does not stop someone from building one illegally, or from creating a rental unit.

1) If a homeowner wants a kitchen in their guest house, it can be easily added (illegally) following the final building inspection. It makes more sense to allow the addition of a kitchen upfront, thus allowing city inspectors to insure the electrical and plumbing is properly and safely installed.

2) Subsections of the existing Administration and Procedures Section has language substantively discouraging the creation of rental units disguised as guest houses. Current existing language strongly discourages the creation of rental units by forbidding the installation of independent electrical and water meters, new driveways, etc.

The current definition forbidding kitchens, only penalizes honest residents with good intentions. In my case, the construction of a guest home for my wife's parents who are in their late 80's and require a little extra help with daily tasks. While I was living in Tucson for the last year and a half I was able to provide the assistance they needed. But now that I am living full-time in Avondale again, we need them closer to us. If you have or had elderly parents, you'll understand our dilemma. The only way they will make this move is if they can retain as much independence as possible. That translates into their own home, with all amenities including a full kitchen.

The current reasoning to prevent the creation of rental units by prohibiting kitchens in guest houses is not sound and penalizes applicable Avondale residents. Thank you in advance for your consideration to modify the current definition of guest house to allow kitchens.

Best regards,

Mike Demlong

AVONDALE
ZONING ORDINANCE
ADMINISTRATION AND
PROCEDURES PROVISION

AMENDED AND RESTATED
APRIL 18, 2011

SECTION 1 ADMINISTRATION AND PROCEDURES

101 TITLE, AUTHORITY, JURISDICTION AND PURPOSE

A. Title

This ordinance shall be known as "The Zoning Ordinance of the City of Avondale, Arizona." Within the ordinance text, the following terms (whether capitalized or not) shall be synonymous with The Zoning Ordinance of the City of Avondale: "this ordinance," "Avondale Zoning Ordinance," "The Zoning Ordinance" and "these regulations."

B. Purpose, Intent and Applicability

1. In its interpretation and application, the provisions of this ordinance shall be held to the minimum requirements adopted to implement and promote the General Plan and Specific Plans of the City of Avondale for the protection of its citizens.

2. Except where otherwise noted in this ordinance, the regulations contained in this ordinance shall govern the development and use of land and structures within the corporate limits of the city. No building, structure, or land shall be developed unless in conformity with all the provisions of these regulations for the zoning district in which it is located and other applicable regulations. Any use not specifically permitted herein is prohibited.

3. The purpose of this ordinance is:

    a. To promote the public health, safety and welfare.

    b. To facilitate the adequate provision of transportation, water, sewer, schools, parks and other improvements.

    c. To ensure orderly growth.

    d. To lessen congestion in the streets.

    e. To regulate the use of buildings, structures, and land for residential, agricultural, commercial, industrial and other purposes.

    f. To establish land use classifications and to divide the city into districts.

    g. To adopt a map of land use districts.

    h. To regulate the location, height, bulk, number of stories and size of buildings and structures.

    i. To regulate the size and use of lots, yards, setbacks, courts and other open

spaces and to regulate the percentage of a lot which may be occupied.

j. To provide adequate open space for light, air, and recreation.

k. To establish standards for performance, aesthetics and design.

l. To establish procedures for zoning changes, use permits, variances, site plans and other permits and required approvals.

m. To prescribe penalties of violation of said ordinances.

C. Relationship to General Plan, Subdivision Regulations, Design Manuals, and General Engineering Requirements Manual

This ordinance and any amendments hereto shall be in conformance with the adopted General Plan and Specific Plans of the City of Avondale. The Zoning Ordinance, along with other regulations of the City of Avondale, including the adopted Subdivision Regulations, Design Manual for Commercial, Industrial, and Multi-Family Development, Design Manual for Single-Family Residential Development, and General Engineering Requirements Manual, as amended, are tools used to further the goals of the Avondale General Plan by regulating future development or redevelopment within the City of Avondale. Adherence to these documents shall be required.

D. Repeal and Severability

1. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

2. Should any section or provision of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

E. Establishment of Zoning Districts

In order to promote the orderly development of the City and carry out the provisions of this ordinance and in order to classify, regulate, restrict, and separate the use of land, buildings and structures, the land within the City is hereby divided into the following zoning districts, as may be amended by the City Council:

1. Residential Zoning Districts

   a. Agricultural (AG)
   b. Rural Residential-43 (RR-43)
   c. Rural Residential-18 (RR-18)
   d. Suburban Residential-35 (R1-35)
   e. Suburban Residential-15 (R1-15)
   f. Urban Residential-8 (R1-8)
   g. Urban Residential-6 (R1-6)

h. Urban Residential-5 (R1-5)
i. Multiple Family Residential-2 (R-2)
j. Multiple Family Residential-3 (R-3)
k. Multiple Family Residential-4 (R-4)
l. Manufactured Home Park (MH)

2. Commercial Zoning Districts

a. Residential Office (R-O)
b. Commercial Office (C-O)
c. Neighborhood Commercial (C-1)
d. Community Commercial (C-2)
e. Freeway Commercial (C-3)
f. Old Town Avondale Business (OTAB)
g. Cashion Business (CBD)

3. Employment Zoning Districts

a. Commerce Park (CP)
b. General Industrial (A-1)

4. Special Zoning Districts

a. City Center (CCD)
b. Major Sports and Entertainment (MSED)
c. Special Use Overlay (SUD)

5. Planned Area Development Zoning Districts (PAD)

F. Location and Boundaries of Districts

The location and boundaries of zoning districts are established on a map entitled "The Zoning Atlas of the City of Avondale, Arizona" adopted by the City Council (The Zoning Atlas of the City of Avondale, Arizona is also referred to herein as the "Zoning Map" or the "Zoning Atlas"). The Zoning Atlas accompanies and is incorporated into this ordinance as if set forth fully herein. If uncertainties exist with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

1. Where a district boundary line is shown by a specific dimension, such specific dimension shall control.

2. Where a district boundary line is located within or along a street, alley, right-of-way or channelized waterway, the district boundary line shall be deemed to be the centerline such street, alley, right-of-way or channelized waterway.

3. Where a district boundary line is shown approximately following lot or property lines, the district property line shall be deemed to coincide with such lot or property line.

G. Non-conforming Buildings, Structures, and Uses

This article provides for the regulation of nonconforming buildings, structures, and uses. These regulations are designed to protect the rights of legally existing nonconforming uses, structures and buildings, but not promote expansion or enlargement of such uses.

1. Non-Conforming Buildings and Structures

   Any building or structure that lawfully exists on the effective date of this ordinance or amendments hereto, but which could not be built under the terms of this ordinance because it does not meet lot coverage, height, setback or other development standards required of the zone in which it is located shall be considered a non-conforming building/structure and is subject to the regulations of this Subsection 101(G). No structural or physical alteration shall be made to any non-conforming building or structure except as follows:

   a. Routine repairs or maintenance of non-conforming buildings or structures shall be allowed.

   b. A non-conforming building or structure that has been damaged by fire, flood or other calamity, may be reconstructed if such reconstruction is completed within twelve (12) months of such calamity. The Zoning Administrator may extend the 12-month deadline if a delay in reconstruction was shown to be caused by unforeseen circumstances beyond the control of the owner of the premises.

   c. Additions to non-conforming buildings or structures shall only be permitted if the added portion of the building or structure conforms to all development standards specified for the district in which it is located, except that non-conforming single-family dwellings may be expanded into required setbacks so long as the expansion does not encroach further into the required setback than the existing building.

2. Non-conforming Uses

   Any use of a building, a structure, or land that lawfully exists on the effective date of this ordinance or amendments hereto, but which could not commence under the terms of this ordinance because of restrictions on the use of a building, a structure or land in the zone in which it is located shall be considered a non-conforming use and is subject to the regulations of this section. A non-conforming use shall be allowed to continue operating in the manner it existed at the time it became non-conforming, subject to the following:

   a. A non-conforming use shall not be expanded into additional building area or land area, even if the building area is allowed to be expanded as set forth in this Subsection 101(G).

b. Whenever a non-conforming use has been discontinued or abandoned for a period of one (1) year, such use shall not thereafter be re-established and any future uses shall be in conformity with the provisions of the zone in which the property is located. Once changed to a conforming use, no building, structure, or land shall be permitted to revert back to a non-conforming use.

c. A non-conforming use that is forced to cease operations due to fire, flood or other calamity, may recommence within twelve (12) months of such calamity. The Zoning Administrator may extend the 12-month deadline if a delay in recommencing was shown to be caused by unforeseen circumstances beyond the control of the owner of the premises.

102 ENFORCEMENT

Any person violating the provisions of this Ordinance shall be subject to civil and criminal penalties. The owners, occupants, and authorized agents of property in violation of this Ordinance may be held individually and jointly responsible for the violation, the prescribed civil and criminal penalties and for abating the violation. Each day a violation of this Ordinance continues shall constitute a separate civil or criminal offense unless such violation involves a billboard, as defined by this Ordinance, in which case the provisions of A.R.S. § 9-462.02, as amended, shall apply. The procedures and remedies provided in this Ordinance shall be cumulative and in addition to any other procedures and remedies to which the City may otherwise be entitled by law. Any violation of this Ordinance is declared to be a public nuisance, and instead of, or in addition to, any civil or criminal enforcement measure authorized by this ordinance, may be enjoined or restrained by the City as other nuisances are abated under authority of the City Charter and applicable State Law.

A. Evidence of Identity; Penalty for Failure to Provide

A person who fails or refuses to provide evidence of his or her identity to a duly authorized agent of the City upon request, when such agent has reasonable cause to believe the person has committed a violation of this Ordinance, is guilty of a Class I Misdemeanor. Evidence of identity shall consist of a person's full name, residence address and date of birth.

B. Notice of Violation

1. The City Manager or authorized designee shall seek voluntary compliance with the provisions of this Ordinance before issuing a civil citation or criminal complaint, as applicable. This shall include a written notice of violation given to the property owner, occupant or authorized agent for the property.

2. A notice of violation may be issued by the Code Compliance Manager, a Code Compliance Officer, the Zoning Administrator, the Chief Building Official, or the City Manager or authorized designee.

3. The notice of violation shall set forth the nature of the violation, the action required to bring the property into compliance with the Ordinance, the time period provided to bring the property into compliance and the person at the City to contact for further information.

4. The minimum time period provided for voluntary compliance shall be as follows:

   a. Temporary signs and displays: immediate compliance.

   b. Unsafe signs: See Subsection 102(J), below.

   c. Temporary uses: two (2) calendar days.

   d. Landscaping: thirty (30) calendar days.

   e. All other violations: ten (10) calendar days.

5. The time period for compliance set forth above may be extended if the official issuing the notice of violation determines that the owner, occupant or agent for the property is making reasonable progress toward compliance. All extensions shall be made in writing.

6. Failure of the property owner, occupant or authorized agent of the property owner to receive a notice of violation shall not preclude the subsequent issuance of a civil citation or criminal complaint, as applicable.

7. Nothing in this section shall prevent the City from taking immediate action to protect the public from an imminent hazard to health or safety as otherwise provided by law.

C. Civil Citations

1. Unless otherwise designated as a criminal offense in this Ordinance, if a violation continues past the time set forth in the notice of violation, a civil citation may be issued to the person responsible for the violation.

2. A civil citation may be issued by the Code Compliance Manager, any Code Compliance Officer, a Police Officer, or other city agent or employee duly authorized by the City Manager.

3. The citation shall include the date of the violation, the location of the property and reference(s) to the section(s) of this Ordinance violated.

4. The citation shall direct the defendant to pay the fine imposed pursuant to subsection 102(E) of this Ordinance or appear in municipal court within ten (10) days of the issuance of the citation.

5. The citation shall provide notice that if the defendant fails to pay the fine or appear in municipal court as directed, a default judgment will be entered in the amount of the fine designated on the citation for the violation. In addition, a default fee may be imposed for failure to appear as set forth in subsection 102(E) of this Ordinance.

6. Service of the citation may be accomplished and will be deemed proper and complete by any of the following methods:

   a. Hand delivering the citation to the defendant.

   b. Mailing a copy of the citation by certified or registered mail, return receipt requested, to the defendant's last known address.

   c. Any means allowed by the Arizona Rules of Civil Procedure for the Superior Court.

D. Civil Procedure

1. The defendant shall, within ten (10) days of the issuance of the citation, either pay the fine indicated on the citation or appear in municipal court to admit or deny the allegations contained in the citation.

   a. The defendant may pay the fine in person or by mailing the citation with a check for the amount of the fine to the Avondale City Court. By paying the fine, the defendant admits the violation described in the citation and accepts responsibility for the offense.

   b. The defendant may appear in person or through an attorney in the City Court and either admit or deny the allegations contained in the citation. If the defendant admits the allegations, the Court shall immediately enter a judgment against the defendant in the amount of the fine for the violation charged. If the defendant denies the allegations contained in the citation, the Court shall set a hearing date for trial of the matter.

2. If the defendant fails to pay the fine or appear in the City Court as directed by the citation, the Court shall enter a default judgment and impose the fine and default fee required by subsection 102(E) of this Ordinance.

