

# CITY COUNCIL AGENDA

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

REGULAR MEETING  
January 17, 2012  
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. COOPERATIVE PURCHASING AGREEMENT - AJP ELECTRIC, INC.**

City Council will consider a request to approve a Cooperative Purchasing Agreement with AJP Electric, Inc. to perform electrical service and construction site work in a total aggregate amount not to exceed \$300,000 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**b. RESOLUTION 3027-112 – INTERGOVERNMENTAL AND GRANT IN KIND AGREEMENTS - ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS FOR BTOP 2 GRANT**

City Council will consider a resolution authorizing an Intergovernmental Agreement and Grant In Kind Agreements with the Arizona State Library, Archives and Public Records relating to the Implementation of Broadband Technology Opportunities Program Round 2 and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents. The Council will take appropriate action.

**c. ORDINANCE 1489-112 – ACCEPTING THE DEDICATION OF A WATERLINE EASEMENT FROM AVONDALE ELEMENTARY SCHOOL DISTRICT NO. 44**

City Council will consider an ordinance accepting a public waterline easement from Avondale Elementary School District No. 44 and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

**d. ORDINANCE 1477-112 - ACCEPTING THE DEDICATION OF A WATERLINE EASEMENT – LEISURE INDUSTRIES, INC.**

City Council will consider an ordinance accepting a public waterline easement on the east side of Dysart Road north of Riley Drive and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

**4 PUBLIC HEARING - TIME EXTENSION FOR PAPAGO COMMERCE CENTER (DBA AVONDALE COMMERCE CENTER) PAD ZONING, ALTERNATIVELY ORDINANCE 1486-112 ZONING REVERSION**

City Council will hold a public hearing and consider a request by Mr. Michael Curley, Earl, Curley, and Lagarde P.C., to extend the validity of the Papago Commerce Center Planned Area Development (PAD) for one year, until November 15, 2012. Alternatively, if the PAD zoning extension is not granted, the Council may adopt an Ordinance reverting the zoning of the property back to Agricultural (AG). The Council will take appropriate action.

**5 PUBLIC HEARING - TIME EXTENSION FOR PHOENIX CHILDREN'S HOSPITAL PAD ZONING, ALTERNATIVELY ORDINANCE 1487-112 - ZONING REVERSION**

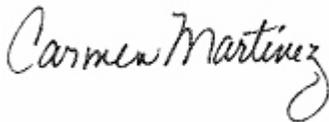
City Council will hold a public hearing and consider a request by Mr. Dave Cottle, Phoenix Children's Hospital, to extend the validity of the Phoenix Children's Hospital Planned Area Development for one year, until November 20, 2012. Alternatively, Council will consider an Ordinance reverting the zoning of the property to previous C-1 (Neighborhood Commercial) designation. The Council will take appropriate action.

**6 PUBLIC HEARING AND ORDINANCE 1485-112 – ZONING REVERSION FOR THREE RIVERS COMMERCE PARK**

City Council will hold a public hearing and consider an Ordinance reverting the Planned Area Development zoning of Three Rivers Commerce Park, which expired December 8, 2011, to its previous zoning classification of Agricultural. The Council will take appropriate action.

**7 ADJOURNMENT**

Respectfully submitted,



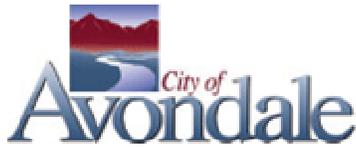
Carmen Martinez  
City Clerk

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

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

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council may be audio and/or video recorded and, as a result, proceedings in which children are present may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. § 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad política haga grabaciones de video o audio de un menor de edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes éstos aparezcan en estos videos o grabaciones de audio. Los padres puedan ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. § 1-602.A.9.



# CITY COUNCIL REPORT

**SUBJECT:**

Cooperative Purchasing Agreement - AJP Electric, Inc.

**MEETING DATE:**

January 17, 2012

**TO:** Mayor and Council

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

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council authorize electrical service and construction site work from AJP Electric, Inc. through a Cooperative Purchasing Agreement not to exceed an aggregate total of \$300,000 and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

The well and booster sites, collection lift stations and the water reclamation facility have emergency generators, well pumps and motors, as well as motor control centers which require preventative and corrective maintenance activities. There is also the need to have unexpected repairs, electrical work, and maintenance performed on these wells, motors, and pumps as failures do occur during normal operations. At times, electrical units even need to be replaced in a construction project. By having a contract in place with an outside contractor, our safety, troubleshooting, repair, and construction needs can be met at the sites over a range of potential issues where returning a well, pump, emergency generators or even an entire MCCs back into service as quickly as possible is paramount to providing reliable service to the city residents. AJP Electric Inc. offers the preventative and corrective maintenance and construction services that are needed in optimizing the operations and maintenance of our water resources facilities.

**DISCUSSION:**

The City of Avondale has secured a contract price with AJP Electric, Inc. to provide electrical services and construction site work. After a competitive bid process, the Alhambra School District entered into Contract# M10-25-15 with AJP Electric, Inc. and the city is permitted under Section 25-24 of the City Code to procure services under the Alhambra School District Contract without further public bidding. The Alhambra School District Contract permits its cooperative use by other governmental agencies including the City of Avondale. This contract will allow Public Works staff to assign all materials, equipment, tools, supplies, labor and supervision in electrical repairs and construction projects required subsequent to water/sewer site work from AJP Electric, Inc. on an as needed basis for the remaining contract period.

**BUDGETARY IMPACT:**

The Water Resources Staff estimates \$100,000 annually in expenditures for these types of repairs and construction projects, for a cumulative total over the contract period not to exceed \$300,000, subject to budget approval. The funding for the work provided under this Cooperative Purchasing Agreement is available in the Water Production Budget: 501-9122-00-6180, Water Administration Budget: 501-9110-00-6180, Collections Budget 503-9200-00-6720, and Water Reclamation Facility Budget: 503-9230-00-6770.

**RECOMMENDATION:**

Staff is recommending that the City Council authorize electrical service and construction site work from AJP Electric, Inc. through a Cooperative Purchasing Agreement not to exceed an aggregate total of \$300,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

Click to download

 [AJP Electric, Inc. Approval letter](#)

 [CPA](#)



# AJP ELECTRIC, INC.

11250 N. Cave Creek Rd. • Phoenix, Arizona 85020

Phone (602) 944-5477 • Fax (602) 944-5784

December 27, 2011

Mr. Todd Carpenter  
City of Avondale  
11465 W. civic Center Dr.  
Avondale, AZ 85323

RE: S.A.V.E. Cooperative Purchasing Agreement

Dear Mr. Carpenter,

A J P Electric, Inc. agrees to allow the City of Avondale to share the contract between Alhambra School District No. 68 and A J P Electric, Inc. for the Electrical Service and Construction Site Work, Bid No. M10-25-15 and agrees to allow the City of Avondale to piggyback and purchase from this contract. A J P Electric, Inc. will honor the same Labor and Materials unit rates as were offered to the Alhambra School District #68.

If you have any questions please contact me at 602-944-5477.

Sincerely,

  
Arina Paganik  
President

**COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
AJP ELECTRIC, INC.**

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of January 17, 2012, between the City of Avondale, an Arizona municipal corporation (the "City") and AJP Electric, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. After a competitive procurement process, the Alhambra School District No. 68 ("Alhambra") entered into Contract No. Bid #M10-25-15 awarded December 3, 2010, as extended by that certain Amendment Number One dated December 15, 2011, (collectively, the "Alhambra Contract") for the Contractor to provide electrical services, materials, equipment and construction site work. A copy of the Alhambra Contract is attached hereto as Exhibit A and incorporated herein by reference.

B. The City is permitted, pursuant to Section 25-24 of the City Code, to purchase such materials and services under the Alhambra Contract, at its discretion and with the agreement of the awarded Contractor, and the Alhambra Contract permits its cooperative use by other public entities including the City.

C. The City experienced problems with one of its generators that required immediate relocation, installation, materials and services (the "Emergency Project").

D. The City and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging a cooperative contractual relationship under the Alhambra Contract, (ii) establishing the terms and conditions by which the Contractor may provide the City with electrical services, materials, equipment and construction site work for the City's one-time emergency project and for ongoing generator repair and services on an "as-required" basis, as more particularly set forth in Section 2 below (the "Materials and Services") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials 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 are hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until December 31, 2012 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement or the Alhambra Contract. After the expiration of the Initial Term, this Agreement

may be renewed for up to three successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Alhambra Contract has been extended, (iii) at least 30 days prior to the end of the then-current term of the Agreement, the Contractor requests, in writing, to extend the Agreement for an additional one-year term and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the Alhambra Contract), as evidenced by the City Manager’s signature thereon, which approval may be withheld by the City for any reason. The Contractor’s failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

## 2. Scope of Work.

2.1 Emergency Project. For the Emergency Project, the Contractor shall provide the City with Materials and Services under the terms and conditions of the Alhambra Contract and as more particularly set forth in the Emergency Project Scope of Work and Fee Proposal, attached hereto as Exhibit B and incorporated herein by reference.

2.2 Subsequent Materials and Services. For any ongoing repair to City generators, this is an indefinite quantity and indefinite delivery Agreement for Materials and Services under the terms and conditions of the Alhambra Contract. The City does not guarantee any minimum or maximum number of purchases will be made for ongoing generator repair pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Contractor shall provide the Materials and Services to the City on an as-required basis in such quantities and configurations as may be agreed upon between the parties in writing, in the form of a scope of services and fee proposal or other form of written acknowledgment between the parties describing the work to be completed, the labor and services required and a detailed fee proposal showing the Alhambra Contract unit rates and the number of units required for the work (each, a “Scope of Work and Fee Proposal”). Each Scope of Work and Fee Proposal approved and accepted by the parties pursuant to this Agreement shall (i) contain a reference to this Agreement and the Alhambra Contract and (ii) be attached hereto as Exhibit C and incorporated herein by reference. Scopes of Work and Fee Proposals submitted without referencing this Agreement and the Alhambra Contract will be subject to rejection. By signing this Agreement, Contractor acknowledges and agrees that Scope(s) of Work and Fee Proposal(s) containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement or the Alhambra Contract, other than City’s project-specific requirements, are hereby expressly declared void and shall be of no force and effect.

2.3 Inspection; Acceptance. All Materials and Services are subject to final inspection and acceptance by the City. Materials failing to conform to the requirements of this Agreement and/or the Alhambra Contract will be held at Contractor’s risk and may be returned to the Contractor. If so returned, all return costs are the responsibility of the Contractor. Upon

discovery of non-conforming Materials or Services, the City may elect to do any or all of the following by written notice to the Contractor: (i) waive the non-conformance; (ii) stop the work immediately; or (iii) bring Materials or Service into compliance and withhold the cost of same from any payments due to the Contractor.

2.4 Cancellation. The City reserves the right to cancel Scopes of Work and Fee Proposals within a reasonable period of time after issuance. Should a Scope of Work and Fee Proposal be canceled, the City agrees to reimburse the Contractor, but only for actual and documentable costs incurred by the Contractor due to and after issuance of the Scope of Work and Fee Proposal. The City will not reimburse the Contractor for any costs incurred after receipt of City notice of cancellation, or for lost profits, shipment of product prior to issuance of Scope of Work and Fee Proposal or for anything not expressly permitted pursuant to this Agreement.

3. Compensation. The City shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed \$100,000.00 for the Materials and Services at the unit rates as set forth in the Alhambra Contract. The maximum aggregate amount for this Agreement shall not exceed \$400,000.00.

4. Payments. The City shall pay the Contractor based upon acceptance and delivery of Materials and/or Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall (i) contain a reference to this Agreement and the Alhambra Contract and (ii) document and itemize all work completed to date. The invoice statement shall include a record of materials delivered, time expended and work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Alhambra Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of 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 (i) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the City to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the

provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

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

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

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

9. Applicable Law; Venue. In the performance of this Agreement, Contractor shall abide by and conform to any and all laws of the United States, the State of Arizona and the 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 Maricopa County, Arizona.

10. Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. 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 Contractor fully informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the Contractor shall be relieved of any subsequent obligation under this Agreement.

11. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any City-approved Scopes of Work and Fee Proposals, invoices and the Alhambra Contract, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Alhambra Contract (collectively, the "Unauthorized Conditions"), other than the City's

project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any Scope of Work and Fee Proposal or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Alhambra Contract shall not alter or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

12. Indemnification; Insurance. To the extent provided under the Alhambra Contract, the City shall be afforded all of the rights, privileges, insurance coverage and indemnifications afforded to Alhambra, and such rights, privileges, insurance coverage and indemnifications shall inure and apply with equal effect to the City under this Agreement including, but not limited to, the Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor 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 Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement 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

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
                                          ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2012,  
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

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



EXHIBIT A  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
AJP ELECTRIC, INC.

[Alhambra Contract]

See following pages.



## Alhambra School District No. 68

4510 North 37th Avenue • Phoenix, Arizona 85019  
(602) 336-2920 • Fax (602) 336-2266

December 15, 2011

**Subject: Electrical Service and Construction Site Work  
Bid #M10-25-15  
Renewal for Year 2**

Dear Vendor,

The Alhambra School District is pleased to inform you that we will be extending your contract on the Electrical Service and Construction Site Work Bid for another year.

The form of contract for services will be properly executed purchase orders referencing Contract Number Bid #M10-25-15, and will be issued during the contract period as the need arises.

If you have any questions or concerns please contact me at 602-336-2972.

Thank you for submitting a proposal, and we look forward to working with you.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Leeder".

Tammy Leeder  
Supervisor, Purchasing/Warehouse

---

*The vision of Alhambra School District is to promote every student to high school  
with the academic skills to ensure success and the vision to go to college.*

**OFFER**  
**BID #M10-25-15**  
**Renewal for Year 2**

The undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications, and amendments in the solicitation, and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax  
License Number 07-470050-V

Federal Employer Identification Number:  
86-0750443

Tax Rate: 6.045 %

For clarification of this offer, contact:

Name Jozef Paganik

Phone 602-944-5477

Fax 602-944-5784

E-mail jozef.paganik@ajpelectric.com

A J P Electric, Inc.

Company Name

11250 N. Cave Creek Rd.

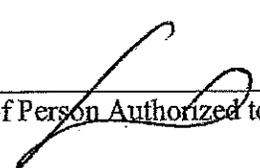
Address

Phoenix, AZ 85020

City

State

Zip

  
Signature of Person Authorized to Sign Offer

Anna Paganik

Printed or Typed Name

President

Title

**CERTIFICATION**

By signature in the Offer Section, above, the offeror certifies:

1. The submission of the offer did not involve collusion or other anti-competitive practices.
2. The offeror shall not discriminate against any employee or applicant for employment in violation of State Executive Order 99-4, 2000-4 or A.R.S. § 41-1461 through 1465.
3. The offeror 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. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The offeror declares that they have carefully read and examined all information to the referenced solicitation and agree to comply with the district rules, regulations and policies.

Please Note: There are no Price changes for Bid #M10-25-15 - Renewal Year 2

December 3, 2010

**Subject: Electrical Services and Construction Site Work  
Bid#M10-25-15**

Dear Vendor

At the December 2, 2010, Governing Board Meeting, the Board awarded the Electrical Services and Construction Site Work contract AJP Electric Inc., Foster Electric Motor Service, JFK Electrical Contracting Ent. Inc., Jillotti Electric Service Co. Inc., KER Electric Inc., Kimbrell Electric Inc., and Swain Electric.

Please refer to the enclosed Acceptance of Offer.

The form of contract for services will be properly executed purchase orders referencing Contract Number Bid #M10-25-15, and will be issued during the contract period as the need arises.

Per the requirements listed in bid specifications, Fingerprint Clearance Cards must be received by December 29, 2010.

Thank you for submitting a proposal, and we look forward to working with you.

Sincerely,

Barbara Moulder  
Supervisor  
Purchasing/Warehousing

Enc.



## COOPERATIVE PURCHASING

This solicitation is being done by the Alhambra School District as a member of the Strategic Alliance for Volume Expenditures (SAVE) and is acting as lead district. Any contract resulting from this solicitation shall be for the use of the consortium members. In order to participate in any resultant contract, a school district must have entered into a cooperative purchasing agreement with the consortium as required by School District Procurement Rule A.A.C. R7-2-1095. No volume is implied or guaranteed.

Below is a list of current member schools/public entities in the Consortium who potentially may wish to utilize this contract. Other schools/public entities in and around the state of Arizona may be added during the term of the contract by SAVE with the approval of the lead district and the contract vendor. The estimated volume of purchases by other schools/public entities within SAVE have been taken into consideration by the lead district and all other schools/public entities that are not members of SAVE are prohibited from using the contract.

### Strategic Alliance for Volume Expenditures

#### Current Members

##### Municipalities

City of Apache Junction  
City of Avondale  
City of Bullhead City  
City of Casa Grande  
City of Chandler  
City of Cottonwood  
City of Douglas  
City of Eloy  
City of Flagstaff  
City of Glendale  
City of Goodyear  
City of Maricopa  
City of Mesa  
City of Page  
City of Peoria  
City of Prescott  
City of Safford  
City of Scottsdale  
City of Sierra Vista  
City of Somerton  
City of Surprise  
City of Tempe  
City of Tucson  
City of Winslow  
  
City of Yuma  
Town of Buckeye  
Town of Camp Verde  
Town of Cave Creek  
Town of Florence  
Town of Fountain Hills  
Town of Gila Bend  
Town of Marana  
Town of Oro Valley

Town of Paradise Valley  
Town of Prescott Valley  
Town of Queen Creek  
Town of Sahuarita  
Town of Superior

##### Counties

Apache County  
Cochise County  
Coconino County  
Gila County  
La Paz County  
Maricopa County  
Mohave County  
Navajo County  
Pima County  
Pinal County  
Santa Cruz County  
Yavapai County  
Yuma County

##### Higher Education

Arizona State University  
Arizona Western College  
Central Arizona College  
Central Arizona Valley Institute of Technology (CAVIT)  
Cochise County Community College District  
Coconino County Community College District  
Diné College  
Maricopa Community College District  
Mohave Community College  
Northern Arizona University  
Pima Community College  
University of Arizona

Yavapai College

**Political Agencies**

Arizona Supreme Court  
Central Arizona Project  
Central Arizona Water Conservation District (CAWCD)  
Central Yavapai Fire District  
Maricopa Integrated Health System  
Mt. Lemmon Fire District  
North Country Community Health Center  
Pima County Joint Technology District #11 (JTED)  
Superior Court of Arizona, Maricopa County  
Superstition Mtn Community Facilities District  
Tucson Airport Authority  
Valley Metro Regional Public Transit Authority  
Phoenix-Mesa Gateway Airport Authority

**School Districts**

Agua Fria Union High School District # 216  
Alhambra Elementary School District # 68  
Altar Valley School District #51  
Amphitheater Unified School District #10  
  
Antelope Union High School #50  
Apache Junction Unified School District # 43  
Arlington Elementary School District #47  
Avondale Elementary School District #44  
Balsz Elementary School District #31  
Beaver Creek School District #26  
Benson Unified School District #9  
Bisbee Unified School District #2  
Blue Ridge Unified School District #32  
Bonita School District #6  
Buckeye Elementary School District #33  
Buckeye Union High School District #201  
Bullhead City Elementary School District #15  
Camp Verde Unified School District #28  
Cartwright Elementary School District #83  
Casa Blanca Middle School dba Vah Ki Middle School  
Casa Grande Elementary School District  
Casa Grande Union High School District  
Catalina Foothills Unified School District #16  
Cave Creek Unified School District #93  
Cedar Unified School District #25  
Chandler Unified School District # 80  
Chinle Unified School District #24  
Chino Valley Unified School District #51  
Clarkdale-Jerome School District #3  
Coconino County Regional Accommodation District #99

Colorado River Union High School District  
Continental Elementary School District #39  
Coolidge Unified School District #21  
Cottonwood-Oak Creek School District #6  
Crane Elementary School District # 13  
  
Deer Valley Unified School District #97  
Double Adobe Elementary School District #45  
Douglas Unified School District #27  
Dysart Unified School District # 89  
East Valley Institute of Technology  
Eloy Elementary School District #11  
Elfrida Elementary School District #12  
Flagstaff Unified School District # 1  
Florence Unified School District # 1  
Flowing Wells Unified School District #8  
Fort Huachuca Accommodation School District  
Fort Thomas Unified School District #7  
Fountain Hills Unified School District #98  
Fowler Elementary School District #45  
Gadsden Elementary School District # 32  
Ganado Unified School District #20  
Gila Bend Unified Schools  
Gilbert Unified School District #41 (Gilbert Pub. Schools)  
Glendale Elementary School District #40  
Glendale Union High School District  
Grand Canyon Unified School District #4  
Hackberry Elementary School District #3  
Heber-Overgaard Unified School District #6  
Higley Unified School District #60  
Holbrook Unified School District #3  
Humboldt Unified School District #22  
Hyder Elementary School District #6  
Indian Oasis-Baboquivari School District #40  
Isaac Elementary School District # 5  
J.O. Combs Elementary School District #44  
Joseph City Unified School District #2  
Kayenta Unified School District #27  
Kingman Unified School District #20  
Kyrene Elementary School District #28  
Lake Havasu Unified School District # 1  
Laveen Elementary School District #59  
Liberty Elementary School District #25  
Litchfield Elementary School District #79  
Littleton Elementary School District #65  
Madison Elementary School District #38  
Maine Consolidated School District  
Mammoth-San Manuel Unified School District #8  
  
Marana Unified School District #6

Maricopa Regional School District #509  
Maricopa Unified School District  
Mayer Unified School District #43  
Mesa Unified School District # 4  
Mobile Elementary School District #86  
Mohawk Valley School District # 17  
Morenci Unified School District #18  
Murphy Elementary School District #21  
Naco Unified School District #9  
Nadaburg Elementary District #81  
Nogales Unified School District # 1  
Northeast AZ Tech Institute of Voc Ed  
Osborn Elementary School District #8  
Page Unified School District #8  
Paradise Valley Unified School District #69  
Parker Unified School District #27  
Patagonia Elementary School District #6  
Patagonia Union High School District #92  
Payson Unified School District #10  
Peach Springs Unified School District #8  
Pendergast School District #92  
Peoria Unified School District #11  
Phoenix Elementary School District # 1  
Phoenix Union High School District #210  
Picacho Elementary School District #33  
Pima Unified School District #6  
Pine Strawberry Elementary School District #12  
Pinon Unified School District #4  
Prescott Unified School District #1  
Quartzsite Elementary School District #4  
Queen Creek Unified School District # 95  
Riverside Elementary School District #2  
Roosevelt Elementary School District # 66  
Round Valley Unified School District #10  
Sacaton Elementary School District #18  
Saddle Mountain Unified School District #90  
Safford Unified School District #1  
Sahuarita Unified School District #30  
Sanders Unified School District #18  
Santa Cruz Valley Unified School District #35  
Santa Cruz Valley Union High School District #840  
Scottsdale Unified School District # 48  
Sedona-Oak Creek Unified School District #9  
Sentinel Elementary School District #71  
Show Low Unified School District #10  
Sierra Vista Unified School District # 68  
Snowflake Unified School District #5  
Somerton Elementary School District #11  
Stanfield Elementary School District #24  
St. David Unified School District #21

St. Johns Unified School District  
Sunnyside Unified School District #12  
Tanque Verde Unified School District #13  
Tempe Elementary School District # 3  
Tempe Union High School District # 213  
Thatcher Unified Schools  
Toltec Elementary School District #22  
Tolleson Elementary School District #17  
Tolleson Union High School District # 214  
Tombstone Unified School District #1  
Tuba City Unified School District #15  
Tucson Unified School District  
Union Elementary School District #62  
Vail Unified School District #20  
Valley Union High School District #22  
Washington Elementary School District # 6  
Wellton Elementary School District #24  
West-MEC District #402  
Whiteriver Unified School District #20  
Wickenburg Unified School District #9  
Wilcox Unified School District  
Williams Unified School District #2  
Wilson Elementary School District #7  
Window Rock Unified School District #8  
Winslow Unified School District #1  
Young Public School District  
Yuma Elementary School District # 1  
Yuma Union High School District # 70

## SURVEY INFORMATION

While all members of SAVE are eligible to use these contracts, the following schools/public entities have specifically expressed an interest in using these contracts via survey conducted electronically by the lead district. The annual estimated expenditure for each schools/public entity is listed for the convenience of the Bidders.

<b>Schools/Public Entities</b>	<b>Estimated Annual Usage</b>
Apache Junction Unified School District	\$10,000
City of Chandler	Undetermined
Deer Valley Unified School District	\$50,000
Florence Unified School District	\$3,200,000
Fowler Elementary School District	\$10,000
Glendale Elementary School District	\$50,000
Phoenix Union High School District	\$100,000
Tolleson Elementary School District	\$10,000
<b>TOTAL</b>	<b>\$3,430,000</b>



# Alhambra School District

4510 N. 37<sup>th</sup> Ave.  
Phoenix, AZ 85019

BID # M10-25-15  
PROJECT: Electrical Service & Construction Site  
Work

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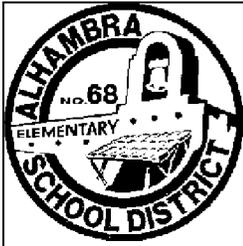
## DOCUMENTS REFERENCED:

You may access a copy of the documents referenced within this bid at the following web addresses:

Arizona Revised Statutes (A.R.S.) is available at: <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>

The Arizona School District Procurement Rules in the Arizona Administrative Code is available at:  
[http://azsos.gov/public\\_services/Title\\_07/7-02.htm#Article\\_10](http://azsos.gov/public_services/Title_07/7-02.htm#Article_10)

I.R.S W-9 Form (Request for Taxpayer I.D. Number) is available at: <http://www.irs.gov/pub/irs-pdf/fw9.pdf>



# Alhambra School District

4510 N. 37<sup>th</sup> Ave.  
Phoenix, AZ 85019

BID # M10-25-15  
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## UNIFORM INSTRUCTIONS TO BIDDERS

### I. Definition of Terms

As used in these instructions, the terms listed below are defined as follows:

- A. **“Attachment”** means any item the Solicitation requires an Bidder to submit as part of the bid.
- B. **“Contract”** means the combination of the Solicitation, including the uniform and Special Instructions to Bidders, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the bid and any Solicitation Amendments (Addenda) or Contract Amendments; and any terms applied by law.
- C. **“Contract Amendment”** means a written document signed by the School District/Public Entity that is issued for the purpose of making changes in the Contract.
- D. **“Contractor”** means any person who has a contract with the School District/Public Entity.
- E. **“Days”** means calendar days unless otherwise specified.
- F. **“Exhibit”** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the solicitation.
- G. **“Gratuity”** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value present or promised, unless consideration of substantially equal or greater value is received.
- H. **“Bidder”** means a vendor who responds to the solicitation.
- I. **“Procurement Officer”** means the person duly authorized to enter into and administer Contracts and make written determinations with respect to this solicitation or his/ her designee.
- J. **“Responsible Bidder”** means the bidder who has the capability to perform the contract requirements and the integrity and reliability to assure complete and good faith performance and who submits the lowest bid.
- K. **“Responsive Bidder”** means the bidder who submits a bid that conforms in all material respects to this Invitation For Sealed bids, Instruction to Bidders and the Plans and Specifications which are incorporated herein by this reference.
- L. **“Solicitation”** means an Invitation for Bids (IFB).
- M. **“Solicitation Amendment (or Addendum)”** means a written document that is authorized by the Procurement Officer and issued for the purpose of making changes to the Solicitation.
- N. **“Subcontract”** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishings of any material or any service required for the performance of the Contract.
- O. **“School District/Public Entity”** means the School District/Public Entity that executes the contract.

## II. Inquiries

- A. Duty to Examine. It is the responsibility of each Bidder to examine the entire Solicitation, seek clarification in writing, and check its bid for accuracy before submitting the bid. Lack of care in preparing a bid shall not be grounds for withdrawing the bid after the bid due date and time nor shall it give rise to any Contract claim.
- B. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Bidder shall not contact or direct inquires concerning this Solicitation to any other employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.
- C. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquires may require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page, and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquire since it may then be identified as an bid and not be opened until after the bid due date and time.
- D. Timeliness. Any inquiry shall be submitted as soon as possible and at least seven (7) days before the bid due date and time. Failure to do so may result in the inquiry not being answered.
- E. No Right to Rely on Verbal Responses. Any inquiry that results in changes to the Solicitation shall be answered solely through a written Solicitation Amendment or Addendum. A Bidder may not rely on verbal responses to inquires.
- F. Solicitation Amendments/Addenda. The Solicitation shall only be modified by a Solicitation Amendment or Addendum.
- G. Pre-Bid Conference. If a Pre-Bid Conference has been scheduled under this Solicitation, the date, time, and location appear on the Solicitation cover sheet or elsewhere in the Solicitation. A Bidder should raise any questions it may have about the Solicitation or the procurement at that time. A Bidder may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment or Addendum.
- H. Persons with Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

## III. Bid Preparation

- A. Forms: No Facsimile or Electronically Submitted Bids. A bid shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation will be legible and contain the same information requested on the form. A facsimile or electronically submitted bid shall be rejected.
- B. Typed or Ink; Corrections. The bid should be typed or in ink. Erasures, interlineations or other modifications in the bid should be initialed in ink by the person signing the bid. Modifications shall not be permitted after bids have been opened except as otherwise provided under applicable law.
- C. Evidence of Intent to be Bound. Failure to submit verifiable evidence of intent to be bound, such as an original signature, shall result in rejection of the bid.  
  
Exceptions to Terms and Conditions. All exceptions included with the bid shall be submitted in a clearly identified separate section of the bid in which the Bidder clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically referenced by the Procurement Officer in a written statement. The Bidder's preprinted or standard terms will not be considered as a part of any resulting Contract. A bid that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected
- D. Subcontracts. Bidder shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the bid.

- E. Cost of Bid Preparation. The District will not reimburse any Bidder the cost of responding to a Solicitation.
- F. Solicitation Amendments/Addenda. Unless otherwise stated in the Solicitation, each Solicitation Amendment or Addendum shall be acknowledged by the person signing the bid. Failure to acknowledge a material Solicitation Amendment or Addendum or to follow the instructions for acknowledgement of the Solicitation Amendment/Addendum shall result in rejection of the bid.
- G. Federal Excise Tax. School Districts/Public Entities are exempt from Federal Excise Tax on manufactured goods. Exemption Certificates will be prepared upon request.
- H. Provision of Tax Identification Numbers. Bidders are required to provide their Arizona Transaction Privilege Tax number and/or Federal Tax Identification number, if applicable, in the space provided on the Offer and Acceptance Form and provide the tax rate and amount, if applicable, on the Price Sheet.
- I. Identification of Taxes in Bid. School Districts/Public Entities are subject to all applicable state and local transaction privilege taxes. If Arizona resident Bidders do not indicate taxes on a separate item in the bid, the School District/Public Entity will conclude that the price(s) bid includes all applicable taxes.
- J. Disclosure. If the Firm, business, or person submitting this bid has been debarred, suspended, or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any federal, state, or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Bidder must fully explain the circumstances relating to the preclusion or proposed preclusion in the bid. The Bidder shall include a letter with its bid setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above must be provided.
- K. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation and any subsequent contracts, the following shall prevail in the order set forth below:
  1. Addenda/Amendments;
  2. Special Terms and Conditions;
  3. Uniform General Terms and Conditions;
  4. Statement of Scope of Work;
  5. Specifications;
  6. Attachments;
  7. Exhibits;
  8. Special Instructions to Bidders; and
  9. Uniform Instructions to Bidders
- L. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all delivery and unloading at the destination(s).

#### **IV. Submission of Bid**

- A. Sealed Envelope or Package. Each bid shall be submitted to the location identified in this Solicitation, in a sealed envelope or package that identifies its contents as a bid and the Solicitation number to which it responds. The appropriate Solicitation Number should be plainly marked on the outside of the envelope or package.
- B. Bid Amendment or Withdrawal. A bid may not be amended or withdrawn after the bid due date and time except as otherwise provided under applicable law.
- C. Public Record. Under applicable law, all bids submitted and opened are public records and must be retained by the School District/Public Entity. bids shall be open to public inspection after Contract award, except for such bids deemed to be confidential by the School District/Public Entity. If a Bidder believes that information in its bid should remain confidential, it shall stamp as confidential that information and submit a statement with its bid detailing the reasons that information should not be disclosed. The School District/Public Entity shall make a determination on whether the stamped information is confidential pursuant to the School District/Public Entity's Procurement Code.

- D. Non-collusion, Employment, and Services. By signing the bid and Acceptance form or other official contract form, the Bidder certifies that:
1. It did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its bid; and
  2. It does not discriminate against any employee, applicant for employment, or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable federal, state, and local laws and executive orders regarding employment.

## V. **Additional Bid Information**

- A. Unit Price Prevails. Where applicable, in the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.
- B. Taxes. All applicable taxes in the bid will be considered by the School District/Public Entity when determining the lowest bid; except when a responsive Bidder which is otherwise reasonably susceptible for award is located outside of Arizona and is not subject to a transaction privilege or use tax of a political subdivision of this state. In that event, all applicable taxes which are the obligation of Bidders in state and out of state, Bidders shall be disregarded in the Contract Award. At all times, payment of taxes and the determination of applicable taxes and rates are the sole responsibility of the Contractor.
- C. Late Bids. A bid submitted after the exact bid due date and exact time shall be rejected.
- D. Disqualification. A bid from a Bidder who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity may be rejected.
- E. Bid Acceptance Period. A Bidder submitting a bid under this Solicitation shall hold its bid open for the number of days from the due date that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for the bid acceptance, the number of days shall be ninety (90).
- F. Payment. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment within thirty (30) days.
- G. Waiver and Rejection Rights. Notwithstanding any other provision of this solicitation, the School District/Public Entity reserves the right to:
1. Waive any minor informality;
  2. Reject any and all bids or portions thereof; or
  3. Cancel a solicitation.

## VI. **Award**

- A. Number or Types of Awards. Where applicable, the School District/Public Entity reserves the right to make multiple awards or to award a Contract by individual line items, by a group of line items, or to make an aggregate award, whichever is deemed most advantageous to the School District/Public Entity. If the Procurement Officer determines that an aggregate award to one Bidder is not in the School District/Public Entity's interest, "all or none" bids shall be rejected.
- B. Contract Commencement. A bid does not constitute a Contract nor does it confer any rights on the Bidder to the award of a Contract. A Contract is not created until the bid is accepted in writing by the District/Public Entity authorized signature on the Offer and Acceptance Form. A letter or other notice of award or of the intent to award shall not constitute acceptance of the bid.
- C. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the bid and Acceptance Form or other official contract form, unless another date is specifically stated in the Contract.
- D. Final acceptance for each participating School District/Public Entity will be contingent upon the approval of their Governing Board, if applicable.

## **VII. Protests**

A protest shall comply with and be resolved according to Arizona Department of Education School District Procurement Code Rule A.A.C. R7-2-1141 through R7-2-1153. Protests shall be in writing and be filed with the District Representative. A protest of a Solicitation shall be received by the District Representative before the bid due date. A protest of a proposed award or of an award shall be filed with the Procurement Officer within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

- A. The name, addresses, and telephone number of the protester;
- B. The signature of the protester or its representative;
- C. Identification of the purchasing agency and the Solicitation or Contract number;
- D. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- E. The form of relief requested.

## **UNIFORM GENERAL TERMS AND CONDITIONS**

### **I. Contract Interpretation**

- A. Arizona Law. The law of Arizona applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona School District Procurement Code, Arizona Revised Statutes (A.R.S.) 15-213, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 7, Chapter 2, Articles 10 and 11.
- B. Implied Contract Terms. Each Provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- C. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee agent of the other party to the Contract.
- D. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- E. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.
- F. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### **II. Contract Administration and Operation**

- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each Subcontractor to retain all data and other records ("records") relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4, 2000-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- C. Audit. At any time during the term of this Contract and five (5) years thereafter, the Contractor's or any Subcontractor's books and records shall be subject to audit by the School District/Public Entity and, where applicable, the Federal Government, the extent that the books and records relate to the performance of the Contract or Subcontract.
- D. Inspection and Testing. The Contractor agrees to permit access to its facilities, Subcontractor facilities and the Contractor's processes for producing the materials, at reasonable time for inspection of the materials and services covered under this Contract. The School District/Public Entity shall also have the right to test at its own cost the materials to be supplied under this Contract. Neither inspection at the Contractor's facilities nor testing shall constitute final acceptance of the materials. If the School District/Public Entity determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the School District/Public Entity for testing and inspection.
- E. Notices. Notices to the Contractor required by this Contract shall be made by the School District/Public Entity to the person indicated on the Offer and Acceptance Form submitted by the Contractor unless otherwise stated in the Contract. Notices to the School District/Public Entity required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notices shall be given by written notice and an Amendment to the Contract shall not be necessary.
- F. Advertising and Promotion of Contract. The Contractor shall not advertise or publish information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

- G. Property of the School District/Public Entity. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the School District/Public Entity. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the School District/Public Entity.

### III. **Costs and Payments**

- A. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the School District/Public Entity within thirty (30) days. The Purchase Order number must be referenced on the invoice.
- B. Applicable Taxes.
1. Payment of Taxes by the School District/Public Entity. The School District/Public Entity will pay only the rate and/or amount of taxes identified in the bid and in any resulting Contract.
  2. State and Local Transaction Privilege Taxes. The School District/Public Entity is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.
  3. Tax Indemnification. Contractor and all Subcontractors shall pay all federal, state, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all Subcontractors to hold the School District/Public Entity harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
  4. IRS W-9. In order to receive payment under any resulting Contract, Contractor shall have a current I.R.S. W-9 Form on file with the School District/Public Entity.
- C. Availability of Funds for the Next Fiscal Year. Funds may not presently be available for performance under this Contract beyond the current fiscal year. No legal liability on the part of the School District/Public Entity for any payment may arise under this Contract beyond the current fiscal year until funds are made available for performance of the Contract. The School District/Public Entity will make reasonable efforts to secure such funds.

### IV. **Contract Changes**

- A. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract signed by the Procurement Officer. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by an unauthorized employee or made unilaterally by the Contractor are violations of the Contract and or applicable law. Such changes, including unauthorized written Contract Amendments, shall be void and without effect, and the Contractor shall not be entitled to any claim and this Contract based on those changes.
- B. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract without the advance written approval of the Procurement Officer. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The Procurement Officer shall not unreasonably withhold approval.

### V. **Risk and Liability**

- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the School District/Public Entity shall be indemnified and held harmless by the Contractor for its vicarious liability as result of entering into this Contract. Each party to this Contract is responsible for its own negligence.
- C. Indemnification - Patent and Copyright. To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless the School District/Public Entity against any liability, including costs and expenses, for infringement of any patent, trademark, or copyright arising out of Contract performance or use by the School District/Public Entity of materials furnished or work performed under this Contract. The School District/Public Entity shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.
- D. Force Majeure.
1. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injections-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
  2. Force Majeure shall not include the following occurrences:
    - a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; or
    - b. Late performance by a Subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. ; or
    - c. Inability of either the Contractor or any Subcontractor to acquire or maintain any required insurance, bonds, licenses, or permits.
  3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt requested, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
  4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and that such delay or failure is caused by force majeure.
- E. Third Party Antitrust Violations. The Contractor assigns to the School District/Public Entity any claim for overcharges resulting from antitrust violation the extent that those violations concern materials of services supplied by third parties to the Contractor toward fulfillment of this Contract.

## **VI. Warranties**

- A. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that for one year after acceptance by the School District/Public Entity of the materials or services, they shall be:
1. A quality to pass without objection in the trade under the Contract description;
  2. Fit for the intended purposes for which the materials or services are used;

3. Within the variations permitted by the Contract and are of even kind, quality, and quality within each unit and among all units;
  4. Adequately contained, packaged and marked as the Contract may require; and
  5. Conform to the written promises or affirmations of fact made by the Contractor.
- C. Fitness. The Contractor warrants that any material or service supplied to the School District/Public Entity shall fully conform to all requirements of the Solicitation and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs A through C of this paragraph are not affected by inspection/ testing of or payment for the materials or services by the School District/Public Entity.
- E. Exclusions. Except as otherwise set forth in this Contract, there are no express or implied warranties or merchant ability fitness.
- F. Compliance with Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable federal, state and local laws, and the Contract shall maintain all applicable licenses and permits.
- G. Survival of Rights and Obligations after Contract Expiration or Termination.
1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration of termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the School District/Public Entity is not subject to or barred by any limitations of actions prescribed in A.R.S. Title 12, Chapter 5.
  2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Offices, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

## **VII. School District/Public Entity's Contractual Remedies**

- A. Right to Assurance. If the School District/Public Entity in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing the Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent or ability to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand may, at the School District/Public Entity's option, be the basis for terminating the Contract under the Uniform General Terms and Conditions.
- B. Stop Work Order.
1. The School District/Public Entity may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for a period of up to ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- C. Non-exclusive Remedies. The rights and the remedies of the School District/Public Entity under this Contract are not exclusive.
- D. Nonconforming Tender. Materials supplied under this Contract shall fully comply with the Contract. The delivery of materials or a portion of the materials in an installment that do not fully comply constitutes a breach of Contract. On delivery of nonconforming materials, the School District/Public Entity may terminate the Contract for default

under applicable termination clauses in the Contract, exercise any of its remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

- E. Right to Offset. The School District/Public Entity shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the School District/Public Entity or damages assessed by the School District/Public Entity concerning the Contractor's nonconforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform General Terms and Conditions.