3. If the defendant fails to appear at the time and place set for trial by the Court, the Court shall enter a default judgment and impose the fine and default fee required by subsection 102(E) of this Ordinance.

4. The Arizona Rules of Procedure in Civil Traffic Violation Cases shall be followed by the Avondale City Court for civil violations of this ordinance, except as modified or where inconsistent with the provisions of this Ordinance, local rules of the City Court or rules of the Arizona Supreme Court.

E. Civil Penalties

1. Any person that violates this Ordinance shall be subject to a civil penalty of two hundred fifty dollars ($250) base fine for the first violation, five hundred dollars ($500) base fine for a second violation and one thousand dollars ($1,000) base fine for a third violation in any 24-month period. The dates of the offenses are the determining factor for calculating the 24-month period.

2. Any defendant that fails to pay the fine or appear in the City Court as directed by a citation issued pursuant to this Ordinance, or who fails to appear at the time and place set for trial of a matter arising under this Ordinance, shall be subject to an additional default fee as established by the City Court.

3. Any judgments issued by the Avondale City Court shall be subject to all surcharges and fees imposed by state law in addition to the civil fines required by this Ordinance.

4. Judgments shall be collected in the same manner as any other civil judgment as provided by law.

F. Habitual Offenders

1. A person found to be responsible for three or more civil violations of this Ordinance within any 24-month period shall be deemed to be a habitual offender. Responsibility may be determined by admission, by default judgment or by judgment after hearing. The dates of the offenses are the determining factor for calculating the 24-month period.

2. A habitual offender who violates the provisions of this Ordinance shall be guilty of a criminal offense and subject to the penalties set forth in subsection 102(I) below for each violation in excess of three (3) civil or criminal violations within a 24-month period.

G. Criminal Complaints

The Code Compliance Manager or any other city agent or employee duly authorized by the City Manager may seek the issuance of a complaint by the Avondale City Prosecutor for criminal prosecution of a habitual offender or any person who commits a criminal offense as set forth in this Ordinance.

H. Criminal Procedure

Every criminal action and proceeding under this Ordinance shall be commenced and prosecuted in accordance with the laws of the State of Arizona relating to misdemeanors and the Arizona Rules of Criminal Procedure.

I. Criminal Penalties

1. Upon conviction of a person for a criminal offense, including the habitual offender provisions set forth above, the Court may impose any combination of the following:

    a. A sentence of incarceration not to exceed six (6) months in jail.

    b. A base fine not to exceed two thousand five hundred dollars ($2,500), exclusive of penalty assessments prescribed by law.

    c. A term of probation.

2. Notwithstanding the elective penalty above, upon conviction of a habitual offender the Court shall impose a base fine of not less than one thousand dollars ($1,000) for each count upon which a conviction is obtained.

J. Sign Removal and Repair

1. The City may act to remove or repair a sign when warranted as follows:

    a. Unsafe Signs: The Chief Building Official or any agent or employee of the City authorized by the City Manager shall make the determination that a sign or sign structure is in an unsafe condition. If the sign owner or property owner does not comply with the notice of violation given under subsection 102(B) of this Ordinance, the Chief Building Official or any agent or employee of the city authorized by the City Manager may have the sign removed or repaired at the expense of the sign owner or the property owner.

    b. Public Right-of-way and Public Property: The Code Compliance Manager, a Code Compliance Officer or any agent or employee of the City authorized by the City Manager may remove or cause to be removed any sign placed or erected unlawfully on public property or within the public right-of-way. Prior notice of violation may be given, but is not required. Removal of the sign does not preclude issuance of a citation as set forth in subsection 102(C) of this Ordinance.

    c. Temporary Signs: The Code Compliance Manager, any Code Compliance Officer or any agent or employee of the City authorized by the City Manager shall have the authority to confiscate a temporary sign unlawfully displayed on private or commonly owned property when the owner or responsible party for the sign refuses or fails to comply with a notice of violation issued under subsection 102(B) of this Ordinance. Removal of the sign does not preclude issuance of a citation as allowed by subsection 102(C) of this Ordinance.

2. When a sign is removed by the city, a written notice of removal shall be given to the sign owner or property owner, if known, stating the reason for the removal, where the sign will be stored, how long it will be stored, the storage fee and the name of the person to contact for further information.

3. Signs removed by the city shall be stored for five (5) business days from the date the notice of removal is given, or from the date of removal if the owner of the sign cannot be determined. Any sign not claimed within this time period may be disposed of in any manner deemed appropriate by the City. The sign shall be released to the sign owner or property owner upon payment of any penalties under this Section 102 and the storage fee in an amount established by the City Council through its annual budget or by separate resolution.

4. All costs incurred by the City for the removal or repair of a sign under this Ordinance shall be reimbursed by the owner of the sign or the owner of the property on which the sign is located. The City may bring an action in Municipal or Superior Court to recover these costs.

K. Transfer of Ownership

It shall be unlawful for a person, firm or corporation found to be in conflict with this Ordinance or in violation of any provisions of this Ordinance who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such property to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility, without condition, for making the corrections or repairs required by such compliance order or notice of violation.

103 DEFINITIONS

For the purpose of this ordinance, certain terms and words are hereby defined as set forth below. Words used in the present tense include the future; words in the masculine gender include the feminine and the neuter, and the singular number includes the plural, and the plural the singular; the word "shall" is mandatory and not permissive; the word "person" includes individuals, partnerships, corporations, clubs and associations. The following words or terms, when applied in this Ordinance, shall carry full force when used interchangeably: lot, plot, parcel, premises or site; used, arranged, occupied, or maintained; adjoining, abutting, contiguous to, bordering, or adjacent to; sold or dispensed; construct, reconstruct, erect, alter (structurally or otherwise) but not the term maintenance. The word "used" shall be deemed also to include designed, intended or arranged to be used. "Board" shall mean Board of Adjustment; "Commission" shall mean the City of Avondale Planning Commission; "Council" shall mean the City of Avondale City Council.

Abutting: Adjacent to.

Accessory Building: A detached subordinate building containing an accessory use and situated on the same lot as the main building.

Accessory Use: A subordinate use of a building, other structure, or tract of land that is both: (A) clearly incidental and customary to the use of the principal building or other structure or use of land and (B) located on the same zoned lot with the principal building, other structure or use of land.

Adult Day Care: A facility providing care for the elderly and/or functionally impaired adults in a protective setting for a portion of a 24-hour day in a place other than the adults' own home. No overnight sleeping facilities are provided.

Alley: A right-of-way, dedicated to public uses, that gives a primary or secondary means of vehicular access to the rear or side of properties otherwise abutting a street.

Amusement Park: An outdoor facility, which may include structures and buildings, where there are various devices for entertainment, including, but not limited to, rides, booths for the conduct of games or sale of items and buildings for shows and entertainment.

Analogous Use: A land use deemed by the Zoning Administrator to be similar enough to another use as to not have a significantly different effect on surrounding properties.

Apartment: An individual dwelling unit within an apartment building.

Apartment Building: Four or more attached dwellings, each of which has its own private sleeping, sanitation and cooking facilities, that are typically rented or leased on a monthly basis. For the purposes of this Ordinance, an apartment or apartment building shall be considered a Multi-Family Dwelling.

Apiary: A structure where bees are kept.

Archeological Resources: Any material of past human life, activities, or habitation that are of historic or prehistoric significance. Such material includes, but is not limited to, pottery, basketry, bottles, weapon projectiles, tools, structures, pit houses, rock paintings, rock carvings, graves, skeletal remains, personal items, clothing, household or business refuse, printed matter, manufactured items, or any piece of the foregoing items.

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.

A.R.S.: The Arizona Revised Statutes, as amended.

Assisted Living Facility: A facility served by a common kitchen that provides living quarters and assistance to residents for daily living activities such as bathing, dressing, taking medications and transportation, and is not licensed by the State of Arizona as a nursing home.

Auto Service and Diagnostic Facility: A facility designed to provide limited servicing of automobiles, including but not limited to brakes, oil changes, and tune ups, excluding any facility which performs body work, engine repair, transmission overhauls, or other major repair or reconditioning.

Automobile, Boat, Recreational Vehicle, or Motorcycle Sales and/or Leasing: The display, sales and/or rental of new or used automobiles, boats, recreational vehicles and motorcycles, where service and repair may occur as an accessory use within a fully enclosed building.

Aviary: An enclosure for confining birds and fowl.

Bar: An establishment, including but not limited to a cocktail lounge, discotheque or tavern, the main use of which is to serve beer, wine and liquor for on-site consumption. Such facility may serve food, as well as, provide dancing and entertainment.

Bed and Breakfast Inn: A private residence that provides lodging and meals for guests at which: (A) the host or hostess resides in the principal residence; (B) no more than four (4) guest rooms are used for lodging at the same time; (C) the host or hostess may advertise and accept reservations, but shall not hold itself out to the public to be a restaurant, hotel or motel; and (D) food and spirited beverages are served only to overnight guests. Any dwelling in which more than four (4) guest rooms are provided shall be deemed a hotel/motel.

Block: That property abutting one side of a street and lying between the two nearest intersecting streets, or nearest intersecting street and railroad right-of-way, unsubdivided land, waterways, but not an alley, of such size as to interrupt the continuity of development on both sides thereof.

Boarding House: A single-family detached or attached dwelling unit in which any of the rooms are rented or leased to persons on a transient basis, but which does not include group homes for persons with a disability, dormitories, group recovery homes, convalescent homes, nursing homes, substance abuse detoxification centers or substance abuse treatment centers.

Brewery Ancillary to a Restaurant or Brewpub: A restaurant that includes the brewing of beer on-site as an accessory use.

Buffer: An area of land, that may include landscaping, berms, walls, fences, building setbacks, or a combination thereof, that is located between land uses of a different character and is intended to mitigate negative impacts of the more intense use.

Buffer, Landscape: A landscaped area located on the perimeter of a site that serves to screen the visual impacts caused by the differences in use.

Building: Any structure, either temporary or permanent, having a roof and used or built for the shelter and enclosure of persons, animals, chattels, or property of any kind. This shall include tents, awnings, or vehicles situated on private property and used for purposes of a building.

Building Addition: Any extension or increase in floor area or height of a structure.

Building, Closed: A structure completely enclosed by a roof and walls of approved construction.

Building Coverage: That portion of a lot occupied by any building or structure, including those buildings or structures not intended for human occupancy, calculated by dividing the total building ground floor area by the net site area. Open carports within parking lots in multi-family, commercial, and employment districts shall not count toward the building coverage calculation.

Building Façade: The exterior elevation of a building structure excluding any porches, overhangs, covered walkways, drive through covers or similar appendages.

Building Footprint: The outline of the total area covered by a building's perimeter at the ground level.

Building Ground Floor Area: The total area of the largest floor under roof, measured from the exterior faces of exterior walls, and not including the sum of the several floors of a multi-story building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

Building Height: The vertical distance measured from the adjacent grade level to the highest level of the roof surface of flat roofs, to the deck line of mansard roofs or to the mean height between eaves and ridge for gable, gambrel or hip roofs.

Building, Main: A building, or buildings, in which is conducted the principal use of the lot on which it is situated. In any residential district, the primary dwelling shall be deemed to be the main building of the lot on which the same is situated.

Building Permit: A permit issued by the duly designated building official authorizing the erection, construction, reconstruction, alteration, repair, conversion or maintenance of any building, structure or portion thereof, where required by the City's adopted building codes.

Cacti: Any family of plants that have fleshy stems and branches with scales or spines instead of leaves and that 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.

Caretaker's Quarters: An accessory dwelling on non-residential premises that is occupied by the person who oversees the nonresidential operation 24 hours a day, and his or her family.

Carport: A covered parking space open on one or more sides that is intended and available for use at an automobile shelter.

Child Care: The care, supervision and guidance of children, unaccompanied by the parent, guardian or custodian, on a regular basis for less than twenty-four (24) hours per day, in a place other than the child's own home.

Child Care Center: Any building or portion thereof used primarily for child care for compensation including nursery schools, preschools and day care centers.

Cigar Bar or Tobacco Lounge: An establishment that specializes in the sale of cigars and other tobacco-related items, and allows patrons to smoke tobacco products on-site. The consuming of tobacco products shall occur entirely indoors and conform to the Arizona law.

Clinic: A building in which one (1) or more physicians work including supplying pharmaceutical and optical needs, conducting medical tests, or other common ancillary uses to a medial office, without overnight patient occupancy.

Club or Social/Private Club: An association of persons (whether or not incorporated), religious or otherwise, for social purpose, but not including groups that are organized primarily to render a service carried on as a business for profit.

Commercial Center: Any property with a minimum land area of ten (10) acres developed with a multi-tenant office or retail development.

Commercial Sporting Complex: An indoor facility, with or without seating for spectators, and providing accommodations for a variety of individual, organized, or franchised sports. Such facility may also provide other regular organized or franchised events, health and fitness club facilities, swimming pool, snack bar, restaurant and other support facilities. Such a facility may be publicly or privately owned and publicly or privately operated.

Commercial Vehicle: Any motor vehicle with a manufacturer's chassis rating greater than one (1) ton.

Conditional Use Permit: A permit issued that allows the City to impose additional development standards on that proposed use after consideration of adjacent uses and their functions and the special impacts that the proposed use may cause.

Condominium: Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by owners of the separate portions.

Consignment Shop: A retail establishment where previously-owned merchandise, such as clothing, jewelry or furniture is consigned to a dealer who collects a fee and pays the seller after the merchandise is sold, but shall not include stores selling consigned vehicles, auto parts, scrap or waste. Consignment shops are distinct from thrift stores, pawn shops and non-consignment secondhand retail stores.

Convalescent Home: A facility served by a common kitchen that provides living quarters and medical care to non-elderly residents recovering from non-chronic illness or injury, and which is licensed by the State of Arizona as a nursing home.

Corral: A fenced area or enclosure intended for the confinement of livestock for feeding, shelter, or other purposes, not to be confused with a pasture used for the grazing of livestock.

Crown: The branches, twigs and leaves that make up the foliage portion of the tree.

Curb Line: The line at the face of the curb nearest the street or roadway. In the absence of a curb, the curb line shall be established by the City Engineer.

Day Labor Hiring Center: A for-profit or non-profit facility at which job seekers congregate to be hired by the day or by the job for short periods of time by third parties.

Day Spa: A business establishment that provides professionally administered personal care treatments such as manicures, pedicures, massages and facials.

Density: The number of dwelling units permitted per net acre of land.

Design Guidelines: See Design Manuals.

Design Manuals: The adopted Avondale Design Manual for Commercial, Industrial, and Multi-Family Residential Development and Avondale Design Manual for Single-Family Residential Development, as amended.

Development Review Committee: See Section 105 below.

Development Services Director: The person designated by the Avondale City Manager to oversee the planning and development related services for the City.

Distribution: Receipt, temporary storage and redistribution of goods.

Dormitory: A structure specifically designed for a long-term stay by students of a college, university, institute or nonprofit organization for the purpose of providing rooms or apartments for living purposes, and may include one common kitchen and some common gathering rooms for social purposes.

Drive Aisle: A paved surface that connects a driveway with a parking lot aisle.

Drive-Through Lane: A paved surface assigned to a specific drive-through use which is used for the purpose of conducting a business transaction without requiring a driver to exit a vehicle, and which is designed of sufficient length to accommodate vehicular queuing.

Driveway: An unobstructed paved area directly connecting a public or private street with vehicle parking, loading or maneuvering areas.

Dwelling or Dwelling Unit: A building or portion of a building designed or used by one (1) family for residential purposes as a single housekeeping unit, but not including convalescent homes, hospices, assisted living facilities, hospitals, hotels, motels, and other accommodations for the transient public, but including group homes for the handicapped.

Dwelling, Attached: Single-family dwellings attached in groups of two (2) or more by common vertical walls.

Dwelling, Detached: A single-family dwelling that is not attached to any other dwelling by any means.

Dwelling, Duplex: A building containing two (2) single-family dwelling units totally separated from each other by an unpierced wall extending from the ground to the roof.

Dwelling, Multi-Family: A building containing four (4) or more dwelling units.

Dwelling, Single-Family: A building containing one (1) single-family dwelling unit.

Dwelling, Triplex: A building containing three (3) dwelling units.

Emergency Medical Care Facility: A facility providing medical care to human beings by licensed medical personnel on an outpatient basis. No sleeping facilities or provisions for overnight stays are provided. Commonly known as "urgent care centers."

Employee: With respect to Section 10 only, a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

Employment Agency: A business that charges a fee for providing information and placement services to candidates seeking employment and/or clients looking for qualified candidates through which candidates register with the agency, but do not wait on-site or at a central location for full time, part time, or temporary assignments and at which vocational guidance, employment counseling, resume writing, executive recruitment, payroll processing and similar personnel services may also be offered.

Entertainment: An engaging or diverting presentation of, or participation in, activities including but not limited to, live singing, dancing, musical instrumentation, dramatic or prosaic presentations or poetic activities, but excluding adult live entertainment.

Event: A commercial, promotional, motorsports, sports or entertainment activity taking place at or on a major sports and entertainment district zoned property. Events may occur within the major sports and entertainment venue, within the surrounding parking areas, or both.

Event Day: Any day upon which an event is scheduled to take place in advance at or in a major sports and entertainment venue.

Evergreen Tree or Shrub: A tree or shrub of a species that normally retains its leaves/needles throughout the year.

Extended Stay Hotel: Any building, other than a boarding house, containing four or more guest rooms that are used, rented or hired for sleeping purposes by transient guests and contain kitchen facilities for food preparation including, but not limited to, such facilities as refrigerators, stoves and ovens.

Family: Any of the following: (A) one (1) or more persons related by blood, adoption, or marriage, living and cooking together as a single nonprofit housekeeping unit, inclusive of household servants, (B) two (2) to six (6) persons living and cooking together as a single housekeeping unit having a continuing non-transient domestic character though not related by blood, adoption, or marriage or (C) a home for independent living with support personnel that provides room and board, personal care and habilitation services in a family environment as a single-housekeeping unit for not more than ten (10) resident elderly or disabled persons in a Group Home for Persons with a Disability (mentally and/or physically impaired) with at least one (1), but not more than two (2) resident staff persons. This definition shall not include any society, club, coterie or organization that is not a recognized religious order nor does it include any group of individuals whose association is temporary or seasonal or similar to a resort, boarding house, motel, hotel or whose association is for an anticipated limited duration or for a determinable period such as a school term.

Farm Animals: Domesticated animals traditionally raised and kept for food, fiber, feathers, labor or riding. This includes horses, cattle, sheep, goats, swine, fowl, rabbits and other similar animals and birds.

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.

Floor Area Ratio: The ratio of gross floor area to the net site area of the building site.

Fowl: Chickens, turkeys, ducks, geese, guinea fowl and peafowl.

Freeway: For the purposes of this Ordinance, freeway shall mean Interstate-10 or other limited access highway, including all traffic lanes, ramps, appurtenances and undeveloped or unpaved land within the associated Arizona Department of Transportation right-of-way.

Garage: A fully enclosed structure, or part thereof, used for the parking and storage of vehicles.

Garage Sale: A general sale, open to the public, conducted on a premises on which a residential dwelling is located, for the purpose of disposing of personal property including, but not limited to, all sales entitled "garage," "lawn," "yard," or "rummage" sale.

Gas Station: A place of business having pumps and/or storage tanks from which motor vehicle fuel is dispensed at retail into a motor vehicle or an approved container with accessory activities that may include the retail sale and installation of minor automobile parts and accessories, retail sales of food, drink and other convenience items, automobile washing,

inspections or other routine vehicle maintenance, but shall not include major automotive repair work such as engine overhauling, body and fender repair, or painting.

Grade: The top of curb, or top of crown of a street where no curb exists, as established at the midpoint of the front of the lot used for establishing building heights.

Gross Floor Area: The sum of the gross areas of all floors of a building or buildings, measured from the exterior faces of exterior walls or from the centerlines of walls separating two buildings, but not including underground parking spaces, uncovered stairwells or exterior balconies.

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. Pavement shall not be considered groundcover for the purposes of landscaping.

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.

Group Home for Persons with a Disability: A dwelling shared by up to ten (10) physically or developmentally disabled persons who reside together as a single housekeeping unit and who receive care, supervision or counseling from one (1) or more support staff. This use includes homes for the mentally ill, group care agencies and similar living arrangements for the handicapped. It does not include boarding houses, nursing homes, shelter care facilities, community correctional facilities, substance abuse detoxification centers, substance abuse treatment centers, group recovery homes, or other uses that are not subject to the Federal Fair Housing Act and the Arizona Fair Housing Act.

Group Recovery Home: A residential facility that provides residence and treatment for two (2) or more persons who are in the process of recovery and adjustment from alcoholism or drug abuse and who receive care, supervision or counseling from one (1) or more support staff.

Guest House: A building used to house guests of the occupants of the main building, which does not contain cooking facilities and which is not rented or leased separately from the main building.

Handicapped: A person who (A) has a physical or mental impairment that substantially limits one (1) or more major life activities to the extent that the person is incapable of living independently; or (B) has a record of having such impairment; or (C) is regarded as having such impairment. Handicapped does not include a person who is illegally using or addicted to a controlled substance as defined in Section 102 of the Controlled Substance Act [21 United States Code 802].

Historic Building: Any building that is listed on the National Register of Historic Places, the Arizona Register of Historic Places, or that has been determined eligible for inclusion on the National Register of Historic Places by the Arizona State Historic Preservation Office.

Home Child Care: Any dwelling in which child care is provided as an accessory use, with or without compensation.

Home Occupation: Any occupation or profession carried on by a member of a family residing on the premises that is clearly incidental to the use of the structure for dwelling purposes and which does not change the exterior character of the premises in any way.

Horse Ranch: A facility at which the breeding and raising of horses for sale is conducted.

Hospice: A facility or service that provides care for the terminally ill patient and support to the family. The care, primarily for pain control and symptom relief, can be provided in the home or in an inpatient setting. A hospice shall be considered an assisted living facility for the purposes of this Ordinance.

Hospital: An institution licensed by the State of Arizona that provides medical, surgical, or psychiatric treatment and care to humans by State licensed medical personnel for the sick and injured on an on-going basis 24 hours a day, 365 days a year.

Hotel: An establishment, other than a boarding house, containing five (5) or more guest rooms that, for a fee, provides temporary sleeping accommodations and customary lodging services, including maid service, the furnishing and upkeep of furniture, bed linens, telephone and desk service, as well as related ancillary uses including, but not limited to, conference and meeting rooms, restaurants, bars and recreational facilities. For the purposes of this Ordinance, a motel shall be considered a hotel.

Household Pets: Small animals that are generally suited for residences and customarily kept for home companionship, hobbies or personal enjoyment. This includes, but is not limited to, cats and dogs.

Impound Lot: A facility that provides temporary outdoor storage of motor vehicles that are (A) to be claimed by titleholders or their agents, (B) not stored at said facility for more than 45 days and (C) operable and licensed at all times during such storage.

Incidental Commercial Sales: Commercial sales operated in conjunction with, upon the same premises as, and solely in support of similar uses located or planned within a business park development or conducive and subordinate to future business park and industrial uses.

Independent Living Facility: An Apartment Building designed to be occupied by elderly or retired persons of a specific age, generally over the age of 55. Independent Living Facilities may include common dining areas, but, because the dwelling units have individual kitchens, residents are typically not required to use these dining facilities.

Indoor Commercial Recreation/Entertainment Use: An indoor facility, with or without seating for spectators, and providing accommodations for a variety of individual, organized, or franchised sports. Such facility may also provide other regular organized or franchised events, health and fitness club facilities, swimming pool, snack bar, restaurant, retail sales of related sports, health, or fitness items, and other support facilities.

Interior Property Line: A recorded property line of a parcel or lot that is located within the area circumscribed by a recorded plat but not abutting public right-of-way.

Joint Use Parking: Use of the same parking spaces by adjacent uses that have staggered peak periods of demand, thereby reducing the amount of land consumed by parking. Also known as "shared parking."

Kennel: Any commercial establishment at which dogs and cats are bred or raised for sale, boarded or cared for, exclusive of dental, medical or surgical care.

Laboratory: A building, or portion thereof, used or intended to be used for scientific experimentation, observation, testing or analysis.

Landscape Architect: A person registered to practice landscape architecture in the State of Arizona.

Landscape Maintenance: The process of keeping a landscape healthy, clean, safe and attractive by landscape irrigation management and 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.

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 depicting the locations of all existing and proposed landscape improvements to be present on the site at the completion of project construction.

Landscaping: An exterior improvement of property in accordance with an approved landscape plan and utilizing approved landscape materials.

Licensee: With respect to Section 10 only, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

Livestock: Cattle, horses, sheep, goats and similar animals, excluding swine.

Lot: A parcel of land created legally through a minor land division or plat, or two (2) or more contiguous parcels legally created to be used as a unit under the provisions of this ordinance, as shown in the records of the Maricopa County Recorder's Office, and having its principal

frontage on a street. In any district where a half-street has been dedicated not less than twenty-five (25) feet in width, lots facing on such half-street shall be deemed to have frontage on a street.

Lot, Corner: A lot located at the intersection of two (2) or more streets. A corner lot shall be considered to be on the block that the lot fronts.

Lot, Interior: A lot having only one (1) side on a street.

Lot, Internal: A lot within a planned shopping center having no street frontage but accessible to public streets through private infrastructure and access easements.

Lot, Key: An interior lot, one side of which is contiguous to the rear line of a corner lot.

Lot Length: The length (or depth) of a lot shall be determined as follows:

A. If the front and rear lines are parallel, the shortest distance between such lines.
B. If the front and rear lines are not parallel, the distance between the midpoint of the front lot line and the midpoint of the rear lot line.
C. If the side lot lines are not parallel, the shortest distance between the front lot line and a line parallel to the front lot line, not less than ten (10) feet long lying wholly within the lot.