## **VIII. Contract Termination**

- A. Cancellation for Conflict of Interest. Per A.R.S. 38-511 the School District/Public Entity may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the School District/Public Entity is, or becomes at any time while the Contract or an extension the Contract is in effect, an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- B. Gratuities. The School District/Public Entity may, by written notice, terminate this Contract, in whole or in part, if the School District/Public Entity determines that employment or gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the School District/Public Entity for the purpose of influencing the outcome of the procurement or securing the Contract, an Amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about Contract performance. The School District/Public Entity, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three (3) times the value of the gratuity offered by the Contractor.
- C. Suspension or Debarment. The School District/Public Entity may, by written notice to the Contractor, immediately terminate this Contract if the School District/Public Entity determines that the Contractor has been disbarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Subcontractor of any public procurement unit or other governmental body.
- D. Termination for Convenience. The School District/Public Entity reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the School District/Public Entity without penalty recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all Subcontractors of the effective date of the termination and minimize all further costs to the School District/Public Entity. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District/Public Entity. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed, and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R7-2-1125 shall apply.
- E. Termination for Default.
  - 1. In addition to the rights reserved in the Uniform Terms and Conditions, the School District/Public Entity reserves the right to terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
  - 2. Upon termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the School District/Public Entity.
  - 3. The School District/Public Entity may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials and services to replace those under this Contract. The Contractor shall be liable to the School District/Public Entity for any excess costs incurred by the School District/Public Entity re-procuring the materials or services.
- F. Continuation of Performance through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

**IX. Contract Claims**

All Contract claims and controversies under this Contract shall be resolved according to A.R.S. Title 15-213 and rules adopted thereunder.

**X. Cooperative Purchasing**

School District Procurement Rule A.A.C. R7-2-1191 through R7-2-1195 authorizes and governs intergovernmental Procurements. The Strategic Alliance for Volume Expenditures “SAVE” is a group of schools/public entities who have signed such a cooperative purchase agreement to obtain economies of scale. This Solicitation is being issued by an eligible School District for the benefit of all eligible School Districts/public entities.

- A. An eligible School District/Public Entity shall not use a Consortium Contract to obtain concessions, including lower prices, from the Consortium Contractor or any other vendor for the same or similar products, materials, and/or services.
- B. The eligible School District/Public Entity shall:
  - 1. Insure that Purchase Orders issued against eligible Consortium Contracts are in accordance with terms and prices established in the Consortium Contract.
  - 2. Make timely payment to the Consortium Contractor for all products, materials, and services in accordance with the terms and conditions of the Consortium Contract. Payment, inspection and acceptance of products, materials and services ordered by the eligible schools/public entities shall be the exclusive obligation of the school/public entity.
  - 3. Be responsible for the ordering of materials or services under the Contract. The Consortium shall not be liable in any fashion for any violation by the eligible school district/public entity, and the eligible school district/public entity shall hold the Consortium harmless from any liability which may arise from action or inaction of the eligible school district.
  - 4. The exercise of any rights or remedies by the eligible school district/public entity shall be the exclusive obligation of such unit; however, the Consortium, as the Contract administrator and without subjecting itself to any liability, may join in the resolution of any controversy should it so desire.

**XI. Gift Policy**

The Strategic Alliance for Volume Expenditures (SAVE) will accept no gifts, gratuities or advertising products from vendors. The SAVE has adopted a zero tolerance policy concerning vendor gifts. Members of SAVE may request product samples from vendors for official evaluation with disposal of those said samples at the discretion of the Procurement Officer.

**XII. Offshore Performance**

Due to security and identity protection concerns, direct services under any subsequent contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the school district(s) or charter school(s) or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

**XIII. Contractor’s Employment Eligibility**

By entering the contract, contractor warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations.

The District may request verification of compliance from any contractor or subcontractor performing work under this contract. The District reserves the right to confirm compliance in accordance with applicable laws.

Should the District suspect or find that the contractor or any of its subcontractors are not in compliance, the District may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

#### **XIV. Terrorism Country Divestments**

Per A.R.S. 35-392, the District is prohibited from purchasing from a company that is in violation of the Export Administration Act.

#### **XV. Scrutinized Business operations**

Per A.R.S. 35-391, the District is prohibited from purchasing from a company with scrutinized business operations in Sudan.

Per A.R.S. 35-393, the District is prohibited from purchasing from a company with scrutinized business operations in Iran.

#### **XVI. Fingerprint Checks**

If required to provide services on school district property, the contractor shall submit a Fingerprint Clearance Card to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy.

The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public law 92-544 of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Additionally, contractor shall comply with the governing body fingerprinting policies of each individual School District/Public Entity.

#### **XVII. Clarifications/Discussions**

Clarification means communication with Bidder for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the bid. It is achieved by explanation or substantiation, either in response to an inquiry from the District or as initiated by Bidder. Clarification does not give Bidder an opportunity to revise or modify its bid, except to the extent that correction of apparent clerical mistakes results in a revision.

#### **XVIII. Confidential Information**

Confidential information request: If Bidder believes that its bid contains trade secrets or proprietary information that should be withheld from public inspection, a statement advising the School District/Public Entity of this fact shall accompany the bid, and the information shall be so identified wherever it appears. The School District/Public Entity shall review the statement and shall determine in writing whether the information shall be withheld. If the School District/Public Entity determines to disclose the information, the School District/Public Entity shall inform Bidder in writing of such determination.

Pricing: The District will not consider pricing to be confidential or proprietary.

Public Record: All bids submitted in response to this solicitation shall become the property of the School District/Public Entity. They will become a matter of public record available for review, subsequent to award notification, under the supervision of the Purchasing Official at the Alhambra School District, 4510 N. 37<sup>th</sup> Ave., Phoenix, AZ 85019, by appointment.

**SPECIAL TERMS AND CONDITIONS**  
**IFB # M10-25-15**

**I. District Representative**

In accordance with the "Uniform Instructions To Offerors," paragraph seven, the District Representative is Dr. Doug Virgil, Assistant Superintendent Business Services.

**II. Purpose**

The Alhambra School District will receive sealed bids for the purchase of electrical service and construction site work on an as needed basis as determined by the District during the contract period of January 1, 2011 until December 31, 2011.

**III. Insurance**

- A. Bidder agrees to maintain such insurance as will fully protect Bidder and the District from any and all claims under any workers' compensation statute or unemployment compensation laws, and from any and all other claims of any kind or nature for damage to property or personal injury, including death, made by anyone, that may arise from work or other activities carried on, under, or facilitated by this Agreement, either by Bidder, its employees, or by anyone directly or indirectly engaged or employed by Bidder. Bidder agrees to maintain such automobile liability insurance as will fully protect Bidder and the District for bodily injury and property damage claims arising out of the ownership, maintenance or use of owned, hired or non-owned vehicles used by Bidder or its employees, while providing services to the District.
- B. Successful Bidder will be required to provide proof of and maintain comprehensive general liability insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate coverage with a deductible of not more than \$5,000 and naming **Alhambra School District** and Members of the Strategic Alliance for Volume Expenditures (SAVE) as an additional insured party.
- C. Successful Bidder will be required to submit proof of and maintain Worker's Compensation and Employer's Liability Insurance as required by law.

**IV. Licenses**

Successful Bidder shall maintain in current status all federal, state, and local licenses and permits required by the operation of the business conducted by the Bidder.

**V. Safety**

- A. Bidder, at its own expense and at all times, shall take all reasonable precautions to protect persons and the District property from damage, loss or injury resulting from the activities of Bidder, its employees, its subcontractors, and/or other persons present. Bidder will comply with all specific job safety requirements promulgated by any governmental authority, including without limitation, the requirements of the Occupational Safety Health Act of 1970.
- B. All items supplied on this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission, the National Electric Code, and the National Fire Protection Association Standards.

**VI. Fingerprinting**

A Fingerprint Clearance Card will be required for this contract, please refer to paragraph sixteen (16) under "Uniform General Terms and Conditions." The Fingerprint Clearance Card must be received by December 29, 2010.

**VII. Terms of Award**

The District reserves the right to award a contract, beginning January 1, 2011 and ending December 31, 2011. The District reserves the right to extend the contract for four (4) additional one-year contracts ending December 31, 2015, providing services performed by the vendor are satisfactory to the District, and funding is available.

It is expected that Governing Board approval for this contract will be made in December 2, 2010.

**VIII. Multiple Award**

The District reserves the right to make a multiple award to more than one supplier. The award will be limited to the least number of suppliers that the District determines is necessary to meet the needs of the District.

**IX. Evaluation**

- A. Representatives of the District will evaluate the bid.
- B. The bids will be initially evaluated for conforming to the requirements of the bid. All those responsible and responsive vendors who met the technical requirements will then be evaluated for pricing and specification of products.
- C. Evaluation criteria are listed below.
  - 1. Cost/Discount Offered – While cost is a significant factor in considering the placement of the awards, it is not the only factor
  - 2. Availability of dedicated account representative.
  - 3. References of educational customers who have purchased from you in the last six months.
  - 4. Past service and performance.
  - 5. Conformity to the exact requirements of this bid
- D. All bids shall be open for public inspection after award of contract, except to the extent the Bidder designates, and the District concurs, that trade secrets or other proprietary data contained in the bid documents remain confidential.

**X. Contingencies**

The total purchase of all orders to be issued against contracts is not known, and the Alhambra School District will not be bound to purchase a minimum quantity during the contract period.

**XI. Guarantees By the Successful Bidder(s)**

Bidder guarantees that equipment or material offered is standard, new, and as required by the specifications. Every item delivered must be guaranteed against faulty material and workmanship for a period of at least one (1) year from the date of purchase. If during this period such faults develop, the successful Bidder agrees to replace the item affected without cost to the District.

**XII. 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 District. The District reserves the rights to obtain like goods or services from other sources.

**XIII. Inspection**

All materials are subject to final inspection and acceptance by the District. Materials failing to meet the requirements of this contract will be held at Bidder's risk and may be returned to Bidder. If so returned, the cost of transportation, unpacking, inspection, repudiating, reshipping or other like expenses shall be the responsibility of the Bidder.

**XIV. Vendor Responsibility**

- A. The successful Bidder shall protect all furnishings from damage and shall protect the school district's property from damage or loss arising in connection with this contract. Bidder shall make good any such damage, injury or loss caused by the operations, or those employees, to the satisfaction of the District. Any damage caused to District facilities, lawns, etc., shall be repaired immediately or replaced at no expense to the District.
- B. The successful Bidder shall adequately screen all employees and, where applicable, independent contractors, who may be involved in providing services under this contract to determine the appropriateness of their working at a public school facility.
- C. The successful Bidder shall take all necessary precautions for the safety of students, school employees and the public, and shall comply with all applicable provisions of Federal, State and Municipal Safety Laws. Successful Bidder agrees that they are fully responsible to the District for the acts and omissions of any and all persons whether directly or indirectly employed by them. They shall maintain such insurance as will protect them and the District from claims or damage from personal injury including death, which may arise from operations under this contract.
- D. The successful Bidder must be prepared to provide an adequate work force and inventory of vehicles, materials and equipment. It shall be the successful Bidder's responsibility to ensure continuation of service.
- E. The successful Bidder must provide adequate training for all contracted employees providing services under this contract.
- F. The successful Bidder must make employees aware of the requirements of the contract including, but not limited to delivery requirements, alarm procedures, and any other information which may be necessary to properly provide the specified service.

**XV. Vendor Required Contract/Agreement**

If your firm will require the District to sign any form of contract/agreement, a copy of that contract/agreement shall be included with this bid. Contents and stipulations contained in the contract/agreement may be part of the evaluation criteria.

**XVI. Delivery of Services**

Services must be received within time agreed to by the District and the Bidder. The District shall make decisions as to compliance with contract services and time and their decision shall be final. The items on this contract shall be delivered per the specifications and instructions for each of the campuses.

**XVII. Local Representative**

Bidder **shall** have a LOCAL field representative available at all times during the contract period.

**XVIII. Authority**

This solicitation as well as any resulting contract is issued under the authority of the Governing Board or designee. No alteration or any resulting contract may be made without the express written approval of the District in a form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the School District Procurement Rules. Any such action is subject to legal and contractual remedies available to the District inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

**XIX. Integrity of Bid**

By signing this bid, the Bidder affirms that the Bidder has not given, nor intends to give any time hereafter any economic opportunity, future employment, gift, loan gratuity, special discount, trip favor, or service to any employee of the District in connection with the submitted bid. Failure to sign the bid, or signing it with a false statement, shall void the submitted bid or any resulting contract.

**XX. Billing**

All billing notices must be sent to each District's Accounts Payable Department as shown on the purchase orders. All invoices shall identify the specific item(s) being billed. Any purchase order issued by the Alhambra School District, or a member of SAVE will refer to the IFB number of this bid.

**XXI. Price Clause**

- A. Prices shall be firm for the term of the contract. Prices as stated must be complete for the services bid and shall include all associated costs. DO NOT include sales tax on any item in the bid.
- B. After initial contract term and prior to any contract renewal, the Alhambra School District will review fully documented requests for price increases and may at its sole option accept any changes or cancel from the contract those items concerned. The vendor shall likewise bid any published price reduction, during the contract period, to the District concurrent with its announcement to other customers. All price adjustments will be effective upon acceptance of the Alhambra School District.

**XXII. Brand Name or Equal**

Any manufacturer's names, trade names, brand name or catalog designations used in the specifications are for the purpose of describing and establishing the general quality level, design and performance desired. Such references are not intended to limit or restrict bidding by other vendors but are intended to approximate the quality design or performance which is desired. Any bid which proposes like quality, design or performance will be considered. If the description of your bid differs in any way, you must give complete detailed description of your bid including pictures and literature where applicable.

**XXIII. Descriptive Literature**

All bids must include complete manufacturer's descriptive literature regarding the supplies they propose to furnish. Literature shall be sufficient in detail in order to allow full and fair evaluation of the offer submitted. Failure to include this information may result in the bid being rejected.

**XXIV. Deviations to Bid**

Any deviation from the general terms and conditions or exceptions taken shall be described fully and appended to the bid form on the Bidder's letterhead. Exceptions must be signed by authorized representative of the company. Such appendages shall be considered part of the Bidders formal bid. For the absence of any statements of deviation or exception, the bid shall be accepted as in strict compliance with all terms and conditions.

**XXV. Procurement Methods**

Any parts or repair services obtained under this Invitation for bid may be by Blanket Purchase Order, Specific Purchase Order, or Procurement Card. The percent discount for parts and the labor rate must remain the same no matter what purchasing method the District uses.

**SCOPE OF WORK**  
**BID #M10-25-15**

- I.** No representation is given as to whether each, or any, of the bid items will be needed, or purchased; nor, in what quantities.
- II.** Unit rates represent the total compensation that will be paid to the contractor for the work. Unit rates shall include all materials, equipment, tools, supplies, labor, supervision, insurance, licenses, overhead and profit, as applicable.
- III.** Offerors may respond to any, or all, of the unit price items contained on the bid form.
- IV.** Contractors must be licensed in the State of Arizona and must have a minimum of five (5) years related experience to perform the work for which they submit bids. Contractors shall comply with, and adhere to, all laws and regulations pertaining to the work. Contractors shall comply with all district procedures and policies relating to the contractor’s presence on school property. No smoking on any school property is allowed. All work performed by the contractor shall comply with applicable building and safety codes and all government entities having jurisdiction. The contractor shall coordinate the work with other contractors, utility companies, City of Phoenix, City of Glendale, State Fire Marshal, and State Office of Manufactured Housing and schedule inspections as required for performance of the work.
- V.** For each project contemplated under the contract, the electrical contractor shall provide a not-to-exceed estimate for approval by the Alhambra School District/public entity prior to commencement of the work.
- VI.** Prior to starting any work, the contractor MUST furnish certificates of insurance naming the Alhambra School District/public entity as an additional insured, demonstrating the following minimum coverages are in effect:

<u>Type</u>	<u>Amount</u>
Workman’s Compensation/Employer’s Liability Insurance	As required by law
Comprehensive General Liability	\$1,000,000
Comprehensive Automobile Liability	\$1,000,000

- VII.** Prior to starting any work, the contractor MUST furnish Fingerprint Clearance Cards for all employees who might provide service under this contract. Please refer to paragraph sixteen (16) under “Uniform General Terms and Conditions.”

**BID REQUIREMENTS**  
**BID #M10-25-15**

**One (1) Original and one (1) Copy** of your bid must be submitted. The Alhambra School District will not assume responsibility for any costs related to the preparation or submission of the bid. In order for your bid to be considered, the following should be included and should be referenced with *index tabs*:

- Tab 1. Letter of interest and a statement of qualifications. Offeror should set forth, in some detail, their background and experience.
  
- Tab 2. The form of contract for any award made as a result of this bid will be a District purchase order (issued annually), referencing this IFB, which shall be considered a part of the contract. The amount will be based upon the fees shown in the bid, and will take into consideration previous and anticipated expenses for the forthcoming year. If your firm will require the District to sign an additional or separate contract, a copy of the bid contract must be included with the bid.
  
- Tab 3. Information Request Form (page 25)
  
- Tab 4. Bid Cost Form (page 27).  
A listing of any items such as letters, phone calls or other types of services generating a cost to the District and not included in the fees shown on the bid are to be included, plus a formula or explanation of how these additional costs will be determined and billed to the District.
  
- Tab 5. All Applicable Forms:  
Bid and Acceptance Form (page 29)  
Deviations and Exceptions (page 31)  
Acknowledgment of Addendums (page 32)  
Drug Free Workplace (page 33)  
Non-collusion Affidavit (page 34)  
W-9 (page 35)  
Certificate of Insurance

**INFORMATION REQUEST FORM  
BID # M10-25-15**

**I. FIRM AND USER'S INFORMATION**

Firm Name \_\_\_\_\_

Length of time your Company has been in business under their current name \_\_\_\_\_

Length of time your Company has been doing business in Arizona \_\_\_\_\_

Toll Free Phone Number \_\_\_\_\_

Contact Person \_\_\_\_\_

**II. EXPERIENCE**

Please make copies of the Vendor Performance Evaluation Survey attached and send to a minimum of three (3), maximum of five (5), customers for which you have provided services/products comparable to those being offered in this bid. Completed evaluation surveys should be returned directly to the Alhambra School District at the fax number or e-mail address listed in the survey.

Below, list the names of customers you provided the Vendor Performance Evaluation Survey:

Name of Company _____
Contact Name _____
Address _____
Phone Number _____ Fax Number _____
E-Mail _____

Name of Company _____
Contact Name _____
Address _____
Phone Number _____ Fax Number _____
E-Mail _____

Name of Company _____
Contact Name _____
Address _____
Phone Number _____ Fax Number _____
E-Mail _____

**VENDOR PERFORMANCE EVALUATION SURVEY  
ELECTRICAL SERVICE AND CONSTRUCTION SITE WORK  
BID # M10-25-15**

<b>Date:</b>	
<b>To:</b>	
<b>Firm:</b>	
<b>Phone:</b>	
<b>Fax:</b>	
<b>Subject:</b>	<b>Performance Evaluation of:</b> <small>Enter Offeror's Name Here</small>

To Whom It May Concern:

The Alhambra School District has implemented a process that collects information on vendors wishing to do business with the District. The information will be used to assist the District in the evaluation and procurement of the above firm.

The above referenced vendor has submitted a bid response to the Alhambra School District to provide Electrical Service and Construction Site Work. You have been listed by this vendor as a reference. The information you provide will be used to assist the District in the evaluation and procurement of the above firm.

The company listed above has chosen to participate in this program. They have listed you as a past client for which they have provided service. Both the company and the Alhambra School District would greatly appreciate you taking a few minutes out of your busy day to complete this questionnaire.

Please evaluate the performance of the vendor (10 means you are Always satisfied and have no question about hiring them again, 5 means you are Sometimes satisfied, and 1 means you are very Dissatisfied and would never hire them again because of very poor performance). If you do not have sufficient knowledge of past performance in a particular area, leave it blank.

No.	Criteria	Unit	Score
1	Ability to manage the project cost (minimize additional cost).	(1-10)	
2	Ability to solve problems.	(1-10)	
3	Quality of workmanship.	(1-10)	
4	Professionalism and ability to manage (quick response time).	(1-10)	
5	Ability to keep system working.	(1-10)	
6	Communication.	(1-10)	
7	Ability to follow the users rules, regulations, and requirement (housekeeping, safety, etc.).	(1-10)	
8	Overall customer satisfaction and hiring again based on performance (comfort level in hiring vendor again).	(1-10)	
9	Response Time.	(1-10)	
<b>Total Points</b>		(0-90)	

Thank you for your time and effort in assisting the vendor in this important endeavor. Please fax your response to the Alhambra School District at (602) 336-2269 or e-mail it to [purchasing@alhambraesd.org](mailto:purchasing@alhambraesd.org), by **9:00 a.m. on November 4, 2010**.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Firm

**BID COST FORM  
 BID #M10-25-15**

I/We, the undersigned, propose to provide the service necessary for the scope of work and specifications.

I/We further declare that I/we have carefully read and examined all information to the referenced Request for Bid. I/We agree to comply with the Districts rules, regulations and policies.

Certain members of SAVE may utilize a Procurement Card program to both improve and expedite the purchasing and payment process. Upon implementation, the District will be asking Vendors to bid a prompt payment discount taking into consideration receipt of payment within seventy-two (72) hours from time of payment processing.

Will you allow payment of invoices using the Procurement Card?      \_\_\_ Yes    \_\_\_ No

Discount for payment within 72 hours using the Procurement Card? \_\_\_\_\_

Would you be willing to allow other members of "SAVE" to piggy-back and purchase from the contract if awarded through this IFB?\*       Yes     No

*\*Your response to this question will not be used as part of the evaluation criteria. It is our intent, as a member of the SAVE, to make available to other schools/public entities the opportunity to save time, effort and paperwork by combining our purchasing power, whenever possible.*

**LABOR RATES**

Hourly labor rates are all-inclusive of the costs associated with providing labor for the work. Included are all wages, benefits, taxes, insurance, supervision, overhead, profit, tools of the trade (up to a value of \$1,000 per tool), and transportation. Time cards shall be submitted weekly to the Alhambra School District/public entity and approved by the maintenance supervisor, or designee.

Journeyman Electrician (straight time)	\$ _____/hour
Journeyman Electrician (over time)	\$ _____/hour
Journeyman Electrician (premium time/holidays)	\$ _____/hour
Journeyman Electrician, with service truck (straight time)	\$ _____/hour
Journeyman Electrician, with service truck (over time)	\$ _____/hour
Journeyman Electrician, with service truck (premium time/holidays)	\$ _____/hour
Apprentice Electrician (straight time)	\$ _____/hour
Apprentice Electrician (over time)	\$ _____/hour
Apprentice Electrician (premium time/holidays)	\$ _____/hour

**MATERIAL RATES**

The material rate is a percentage mark-up on all materials and equipment furnished by the electrical contractor for incorporation into the work. The material rate will be applied to the actual out-of-pocket cost paid by the electrical contractor to suppliers. A list of materials and equipment shall be provided by the contractor and approved by the Alhambra School District/public entity in advance of any work. The actual out-of-pocket cost shall be verified with copies of actual supplier invoices for all materials and equipment with an individual item cost of \$50, or more. The material rate includes all costs for providing materials and equipment for the work including taxes, shipping & handling, delivery, storage, insurance, overhead and profit.

Material rate percentage mark-up \_\_\_\_\_%

**SUBCONTRACTOR RATE**

The subcontractor rate is a percentage mark-up on the cost of work performed by subcontractors in the performance of the work. The electrical contractor will be reimbursed for the cost of work performed by subcontractors plus this mark-up. The subcontractor rate is to include all costs associated with work performed by subcontractors including coordination, taxes, insurance, overhead and profit. The electrical contractor will be paid for work performed by subcontractors only if, and when, the use of subcontractors for the work has been approved in advance by the Alhambra School District/public entity.

Subcontractor rate percentage mark-up \_\_\_\_\_ %

**EQUIPMENT RATES**

The equipment rate is a percentage mark-up on the actual cost of rental equipment with a per item value of over \$1,000. All tools and equipment with a per-item value of \$1,000, or less, are included in the hourly labor rate. The contractor shall provide copies of invoices from the rental company to substantiate the actual cost of rental equipment for each project. For equipment that is owned by the electrical contractor, a rental schedule of base rates (exclusive of overhead and profit, etc.) shall be attached to this offer that will become part of the unit rate schedule. The rental rate mark-up includes all costs associated with renting equipment including fuel, oil, maintenance, repairs, delivery to the job site, taxes, insurance, overhead and profit.

Equipment rate percentage mark-up \_\_\_\_\_ %

**TRENCHING RATES**

The trenching rates are per lineal foot charge for the costs of excavation, backfill, and compaction, for the installation of underground conduit. The minimum length of trench represents the base quantity of trenching per project where required for quantities where efficiencies are low. The trenching rates include all costs associated with trench excavation, backfill, and compaction, including taxes, insurance, coordination, equipment, materials, tools, supplies, labor, profit and overhead. The contractor shall be responsible for obtaining Blue Stake surveys, where applicable, and for protecting existing improvements. Minimum compaction of trench backfill shall be to 85% of maximum density based on the Proctor Test, and shall be accomplished in lifts of not more than 12 inches deep.

Up to eight inch wide trench up to four feet deep \$ \_\_\_\_\_ /LF

Minimum length of trench for eight inch wide trench \_\_\_\_\_

Nine to twelve inch wide trench up to four feet deep \$ \_\_\_\_\_ /LF

Minimum length of trench for nine to twelve inch wide trench \_\_\_\_\_

Thirteen to twenty inch wide trench up to four feet deep \$ \_\_\_\_\_ /LF

Minimum length of trench for thirteen to twenty inch wide trench \_\_\_\_\_

\_\_\_\_\_  
Name of Company Proposing

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Authorized Signature/Local Representative

\_\_\_\_\_  
Telephone/Fax Number

\_\_\_\_\_  
Type Name and Position Held with Company

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

**BID AND ACCEPTANCE  
BID #M10-25-15**

The Undersigned hereby bids and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications, and amendments in the Solicitation and any written exceptions in the bid.

Arizona Transaction (Sales) Privilege Tax License No.:

For clarification of this bid, contact:

\_\_\_\_\_

Name: \_\_\_\_\_

Federal Employer Identification No.: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

Tax Rate: \_\_\_\_\_ %

Email: \_\_\_\_\_

\_\_\_\_\_ Company Name

\_\_\_\_\_ Signature of Person Authorized to Sign Bid

\_\_\_\_\_ Address

\_\_\_\_\_ Printed Name

\_\_\_\_\_ City State Zip

\_\_\_\_\_ Title

**CERTIFICATION**

By signature in the bid section above, the Bidder certifies:

1. The submission of the bid did not involve collusion or other anti-competitive practices.
2. The Bidder shall not discriminate against any employee or applicant for employment in violation of State Executive Order 99-4, 2000-4 or A.R.S. § 41-1461 through 1465.
3. The Bidder has not given, directed 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 bid. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the bid. Signing the bid with a false statement shall void the bid, any resulting contract and may be subject to legal remedies provided by law.
4. The Bidder warrants that it and all proposed subcontractors will maintain compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and A.R.S. § 23-214 and all other Federal immigration laws and regulations related to the immigration status of its employees which requires compliance with Federal immigration laws by employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
5. In accordance with A.R.S. § 35-391, the Bidder does not have scrutinized business operations in Sudan.
6. In accordance with A.R.S. § 35-392, the Bidder is in compliance and shall remain in compliance with the Export Administration Act.
7. In accordance with A.R.S. § 35-393, the Bidder does not have scrutinized business operations in Iran.
8. In accordance with A.R.S. § 15-512, the Bidder shall comply with fingerprinting requirements unless otherwise exempted.

**ACCEPTANCE OF BID**

**The bid is hereby accepted.**

**The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's bid as accepted by the School District/Public Entity.**

**This contract shall henceforth be referred to as Contract No. \_\_\_\_\_.**

**The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document, or written notice to proceed.**

**Awarded this day of \_\_\_\_\_ 20\_\_\_\_\_**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE**

**STATEMENT OF NO BID**  
**BID #M10-25-15**

If you are not bidding on this service/commodity, please complete and return **only** this form to: Alhambra School District, 4510 N. 37<sup>th</sup> Ave., Phoenix, AZ 85019 or fax it to the attention of the Purchasing Department 602-336-2269. (Please print or type, except signature)

Failure to respond may result in deletion of Bidder's name from the qualified Bidder's list for the Alhambra School District.

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

We, the undersigned, have declined to bid on your IFB #M10-25-15 for Electrical Service and Construction Site Work because of the following reasons:

Service/Commodity

- \_\_\_\_\_ We do not offer this product or the equivalent.
- \_\_\_\_\_ Insufficient time to respond to this solicitation.
- \_\_\_\_\_ Remove our name from this list only.
- \_\_\_\_\_ Our product schedule would not permit us to perform.
- \_\_\_\_\_ Unable to meet all insurance requirements.
- \_\_\_\_\_ Other. (Specify below)

REMARKS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**DEVIATIONS OR EXCEPTIONS**  
**BID #M10-25-15**

List any deviation or exception for any item listed under Specifications/Scope of Work. The item number must be listed and the page of the IFB it is found on. Any deviation/exception or inability of the Bidder to handle that particular item must be clearly and fully stated. Failure to show specific deviations indicates non-compliance with the IFB.

The following deviations/exceptions are being submitted for consideration:

---

The undersigned hereby acknowledges that there are *no deviations/exceptions* to this solicitation:

---

Firm

---

Authorized Signature

**ADDENDUM ACKNOWLEDGMENT**

**BID #M10-25-15**

This page is used to acknowledge any and all addendums that might be issued. Any addendum issued within three days of the solicitation due date, will included a new due date to allow for addressing the addendum issues. Your signature indicates that you took the information provided in the addendums into consideration when providing your complete bid response.

Please sign and date

**ADDENDA NO. 1 Acknowledgement** \_\_\_\_\_  
Signature Date

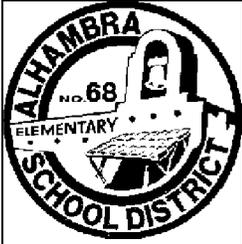
**ADDENDA NO. 2 Acknowledgement** \_\_\_\_\_  
Signature Date

**ADDENDA NO. 3 Acknowledgement** \_\_\_\_\_  
Signature Date

*If no addendums were issued*, indicate below, sign the form and return with your response.

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Authorized Signature



# Alhambra School District

4510 N. 37<sup>th</sup> Ave.  
Phoenix, AZ 85019

BID # M10-25-15  
PROJECT: Electrical Service & Construction Site  
Work

Page  
33 of  
35

## DRUG-FREE WORKPLACE CERTIFICATION

Preference must be given to Bidders submitting a certification with their bid certifying they have a drug-free workplace. The special condition is as follows:

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, which are equal with respect to price, quality, and service for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied Bidders have a drug-free workplace program, a business shall:

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specify the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid, a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than three (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
OFFEROR'S SIGNATURE

**Must be executed and returned with attached proposal at time of bid opening to be considered.**



**Request for Taxpayer  
Identification Number and Certification**

**Give form to the  
requester. Do not  
send to the IRS.**

**Print or type**  
**See Specific Instructions on page 2.**

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  
 Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....  Exempt payee  
 Other (see instructions) ▶

Address (number, street, and apt. or suite no.) Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



**SUBCONTRACTOR RATE**

The subcontractor rate is a percentage mark-up on the cost of work performed by subcontractors in the performance of the work. The electrical contractor will be reimbursed for the cost of work performed by subcontractors plus this mark-up. The subcontractor rate is to include all costs associated with work performed by subcontractors including coordination, taxes, insurance, overhead and profit. The electrical contractor will be paid for work performed by subcontractors only if, and when, the use of subcontractors for the work has been approved in advance by the Alhambra School District/public entity.

Subcontractor rate percentage mark-up 15 %

**EQUIPMENT RATES**

The equipment rate is a percentage mark-up on the actual cost of rental equipment with a per item value of over \$1,000. All tools and equipment with a per-item value of \$1,000, or less, are included in the hourly labor rate. The contractor shall provide copies of invoices from the rental company to substantiate the actual cost of rental equipment for each project. For equipment that is owned by the electrical contractor, a rental schedule of base rates (exclusive of overhead and profit, etc.) shall be attached to this offer that will become part of the unit rate schedule. The rental rate mark-up includes all costs associated with renting equipment including fuel, oil, maintenance, repairs, delivery to the job site, taxes, insurance, overhead and profit.

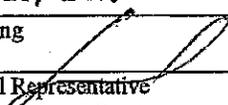
Equipment rate percentage mark-up 15 %

**TRENCHING RATES**

The trenching rates are per lineal foot charge for the costs of excavation, backfill, and compaction, for the installation of underground conduit. The minimum length of trench represents the base quantity of trenching per project where required for quantities where efficiencies are low. The trenching rates include all costs associated with trench excavation, backfill, and compaction, including taxes, insurance, coordination, equipment, materials, tools, supplies, labor, profit and overhead. The contractor shall be responsible for obtaining Blue Stake surveys, where applicable, and for protecting existing improvements. Minimum compaction of trench backfill shall be to 85% of maximum density based on the Proctor Test, and shall be accomplished in lifts of not more than 12 inches deep.

Up to eight inch wide trench up to four feet deep	\$ <u>10.00</u> /LF
Minimum length of trench for eight inch wide trench	<u>50'</u>
Nine to twelve inch wide trench up to four feet deep	\$ <u>12.00</u> /LF
Minimum length of trench for nine to twelve inch wide trench	<u>50'</u>
Thirteen to twenty inch wide trench up to four feet deep	\$ <u>15.00</u> /LF
Minimum length of trench for thirteen to twenty inch wide trench	<u>50'</u>

A J P Electric, Inc.  
 Name of Company Proposing

  
 Authorized Signature/Local Representative

Anna Paganik, President  
 Type Name and Position Held with Company

11250 N. Cave Creek Rd.  
 Mailing Address

11/4/2010  
 Date Signed

602-944-5477 / 602-944-5784  
 Telephone/Fax Number

Phoenix                      AZ                      85020  
 City                                      State                      Zip

**BID AND ACCEPTANCE**  
**BID #M10-25-15**

The Undersigned hereby bids and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications, and amendments in the Solicitation and any written exceptions in the bid.

Arizona Transaction (Sales) Privilege Tax License No.:

07-470050-V

Federal Employer Identification No.: 86-0750443

Tax Rate: 5.915 %

A J P Electric, Inc.

Company Name

11250 N. Cave Creek Rd.

Address

Phoenix, AZ 85020

City State Zip

For clarification of this bid, contact:

Name: Jozef Paganik

Phone: 602-944-5477

Fax: 602-944-5784

Email: jozef@ajpelectric.com

[Signature]  
Signature of Person Authorized to Sign Bid

Anwa Paganik

Printed Name

President

Title

**CERTIFICATION**

By signature in the bid section above, the Bidder certifies:

1. The submission of the bid did not involve collusion or other anti-competitive practices.
2. The Bidder shall not discriminate against any employee or applicant for employment in violation of State Executive Order 99-4, 2000-4 or A.R.S. § 41-1461 through 1465.
3. The Bidder has not given, directed 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 bid. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the bid. Signing the bid with a false statement shall void the bid, any resulting contract and may be subject to legal remedies provided by law.
4. The Bidder warrants that it and all proposed subcontractors will maintain compliance with the Federal Immigration and Nationality Act (FINA), A.R.S. § 41-4401 and A.R.S. § 23-214 and all other Federal immigration laws and regulations related to the immigration status of its employees which requires compliance with Federal immigration laws by employers, contractors and subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.
5. In accordance with A.R.S. § 35-391, the Bidder does not have scrutinized business operations in Sudan.
6. In accordance with A.R.S. § 35-392, the Bidder is in compliance and shall remain in compliance with the Export Administration Act.
7. In accordance with A.R.S. § 35-393, the Bidder does not have scrutinized business operations in Iran.
8. In accordance with A.R.S. § 15-512, the Bidder shall comply with fingerprinting requirements unless otherwise exempted.

**ACCEPTANCE OF BID**

The bid is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's bid as accepted by the School District/Public Entity.

This contract shall henceforth be referred to as Contract No. M10-25-15.

The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contract release document, or written notice to proceed.

Awarded this day of 3rd December 2010

[Signature]  
AUTHORIZED SIGNATURE

EXHIBIT B  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
AJP ELECTRIC, INC.

[Emergency Project Scope of Work and Fee Proposal]

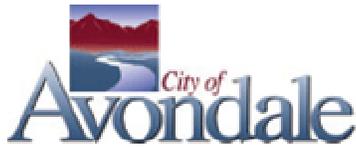
See following pages.

SLIP SHEET  
REMOVE WHEN ATTACH THE  
Emergency Project Scope of Work and Fee Proposal

EXHIBIT C  
TO  
COOPERATIVE PURCHASING AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
AJP ELECTRIC, INC.

[Scopes of Work and Fee Proposals]

See following pages (to be attached subsequent to execution).



# CITY COUNCIL REPORT

**SUBJECT:**

Resolution 3027-112 – Intergovernmental and Grant In Kind Agreements - Arizona State Library, Archives and Public Records for BTOP 2 Grant

**MEETING DATE:**

January 17, 2012

**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 adopt a resolution authorizing an Intergovernmental Agreement and Grant In Kind Agreements with the Arizona State Library, Archives and Public Records relating to the Implementation of the Broadband Technology Opportunities Program Round 2 and authorize the Mayor or the City Manager and City Clerk to execute the applicable documents.

**DISCUSSION:**

The City of Avondale Parks Recreation and Libraries Department, Library Division has been approved for a grant from the AZ State Library for the Broadband Technologies Opportunity Program (BTOP II). The BTOP II program was developed in response to increased demand by job seekers on library resources. This program is administered by the AZ State Library and is part of the American Recovery Reinvestment Act of 2009 (ARRA).

The BTOP II Grant has two components: a Job Help Hub and a Virtual Workforce Workstation. The Workstation is a single work station dedicated to job seekers and the Job Help Hub is a portable computer lab dedicated to job seekers. Funds under BTOP II are also available for the employment of a part-time instructor for activities that support the implementation of the BTOP II related programs. All of the grant components together are referred to as the Arizona Jobs Assistance Center Project. The City of Avondale has been approved for all portions of the program.

The grant award includes one station at each library dedicated to job search and placement assistance plus comprehensive skills assessment, development of individual employment plans and one-on-one counseling and career planning, and a mobile lab (11 laptop computers) for face to face training. Funding for the instructor is provided to help with resumes, job searches, employment applications, starting a business and continuing education opportunities.

The term of the agreement for the program will be in effect until June 14, 2013.

**BUDGETARY IMPACT:**

There is no budgetary impact to this agreement. All funds for associated personnel and equipment will be funded through the grant process.

**RECOMMENDATION:**

Staff recommends that the City Council adopt a resolution authorizing an Intergovernmental Agreement and Grant In Kind Agreements with the Arizona State Library, Archives and Public Records relating to the Implementation of Broadband Technology Opportunities Program Round 2 and authorize the Mayor or the City Manager and City Clerk to execute the applicable documents.

## ATTACHMENTS:

Click to download

 [Resolution 3027-112](#)

**RESOLUTION NO. 3027-112**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT AND GRANT IN KIND AGREEMENTS WITH THE STATE OF ARIZONA, ARIZONA STATE LIBRARY, ARCHIVE AND PUBLIC RECORDS, RELATING TO THE IMPLEMENTATION OF THE BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM ROUND 2.