Lot Line, Front: The front lot line of a lot shall be determined as follows:

A. Corner lot: The front lot line of a corner lot shall be the property line abutting the lower adjacent street classification. If both abutting streets are the same classification, the front property line shall be the shorter of the two (2) lines adjacent to the streets. Where the lines are equal, the front lot line shall be that line which is obviously the front by reason of the prevailing custom of the other buildings on the block. If such front is not evident, then either may be considered the front of the lot, but not both.
B. Interior lot: The front property line of an interior lot shall be the line bounding the street frontage.
C. Through lot: The front property line of a through lot shall be that line which is obviously the front by reason of the prevailing custom of the other buildings on the block. Where such front property line is not obviously evident, the Board of Adjustment shall determine the front property line.

Lot Line, Rear: The rear property line of a lot is that lot line opposite to the front property line. Where the side property lines of a lot meet in a point, the rear property line shall be assumed to be a line of not less than ten (10) feet long, lying within the lot and parallel to the front property line. In the event that the property line is a curved line, then the rear property line shall be assumed to be a line not less than ten (10) feet long, lying within the lot and parallel to a line tangent to the front property line at its midpoint.

Lot Line, Side: The side property lines of a lot are those lot lines connecting the front and rear property lines of a lot.

Lot, Through: A lot contiguous to two (2) parallel or approximately parallel streets.

Lot Width: The width of a lot shall be determined as follows:

A. If the side property lines are parallel, the shortest distance between these sidelines.
B. If the side property lines are not parallel, the width of a lot shall be the length of a line at right angles to the axis of the lot at a distance equal to the front setback required for the district in which the lot is located. The axis of a lot shall be a line joining the midpoints of the front and rear property lines.

Maintenance, Building or Site: The replacing of a part or parts of a building or site that have been made unusable by ordinary wear and tear, or by the weather.

Maintenance, Landscaping: 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.

Major Sports and Entertainment Venue: A commercial structure consisting of tiered seats around a field, court or racetrack, intended to be used for the viewing of sporting events but which may also be used for entertainment and other public gathering purposes and which may also include food service facilities and other accessory uses customarily associated with the operation of the venue.

Manufactured Home: A mobile home manufactured or constructed in accordance with the Federal Manufactured Home Construction and Safety Standards (42 USC 5403), as amended.

Manufactured Home Park: Any area or tract of land designed for the parking or other type of installation of manufactured or mobile homes on spaces or lots offered for lease or rent, including all improvements, buildings, structures, recreation areas or other facilities for the use of the residents of such development.

Manufacturing and Assembly, Heavy: The manufacturing, assembly, fabrication, packaging or other industrial processing of products primarily from extracted or raw materials whose process typically produces noise, dust, odors and/or vibrations detectable outside of the building.

Manufacturing and Assembly, Light: Manufacturing from predominantly previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging, but excluding basic industrial processing and taking place entirely within doors and producing no detectable noise, dust, odors or vibrations outside the building.

Marquee: A permanent roof-like structure extending from part or all of the building facade over a walkway either within or outside the public right-of-way and constructed of some durable material such as metal, glass or plastic.

Massage: The manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device.

Massage or Day Spa: An establishment where massage is administered by someone other than a medical practitioner, chiropractor, physical therapist or similar person licensed by the State of Arizona.

Massage Therapy: Massage administered for medical purposes by a medical practitioner, chiropractor, physical therapist or similar person licensed by the State of Arizona.

Master Planned Development: A self-contained development under unified ownership, often with a mixture of land uses, planned and developed as a whole in a single phase or programmed in a determined series of phases, and in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots.

Medical Marijuana: "Marijuana" for "medical use" as those terms are defined in A.R.S. § 36-2801, as amended.

Medical Marijuana Cultivation Location: Any of the following: (A) a medical marijuana dispensary at which cultivation occurs for sale at that medical marijuana dispensary, (B) the one additional location, if any, duly identified pursuant to A.R.S. § 36-2806(E), as amended, during the process of registering a medical marijuana dispensary, where marijuana will be cultivated for sale at a medical marijuana dispensary, (C) any location identified pursuant to A.R.S. § 36-2804.02(A)(3)(f), as amended, for cultivation of medical marijuana by a designated caregiver or qualifying patient (as defined in A.R.S. § 36-2801, as amended) for a qualifying patient's medical use or (D) a facility that incorporates or processes medical marijuana into a consumable or edible product.

Medical Marijuana Dispensary: A nonprofit medical marijuana dispensary (as defined in A.R.S. § 36-2801, as amended) duly registered and certified pursuant to A.R.S. § 36-2804, as amended.

Medical Office: A room or group of rooms used exclusively by physicians, dentists or similar personnel for the treatment and examination of patients solely on an out-patient basis, provided that no overnight patients shall be kept on the premises.

Mini-Storage Warehouse: A facility that leases space to individuals or to small businesses wherein the rented spaces, known as "units", are secured by the tenant's own lock and key.

Mobile Home: A structure at least eight (8) feet in width and thirty-two (32) feet in length, built on a permanent chassis and designed to be used as a dwelling unit.

Motor Vehicle: Defined as set forth in A.R.S. § 28-101, as amended.

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 is not considered a multiple trunk tree.

Multi-Tenant Non-Residential Development: A development site for a shopping center, office park or commerce park whereupon a number separate commercial and/or employment

activities are located and in which there are appurtenant shared facilities, such as parking and pedestrian walkways. Distinguishing characteristics of a multi-tenant non-residential development may, but need not, include common ownership of the real property upon which the development is located, common wall construction, and multiple-occupant commercial use of a single structure.

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.

Net Floor Area: The total square footage of interior floor areas, interior courtyards, outdoor storage areas, and outdoor dining areas, exterior walkways, parking areas and landscaped areas, excluding the thickness of exterior walls.

New Urbanism: The process of reintegrating the components of modern life (i.e. housing, workplace, shopping, and recreation) into compact, pedestrian-friendly, mixed-use neighborhoods served by transit and set in a larger regional open space framework.

Night Club: A place of entertainment open at night usually serving food, beer, wine and liquor and providing music and space for dancing and often having a floor show.

Non-Chartered Financial Institution: A business, other than a state or federally chartered bank, credit union, mortgage lender or savings and loan association, that offers check cashing services and loans for payment of a percentage fee. Specifically included are check cashing businesses that charge a percentage fee for cashing a check or negotiable instrument and loan businesses that make loans upon assignments of wages to be received.

Non-Conforming Buildings, Uses, and Lots: See Subsection 101(G).

Nursing Home: A facility served by a common kitchen that provides living quarters and medical care to elderly and chronically ill residents, and which is licensed by the State of Arizona as a nursing home.

Office: A room or group of rooms used for conducting the affairs of a business, profession, service industry or government.

Off-Street Parking Space: A paved and properly drained area, enclosed or unenclosed (unless specified), permanently reserved for parking one (1) automobile.

Open Space: Areas within a development that are either improved or unimproved, and are designated and intended for the common use or enjoyment of the residents, guests and patrons for leisure time activities or for aesthetic enhancement of the development. Said areas are comprised active and passive recreation areas, and improvements as are necessary and appropriate for the intended users.

Open Space, Active: Open space that is improved and set aside, dedicated, designated, or reserved for recreational facilities such as swimming pools, play grounds, ball fields, court games, picnic tables or other activities.

Open Space, Passive: Passive open spaces are unimproved areas used for recreation activities typically undertaken on an individual or small group basis. Passive recreation may include activities such as hiking, bird watching, nature observation, canoeing, jogging, bicycling, horseback riding or other non-motorized trail-oriented activities requiring only limited modifications to the natural landscape. Non-trail oriented activities such as boating, fishing; environmental education, and picnicking are also considered passive recreation.

Parapet: The portion of a wall that extends above the roof line.

Parcel: A lot or a contiguous group of lots under common ownership and/or control that are considered a single development site.

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.

Parking Lot: A parcel of land upon which members of the general public may park their vehicles at no cost for the purpose of utilizing a use or facility.

Parking Lot Aisle: The areas immediately adjacent to parking stalls that permit maneuvering of cars entering and leaving the parking stalls, and which connect the parking stalls to the driveway or drive aisle.

Parking Lot, Commercial: A parcel of land upon which members of the general public may park a vehicle by paying a charge or fee for said usage to the landowner or his agent.

Patio Home: An attached or detached single-family dwelling constructed with no side yard on one (1) or more sides of the lot.

Paved Surface: A surface of masonry, concrete or asphalt. Permeable or decorative surfaces, such as pavers, stamped/colored concrete (Bomanite), porous concrete, or porous asphalt may be considered a paved surface if approved by the City Engineer.

Pawn Shop: An establishment where money is loaned on security of personal property left in pawn and pledged as collateral, and where the pledged property may be sold to the public if not redeemed by the pledgor within a fixed amount of time.

Person: An individual, proprietorship, partnership, corporation, association or other legal entity.

Personal Wireless Service Facility (PWSF): An unmanned facility for the provision of personal wireless services as defined by the Telecommunications Act of 1996, and any amendments thereto. Personal wireless service facilities are composed of three (3) or more of the following components: (A) antennae); (B) mount; (C) cables; (D) support structure; (E) equipment cabinet/shelter; and (F) wall or security barrier. A PWSF is also commonly referred to as a "cell tower."

Personal Wireless Service Facility, Alternative Structure: A PWSF that is either:

A. Virtually invisible to the casual observer, such as an antenna behind louvers on a building, or located inside a clock tower, steeple, or similar structure; or
B. Camouflaged with stealth design to blend in with surroundings to the extent that it is indistinguishable by the casual observer from the structure on which it is placed or the surroundings in which it is located, such as structures commonly referred to as "monopalms," "monopines," or "flag pole" designs.

Personal Wireless Service Facility, Freestanding: A self-supported structure, to include monopoles, lattice cell towers, and alternative structures, designed for use as a PWSF. For the purpose of this zoning ordinance, guyed PWSFs shall also be considered freestanding.

Personal Wireless Service Facility, Guyed: A cell tower that is supported by the use of cables (guy wires) that are permanently anchored to the ground and designed to support PWSF antennas. Guyed PWSFs shall not be considered Alternative Structures for the purpose of this zoning ordinance.

Personal Wireless Service Facility, Lattice: A tower that is self-supporting with multiple legs and cross-bracing of structural steel and that is designed to support PWSF antennas. Lattice PWSFs shall not be considered Alternative Structures for the purpose of this zoning ordinance.

Personal Wireless Service Facility, Monopole: A single, upright pole, engineered to be self-supporting and requiring no guy wires or lateral cross-members and that is designed to support PWSF antennas. Monopoles shall not be considered Alternative Structures for the purpose of this zoning ordinance.

Pet Boarding and Day Care Facility: A commercial establishment where domestic pets are temporarily housed within separate indoor units. This does not include the breeding, raising, or sale of animals. Pet grooming, training, veterinary care, or the sale of pet products may occur as accessory uses.

Place of Worship: A permanently located building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body to sustain public worship and related uses.

Planning Division: The Division within the City of Avondale Development Services Department responsible for planning, zoning and development related activities.

Plant Material: All vegetative landscaping material.

Plate Line: The point at which any part of the roof structure first touches or bears upon an external wall.

Primary Elevation: The side of a commercial, office, or industrial building or tenant suite that contains the main entrance. In instances where there is no singular main entrance, the primary

elevation shall be the building's most significant side as determined by the Zoning Administrator.

Profession: An occupation involving the dispensation of a service that involves either some skill or knowledge, or that requires connections to other business not easily or readily available to the general public (examples are lawyers, architects, financial services, stockbrokers, detective agencies, engineers, land use planners, etc.) A distinction is made between purveyors of professions and purveyors of merchandise or repair of articles.

Property Line: See "Lot Line".

Public Art: Any work of art created by visual artists or public context designers that is sited in a public place for people to experience and encounter on a daily basis in the public sphere. Public art can include murals, outdoor sculptures or infrastructure such as public fixtures, furniture and other functional elements.

Public Art, Exterior: Art displayed in the region that is outside and in front of a building.

Public Art, Interior: Art displayed in the inner part of a building, including foyers and internal courtyards, that is accessible to the general public during all hours.

Public Service: A service performed for the benefit of the public, typically by a governmental entity or nonprofit organization.

Public Uses: Public use includes, but is not limited to: streets, highways, government buildings, parks, water reservoirs and treatment facilities, flood control, public theaters, safety facilities, bridges, public utilities, and canals.

Queuing Space: A temporary waiting area for motor vehicles generally associated with a drive-through use or egress from a site. Also known as "stacking space."

Recreational Vehicle: A vehicle designed and/or used for living or sleeping and/or recreational purposes and equipped with wheels to facilitate movement from place to place, including automobiles when used for living or sleeping purposes and including pick-up coaches (campers), motorized homes, boats, travel trailers and camping trailers, none of which meet the specifications required for a manufactured home.

Recreational Vehicle Park: Any lot, tract, or parcel of land used or offered for use in whole or in part for the rental of sites for the parking of three (3) or more recreation vehicles, but not including mobile home parks or subdivisions.

Residential Care Home: A private residence that typically serves residents who live together and receive care from live-in caregivers. These homes offer assisted care services for seniors who want a more private, home-like community. Assistance with activities of daily living such as bathing and dressing are typically provided. Also known as: Board & Care Homes, Group Homes, Adult Family Homes.

Resort: A group or groups of buildings containing more than five (5) dwelling units and/or guest rooms and providing outdoor recreational activities which may include golf, horseback riding, swimming, shuffleboard, tennis and similar activities. A resort may furnish services customarily furnished by a hotel, including a restaurant, cocktail lounge and convention facilities.

Restaurant, Drive-Through: A restaurant, most often a fast food restaurant, where prepared food and drink are sold for consumption by order from vehicular passengers outside the structure. Drive-through restaurants may also provide interior areas for ordering and dining.

Restaurant, Fast-Food: An establishment engaged primarily in the business of preparing food and purveying it on a self-service or semi self-service basis. Customer orders and/or service may be by means of a walk-up counter or window designed to accommodate automobile traffic. Consumption may be either on or off the premises.

Restaurant, Without Drive-Through: An establishment where food and beverage are served to the public on demand from a menu during stated business hours, served in reusable containers and dinnerware, to be consumed on the premises primarily inside the building at tables, booths, or counters, with chairs, benches, or stools, where food sales constitute more than fifty (50) percent of the gross sales receipts for food and beverages. Full service restaurants may provide take out service and/or outdoor seating as an accessory.

Retail: The business of selling personal property directly to the ultimate consumer for any purpose other than for resale.

Retention Basin: A basin designed for the retention of storm water, having a depth in excess of eighteen (18) inches and a permeable surface.

Right-of-Way: An area of land not on a lot or site that is dedicated for public or private use to accommodate a transportation system and/or public utility infrastructure (including but not limited to water lines, sewer lines, power lines and communication lines). In no case shall a right-of-way be construed to mean "easement."

Roof: A continuous solid sheathing cover on a structure, which provides protection from rain, wind, sun, or other natural elements.

Roof Line: The highest point of the main roof structure, not including cupolas, projections or other similarly minor raised portions of the roof.

Sanitary Landfill: A lot or part thereof used primarily for the disposal by abandonment, dumping, burial, burning, or other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles, or parts thereof, or nontoxic waste material of any kind.

School, Business: A school offering courses, especially at the graduate level, in economics, management, accounting, sales, etc.

School, Charter: A public school that serves as an alternative to a traditional public school, which is established and operated pursuant to A.R.S. § 15-181 *et seq.*, as amended.

School, Elementary: A school including usually the first four to the first eight grades and often a kindergarten.

School, Pre-School: A school for children usually younger than those attending elementary school or kindergarten.

School, Primary: Same as elementary school.

School, Private: A school that is established, conducted and primarily supported by a nongovernmental entity.

School, Public: A free, tax-supported school controlled by a local governmental authority.

School, Secondary: A school intermediate between elementary school and college and usually offering general, technical, vocational, or college-preparatory courses.

School, Technical: A general term used for a two (2) year college that provides mostly employment-preparation skills for trained labor.

School, Vocational, Commercial, or Trade: A secondary school teaching specific skilled trades.

Screen Wall: See "Wall".

Seasonal Sale: The sale of seasonal or holiday-related merchandise at temporary locations, including but not limited to fireworks, Christmas trees and pumpkins. For the purposes of this Ordinance, seasonal sales shall also include the off-site sale at temporary locations of souvenirs, gifts and food incidental to a sporting event.

Service: Useful labor that does not produce a tangible commodity.

Setback: The shortest horizontal distance between a building, structure, wall, property line, parking lot, sign or any combination thereof as defined by the type of setback in this ordinance.

Setback Line: A line designating the distance which a building or parking lot must be set back from a property line.

Sexually Oriented Business: An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

Sexually Oriented Business, Adult Arcade: Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to

show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas" and having a substantial portion of its stock in trade, books, magazines and other periodicals depicting, describing or relating to "specified sexual activities" or which are characterized by their emphasis on matter depicting, describing, or relating to "specified anatomical areas."

Sexually Oriented Business, Adult Bookstore/Adult Novelty Store/Adult Video Store: A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following: (A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or (B) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Sexually Oriented Business, Adult Cabaret: A nightclub, bar, restaurant or similar commercial establishment that regularly features: (A) Persons who appear in a state of nudity or semi-nude; or (B) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (C) Films, motion pictures, video cassettes, slides, or other photographic reproductions, that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Sexually Oriented Business, Adult Motel: A hotel, motel or similar commercial establishment that:

A. Offers accommodations to the public for any form of consideration and which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions; or
B. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
C. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.

Sexually Oriented Business, Adult Motion Picture Theater: A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Sexually Oriented Business, Adult Theater: A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

Sexually Oriented Business, Escort: A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Sexually Oriented Business, Escort Agency: A person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Sexually Oriented Business, Establishment: Includes, with respect to Section 10 only, any of the following:

A. The opening or commencement of any sexually oriented business as a new business.
B. The conversion of an existing business, whether or not a sexually oriented business, into any sexually oriented business.
C. The additions of any sexually oriented business to any other existing sexually oriented business.
D. The relocation of any sexually oriented business.

Sexually Oriented Business, Nude Model Studio: Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the state of Arizona or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation, or in a structure:

A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
B. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
C. Where no more than one (1) nude or semi-nude model is on the premises at any one time.

Sexually Oriented Business, Nudity or a State of Nudity: The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

Sexually Oriented Business, Semi-nude or in a Semi-Nude Condition: The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

Sexually Oriented Business, Sexual Encounter Center: A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

Sexually Oriented Business, Specified Anatomical Areas:

A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
B. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

Sexually Oriented Business, Specified Criminal Activity: Any of the following offenses:

A. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
B. For which:
    1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
    2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
    3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
C. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

Sexually Oriented Business, Specified Sexual Activities: Any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
C. Excretory functions as part of or in connection with any of the activities set forth in A and B above.

Sexually Oriented Business, Substantial Enlargement of: The increase in floor area occupied by the business by more than twenty-five (25) percent, as the floor area existed on July 17, 2002.

Sexually Oriented Business, Transfer of Ownership or Control of: Includes any of the following:

A. The sale, lease, or sublease of the business;
B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Shrub: A woody plant that has several stems that rise from the ground level.

Sidewalk Café: An area adjacent to and directly in front of a street-level eating or drinking establishment located within the sidewalk area or pedestrian plaza area of the public right-of-way or other pedestrian space and used exclusively for dining, drinking and pedestrian circulation.

Sign: Any display of any letter, numeral, figure, emblem, picture, outline or character visible to the eye. The definition shall include any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or governmental agency, or of any civic, charitable, religious, patriotic, fraternal or similar organization, and further not including any item of merchandise normally displayed within a shop window of a merchant.

Sign, Abandoned: Any sign 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.

Sign, Address: A sign designed to display the number or other designation assigned to a housing unit, business establishment or other structure for purposes of mail delivery, emergency services and similar purposes.

Sign, A-Frame: A temporary/portable sign constructed in such a manner as to form an "A" or tent-like shape.

Sign, Animated: Any sign that includes action, motion, or color changes of all or any part of the sign facing that is powered by electrical energy or set in motion by movement of the atmosphere, excluding flags.

Sign, Area of: See Section 906 below.

Sign, Banner: A temporary sign made of fabric, plastic, or other light, pliable, weather-resistant material, not enclosed in a rigid frame.

Sign, Blade: A small, pedestrian-oriented sign that is hung beneath a canopy for the purpose of business identification.

Sign, Box Cabinet: A sign that contains two dimensional text and/or logos painted on or otherwise affixed to a panel, usually lexan, and attached to a cabinet. This definition shall not

include custom cabinet signs, which by definition include a minimum of three (3) graphic levels to create depth and add visual interest.

Sign, Center Identification Wall: A sign located on the exterior wall of a building used to identify only the name of a shopping center or office complex that is placed on building frontages that are not occupied by any tenant and that is common building space, such as a common lobby or open breezeway.

Sign, Classic: A sign (freestanding, building-mounted or otherwise) 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.

Sign, Community Kiosk: A City managed off-premise sign designed to provide directional information to residential developments, community facilities and attractions.

Sign, Contractor: A temporary sign identifying an architect, engineer, contractor, subcontractor or material supplier who participates in construction on the property on which the sign is located.

Sign, Custom Cabinet: A sign composed of a minimum of three (3) graphic levels, each level a minimum of two (2) inches deep, mounted to a custom, non-rectangular cabinet.

Sign, Directional: A sign of non-commercial nature that indicates access to parking and loading areas or indicates traffic circulation patterns, or which indicates the location of public or educational institutions, historical areas or structures or public parks, but which specifically does not include the name or logo of any commercial business.

Sign, Directly Illuminated: Any sign designed to provide artificial light through exposed lighting on the sign face, such as neon. This definition shall not include internally illuminated pan channel or other similar internally illuminated signs.

Sign, Directory: A sign designed to show the relative location of several activities within a shopping center, office park, commerce park, apartment complex or other multi-tenant master planned development.

Sign, Drive-Through Menu Board: A wall or freestanding sign that lists the products and prices of products for items available at drive-through facilities, often containing a two way communication device used by customers to place an order.

Sign, Electrical: Any sign or advertising device that has electrical wiring in or attached to it.

Sign, Electronic Message Display: A sign or portion of a sign consisting of a video screen or similar technology displaying a fixed and/or varying message and which changes through electronic means.

Sign, Embellishment: Anything that enhances the appearance of a freestanding sign without having a functional purpose. For the purpose of this Ordinance, embellishment does not include any symbol, representation, logo, insignia, illustration or other form of advertising

message for any business on site, but may include a the name and/or symbol, representation, logo or insignia of a master planned shopping center, office park, commerce park or other master planned multi-tenant development.

Sign, Flag: Any fabric or other flexible material designed to be flown from a flagpole or similar device.

Sign, Freestanding: A sign anchored directly to the ground or supported by one or more posts, columns or other vertical structures or supports, and not attached to or dependent for support from any building.

Sign, Freeway Pylon: A freestanding sign designed and oriented to attract the attention of freeway drivers to a commercial or mixed-use development site directly abutting a freeway right-of-way.

Sign, Fuel Price: A variable message sign used by vehicle fueling stations to identify the type, grade and price of fuel being sold.

Sign, Future Development: A temporary sign that provides information about the future development of a property and may include a depiction of an approved site plan, approved building elevations and contact information for parties involved in the project.

Sign, Grand Opening: A temporary sign used to indicate the opening of a new business or residential community. Grand opening signs can take the form of pennants, banners, flags, inflatables, character or product likenesses, attention-attracting media and devices, and other inanimate non-merchandise displays.

Sign, Height of: The vertical distance measured from the adjacent street grade or upper surface of the curb, whichever permits the greatest height, to the highest point of said sign, excluding embellishment.

Sign, Ideological: A temporary sign that announces or supports the personal views of the property owner or tenant of the parcel on which the sign is located.

Sign, Illegal: Any sign that does not meet at least one of the following conditions:

A. Allowed by Zoning Ordinance Section 9 and not requiring a permit.
B. Allowed by Zoning Ordinance Section 9 with a permit, and carrying a valid permit.
C. Not allowed by Zoning Ordinance Section 9, but legalized by variance and proper permit.
D. Not allowed by Zoning Ordinance Section 9, but approved as part of a comprehensive sign plan associated with a Planned Area Development (PAD) or through a development agreement.
E. A legal nonconforming sign as defined in this Ordinance.

Sign, Indirectly Illuminated: A sign that contains a source of illumination wholly within the sign that makes the design visible at night by means of lighting the background upon which free-standing characters or letters are mounted, but for which the source of illumination is not

visible. The characters or letters themselves shall be opaque, and are silhouetted against the background.

Sign, Interim Business Identification Banner: A temporary banner used to identify a business only during the time period a permanent wall sign is being designed, constructed and installed.

Sign, Internally Illuminated: A sign that contains a source of illumination located wholly inside the sign, designed to make the sign content visible at night by means of light being transmitted through a translucent material, but for which the source of illumination is not visible.

Sign, Leading Edge: The portion of a free standing sign or the base of the sign that is nearest to a property line.

Sign, Legal Non-Conforming: Any sign that is not allowed under Section 9, but which, when first constructed, was legally allowed by the City of Avondale or the political subdivision then having the control and regulation over construction of such sign.

Sign, Low Profile Wall Identification: A type of wall sign identifying the name and/or address of a master planned commercial, employment or mixed use development that is used to create a sense of place, but which shall not be used for advertising purposes.

Sign, Maintenance of: The replacing or repairing of a part or portion of a sign made unusable by ordinary wear and tear or by damage beyond the control of the sign's owner.

Sign, Model Home: A temporary sign that serves to draw attention to a builder's sales office and/or model home site.