**WHEREAS**, pursuant to ARIZ. REV. STAT. § 41-2701, *et seq.*, the State of Arizona, acting by and through the Arizona State Library, Archive and Public Records (“ASLAPR”), is authorized to execute and administer the Broadband Technology Opportunities Program Round 2 (the “BTOP II”); and

**WHEREAS**, ASLAPR has awarded the City of Avondale (the “City”) a grant for the purpose of employing a part-time instructor to support implementation of the BTOP II (the “BTOP II Grant”); and

**WHEREAS**, the BTOP II consists of two additional components: (i) Job Help Hubs (“JHH”), portable computer labs to assist job seekers with skill assessments, skill development and adult education, and (ii) Virtual Workforce Workstations (“VWW”), workstations to assist job seekers in job search and placement, skill assessments, development of employment plans and career planning; and

**WHEREAS**, the Council of the City of Avondale (the “City Council”) desires to accept BTOP II Grant funds and JHH and VWW equipment to support the implementation of the BTOP II at City libraries.

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

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

**SECTION 2.** The City Council hereby authorizes (i) the acceptance of the BTOP II Grant and (ii) the execution of an intergovernmental agreement between the ASLAPR and the City relating to acceptance and implementation of the BTOP II (the “Intergovernmental Agreement”) in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The Grant in Kind Agreement between the ASLAPR and the City relating to the acceptance and installation of VWW equipment to support implementation of the BTOP II at the Avondale Civic Center Library (“Civic Center VWW Agreement”) is hereby approved in substantially the form attached hereto as Exhibit B.

SECTION 4. The Grant in Kind Agreement between the ASLAPR and the City relating to the acceptance and installation of JHH equipment to support implementation of the BTOP II at the Avondale Civic Center Library (“Civic Center JHH Agreement”) is hereby approved in substantially the form attached hereto as Exhibit C.

SECTION 5. The Grant in Kind Agreement between the ASLAPR and the City relating to the acceptance and installation of VWW equipment to support implementation of the BTOP II at the Sam Garcia Western Avenue Library (“Western Avenue VWW Agreement”) is hereby approved in substantially the form attached hereto as Exhibit D.

SECTION 6. 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 agreements 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, January 17, 2012.

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Marie Lopez Rogers, Mayor

ATTEST:

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Carmen Martinez, City Clerk

APPROVED AS TO FORM:

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Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 3027-112

[Intergovernmental Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT**  
**ASLAPR-AZJAC-IG-11-1-11**  
**between**  
**ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS**  
**and**  
**CITY of AVONDALE**

WHEREAS A.R.S. §41-2701 et seq., authorizes the State of Arizona, as the Arizona State Library, Archive and Public Records, **ASLAPR**, a division of the Arizona Secretary of State ("**GRANTOR**") to execute and administer a specific federal grant, American Recovery and Reinvestment Act (ARRA) - PCC, AZ Job Help Hubs @ Your Library, CFDA number 11.557, award number 04-41-B10521, awarded July 2, 2010, herein referred to as Broadband Technology Opportunities Program Round 2 ("**BTOP II**"), as administered by the U.S. Department of Commerce (DoC), National Institute of Standards and Technology (NIST).

THEREFORE, in consideration of the mutual promises and covenants contained herein, ASLAPR and **City of Avondale** ("**RECIPIENT**"), located at 11465 W Civic Center Drive, Avondale, Arizona 85323, enter into this Intergovernmental Agreement ("**AGREEMENT**") as follows:

**1. Purpose of Agreement**

To address the increased demand by job-seekers on local libraries as a local resource where patrons can utilize internet access to search for or apply to jobs and also obtain or improve job-related skills, GRANTOR will provide funding to RECIPIENT for the purpose of employing a part-time instructor ("**INSTRUCTOR**"). Specifically, these funds are to be used, solely, as compensation to the INSTRUCTOR for labor hours, employee administrative related expenses, and to offset allowable travel costs, if any, incurred by the INSTRUCTOR for activities that support the implementation and tasks specified in the BTOP II grant as set forth herein.

The BTOP II implementation has two components: (1) Job Help Hubs ("**JHH**") and (2) Virtual Workforce Workstations ("**VWW**"). Together these are dubbed the Arizona Job Assistance Centers ("**AzJAC**") project . The VWW is a single workstation dedicated to job seekers for job search and placement assistance, skill assessments, development of individual employment plans, and career planning. The JHH is a portable computer lab dedicated to assisting job seekers with skill assessments, skill development and adult education. At least one JHH will be located in each county and within those counties located in communities determined to have the greatest need. The JHH labs are intended to provide face-to-face training and re-training and there is a provision in the grant to provide for the INSTRUCTOR to help with resumes, job searches, employment applications, starting a business, and continuing education opportunities.

**2. Effective Date/Term of Agreement**

The term of the AGREEMENT shall commence on **January 1, 2012** ("**EFFECTIVE DATE**"), and shall remain in effect until June 14, 2013 ("**TERMINATION DATE**"), contingent upon federal funding, unless terminated or canceled as provided herein.

**3. Contract Type**

This AGREEMENT is a Cost Reimbursement, Sub-Grant Contract.

## 4. Description of Services

RECIPIENT shall hire INSTRUCTOR and shall guarantee that the INSTRUCTOR performs work, complies with his responsibilities, and meets the objectives for INSTRUCTOR as per BTOP II requirements and as described herein:

### A. INSTRUCTOR Duties

As per the grant's terms and conditions, the INSTRUCTOR's primary duties are to provide training and one-on-one assistance to job-seekers in a classroom setting for an average of 18 hours per week. INSTRUCTOR will perform the following services:

- (1) Perform services at the principal location, the **Avondale Civic Center Library** ("**PARTICIPATING LIBRARY**"),
- (2) Participate in a training curriculum sponsored by Arizona Workforce Connection and sanctioned by GRANTOR. This training is focused on how to assist JHH patrons with resources, triage job and employment inquiries, and learn about the special issues of working with displaced employees. INSTRUCTOR will be paid for the hours while attending this training and may request reimbursement for travel costs as provided herein.
- (3) With prior permission from GRANTOR, the INSTRUCTOR may, at the discretion and direction of the PARTICIPATING LIBRARY, attend other training provided by Arizona Workforce or other training deemed important to assist in providing training or education to job-seekers. INSTRUCTOR will be paid for the hours while attending this training and may request reimbursement for travel costs as provided herein.
- (4) Install and implement any software on the JHH laptops as needed.
- (5) Prioritize training by those endeavors deemed important by Arizona Workforce Connection and sanctioned by the PARTICIPATING LIBRARY.
- (6) Utilize the JHH, or subsets of, at other venues as requested by and under the direction of the PARTICIPATING LIBRARY to provide services as described herein.
- (7) Initiate, plan, construct, or deliver, presentations, talks, or seminars to promote the JHH availability and offerings as necessary.

### B. Reporting Requirements

The RECIPIENT shall submit reports that contain the information required under section 1512(c) of the ARRA in accordance with any guidance issued by the Office of Management and Budget, the U.S. Department of Education (ARRA Division A, Section 1512(c)), the Governor's Office of Economic Recovery, or GRANTOR.

### C. Hours and Compensation

- (1) LABOR

**RECIPIENT is to be reimbursed at a rate up to \$23.73 per hour worked by INSTRUCTOR. The INSTRUCTOR is to be compensated at a rate of \$22.00 per hour**, which represents the reimbursement to the RECIPIENT minus the RECIPIENT costs as specified in **Section 5, RECIPIENT Costs.**

The anticipated average monthly hours of contracted services are 75 hours based on a combination of an average 18 hours per week and a 52-week work-year. Based on the EFFECTIVE DATE and TERMINATION DATE, **reimbursement to RECIPIENT for labor cannot exceed \$1,937 in any one month and cannot exceed \$36,000 for the entire contract** without prior written permission from the GRANTOR. In any given month, RECIPIENT shall obtain this written permission three (3) business days prior to authorizing INSTRUCTOR to exceed monthly reimbursement amount established herein.

Upon the AGREEMENT being duly signed by both parties, GRANTOR and RECIPIENT will determine the method of time logging and the chain of administrative approval necessary and verify the INSTRUCTOR's hours for compensation and reporting.

## (2) TRAVEL

Travel expenses shall be at the prevailing State rates and reimbursable at cost. State rates, as established by the Arizona Department of Administration, General Accounting Office, are made part of this agreement by reference herein. Travel expenses shall be at the prevailing State rates and reimbursable at cost. State rates, as established by the Arizona Department of Administration, General Accounting Office, and are made part of this agreement by reference herein (accessible at: [www.gao.az.gov/travel/default.asp](http://www.gao.az.gov/travel/default.asp))

GRANTOR will reimburse expenses to RECIPIENT using a warrant, transfer, or by direct deposit. Method of payment will be at the discretion of GRANTOR and RECIPIENT will allow twenty (20) working days to receive payment from the time that GRANTOR receives a properly executed Travel Payment Request Form that will be provided to the RECIPIENT upon a duly executed AGREEMENT.

RECIPIENT will be reimbursed for INSTRUCTOR's mileage, only. The only exceptions are if the INSTRUCTOR provides services to RECIPIENT in one of the following four counties: Coconino, Yavapai, Mohave, Navajo, and Apache. INSTRUCTORS for these counties will be permitted to submit expenses supporting JHH endeavors involving overnight trips. A section of Travel Payment Request Form requires an explanation of the justification for such trips and completion of the section will be required for RECIPIENT to receive reimbursement. All travel reimbursement requests are subject to the policies set forth by Arizona Department of Administration, General Accounting Office.

## 5. RECIPIENT Costs

RECIPIENT is entitled to retain a maximum of **7.85%** of the labor reimbursement rate as specified in **Section 4.C, Hours and Compensation**, for costs associated with the administration of the INSTRUCTOR, and is to be deducted from the hourly labor rate specified in **Section 4.C, Hours and Compensation**.

## 6. Documents Incorporated by Reference

Incorporation by Reference into AGREEMENT as if fully set forth herein are the following:

- (1) Title XIV of the American Recovery and Reinvestment Act (ARRA) of 2009, known as the State Fiscal Stabilization Fund (Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115, as amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524), as administered by the U.S. Department of Education.

(Included as Attachment 1 and accessible at:

<http://www2.ed.gov/policy/gen/leg/recovery/statutory/stabilization-fund.doc>).

It is the RECIPIENT's responsibility to obtain the most current revisions of this document.

## 7. RECIPIENT ARRA Assurances

RECIPIENT assures compliance with the guidelines, provisions and reporting requirements of the ARRA recipients. RECIPIENT accepts that the Federal Government may issue additional guidance or change requirements or terms and conditions of this AGREEMENT as ARRA funds are distributed and programs are implemented for the stated designated goals and quick timelines. RECIPIENT agrees that any such supplementary guidance, clarifications, or provisions, shall become terms and conditions of this award.

RECIPIENT certifies that it will not use ARRA funds for any unauthorized purposes and understands that misuse of ARRA funds may result in a range of penalties from suspension of funds to civil and/or criminal penalties.

## **8. Programmatic and Financial Reports**

RECIPIENT shall send quarterly program activity reports to the GRANTOR within five (5) calendar days of the last day of the quarter in which services are provided. RECIPIENT shall use the forms provided by GRANTOR to submit quarterly program activity reports. The report shall contain such information as deemed necessary by the ARRA guidance and GRANTOR. GRANTOR shall send these forms to both the PARTICIPATING LIBRARY and RECIPIENT upon receipt of the duly signed AGREEMENT.

## **9. Renewal**

The AGREEMENT shall not bind nor purport to bind GRANTOR for any contractual commitment in excess of the original AGREEMENT period or amount. The AGREEMENT will terminate at the end of the grant period and GRANTOR reserves the right to cancel based on the cancellation criteria set forth in the AGREEMENT.

## **10. RECIPIENT'S Obligation Regarding Confidentiality**

Due to the sensitive nature of the information maintained by GRANTOR, RECIPIENT acknowledges that all information disclosed to it concerning the GRANTOR's operations during performance of this AGREEMENT shall not be disclosed to third parties without GRANTOR's prior written consent. All proprietary information and all copies thereof shall be returned to GRANTOR upon completion of the work for which it was obtained or developed.

## **11. No Parole Evidence**

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

## **12. No Waiver**

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

## **13. Financial Reimbursement**

The RECIPIENT shall be paid on a cost-reimbursement basis. The reimbursement amount is to be determined on the cash basis of accounting. The reimbursement request may be submitted monthly but must be submitted at least quarterly for those items submitted and approved in the budget inclusively.

RECIPIENT shall submit a final reimbursement request no more than fifteen (15) days after the AGREEMENT ends for expenses incurred prior to the date of AGREEMENT termination. All expenses must be liquidated prior to the final reimbursement request. Requests for reimbursement received later than fifteen (15) days after the AGREEMENT termination will not be paid. If awarded a contract, RECIPIENT must have sufficient funds to meet obligations for up to thirty (30) days while awaiting reimbursements from GRANTOR.

Notwithstanding any other payment provision of this AGREEMENT, failure of the RECIPIENT to submit required reports when due, or failure to perform or deliver required work, supplies or

services, may result in the withholding of payment under this AGREEMENT at the discretion of GRANTOR.

#### **14. Manner of Financing**

- A.** RECIPIENT will receive the amounts specified in Section 4.C of this AGREEMENT, **Hours and Compensation**, in the manner specified in Section 13 of this AGREEMENT, **Financial Reimbursement**, and as specified in within Section 13.
- B.** Payment made by GRANTOR to the RECIPIENT will be on a reimbursement basis only and is conditioned upon receipt of applicable, accurate and complete reimbursement documents, as required by GRANTOR, to be submitted by the RECIPIENT. Final payment shall be contingent upon receipt of all fiscal and programmatic reports required of the RECIPIENT under this AGREEMENT.
- C.** Requested reimbursement must be submitted in an all-inclusive basis.
- D.** Travel expenses shall be at State rates and reimbursable at cost as referenced in Section 4.C.2 of this AGREEMENT, **Travel**.

#### **15. DUNS/CCR**

The RECIPIENT is required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number for the fiscal agent and proof of current registration in the Central Contractor Registration (CCR) database. CCR registration must be maintained for the term of the AGREEMENT.

#### **16. Restrictions on Lobbying**

The RECIPIENT shall not use these funds to pay for, influence, or seek to influence any officer or employee of the State of Arizona or the federal government.

#### **17. Printed Material**

It is agreed that any report or printed matter completed as a part of this AGREEMENT is a work for hire and shall not be copyrighted by the RECIPIENT. Any publicly printed material under this AGREEMENT shall state "This project was supported by the U.S. Department of Commerce, the Governor's Office of Economic Recovery, and Arizona State Library, Archives and Public Records".

#### **18. Fiscal Responsibility**

It is understood and agreed that the total amount of the funds used under this AGREEMENT shall be used for the project as specified within this AGREEMENT. Should the project not be completed, be partially completed, or be completed at a lower cost than the original budget called for, the amount reimbursed to RECIPIENT shall be for only the amount of dollars actually spent by the RECIPIENT. For any funds received under this AGREEMENT for which expenditure is disallowed in an audit exception by the GRANTOR, the State of Arizona, or Federal government, RECIPIENT shall reimburse said funds directly to the GRANTOR immediately within fifteen (15) business days, exclusive of state holidays.

#### **19. Records and Audit Trails**

Under A.R.S. § 35-214 and § 35-215, the RECIPIENT shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the performance of the AGREEMENT for a period of five (5) years after the closing of the federal grant. The RECIPIENT's books and records may be subject to an audit by the State of Arizona or Federal Government, to the extent that the books and records relate to the performance of the AGREEMENT.

RECIPIENT shall maintain proper audit trails for all reports related to this AGREEMENT. GRANTOR reserves the right to review all program records.

All records shall be subject to inspection and audit by the State of Arizona or Federal government at reasonable times. Upon request, RECIPIENT shall produce a legible copy of any or all such records.

## **20. Funds Management**

The RECIPIENT must maintain funds received under this AGREEMENT in separate ledger accounts and cannot mix these funds with other sources. RECIPIENT must manage funds according to applicable federal regulations for administrative requirements, cost principles and audits.

The RECIPIENT must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are:

- (1) Financial Management
- (2) Personnel
- (3) Travel

A system is adequate if it is: 1) written; 2) consistently followed (it applies in all similar circumstances); and 3) consistently applied (it applies to all sources of funds). The GRANTOR reserves the right to review all business systems policies.

The fiscal person is considered a Key Person for this grant and it is essential that RECIPIENT provide adequate and competent personnel capable of achieving the successful accomplishment of obligations under this AGREEMENT.

## **21. Assignment and Delegation**

RECIPIENT may not assign any rights hereunder without the express, prior written consent of GRANTOR.

## **22. Notification Regarding Changes**

RECIPIENT shall notify GRANTOR in writing, with immediate notice, of any changes that will directly affect service delivery under the terms of this AGREEMENT. No changes shall be implemented without written approval or a formal amendment to this AGREEMENT issued by GRANTOR.

## **23. Amendments**

Any change in the AGREEMENT, including material changes to the scope of work and/or the budget described herein, whether by modification or supplementation, must be accomplished by a formal AGREEMENT amendment signed and approved by and between the duly authorized representatives of the RECIPIENT and GRANTOR. GRANTOR may approve or reject any amendment, when necessary. Any such amendment shall specify an effective date, any increases or decreases in the amount of the RECIPIENT's compensation, if applicable, and entitled as an "Amendment" and signed by the parties identified in the preceding sentence. The RECIPIENT expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification or supplementation to the AGREEMENT.

## **24. Subcontractors**

The RECIPIENT shall not enter into any Subcontract under this AGREEMENT for the performance of this AGREEMENT without the advance written approval of GRANTOR. The RECIPIENT shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this AGREEMENT.

## **25. Cancellation for Conflict of Interest**

GRANTOR may, by written notice to the RECIPIENT, immediately cancel this AGREEMENT without penalty or further obligation pursuant to A.R.S. §38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating of the AGREEMENT on behalf of GRANTOR is an employee or agent of any other party in any capacity or a consultant to any other party to the AGREEMENT with respect to the subject matter of the AGREEMENT. Such cancellation shall be effective when the RECIPIENT to the AGREEMENT receives written notice from GRANTOR, unless the notice specifies a later time.

## **26. Cancellation for Cause**

GRANTOR reserves the right to cancel the whole or any part of the AGREEMENT due to failure of the RECIPIENT to carry out any term or condition of the AGREEMENT, to maintain all required insurance policies, bonds, licenses, permits, or to make unsatisfactory progress in performing this AGREEMENT.

If GRANTOR determines there is cause for cancellation, GRANTOR shall issue a written ten (10) day notice of default to the RECIPIENT and GRANTOR may cancel the AGREEMENT. If GRANTOR cancels AGREEMENT pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

## **27. AGREEMENT Termination**

GRANTOR reserves the right to terminate the AGREEMENT at any time, for the convenience of GRANTOR, without penalty or recourse, by giving written notice to the RECIPIENT at least thirty (30) days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the RECIPIENT under the AGREEMENT shall, at the option of GRANTOR, become property of the State of Arizona. The RECIPIENT shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination.

## **28. Force Majeure**

If either party hereto is delayed or prevented from the performance of any act required in this AGREEMENT by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of or payment for such act will be excused for the period of the delay.

## **29. Non-Discrimination**

All parties to this AGREEMENT agree to comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 09-09, which mandates that all persons, regardless of race, religion, color, age, sex, or national origin shall have equal access to employment opportunities. All parties shall comply with 1) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability; 2) all applicable federal regulations regarding equal employment opportunity and relevant orders issued by the U.S. Secretary of Labor; 3) all applicable provisions and regulations relating to the Americans with Disabilities Act, as amended and the Arizona Disability Act of 1992 (A.R.S. 41-1492 et seq.); and 4) all applicable provisions and regulations relating to President's Executive Order No. 13279 - Equal Protection of the Laws for Faith-based and Community Organizations.

## **30. Ownership of Information**

GRANTOR reserves the right to review and approve any publications funded or partially funded through this AGREEMENT. All publications funded or partially funded through this AGREEMENT shall

recognize the Broadband Technology Opportunities Program, administered by the U.S. Department of Commerce and the Arizona State Library, Archives and Public Records.

### 31. Partial Invalidity

Any term or provision of this AGREEMENT that is hereafter declared contrary to any current or future law, order, regulation or rule, or which is otherwise invalid, shall be deemed stricken from this AGREEMENT without impairing the validity of the remainder of this AGREEMENT.

### 32. Arbitration

In the event of any dispute arising under this AGREEMENT, written notice of the dispute must be provided to the other party within thirty (30) days of the events giving rise to the dispute. The parties shall follow the procedures set forth in this section to facilitate a resolution and attempt to avoid litigation.

The parties shall negotiate in good faith to resolve the dispute within sixty (60) days of receiving notice of the existence of the dispute. However, if the parties do not reach such resolution within a period of sixty (60) days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules, in compliance with A.R.S. §12-1518, and any such proceeding shall be held in Maricopa County, Arizona.

### 33. Governing Law

This AGREEMENT shall be governed and interpreted by the laws of the State of Arizona. The venue for any proceedings, actions, or suits arising from this AGREEMENT shall be in Maricopa County, Arizona.

### 34. Paragraph Headings

The descriptive headings of this AGREEMENT are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions in this AGREEMENT.

### 35. Notices

Any and all notices, requests, demands or communications by either party to this AGREEMENT, pursuant to or in connection with this AGREEMENT shall be in writing and shall be delivered in person, facsimile, e-mail, or shall be sent by the United States Postal Service, first class, to the respective parties at the following addresses:

**RECIPIENT:**

**City of Avondale**  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
FAX: (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  
FAX: (602) 254-4878  
Attn: Andrew J. McGuire, Esq.

**GRANTOR:**

**Arizona State Library,  
Archive and Public Records**  
1700 W. Washington, Suite 200  
Phoenix, AZ 85007  
FAX : (602) 256-7983  
Attn.: Laura Stone

Any such notices or other communications shall be deemed received based on any one of the following criteria:

- A. Upon being physically delivered to the party;
- B. Three business days after being placed in the U.S. Mail, properly addressed, and with sufficient postage;
- C. The following business day after being given to a duly recognized overnight delivery service, with the person sending 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.

### **36. Indemnification Clause**

Each party (as "**Indemnitor**") agrees to indemnify, defend, and hold harmless the other party (as "**Indemnitee**") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "**Claims**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, RECIPIENT shall cause its contractor(s) and subcontractors, if any, to indemnify, defend, save and hold harmless the State of Arizona, any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and their respective directors, 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 RECIPIENT's contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. 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 such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

### **37. Compliance with Applicable Laws**

All parties to this AGREEMENT shall comply with all applicable Federal, State, and local laws.

### **38. Licensing and Permits**

RECIPIENT shall maintain in current status all federal, state, and local licenses and permits required for the operation of the business conducted by the RECIPIENT. RECIPIENT shall ensure that INSTRUCTOR maintains all applicable federal, state and local licenses and permits required to perform under this AGREEMENT.

### **39. Suspension or Debarment Status**

If the RECIPIENT has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity with any federal, state or local government, the applicant must include a letter with its application setting forth the name and address of the governmental unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment.

Failure by the RECIPIENT to supply the letter or to disclose in the letter all pertinent information regarding a suspension or debarment or failure to offer proof of the expiration or lifting of the disbarment or suspension, shall result in denial to the RECIPIENT from participating in this AGREEMENT or cancellation of this AGREEMENT. GRANTOR may also exercise any remedy available by law.

#### **40. Federal Immigration Laws and E-verify**

By entering into this AGREEMENT, the RECIPIENT warrants compliance with the Federal Immigration and Nationality Act and all other federal immigration laws and regulations related to the immigration status of its employees and, in accordance with A.R.S. § 41-4401, warrants its compliance with the applicable sections of the Arizona Administrative Code and A.R.S. § 23-214, Subsection A (participation in E-verify), during the term of the AGREEMENT. Further, the RECIPIENT shall flow down these requirements to all subcontractors utilized during the term of the AGREEMENT.

The State shall retain the right to perform random audits of RECIPIENT and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the RECIPIENT and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to suspension of work, termination of the AGREEMENT for default and suspension and/or debarment of the contractor.

#### **41. Counterparts**

This AGREEMENT may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one AGREEMENT.

#### **42. Prohibition on Government Contracts Regarding Iran and Sudan**

In accordance with A.R.S. § 35-391.06 and § 35-393.06, the RECIPIENT hereby certifies that the RECIPIENT does not have scrutinized business operations in Sudan or Iran.

**REST OF PAGE INTENTIONALLY LEFT BLANK**

### 43. Authority to Execute this AGREEMENT

Each individual executing this AGREEMENT on behalf of the RECIPIENT represents and warrants that he or she is duly authorized to execute this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto agree to execute this AGREEMENT.

**RECIPIENT:**

**City of Avondale**  
11465 W Civic Center Dr  
Avondale, AZ 85323

*signature*

Charles P. McClendon  
City Manager

DATE: \_\_\_\_ / \_\_\_\_ / 2012

**GRANTOR::**

**Arizona State Library,  
Archive and Public Records**  
1700 W. Washington, Suite 200  
Phoenix, AZ 85007

*signature*

Jim Drake  
Assistant Secretary of State

DATE: \_\_\_\_ / \_\_\_\_ / 2012

**ATTACHMENT 1**

**American Recovery and Reinvestment Act of 2009  
Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115**

**As amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009;  
Division A, Section 523; March 11, 2009; 123 Stat. 524**

Below are excerpts from Public Law 111-5, as amended by Public Law 111-8, that relate to the State Fiscal Stabilization Fund administered by the U.S. Department of Education. The U.S. Department of Education has posted this information as a courtesy to readers. The official (and controlling) texts of this material will be printed in those two Public Laws.

**DIVISION A, TITLE XIV – STATE FISCAL STABILIZATION FUND  
DEPARTMENT OF EDUCATION  
STATE FISCAL STABILIZATION FUND**

**GENERAL PROVISIONS – THIS TITLE**

**SEC. 14001. ALLOCATIONS.**

(a) Outlying Areas. From the amount appropriated to carry out this title, the Secretary of Education shall first allocate up to one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior, for activities consistent with this title under such terms and conditions as the Secretary may determine.

(b) Administration and Oversight. The Secretary may, in addition, reserve up to \$14,000,000 for administration and oversight of this title, including for program evaluation.

(c) Reservation for Additional Programs. After reserving funds under subsections (a) and (b), the Secretary shall reserve \$5,000,000,000 for grants under sections 14006 and 14007.

(d) State Allocations. After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

- (1) 61 percent on the basis of their relative population of individuals aged 5 through 24.
- (2) 39 percent on the basis of their relative total population.

(e) State Grants. From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) Reallocation. The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not award as subgrants or otherwise commit within two years of receiving such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

**SEC. 14002. STATE USES OF FUNDS.**

(a) Education Fund.

(1) In general. For each fiscal year, the Governor shall use 81.8 percent of the State's allocation under section 14001(d) for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) Restoring state support for education.

(A) In general. The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's primary elementary and secondary education funding formulae, that is needed—

(I) to restore, in each of fiscal years 2009, 2010, and 2011, the level of State support provided through such formulae to the greater of the fiscal year 2008 or fiscal year 2009 level; and

(II) where applicable, to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments, if such increases were enacted pursuant to State law prior to October 1, 2008.

(ii) to provide, in each of fiscal years 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the State that is needed to restore State support for such institutions (excluding tuition and fees paid by students) to the greater of the fiscal year 2008 or fiscal year 2009 level.

(B) Shortfall. If the Governor determines that the amount of funds available under paragraph (1) is insufficient to support, in each of fiscal years 2009, 2010, and 2011, public elementary, secondary, and higher education at the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(C) Fiscal year. For purposes of this paragraph, the term "fiscal year" shall have the meaning given such term under State law.

(3) Subgrants to improve basic programs operated by local educational agencies.--After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) Other Government Services.

(1) In general. The Governor shall use 18.2 percent of the State's allocation under section 14001(d) for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(2) Availability to all institutions of higher education. A Governor shall not consider the type or mission of an institution of higher education, and shall consider any institution for funding for modernization, renovation, and repairs within the State that—

(A) qualifies as an institution of higher education, as defined in subsection 14013(3); and

(B) continues to be eligible to participate in the programs under title IV of the Higher Education Act of 1965.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14003. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.**

(a) In General. local educational agency that receives funds under this title may use he funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) ("SEA"), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ("IDEA"), the Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ("the Perkins Act") or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. A local educational agency may not use funds received under this title for—

(1) payment of maintenance costs;

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) purchase or upgrade of vehicles; or

(4) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.**

(a) In General. A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students, or for modernization, renovation, or repair of institution of higher education facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. An institution of higher education may not use funds received under this title to increase its endowment.

(c) Additional Prohibition. No funds awarded under this title may be used for—

(1) the maintenance of systems, equipment, or facilities;

(2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or

(3) modernization, renovation, or repair of facilities—

(A) used for sectarian instruction or religious worship; or

(B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

**SEC. 14005. STATE APPLICATIONS.**

(a) In General. The Governor of a State desiring to receive an allocation under section 14001(d) shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Application. In such application, the Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and, in such cases, what amount will be used to meet such requirements.

(c) Incentive Grant Application. The Governor of a State seeking a grant under section 14006 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d), and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;

(3) describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies; and

(5) include a plan for evaluating the State's progress in closing achievement gaps.

(d) Assurances. An application under subsection (b) shall include the following assurances:

(1) Maintenance of effort.

(A) Elementary and secondary education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) Higher education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.

(2) Achieving equity in teacher distribution. The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

(3) Improving collection and use of data. The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) Standards and assessments. The State—

(A) will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act.

(5) Supporting struggling schools. The State will ensure compliance with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA with respect to schools identified under such sections.

## **SEC. 14006. STATE INCENTIVE GRANTS.**

(a) In General.

(1) Reservation. From the total amount reserved under section 14001(c) that is not used for section 14007, the Secretary may reserve up to 1 percent for technical assistance to States to assist them in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(2) Remainder. Of the remaining funds, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(b) Basis for Grants. The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 14005 and such other criteria as the Secretary determines appropriate, which may include a State's need for assistance to help meet the objective of paragraphs (2), (3), (4), and (5) of section 14005(d).

(c) Subgrants to Local Educational Agencies. Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

#### **SEC. 14007. INNOVATION FUND.**

(a) In General.

(1) Eligible entities. For the purposes of this section, the term "eligible entity" means—

- (A) a local educational agency; or
- (B) a partnership between a nonprofit organization and—
  - (i) one or more local educational agencies; or
  - (ii) a consortium of schools.

(2) Program established. From the total amount reserved under section 14001(c), the Secretary may reserve up to \$650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) Basis for awards. The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

- (A) to allow such eligible entities to expand their work and serve as models for best practices;
- (B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and
- (C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) Eligibility. To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of the ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

(c) Special Rule. In the case of an eligible entity that includes a nonprofit organization, the eligible entity shall be considered to have met the eligibility requirements of paragraphs (1), (2), (3) of subsection (b) if such nonprofit organization has a record of meeting such requirements.

#### **SEC. 14008. STATE REPORTS.**

For each year of the program under this title, a State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) a description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

**SEC. 14009. EVALUATION.**

The Comptroller General of the United States shall conduct evaluations of the programs under sections 14006 and 14007 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

**SEC. 14010. SECRETARY'S REPORT TO CONGRESS.**

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of State reports, that evaluates the information provided in the State reports under section 14008 and the information required by section 14005(b)(3) including State-by-State information.

**SEC. 14011. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.**

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

**SEC. 14012. FISCAL RELIEF.**

(a) In General. For the purpose of relieving fiscal burdens on States and local educational agencies that have experienced a precipitous decline in financial resources, the Secretary of Education may waive or modify any requirement of this title relating to maintaining fiscal effort.

(b) Duration. A waiver or modification under this section shall be for any of fiscal year 2009, fiscal year 2010, or fiscal year 2011, as determined by the Secretary.

(c) Criteria. The Secretary shall not grant a waiver or modification under this section unless the Secretary determines that the State receiving such waiver or modification will not provide for elementary, secondary, and public higher education, for the fiscal year under consideration, a smaller percentage of the total revenues available to the State than the percentage provided for such purpose in the preceding fiscal year.

(d) Maintenance of Effort. Upon prior approval from the Secretary, a State or local educational agency that receives funds under this title may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), administered by the Secretary.

(e) Subsequent Level of Effort. Notwithstanding (d), the level of effort required by a State or local educational agency for the following fiscal year shall not be reduced.

**SEC. 14013. DEFINITIONS.**

Except as otherwise provided in this title, as used in this title—

(1) the terms "elementary education" and "secondary education" have the meaning given such terms under State law;

(2) the term "high-need local educational agency" means a local educational agency—

(A) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(B) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line;

(3) the term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) the term "Secretary" means the Secretary of Education;

(5) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(6) any other term used that is defined in section 9101 of the ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

[END]

EXHIBIT B  
TO  
RESOLUTION NO. 3027-112

[Civic Center VWW Agreement]

See following pages.

**GRANT IN KIND**  
**between**  
**ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS**  
**and**  
**City of Avondale**

This Grant In Kind (“**AGREEMENT**”) is entered into by and between the State of Arizona, the Arizona State Library, Archives and Public Records, **ASLAPR**, a division of the Arizona Secretary of State (“**GRANTOR**”), located at 1700 West Washington, Suite 200, Phoenix, Arizona, 85007 and **City of Avondale** (“**RECIPIENT**”), located at 11465 W Civic Center Dr, Avondale, AZ 85323.

This AGREEMENT is entered pursuant to A.R.S. §41-2701 et seq., authorizing the State of Arizona, Governor’s Office of Economic Recovery, contracting with ASLAPR, to execute and administer a specific federal grant, American Recovery and Reinvestment Act (ARRA) - PCC, AZ Job Help Hubs @ Your Library, CFDA number 11.557, award number 04-41-B10521, awarded July 2, 2010, herein referred to as Broadband Technology Opportunities Program Round 2 (“**BTOP II**”).

Whereas, A.R.S. § 41-151.05 and A.R.S. § 41-151.06 authorizes ASLAPR to execute and administer contracts. Whereas, A.R.S. § 9-420 authorizes RECIPIENT to enter into agreements with ASLAPR.

Therefore, it is agreed that GRANTOR shall provide equipment and funding to the RECIPIENT for implementation of Virtual Workforce Workstation (“**VWW**”) as defined under BTOP II and as established herein:

## **1. Purpose of the Agreement**

The purpose of this AGREEMENT is to transfer ownership of the equipment and all responsibilities thereof to the RECIPIENT, have the RECIPIENT install and implement the equipment at **Avondale Civic Center Library** (“**PARTICIPATING LIBRARY**”), located at 11350 W Civic Center Dr, Avondale, AZ 85323, have the RECIPIENT meet the programmatic objectives of the BTOP II Program as established by GRANTOR, and have RECIPIENT report on the utilization of this equipment, as specified by the BTOP II grant, until the **TERMINATION DATE** or until all grant requirements are met as required by GRANTOR.

### **A. The BTOP II Grant**

The goal of the BTOP II grant is to address the increased demand by job-seekers on local libraries as a local resource where patrons can utilize internet access to search for or apply to jobs and also obtain or improve job-related skills. The BTOP II implementation has two components: (1) Job Help Hubs (“**JHH**”) and (2) Virtual Workforce Workstations (“**VWW**”). Together these are dubbed the Arizona Job Assistance Centers (“**AzJAC**”) project .

The JHH is a portable computer lab dedicated to assisting job seekers with skill assessments, skill development and adult education. At least one JHH will be located in each county and within those counties located in communities determined to have the greatest need. Although the JHH is delivered and associated with a specific library, the BTOP II grant encourages and supports utilization at venues other than the target library, such as community centers or faith-based sites, provided the use is in line with the job-seeker and adult education goals of the BTOP II grant.

The VWW is a single workstation dedicated to job seekers for job search and placement assistance, skill assessments, development of individual employment plans, and career planning. There are approximately 200 public libraries across Arizona receiving VWW as part of the BTOP II grant.

Pursuant to the goals of the BTOP II grant, **GRANTOR will purchase the computer equipment on the RECIPIENT's behalf and deliver this equipment to the RECIPIENT.** The RECIPIENT agrees to take ownership of the equipment and agrees to use the equipment as specified and report on that use as specified by GRANTOR in accordance with the BTOP II grant.

## 2. Effective Date/Term of Agreement

The term of the AGREEMENT shall commence on **January 1, 2012** ("EFFECTIVE DATE"), and shall remain in effect until June 28, 2013 ("TERMINATION DATE"), contingent upon federal funding availability, unless terminated or canceled as provided herein.

## 3. General Provisions

The parties mutually agree as follows:

### A. Type of BTOP II RECIPIENT AGREEMENT

**This AGREEMENT applies to a VWW implementation.**

### B. Equipment and Software List

#### Hardware List:

<b>SIGNIFICANT ASSETS for VWW Recipients:</b>			
<u>Quantity</u>	<u>Description</u>	<u>Unit Cost</u>	<u>Approximate Subtotal Value</u>
1	Desktop SFF; Dell Optiplex 780	\$ 855	\$ 855
1	Monitor: Dell E2211H, Widescreen, 21.5 in LCD		
1	All-in-one monochrome laser printer; Xerox Workcentre 3210N, C/P/S/F	\$ 245	\$ 245
<b>Total Approximate Value:</b>			<b>\$ 1,100</b>

#### Software List :

<u>Quantity</u>	<u>Description</u>	<u>Approximate Unit Cost</u>	<u>Not-To-Exceed Value</u>
1	Microsoft Office Standard (see <b>Software Note 1 below</b> )	\$ 350	\$ 400 each
1	Adobe Acrobat Standard (see <b>Software Note 1 below</b> )	\$ 250	\$ 300 each

**Software Note 1:** If the installed version of Microsoft Office is v2010 or later, then Adobe Acrobat Standard is not a requirement. For Office 2007 an add-in for creating Adobe documents must be installed. For versions of Office 2007 or older, Adobe Acrobat Standard would be a requirement and would have to be version 9 or 10.

### C. Method and Terms of Receipt of Equipment

1. Upon receipt of the equipment at the location specified by the RECIPIENT, or their designee, the RECIPIENT agrees to take ownership of the equipment specified in Section 3.B, **Equipment and Software List**.
2. RECIPIENT, or their designee, agrees to notify GRANTOR within 5 business days of the receipt of any equipment for the BTOP II grant. Upon receiving notification of delivery, GRANTOR will, within 5 business days, provide by Email to the person designated by the RECIPIENT, an **Inventory Receipt Form** listing the items received.
3. The RECIPIENT, or their designee, shall complete and sign the **Inventory Receipt Form** and deliver to GRANTOR at the address provided at the bottom of this AGREEMENT.
4. Any incidental items supplied with the above equipment, such as USB printer cables, network cables, supplies (if any), or other non-essential items such as laptop cases, are not listed due to their relatively low value.
5. Any other equipment that may be supplied by GRANTOR as part of the BTOP II grant will be covered under separate agreement.

### D. Software Requirements for BTOP II Computers

As part of the BTOP II grant, the items in the SOFTWARE LIST in Section 3.B, **Equipment and Software List**, are mandated to be installed on each computer listed in Section 3.B. The RECIPIENT is eligible to be reimbursed for the actual cost to acquire these software licenses should they elect to utilize the grant to cover such costs up to the "Not-To-Exceed Value" amount listed in Section 3.B. Software maintenance for the items in Section 3.B will be covered up to the end of the grant period, June 30, 2013. **In order to be eligible for reimbursement by GRANTOR, the RECIPIENT or the PARTICIPATING LIBRARY must have acquired, installed, and requested reimbursement for the software listed in Section 3.B prior to June 29, 2012.** The RECIPIENT shall comply with all GRANTOR reimbursement requirements, including, but not limited to, all supporting documentation required by GRANTOR.

### E. Maintenance of Equipment and Software

#### 1. Hardware Maintenance:

For the SIGNIFICANT ASSETS listed in Section 3.B, **Equipment and Software List**, GRANTOR will also purchase warranties that extend up to, or beyond, the end of the grant period, June 30, 2013. GRANTOR will have no obligation beyond June 30, 2013, to provide warranties and/or maintenance for any of the items referenced in this AGREEMENT.

#### 2. Software Maintenance:

GRANTOR has no obligation to provide software maintenance beyond that provided as part of the initial software acquisition of the software specified in Section 3.B, **Equipment and Software List**, and up to the end of the grant period, June 30, 2013.

GRANTOR makes no promises or warranties as to the actual cost the RECIPIENT or the PARTICIPATING LIBRARY will incur to acquire the software listed in Section 3.B or the accuracy of the estimated value provided in Section 3.B.