Sign, Monument: A freestanding sign where the base of the sign structure is on the ground or a maximum of twelve (12) inches above the adjacent grade and the width of the top of the sign structure is no more than one hundred twenty (120) percent the width of the base, and which is designed to complement the architecture of buildings on the site and which contains tenant information and the address of the building(s) it supports.

Sign, Multi-Tenant Monument: A monument sign that serves as a common or collective identification for two (2) or more uses on the same site and containing tenant information and address and the name of the shopping center, office park or other multiple user development type that it serves.

Sign, Off-Premise: A sign or similar structure that portrays information and directs attention to a business, commodity, service, entertainment venue or product not located on the premises upon which the sign is located.

Sign, Open House: A temporary sign used to advertise the sale of a house and direct traffic to the house for sale, which is typically placed off-site in proximity to the house for sale.

Sign, Permanent: A sign that is intended to be and is so constructed as to be of lasting and enduring condition, remaining unchanged in character, condition (beyond normal wear) and position.

Sign, Pole: A freestanding sign where the width of the top of the sign structure is over one hundred twenty (120) percent wider than the width of the base.

Sign, Political: A temporary sign announcing or supporting candidates or issues in connection with any national, state or local election.

Sign, Portable: Any sign not permanently affixed to the ground or structure on the premises it occupies.

Sign, Portable Religious Assembly: A portable sign, often located off-site, used to display the time and date of religious services at a nearby place of worship and to direct people to said place of worship.

Sign, Projecting: Any sign attached to a building or other structure that extends in whole or in part more than fifteen (15) inches beyond the building line. Where permitted by Section 9, projecting signs, excluding blade signs, shall be considered wall mounted signs for the purpose of calculating area.

Sign, Raceway: An electrical enclosure that may also serve as a mounting structure for a sign.

Sign, Real Estate: A temporary sign indicating the availability for sale, rent, or lease of a specific parcel, building, or portion of a building, along with contact information for the associated property owner or real estate broker.

Sign, Single-Tenant Monument: A monument sign that identifies the name, address and tenant information of a single user development.

Sign, Special Promotion: A temporary sign used to advertise a sale event or other similar special promotion that can take the form of pennants, banners, flags, inflatables, character or product likenesses, attention-attracting media and devices, and other inanimate non-merchandise displays. Search lights may also be considered Special Promotion Signs.

Sign, Stroke Width: The width of the major lines comprising a letterform.

Sign Structure: The supports, uprights, braces and framework of a sign.

Sign, Subdivision Identification: A sign, by means of symbol or name, that identifies a residential community, but which does not include information used for a commercial purpose, including leasing rates, phone numbers or similar information.

Sign, Temporary: A sign not intended or designed for permanent display.

Sign, Theater: A variable message sign used by motion picture and performing arts theaters to announce current attractions, show times and on-site events.

Sign, Variable Message: A sign or portion of a sign designed to allow the immediate and frequent change of copy by manual, mechanical or electronic means.

Sign, Vehicle: A sign mounted, pasted, painted or drawn on any vehicle, whether motorized or drawn, that is placed, parked, or maintained at one particular location for the express purpose and intent of promotion or conveying an advertising message.

Sign Walker: A person who wears, holds or balances a commercial sign for the explicit purpose of promoting a business.

Sign, Wall Mounted: A sign mounted to the wall of a building or structure.

Sign, Way-Finding: A temporary, removable sign intended to allow businesses located within pedestrian-oriented environments to identify a business name and/or the service being provided.

Sign, Window: A sign affixed to the interior or exterior of a window, or any sign located inside a building within six (6) feet of the interior side of the window and displayed so as to attract the attention of persons outside the building.

Single User Development: Any lot and single-tenant building that is not part of a master planned development or multi-tenant non-residential development.

Site Area, Gross: The total ground area located within the property lines of a site, including any proposed portions to be dedicated for public use as streets, alleys, easements, or other.

Site Area, Net: The remaining ground area of the gross site area after deleting all portions for proposed perimeter right-of-ways and alleys.

Site Plan: A plan prepared to scale showing all the uses proposed for a specific property showing all buildings, structures, signs, off-street parking layout, loading spaces, points of ingress and egress, fences, walks, refuse locations, and any additional information which may be necessary to clearly define the intended use of the property. For the purposes of Site Plan review as defined by this Ordinance, a Site Plan may also be meant to include one or more of the following items, as determined by the Zoning Administrator or designee: landscape plan, exterior building wall elevation plan, preliminary grading and drainage plan, preliminary utility plan, lighting plan, and other plans deemed necessary by the Zoning Administrator or designee.

Special Event: A temporary outdoor event, excluding "Seasonal Sales" as defined by this ordinance and also excluding temporary outdoor uses occurring in the Major Sports & Entertainment Zoning District. Examples of special events include carnivals, circuses, and outdoor sales events.

Specialty Retail: Retail establishments that specialize in one type or line of merchandise. Such establishments could include, but are not limited to, apparel stores, jewelry stores, bookstores, or stationary stores.

Specialty Sales: The act of selling items classified as "specialty retail."

Specialty Services: Establishments whose primary activity is the provision of assistance without the production of a tangible commodity to individuals, businesses, industry, government, or other enterprises.

Story: A space in a building between the surface of any floor and the surface of the floor next above, or if there be no floor above, then the space between such floor and the ceiling or roof above.

Street: A public thoroughfare or right-of-way dedicated, deeded or condemned for use as such, other than an alley, which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare.

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.

Structure: Any piece of work artificially built up or composed of parts joined together in some definite manner.

Subdivision: Has the meaning set forth in A.R.S. § 9-463-02, as amended.

Substance Abuse Detoxification Center: An inpatient health facility staffed by medical professionals providing therapy and/or rehabilitation for substance-dependent individuals. Methadone distribution centers are included.

Substance Abuse Treatment Center: A health facility providing therapy and/or rehabilitation for substance-dependent individuals on an outpatient basis. Methadone distribution centers are included.

Suburban Development: A form of development that is designed to accommodate personal automobile use, characterized by medium residential densities, internally focused subdivisions with curvilinear streets and limited connectivity to surrounding residential neighborhoods and shopping centers with surface parking lots visible from adjacent streets.

Surplus Store: A store selling items that are used, or purchased but unused, and no longer needed. The surplus is often military, government or industrial excess. A surplus store may also sell items that are past their use by date.

Tandem Parking: The placement of parking spaces one behind the other, so that the space nearest the driveway or street access serves as the only means of access to the other space.

Thrift Store: A retail store that specializes in the sale of previously-owned and/or used goods and merchandise that has been donated. Thrift stores are distinct from consignment shops, pawn shops and non-consignment secondhand retail stores.

Townhouse: A single-family dwelling unit, with a private entrance, that is part of a structure whose dwelling units are attached horizontally in a linear arrangement, and having a totally exposed front and rear wall to be used for access, light and ventilation.

Trailer: Any towed vehicle that does not fall under the definitions of mobile home or recreational vehicle.

Transmitting Tower: An unmanned structure that transmits or receives communications by electromagnetic or optical means, such as a radio antenna, television antenna, radar station, or microwave tower, but excluding PWSFs.

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 larger than one inch in diameter to a point between branch collars/buds within the tree's crown. Also referred to as hat racking, heading and pollarding.

Truck Stop: A service station primarily oriented to servicing of trucks and tractor trailers and which may include restaurants, retail activities and truck repair services.

Turf: Continuous plant coverage consisting of grass species that is mowed to maintain an established height.

University: An institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees.

Use: The conduct of an activity or the performance of a function or operation, on a site or in a building or facility.

Urban Development: A form of development generally characterized by higher residential densities and integrated commercial and industrial land uses connected by multiple transportation modes, with a particular emphasis on pedestrians and transit users.

Urgent Care Center: A facility dedicated to the delivery of medical care outside of a hospital emergency department, usually on an unscheduled, walk-in basis. Urgent care centers are primarily used to treat patients who have an injury or illness that requires immediate care but is not serious enough to warrant a visit to an emergency room, with no accommodations for overnight stays.

Variance: A license, granted by the Board of Adjustment to deviate from certain limited provision of the City zoning ordinance.

Video Arcade or Game Room: An establishment having six (6) or more coin-operated devices for the amusement of its patrons, but specifically excluding an Adult Arcade.

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 Height: The height measured at the highest adjacent grade located within five (5) feet of the wall.

Wall (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.

Warehousing: The storage and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials that are inflammable or explosive or that present hazards or conditions commonly referred to as offensive.

Wholesaling: The selling and/or distributing of goods or merchandise to retailers, to industrial, commercial, institutional, or professional business users, to other wholesalers, or jobbers for resale to the ultimate consumer, but not to the general public. Wholesale to the public stores shall be considered, for the purposes of this Ordinance, retail uses.

Wine Bar: A bar that serves wine but does not serve beer or liquor.

Xeriscape: A landscaping method that maximizes the conservation of water by the use of site-appropriate plants and an efficient watering system.

Yard: A required space on a lot, other than a court that is open and unobstructed to the sky (except as otherwise provided herein), and which is measured from a property line inward to the required setback specified herein for each zoning district.

Yard, Front: A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.

Yard, Rear: A yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line of the principal building.

Yard Sale: See Garage Sale.

Yard, Side: That portion of a lot lying between the side lot line of the lot and a line drawn through the nearest point of a principal building extending from the front yard to the rear yard, or in the absence of either of said yards from the front to the rear lot lines respectively.

Zoning Administrator: The person designated by the City Manager to interpret and enforce the Zoning Ordinance.

Zoo: A garden or park where wild animals are kept for exhibition.

104 RESERVED.

105 DEVELOPMENT REVIEW PROCEDURES.

A. Building Permit Required

No building or other structure, unless excepted by the International Building Code, shall be erected, moved, added to, or structurally altered without a building permit issued by the city. No building permit shall be issued except in conformity with the provisions of this ordinance, which may require approval of an appeal or variance, a text or map amendment, conditional use permit or site plan.

B. Development Review Committee

1. The Development Review Committee is made up of the Zoning Administrator or designee and any other department representatives the Zoning Administrator deems necessary, including the Chief Building Official or designee, the City Engineer or designee, the Chief of Police or designee and the Fire Chief or designee. The Zoning Administrator or designee shall serve as secretary to the committee.

2. The Zoning Administrator shall determine which members of the Development Review Committee shall review each type of development application.

3. Development Review Committee members shall review and comment on development review items. Comments shall be provided to the Zoning Administrator or designee, who shall provide the comments of the Committee to the project applicant.

4. The Development Review Committee shall review and comment on materials submitted for Pre-Application Meetings and provide comments to the project applicant.

5. The Development Review Committee shall conduct Pre-Application Meetings as necessary.

C. Pre-Application Meeting

Prior to submittal of an application for any of the development review procedures outlined herein, a Pre-Application Meeting with the Zoning Administrator or designee or with the Development Review Committee is required. In order to ensure that information provided at a Pre-Application Meeting is current, a formal application shall be submitted to the Planning Division not later than six (6) months after the date of the Pre-Application Meeting or the Zoning Administrator shall have the authority to require a new pre-application meeting prior to submittal of the application. The purpose of the pre-application meeting is:

1. To familiarize the Development Review Committee with the request.

2. To identify land use and development policies that may affect the request.

3. To familiarize the applicant with the review and approval process.

4. To provide the applicant with Planning application(s) and checklist(s) of required submittal material for the project.

D. Application

The Zoning Administrator shall create applications for the development types outlined herein, which shall outline the required deliverables. No application shall be accepted without all deliverables listed on the application as indicated by the Zoning Administrator or designee.

E. Closure

In order to ensure that developments are reviewed against the most current standards and regulations, the Zoning Administrator shall have the authority to close any applications that have been inactive for more than one (1) year. Any further processing of an application that has been closed shall require a new application to be filed, in accordance with this Ordinance.

106 ADMINISTRATIVE ACTIONS

A. Zoning Administrator Powers and Duties

The Zoning Administrator shall:

1. Interpret the Zoning Ordinance, including but not limited to, clarification of intention, determination and clarification of unspecified land uses, determination of zoning district boundaries and similar matters.

2. Accomplish administrative actions, including preparation of reports, processing appeals, providing assistance to variance applicants and similar matters.

3. Serve as secretary to the Board of Adjustment and Planning Commission.

4. Undertake similar duties as may arise from time to time in the enforcement and interpretations of the Zoning Ordinance.

B. Zoning Interpretations

1. The Zoning Administrator or designee shall be responsible for interpretation of the Zoning Ordinance. Zoning Interpretations may be considered if there is a question of clarity for any development standard or other provision of this ordinance, or a review is required within the land use matrix of a specified zoning district.

2. An application clearly stating the section requiring interpretation or the characteristics of the desired use and zoning district in which it is proposed to be

located shall be submitted on a form prescribed by the Planning Division with the required fee before a Zoning Interpretation will be made. All requests for written interpretation shall be filed in the Planning Division.

3. The Zoning Administrator or designee shall issue written interpretation within fifteen (15) business days of the submission of a completed application and request for interpretation. All Zoning Interpretations shall be maintained in the Planning Division records.