## 4. GRANTOR's and RECIPIENT's Responsibilities

### A. RECIPIENT, or their designee, agrees to:

1. Install and implement the equipment referenced in Section 3.B, *Equipment and Software*, within 45 days of either (a) receipt of all listed equipment, or (b) EFFECTIVE DATE, whichever is the most recent, and according to the utilization requirements of the BTOP II grant as established by GRANTOR.
2. Acquire and install the software on each computer provided as specified in Section 3.B, *Equipment and Software List*, within 30 days of implementation as per Section 4.A.1 above.
3. Monitor and document use of the VWW equipment whether being utilized by the RECIPIENT, a designee of the RECIPIENT, or a designee of GRANTOR, or for any other use as permitted by the terms and conditions of the BTOP II grant.
4. Provide monthly utilization reports as required by GRANTOR. Upon generating a duly signed AGREEMENT, GRANTOR will consult with the PARTICIPATING LIBRARY on the best practices for gathering utilization metrics. However, there are minimum requirements for the BTOP II grant that the RECIPIENT must meet.
5. In consultation with GRANTOR, strive and aspire to maximize utilization of the VWW computer.

### B. GRANTOR agrees to:

1. Administer the AzJAC Project.
2. Provide a project manager.
3. Work closely with the RECIPIENT and/or the PARTICIPATING LIBRARY to assist in resolving any issues of space, connectivity, accessibility, designated use, maximizing utilization, and gathering metrics on utilization.
4. Act as the fiscal agent for the project.
5. Submit federal and state project reports.
6. Communicate project status with libraries, when applicable.

## 5. Responsibility for Equipment

GRANTOR and the State of Arizona are not responsible for and will not cover any items referenced in this AGREEMENT for loss or damage. GRANTOR recommends that the RECIPIENT and the PARTICIPATING LIBRARY include the equipment in their loss prevention programs and/or policies.

In the event of loss of any items listed in Section 3.B, *Equipment and Software List*, the RECIPIENT agrees to report the loss to GRANTOR within five (5) business days of the loss. Because the RECIPIENT has a contractual responsibility to continue to provide the services required by the BTOP II grant and report on the use of the equipment, regardless of the circumstances of the loss, the RECIPIENT agrees to replace any items listed in Section 3.B, *Equipment and Software List*, that are designated as either SIGNIFICANT ASSETS or SOFTWARE within sixty (60) calendar days after the loss occurred.

The RECIPIENT must submit the specifications of the proposed replacement equipment and/or software to GRANTOR prior to purchasing or implementation, in case the RECIPIENT proposes using existing equipment or software. GRANTOR reserves the right to reject the proposed replacement equipment or software if GRANTOR determines that it will not sufficiently meet the capabilities or specifications of the original equipment or software. If the replacement equipment is not approved by GRANTOR prior to purchasing or implementation, the RECIPIENT is still liable for loss coverage should the equipment not meet the approval of GRANTOR.

Should the RECIPIENT elect not to replace equipment due to a loss, GRANTOR will consider the RECIPIENT in breach of this AGREEMENT and GRANTOR may terminate this AGREEMENT subject to Section 21, **AGREEMENT Termination** and may exercise any other remedy available by law.

## **6. Method and Terms of Reimbursement**

Funds will be transferred to RECIPIENT on a cost reimbursement basis upon receipt and approval of a Reimbursement Request Form showing cumulative expenditures by line item. Items to be reported are; dollar amount requested, name of project worked on and project status compared to timeline submitted, if applicable. The RECIPIENT will be responsible for paying vendors associated with this project, when applicable. GRANTOR will reimburse expenses to RECIPIENT using a warrant, transfer, or by direct deposit of BTOP II funds. Method of payment will be at the discretion of GRANTOR and the RECIPIENT will allow thirty (30) calendar days for completion of payment of funds after GRANTOR's receipt of a Reimbursement Request Form. Any unspent funds associated with this AGREEMENT will be refunded to GRANTOR at completion of stated AGREEMENT term. Final payment for this AGREEMENT will be released upon receipt of any final reporting requirements which are yet to be determined, if applicable.

## **7. Reporting and Compliance Requirements**

Payments by GRANTOR to the RECIPIENT shall be in strict compliance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (2 CFR 225 A-87) and shall adhere to the Federal Cash Management Improvement Act (CMIA) and comply with guidelines of the BTOP II grant.

In addition the Recovery Act specifically provides that funds may not be used by any state or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

The RECIPIENT must be prepared to track and report on the specific outcomes and benefits attributable to use of Recovery Act funds. Funds associated with this AGREEMENT shall only be used to reimburse the RECIPIENT for the purposes set forth on Section 3 of this AGREEMENT. The RECIPIENT must comply with all applicable Federal and State policies and procedures, and requirements related to Recovery Act and BTOP II monies.

## **8. Printed Material**

It is agreed that any report or printed matter completed as a part of this AGREEMENT is a work for hire and shall not be copyrighted by the RECIPIENT. Any publicly printed material under this AGREEMENT shall state "This project was supported by ARRA funding in the form of a grant from the U.S. Department of Commerce and the Governor's Office of Economic Recovery."

## **9. Documents Incorporated by Reference**

Incorporation by Reference into AGREEMENT as if fully set forth herein:

**Title XIV of the American Recovery and Reinvestment Act (ARRA) of 2009**, known as the State Fiscal Stabilization Fund (Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115, as amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524), as administered by the U.S. Department of Education.

(Included as **Attachment 1** and accessible at:

<http://www2.ed.gov/policy/gen/leg/recovery/statutory/stabilization-fund.doc>).

It is the RECIPIENT's responsibility to obtain the most current revisions of this document.

## **10. Fiscal Responsibility**

Should the project not be completed, be partially completed, or be completed at a lower cost than the original budget called for, the amount reimbursed to RECIPIENT shall be for only the amount of dollars actually spent by the RECIPIENT. For any funds received under this AGREEMENT for which expenditure is disallowed in an audit exception by the GRANTOR, the State of Arizona, or Federal government, the RECIPIENT shall reimburse said funds directly to the GRANTOR immediately within fifteen (15) business days, exclusive of state holidays.

## **11. Records and Audit Trails**

Under A.R.S. § 35-214 and A.R.S. § 35-215, the RECIPIENT shall retain all data and other "records" relating to the performance of the AGREEMENT for a period of five (5) years after the closing of the federal grant. The RECIPIENT is subject to all audit oversight policies and procedures established by GRANTOR and/or the State of Arizona. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **12. Amendments**

This AGREEMENT may be modified, altered or amended only in writing signed by, or on behalf of, both parties.

## **13. Arbitration**

This AGREEMENT is subject to arbitration to the extent required by A.R.S. § 12-1518, and any such proceeding shall be held in Phoenix, Maricopa County, Arizona.

## **14. Cancellation for Conflict of Interest**

This AGREEMENT is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are herein incorporated by reference.

## **15. Non-Discrimination**

The RECIPIENT shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the American with Disabilities Act. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **16. Federal Immigration and Nationality Act**

The RECIPIENT shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the AGREEMENT. Further, the RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of the AGREEMENT. The State shall retain the right to perform random audits of the RECIPIENT's and subcontractors' records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the RECIPIENT and/or any subcontractor be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the AGREEMENT for default and suspension and/or debarment of the RECIPIENT.

## **17. E-Verify Requirements**

In accordance with A.R.S. § 41-4401, the RECIPIENT warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **18. Scrutinized Business**

In accordance with A.R.S. § 35-391.06 and A.R.S. § 35-393.06, the RECIPIENT certifies that the RECIPIENT does not have scrutinized business operations in Sudan or Iran. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **19. Renewal**

This AGREEMENT will and shall not be renewed. Additionally, this AGREEMENT shall not bind nor purport to bind GRANTOR and/or the State of Arizona for any contractual commitment in excess of the original AGREEMENT period or amount. The AGREEMENT will terminate on the TERMINATION DATE and GRANTOR reserves the right to cancel prior to the TERMINATION DATE based on the cancellation criteria set forth in this AGREEMENT.

## **20. Indemnification**

Each party (as "**Indemnitor**") agrees to indemnify, defend, and hold harmless the other party (as "**Indemnitee**") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "**Claims**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

## **21. AGREEMENT Termination**

### **A. Termination for Cause**

GRANTOR reserves the right to cancel the whole or any part of the AGREEMENT due to failure of the RECIPIENT to carry out any term or condition of the AGREEMENT or failure to make satisfactory progress in performing this AGREEMENT.

If GRANTOR determines there is cause for cancellation, GRANTOR shall issue a written ten (10) day notice of default to the RECIPIENT and GRANTOR may cancel the AGREEMENT. If GRANTOR cancels AGREEMENT pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

## **B. Termination for Non-Availability of Funds**

Obligations by GRANTOR for acquisition of equipment and software is conditioned upon the availability of funds appropriated or allocated for such obligations. If funds are not allocated and available for the continuance of this AGREEMENT, either party may terminate this AGREEMENT at the end of the period for which funds remain available. No liability shall accrue to GRANTOR or the State of Arizona in the event this provision is exercised, and neither GRANTOR nor the State of Arizona will be obligated or liable for any future commitment, obligations, or for any damages as a result of termination under this paragraph.

## **C. Termination by Notice**

GRANTOR reserves the right to terminate the AGREEMENT at any time, for the convenience of GRANTOR, without penalty or recourse, by giving written notice to the RECIPIENT at least thirty (30) days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the RECIPIENT under the AGREEMENT shall, at the option of GRANTOR, become property of the State of Arizona. The RECIPIENT shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination.

## **22. Entire Agreement**

This AGREEMENT contains the entire agreement and understanding of the parties hereto. There are no representations or provisions other than those contained herein, and this AGREEMENT supersedes all prior agreements between the parties, whether written or oral, pertaining to the same subject matter of this AGREEMENT.

## **23. No Waiver**

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

## **24. Partial Invalidity**

The parties agree that, should any part of this AGREEMENT be held to be invalid or void, the remainder of the AGREEMENT shall remain in full force and effect and shall be binding upon the parties.

## **25. Governing Law**

This AGREEMENT is made under, and shall be governed and interpreted by the laws of the State of Arizona. In the event of litigation arising out of, or relating to, this AGREEMENT, the RECIPIENT, ASLAPR, and the State of Arizona hereby stipulate to the exclusive jurisdiction and venue of the Maricopa County Superior Court in Phoenix, Arizona.

## 26. Counterparts

This AGREEMENT may be executed in any number of duplicate originals, photocopies or facsimiles, all of which (once each party has executed at least one such duplicate original, photocopy, or facsimile) will constitute one and the same document.

## 27. Interpretation

This AGREEMENT is not to be construed or interpreted for or against either of the parties on the grounds of sole or primary authorship or draftsmanship.

## 28. Paragraph Headings

The paragraph headings in this AGREEMENT are for convenience or reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

## 29. Notices

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this AGREEMENT, unless otherwise noted, shall be delivered in person, fax, email, or sent by United States Mail, postage prepaid, to the parties at their respective addresses as set forth immediately below:

**RECIPIENT:**

**City of Avondale**

11465 West Civic Center Drive

Avondale, Arizona 85323

FAX: (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

FAX: (602) 254-4878

Attn: Andrew J. McGuire, Esq.

**GRANTOR:**

**Arizona State Library,**

**Archive and Public Records**

1700 W. Washington, Suite 200

Phoenix, AZ 85007

FAX : (602) 256-7983

Attn.: Laura Stone

Any such notices or other communications shall be deemed received based on any one of the following criteria:

- A. Upon being physically delivered to the party;
- B. Three business days after being placed in the U.S. Mail, properly addressed, and with sufficient postage;
- C. The following business day after being given to a duly recognized overnight delivery service, with the person sending 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.

### 30. Authority to Execute this AGREEMENT

Each individual executing this AGREEMENT on behalf of the RECIPIENT and GRANTOR represents and warrants that he or she is duly authorized to execute this AGREEMENT.

**IN WITNESS WHEREOF**, the parties hereto agree to execute this AGREEMENT:

<p><b>RECIPIENT:</b> <b>City of Avondale</b> 11465 W Civic Center Dr Avondale, AZ 85323</p> <p style="text-align: center;"><i>signature</i></p> <p>Charles P. McClendon City Manager</p> <p>DATE: ____ / ____ / 2012</p>	<p><b>GRANTOR::</b> <b>Arizona State Library, Archive and Public Records</b> 1700 W. Washington, Suite 200 Phoenix, AZ 85007</p> <p style="text-align: center;"><i>signature</i></p> <p>Jim Drake Assistant Secretary of State</p> <p>DATE: ____ / ____ / 2012</p>
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Any ***Inventory Receipt Form*** completed by RECIPIENT shall be delivered in person or sent by the United States Postal Service to the address below.

<p><b>Arizona State Library</b> 1700 W. Washington Suite 200 Phoenix, AZ 85007 <b>Attn.: Chris Guerra</b></p>	<p>Email: <a href="mailto:cguerra@lib.az.us">cguerra@lib.az.us</a> Telephone: ( 602 ) 926 - 3811</p>
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# **ATTACHMENT 1**

**American Recovery and Reinvestment Act of 2009**  
**Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115**

**As amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009;**  
**Division A, Section 523; March 11, 2009; 123 Stat. 524**

Below are excerpts from Public Law 111-5, as amended by Public Law 111-8, that relate to the State Fiscal Stabilization Fund administered by the U.S. Department of Education. The U.S. Department of Education has posted this information as a courtesy to readers. The official (and controlling) texts of this material will be printed in those two Public Laws.

**DIVISION A, TITLE XIV – STATE FISCAL STABILIZATION FUND**  
**DEPARTMENT OF EDUCATION**  
**STATE FISCAL STABILIZATION FUND**

**GENERAL PROVISIONS – THIS TITLE**

**SEC. 14001. ALLOCATIONS.**

(a) Outlying Areas. From the amount appropriated to carry out this title, the Secretary of Education shall first allocate up to one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior, for activities consistent with this title under such terms and conditions as the Secretary may determine.

(b) Administration and Oversight. The Secretary may, in addition, reserve up to \$14,000,000 for administration and oversight of this title, including for program evaluation.

(c) Reservation for Additional Programs. After reserving funds under subsections (a) and (b), the Secretary shall reserve \$5,000,000,000 for grants under sections 14006 and 14007.

(d) State Allocations. After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

- (1) 61 percent on the basis of their relative population of individuals aged 5 through 24.
- (2) 39 percent on the basis of their relative total population.

(e) State Grants. From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) Reallocation. The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not award as subgrants or otherwise commit within two years of receiving such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

**SEC. 14002. STATE USES OF FUNDS.**

(a) Education Fund.

(1) In general. For each fiscal year, the Governor shall use 81.8 percent of the State's allocation under section 14001(d) for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) Restoring state support for education.

(A) In general. The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's primary elementary and secondary education funding formulae, that is needed—

(I) to restore, in each of fiscal years 2009, 2010, and 2011, the level of State support provided through such formulae to the greater of the fiscal year 2008 or fiscal year 2009 level; and

(II) where applicable, to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments, if such increases were enacted pursuant to State law prior to October 1, 2008.

(ii) to provide, in each of fiscal years 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the State that is needed to restore State support for such institutions (excluding tuition and fees paid by students) to the greater of the fiscal year 2008 or fiscal year 2009 level.

(B) Shortfall. If the Governor determines that the amount of funds available under paragraph (1) is insufficient to support, in each of fiscal years 2009, 2010, and 2011, public elementary, secondary, and higher education at the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(C) Fiscal year. For purposes of this paragraph, the term "fiscal year" shall have the meaning given such term under State law.

(3) Subgrants to improve basic programs operated by local educational agencies.--After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) Other Government Services.

(1) In general. The Governor shall use 18.2 percent of the State's allocation under section 14001(d) for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(2) Availability to all institutions of higher education. A Governor shall not consider the type or mission of an institution of higher education, and shall consider any institution for funding for modernization, renovation, and repairs within the State that—

(A) qualifies as an institution of higher education, as defined in subsection 14013(3); and

(B) continues to be eligible to participate in the programs under title IV of the Higher Education Act of 1965.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14003. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.**

(a) In General. local educational agency that receives funds under this title may use he funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) ("SEA"), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ("IDEA"), the Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ("the Perkins Act") or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. A local educational agency may not use funds received under this title for—

(1) payment of maintenance costs;

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) purchase or upgrade of vehicles; or

(4) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.**

(a) In General. A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students, or for modernization, renovation, or repair of institution of higher education facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. An institution of higher education may not use funds received under this title to increase its endowment.

(c) Additional Prohibition. No funds awarded under this title may be used for—

(1) the maintenance of systems, equipment, or facilities;

(2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or

(3) modernization, renovation, or repair of facilities—

(A) used for sectarian instruction or religious worship; or

(B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

**SEC. 14005. STATE APPLICATIONS.**

(a) In General. The Governor of a State desiring to receive an allocation under section 14001(d) shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Application. In such application, the Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and, in such cases, what amount will be used to meet such requirements.

(c) Incentive Grant Application. The Governor of a State seeking a grant under section 14006 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d), and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;

(3) describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies; and

(5) include a plan for evaluating the State's progress in closing achievement gaps.

(d) Assurances. An application under subsection (b) shall include the following assurances:

(1) Maintenance of effort.

(A) Elementary and secondary education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) Higher education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.

(2) Achieving equity in teacher distribution. The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

(3) Improving collection and use of data. The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) Standards and assessments. The State—

(A) will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act.

(5) Supporting struggling schools. The State will ensure compliance with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA with respect to schools identified under such sections.

## **SEC. 14006. STATE INCENTIVE GRANTS.**

(a) In General.

(1) Reservation. From the total amount reserved under section 14001(c) that is not used for section 14007, the Secretary may reserve up to 1 percent for technical assistance to States to assist them in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(2) Remainder. Of the remaining funds, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(b) Basis for Grants. The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 14005 and such other criteria as the Secretary determines appropriate, which may include a State's need for assistance to help meet the objective of paragraphs (2), (3), (4), and (5) of section 14005(d).

(c) Subgrants to Local Educational Agencies. Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

#### **SEC. 14007. INNOVATION FUND.**

(a) In General.

(1) Eligible entities. For the purposes of this section, the term "eligible entity" means—

- (A) a local educational agency; or
- (B) a partnership between a nonprofit organization and—
  - (i) one or more local educational agencies; or
  - (ii) a consortium of schools.

(2) Program established. From the total amount reserved under section 14001(c), the Secretary may reserve up to \$650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) Basis for awards. The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

- (A) to allow such eligible entities to expand their work and serve as models for best practices;
- (B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and
- (C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) Eligibility. To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of the ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

(c) Special Rule. In the case of an eligible entity that includes a nonprofit organization, the eligible entity shall be considered to have met the eligibility requirements of paragraphs (1), (2), (3) of subsection (b) if such nonprofit organization has a record of meeting such requirements.

#### **SEC. 14008. STATE REPORTS.**

For each year of the program under this title, a State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) a description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

**SEC. 14009. EVALUATION.**

The Comptroller General of the United States shall conduct evaluations of the programs under sections 14006 and 14007 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

**SEC. 14010. SECRETARY'S REPORT TO CONGRESS.**

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of State reports, that evaluates the information provided in the State reports under section 14008 and the information required by section 14005(b)(3) including State-by-State information.

**SEC. 14011. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.**

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

**SEC. 14012. FISCAL RELIEF.**

(a) In General. For the purpose of relieving fiscal burdens on States and local educational agencies that have experienced a precipitous decline in financial resources, the Secretary of Education may waive or modify any requirement of this title relating to maintaining fiscal effort.

(b) Duration. A waiver or modification under this section shall be for any of fiscal year 2009, fiscal year 2010, or fiscal year 2011, as determined by the Secretary.

(c) Criteria. The Secretary shall not grant a waiver or modification under this section unless the Secretary determines that the State receiving such waiver or modification will not provide for elementary, secondary, and public higher education, for the fiscal year under consideration, a smaller percentage of the total revenues available to the State than the percentage provided for such purpose in the preceding fiscal year.

(d) Maintenance of Effort. Upon prior approval from the Secretary, a State or local educational agency that receives funds under this title may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), administered by the Secretary.

(e) Subsequent Level of Effort. Notwithstanding (d), the level of effort required by a State or local educational agency for the following fiscal year shall not be reduced.

**SEC. 14013. DEFINITIONS.**

Except as otherwise provided in this title, as used in this title—

(1) the terms "elementary education" and "secondary education" have the meaning given such terms under State law;

(2) the term "high-need local educational agency" means a local educational agency—

(A) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(B) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line;

(3) the term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) the term "Secretary" means the Secretary of Education;

(5) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(6) any other term used that is defined in section 9101 of the ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

[END]

EXHIBIT C  
TO  
RESOLUTION NO. 3027-112

[Civic Center JHH Agreement]

See following pages.

**GRANT IN KIND**  
**between**  
**ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS**  
**and**  
**City of Avondale**

This Grant In Kind (“**AGREEMENT**”) is entered into by and between the State of Arizona, the Arizona State Library, Archives and Public Records, **ASLAPR**, a division of the Arizona Secretary of State (“**GRANTOR**”), located at 1700 West Washington, Suite 200, Phoenix, Arizona, 85007 and **City of Avondale** (“**RECIPIENT**”), located at 11465 W Civic Center Dr, Avondale, AZ 85323.

This **AGREEMENT** is entered pursuant to A.R.S. §41-2701 et seq., authorizing the State of Arizona, Governor’s Office of Economic Recovery, contracting with ASLAPR, to execute and administer a specific federal grant, American Recovery and Reinvestment Act (ARRA) - PCC, AZ Job Help Hubs @ Your Library, CFDA number 11.557, award number 04-41-B10521, awarded July 2, 2010, herein referred to as Broadband Technology Opportunities Program Round 2 (“**BTOP II**”).

Whereas, A.R.S. § 41-151.05 and A.R.S. § 41-151.06 authorizes ASLAPR to execute and administer contracts. Whereas, A.R.S. § 9-420 authorizes **RECIPIENT** to enter into agreements with ASLAPR.

Therefore, it is agreed that **GRANTOR** shall provide equipment and funding to the **RECIPIENT** for implementation of Job Help Hubs (“**JHH**”) as defined under **BTOP II** and as established herein:

## **1. Purpose of the Agreement**

The purpose of this **AGREEMENT** is to transfer ownership of the equipment and all responsibilities thereof to the **RECIPIENT**, have the **RECIPIENT** install and implement the equipment at **Avondale Civic Center Library** (“**PARTICIPATING LIBRARY**”), located at at 11350 W Civic Center Dr, Avondale, AZ 85323, have the **RECIPIENT** meet the programmatic objectives of the **BTOP II** Program as established by **GRANTOR**, and have **RECIPIENT** report on the utilization of this equipment, as specified by the **BTOP II** grant, until the **TERMINATION DATE** or until all grant requirements are met as required by **GRANTOR**.

### **A. The BTOP II Grant**

The goal of the **BTOP II** grant is to address the increased demand by job-seekers on local libraries as a local resource where patrons can utilize internet access to search for or apply to jobs and also obtain or improve job-related skills. The **BTOP II** implementation has two components: (1) Job Help Hubs (“**JHH**”) and (2) Virtual Workforce Workstations (“**VWW**”). Together these are dubbed the Arizona Job Assistance Centers (“**AzJAC**”) project .

The **JHH** is a portable computer lab dedicated to assisting job seekers with skill assessments, skill development and adult education. At least one **JHH** will be located in each county and within those counties located in communities determined to have the greatest need. Although the **JHH** is delivered and associated with a specific library, the **BTOP II** grant encourages and supports utilization at venues other than the target library, such as community centers or faith-based sites, provided the use is in line with the job-seeker and adult education goals of the **BTOP II** grant.

The VWW is a single workstation dedicated to job seekers for job search and placement assistance, skill assessments, development of individual employment plans, and career planning. There are approximately 200 public libraries across Arizona receiving VWW as part of the BTOP II grant.

Pursuant to the goals of the BTOP II grant, **GRANTOR will purchase the computer equipment on the RECIPIENT's behalf and deliver this equipment to the RECIPIENT.** The RECIPIENT agrees to take ownership of the equipment and agrees to use the equipment as specified and report on that use as specified by GRANTOR in accordance with the BTOP II grant.

## 2. Effective Date/Term of Agreement

The term of the AGREEMENT shall commence on **January 1, 2012** (“EFFECTIVE DATE”), and shall remain in effect until **June 28, 2013** (“TERMINATION DATE”), contingent upon federal funding availability, unless terminated or canceled as provided herein.

## 3. General Provisions

The parties mutually agree as follows:

### A. Type of BTOP II RECIPIENT AGREEMENT

**This AGREEMENT applies to a JHH implementation.**

### B. Equipment and Software List

#### Hardware List:

<b>SIGNIFICANT ASSETS for JHH Recipients:</b>			
<u>Quantity</u>	<u>Description</u>	<u>Unit Cost</u>	<u>Approximate subtotal value</u>
11	Laptop; Dell Latitude E5510	\$ 850	\$ 9,350
1	Laptop storage/charging cart; Datamation 20 Module NB	\$ 1,100	\$ 1,100
1	Data projector; Dell 1610HD	\$ 470	\$ 470
1	All-in-one color inkjet printer; Epson Workforce 635	\$ 125	\$ 125
1	Wireless Access Point; D-Link DLI-DWL-G730AP	\$ 55	\$ 55
<b>ADJUNCT ASSETS for JHH Recipients:</b>			
11	Laptop locks; Kensington Clicksafe NB Lockmaster	\$ 40	\$ 440
1	Projector lock; Kensington Microsaver Lock F/project	\$ 41	\$ 41
1	Portable projection screen; Draper 66.5" Piper Portable	\$ 185	\$ 185
<b>Total Approximate Value:</b>			<b>\$ 11,766</b>

#### Software List :

<u>Quantity</u>	<u>Description</u>	<u>Approx Unit Cost</u>	<u>Not-To-Exceed Value</u>
11	Microsoft Office Standard (see <b>Software Note 1 below</b> )	\$ 350	\$ 400 each
1	Adobe Acrobat Standard (see <b>Software Note 1 below</b> )	\$ 250	\$ 300 each

**Software Note 1:** If the installed version of Microsoft Office is v2010 or later, then Adobe Acrobat Standard is not a requirement. For Office 2007 an add-in for creating Adobe documents must be installed. For versions of Office 2007 or older, Adobe Acrobat Standard would be a requirement.

### C. Method and Terms of Receipt of Equipment

1. Upon receipt of the equipment at the location specified by the RECIPIENT, or their designee, the RECIPIENT agrees to take ownership of the equipment specified in Section 3.B, *Equipment and Software List*.
2. RECIPIENT, or their designee, agrees to notify GRANTOR within 5 business days of the receipt of any equipment for the BTOP II grant. Upon receiving notification of delivery, GRANTOR will, within 5 business days, provide by Email to the person designated by the RECIPIENT, an *Inventory Receipt Form* listing the items received.
3. The RECIPIENT, or their designee, shall complete and sign the *Inventory Receipt Form* and deliver to GRANTOR at the address provided at the bottom of this AGREEMENT.
4. Any incidental items supplied with the above equipment, such as USB printer cables, network cables, supplies (if any), or other non-essential items such as laptop cases, are not listed due to their relatively low value.
5. Any other equipment that may be supplied by GRANTOR as part of the BTOP II grant will be covered under separate agreement.

### D. Software Requirements for BTOP II Computers

As part of the BTOP II grant, the items in the SOFTWARE LIST in Section 3.B, *Equipment and Software List*, are mandated to be installed on each computer listed in Section 3.B. The RECIPIENT is eligible to be reimbursed for the actual cost to acquire these software licenses should they elect to utilize the grant to cover such costs up to the "Not-To-Exceed Value" amount listed in Section 3.B. Software maintenance for the items in Section 3.B will be covered up to the end of the grant period, June 30, 2013. **In order to be eligible for reimbursement by GRANTOR, the RECIPIENT or the PARTICIPATING LIBRARY must have acquired, installed, and requested reimbursement for the software listed in Section 3.B prior to June 29, 2012.** The RECIPIENT shall comply with all GRANTOR reimbursement requirements, including, but not limited to, all supporting documentation required by GRANTOR.

### E. Maintenance of Equipment and Software

#### 1. Hardware Maintenance:

For the SIGNIFICANT ASSETS listed in Section 3.B, *Equipment and Software List*, GRANTOR will also purchase warranties that extend up to, or beyond, the end of the grant period, June 30, 2013. GRANTOR will have no obligation beyond June 30, 2013, to provide warranties and/or maintenance for any of the items referenced in this AGREEMENT.

#### 2. Software Maintenance:

GRANTOR has no obligation to provide software maintenance beyond that provided as part of the initial software acquisition of the software specified in Section 3.B, *Equipment and Software List*, and up to the end of the grant period, June 30, 2013.

GRANTOR makes no promises or warranties as to the actual cost the RECIPIENT or the PARTICIPATING LIBRARY will incur to acquire the software listed in Section 3.B or the accuracy of the estimated value provided in Section 3.B.

## 4. GRANTOR's and RECIPIENT's Responsibilities

### A. RECIPIENT, or their designee, agrees to:

1. Install and implement the equipment referenced in Section 3.B, *Equipment and Software*, within 45 days of either (a) receipt of all listed equipment, or (b) EFFECTIVE DATE, whichever is the most recent, and according to the utilization requirements of the BTOP II grant as established by GRANTOR.
2. Acquire and install the software on each computer provided by GRANTOR as specified in Section 3.B, *Equipment and Software List*, within 30 days of implementation as per Section 4.A.1 above.
3. Monitor and document use of the JHH equipment whether being utilized by the RECIPIENT, a designee of the RECIPIENT, or a designee of GRANTOR, or for any other use as permitted by the terms and conditions of the BTOP II grant.
4. Provide monthly utilization reports as required by GRANTOR. Upon generating a duly signed AGREEMENT, GRANTOR will consult with the PARTICIPATING LIBRARY on the best practices for gathering utilization metrics. However, there are minimum requirements for the BTOP II grant that the RECIPIENT must meet.
5. In consultation with GRANTOR, strive and aspire to maximize utilization of the JHH lab, including concerted efforts to utilize venues other than the PARTICIPATING LIBRARY if this is a better approach or solution.

### B. GRANTOR agrees to:

1. Administer the AzJAC Project.
2. Provide a project manager.
3. Work closely with the RECIPIENT and/or the PARTICIPATING LIBRARY to assist in resolving any issues of space, connectivity, accessibility, designated use, maximizing utilization, and gathering metrics on utilization.
4. Act as the fiscal agent for the project.
5. Submit federal and state project reports.
6. Communicate project status with libraries, when applicable.

## 5. Responsibility for Equipment

GRANTOR and the State of Arizona are not responsible for and will not cover any items referenced in this AGREEMENT for loss or damage. GRANTOR recommends that the RECIPIENT and the PARTICIPATING LIBRARY include the equipment in their loss prevention programs and/or policies.

In the event of loss of any items listed in Section 3.B, *Equipment and Software List*, the RECIPIENT agrees to report the loss to GRANTOR within five (5) business days of the loss. Because the RECIPIENT has a contractual responsibility to continue to provide the services required by the BTOP II grant and report on the use of the equipment, regardless of the circumstances of the loss, the RECIPIENT agrees to replace any items listed in Section 3.B, *Equipment and Software List*, that are designated as either SIGNIFICANT ASSETS or SOFTWARE within sixty (60) calendar days after the loss occurred.

The RECIPIENT must submit the specifications of the proposed replacement equipment and/or software to GRANTOR prior to purchasing or implementation, in case the RECIPIENT proposes using existing equipment or software. GRANTOR reserves the right to reject the proposed replacement equipment or software if GRANTOR determines that it will not sufficiently meet the capabilities or specifications of the original equipment or software. If the replacement equipment is not approved by GRANTOR prior to purchasing or implementation, the RECIPIENT is still liable for loss coverage should the equipment not meet the approval of GRANTOR.

Should the RECIPIENT elect not to replace equipment due to a loss, GRANTOR will consider the RECIPIENT in breach of this AGREEMENT and GRANTOR may terminate this AGREEMENT subject to Section 21, ***AGREEMENT Termination***, and may exercise any other remedy available by law.

## **6. Method and Terms of Reimbursement**

Funds will be transferred to RECIPIENT on a cost reimbursement basis upon receipt and approval of a Reimbursement Request Form showing cumulative expenditures by line item. Items to be reported are; dollar amount requested, name of project worked on and project status compared to timeline submitted, if applicable. The RECIPIENT will be responsible for paying vendors associated with this project, when applicable. GRANTOR will reimburse expenses to RECIPIENT using a warrant, transfer, or by direct deposit of BTOP II funds. Method of payment will be at the discretion of GRANTOR and the RECIPIENT will allow thirty (30) calendar days for completion of payment of funds after GRANTOR's receipt of a Reimbursement Request Form. Any unspent funds associated with this AGREEMENT will be refunded to GRANTOR at completion of stated AGREEMENT term. Final payment for this AGREEMENT will be released upon receipt of any final reporting requirements which are yet to be determined, if applicable.

## **7. Reporting and Compliance Requirements**

Payments by GRANTOR to the RECIPIENT shall be in strict compliance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (2 CFR 225 A-87) and shall adhere to the Federal Cash Management Improvement Act (CMIA) and comply with guidelines of the BTOP II grant.

In addition the Recovery Act specifically provides that funds may not be used by any state or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

The RECIPIENT must be prepared to track and report on the specific outcomes and benefits attributable to use of Recovery Act funds. Funds associated with this AGREEMENT shall only be used to reimburse the RECIPIENT for the purposes set forth on Section 3 of this AGREEMENT. The RECIPIENT must comply with all applicable Federal and State policies and procedures, and requirements related to Recovery Act and BTOP II monies.

## **8. Printed Material**

It is agreed that any report or printed matter completed as a part of this AGREEMENT is a work for hire and shall not be copyrighted by the RECIPIENT. Any publicly printed material under this AGREEMENT shall state "This project was supported by ARRA funding in the form of a grant from the U.S. Department of Commerce and the Governor's Office of Economic Recovery."

## **9. Documents Incorporated by Reference**

Incorporation by Reference into AGREEMENT as if fully set forth herein:

**Title XIV of the American Recovery and Reinvestment Act (ARRA) of 2009**, known as the State Fiscal Stabilization Fund (Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115, as amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524), as administered by the U.S. Department of Education.

(Included as **Attachment 1** and accessible at:

<http://www2.ed.gov/policy/gen/leg/recovery/statutory/stabilization-fund.doc>).

It is the RECIPIENT's responsibility to obtain the most current revisions of this document.

## **10. Fiscal Responsibility**

Should the project not be completed, be partially completed, or be completed at a lower cost than the original budget called for, the amount reimbursed to RECIPIENT shall be for only the amount of dollars actually spent by the RECIPIENT. For any funds received under this AGREEMENT for which expenditure is disallowed in an audit exception by the GRANTOR, the State of Arizona, or Federal government, the RECIPIENT shall reimburse said funds directly to the GRANTOR immediately within fifteen (15) business days, exclusive of state holidays.

## **11. Records and Audit Trails**

Under A.R.S. § 35-214 and A.R.S. § 35-215, the RECIPIENT shall retain all data and other "records" relating to the performance of the AGREEMENT for a period of five (5) years after the closing of the federal grant. The RECIPIENT is subject to all audit oversight policies and procedures established by GRANTOR and/or the State of Arizona. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **12. Amendments**

This AGREEMENT may be modified, altered or amended only in writing signed by, or on behalf of, both parties.

## **13. Arbitration**

This AGREEMENT is subject to arbitration to the extent required by A.R.S. § 12-1518, and any such proceeding shall be held in Phoenix, Maricopa County, Arizona.

## **14. Cancellation for Conflict of Interest**

This AGREEMENT is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are herein incorporated by reference.

## **15. Non-Discrimination**

The RECIPIENT shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the American with Disabilities Act. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **16. Federal Immigration and Nationality Act**

The RECIPIENT shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the AGREEMENT. Further, the RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of the AGREEMENT. The State shall retain the right to perform random audits of the RECIPIENT's and subcontractors' records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the RECIPIENT and/or any subcontractor be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the AGREEMENT for default and suspension and/or debarment of the RECIPIENT.

## **17. E-Verify Requirements**

In accordance with A.R.S. § 41-4401, the RECIPIENT warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **18. Scrutinized Business**

In accordance with A.R.S. § 35-391.06 and A.R.S. § 35-393.06, the RECIPIENT certifies that the RECIPIENT does not have scrutinized business operations in Sudan or Iran. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **19. Renewal**

This AGREEMENT will and shall not be renewed. Additionally, this AGREEMENT shall not bind nor purport to bind GRANTOR and/or the State of Arizona for any contractual commitment in excess of the original AGREEMENT period or amount. The AGREEMENT will terminate on the TERMINATION DATE and GRANTOR reserves the right to cancel prior to the TERMINATION DATE based on the cancellation criteria set forth in this AGREEMENT.

## **20. Indemnification**

Each party (as "**Indemnitor**") agrees to indemnify, defend, and hold harmless the other party (as "**Indemnitee**") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "**Claims**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

## **21. AGREEMENT Termination**

### **A. Termination for Cause**

GRANTOR reserves the right to cancel the whole or any part of the AGREEMENT due to failure of the RECIPIENT to carry out any term or condition of the AGREEMENT or failure to make satisfactory progress in performing this AGREEMENT.

If GRANTOR determines there is cause for cancellation, GRANTOR shall issue a written ten (10) day notice of default to the RECIPIENT and GRANTOR may cancel the AGREEMENT. If

GRANTOR cancels AGREEMENT pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

## **B. Termination for Non-Availability of Funds**

Obligations by GRANTOR for acquisition of equipment and software is conditioned upon the availability of funds appropriated or allocated for such obligations. If funds are not allocated and available for the continuance of this AGREEMENT, either party may terminate this AGREEMENT at the end of the period for which funds remain available. No liability shall accrue to GRANTOR or the State of Arizona in the event this provision is exercised, and neither GRANTOR nor the State of Arizona will be obligated or liable for any future commitment, obligations, or for any damages as a result of termination under this paragraph.

## **C. Termination by Notice**

GRANTOR reserves the right to terminate the AGREEMENT at any time, for the convenience of GRANTOR, without penalty or recourse, by giving written notice to the RECIPIENT at least thirty (30) days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the RECIPIENT under the AGREEMENT shall, at the option of GRANTOR, become property of the State of Arizona. The RECIPIENT shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination.

## **22. Entire Agreement**

This AGREEMENT contains the entire agreement and understanding of the parties hereto. There are no representations or provisions other than those contained herein, and this AGREEMENT supersedes all prior agreements between the parties, whether written or oral, pertaining to the same subject matter of this AGREEMENT.

## **23. No Waiver**

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

## **24. Partial Invalidity**

The parties agree that, should any part of this AGREEMENT be held to be invalid or void, the remainder of the AGREEMENT shall remain in full force and effect and shall be binding upon the parties.

## **25. Governing Law**

This AGREEMENT is made under, and shall be governed and interpreted by the laws of the State of Arizona. In the event of litigation arising out of, or relating to, this AGREEMENT, the RECIPIENT, GRANTOR, and the State of Arizona hereby stipulate to the exclusive jurisdiction and venue of the Maricopa County Superior Court in Phoenix, Arizona.

## 26. Counterparts

This AGREEMENT may be executed in any number of duplicate originals, photocopies or facsimiles, all of which (once each party has executed at least one such duplicate original, photocopy, or facsimile) will constitute one and the same document.

## 27. Interpretation

This AGREEMENT is not to be construed or interpreted for or against either of the parties on the grounds of sole or primary authorship or draftsmanship.

## 28. Paragraph Headings

The paragraph headings in this AGREEMENT are for convenience or reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

## 29. Notices

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this AGREEMENT, unless otherwise noted, shall be delivered in person, fax, email, or sent by United States Mail, postage prepaid, to the parties at their respective addresses as set forth immediately below:

**RECIPIENT:**

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

**GRANTOR:**

**Arizona State Library,  
Archive and Public Records**  
1700 W. Washington, Suite 200  
Phoenix, AZ 85007  
FAX : (602) 256-7983  
Attn.: Laura Stone

*With copy to:*

**GUST ROSENFELD, P.L.C.**  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
FAX: (602) 254-4878  
Attn: Andrew J. McGuire, Esq.

Any such notices or other communications shall be deemed received based on any one of the following criteria:

- A. Upon being physically delivered to the party;
- B. Three business days after being placed in the U.S. Mail, properly addressed, and with sufficient postage;
- C. The following business day after being given to a duly recognized overnight delivery service, with the person sending 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.

### 30. Authority to Execute this AGREEMENT

Each individual executing this AGREEMENT on behalf of the RECIPIENT and GRANTOR represents and warrants that he or she is duly authorized to execute this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto agree to execute this AGREEMENT.

**RECIPIENT:**

**City of Avondale**  
11465 W Civic Center Dr  
Avondale, AZ 85323

signature

Charles P. McClendon  
City Manager

DATE: \_\_\_\_ / \_\_\_\_ / 2012

**GRANTOR::**

**Arizona State Library,  
Archive and Public Records**  
1700 W. Washington, Suite 200  
Phoenix, AZ 85007

signature

Jim Drake  
Assistant Secretary of State

DATE: \_\_\_\_ / \_\_\_\_ / 2012

Any ***Inventory Receipt Form*** completed by RECIPIENT shall be delivered in person or sent by the United States Postal Service to the address below.