C. Zoning Verifications

1. The Zoning Administrator or designee shall be responsible for the verification of the boundaries and requirements of Zoning Districts and Zoning Regulations.

2. An application clearly stating the location and property identification number(s) for the property or properties in question shall be submitted on a form prescribed by the Planning Division with the required fee before a Zoning Verification will be made. All requests for written verification shall be filed in the Planning Division.

3. Zoning Verification letters may contain the following information:

   a. Current zoning on the property or properties.

   b. Development standards required by the property's zoning district, including, but not limited to, building setbacks, maximum building height, lot coverage.

   c. Copies of Certificates of Occupancy.

   d. Verification of known building or Zoning Ordinance violations or failure to comply with development standards or development regulations.

4. Zoning Verification letters shall not certify legal non-conforming uses or act as legal authority with respect to legal interpretations such as vested rights.

5. The Zoning Administrator or designee shall issue written verification within fifteen (15) business days of the submission of a completed application and request for Zoning Verification. All Zoning Verifications shall be maintained in the Planning Division records.

107 DESIGN REVIEW

A. Applicability

Prior to or concurrent with the application for a building permit, a full site plan application shall be submitted for design review and approval by the Development Review Committee. This requirement shall apply to:

1. All new buildings and uses of land constructed or developed after August 30, 1990, except that single-family residences not located within a master planned subdivision shall not require design review.

2. Existing properties when a change in the distinguishing characteristics or primary features of the use of a building or land occurred after August 30, 1990. Such changes may include, but are not limited to, an increase in the size of the building or use or remodeling of an existing building. Criteria used to establish applicability may include, but are not limited to, an increase in parking requirements, a change in occupancy designation, a change in outside storage or other similar factors. Single-family residences not located within a master planned subdivision shall not require design review.

B. Design Review Waiver

The Zoning Administrator or designee may waive the design review if it is determined that such review does not further the purposes of this ordinance, even if the Applicability requirements of Section 107.A are met.

C. Application

The applicant shall submit plans and drawings illustrating the proposed location of buildings, parking areas, loading and refuse areas, landscaping, drives, dimensions of improvements, drainage, typical elevations of buildings and all other improvements. The site plan shall be submitted in accordance with procedures and requirements established by the Zoning Administrator. The Zoning Administrator may request additional information concerning the property.

D. Notification

The applicant shall furnish the names and addresses and addressed, stamped envelopes for all property owners within five hundred (500) feet of the property. The Planning Division shall be responsible for mailing a notice of the site plan review within five (5) business days of the receipt of the application including the addressed, stamped envelopes, by the Planning Division to each owner of property situated wholly or partly within five hundred (500) feet of the property to which the site plan relates.

E. Review

1. The Planning Division shall refer the site plan to the Development Review Committee to determine compliance with this ordinance and any other applicable codes, plans and standards.

2. The Development Review Committee shall have the authority to request modifications to the site plan and may approve conditions consistent with this ordinance and any other applicable codes, plans and standards deemed necessary to protect the public health, safety and welfare.

F. Required Findings

1. The proposal is in conformance with all requirements of this ordinance and any other applicable codes, plans and standards in place at the time the design review application is submitted.

2. The proposal is of high quality and furthers the City's aesthetic vision.

3. Adequate conditions of approval are imposed to ensure compatibility with the current or planned use of surrounding properties.

G. Approval

1. When the Development Review Committee has completed its review:

   a. Site plans for properties zoned CCD (City Center District) shall be forwarded to the Planning Commission for its review and recommendation, and then to the City Council for its review and decision. The Development Review Committee shall include a recommendation of approval, approval subject to stipulations, or denial for the site plan.

   b. Any site plan not requiring Planning Commission and City Council consideration specified in Subsection 107(G)(1)(a) above shall be either: approved, approved with stipulations, or denied by the Development Review Committee.

2. A building permit shall not be issued for any project unless a site plan has been approved by the Development Review Committee or City Council, as outlined in this ordinance.

3. All buildings, parking areas, landscaping and other improvements shall be constructed and installed in accordance with the approved site plan prior to issuance of a Certificate of Occupancy for the building or use.

4. An approved site plan shall be valid for a period of two (2) years. If a building permit has not been issued for a site within two (2) years after the date of site plan approval or if at any time a building permit is not valid or active for a site,

the site plan shall be considered expired and a building permit shall not be issued for the site until a new site plan has been approved.

H. Extension

1. Prior to the expiration of the two (2) year time period, the property owner or authorized representative may submit an application for a site plan extension to the Planning Division. Site plan extension requests for site plans originally approved by the City Council shall be placed on the next available City Council agenda; site plans originally approved by the Development Review Committee shall be sent to the Zoning Administrator or designee for review.

2. A site plan extension shall only be granted if it is determined that all of the following requirements have been met:

    a. The site plan meets the requirements of this ordinance and any other applicable codes, plans and standards in place at the time the site plan extension is requested, unless exempted by the City Council.

    b. The applicant has shown good cause for the delay.

    c. The applicant has proposed a timeline to bring about the commencement of construction on the site.

3. If the required criteria have been met, the City Council or Zoning Administrator or designee, as applicable, may grant a maximum of two (2) extensions, each extension not to exceed a period of one (1) year. If at the end of the extension period a building permit has not been issued or is no longer valid, the site plan shall be considered expired.

I. Appeal

An appeal of the Development Review Committee's design review decision may be made within fifteen (15) business days of said decision. Upon written request of the applicant, the Zoning Administrator shall schedule the appeal hearing for regularly scheduled Planning Commission. The Planning Commission shall review the site plan and make a decision as to whether the required findings have been met and approve, approve with stipulations, or deny the appeal. A majority vote of the Planning Commission shall be necessary to make a finding on the appeal.

108 ADMINISTRATIVE RELIEF

The Zoning Administrator or authorized designee may authorize relief of up to ten (10) percent of any development standard. For projects located within a revitalization area, the Zoning Administrator or authorized designee may authorize relief up to thirty (30) percent of any development standard and may also waive specific non-quantitative development requirements for single family homes. Any relief authorized will be documented with findings

consistent with all of the requirements below and filed with the building permit records, subdivision case file or other Planning Division records:

A. An application by the property or on behalf of the owner was submitted on a form prescribed by the Zoning Administrator or authorized representative, and any applicable fees were paid.

B. Notice, by first-class mail, postmarked at least five (5) days prior to the determination, was given to adjacent property owners determined by the Zoning Administrator or authorized designee as potentially affected by the request.

C. The proposed improvement requiring relief will not be detrimental to the property requesting relief, any adjacent property or the City as a whole.

D. The relief requested is needed due to the unusually small size or irregular shape of the parcel.

E. The relief granted is the minimum required to meet the needs of the proposed improvement.

F. The relief shall not be contrary to the purpose and intent of this Ordinance.

109 CONDITIONAL USE PERMIT

Some uses that are not permitted by right in a zoning district may be acceptable as conditional uses. A site-specific review is required to determine if the location, design, scale and operation of the use is appropriate at given location. A Conditional Use Permit may only be granted for the conditional uses listed in each zoning category according to the procedure set forth below.

A. Process and Procedure

1. The designation of a use as a conditional use in a zoning district does not convey a right or constitute an assurance that the use will be approved. Each application will be evaluated for compliance with the required findings set forth below. The burden of proof for satisfying these findings rests with the applicant.

2. An application for a Conditional Use Permit shall be submitted on a form prescribed by the Planning Division with the required fee before the conditional use permit application can be processed.

3. The applicant shall conduct a neighborhood meeting in accordance with Section 113 below. The following notifications are required to be completed by the applicant prior to the neighborhood meeting:

    a. Mail notification, in accordance with Subsection 114(A) below.

    b. Newspaper ad, in accordance with Subsection 114(B) below.

c. Public notice sign, in accordance with Subsection 114(C) below.

4. The Planning Commission shall hold a public hearing and forward a recommendation to the City Council. The Planning Commission shall base its recommendation on whether or not the information provided is sufficient to meet the required findings. The following notifications are required to be completed by the applicant prior to the Planning Commission meeting:

   a. Mail notification, in accordance with Subsection 114(A) below.

   b. Newspaper ad, in accordance with Subsection 114(B) below.

   c. Public notice sign, in accordance with Subsection 114(C) below.

5. The City Council shall hold a public hearing considering the information presented and may accept or reject the Planning Commission's recommendation with respect to whether the required findings have been met. The following notifications are required to be completed by the applicant prior to the City Council meeting:

   a. Mail notification, in accordance with Subsection 114(A) below.

   b. Newspaper ad, in accordance with Subsection 114(B) below.

   c. Public notice sign, in accordance with Subsection 114(C) below.

6. The City Council shall have complete discretion to approve, conditionally approve, or deny a request for a Conditional Use Permit based upon its determination of whether the required findings (set forth in Subsection 109(B) below) have been met.

B. Required Findings

A Conditional Use Permit may only be approved if all the following findings are met:

1. That the proposed use (a) is consistent with the land-use designation set forth in the general plan, (b) will further the City's general guidelines and objectives for development of the area, as set forth in the general plan and (c) will be consistent with the desired character for the surrounding area.

2. That the use will be (a) compatible with other adjacent and nearby land uses and (b) will not be detrimental to persons residing or working in the area, adjacent property, the neighborhood or the public welfare in general.

3. That the site is adequate in size and shape to accommodate the proposed use, allow safe onsite circulation, and meet all required development standards including, but not limited to, setbacks, parking, screening, and landscaping.

4. That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.

5. That adequate conditions have been incorporated into the approval to ensure that any potential adverse effects will be mitigated.

C. Conditions Upon Approval

The approval of a Conditional Use Permit may be subject to conditions when necessary to mitigate the potential impacts of the use and ensure land use compatibility. These conditions may include, but are not limited to the following:

1. Additional requirements for setbacks, open space, screening, parking, lighting and landscaping.

2. Dedication of public rights-of-way, street improvements and the control of access points or on-site circulation to mitigate traffic impacts.

3. Limitations on the hours of operation, methods of operation, and phasing of site development.

4. Time limitations on the duration of the permit to determine if the use, after a temporary period of operation, is materially detrimental to the area or to evaluate whether changed conditions in the neighborhood affect the compatibility of the use or its ability to continue to adequately mitigate the impacts on the surrounding area or the City as a whole.

D. Expiration

Unless otherwise stipulated, a Conditional Use Permit shall be void if the use approved therein is not commenced within twenty-four (24) months after the date of approval. Once an approved conditional use has commenced, the Conditional Use Permit shall run with the land and continue to be valid regardless of ownership of the site or structure subject to the use permit application, so long as it operates within the conditions, stipulations and terms of the use permit approval.

E. Modification of Conditional Use Permit

A request to modify, expand, or otherwise change an approved Conditional Use Permit shall be reviewed and processed according to the procedures required for a new application.

F. Revocation

An approved Conditional Use Permit may be revoked by the City Council at a public hearing if the holder thereof fails to comply with the conditions or terms of approval for such Conditional Use Permit. The Zoning Administrator shall provide notice of the revocation hearing to the conditional use permit holder via certified mail. Additionally, notification of the revocation hearing shall be completed at the City's expense, to include a sign, legal advertisement, and mailing described in Section 114 below. The decision of the City Council with respect to such revocation shall be final.

G. Reapplication

If a conditional use permit has been denied or revoked, no application shall be accepted by the Zoning Administrator or designee for a conditional use permit that is (1) for the same or substantially similar use (2) located on the same site and (3) submitted within one (1) year from the date of the final denial or revocation.

110 ZONING ORDINANCE TEXT AMENDMENT

The written regulations set forth in this Ordinance may be amended whenever deemed necessary to best serve the public health, safety and general welfare of the City. Amendments to the text of this Ordinance shall not be made except through the adoption of an amending Ordinance by the City Council after complying with State Law and following the procedures prescribed in this Section 110.

A. Process and Procedure

1. Requests for text amendments shall be submitted to the Planning Division on a form prescribed by the Planning Division with the required fee. The request may be submitted by the Planning Division, the Zoning Administrator, the Planning Commissioner or by the City Council, under its own motion.

2. The applicant shall conduct a neighborhood meeting in accordance with Section 113 below. The applicant shall provide notification of the neighborhood meeting by Subsection 114(B) below.

3. A request for a text amendment shall first be heard by the Planning Commission, which shall hold a public hearing and transmit a recommendation to the City Council containing reasons for such recommendation. The applicant shall provide notification of the Planning Commissioner meeting by newspaper ad, in accordance with Subsection 114(B) below.

4. The City Council shall hold a public hearing and approve, approve with conditions, or deny the request for the amendment. The Applicant shall provide notification of the City Council meeting by newspaper ad in accordance with Subsection 114(B) below.

5. The recommendation of approval of any amendment by the Planning Commission shall be void if the amendment has not been adopted by the City Council within one (1) year of the Planning Commission action.