**Arizona State Library**

1700 W. Washington  
Suite 200  
Phoenix, AZ 85007

**Attn.: Chris Guerra**

Email: [cguerra@lib.az.us](mailto:cguerra@lib.az.us)

Telephone: ( 602 ) 926 - 3811

## **ATTACHMENT 1**

**American Recovery and Reinvestment Act of 2009  
Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115**

**As amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009;  
Division A, Section 523; March 11, 2009; 123 Stat. 524**

Below are excerpts from Public Law 111-5, as amended by Public Law 111-8, that relate to the State Fiscal Stabilization Fund administered by the U.S. Department of Education. The U.S. Department of Education has posted this information as a courtesy to readers. The official (and controlling) texts of this material will be printed in those two Public Laws.

**DIVISION A, TITLE XIV – STATE FISCAL STABILIZATION FUND  
DEPARTMENT OF EDUCATION  
STATE FISCAL STABILIZATION FUND**

**GENERAL PROVISIONS – THIS TITLE**

**SEC. 14001. ALLOCATIONS.**

(a) Outlying Areas. From the amount appropriated to carry out this title, the Secretary of Education shall first allocate up to one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior, for activities consistent with this title under such terms and conditions as the Secretary may determine.

(b) Administration and Oversight. The Secretary may, in addition, reserve up to \$14,000,000 for administration and oversight of this title, including for program evaluation.

(c) Reservation for Additional Programs. After reserving funds under subsections (a) and (b), the Secretary shall reserve \$5,000,000,000 for grants under sections 14006 and 14007.

(d) State Allocations. After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

- (1) 61 percent on the basis of their relative population of individuals aged 5 through 24.
- (2) 39 percent on the basis of their relative total population.

(e) State Grants. From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) Reallocation. The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not award as subgrants or otherwise commit within two years of receiving such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

**SEC. 14002. STATE USES OF FUNDS.**

(a) Education Fund.

(1) In general. For each fiscal year, the Governor shall use 81.8 percent of the State's allocation under section 14001(d) for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) Restoring state support for education.

(A) In general. The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's primary elementary and secondary education funding formulae, that is needed—

(I) to restore, in each of fiscal years 2009, 2010, and 2011, the level of State support provided through such formulae to the greater of the fiscal year 2008 or fiscal year 2009 level; and

(II) where applicable, to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments, if such increases were enacted pursuant to State law prior to October 1, 2008.

(ii) to provide, in each of fiscal years 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the State that is needed to restore State support for such institutions (excluding tuition and fees paid by students) to the greater of the fiscal year 2008 or fiscal year 2009 level.

(B) Shortfall. If the Governor determines that the amount of funds available under paragraph (1) is insufficient to support, in each of fiscal years 2009, 2010, and 2011, public elementary, secondary, and higher education at the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(C) Fiscal year. For purposes of this paragraph, the term "fiscal year" shall have the meaning given such term under State law.

(3) Subgrants to improve basic programs operated by local educational agencies.--After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) Other Government Services.

(1) In general. The Governor shall use 18.2 percent of the State's allocation under section 14001(d) for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(2) Availability to all institutions of higher education. A Governor shall not consider the type or mission of an institution of higher education, and shall consider any institution for funding for modernization, renovation, and repairs within the State that—

(A) qualifies as an institution of higher education, as defined in subsection 14013(3); and

(B) continues to be eligible to participate in the programs under title IV of the Higher Education Act of 1965.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14003. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.**

(a) In General. local educational agency that receives funds under this title may use he funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) ("SEA"), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ("IDEA"), the Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ("the Perkins Act") or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. A local educational agency may not use funds received under this title for—

(1) payment of maintenance costs;

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) purchase or upgrade of vehicles; or

(4) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.**

(a) In General. A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students, or for modernization, renovation, or repair of institution of higher education facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. An institution of higher education may not use funds received under this title to increase its endowment.

(c) Additional Prohibition. No funds awarded under this title may be used for—

(1) the maintenance of systems, equipment, or facilities;

(2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or

(3) modernization, renovation, or repair of facilities—

(A) used for sectarian instruction or religious worship; or

(B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

**SEC. 14005. STATE APPLICATIONS.**

(a) In General. The Governor of a State desiring to receive an allocation under section 14001(d) shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Application. In such application, the Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and, in such cases, what amount will be used to meet such requirements.

(c) Incentive Grant Application. The Governor of a State seeking a grant under section 14006 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d), and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;

(3) describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies; and

(5) include a plan for evaluating the State's progress in closing achievement gaps.

(d) Assurances. An application under subsection (b) shall include the following assurances:

(1) Maintenance of effort.

(A) Elementary and secondary education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) Higher education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.

(2) Achieving equity in teacher distribution. The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

(3) Improving collection and use of data. The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) Standards and assessments. The State—

(A) will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act.

(5) Supporting struggling schools. The State will ensure compliance with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA with respect to schools identified under such sections.

## **SEC. 14006. STATE INCENTIVE GRANTS.**

(a) In General.

(1) Reservation. From the total amount reserved under section 14001(c) that is not used for section 14007, the Secretary may reserve up to 1 percent for technical assistance to States to assist them in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(2) Remainder. Of the remaining funds, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(b) Basis for Grants. The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 14005 and such other criteria as the Secretary determines appropriate, which may include a State's need for assistance to help meet the objective of paragraphs (2), (3), (4), and (5) of section 14005(d).

(c) Subgrants to Local Educational Agencies. Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

#### **SEC. 14007. INNOVATION FUND.**

(a) In General.

(1) Eligible entities. For the purposes of this section, the term "eligible entity" means—

- (A) a local educational agency; or
- (B) a partnership between a nonprofit organization and—
  - (i) one or more local educational agencies; or
  - (ii) a consortium of schools.

(2) Program established. From the total amount reserved under section 14001(c), the Secretary may reserve up to \$650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) Basis for awards. The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

- (A) to allow such eligible entities to expand their work and serve as models for best practices;
- (B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and
- (C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) Eligibility. To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of the ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

(c) Special Rule. In the case of an eligible entity that includes a nonprofit organization, the eligible entity shall be considered to have met the eligibility requirements of paragraphs (1), (2), (3) of subsection (b) if such nonprofit organization has a record of meeting such requirements.

#### **SEC. 14008. STATE REPORTS.**

For each year of the program under this title, a State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) a description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

**SEC. 14009. EVALUATION.**

The Comptroller General of the United States shall conduct evaluations of the programs under sections 14006 and 14007 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

**SEC. 14010. SECRETARY'S REPORT TO CONGRESS.**

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of State reports, that evaluates the information provided in the State reports under section 14008 and the information required by section 14005(b)(3) including State-by-State information.

**SEC. 14011. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.**

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

**SEC. 14012. FISCAL RELIEF.**

(a) In General. For the purpose of relieving fiscal burdens on States and local educational agencies that have experienced a precipitous decline in financial resources, the Secretary of Education may waive or modify any requirement of this title relating to maintaining fiscal effort.

(b) Duration. A waiver or modification under this section shall be for any of fiscal year 2009, fiscal year 2010, or fiscal year 2011, as determined by the Secretary.

(c) Criteria. The Secretary shall not grant a waiver or modification under this section unless the Secretary determines that the State receiving such waiver or modification will not provide for elementary, secondary, and public higher education, for the fiscal year under consideration, a smaller percentage of the total revenues available to the State than the percentage provided for such purpose in the preceding fiscal year.

(d) Maintenance of Effort. Upon prior approval from the Secretary, a State or local educational agency that receives funds under this title may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), administered by the Secretary.

(e) Subsequent Level of Effort. Notwithstanding (d), the level of effort required by a State or local educational agency for the following fiscal year shall not be reduced.

**SEC. 14013. DEFINITIONS.**

Except as otherwise provided in this title, as used in this title—

(1) the terms "elementary education" and "secondary education" have the meaning given such terms under State law;

(2) the term "high-need local educational agency" means a local educational agency—

(A) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(B) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line;

(3) the term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) the term "Secretary" means the Secretary of Education;

(5) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(6) any other term used that is defined in section 9101 of the ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

[END]

EXHIBIT D  
TO  
RESOLUTION NO. 3027-112

[Western Avenue VWW Agreement]

See following pages.

**GRANT IN KIND**  
**between**  
**ARIZONA STATE LIBRARY, ARCHIVES AND PUBLIC RECORDS**  
**and**  
**City of Avondale**

This Grant In Kind (“**AGREEMENT**”) is entered into by and between the State of Arizona, the Arizona State Library, Archives and Public Records, **ASLAPR**, a division of the Arizona Secretary of State (“**GRANTOR**”), located at 1700 West Washington, Suite 200, Phoenix, Arizona, 85007 and **City of Avondale** (“**RECIPIENT**”), located at 11465 W Civic Center Dr, Avondale, AZ 85323.

This **AGREEMENT** is entered pursuant to A.R.S. §41-2701 et seq., authorizing the State of Arizona, Governor’s Office of Economic Recovery, contracting with ASLAPR, to execute and administer a specific federal grant, American Recovery and Reinvestment Act (ARRA) - PCC, AZ Job Help Hubs @ Your Library, CFDA number 11.557, award number 04-41-B10521, awarded July 2, 2010, herein referred to as Broadband Technology Opportunities Program Round 2 (“**BTOP II**”).

Whereas, A.R.S. § 41-151.05 and A.R.S. § 41-151.06 authorizes ASLAPR to execute and administer contracts. Whereas, A.R.S. § 9-420 authorizes RECIPIENT to enter into agreements with ASLAPR.

Therefore, it is agreed that GRANTOR shall provide equipment and funding to the RECIPIENT for implementation of Virtual Workforce Workstation (“**VWW**”) as defined under BTOP II and as established herein:

## **1. Purpose of the Agreement**

The purpose of this **AGREEMENT** is to transfer ownership of the equipment and all responsibilities thereof to the RECIPIENT, have the RECIPIENT install and implement the equipment at **Sam Garcia Western Avenue Library** (“**PARTICIPATING LIBRARY**”), located at 495 East Western Avenue, Avondale, AZ 85323-2349,, have the RECIPIENT meet the programmatic objectives of the BTOP II Program as established by GRANTOR, and have RECIPIENT report on the utilization of this equipment, as specified by the BTOP II grant, until the **TERMINATION DATE** or until all grant requirements are met as required by GRANTOR.

### **A. The BTOP II Grant**

The goal of the BTOP II grant is to address the increased demand by job-seekers on local libraries as a local resource where patrons can utilize internet access to search for or apply to jobs and also obtain or improve job-related skills. The BTOP II implementation has two components: (1) Job Help Hubs (“**JHH**”) and (2) Virtual Workforce Workstations (“**VWW**”). Together these are dubbed the Arizona Job Assistance Centers (“**AzJAC**”) project .

The JHH is a portable computer lab dedicated to assisting job seekers with skill assessments, skill development and adult education. At least one JHH will be located in each county and within those counties located in communities determined to have the greatest need. Although the JHH is delivered and associated with a specific library, the BTOP II grant encourages and supports utilization at venues other than the target library, such as community centers or faith-based sites, provided the use is in line with the job-seeker and adult education goals of the BTOP II grant.

The VWW is a single workstation dedicated to job seekers for job search and placement assistance, skill assessments, development of individual employment plans, and career planning. There are approximately 200 public libraries across Arizona receiving VWW as part of the BTOP II grant.

Pursuant to the goals of the BTOP II grant, **GRANTOR will purchase the computer equipment on the RECIPIENT's behalf and deliver this equipment to the RECIPIENT.** The RECIPIENT agrees to take ownership of the equipment and agrees to use the equipment as specified and report on that use as specified by GRANTOR in accordance with the BTOP II grant.

## 2. Effective Date/Term of Agreement

The term of the AGREEMENT shall commence on **January 1, 2012** ("EFFECTIVE DATE"), and shall remain in effect until June 28, 2013 ("TERMINATION DATE"), contingent upon federal funding availability, unless terminated or canceled as provided herein.

## 3. General Provisions

The parties mutually agree as follows:

### A. Type of BTOP II RECIPIENT AGREEMENT

**This AGREEMENT applies to a VWW implementation.**

### B. Equipment and Software List

#### Hardware List:

<b>SIGNIFICANT ASSETS for VWW Recipients:</b>			
<u>Quantity</u>	<u>Description</u>	<u>Unit Cost</u>	<u>Approximate Subtotal Value</u>
1	Desktop SFF; Dell Optiplex 780	\$ 855	\$ 855
1	Monitor: Dell E2211H, Widescreen, 21.5 in LCD		
1	All-in-one monochrome laser printer; Xerox Workcentre 3210N, C/P/S/F	\$ 245	\$ 245
<b>Total Approximate Value:</b>			<b>\$ 1,100</b>

#### Software List :

<u>Quantity</u>	<u>Description</u>	<u>Approximate Unit Cost</u>	<u>Not-To-Exceed Value</u>
1	Microsoft Office Standard (see <b>Software Note 1 below</b> )	\$ 350	\$ 400 each
1	Adobe Acrobat Standard (see <b>Software Note 1 below</b> )	\$ 250	\$ 300 each

**Software Note 1:** If the installed version of Microsoft Office is v2010 or later, then Adobe Acrobat Standard is not a requirement. For Office 2007 an add-in for creating Adobe documents must be installed. For versions of Office 2007 or older, Adobe Acrobat Standard would be a requirement and would have to be version 9 or 10.

### C. Method and Terms of Receipt of Equipment

1. Upon receipt of the equipment at the location specified by the RECIPIENT, or their designee, the RECIPIENT agrees to take ownership of the equipment specified in Section 3.B, **Equipment and Software List**.
2. RECIPIENT, or their designee, agrees to notify GRANTOR within 5 business days of the receipt of any equipment for the BTOP II grant. Upon receiving notification of delivery, GRANTOR will, within 5 business days, provide by Email to the person designated by the RECIPIENT, an **Inventory Receipt Form** listing the items received.
3. The RECIPIENT, or their designee, shall complete and sign the **Inventory Receipt Form** and deliver to GRANTOR at the address provided at the bottom of this AGREEMENT.
4. Any incidental items supplied with the above equipment, such as USB printer cables, network cables, supplies (if any), or other non-essential items such as laptop cases, are not listed due to their relatively low value.
5. Any other equipment that may be supplied by GRANTOR as part of the BTOP II grant will be covered under separate agreement.

### D. Software Requirements for BTOP II Computers

As part of the BTOP II grant, the items in the SOFTWARE LIST in Section 3.B, **Equipment and Software List**, are mandated to be installed on each computer listed in Section 3.B. The RECIPIENT is eligible to be reimbursed for the actual cost to acquire these software licenses should they elect to utilize the grant to cover such costs up to the "Not-To-Exceed Value" amount listed in Section 3.B. Software maintenance for the items in Section 3.B will be covered up to the end of the grant period, June 30, 2013. **In order to be eligible for reimbursement by GRANTOR, the RECIPIENT or the PARTICIPATING LIBRARY must have acquired, installed, and requested reimbursement for the software listed in Section 3.B prior to June 29, 2012.** The RECIPIENT shall comply with all GRANTOR reimbursement requirements, including, but not limited to, all supporting documentation required by GRANTOR.

### E. Maintenance of Equipment and Software

#### 1. Hardware Maintenance:

For the SIGNIFICANT ASSETS listed in Section 3.B, **Equipment and Software List**, GRANTOR will also purchase warranties that extend up to, or beyond, the end of the grant period, June 30, 2013. GRANTOR will have no obligation beyond June 30, 2013, to provide warranties and/or maintenance for any of the items referenced in this AGREEMENT.

#### 2. Software Maintenance:

GRANTOR has no obligation to provide software maintenance beyond that provided as part of the initial software acquisition of the software specified in Section 3.B, **Equipment and Software List**, and up to the end of the grant period, June 30, 2013.

GRANTOR makes no promises or warranties as to the actual cost the RECIPIENT or the PARTICIPATING LIBRARY will incur to acquire the software listed in Section 3.B or the accuracy of the estimated value provided in Section 3.B.

## 4. GRANTOR's and RECIPIENT's Responsibilities

### A. RECIPIENT, or their designee, agrees to:

1. Install and implement the equipment referenced in Section 3.B, *Equipment and Software*, within 45 days of either (a) receipt of all listed equipment, or (b) EFFECTIVE DATE, whichever is the most recent, and according to the utilization requirements of the BTOP II grant as established by GRANTOR.
2. Acquire and install the software on each computer provided as specified in Section 3.B, *Equipment and Software List*, within 30 days of implementation as per Section 4.A.1 above.
3. Monitor and document use of the VWW equipment whether being utilized by the RECIPIENT, a designee of the RECIPIENT, or a designee of GRANTOR, or for any other use as permitted by the terms and conditions of the BTOP II grant.
4. Provide monthly utilization reports as required by GRANTOR. Upon generating a duly signed AGREEMENT, GRANTOR will consult with the PARTICIPATING LIBRARY on the best practices for gathering utilization metrics. However, there are minimum requirements for the BTOP II grant that the RECIPIENT must meet.
5. In consultation with GRANTOR, strive and aspire to maximize utilization of the VWW computer.

### B. GRANTOR agrees to:

1. Administer the AzJAC Project.
2. Provide a project manager.
3. Work closely with the RECIPIENT and/or the PARTICIPATING LIBRARY to assist in resolving any issues of space, connectivity, accessibility, designated use, maximizing utilization, and gathering metrics on utilization.
4. Act as the fiscal agent for the project.
5. Submit federal and state project reports.
6. Communicate project status with libraries, when applicable.

## 5. Responsibility for Equipment

GRANTOR and the State of Arizona are not responsible for and will not cover any items referenced in this AGREEMENT for loss or damage. GRANTOR recommends that the RECIPIENT and the PARTICIPATING LIBRARY include the equipment in their loss prevention programs and/or policies.

In the event of loss of any items listed in Section 3.B, *Equipment and Software List*, the RECIPIENT agrees to report the loss to GRANTOR within five (5) business days of the loss. Because the RECIPIENT has a contractual responsibility to continue to provide the services required by the BTOP II grant and report on the use of the equipment, regardless of the circumstances of the loss, the RECIPIENT agrees to replace any items listed in Section 3.B, *Equipment and Software List*, that are designated as either SIGNIFICANT ASSETS or SOFTWARE within sixty (60) calendar days after the loss occurred.

The RECIPIENT must submit the specifications of the proposed replacement equipment and/or software to GRANTOR prior to purchasing or implementation, in case the RECIPIENT proposes using existing equipment or software. GRANTOR reserves the right to reject the proposed replacement equipment or software if GRANTOR determines that it will not sufficiently meet the capabilities or specifications of the original equipment or software. If the replacement equipment is not approved by GRANTOR prior to purchasing or implementation, the RECIPIENT is still liable for loss coverage should the equipment not meet the approval of GRANTOR.

Should the RECIPIENT elect not to replace equipment due to a loss, GRANTOR will consider the RECIPIENT in breach of this AGREEMENT and GRANTOR may terminate this AGREEMENT subject to Section 21, ***AGREEMENT Termination***, and may exercise any other remedy available by law.

## **6. Method and Terms of Reimbursement**

Funds will be transferred to RECIPIENT on a cost reimbursement basis upon receipt and approval of a Reimbursement Request Form showing cumulative expenditures by line item. Items to be reported are; dollar amount requested, name of project worked on and project status compared to timeline submitted, if applicable. The RECIPIENT will be responsible for paying vendors associated with this project, when applicable. GRANTOR will reimburse expenses to RECIPIENT using a warrant, transfer, or by direct deposit of BTOP II funds. Method of payment will be at the discretion of GRANTOR and the RECIPIENT will allow thirty (30) calendar days for completion of payment of funds after GRANTOR's receipt of a Reimbursement Request Form. Any unspent funds associated with this AGREEMENT will be refunded to GRANTOR at completion of stated AGREEMENT term. Final payment for this AGREEMENT will be released upon receipt of any final reporting requirements which are yet to be determined, if applicable.

## **7. Reporting and Compliance Requirements**

Payments by GRANTOR to the RECIPIENT shall be in strict compliance with OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments (2 CFR 225 A-87) and shall adhere to the Federal Cash Management Improvement Act (CMIA) and comply with guidelines of the BTOP II grant.

In addition the Recovery Act specifically provides that funds may not be used by any state or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

The RECIPIENT must be prepared to track and report on the specific outcomes and benefits attributable to use of Recovery Act funds. Funds associated with this AGREEMENT shall only be used to reimburse the RECIPIENT for the purposes set forth on Section 3 of this AGREEMENT. The RECIPIENT must comply with all applicable Federal and State policies and procedures, and requirements related to Recovery Act and BTOP II monies.

## **8. Printed Material**

It is agreed that any report or printed matter completed as a part of this AGREEMENT is a work for hire and shall not be copyrighted by the RECIPIENT. Any publicly printed material under this AGREEMENT shall state "This project was supported by ARRA funding in the form of a grant from the U.S. Department of Commerce and the Governor's Office of Economic Recovery."

## **9. Documents Incorporated by Reference**

Incorporation by Reference into AGREEMENT as if fully set forth herein:

**Title XIV of the American Recovery and Reinvestment Act (ARRA) of 2009**, known as the State Fiscal Stabilization Fund (Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115, as amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009; Division A, Section 523; March 11, 2009; 123 Stat. 524), as administered by the U.S. Department of Education.

(Included as **Attachment 1** and accessible at:

<http://www2.ed.gov/policy/gen/leg/recovery/statutory/stabilization-fund.doc>).

It is the RECIPIENT's responsibility to obtain the most current revisions of this document.

## **10. Fiscal Responsibility**

Should the project not be completed, be partially completed, or be completed at a lower cost than the original budget called for, the amount reimbursed to RECIPIENT shall be for only the amount of dollars actually spent by the RECIPIENT. For any funds received under this AGREEMENT for which expenditure is disallowed in an audit exception by the GRANTOR, the State of Arizona, or Federal government, the RECIPIENT shall reimburse said funds directly to the GRANTOR immediately within fifteen (15) business days, exclusive of state holidays.

## **11. Records and Audit Trails**

Under A.R.S. § 35-214 and A.R.S. § 35-215, the RECIPIENT shall retain all data and other "records" relating to the performance of the AGREEMENT for a period of five (5) years after the closing of the federal grant. The RECIPIENT is subject to all audit oversight policies and procedures established by GRANTOR and/or the State of Arizona. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **12. Amendments**

This AGREEMENT may be modified, altered or amended only in writing signed by, or on behalf of, both parties.

## **13. Arbitration**

This AGREEMENT is subject to arbitration to the extent required by A.R.S. § 12-1518, and any such proceeding shall be held in Phoenix, Maricopa County, Arizona.

## **14. Cancellation for Conflict of Interest**

This AGREEMENT is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are herein incorporated by reference.

## **15. Non-Discrimination**

The RECIPIENT shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the American with Disabilities Act. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **16. Federal Immigration and Nationality Act**

The RECIPIENT shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the AGREEMENT. Further, the RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of the AGREEMENT. The State shall retain the right to perform random audits of the RECIPIENT's and subcontractors' records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the RECIPIENT and/or any subcontractor be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the AGREEMENT for default and suspension and/or debarment of the RECIPIENT.

## **17. E-Verify Requirements**

In accordance with A.R.S. § 41-4401, the RECIPIENT warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. § 23-214, Subsection A. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **18. Scrutinized Business**

In accordance with A.R.S. § 35-391.06 and A.R.S. § 35-393.06, the RECIPIENT certifies that the RECIPIENT does not have scrutinized business operations in Sudan or Iran. The RECIPIENT shall flow down this requirement to all subcontractors utilized during the term of this AGREEMENT.

## **19. Renewal**

This AGREEMENT will and shall not be renewed. Additionally, this AGREEMENT shall not bind nor purport to bind GRANTOR and/or the State of Arizona for any contractual commitment in excess of the original AGREEMENT period or amount. The AGREEMENT will terminate on the TERMINATION DATE and GRANTOR reserves the right to cancel prior to the TERMINATION DATE based on the cancellation criteria set forth in this AGREEMENT.

## **20. Indemnification**

Each party (as "**Indemnitor**") agrees to indemnify, defend, and hold harmless the other party (as "**Indemnitee**") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "**Claims**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

## **21. AGREEMENT Termination**

### **A. Termination for Cause**

GRANTOR reserves the right to cancel the whole or any part of the AGREEMENT due to failure of the RECIPIENT to carry out any term or condition of the AGREEMENT or failure to make satisfactory progress in performing this AGREEMENT.

If GRANTOR determines there is cause for cancellation, GRANTOR shall issue a written ten (10) day notice of default to the RECIPIENT and GRANTOR may cancel the AGREEMENT. If GRANTOR cancels AGREEMENT pursuant to this clause, the State reserves all rights or claims to damage for breach of contract.

## **B. Termination for Non-Availability of Funds**

Obligations by GRANTOR for acquisition of equipment and software is conditioned upon the availability of funds appropriated or allocated for such obligations. If funds are not allocated and available for the continuance of this AGREEMENT, either party may terminate this AGREEMENT at the end of the period for which funds remain available. No liability shall accrue to GRANTOR or the State of Arizona in the event this provision is exercised, and neither GRANTOR nor the State of Arizona will be obligated or liable for any future commitment, obligations, or for any damages as a result of termination under this paragraph.

## **C. Termination by Notice**

GRANTOR reserves the right to terminate the AGREEMENT at any time, for the convenience of GRANTOR, without penalty or recourse, by giving written notice to the RECIPIENT at least thirty (30) days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the RECIPIENT under the AGREEMENT shall, at the option of GRANTOR, become property of the State of Arizona. The RECIPIENT shall be entitled to receive just and equitable compensation for that work completed prior to the effective date of termination.

## **22. Entire Agreement**

This AGREEMENT contains the entire agreement and understanding of the parties hereto. There are no representations or provisions other than those contained herein, and this AGREEMENT supersedes all prior agreements between the parties, whether written or oral, pertaining to the same subject matter of this AGREEMENT.

## **23. No Waiver**

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

## **24. Partial Invalidity**

The parties agree that, should any part of this AGREEMENT be held to be invalid or void, the remainder of the AGREEMENT shall remain in full force and effect and shall be binding upon the parties.

## **25. Governing Law**

This AGREEMENT is made under, and shall be governed and interpreted by the laws of the State of Arizona. In the event of litigation arising out of, or relating to, this AGREEMENT, the RECIPIENT, ASLAPR, and the State of Arizona hereby stipulate to the exclusive jurisdiction and venue of the Maricopa County Superior Court in Phoenix, Arizona.

## 26. Counterparts

This AGREEMENT may be executed in any number of duplicate originals, photocopies or facsimiles, all of which (once each party has executed at least one such duplicate original, photocopy, or facsimile) will constitute one and the same document.

## 27. Interpretation

This AGREEMENT is not to be construed or interpreted for or against either of the parties on the grounds of sole or primary authorship or draftsmanship.

## 28. Paragraph Headings

The paragraph headings in this AGREEMENT are for convenience or reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this AGREEMENT or any of its provisions.

## 29. Notices

Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this AGREEMENT, unless otherwise noted, shall be delivered in person, fax, email, or sent by United States Mail, postage prepaid, to the parties at their respective addresses as set forth immediately below:

**RECIPIENT:**

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

**GRANTOR:**

**Arizona State Library,  
Archive and Public Records**  
1700 W. Washington, Suite 200  
Phoenix, AZ 85007  
FAX : (602) 256-7983  
Attn.: Laura Stone

*With copy to:*

**GUST ROSENFELD, P.L.C.**  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
FAX: (602) 254-4878  
Attn: Andrew J. McGuire, Esq.

Any such notices or other communications shall be deemed received based on any one of the following criteria:

- A. Upon being physically delivered to the party;
- B. Three business days after being placed in the U.S. Mail, properly addressed, and with sufficient postage;
- C. The following business day after being given to a duly recognized overnight delivery service, with the person sending 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.

### 30. Authority to Execute this AGREEMENT

Each individual executing this AGREEMENT on behalf of the RECIPIENT and GRANTOR represents and warrants that he or she is duly authorized to execute this AGREEMENT.

**IN WITNESS WHEREOF**, the parties hereto agree to execute this AGREEMENT:

**RECIPIENT:**

**City of Avondale**  
11465 W Civic Center Dr  
Avondale, AZ 85323

signature

Charles P. McClendon  
City Manager

DATE: \_\_\_\_ / \_\_\_\_ / 2012

**GRANTOR::**

**Arizona State Library,  
Archive and Public Records**  
1700 W. Washington, Suite 200  
Phoenix, AZ 85007

signature

Jim Drake  
Assistant Secretary of State

DATE: \_\_\_\_ / \_\_\_\_ / 2012

Any ***Inventory Receipt Form*** completed by RECIPIENT shall be delivered in person or sent by the United States Postal Service to the address below.

**Arizona State Library**

1700 W. Washington  
Suite 200  
Phoenix, AZ 85007

**Attn.: Chris Guerra**

Email: [cguerra@lib.az.us](mailto:cguerra@lib.az.us)

Telephone: ( 602 ) 926 - 3811

# **ATTACHMENT 1**

**American Recovery and Reinvestment Act of 2009  
Public Law 111-5 (H.R. 1), February 17, 2009; 123 Stat. 115**

**As amended by Public Law 111-8 (H.R. 1105), the Omnibus Appropriations Act, 2009;  
Division A, Section 523; March 11, 2009; 123 Stat. 524**

Below are excerpts from Public Law 111-5, as amended by Public Law 111-8, that relate to the State Fiscal Stabilization Fund administered by the U.S. Department of Education. The U.S. Department of Education has posted this information as a courtesy to readers. The official (and controlling) texts of this material will be printed in those two Public Laws.

**DIVISION A, TITLE XIV – STATE FISCAL STABILIZATION FUND  
DEPARTMENT OF EDUCATION  
STATE FISCAL STABILIZATION FUND**

**GENERAL PROVISIONS – THIS TITLE**

**SEC. 14001. ALLOCATIONS.**

(a) Outlying Areas. From the amount appropriated to carry out this title, the Secretary of Education shall first allocate up to one-half of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior, for activities consistent with this title under such terms and conditions as the Secretary may determine.

(b) Administration and Oversight. The Secretary may, in addition, reserve up to \$14,000,000 for administration and oversight of this title, including for program evaluation.

(c) Reservation for Additional Programs. After reserving funds under subsections (a) and (b), the Secretary shall reserve \$5,000,000,000 for grants under sections 14006 and 14007.

(d) State Allocations. After carrying out subsections (a), (b), and (c), the Secretary shall allocate the remaining funds made available to carry out this title to the States as follows:

- (1) 61 percent on the basis of their relative population of individuals aged 5 through 24.
- (2) 39 percent on the basis of their relative total population.

(e) State Grants. From funds allocated under subsection (d), the Secretary shall make grants to the Governor of each State.

(f) Reallocation. The Governor shall return to the Secretary any funds received under subsection (e) that the Governor does not award as subgrants or otherwise commit within two years of receiving such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (d).

**SEC. 14002. STATE USES OF FUNDS.**

(a) Education Fund.

(1) In general. For each fiscal year, the Governor shall use 81.8 percent of the State's allocation under section 14001(d) for the support of elementary, secondary, and postsecondary education and, as applicable, early childhood education programs and services.

(2) Restoring state support for education.

(A) In general. The Governor shall first use the funds described in paragraph (1)—

(i) to provide the amount of funds, through the State's primary elementary and secondary education funding formulae, that is needed—

(I) to restore, in each of fiscal years 2009, 2010, and 2011, the level of State support provided through such formulae to the greater of the fiscal year 2008 or fiscal year 2009 level; and

(II) where applicable, to allow existing State formulae increases to support elementary and secondary education for fiscal years 2010 and 2011 to be implemented and allow funding for phasing in State equity and adequacy adjustments, if such increases were enacted pursuant to State law prior to October 1, 2008.

(ii) to provide, in each of fiscal years 2009, 2010, and 2011, the amount of funds to public institutions of higher education in the State that is needed to restore State support for such institutions (excluding tuition and fees paid by students) to the greater of the fiscal year 2008 or fiscal year 2009 level.

(B) Shortfall. If the Governor determines that the amount of funds available under paragraph (1) is insufficient to support, in each of fiscal years 2009, 2010, and 2011, public elementary, secondary, and higher education at the levels described in clauses (i) and (ii) of subparagraph (A), the Governor shall allocate those funds between those clauses in proportion to the relative shortfall in State support for the education sectors described in those clauses.

(C) Fiscal year. For purposes of this paragraph, the term "fiscal year" shall have the meaning given such term under State law.

(3) Subgrants to improve basic programs operated by local educational agencies.--After carrying out paragraph (2), the Governor shall use any funds remaining under paragraph (1) to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent year for which data are available.

(b) Other Government Services.

(1) In general. The Governor shall use 18.2 percent of the State's allocation under section 14001(d) for public safety and other government services, which may include assistance for elementary and secondary education and public institutions of higher education, and for modernization, renovation, or repair of public school facilities and institutions of higher education facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(2) Availability to all institutions of higher education. A Governor shall not consider the type or mission of an institution of higher education, and shall consider any institution for funding for modernization, renovation, and repairs within the State that—

(A) qualifies as an institution of higher education, as defined in subsection 14013(3); and

(B) continues to be eligible to participate in the programs under title IV of the Higher Education Act of 1965.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14003. USES OF FUNDS BY LOCAL EDUCATIONAL AGENCIES.**

(a) In General. local educational agency that receives funds under this title may use he funds for any activity authorized by the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) ("SEA"), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ("IDEA"), the Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.), or the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ("the Perkins Act") or for modernization, renovation, or repair of public school facilities, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. A local educational agency may not use funds received under this title for—

(1) payment of maintenance costs;

(2) stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public;

(3) purchase or upgrade of vehicles; or

(4) improvement of stand-alone facilities whose purpose is not the education of children, including central office administration or operations or logistical support facilities.

(c) Rule of Construction. Nothing in this section shall allow a local educational agency to engage in school modernization, renovation, or repair that is inconsistent with State law.

**SEC. 14004. USES OF FUNDS BY INSTITUTIONS OF HIGHER EDUCATION.**

(a) In General. A public institution of higher education that receives funds under this title shall use the funds for education and general expenditures, and in such a way as to mitigate the need to raise tuition and fees for in-State students, or for modernization, renovation, or repair of institution of higher education facilities that are primarily used for instruction, research, or student housing, including modernization, renovation, and repairs that are consistent with a recognized green building rating system.

(b) Prohibition. An institution of higher education may not use funds received under this title to increase its endowment.

(c) Additional Prohibition. No funds awarded under this title may be used for—

(1) the maintenance of systems, equipment, or facilities;

(2) modernization, renovation, or repair of stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public; or

(3) modernization, renovation, or repair of facilities—

(A) used for sectarian instruction or religious worship; or

(B) in which a substantial portion of the functions of the facilities are subsumed in a religious mission.

**SEC. 14005. STATE APPLICATIONS.**

(a) In General. The Governor of a State desiring to receive an allocation under section 14001(d) shall submit an application at such time, in such manner, and containing such information as the Secretary may reasonably require.

(b) Application. In such application, the Governor shall—

(1) include the assurances described in subsection (d);

(2) provide baseline data that demonstrates the State's current status in each of the areas described in such assurances; and

(3) describe how the State intends to use its allocation, including whether the State will use such allocation to meet maintenance of effort requirements under the ESEA and IDEA and, in such cases, what amount will be used to meet such requirements.

(c) Incentive Grant Application. The Governor of a State seeking a grant under section 14006 shall—

(1) submit an application for consideration;

(2) describe the status of the State's progress in each of the areas described in subsection (d), and the strategies the State is employing to help ensure that students in the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (20 U.S.C. 6311(b)(2)(C)(v)(II)) who have not met the State's proficiency targets continue making progress toward meeting the State's student academic achievement standards;

(3) describe the achievement and graduation rates (as described in section 1111(b)(2)(C)(vi) of the ESEA (20 U.S.C. 6311(b)(2)(C)(vi)) and as clarified in section 200.19(b)(1) of title 34, Code of Federal Regulations) of public elementary and secondary school students in the State, and the strategies the State is employing to help ensure that all subgroups of students identified in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2)) in the State continue making progress toward meeting the State's student academic achievement standards;

(4) describe how the State would use its grant funding to improve student academic achievement in the State, including how it will allocate the funds to give priority to high-need local educational agencies; and

(5) include a plan for evaluating the State's progress in closing achievement gaps.

(d) Assurances. An application under subsection (b) shall include the following assurances:

(1) Maintenance of effort.

(A) Elementary and secondary education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for elementary and secondary education at least at the level of such support in fiscal year 2006.

(B) Higher education. The State will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in fiscal year 2006.

(2) Achieving equity in teacher distribution. The State will take actions to improve teacher effectiveness and comply with section 1111(b)(8)(C) of the ESEA (20 U.S.C. 6311(b)(8)(C)) in order to address inequities in the distribution of highly qualified teachers between high- and low-poverty schools, and to ensure that low-income and minority children are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers.

(3) Improving collection and use of data. The State will establish a longitudinal data system that includes the elements described in section 6401(e)(2)(D) of the America COMPETES Act (20 U.S.C. 9871).

(4) Standards and assessments. The State—

(A) will enhance the quality of the academic assessments it administers pursuant to section 1111(b)(3) of the ESEA (20 U.S.C. 6311(b)(3)) through activities such as those described in section 6112(a) of such Act (20 U.S.C. 7301a(a));

(B) will comply with the requirements of paragraphs (3)(C)(ix) and (6) of section 1111(b) of the ESEA (20 U.S.C. 6311(b)) and section 612(a)(16) of the IDEA (20 U.S.C. 1412(a)(16)) related to the inclusion of children with disabilities and limited English proficient students in State assessments, the development of valid and reliable assessments for those students, and the provision of accommodations that enable their participation in State assessments; and

(C) will take steps to improve State academic content standards and student academic achievement standards consistent with section 6401(e)(1)(A)(ii) of the America COMPETES Act.

(5) Supporting struggling schools. The State will ensure compliance with the requirements of section 1116(b)(7)(C)(iv) and section 1116(b)(8)(B) of the ESEA with respect to schools identified under such sections.

## **SEC. 14006. STATE INCENTIVE GRANTS.**

(a) In General.

(1) Reservation. From the total amount reserved under section 14001(c) that is not used for section 14007, the Secretary may reserve up to 1 percent for technical assistance to States to assist them in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(2) Remainder. Of the remaining funds, the Secretary shall, in fiscal year 2010, make grants to States that have made significant progress in meeting the objectives of paragraphs (2), (3), (4), and (5) of section 14005(d).

(b) Basis for Grants. The Secretary shall determine which States receive grants under this section, and the amount of those grants, on the basis of information provided in State applications under section 14005 and such other criteria as the Secretary determines appropriate, which may include a State's need for assistance to help meet the objective of paragraphs (2), (3), (4), and (5) of section 14005(d).

(c) Subgrants to Local Educational Agencies. Each State receiving a grant under this section shall use at least 50 percent of the grant to provide local educational agencies in the State with subgrants based on their relative shares of funding under part A of title I of the ESEA (20 U.S.C. 6311 et seq.) for the most recent year.

#### **SEC. 14007. INNOVATION FUND.**

(a) In General.

(1) Eligible entities. For the purposes of this section, the term "eligible entity" means—

- (A) a local educational agency; or
- (B) a partnership between a nonprofit organization and—
  - (i) one or more local educational agencies; or
  - (ii) a consortium of schools.

(2) Program established. From the total amount reserved under section 14001(c), the Secretary may reserve up to \$650,000,000 to establish an Innovation Fund, which shall consist of academic achievement awards that recognize eligible entities that meet the requirements described in subsection (b).

(3) Basis for awards. The Secretary shall make awards to eligible entities that have made significant gains in closing the achievement gap as described in subsection (b)(1)—

- (A) to allow such eligible entities to expand their work and serve as models for best practices;
- (B) to allow such eligible entities to work in partnership with the private sector and the philanthropic community; and
- (C) to identify and document best practices that can be shared, and taken to scale based on demonstrated success.

(b) Eligibility. To be eligible for such an award, an eligible entity shall—

(1) have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (20 U.S.C. 6311(b)(2));

(2) have exceeded the State's annual measurable objectives consistent with such section 1111(b)(2) for 2 or more consecutive years or have demonstrated success in significantly increasing student academic achievement for all groups of students described in such section through another measure, such as measures described in section 1111(c)(2) of the ESEA;

(3) have made significant improvement in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and school leaders, as demonstrated with meaningful data; and

(4) demonstrate that they have established partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale.

(c) Special Rule. In the case of an eligible entity that includes a nonprofit organization, the eligible entity shall be considered to have met the eligibility requirements of paragraphs (1), (2), (3) of subsection (b) if such nonprofit organization has a record of meeting such requirements.

#### **SEC. 14008. STATE REPORTS.**

For each year of the program under this title, a State receiving funds under this title shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes—

(1) the uses of funds provided under this title within the State;

(2) how the State distributed the funds it received under this title;

(3) the number of jobs that the Governor estimates were saved or created with funds the State received under this title;

(4) tax increases that the Governor estimates were averted because of the availability of funds from this title;

(5) the State's progress in reducing inequities in the distribution of highly qualified teachers, in implementing a State longitudinal data system, and in developing and implementing valid and reliable assessments for limited English proficient students and children with disabilities;

(6) the tuition and fee increases for in-State students imposed by public institutions of higher education in the State during the period of availability of funds under this title, and a description of any actions taken by the State to limit those increases;

(7) the extent to which public institutions of higher education maintained, increased, or decreased enrollment of in-State students, including students eligible for Pell Grants or other need-based financial assistance; and

(8) a description of each modernization, renovation and repair project funded, which shall include the amounts awarded and project costs.

**SEC. 14009. EVALUATION.**

The Comptroller General of the United States shall conduct evaluations of the programs under sections 14006 and 14007 which shall include, but not be limited to, the criteria used for the awards made, the States selected for awards, award amounts, how each State used the award received, and the impact of this funding on the progress made toward closing achievement gaps.

**SEC. 14010. SECRETARY'S REPORT TO CONGRESS.**

The Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, not less than 6 months following the submission of State reports, that evaluates the information provided in the State reports under section 14008 and the information required by section 14005(b)(3) including State-by-State information.

**SEC. 14011. PROHIBITION ON PROVISION OF CERTAIN ASSISTANCE.**

No recipient of funds under this title shall use such funds to provide financial assistance to students to attend private elementary or secondary schools, unless such funds are used to provide special education and related services to children with disabilities, as authorized by the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

**SEC. 14012. FISCAL RELIEF.**

(a) In General. For the purpose of relieving fiscal burdens on States and local educational agencies that have experienced a precipitous decline in financial resources, the Secretary of Education may waive or modify any requirement of this title relating to maintaining fiscal effort.

(b) Duration. A waiver or modification under this section shall be for any of fiscal year 2009, fiscal year 2010, or fiscal year 2011, as determined by the Secretary.

(c) Criteria. The Secretary shall not grant a waiver or modification under this section unless the Secretary determines that the State receiving such waiver or modification will not provide for elementary, secondary, and public higher education, for the fiscal year under consideration, a smaller percentage of the total revenues available to the State than the percentage provided for such purpose in the preceding fiscal year.

(d) Maintenance of Effort. Upon prior approval from the Secretary, a State or local educational agency that receives funds under this title may treat any portion of such funds that is used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of any requirement to maintain fiscal effort under any other program, including part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 et seq.), administered by the Secretary.

(e) Subsequent Level of Effort. Notwithstanding (d), the level of effort required by a State or local educational agency for the following fiscal year shall not be reduced.

**SEC. 14013. DEFINITIONS.**

Except as otherwise provided in this title, as used in this title—

(1) the terms "elementary education" and "secondary education" have the meaning given such terms under State law;

(2) the term "high-need local educational agency" means a local educational agency—

(A) that serves not fewer than 10,000 children from families with incomes below the poverty line; or

(B) for which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line;

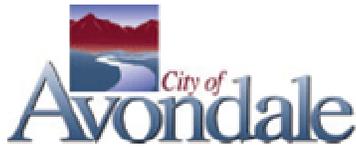
(3) the term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001);

(4) the term "Secretary" means the Secretary of Education;

(5) the term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(6) any other term used that is defined in section 9101 of the ESEA (20 U.S.C. 7801) shall have the meaning given the term in such section.

[END]



# CITY COUNCIL REPORT

**SUBJECT:**

Ordinance 1489-112 – Accepting the Dedication of a Waterline Easement from Avondale Elementary School District No. 44

**MEETING DATE:**

January 17, 2012

**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 a public waterline easement from Avondale Elementary School District No. 44 and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**BACKGROUND:**

On April 18, 2011 council adopted a resolution authorizing an Intergovernmental Agreement (IGA) between the City and Avondale Elementary School District No. 44 for the design, construction and installation of two (2) compound water meters. Installation of the water meters will provide accurate readings for both domestic uses on-site and fire flows. In addition, the location of where the school's private water system begins and where the City's service ends will be clearly identified.

Although the improvement plans associated with the new district building showed that the two (2) meter vaults would fit in the public right-of-way, there were unforeseen buried utility conflicts which required one (1) of the vaults to be relocated onto private property, within an easement granted to the City of Avondale.

**DISCUSSION:**

The new waterline easement is located on the east side of 3rd Avenue south of the southern entrance to the Michael Anderson Elementary School campus. The easement is 18 feet wide by 19 feet deep and is adjacent and east of right-of-way for 3rd Avenue approximately 797 feet south of Western Avenue (see attached map). The easement is sufficient for maintenance and operation of the meter, vault and appurtenances.

**BUDGETARY IMPACT:**

The proposed public waterline easement will have no budgetary impact on the City.

**RECOMMENDATION:**

Staff recommends that the City Council adopt an ordinance accepting a public waterline easement from Avondale Elementary School District No. 44 and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

Click to download

[📄 Vicinity Map](#)

[📄 Ordinance 1489-112](#)

# VICINITY MAP



CITY OF AVONDALE  
Michael Anderson Elementary

**ORDINANCE NO. 1489-112**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ACCEPTING THE DEDICATION OF A WATERLINE EASEMENT.

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

SECTION 1. An easement over  $\pm$  0.0079 acres of real property, being a portion of Maricopa County Assessor's Parcel No. 500-45-001A, generally located west of Central Avenue and south of Western Avenue, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, is hereby accepted by the City of Avondale from Avondale Elementary School District No. 44 of Maricopa County, Arizona, a political subdivision of the State of Arizona, for waterline purposes.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, January 17, 2012.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1489-112

[Legal Description and Map of Waterline Easement]

See following pages.

**EXHIBIT "A"**  
**AVONDALE DISTRICT OFFICE**  
**WATER VAULT EASEMENT**  
**LEGAL DESCRIPTION**

That portion of Tract A of Avondale Replatted as recorded in Book 33, Page 34, Records of Maricopa County, Arizona also 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, more particularly described as follows:

**BEGINNING** at the southwest corner of said Tract A;

Thence along the west line of said Tract A, North 01 degrees 22 minutes 27 seconds West a distance of 18.00 feet to a line that is parallel with and 18.00 feet north of the south line of said Tract A;

Thence leaving said west line and along said parallel line, North 88 degrees 37 minutes 33 seconds East a distance of 19.00 feet to a line that is parallel with and 19.00 feet east of the west line of said Tract A;

Thence along last said parallel line, South 01 degrees 22 minutes 27 seconds East a distance of 18.00 feet to the south line of said Tract A;

Thence along said south line, South 88 degrees 37 minutes 33 seconds West a distance of 19.00 feet to the **POINT OF BEGINNING**.

This description shown hereon is not to be used to violate subdivision regulation of the state, county and/or municipality or any other land division restrictions.

The above described parcel contains 342 Square Feet (0.0079 acres) more or less.

Prepared by: HilgartWilson  
1661 East Camelback Road  
Suite 275  
Phoenix, AZ  
Job No. 1092  
November 03, 2011



NORTHWEST CORNER  
SECTION 15, T.1N., R.1W.  
FOUND 3" CITY OF GOODYEAR  
BRASS CAP FLUSH

NORTH QUARTER CORNER  
SECTION 15, T.1N., R.1W.  
FOUND 3" MARICOPA COUNTY  
HIGHWAY DEPARTMENT  
BRASS CAP IN HAND HOLE

S89°43'24"E 2635.22'

**WESTERN AVENUE**

S89°43'24"E 863.97'

TRACT A  
AVONDALE REPLATTED  
BOOK 33, PAGE 34, M.C.R.



S01°23'26"E 772.18'

**CENTRAL AVENUE**

S01°23'28"E 2641.17'

S01°22'27"E 797.07'

**3RD AVENUE**

N88°37'33"E  
19.00'

N01°22'27"W  
18.00'

S88°37'33"W  
19.00'

P.O.B.

S01°22'27"E  
18.00'



N88°37'33"E 863.83'

SITE CONTAINS 342 S.F. OR  
0.0079 ACRES MORE OR LESS.

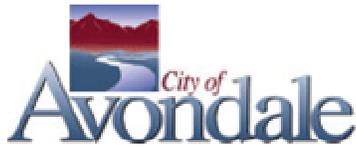
CENTER OF SECTION  
SECTION 15, T.1N., R.1W.  
FOUND 3" CITY OF AVONDALE  
BRASS CAP IN HAND HOLE

PROJ.#:	1092
DATE:	11/03/11
SCALE:	N.T.S.
DRAWN BY:	JDL
CHECKED BY:	ZH

**AVONDALE DISTRICT OFFICE**  
WATER VAULT EASEMENT  
AVONDALE, ARIZONA

**EXHIBIT "A"**

**hilgartwilson**  
ENGINEERS • PLANNERS • SURVEYORS  
1661 E. CAMELBACK RD., STE. 275  
PHOENIX, AZ 85016  
PH 602.490.0535 FAX 602.325.0161



# CITY COUNCIL REPORT

**SUBJECT:**

Ordinance 1477-112 - Accepting the Dedication of a Waterline Easement – Leisure Industries, Inc.

**MEETING DATE:**

January 17, 2012

**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 a public waterline easement on the east side of Dysart Road north of Riley Drive and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

**BACKGROUND:**

During routine backflow prevention program procedures, staff discovered a water meter vault located on private property just beyond the right-of-way on the east side of Dysart Road north of Riley Drive. The private property owner is Leisure Industries, Inc. A public waterline easement is needed for maintenance of the water facilities which serve the Wigwam Villa's Mobile Home Park located at 805 N. Dysart Road in Avondale.

**DISCUSSION:**

The new waterline easement is a 9 foot wide by 20 foot long strip perpendicular with and adjacent to the east right-of-way of Dysart Road about 800 feet north of Riley Drive. The easement is sufficient for maintenance and operation of the meter, vault and appurtenances.

**BUDGETARY IMPACT:**

There will be no budgetary impact due to the acquisition of the proposed easement.

**RECOMMENDATION:**

Staff recommends that the City Council adopt an ordinance accepting a public waterline easement on the east side of Dysart Road north of Riley Drive and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents.

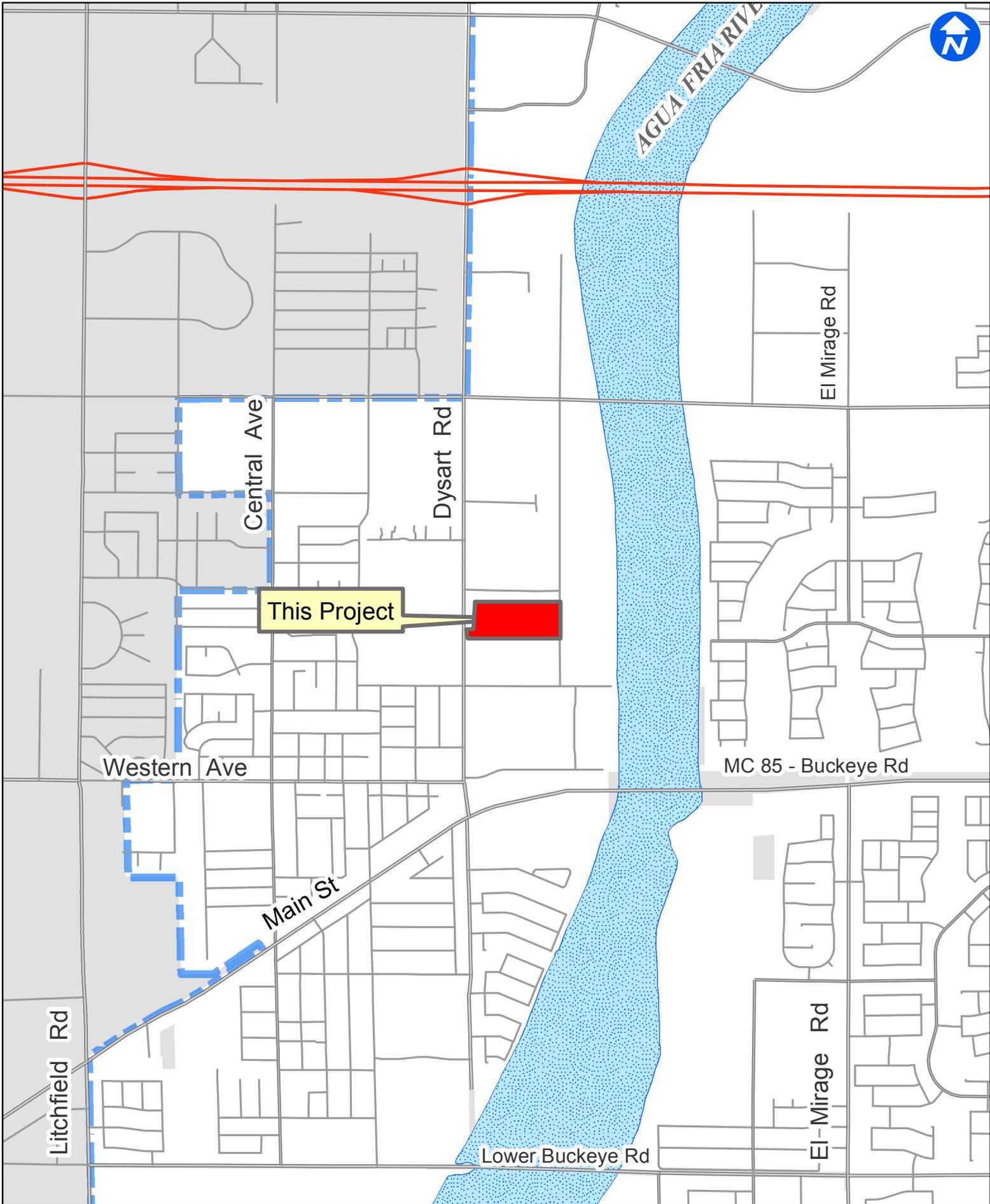
**ATTACHMENTS:**

Click to download

[📄 Vicinity Map](#)

[📄 Ordinance 1477-112](#)

# VICINITY MAP



**City of Avondale**  
**Wigwam Villas Mobile Home Park**

**ORDINANCE NO. 1477-112**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE,  
ARIZONA, ACCEPTING THE DEDICATION OF A WATERLINE  
EASEMENT.

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

SECTION 1. An easement over  $\pm$  0.0041 acres of real property, being a portion of Maricopa County Assessor's Parcel No. 500-22-008F, generally located east of Dysart Road and north of Riley Drive, as more particularly described and depicted in Exhibit 1, attached hereto and incorporated herein by reference, is hereby accepted by the City of Avondale from Leisure Industries, Inc., an Arizona corporation, for public utility purposes.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, January 17, 2012.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT 1  
TO  
ORDINANCE NO. 1477-112

[Legal description and map of Waterline Easement]

See following pages.

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**PUBLIC WATERLINE EASEMENT**

A PUBLIC WATERLINE EASEMENT, 20.00 FEET IN WIDTH, OVER THAT PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, THE CENTERLINE OF SAID EASEMENT, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 11;

THENCE SOUTH, ALONG THE WEST LINE OF SAID SECTION 11, A DISTANCE OF 527.80 FEET;

THENCE SOUTH 89 DEGREES 35 MINUTES 18 SECONDS EAST, PARALLEL TO THE SOUTH LINE OF THE NORTH 40 RODS OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING OF THE CENTERLINE OF SAID EASEMENT;

THENCE CONTINUING SOUTH 89 DEGREES 35 MINUTES 18 SECONDS EAST, ALONG THE CENTERLINE OF SAID EASEMENT, A DISTANCE OF 9.00 FEET TO THE POINT OF TERMINUS OF THE CENTERLINE OF SAID EASEMENT.

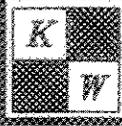
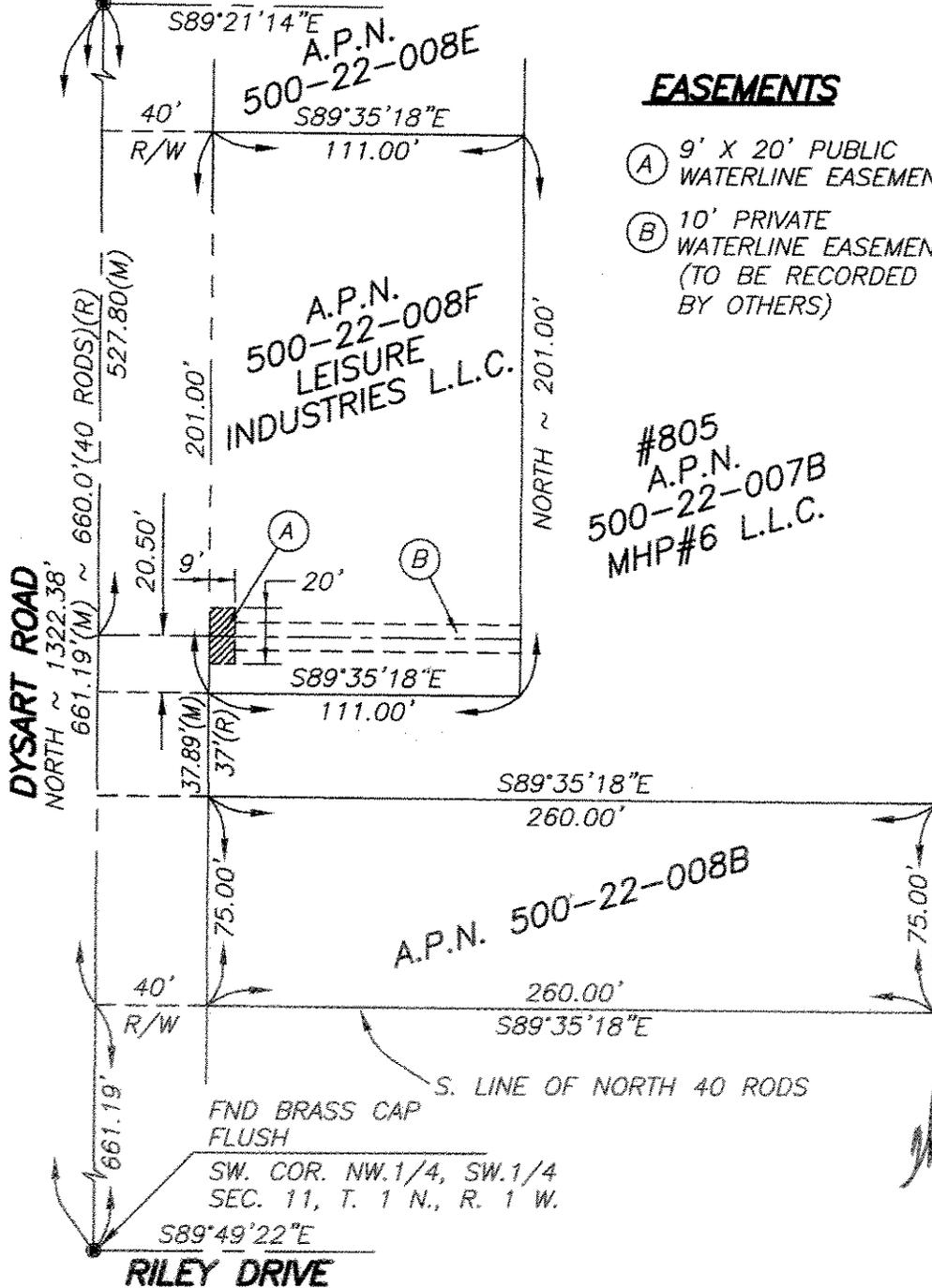


	<b>K-WEST SURVEYING, INC.</b>	J.N. 11(1437)001A	DATE: 08/11	08/11
	WADE H. SHAFFER R.L.S. 12600 P.O. BOX 509, AVONDALE, AZ 85323-0170 PHONE(623)536-8248 FAX(623)536-8247 MOBILE(602)320-2333	SCALE 1"=60'	SHEET 1 OF 2	
		CHKD BY: W.H.S.	DWN BY: R.G.A.	

FND BRASS CAP  
IN HANDHOLE  
W.1/4 COR. SEC. 11  
T. 1 N., R. 1 W.

# EXHIBIT "B"

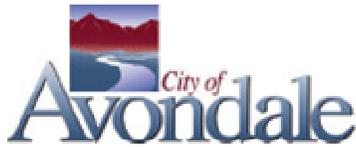
## PUBLIC WATERLINE EASEMENT



**K-WEST SURVEYING, INC.**  
WADE H. SHAFFER R.L.S. 12600  
P.O. BOX 509, AVONDALE, AZ 85323-0170  
PHONE(623)536-8248 FAX(623)536-8247 MOBILE(602)320-2333

J.N. 11(1437)001A DATE: 08/11  
SCALE 1"=60' SHEET 2 OF 2  
CHKD BY: W.H.S. DWN BY: R.G.A.

11-029



# DEVELOPMENT SERVICES

**SUBJECT:**

Public Hearing - Time Extension for Papago Commerce Center (dba Avondale Commerce Center) PAD zoning, Alternatively Ordinance 1486-112 Zoning Reversion

**MEETING DATE:**

January 17, 2012

**TO:** Mayor and Council

**FROM:** Sue McDermott, Development Services Director/City Engineer (623) 333-4211

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

---

**REQUEST:** Hold a public hearing and extend the period allowed for commencement of development within the Papago Commerce Center (dba Avondale Commerce Center) PAD for one year from the date of expiration, until November 15, 2012.

**PARCEL SIZE:** Approximately 11.1 Gross Acres

**LOCATION:** Southeast Corner of El Mirage Road and Interstate 10 (Exhibits A and B)

**APPLICANT:** Mr. Michael Curley, Earl, Curley, and Lagarde, P.C. (602) 265-0094

**OWNER:** Mr. J. Paul Sharp, iStar Financial (972) 581-1117

**BACKGROUND:**

The property was annexed into the City of Avondale on July 2, 1984 and was subsequently rezoned from AG (Agricultural) to Planned Area Development (PAD) on October 15, 2007 (Exhibits D, E, and F). The approved Papago Commerce Center PAD requires development of the site in accordance with the uses and requirements of the Commerce Park (CP) Zoning District. The development plan proposes a mix of uses including office and fully enclosed light industrial, as well as a few limited retail/commercial uses. The original applicant for this site, RDB Construction and Management, envisioned this property as a future phase of the Avondale Commerce Center development that has been built to the west of this site. RDB no longer owns either site; iStar Financial now owns both sites.

Primary access to the site is to be provided via El Mirage Road along the western property boundary. Secondary access will be provided through the property to the south, property to the east, or both. To comply with fire code requirements, a stipulation of the 2007 rezoning approval states that development of the eastern half of the subject property cannot commence until at least one of these access points can be installed.

A formal site plan application for the subject property has never been submitted; however, the applicant has worked with staff to develop a conceptual site plan to use in marketing the site for development.

The property is designated by the General Plan Land Use Map as Employment. The Employment designation encourages facilities that provide employment opportunities by allowing uses that include general office, enclosed industrial uses, and retail and limited commercial uses that support office and industrial. Additionally, the property is located within the Freeway Corridor Specific Plan

area with a land use designation of Employment. The approved PAD remains consistent with these General Plan and Freeway Corridor Specific Plan designations.

The Zoning Ordinance allows up to three years from the date of the original zoning approval to commence development within a PAD in order to prevent its expiration. The Zoning Ordinance specifies that prior to expiration, the property owner or an authorized representative may submit an application for extension to the City; the City Council may grant up to four (4) one-year extensions of the time condition.

A one-year extension for the Papago Commerce Center PAD was originally denied by the City Council on December 6, 2010 (Exhibit G). However, the Council reconsidered the item on March 7, 2011 (Exhibit H), and granted the requested extension after hearing additional testimony from the applicant regarding their efforts to develop the property. That extension was the first of the four possible one-year extensions that Council may grant. Approval of this second request for a one-year extension will extend the deadline for development to occur within the Papago Commerce Center PAD through November 15, 2012. Should no development occur prior to that date, the property owners or authorized representatives will be able to request up to two additional one-year extensions under the terms of the PAD Ordinance.

At its discretion, the City Council may also choose to deny the extension request. In that event, the Council can immediately revert the zoning of the subject property to its previous designation of AG (Agricultural) through a separate motion and adoption of the applicable Ordinance. As required by the Zoning Ordinance, the applicant was notified of this possibility through a certified letter received on December 21, 2011.

#### **SUMMARY OF REQUEST:**

The applicant is requesting that the City Council grant a one-year extension for the Papago Commerce Center PAD approval. This request represents the second extension for this particular PAD; the Zoning Ordinance allows for no more than four one year extensions to be granted.

The primary reasons stated by the applicant as justification for the extension request (Exhibit C) include:

- The PAD remains consistent with the General Plan Land Use Map and Freeway Corridor Specific Plan and the allowed land uses are still appropriate for the area.
- The site has been actively marketed and promoted in an attempt to encourage development of the parcel. However, additional time is needed for the market to recover before the site can be successfully developed.
- In spite of the stagnant market, the property owner has continued to invest in properties in Avondale. For example, approximately \$800,000 was spent in 2010/2011 on improving the adjacent 53 acre Avondale Commerce Center, which is also owned by iStar Financial.
- Reverting the zoning of the property to AG (Agricultural) would make the site less attractive to potential site users, as the time, cost, and uncertainty of the rezoning process will lead users to seek out other locations that are already zoned.

In the instance that the PAD zoning extension is not granted, the Council may revert the zoning of the property back to Agricultural (AG). An Ordinance has been prepared to this effect if needed.

#### **PARTICIPATION:**

Public notifications are not required for PAD Extensions.

## **PLANNING COMMISSION ACTION:**

The Planning Commission does not review PAD Extensions.

## **ANALYSIS:**

### ***Conformance with General Plan and Freeway Corridor Specific Plan***

The property is designated as Employment by the General Plan and falls within the boundaries of the Freeway Corridor Specific Plan (FCSP). All permitted and conditional uses listed in the PAD are still considered appropriate for a property designated as Employment by the General Plan. The PAD also remains in conformance with the enhanced design requirements for properties within the "freeway frontage" sub-area of the FCSP. In summary, the PAD remains in total conformance with both the General Plan and Freeway Corridor Specific Plan.

### ***Conformance with the Zoning Ordinance and Design Manual***

In the period since the PAD was approved in October 2007, the City has updated and amended several Zoning Ordinance sections and also has adopted the Design Manual for Commercial, Industrial, and Multi-Family Residential Development. However, because the majority of development and design standards contained within the Papago Commerce Center PAD refer back to relevant Zoning Ordinance sections, the PAD remains in conformance with the Zoning Ordinance except in a few instances specified in the bulleted list, below. For instance, rather than prescribing customized landscaping standards in the PAD Development Plan, the text simply states that, "landscaping shall comply with City of Avondale landscaping requirements." Because the PAD was written in that general fashion, future development on the site will be required to adhere to the City's most current version of Zoning Ordinance Section 12, Landscaping, Walls, and Fences.

The PAD is not in conformance with City requirements in the following areas:

- The PAD contains its own specific set of building and site design standards which are not as strong as the design standards listed in the Design Manual. A stipulation is recommended that future development of the site be required to adhere to the Design Manual for Commercial, Industrial, and Multi-Family Residential Development. In instances where there is a conflict between the PAD's design language and the Design Manual, the stipulation specifies that the Design Manual shall supersede.
- The PAD was approved prior to adoption of Zoning Ordinance Section 11, the City's Public Art Ordinance. A stipulation is recommended that future development on the site comply with the terms of Section 11.
- The City's Outdoor Lighting standards were revised as part of the amendment to Zoning Ordinance Section 7, Supplementary Regulations. Outdoor Lighting is one of only a few sections for which the approved PAD does not refer back to the Zoning Ordinance. As such, a stipulation is recommended that future development on the site comply with the requirements of Zoning Ordinance Section 707, Outdoor Lighting.

## ***Conclusion***

With staff recommended stipulations, the uses, standards, and requirements contained within the Papago Commerce Center PAD are in conformance with the General Plan and current Zoning Ordinance standards. As such, staff recommends that the PAD zoning be extended.

## **RECOMMENDATION:**

Staff recommends that the City Council hold a public hearing and approve the time extension request for the Papago Commerce Center PAD for one year from the date of expiration, until November 15, 2012, subject to the following stipulations:

1. Unless listed below, all standards, requirements, and stipulations of the Papago Commerce Center PAD approval from October 15, 2007 shall remain in full force and effect.
2. Site and building design shall be in conformance with the City of Avondale Design Manual for Commercial, Industrial, and Multi-Family Residential Development. Where there are conflicts between the PAD's "Design Standards" and the City's Design Manual, the standards contained within the Design Manual shall supersede.
3. Outdoor site lighting shall be in conformance with City of Avondale Zoning Ordinance Section 707, Outdoor Lighting. Where there are conflicts between the PAD's lighting language and Zoning Ordinance Section 707, the language contained within Section 707 shall supersede.
4. Public art shall be provided in accordance with the Avondale Zoning Ordinance Section 11, Public Art.

#### **PROPOSED MOTION:**

I move that the City Council **GRANT** a time extension for the Papago Commerce Center Planned Area Development (PAD) for one year from the date of expiration, until November 15, 2012, subject to the staff recommended stipulations.

*In the event that the Council denies the applicant's request, the following motion should be used to revert the zoning of the property to its previous designation of AG (Agricultural):*

I move that the City Council **ADOPT** an Ordinance reverting the zoning of the subject site from Planned Area Development (PAD) to its previous zoning classification of Agricultural (AG).

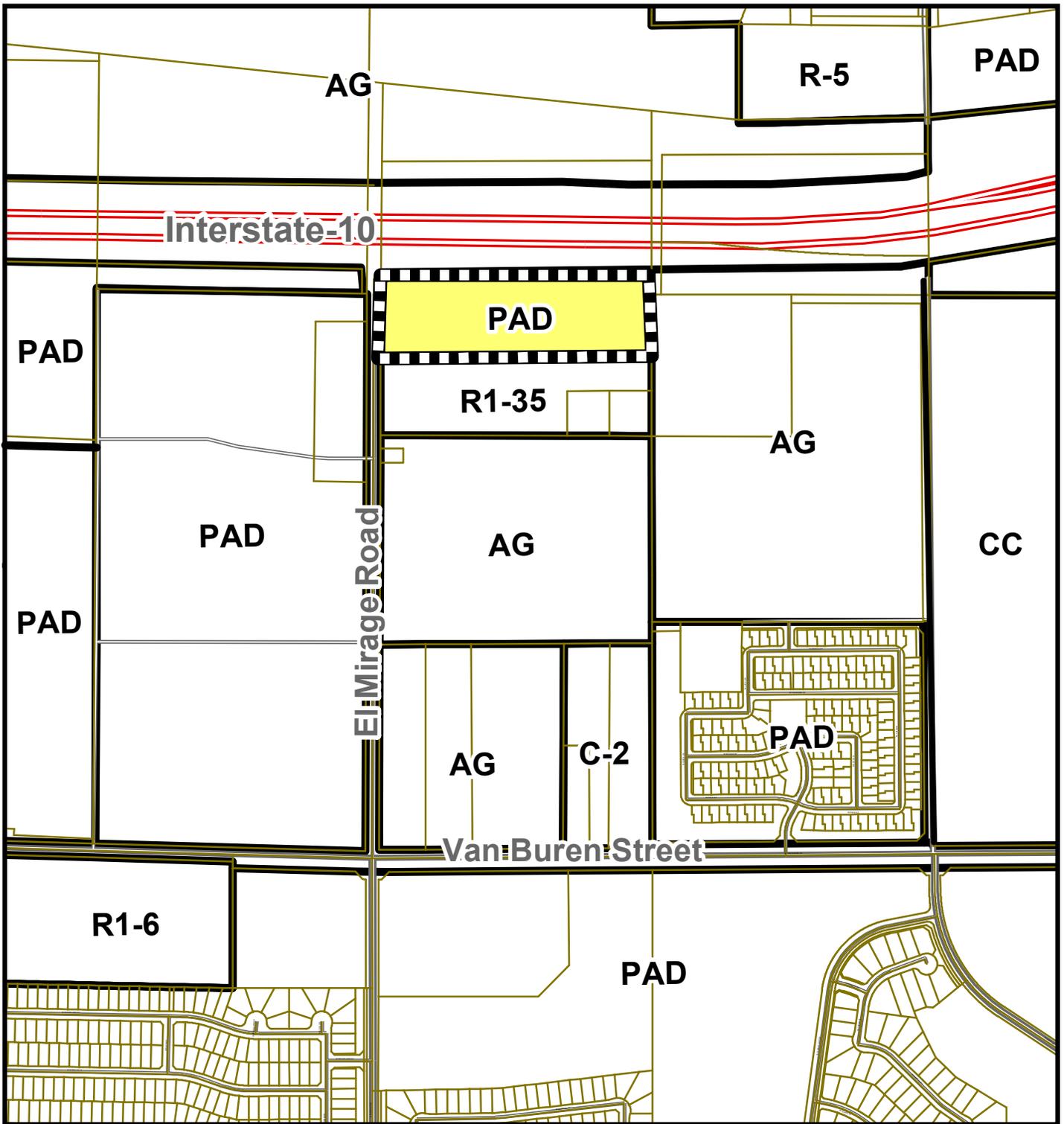
#### **ATTACHMENTS:**

Click to download

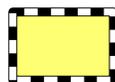
- 📄 [Exhibit A - Zoning Vicinity Map](#)
- 📄 [Exhibit B - Aerial Photograph](#)
- 📄 [Exhibit C - Applicant's Extension Request dated November 10, 2011](#)
- 📄 [Exhibit D - Approved Papago Commerce Center PAD](#)
- 📄 [Exhibit E - Ordinance 1272-1007, approving the Papago Commerce Center PAD](#)
- 📄 [Exhibit F - Excerpt from City Council Minutes, Regular Meeting of October 15, 2007 \(PAD Approval\)](#)
- 📄 [Exhibit G - Excerpt from City Council Minutes, Regular Meeting of December 6, 2010 \(PAD Extension Denial\)](#)
- 📄 [Exhibit H - Excerpt from City Council Minutes, Regular Meeting of March 7, 2011 \(PAD Extension Reconsideration and Approval\)](#)
- 📄 [Ordinance 1486-112](#)

#### **PROJECT MANAGER:**

Ken Galica, Planner II (623) 333-4019



### Zoning Vicinity Map

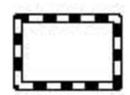


Subject Property





**Aerial Photograph**



**Subject Property**



**EARL, CURLEY & LAGARDE, P.C.**  
ATTORNEYS AT LAW

Telephone (602) 265-0094  
Fax (602) 265-2195  
www.ecllaw.com

3101 North Central Avenue  
Suite 1000  
Phoenix, Arizona 85012

November 10, 2011

Mayor Marie Lopez Rogers  
Members of the City Council  
11465 W. Civic Center Dr.  
Suite 280  
Avondale, AZ 85232

RE: Avondale Commerce Center (formerly known as "Papago Commerce Center")  
SEC of I-10 and El Mirage Road  
PAD Extension request

Dear Mayor Lopez Rogers and City Council Members:

Our law firm represents iStar Financial, the owners of the property which is the subject of the above referenced PAD extension request for Avondale Commerce Center (formally known as Papago Commerce Center). We are writing this letter on behalf of our client to request a PAD extension.

**Background**

iStar Financial is a major commercial real estate REIT that owns approximately 25 million square feet of industrial and office properties in the United States. Many of their real estate holdings contain long-term corporate tenant leases that are a result of build-to-suit opportunities or sale lease-back financing transactions. iStar foreclosed on the subject property approximately two years ago. The previous developer of the property was RDB Development (Roger Buttrum).

The subject site is an approximate 11-acre vacant parcel which is depicted on the aerial. iStar also owns the adjacent ±53-acre parcel which has thirteen (13)



buildings on the site totaling almost 600,000 square feet of industrial/office development. In addition to owning and managing a significant portfolio of industrial and office inventory, iStar is also a lender for commercial real estate, which provides additional flexibility for its tenants.

On March 7, 2011, the City Council approved the request to extend the PAD (Planned Area Development) zoning for this site.

### **Details of Request**

iStar Financial as the owners of the property, seek a second one-year extension on the approval of the Avondale Commerce Center PAD zoning approval. Given the severity of the current recession (both locally and nationally-which most experts agree has been the worst recession in the last 50 years), the owners are merely seeking a 2nd extension of the PAD approval time limit. This extension will allow the zoning to remain on the property and allow this project to move forward as the market recovers over the next years.

The PAD zoning on the property still remains consistent with the current General Plan land use map of "Employment" and remains consistent with the Freeway Corridor Specific Area Plan. As you are aware, the City's General Plan places great importance on the I-10 Freeway Corridor for employment, industrial and retail uses. The Plan also indicates that the corridor along the I-10 Freeway is to be developed with more intense uses and is intended to allow flexibility by allowing different types of employment uses. The Avondale Commerce Center PAD also remains consistent with these goals and the City's vision for this area.

### **Marketing Effort by iStar**

Cassidy Turley/BRE Commercial continues to market and promote this 11 acre property, including the adjacent 53 acres, through Paul Boyle the Executive Vice President. Paul is one of the Valley's most respected and experienced industrial brokers. He has been the listing agent along with Gary Anderson and Justin LeMaster at Cassidy Turley/BRE Commercial for the site for the past 23 months (when Paul and his marketing team received the listing on the property).

iStar has spent approximately \$800,000.00 in improving the adjacent 53 acre site since they acquired it last year. Very few industrial developers have made any financial investments in their properties during this economic recession. The \$800,000.00 worth of financial improvements invested by iStar is certainly the exception rather than the rule. I believe that this investment distinguishes iStar from most other industrial developers. Another distinguishing characteristic of iStar is that it has the financial ability to provide tenant improvements for potential lessors. The ability to finance improvements, in addition to having the 11-acre vacant parcel which allows for expansion for a tenant who might lease some of the already-developed adjacent property, in our view, places this property at a competitive advantage over many other properties along the freeway corridor.

Since the Council hearing in March 2011, Cassidy Turley/BRE Commercial hired an architect to prepare a site plan (attached) for the property to show prospective users of the site's potential for a build-to-suit development. In preparation of this site plan, Cassidy Turley/BRE worked closely with City Staff on the development of the site plan to ensure that what would be presented to future users had positive input from the City of Avondale. The attached site plan was developed in cooperation with the City Planning Department and can accommodate up to 160,000 square feet of building area. The marketing team felt it was important to illustrate the site's building potential for a potential build-to-suit user.

Cassidy Turley/BRE works closely with industry stakeholders such as: GPEC, Local 3rd party industrial/flex brokers, National 3rd party industrial/flex brokers, Site Selection professionals, Architects, Consultants, Lenders, Local/National Industrial/flex Developers and National/Global corporate employers. Cassidy Turley/BRE has created a webpage ([www.avondalecc.com](http://www.avondalecc.com)) and marketing copy for the subject site which provides valuable information including zoning, utility, and other related information and has posted site information on various websites including Costar, Loopnet, GPEC and Cassidy Turley/BRE own Website. With larger distribution/manufacturing spaces' being absorbed in the southwest valley, Cassidy Turley/BRE is starting to receive attention from built-to-suit prospects for the 160,000 (building) square feet that the site can accommodate.

Property information and marketing materials have also been forwarded to the brokerage community of the Southwest Valley as well as Tenant Representative Brokers who work with larger companies. Additionally, the build-to-suit opportunity has been forwarded to industrial brokers in other BRE offices throughout the country. The property continues to be exposed to Cassidy Turley/BRE's extensive database of larger users in the Southwest Valley. Additionally, Cassidy Turley/BRE held an open house at the property in October 2010 to introduce the land and Avondale Commerce Center to the brokerage community. Members of the City attended the open house.

We believe that the above-referenced marketing strategy demonstrates that iStar and Paul have in fact been actively marketing the property since they gained possession of it approximately two years ago.

### **Demand for Zoned Properties**

The Economic Development Directors of Chandler, Phoenix or Glendale, make three major points regarding employers relocating to the Valley. The first is that there are companies looking to locate in the Valley. Secondly, freeway-oriented sites are often the most attractive sites to these users. The last point is that unzoned property usually won't even be considered by any major employers, corporate headquarters or company relocates. The reasons for this are primarily: 1) because there is uncertainty related to the rezoning process; 2) the fact that zoning a

property typically takes approximately six months; and, 3) there are hundreds of acres of already-zoned properties in nearby cities.