B. Council Discretion

The City Council shall consider all of the information provided and may accept or reject the Planning Commission's recommendation. The City Council may approve or reject a Zoning Ordinance text amendment in its sole legislative discretion; provided that any such Amendment shall be consistent with the adopted General Plan.

111 ZONING ORDINANCE MAP AMENDMENTS (REZONING)

The boundaries of zoning districts set forth in the Zoning Map may be amended whenever deemed appropriate by the City Council. Amendments to the zoning map shall not be made except through the adoption of an amending Ordinance by the City Council and following the procedures prescribed in this Section 111.

A. Process and Procedure

1. Requests for map amendments shall be submitted to the Planning Division on a form prescribed by the Planning Division with the required fee. A Zoning Map amendment may be requested by the property owner of land proposed to be rezoned or by the Planning Division, the Zoning Administrator, the Planning Commission or by the City Council, under its own motion.

2. The applicant shall conduct a neighborhood meeting in accordance with Section 113 below. The following notifications are required to be completed by the applicant prior to the neighborhood meeting:

    a. Mail notification, in accordance with Subsection 114(A) below.

    b. Newspaper ad, in accordance with Subsection 114(B) below.

    c. Public notice sign, in accordance with Subsection 114(C) below.

    d. Certificate of Adequate School Facilities, in accordance with Subsection 114(D) below.

3. A request for a zoning map amendment shall first be heard by the Planning Commission, which shall hold a public hearing and transmit a recommendation to the City Council containing reasons for such recommendation. The following notifications are required to be completed by the applicant prior to the Planning Commission:

    a. Mail notification, in accordance with Subsection 114(A) below.

b. Newspaper ad, in accordance with Subsection 114(B) below.

c. Public notice sign, in accordance with Subsection 114(C) below.

4. The City Council shall hold a public hearing and approve, approve with conditions, or deny the request for the amendment. The following notifications are required to be completed by the applicant prior to the City Council meeting:

   a. Mail notification, in accordance with Subsection 114(A) below.

   b. Newspaper ad, in accordance with Subsection 114(B) below.

   c. Public notice sign, in accordance with Subsection 114(C) below.

5. If the owners of twenty (20) percent or more of lots, calculated according to A.R.S. § 9-462.04(H), as amended, file a protest in writing against a proposed amendment, it shall not become effective except by the favorable vote of three-fourths (3/4) of all members of the City Council. If any members of the City Council are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths (3/4) of the remaining membership of the City Council, provided that such required number of votes shall in no event be less than a majority of the full membership of the City Council. Written protests must be submitted to the Planning Division not later than seventy-two (72) hours prior to the City Council hearing.

6. In the event an application is denied by the City Council or withdrawn after the Planning Commission hearing, the City Council shall have the authority to refuse to accept another application for any amendment on the same property or part thereof, for a period of one (1) year from the date of denial.

7. The recommendation of approval of any amendment by the Planning Commission shall be void if the amendment has not been adopted by the City Council within one (1) year of the Planning Commission action.

B. Council Discretion

The City Council shall consider all of the information provided and may accept or reject the Planning Commission's recommendation. The City Council may approve a Zoning Ordinance map amendment in its sole legislative discretion; provided that any such amendment shall be consistent with the land use designation, goals and objectives of the adopted General Plan and any applicable Specific Plans.

C. Conditions for Approval

The Planning Commission may recommend and the City Council may approve a map amendment conditioned as deemed necessary by the City Council in its sole discretion. Any

condition of zoning shall be set forth in the Ordinance amending the zoning text or map. All conditions of zoning approval shall become part of the regulations governing the use of the property. No building permits shall be issued except in conformity with the conditions of zoning approval.

112 VARIANCES AND APPEALS

A. Variance

A variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the hardship criteria established in A.R.S. § 9-462.06(G)(2), as amended. Pursuant to A.R.S. § 9-462.06(H), as amended, no use variance or variance based upon self-imposed hardship shall be granted.

1. Process and Procedure

   a. Requests for variances shall be submitted to the Planning Division on a form prescribed by the Planning Division with the required fee and submittal materials.

   b. The Board of Adjustment shall conduct a hearing on the variance pursuant to the procedures established in A.R.S. § 9-462.06, as amended. The Board of Adjustment shall convene for a hearing within sixty (60) days of the acceptance of the application by the Planning Division. The following notifications are required to be completed by the applicant prior to the Board of Adjustment meeting:

      1) Mail notification, in accordance with Subsection 114(A) below.

      2) Newspaper ad, in accordance with Subsection 114(B) below.

      3) Public notice sign, in accordance with Subsection 114(C) below.

   c. Once a variance is approved by the Board of Adjustment, it is effective and shall run with the land subject to the limitations set forth in this Ordinance.

2. Required Findings

The Board of Adjustment may grant a variance only after all of the findings set forth below have been met:

   a. There are special circumstances or conditions applicable to the property, including size, shape, topography, location or surroundings.

   b. Due to these special circumstances, the strict interpretation of the Zoning Ordinance would deprive the property of privileges enjoyed by surrounding properties of the same classification in the same zoning district.

c. The proposed variance is the minimum necessary to alleviate the hardship.

d. Granting the variance will not (i) change any of the uses permitted in the zoning classification or zoning district (ii) make any changes in the terms of the zoning ordinance or (iii) be detrimental to the property, neighboring properties, the neighborhood or the community in general.

e. The hardship created by the Zoning Ordinance is more than a personal inconvenience or financial hardship and was not self-imposed.

3. Appeals of Board Decisions

Any appeal from any decision rendered by the Board of Adjustment shall conform to the criteria and process as established in A.R.S. § 9-462.06(K), as amended. Said appeal shall be filed within thirty (30) days after the Board of Adjustment has rendered its decision.

B. Appeals of Decisions of the Zoning Administrator

1. Process and Procedure

a. A notice of appeal of an administrative decision or interpretation by the Zoning Administrator shall be submitted by the applicant through the Zoning Administrator to the Board of Adjustment within fifteen (15) days from the date of the decision. The Board's scope of review shall be limited to determining whether the decision or interpretation by the Zoning Administrator was in accordance with the intent and requirements of this Ordinance. The Board shall affirm or reverse the decision of the Zoning Administrator.

b. The Board shall conduct a public hearing on the appeal pursuant to the procedures established in A.R.S. § 9-462.06, as amended. The Board shall convene for a hearing within sixty (60) days of the acceptance of the application by the Zoning Administrator or authorized designee. The following notifications are required to be completed by the applicant prior to the Board of Adjustment meeting:

1) Mail notification, in accordance with Subsection 114(A) below.

2) Newspaper ad, in accordance with Subsection 114(B) below.

3) Public notice sign, in accordance with Subsection 114(C) below.

2. Appeals of Board Decisions

Any appeal from any decision rendered by the board shall conform to the criteria and process as established in A.R.S. § 9-462.06(G)(1), as amended. Said appeal shall be filed within thirty (30) days after the board has rendered its decision.

113 NEIGHBORHOOD MEETING

The Neighborhood Meeting is an opportunity for the applicant to meet with citizens and other interested parties to share details of the planning approval request and receive comments regarding the proposal. Neighborhood Meetings shall conform to the following standards:

A. The Zoning Administrator or designee shall notify applicants when they may proceed with a neighborhood meeting, and applicants shall work with the Zoning Administrator or designee to schedule the neighborhood meeting date, location, and time that is convenient for citizens.

B. The neighborhood meeting shall be held as early in the review process as feasible to give citizens ample opportunity to comment on the development, but late enough in the review process to ensure that the proposal will not significantly change between the Neighborhood Meeting and the start of the adoption process.

C. The neighborhood meeting shall be held a minimum of fifteen (15) calendar days prior to the first public hearing before the Planning Commission.

D. The applicant shall arrange for the facilities and bear all costs associated with the meeting, including all required notifications.

E. Neighborhood Meetings shall be scheduled between Monday and Thursday after 6:00 pm to ensure the majority of residents can attend.

F. Neighborhood Meetings shall be held within the corporate limits of the City of Avondale.

G. Within four (4) business days of any neighborhood meeting, the applicant shall provide a report summarizing any questions, issues or concerns expressed at the meeting and copy of the sign-in sheet from the neighborhood meeting showing all who attended.

114 PUBLIC NOTIFICATION

In order to encourage and enhance citizen participation in the development process and to comply with state law, the City of Avondale requires notifications in advance of required Neighborhood Meetings, Planning Commission Meetings, Board of Adjustment Meetings, and City Council Meetings.

A. Mail Notification

1. The applicant shall send a notice by first class mail, not less than fifteen (15) calendar days prior to the date of each meeting, to each property owner within

five hundred (500) feet of the subject property. The public notice shall include a description of the request, a conceptual development plan (if applicable), the general location of the request and the date, time, and place of the hearing/meeting. The Zoning Administrator shall provide the wording for the required mail notification to the applicant.

2. Where land that is the subject of a proposed change abuts or affects adjacent municipalities or unincorporated areas of the county, copies of the notice of public hearing shall be transmitted to the planning agency of the appropriate jurisdiction.

3. Within four (4) business days after the mailing deadline, the applicant shall provide a copy of the Written Notice, as well as a notarized affidavit stating that the Written Notice was mailed in accordance with this Ordinance.

B. Newspaper Advertisement

1. The applicant shall publish a public notice in a display ad covering not less than one-eighth (1/8) of a full page in an official local newspaper of general circulation in the City of Avondale (as determined by the Zoning Administrator), no less than fifteen (15) days prior to the date of each meeting.

2. The public notice shall include a description of the request, the general location of the request and the date, time, and place of the hearing. The Zoning Administrator or designee shall provide the wording for the required newspaper advertisement to the applicant.

C. Public Notice Sign

1. The applicant shall post a public notice sign at one (1) or more prominent locations on the site as determined by the Zoning Administrator or designee at least fifteen (15) days prior to the neighborhood meeting or, in the case of Variances and Appeals, at least fifteen (15) days prior to the Board of Adjustment meeting. The Zoning Administrator or designee shall provide a template of the required notice sign to the applicant.

2. The sign shall be a minimum of four (4)-feet by eight (8)-feet in size.

3. The sign shall be double-sided and attached to two (2) four (4)-inch by four (4)-inch by eight (8)-foot wood posts, constructed of either laminated plywood or medium density overlay (MDO) board. The sign shall be placed perpendicular to the street, unless it is not feasible to place the sign perpendicular to the street, in which case the Zoning Administrator or designee shall determine the more appropriate location to place the sign.

4. The color of the sign shall be white with black lettering. Updates with Planning Commission and City Council information shall be in bold lettering.

5. All information shall be evenly spaced and organized in a readable manner:

   a. The phrase "City of Avondale Public Hearing Notice" shall be printed at the top of the sign in a minimum letter size of four (4) inches.

   b. The sign shall contain the case number, project location, description of the request, time, date and location of the scheduled meetings and contact for the City of Avondale. For all applications that require Planning Commission and City Council hearings, if the date, time, and location of the Planning Commission and City Council hearings are unknown at the time of posting, adequate space shall be reserved on the sign to be updated when that information is known. Lettering for this text shall be a minimum of three (3) inches.

   c. It is the applicant's responsibility to keep the sign updated, free of graffiti and to remove the sign within seven (7) calendar days of final action by the City Council.

   d. Within four (4) business days of sign posting, the applicant shall provide pictures of each Public Notice Sign showing the date and time at which the picture was taken, as well as a notarized affidavit stating that each Public Notice Sign was posted in accordance with this Ordinance.

D. Proof of Adequate School Facilities

1. The applicant shall notify all applicable school districts within four (4) business days of the submittal of a Zoning Map Amendment request involving a residential component.

2. The applicant shall provide the Planning Division with a letter from all applicable school districts indicating that the applicant has contacted and met with the school district and the outcome of the meeting. Such letter shall be submitted to the Planning Division not less than fourteen (14) days prior to the scheduled Planning Commission meeting.

3. The applicant shall provide the Planning Division with a Certificate of Adequate Schools facility filled out by the school district not less than fourteen (14) days prior to the scheduled Planning Commission meeting.

115 APPLICATIONS AND FEES

A. Applications

1. Applications for variances, appeals, conditional use permits, Zoning Ordinance text amendments, Zoning Map amendments, design review, development plans, design review waivers, administrative relief, seasonal sales permits, house plans,

zoning interpretations, zoning verifications, sign permits, and amendments and/or extensions of the above shall be submitted on a form prescribed by the Planning Division with the required fee.

2. The Planning Division shall include with the required applications a list of all items typically required for review. At the time of pre-application meeting, the Zoning Administrator or designee shall determine which items will be required to accompany the application at the time of submittal, at a minimum.

3. Incomplete applications shall not be processed.

B. Fees

1. Fees for all applications pursuant to this Section shall be as determined by the City Council as part of the City's annual budget or by separate resolution. A copy of the then-current adopted fee schedule shall be maintained at all times in the Planning Division.

2. If more than one (1) type of application is requested, the fee shall be the total of all fees for all applications.

3. Fees are non-refundable once submitted to the City.

4. The City of Avondale, when acting in its official capacity, shall be exempt from application fees for any application type authorized by this Ordinance.