At the time of the original PAD approval, the owners could not have anticipated the severity of this economic recession that both the Valley and the Nation are now enduring. The approved land uses remain valid and appropriate, but more time is needed to allow the Valley's economy to recover and restore viability for this area and to this proposed project. Efforts have been made to diligently market the property for development by well qualified brokers who know the industry well.

### Conclusion

It is our belief that it is counter-productive for both the City as well as iStar to downzone or revert the PAD zoning on the subject property. We believe that by down-zoning the property, the property will be taken out of the inventory pool of parcels that might be attractive and available to proposed users. We fully understand that there is a place for down-zoning, such as when zoning is inconsistent with the General Plan or there is controversy associated with the zoning case. However, here you have a developer/owner who is: 1) committed to the property; 2) has a track record of investing in the property; 3) is financially able to continue investing in the property; and, 4) the zoning is consistent with the General Plan. In light of the above, we believe that a 2<sup>nd</sup> PAD Extension is warranted and necessary in order for the property owner and the City the ability and benefit of a potential new corporate development.

Thank you very much for your time and consideration in this matter.

Sincerely,



FOR Michael J. Curley

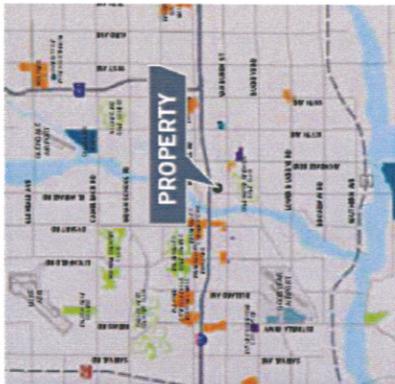
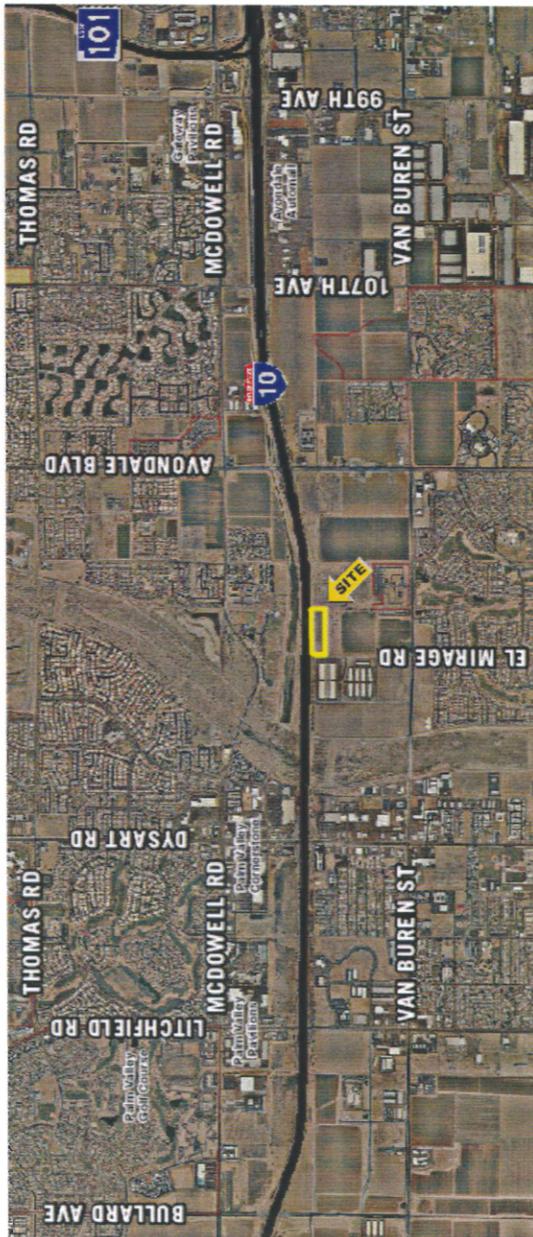
MJC:rot

Enclosures: As Stated

Cassidy/BRE  
Turley/Commercial

# El Mirage & Interstate 10

Avondale, Arizona



## BUILD-TO-SUIT OPPORTUNITY UP TO ±160,000 SF

±11.09 Acres  
PAD Zoned Land



### Property Highlights:

- ±11.09 Acres
- Parcel: 500-01-008F
- Zoning: PAD
- Dimensions: ±376' x ±1261.86'; (slightly irregular)
- ±1261.86 feet of frontage on Interstate 10
- Flood Zone: Zone X, Flood insurance not required

Exclusively offered by:

**Paul E. Boyle**  
Executive Vice President  
602.224.4414  
pboyle@brephoenix.com

**Gary Anderson**  
Senior Vice President  
602.224.4439  
ganderson@brephoenix.com

**Justin LeMaster**  
Senior Associate  
602.224.4477  
jlemaster@brephoenix.com

**Rick Danis**  
Executive Vice President  
602.224.4405  
rdanis@brephoenix.com

2375 E Camelback Rd, Suite 300  
Phoenix, Arizona 85016  
ph: 602.954.9000  
fx: 602.468.8588

[www.brephoenix.com](http://www.brephoenix.com)

# El Mirage & Interstate 10

Avondale, Arizona

## Property Highlights:

- Parcel Number: 500-01-008F
- Build-to-Suit Opportunity up to ±160,000 SF
- Electric: Salt River Project
- Water: City of Avondale; 12" line in El Mirage Road
- Sewer: City of Avondale; 12" line in Van Buren Street
- Excellent exposure on Interstate 10
- Great employment facility site
- Adjacent to ±600,000 square foot business park development



For more information, please contact:

**Paul E. Boyle**  
Executive Vice President  
602.224.4414  
pboyle@brephoenix.com

**Gary Anderson**  
Senior Vice President  
602.224.4439  
ganderson@brephoenix.com

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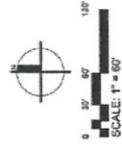
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Executive Vice President  
602.224.4405  
rdanis@brephoenix.com

2375 E. Camelback Rd., Suite 300  
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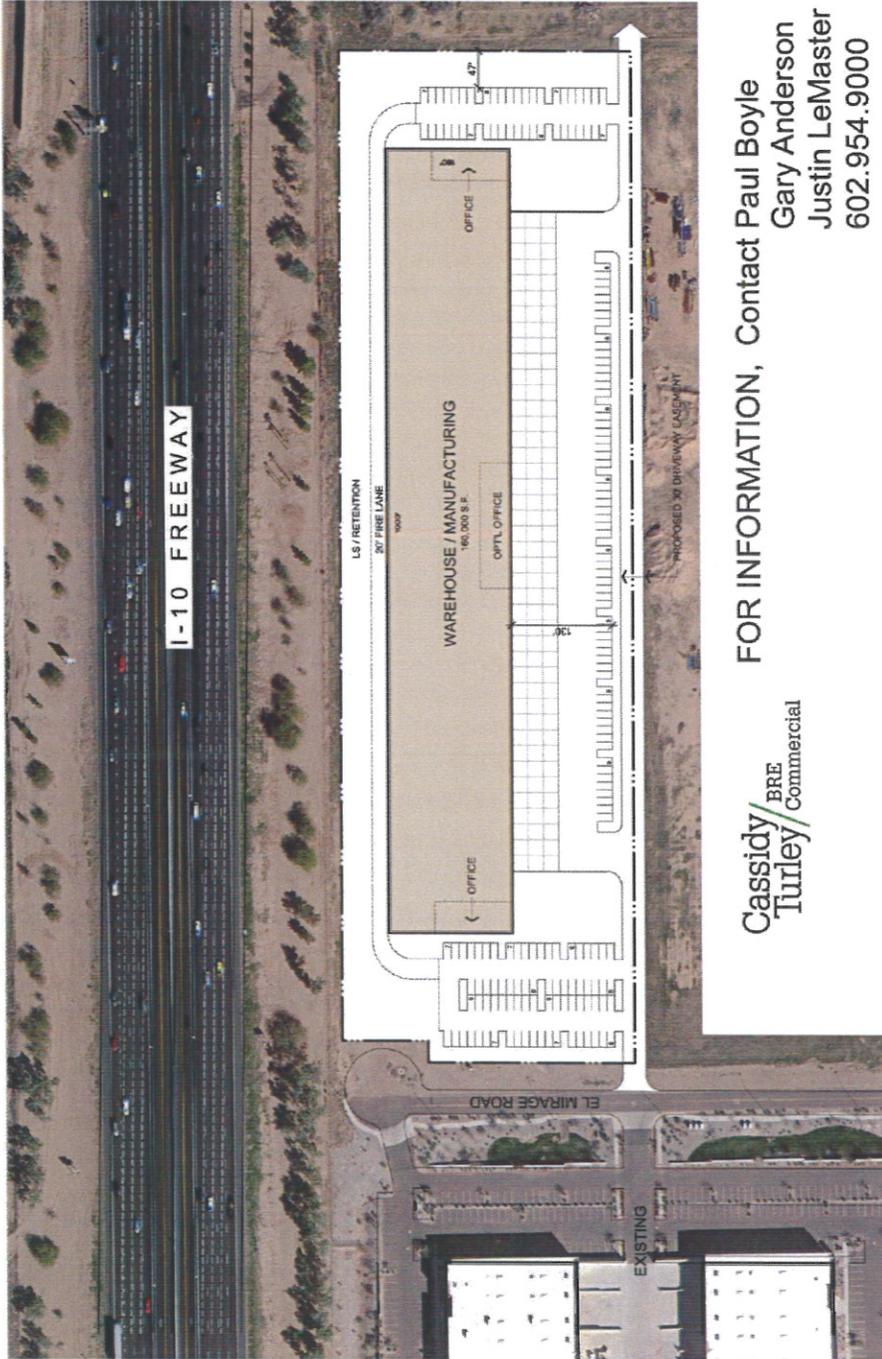
[www.brephoenix.com](http://www.brephoenix.com)

**Cassidy  
Turley** BRE  
Commercial



**Site Data**

Gross Site Area: <small>(includes)</small>	482,236 sf <small>(11.1 ac)</small>
Building Area:	160,000 sf
Coverage: <small>(excludes)</small>	33.2%
Parking Provided:	180 Spaces
Overall Parking Ratio:	1.1 / 1,000



**FOR INFORMATION, Contact Paul Boyle**  
 Gary Anderson  
 Justin LeMaster  
 602.954.9000

Cassidy  
 Turley  
 BRE Commercial

**I-10 & EL MIRAGE ROAD**  
 PROPOSED INDUSTRIAL BUILDING  
 AVONDALE, ARIZONA

**iSTAR** | FINANCIAL

08.03.11  
 11104.0704



A PLANNED AREA DEVELOPMENT  
BY  
RDE MANAGEMENT  
AND CONSTRUCTION

PAPAGO COMMERCE  
CENTER  
11 ACRES

PALE ARIZONA

GENERAL DEVELOPMENT PLAN

APRIL 10, 2007

JUNE 29, 2007

AUGUST 8, 2007

**A. Introduction**

This General Development Plan and Program provides a project overview of the Planned Area Development (PAD), proposed by RDB Management and Construction, (RDB) for an approximate 11 acre parcel of land located quarter mile north of Van Buren along 127<sup>th</sup> Avenue in Avondale, Arizona (Property). Refer to Exhibit 'A' for the location of this subject property. This General Development Plan and Program is intended to provide the City of Avondale Planning and Building Division with the information necessary to review and approve the requested rezoning to PAD.

**1. Site Ownership**

This Property is owned by Avondale Commerce Center, LLC.

**2. Site Data**

The site for this proposed project is located north of Van Buren along El Mirage Road and I-10 in Avondale, Arizona, as shown on the location map enclosed as Exhibit A. The Property is comprised of a gross site area of approximately 11 acres. Refer to Exhibit 'B' for a copy of ALTA Survey.

**3. Existing Site Conditions / Topography**

The site is currently vacant with no agricultural production. There are no existing structures on-site. The topography of the site is fairly level with a slight but even grade sloping to the southwest.

**4. Surrounding Land Uses**

- North: Arizona Department of Transportation (ADOT) right-of-way for Interstate 10 parallels the north property line. The freeway traffic is elevated approximately 10' above the property. El Mirage, forms the western boundary of the property, which terminates in a Cul-de-sac at the ADOT right-of-way. The land area along the north side of the interstate is Friendship Park, a community Park for Avondale, which includes lighted fields for baseball, softball, and soccer.
- West: The area to the west is the newly constructed Avondale Commerce Center. A multi-building commercial center developed by this applicant. Phases II and III of this project, currently under construction, will accommodate Commerce Park type uses. Phase I, located further south along the Van Buren frontage, will accommodate commercial uses, including some retail.
- South: The land area directly south is unimproved, has no structures and is being used for agriculture.
- East: The land directly east of the proposed development is unimproved, has no structures and is being used for agriculture.

Refer to Exhibit 'C', for additional information regarding land uses and zoning.

**B. Objectives / Development Goals**

**Rezone to PAD (Planned Area Development)**

The property, 11 acres, is zoned Agricultural - AG, refer to Exhibit 'B'. RDB intends to rezone the property to PAD for an employment based project that includes Commerce Park uses in conformance with the Avondale General Plan and the Freeway Corridor Specific Plan. This land use plan provides flexibility for future employment based on demand within the marketplace.

The subject property is situated within the Freeway Corridor Specific Plan, a designated growth area as referenced by the Avondale General Plan. Recent growth in the west valley as demonstrated by Coldwater Springs, a master-planned residential community to the south, has focused more attention on the Freeway Corridor area.

**C. Conformance with City of Avondale's General Plan**

The City of Avondale General Plan has designated this property for Employment Use. Included in the "Employment" designation are land uses related to business parks and industrial parks.

**D. General Development Plan**

**1. Project Description**

In accordance with the General Plan, this project is designed to offer a mix of commercial and industrial activities as provided within the Commerce Park (CP) district. These uses will be combined within the Planned Area Development in order to provide a more cohesive development that will offer common design standards for each land use.

Guidelines will be established to unify the architecture, signage, and landscaping throughout the development. The land plan takes advantage of the site's proximity to I-10 to provide a well designed multi-tenant commerce park that will provide many employment opportunities for local residents as well as provide added tax revenue for the City of Avondale.

**2. Land Use Plan**

The General Development Plan is enclosed as Exhibit 'D'. The land uses are organized to promote compatibility with surrounding land uses, provide appropriate transitions between the commercial and commerce park users, and provide efficient access and circulation throughout the project. The project is designed with minimal vehicular penetration points in order to safely and conveniently move commercial traffic into and out of the project while minimizing the traffic impact upon the surrounding streets. The streetscape will be designed to provide variety and interest as one drives adjacent to the development.

Land Use Summary

Commerce Park, CP	11 acres
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It is anticipated that uses in the Papago Commerce Center shall be similar to those in the Avondale Commerce Center to the west.

**3. Commerce Park (CP)**

The property will be designated as Commerce Park. The purpose of the Commerce Park district is to allow for a wide variety of employment uses that are not included in a typical CO, C-1 or C-2 district.

Note: All structures and improvements designated within this PAD, designated as CP will be designed and constructed by RDB Management and Construction. RDB will maintain the buildings and lease suites to future tenants.

## **E. DEVELOPMENT STANDARDS**

### **1. Commerce Park (CP)**

The commerce park development will be a fully master planned site consisting of multiple buildings providing flex-space for multiple and individual tenants. The Property will ensure a well designed streetscape, adequate on and off-site auto circulation, encourage pedestrian travel through carefully planned walkway systems, and create a common architectural interest from transition in scale to the building materials that will add visual appeal and serve an overall function of the development. The commerce park will possess an overall design framework that provides an internal organizational structure and contextual response to the surrounding area. Vehicular traffic shall access the site via El Mirage paralleling the west property line. Vehicles will be able to access Avondale Commerce Center I to the west via El Mirage road. Pedestrian traffic shall be able to move between commerce centers on a series of sidewalks and clearly indicated pathways within the developments of similar materials that tie the Commerce centers together.

#### **1a. Permitted Uses**

- a) Offices for professional, administrative, clerical and sales services including
- b) Business colleges.
- c) Research, Medical and dental laboratories
- e) Wholesaling including but not limited to, irrigation, landscape, material sales provided all supplies and equipment are in a completely enclosed building.
- f) "Value added" distribution / packaging – hands-on modification of bulk goods by employees that adds additional value to the products (ie. but not limited too, customized embroidery of sports apparel). Job creation is an important component of this use.
- g) Light manufacturing, fabrication, processing, or assembly of finished or unfinished products composed of pre-manufactured or natural products or materials provided that all processes are conducted indoors.
- h) Retail commercial operations directly related to a primary industrial use, provided it does not exceed 30% of the gross floor area of the primary industrial use.
- i) Print and sign manufacturing with sales.
- j) Similar uses as determined by the City's Zoning Administrator, or his designee.

- Warehousing/storage that is ancillary to a permitted use. Not to include dead vehicle storage, trucking companies and moving storage companies.
- Any use not expressly allowed herein is prohibited

**1b. Uses Permitted pending City of Avondale Conditional Use Permit Approval**

- a) Athletic and health clubs
- b) Trade school
- c) Retail commercial operations directly related to a primary industrial use, provided it does not exceed 40% of the gross floor area of the primary industrial use.
- d) Indoor Recreation facilities (ie laser tag, rock wall climbing, etc)

**1c. General Requirements**

Except where otherwise explicitly stated, this development shall conform to all requirements of the City of Avondale zoning ordinance, as amended, for development within Commerce Park (CP) zoning.

**1d. General Standards**

Minimum Setbacks

Front Yard:	25'
Street Side Yard	25'
Side Yard	12'
Rear Yard	12'

Interstate 10

A 30' landscape area shall be provided along the north property line of the project nearest to Interstate 10.

Maximum Building Height

- a) Maximum building height of any buildings shall be (45) feet. The additional height allowance is intended to attract larger corporate users along this interstate freeway frontage.

Outdoor Storage

- a) No outdoor storage shall be permitted.

## F. DESIGN STANDARDS

### 1. Architecture

#### 1a. Architectural Design Theme

While no particular style will be dictated, architectural standards for the development shall remain high while complimenting and drawing from the design and material palettes of the Avondale Commerce Center, directly west. The concept is for these buildings to be recognized as an integral part of the greater Avondale Commerce Center.

#### 1b. Architectural Concepts

- The architectural design for all structures shall be based on “4-sided” architecture solutions, taking into consideration all sides to receive consistent architectural treatment.
- For all buildings at least two of these elements shall repeat horizontally. Buildings with facades greater than 150 feet in length shall include at least three of the elements listed below, repeated at appropriate intervals, both horizontally or vertically:
  - Color change. Recognizable, but not strongly contrasting.
  - Texture change
  - Material change
  - Architectural variety and interest through a change in plane such as offsets, reveals, archways or projecting ribs.
- Wall plane projections or recesses
- Variations in rooflines or parapets shall be used at a minimum of two feet (2') to reduce the scale of the buildings. Roof size, shape, material, color and slope shall be coordinated with the scale and theme of the building.
- Service and exit doors shall be integrated into the architecture of the elevations.
- Service and roll-up doors shall be internalized within the site.
- Reduction of building mass shall be achieved by using a combination of the following techniques:
  - Variation in the rooflines
  - Use of protected and recessed entries
  - Use of vertical elements on or in front of expansive blank walls
  - Use of pronounced wall plane offsets and projections
  - Use of focal points and vertical accents

- Inclusion of windows on elevations facing streets and pedestrian areas.
- Rooflines, relative building heights, orientation of entrances and other major architectural elements of the buildings shall be designed within the context of the overall PAD. Building design shall compliment the surrounding area, with contrast encouraged where appropriate or beneficial to the overall development
- Buildings with freeway frontage will front towards Interstate 10.
- Roof drains shall be internal.
- Any roof access ladders shall be located inside the building.
- All roof mounted equipment, vents, stacks, pipes, etc. shall be screened from view from all perimeter streets and painted to match the roof.

**1c. Building Materials**

Architectural materials should convey an image of quality and durability. Buildings within the PAD shall be compatible with the materials used in Avondale Commerce Center Phase One and will include the following materials :

- Primary building materials shall include: common clay brick, stucco, or EIFS type systems provided that finishes must be smooth or sand textured, smooth or split face concrete block or similar materials.
- All tilt or pre-cast concrete panels or smooth face block shall include methods for improving the natural material such as: additional color and texture, windows, reveals or recesses, notched parapets, canopies, building wall undulation, corner windows, additional materials, etc.
- Accent materials shall include: natural stone, block, brick, ceramic tile, ornamental steel or other similar materials as implemented in Phase One.
- Roofs may be flat with parapet walls, or sloped with concrete tile, standing metal seam, or equivalent architectural materials.

**Prohibited Materials:**

- Wood, except for limited amounts of trim
- Corrugated metal and pre-engineered metal-sided buildings

**1d. Color Coordination**

Buildings within the PAD shall be consistent with the following building colors:

- Colors and materials should be used to create visual harmony within the PAD. The approved colors are as follows:
  - Primary building colors shall be desert hues and other “earth tones” muted shades of blues, greens, and reds found in the natural desert, and colors appearing in natural stone.
  - Accent colors on buildings shall compliment the primary building colors and include combinations of desert hues, earth tones, muted shades of greens, reds, and colors found in natural stone. Brighter colors such as orange, red, blue, green, yellow, purple and similar colors may be used as accents as determined during the Site Planning process.

**Prohibited Colors:**

- “Loud colors” such as orange, red, blue, green, yellow, purple and similar colors as a primary building color.

**2. Site Development**

**2a. Off-Street Parking**

A development plan indicating compliance with the off-street parking requirements of the Avondale Zoning Ordinance as amended will be submitted for approval prior to obtaining final building permits.

- The number of off-street parking spaces shall be based upon the proposed building use as determined at the time of site-plan review.
  
- All off-street parking and loading areas, access drives, internal circulation drives, and truck maneuvering areas shall conform to the requirements and regulations of the Avondale Fire Department, Zoning Ordinance, and Engineering Division.

Note: Additional landscape enhancements will be required along the Interstate 10 frontage, including shade trees incorporated into parking areas at the rate of one (1) tree per 6 parking stalls instead of the standard of one (1) per 8 stalls.

**Covered Parking**

- Covered parking shall be lighted. The source of illumination shall be screened, recessed or covered.
- Parking canopies shall include fascias that are consistent with the color and architectural themes of the principal building.

**2b. Loading areas**

All loading areas and loading docks shall be designed not to be visible from adjacent streets or detract from the architectural character of the project.

- All truck loadings or loading docks shall be located at the rear or side of the building. No loading dock shall face a front street or Interstate 10.
- All loading areas must be screened by a continuous wall with to match the architecture of the building at a minimum height of 8'
- Landscaping by additional street trees or on-site tree massing in combination with the screen wall may be used to visually screen loading docks.

**2c. Screening**

Screen walls shall maintain a consistent material, design and color theme to provide continuity throughout the Commerce Park.

- Screen walls shall be provided for all service areas, mechanical and electrical equipment yards, outdoor storage areas, loading docks, and refuse collection areas.
- All screen walls should be architecturally treated as an extension of the primary structure.
- When needed, parking screen walls shall be a minimum of 3-foot in height and constructed of block and may be finished with stucco or mortar wash.
- 3' high landscape berms may be used in conjunction with parking screen walls.
- Perimeter screen walls shall be a minimum of 6-foot in height constructed of the design and materials of the building.
- Screen walls along pedestrian routes or sidewalks shall be set back to allow for landscaping

**2d. Site Lighting**

The lighting should enhance the architectural and site design concepts of the overall PAD.

- Lighting shall be master planned for the development at the time of site plan review.

- Street lighting shall be provided along El Mirage Road per current City of Avondale standards.
- Site lighting shall be provided for security throughout all parking areas, service areas, and building entries/exits that provides a level of security.
- All site lighting shall be directed downward and use appropriate light source to minimize light pollution onto adjacent properties and to adhere to local dark sky ordinance.
- Lighting shall not exceed 1-foot candle at the property line
- Intensity shall not be greater than required for vehicular and pedestrian safety.
- The use of shields with cut-off fixtures is required for all pole and wall pack lighting
- Height of light poles shall be a maximum of 25' high.
- Low pedestrian-scaled fixtures may be allowed to help identify and light pedestrian routes within the commercial areas.

**2e. Pedestrian Circulation**

El Mirage Drive shall provide 8' wide sidewalks detached from the back of curb. Accessible walkways from the parking areas to the building entries shall also be provided.

- a. Stamped, colored concrete or pavers shall be used to denote all pedestrian crossings.
- b. Pedestrian pathways shall be shaded via landscaping or the introduction of hardscape elements such as canopies as determined at the time of site plan review.

**2f. Grading and Drainage**

The site will be required to retain storm water runoff and retain for the adjacent half streets. Retention basins shall be designed and contoured to assume a more natural appearance and to be an integral part of the landscape. The Property will be coordinated to combine open space areas with property to the west in order to provide greater sense of scale and to enhance the potential for more active and passive recreational uses. Retention basins shall be designed to meet the requirements of the Avondale Zoning Ordinance as amended.

**2g. Signage**

Signage for the PAD should be designed to enhance the identity of the overall development park and the individual businesses within. A master sign package shall be submitted for review and approved with the master site plan.

**Freestanding Monument:**

- Monument Signs shall be for center identification only, with the complex name and address.
- Monuments shall not exceed 6-foot in height and 10-foot in width.

- Sign materials and colors shall be consistent with the exterior architecture of the buildings. Lettering shall be halo backlit reverse pan channel letters.
- Maintenance of the signage will be at the responsibility of the developer.
- One (1) monument sign location has been proposed to be placed within the PAD. See potential locations on Exhibit "D"

#### **Multi-tenant Monument**

- One multi-tenant monument sign for tenant identification will be allowed along El Mirage Road. An additional multi-tenant monument sign may be located at a future secondary entrance point to be determined at the time of site plan review.
- Two multi-tenant signs may be necessary depending upon number of tenants.
- The design of the monument shall be consistent with the overall scale of the building. Design and placement of any signage shall not obstruct traffic safety site areas.
- Shall not exceed 8 feet in height.
- Maximum area of 100 square feet.
- Signs shall be a minimum of 300 feet apart
- Lettering shall be non reflective halo backlit reverse pan channel letters.

#### **Building:**

- Signage shall be systematically located and styled to support the architectural design
- Building wall signage
  - Maximum sign area – 1 sq ft for each linear ft of suites building façade. 150 sq ft maximum per sign.
  - Sign placement – below edge of roof.
  - Location requirements – Signs will be mounted above each respective suite, placed consistently along the building face, and located on the upper part of the exterior wall within a dedicated band
- Lettering -
  - Commerce Park - wall mounted tenant signage shall be reverse pan channel letters with solid color that compliments the building color.
  - Illuminated signage may be placed on buildings fronting I-10
  - Halo backlighting will be used for all wall signage requiring illumination.
- Tenants may have one window decal sign. Window signage shall count towards allowable building signage aggregates and shall require a permit from the City of Avondale.

### 3. Streetscape and On-site Landscape

Landscaping is an important component of commerce center design which softens the park appearance by breaking up the continuous expanse of pavement and buildings. In order to create a uniform appearance throughout the development, the PAD will be established.

The PAD requires complete streetscape concepts and strategies that help contribute to the identity and comfort of the development.

- A typical streetscape concept and theme shall be developed and repeated. Includes tree selection, lighting, signage, decorative walls, and other design elements.
- Streetscape should reinforce design concepts for the commerce center. This includes defining focal points, framing views and edges, and highlighting architectural design features.
- When necessary, streetscaping should screen views of parking lots and loading areas. Berms or shrubs may be used to help screen parking lots.
- Landscaping shall comply with the City of Avondale landscaping requirements.
- All plant materials shall conform to the Arizona Department of Water Resources (ADWR) plant material list.

On-site landscaping shall reinforce overall site and architectural concepts while increasing pedestrian comfort.

- Planting in front and side yards should reinforce the PAD streetscape concept.
- Foundation planting should enhance architectural and massing concepts for buildings.
- Accent planting and color should reinforce architectural and site design entry expression.
- Screen planting should be used around parking lots and to block undesirable views. Parking lot screen planting should be at least 30" tall.

- Grading and retention basins should be done to fulfill functional requirements and architectural and site design concepts.
- Landscaping must comply with the City of Avondale landscaping requirements.
- All plant materials shall conform to the ADWR plant material list

The City of Avondale has established the landscape theme for the Interstate 10 frontage, which includes the predominant use of Southern Live Oaks (*Quercus virginiana* 'Heritage Oak'). Along the interstate frontage, 50% of the required trees shall be Southern Live Oak, all which shall be a minimum of 24" Box. All of the interior street intersections shall include at least one Southern Live Oak which shall be a minimum of 36" Box in size and clustered with other Southern Live Oak of varying size to reinforce the street tree theme. The size and quantities of plant material for the balance of the streetscape shall conform to the landscape standards of the Avondale Zoning Ordinance as amended.

Note: Landscaping plans will receive a master site plan/design review in order to maintain a unified project.

## **G. Infrastructure / Utilities**

### **1. Access / Circulation**

The primary access to and from the property is along Van Buren Street, a designated major arterial quarter mile south of the property.

El Mirage Drive is a collector street that aligns with the quarter mile point east of 127<sup>th</sup> Avenue and is centered on the west property line, where it will terminate at the northeast corner of the property in a cul-de-sac.

Development of the **East** portion of the site may not proceed until a secondary access point agreement is reached along the south or east property lines. The location of the secondary access point must be approved by the City Engineer or his "designee."

]

**2. Street Improvements**

Half street improvements will be constructed per City of Avondale standards and in conformance with the proposed development. Improvements that will comply to City of Avondale standards include but are not limited to, curb, gutter, and 8' wide sidewalks connecting to possible improvements leading to Friendship Park. Street dedications as follows:

<u>Street</u>	<u>Ex. ROW</u>	<u>Prop. ROW</u>
El Mirage: east half ROW	33'	60'

**3. Water Service**

This project will connect into the water main within El Mirage Drive where it connects into the existing water main in Van Buren.

**4. Sanitary Sewer Service**

Proposed is a gravity sewer system. All sewer mains internal to the site will drain to the west and connect into the sewer main in El Mirage Road.

**5. Electrical Service**

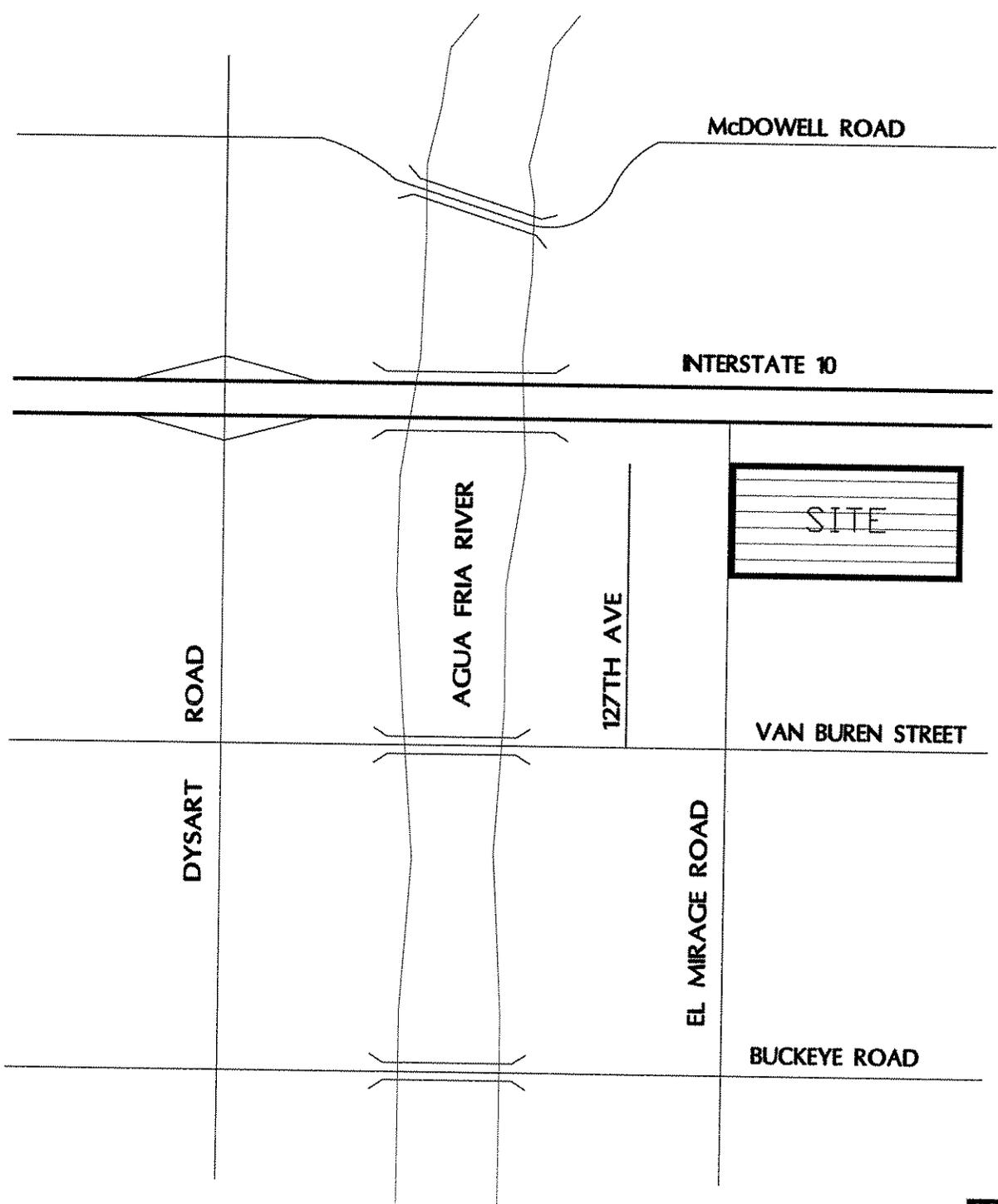
This subject property is within the service area of the Salt River Project.

**6. Natural Gas Service**

This project is within the service area of the Southwest Gas Corporation.

**7. Telephone Service**

This Subject property is within the service of Qwest Telephone.



**PAPAGO.COMMERCE.CENTER**  
**AVONDALE, AZ**

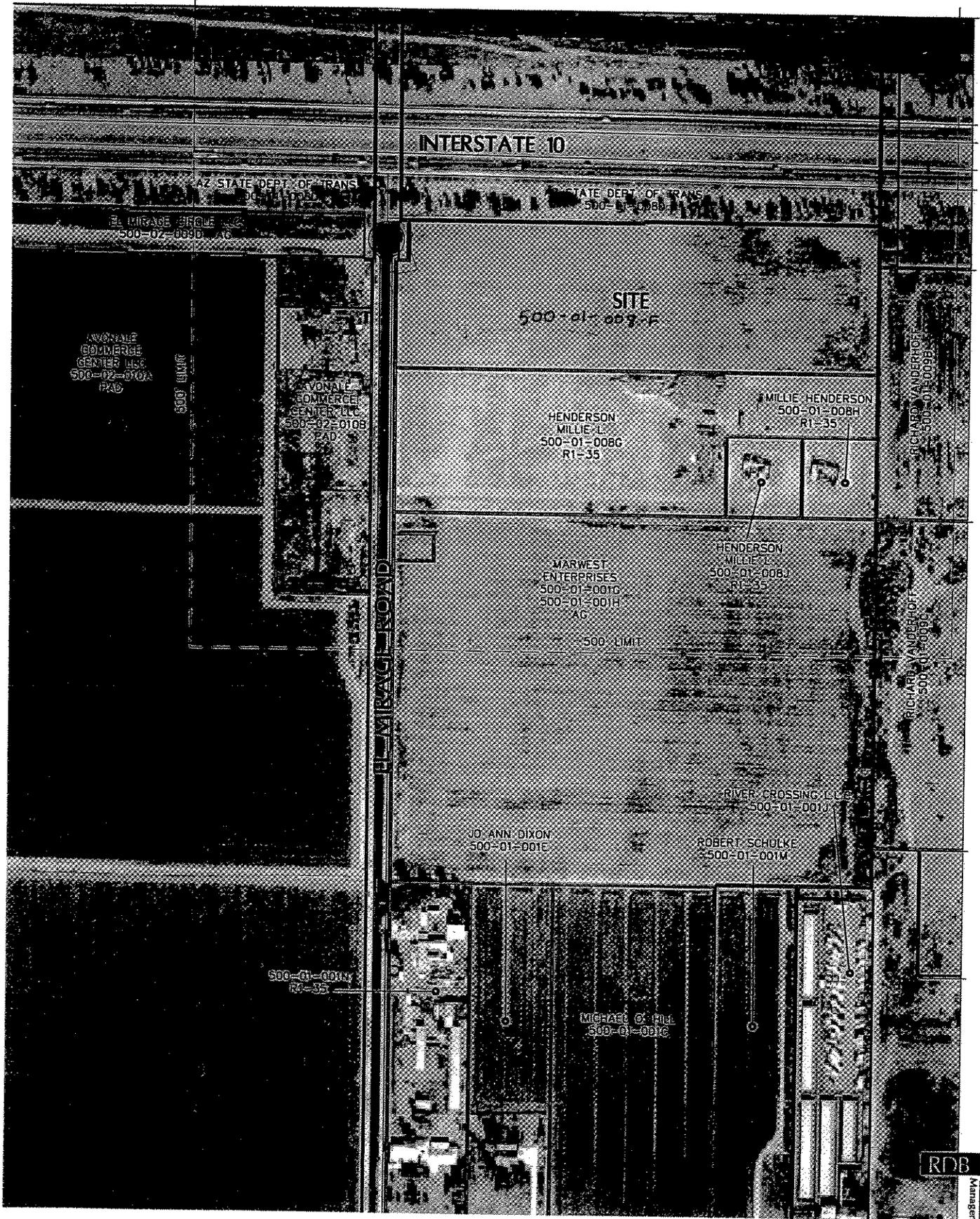


**VICINITY MAP**  
**EXHIBIT A**

107 W. Williams Dr. Phoenix, AZ 85027  
 T: 602.760.2229 F: 602.760.2550

**RDB**  
 Management & Construction





PAPAGO.COMMERCE.CENTER  
AVONDALE, AZ



CONTEXT PLAN  
EXHIBIT C

INTERSTATE 10

CP  
11.3129 GROSS AC  
11.1122 NET AC

33' ROW TYP.

POTENTIAL FUTURE MONUMENT  
SIGN LOCATION

EL MIRAGE ROAD

UNSUBDIVIDED

EXCEPTION

CORPORATE DRIVE

**SITE DATA SUMMARY**

GROSS SITE AREA	11.31 AC
(PERIMETER R.O.W.)	0.2 AC
NET SITE AREA	11.11 AC

**NOTES:**

GROSS ACERAGES IS CALCULATED  
TO THE ADJACENT PERIMETER  
STREET CENTER LINE.

ALL ACERAGES SHOWN  
ARE BASED ON  
APPROXIMATE NET VALUE

**RDB**

Management & Construction



**GENERAL  
DEVELOPMENT PLAN  
EXHIBIT D**

**PAPAGO.COMMERCE.CENTER**

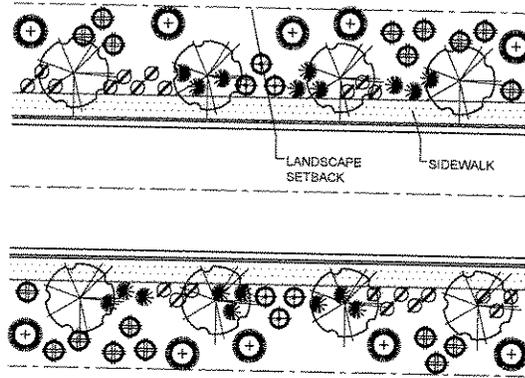
807 W. Williams Dr, Phoenix, AZ 85027  
T: 602.790.2529 F: 602.990.2050

**PLANT SCHEDULE**

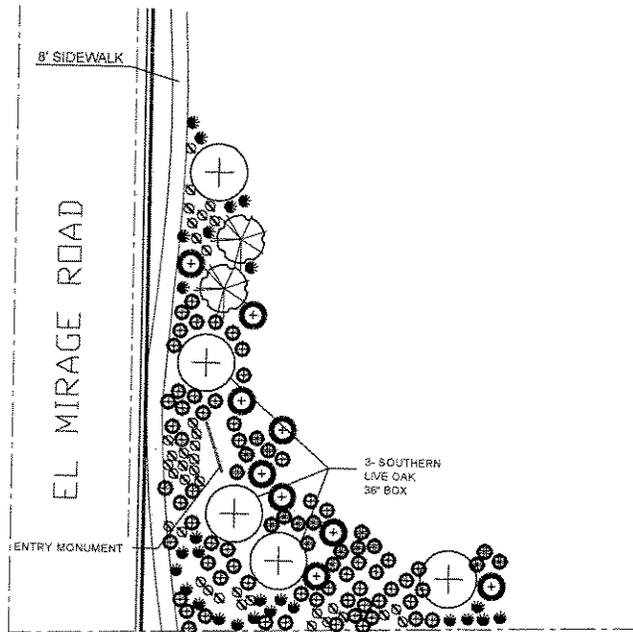
SYMBOL	BOTANICAL/COMMON NAME	W x H
<b>TREES SUCH AS + (25% = 24" BOX / 74% = 15 GAL.)</b>		
+	ACACIA SPP. ACACIA	20 x 20
+	CERODIUM SPP. PALM VERDE	30 x 30
+	CHLOROPIS LINEARIS DESERT WILLOW	20 x 20
+	PITHECCELLOBIUM FLEXICOLLE TEXAS EBONY	25 x 20
+	PROSOPIA SPP. MESQUITE	30 x 30
+	QUERUS VIRGINIANA SOUTHERN LIVE OAK	30 x 30
<b>SHRUBS SUCH AS + (REQ'D. 5 GAL. SHRUBS)</b>		
+	CALSAEPHA SPP. BIRD OF PARADISE	6 x 6
+	CASSIA SPP. CASSIA	6 x 6
+	CALLIANDRA SPP. FAIRY DUSTER	4 x 4
+	DALEA PULCHRA INDIGO BUSH	5 x 5
+	DOGONADA SPP. HOPSEED BUSH	10 x 12
+	EREMOPHILA SPP. EMU BUSH	4 x 4
+	LEUCOPHYLLUM SPP. TEXAS RANGER	3 x 3
+	RUPELLIA SPP. RUPELLIA	4 x 4
+	TECOMA SPP. ORANGE JUBILEE	8 x 10
<b>ACCENTS SUCH AS + (3 GAL.)</b>		
+	AGAVE SPP. AGAVE	6 x 6
+	DAYLIRION SPP. DESERT SPOON	6 x 4
+	HESPERALOE SPP. RED YUCCA	5 x 3
+	MULLENBERGIA SPP. DEER GRASS	3 x 3
<b>GROUND COVER SUCH AS + (1 GAL.)</b>		
+	ACACIA SPP. AGAVA	8 x 2
+	BAILEYA MULTIRADIATA DESERT MARIGOLD	2 x 1
+	BACCHARIS SPP. DESERT BROOM HYBRID	6 x 3
+	DALEA SPP. TRAILING INDIGO BUSH	6 x 1
+	LANTANA SPP. LANTANA	2 x 1
+	VERBENA SPP. VERBENA	5 x 1
<b>MATERIAL</b>		
+	DECOMPOSED GRANITE "JESSE RED"	3/4" MINUS
+	WEATHERED GRANITE BOULDERS SURFACE SELECT	1/2 - 2 TONS 1 TON AVG.

NOTE: TREE HEIGHTS AND CALIPERS WILL COMPLY WITH "ARIZONA NURSERY ASSOCIATION SPECIFICATIONS" FOR THAT SIZE OF TREE.

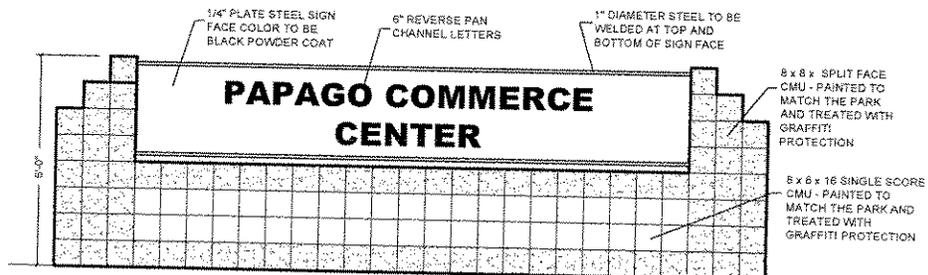
NOTE: LANDSCAPE TO BE WATERED BY AN UNDERGROUND AUTOMATIC IRRIGATION SYSTEM.



**INTERNAL STREETSCAPE CONCEPT**



**TYPICAL ENTRY MONUMENT - STREETSCAPE CONCEPT**



**ENTRY MONUMENT**

**PAPAGO.COMMERCE.CENTER**



**CONCEPTUAL MONUMENT & STREETSCAPE EXHIBIT G**



Management & Construction

67 W. Williams Dr, Phoenix, AZ 85027  
T: 623.780.2929 F: 623.298.2050



**ORDINANCE NO. 1272-1007**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 11.1 ACRES LOCATED AT THE SOUTHEAST CORNER OF INTERSTATE 10 AND EL MIRAGE ROAD AS SHOWN IN FILENAME Z-07-5, REZONING SUCH PROPERTY FROM AGRICULTURAL (AG) TO PLANNED AREA DEVELOPMENT (PAD) AND IMPOSING CONDITIONS UPON SUCH CHANGE.

**WHEREAS**, the Council of the City of Avondale (the "City Council") desires to amend the City of Avondale Zoning Atlas (the "Zoning Atlas") pursuant to ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, all due and proper notices of public hearings on the intended amendment held before the City of Avondale Planning and Zoning Commission (the "Commission") and the City Council were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the Commission held a public hearing on Thursday, September 20, 2007, on the amendment to the Zoning Atlas pursuant to such notices and as required by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the Commission recommended approval; and

**WHEREAS**, the City Council held a public hearing regarding the amendment to the Zoning Atlas on October 15, 2007.

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

**SECTION 1.** That ± 11.1 acres of real property, generally located at the southeast corner of Interstate 10 and El Mirage Road as shown in filename Z-07-5 (the "Property"), as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, are hereby rezoned from Agricultural (AG) to Planned Area Development (PAD), subject to the following conditions:

1. Development shall conform to the Papago Commerce Center General Development Plan date stamped August 9, 2007, except as modified by these stipulations.

2. Retail commercial operations directly related to the primary industrial use shall not exceed ten (10) percent of the gross floor area of any single tenant except with a Conditional Use Permit, where up to 30 percent may be allowed.
3. Freestanding freeway identification signage shall not be allowed.
4. A master site plan shall be approved by the City Council prior to development. Subsequently, plans and permits may be administratively approved by staff for this development in accordance with the Council approved master site plan and comprehensive sign program.
5. Right-of-way dedication and street improvements shall be required as follows:

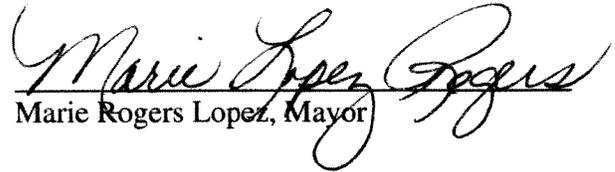
<b>Street</b>	<b>Right-of-way Required</b>	<b>Street Improvements</b>
El Mirage Road	60' half street adjacent to property. (Major Collector)	2 travel lanes, bike lane, curb and gutter, sidewalks, street lights and landscaping

6. Additional right-of-way may be required at site plan approval for improvements based upon the results of the revised traffic study and the site plan application, as determined by the City Engineer.
7. A full traffic impact analysis shall be required at the time of master site plan approval.
8. All water rights on the property shall be conveyed to the City of Avondale prior to issuance if a building permit or approval of a final plat, which ever is first.
9. Development of the eastern half of the Papago Commerce Center property may not commence until a secondary access point can be built.
10. The master site plan shall be approved by ADOT prior to site plan approval by the City of Avondale.

**SECTION 2.** That if any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, October 15, 2007.

  
Marie Rogers Lopez, Mayor

ATTEST:

  
Linda M. Farris, City Clerk

APPROVED:

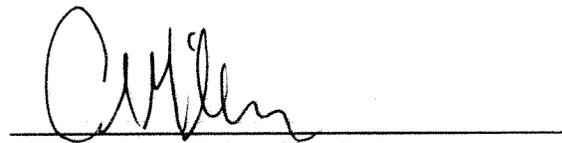
  
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1272-1007

[Map and Legal Description]

See following pages.

**SOUTHEAST CORNER OF INTERSTATE 10 AND EL MIRAGE ROAD  
LEGAL DESCRIPTION**

A PARCEL OF LAND BEING A PART OF THE WEST HALF OF SECTION 1, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1, AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 0 DEGREES 37 MINUTES 11 SECONDS EAST ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 113.39 FEET TO THE NORTHWEST CORNER OF THIS SAID PARCEL;

THENCE SOUTH 89 DEGREES 18 MINUTES 26 SECONDS EAST ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE I-10 FREEWAY A DISTANCE OF 1321.86 FEET;

THENCE SOUTH 0 DEGREES 19 MINUTES 44 SECONDS EAST A DISTANCE OF 100.98 FEET TO THE INTERSECTION WITH THE EAST-WEST MID-SECTION LINE OF SAID SECTION 1;

THENCE SOUTH 0 DEGREES 08 MINUTES 02 SECONDS EAST A DISTANCE OF 275.50 FEET;

THENCE NORTH 89 DEGREES 22 MINUTES 54 SECONDS WEST A DISTANCE OF 1322.91 FEET;

THENCE NORTH 0 DEGREES 13 MINUTES 52 SECONDS EAST A DISTANCE OF 264.81 FEET BACK TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION WHICH LIES NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

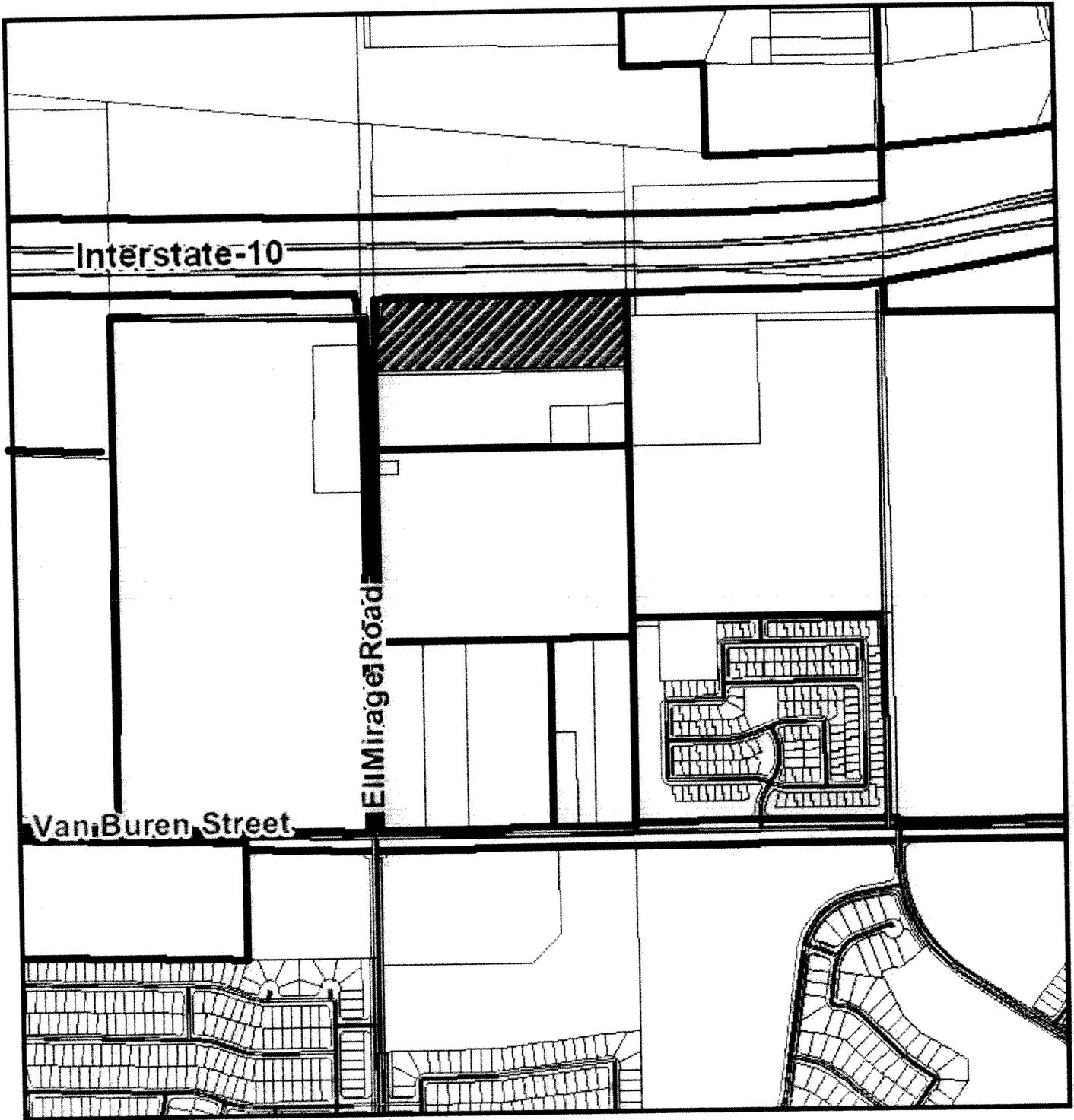
BEGINNING AT THE WEST CORNER OF SAID SECTION 1:

THENCE NORTH 89 DEGREES 52 MINUTES 41 SECONDS EAST, 60.00 FEET;

THENCE NORTH 0 DEGREES 17 MINUTES 59 SECONDS EAST, 112.90 FEET;

THENCE SOUTH 89 DEGREES 34 MINUTES 21 SECONDS EAST, 1516.06 FEET TO THE POINT OF ENDING, AS CONDEMNED FOR STATE HIGHWAY PURPOSES BY INSTRUMENT RECORDED IN DOCUMENT NO. 83-348293, RECORDS OF MARICOPA COUNTY, ARIZONA. THE DESCRIPTION FOR THE EXCEPTION AREA IS ON A

DIFFERENT BASIS OF BEARINGS THEREFORE THE BEARINGS MAY SLIGHTLY  
DIFFER.



## Application Z-07-5



Subject Property



**City Council Regular Meeting – Excerpt of Meeting Minutes  
October 15, 2007**

**PUBLIC HEARING AND ORDINANCE 1272-1007 – PAPAGO COMMERCE  
CENTER REZONING (Z-07-5)**

Ken Galica, Planner II, Development Services Department, explained this item was a rezoning application for Papago Commerce Center, approximately 11 acres located at the southeast corner of I-10 and El Mirage Road, currently zoned AG. Mr. Galica showed the Council an aerial photo of the subject property, pointing out vehicular access. He stated the subject property is designated as Employment by the General Plan and it falls within the Freeway Corridor Specific Plan, and the Employment land use encourages office and enclosed industrial uses, as well as modest amounts of retail which support the office and industrial uses. Mr. Galica informed the Council that the proposed office, distribution, and light manufacturing uses are consistent with the Commerce Park zoning district and the Employment land use designation, and the proposed Conditional Uses are consistent with the PADs approved in the vicinity. He reported the PAD development plan contains standards designed to encourage outstanding architecture through the inclusion of landscaping, signage and building design standards which will ensure a quality development of the subject property, and all development standards proposed for the property are identical to those in the Commerce Park district with the exception of an increase in building height from 35 to 45 feet. Mr. Galica explained that Staff feels this building height increase is appropriate considering the parcel location is adjacent to the freeway. He stated a Master Site Plan for the site, which will include reviews of materials, colors, landscaping, etc., will come before the City Council at a later date.

Mr. Galica reported this request for rezoning meets the requirements of the Zoning Ordinance, will result in compatible land use relationships, and will produce the quality of development which is consistent with the desired character for the area. He stated that with the recommended stipulations, the Papago Commerce Center PAD is consistent with the objectives of the General Plan and the Freeway Corridor Specific Plan. He reported that on September 20, 2007, the Planning Commission recommended approval of the application subject to 10 stipulations.

Mayor Lopez Rogers opened the item for public hearing. There were no requests to speak.

Council Member Buster stated he received a call regarding a lack of the ability for churches to buy property and to expand which had occurred since the housing boom and the gobbling up of real estate by large developers. While he is not sure the call was in reference to this item or the last item, he pointed out a church had looked at a parcel in terms of leasing space. Mr. Galica responded this issue regarded the phase that is currently under construction just to the west of El

Mirage Road where a church had looked at moving in, and the zoning does not allow for churches. He explained that churches were not considered compatible with employment types of uses because of the differences in parking requirements, pointing out that employment type uses require 1 space for every 500 square feet, and even less for areas that are strictly for warehousing and inventory storage; whereas, churches require much more parking. He added that churches were allowed in all commercial zoning districts, in some residential districts, and in some PAD districts, some subject to a Conditional Use Permit.

Council Member Buster stated this was an ongoing problem and perhaps he needs to talk with Staff about it because it was becoming all too common.

Charlie McClendon, City Manager, suggested that Council Member Buster refer the caller to the Economic Development staff or the Planning staff who are very familiar with inventory of property that might be available in the community that would be suitable for a church and they would be happy to work with the caller.

Mayor Lopez Rogers closed the public hearing.

Andrew McGuire, City Attorney, read Ordinance 1272-1007 – Papago Commerce Center Rezoning (Z-07-5), by title only.

Vice Mayor Wolf moved to approve the Ordinance subject to the 10 stipulations recommended by Staff.

- 1) Development shall conform to the Papago Commerce Center General Development Plan date stamped August 9, 2007, except as modified by these stipulations.
- 2) Retail commercial operations directly related to the primary industrial use shall not exceed ten (10) percent of the gross floor area of any single tenant except with a Conditional Use Permit, where up to thirty (30) percent may be allowed.
- 3) Freestanding freeway identification signage shall not be allowed.
- 4) A Master Site Plan shall be approved by the City Council prior to development. Subsequently, plans and permits may be administratively approved by staff or this development in accordance with the Council-approved Master Site Plan and Comprehensive Sign Program.
- 5) Right-of-way dedication and street improvements shall be required as follows: Street right-of-way required street improvements - El Mirage Road 60' half street adjacent to property. (Major Collector) 2 travel lanes, bike lane, curb and gutter, sidewalks, street lights and landscaping.
- 6) Additional right-of-way may be required at Site Plan approval for improvements based upon the results of the revised Traffic Study and the Site Plan application, as determined by the City Engineer.
- 7) A full Traffic Impact Analysis shall be required at the time of Master Site Plan approval.
- 8) All water rights on the property shall be conveyed to the City of Avondale prior to issuance of a building permit or approval of a final plat, whichever is first.
- 9) Development of the eastern half of the Papago Commerce Center property may not

commence until a secondary access point can be built. 10) The Master Site Plan shall be approved by ADOT prior to Site Plan approval by the City of Avondale.

Council Member Weise seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Earp	Excused
Council Member Scott	Excused
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Wolf	Aye
Council Member Lynch	Aye
Council Member Weise	Aye

Motion carried unanimously.

**City Council Regular Meeting – Excerpt of Meeting Minutes  
December 6, 2010**

**PUBLIC HEARING – TIME EXTENSION FOR PAPAGO COMMERCE  
CENTER PAD ZONING**

Mr. Galica advised that application PL-10-0100 is for property located at the southeast corner of the I-10 freeway and El Mirage. It was zoned PAD in 2007. Bordering properties are zoned R1-35, the Spectrum PAD, and the Avondale Commerce Center PAD. The Papago Commerce Center was processed by the same original applicant as the Avondale Commerce Center and the same owner owns both properties. The request is to extend the application for one year from the date of expiration. This would be the first of four one-year zoning extensions allowed. The site plan is consistent with the employment designation in the General Plan. The majority of development standards in this PAD remain current. The City is stipulating that the design language in the PAD be overridden by the design manuals, that it adhere to the Municipal Art Ordinance, and that it comply with the outdoor lighting standards. The justification for the request is that they have shown a commitment to the City and are still trying to fill empty tenant spaces in Avondale Commerce Project. It would be detrimental to the City and the developer to start a rezoning process from scratch. Staff recommends approval of the application.

Vice Mayor McDonald inquired about their actions to substantially move forward with the project. Mr. Galica explained that they have not submitted a site plan application, which would be the next step. There have been no discussions about development to this point. In response to his further inquiry, Mr. Galica said the adjacent Avondale Commerce Project PAD has three suites occupied out of several dozen. Vice Mayor McDonald doubted that they would break ground on the new development while there were so many empty spaces in the adjacent one and for that reason, he would be opposed to the extension.

Council Member Scott asked whether the applicant was present. Mr. Galica indicated that they were not.

Mayor Lopez Rogers opened the public hearing. There being no requests to speak, Mayor Lopez Rogers closed the public hearing.

Vice Mayor McDonald moved to grant a time extension for the Papago Commerce Center PAD for one year from the date of expiration, until October 15, 2011, subject to the staff recommended stipulations. Council Member Weise seconded.

**ROLL CALL VOTE AS FOLLOWS:**

Vice Mayor McDonald	Nay
Council Member Scott	Nay
Council Member Vierhout	Nay
Mayor Lopez-Rogers	Nay

Council Member Weise	Nay
Council Member Karlin	Nay
Council Member Buster	Aye

Motion failed 1-6.

**City Council Regular Meeting – Excerpt of Meeting Minutes  
March 7, 2011**

**PUBLIC HEARING AND ORDINANCE 1446-311 – ZONING REVERSION FOR  
PAPAGO COMMERCE CENTER FROM PAD TO AG FOR AN EXPIRED PAD (PL-11  
0001)**

Mr. McClendon recalled that this item was initially an action on the February 22<sup>nd</sup> agenda to revert the zoning of the Papago Commerce Center PAD because the request for extension had been denied at a previous meeting. At its February 22<sup>nd</sup> meeting the Council voted to continue this item to tonight's meeting. He introduced Ken Galica to present this item.

Mr. Galica said the property is 11.1 acres at the corner of I-10 and El Mirage Road. The General Plan designation is employment. It was originally rezoned from agricultural to PAD in October of 2007. The PAD expired on October 15, 2010, and on December 6 of 2010, the Council denied the applicants a one-year extension request. On February 22, Council voted 4 to 2 to continue the item to this meeting. The permitted uses in the development plan include professional office, manufacturing distribution, educational, research, medical/dental labs, wholesaling with limited commercial uses. The PAD refers to the zoning ordinance in terms of setting development standards.

There are three areas of non-conformance. The PAD contains its own set of specific building and site design standards that are less thorough than the City Design Manual. The PAD was also approved prior to adoption of the Public Art Ordinance. It also does not refer back to the zoning ordinance for outdoor lighting.

Staff recommends approval of PL-11-0001 reverting the property zoning from PAD to agricultural. If Council reconsiders, the recommendation is to approve the extension through October 15, 2011 with following four stipulations:

1. Unless listed below, all standards, requirements, and stipulations of the Papago Commerce Center PAD approval from October 15, 2007 shall remain in full force and effect.
2. Site and building design shall be in conformance with the City of Avondale Design Manual for Commercial, Industrial, and Multi-Family Residential Development. Where there are conflicts between the PAD's "Design Standards" and the City's Design Manual, the standards contained within the Design Manual shall supersede.
3. Outdoor site lighting shall be in conformance with City of Avondale Zoning Ordinance Section 707, Outdoor Lighting. Where there are conflicts between the PAD's lighting language and Zoning Ordinance Section 707, the language contained within Section 707 shall supersede.
4. Public art shall be provided in accordance with the Avondale Zoning Ordinance Section 11, Public Art.

Council Member Weise inquired about building size limits. Mr. Galica responded that building size is typically limited by the amount of landscaping and parking

required. Land not occupied by landscaping and parking could be occupied by one large or a series of smaller buildings. Council Member Weise observed that larger buildings would attract larger users who would benefit from I-10 corridor exposure. Mr. Galica said it is conceivable that a large building could be built there, but he was uncertain of the plans. Council Member Weise said he voted against the extension because he felt some developers treat Avondale like a second class city. After speaking with the representatives, he understands the work they put into the buildings and have marketed the land. They have convinced him to change his mind on an extension, especially if it could attract a large user. Mr. Galica clarified that nothing in the PAD establishes a minimum building size.

Council Member Buster expressed support for a one-year extension. During the economic downturn, Avondale needs to stay competitive. The developers are trying to make the project work and the City should meet them halfway.

Mayor Rogers opened the public hearing.

Mr. Curley, on behalf of the applicant, said the current economy does not support anything getting built on spec. Projects have to be user driven. Virtually all the users considering the corridor are large users. He anticipates that the development could include a 130,000 square-foot building. The marketing effort on the property includes a website and open houses. He indicated that since the developer took over the property, the floors on two of the buildings have been finished, and 13 spec spaces have been built. By providing an extension on the vacant space, users could have the option of coming into an existing space or building a build-to-suit project on the vacant space. iStar has the ability to provide financing which is a benefit in this economy.

Mayor Rogers closed the public hearing.

Vice Mayor McDonald moved to grant the time extension for the Papago Commerce Center Planned Area Development (PAD) for one year from the date of expiration, until October 15, 2011, subject to the staff recommended stipulations; Council Member Karlin seconded the Motion.

ROLL CALL VOTE AS FOLLOWS:

Vice Mayor McDonald	Nay
Council Member Scott	Nay
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried 5-2.

**ORDINANCE NO. 1486-112**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 11.1 ACRES GENERALLY LOCATED AT THE SOUTHEAST CORNER OF INTERSTATE 10 AND EL MIRAGE ROAD, AS SHOWN IN FILENAME PL-11-0178, REVERTING THE ZONING ON SUCH PROPERTY FROM PLANNED AREA DEVELOPMENT (PAD) TO AGRICULTURAL (AG).

**WHEREAS**, the Council of the City of Avondale (the “City Council”) approved Ordinance No. 1272-1007 on October 15, 2007, rezoning that certain  $\pm$  11.1 acre parcel of land generally located at the southeast corner of Interstate 10 and El Mirage Road, as more particularly described and depicted in Ordinance No. 1272-1007, (the “Subject Property”), from Agricultural (AG) to Planned Area Development (PAD) and imposing conditions upon such rezoning (the “Rezoning”); and

**WHEREAS**, the Rezoning was subject to a condition imposed pursuant to provisions of the City of Avondale Zoning Ordinance (the “Zoning Ordinance”), requiring that the development of the first phase of the project on the Subject Property must have commenced within three years of the effective date of the ordinance approving the PAD zoning on the property (the “Time Condition”); and

**WHEREAS**, the Time Condition upon the Rezoning has not been met and the City Council desires to revert the zoning on the Subject Property from Planned Area Development (PAD) to Agricultural (AG); and

**WHEREAS**, the City Council desires to amend the City of Avondale Zoning Atlas (the “Zoning Atlas”) pursuant to ARIZ. REV. STAT. § 9-462.04 to reflect the change in zoning on the Subject Property due to the Rezoning reversion; and

**WHEREAS**, all due and proper notice of the public hearing on the intended Rezoning reversion and Zoning Atlas amendment held before the City Council were given in the time, form, substance and manner provided by the Zoning Ordinance; and

**WHEREAS**, the City Council held a public hearing regarding the Rezoning reversion and amendment to the Zoning Atlas on January 17, 2012.

**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 Planned Area Development (PAD) zoning for the ± 11.1 acre parcel of real property generally located at the southeast corner of Interstate 10 and El Mirage Road, as shown in filename PL-11-0178, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, is hereby reverted to Agricultural (AG) zoning and the Zoning Atlas is hereby amended to reflect the reversion from PAD to AG.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, January 17, 2012.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1486-112

(Legal Description and Map)

See following pages.

**SOUTHEAST CORNER OF INTERSTATE 10 AND EL MIRAGE ROAD  
LEGAL DESCRIPTION**

A PARCEL OF LAND BEING A PART OF THE WEST HALF OF SECTION 1, TOWNSHIP 1 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 1, AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 0 DEGREES 37 MINUTES 11 SECONDS EAST ALONG THE WEST LINE OF SAID SECTION 1, A DISTANCE OF 113.39 FEET TO THE NORTHWEST CORNER OF THIS SAID PARCEL;

THENCE SOUTH 89 DEGREES 18 MINUTES 26 SECONDS EAST ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF THE I-10 FREEWAY A DISTANCE OF 1321.86 FEET;

THENCE SOUTH 0 DEGREES 19 MINUTES 44 SECONDS EAST A DISTANCE OF 100.98 FEET TO THE INTERSECTION WITH THE EAST-WEST MID-SECTION LINE OF SAID SECTION 1;

THENCE SOUTH 0 DEGREES 08 MINUTES 02 SECONDS EAST A DISTANCE OF 275.50 FEET;

THENCE NORTH 89 DEGREES 22 MINUTES 54 SECONDS WEST A DISTANCE OF 1322.91 FEET;

THENCE NORTH 0 DEGREES 13 MINUTES 52 SECONDS EAST A DISTANCE OF 264.81 FEET BACK TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION WHICH LIES NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

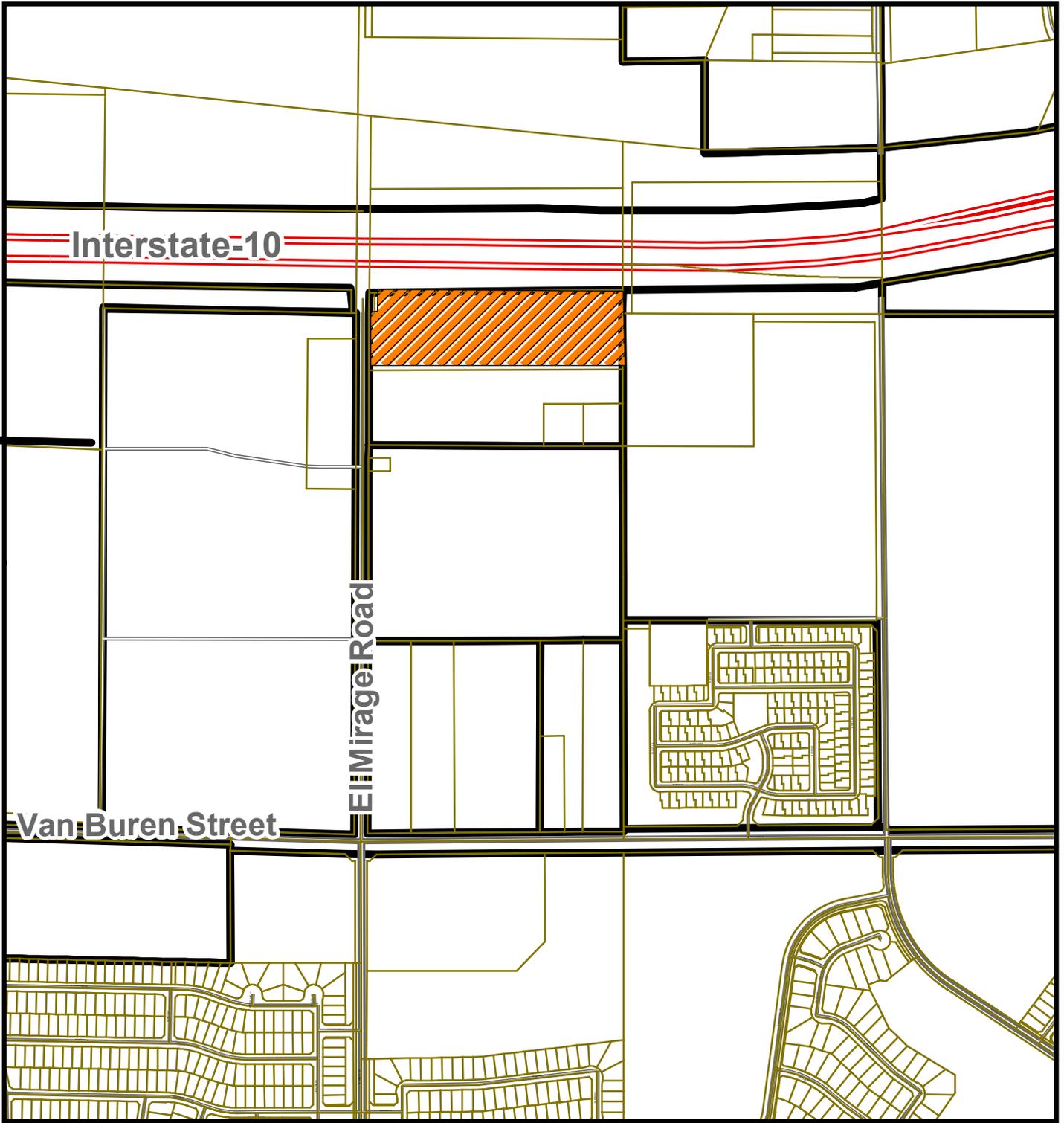
BEGINNING AT THE WEST CORNER OF SAID SECTION 1:

THENCE NORTH 89 DEGREES 52 MINUTES 41 SECONDS EAST, 60.00 FEET;

THENCE NORTH 0 DEGREES 17 MINUTES 59 SECONDS EAST, 112.90 FEET;

THENCE SOUTH 89 DEGREES 34 MINUTES 21 SECONDS EAST, 1516.06 FEET TO THE POINT OF ENDING, AS CONDEMNED FOR STATE HIGHWAY PURPOSES BY INSTRUMENT RECORDED IN DOCUMENT NO. 83-348293, RECORDS OF MARICOPA COUNTY, ARIZONA. THE DESCRIPTION FOR THE EXCEPTION AREA IS ON A

DIFFERENT BASIS OF BEARINGS THEREFORE THE BEARINGS MAY SLIGHTLY DIFFER.

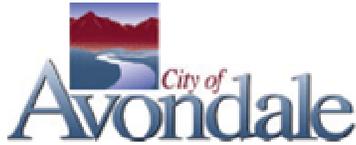


## Application PL-11-0178



**Subject Property**





# DEVELOPMENT SERVICES

**SUBJECT:**

Public Hearing - Time Extension for Phoenix Children's Hospital PAD Zoning, Alternatively Ordinance 1487-112 - Zoning Reversion

**MEETING DATE:**

January 17, 2012

**TO:** Mayor and Council

**FROM:** Sue McDermott, Development Services Director/City Engineer (623) 333-4211

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

---

**REQUEST:** Hold a public hearing and extend the period allowed for commencement of development within the Phoenix Children's Hospital PAD for one year from the date of expiration, until November 20, 2012.

**PARCEL SIZE:** Approximately 12.6 Acres

**LOCATION:** Northeast corner of McDowell Road and Avondale Boulevard (Exhibits A and B)

**APPLICANT:** Mr. Dave Cottle, Vice President of Planning, Design, and Construction, Phoenix Children's Hospital (602) 933-2900

**OWNER:** Phoenix Children's Hospital (602) 546-1000

**BACKGROUND:**

The property was annexed into the City of Avondale on April 20, 1987. It was rezoned from AG (Agricultural) to C-1 (Neighborhood Commercial) by Ordinance 931-03 on May 5, 2003. On October 20, 2008, the site was rezoned (Exhibits D, E, and F) from C-1 to Planned Area Development (PAD). The Phoenix Children's Hospital PAD specifies that development will occur in three phases, as follows:

- **Phase I** includes a one-story, 15' tall building which will function as a pediatric medical clinic and urgent care facility. The clinic building is approximately 36,000 square feet in area. The square footage devoted to clinical uses will be reduced to roughly 18,000 feet upon completion of Phase III, with approximately 18,000 square feet being converted into Emergency Room facilities when the Hospital (Phase III) is completed.
- **Phase II** is a two-story 30' tall medical office building (MOB) measured to the roof deck. With screen walls the highest point of the building will be 42' above grade. The medical office building will be roughly 36,000 square feet in area and construction is expected to begin on Phase II after the clinic phase of the project commences.
- **Phase III** is a two-story, 30' tall hospital building measured to the roof deck. As with the MOB, the highest point of the building will extend to 42' above grade. The hospital will add an additional 96,000 square feet of floor area to the complex. When taking into account the 18,000 square feet of clinic which will be converted to emergency facilities, the total square footage of the hospital at build out will be approximately 114,000 square feet. No timetable has been established for the hospital phase of the project

On October 20, 2008, the City Council approved a Site Plan for Phoenix Children's Hospital. Construction documents for the first phase (urgent care clinic), were approved on February 19, 2009. Due to economic conditions, construction of the project was put on hold by the developer. Two one-year extensions of the Site Plan were subsequently approved by the City Council to keep the project alive through the turbulent economic climate.

The applicant showed a renewed interest in constructing the project beginning in early 2011. On August 1, 2011, Phoenix Children's Hospital paid \$44,881.00 to secure a building permit for six months by paying a percentage of the required permitting fees. The remainder of fees, approximately \$304,000, will be paid prior to issuance of the building permit, which the applicant has indicated will occur by the end of January 2012 before the permit expires on February 1, 2012 (Exhibit G). Construction of the first phase is also expected to begin by the end of the month upon receipt of the full permit. Although it appears unlikely, in the event that development does not commence by February 1, 2012, approval of a new Site Plan and construction documents will be required. Off-site improvements to McDowell Road have been completed by the City as required by the Development Agreement.

The Zoning Ordinance allows up to three years from the date of the original zoning approval to commence development within a PAD in order to prevent its' expiration, and then up to four one-year extensions. The Phoenix Children's Hospital PAD would have expired on November 20, 2011; however, because a building permit had been secured, the PAD remains effective until that permit expires on February 1, 2012. The PAD will be vested as soon as the first phase of development commences on the property, which, as mentioned above, is expected in January 2012. As such, this request for a one-year PAD extension is likely to be unnecessary but is being processed for the applicant's peace-of-mind in the event something occurs which prevents construction from occurring before February 1<sup>st</sup>.

At its discretion, the City Council may also choose to deny the extension request. In that event, the Council can immediately revert the zoning of the subject property to its previous designation of C-1 (Neighborhood Commercial) through a separate motion and adoption of the applicable Ordinance. As required by the Zoning Ordinance, the applicant was notified of this possibility through a certified letter received on December 21, 2011. Please be aware that as long as the building permit is valid (through February 1, 2012), the developer may commence construction of the project even if the PAD is reverted.

#### **SUMMARY OF REQUEST:**

The applicant is requesting that the City Council grant a one-year extension for the Phoenix Children's Hospital PAD. This request represents the first extension for this particular PAD; the Zoning Ordinance allows for no more than four one year extensions to be granted. Because construction is anticipated to begin in January 2012 before the building permit approval expires, the PAD extension request is very likely unnecessary. However, it does provide PCH with additional security in the event that unforeseen circumstances prevent construction from occurring as scheduled.

The primary reasons stated by the applicant as justification for the extension request (Exhibit C) include:

- The economic downturn required the project be placed on hold in anticipation of an economic rebound. However, the site is a strategic priority for PCH and management has aggressively worked to initiate Phase I of the project.
- Over the past several months, interest has picked up and solutions have been found to facilitate construction of the project starting prior to January 31, 2012. Meetings have been held with City staff and the project appears on track for construction within the month.

If the PAD zoning extension is not granted, the Council may revert the zoning of the property back to C-1 (Neighborhood Commercial). An Ordinance has been prepared to this effect if needed.

#### **PARTICIPATION:**

Public notifications are not required for PAD Extensions.

#### **PLANNING COMMISSION ACTION:**

The Planning Commission does not review PAD Extensions.

#### **ANALYSIS:**

##### ***Conformance with the General Plan, Zoning Ordinance, and Design Manual***

The property is designated as Commercial by the General Plan. The medical and office uses permitted by the PAD are still considered appropriate for a property designated as Commercial by the General Plan. The PAD also remains in general conformance with the City's enhanced design and landscape requirements listed in the Zoning Ordinance and Design Manual. The project remains vital to the economic development goals of the City, specifically in regards to the McDowell Road corridor. For these reasons, staff supports approving the one-year time extension for the Phoenix Children's Hospital PAD.

#### ***Conclusion***

The uses, standards, and requirements contained within the Phoenix Children's Hospital PAD are in general conformance with the General Plan and current Zoning Ordinance standards. Additionally, the developer has been in constant communication with the City and has relayed a strong desire to begin construction of the project within the next month. As such, staff recommends that the PAD zoning be extended to ensure the project can still be built even in the event that there are unexpected setbacks which delay construction past January 31, 2012.

#### **RECOMMENDATION:**

Staff recommends that the City Council hold a public hearing and approve the time extension request for the Phoenix Children's Hospital PAD for one year from the date of expiration, until November 20, 2012.

#### **PROPOSED MOTION:**

I move that the City Council **GRANT** a time extension for the Phoenix Children's Hospital Planned Area Development (PAD) for one year from the date of expiration, until November 20, 2012.

*In the event that the Council denies the applicant's request, the following motion should be used to revert the zoning of the property to its previous designation of C-1 (Neighborhood Commercial):*

I move that the City Council **ADOPT** an Ordinance reverting the zoning of the subject site from Planned Area Development (PAD) to its previous zoning classification of C-1 (Neighborhood Commercial).

#### **ATTACHMENTS:**

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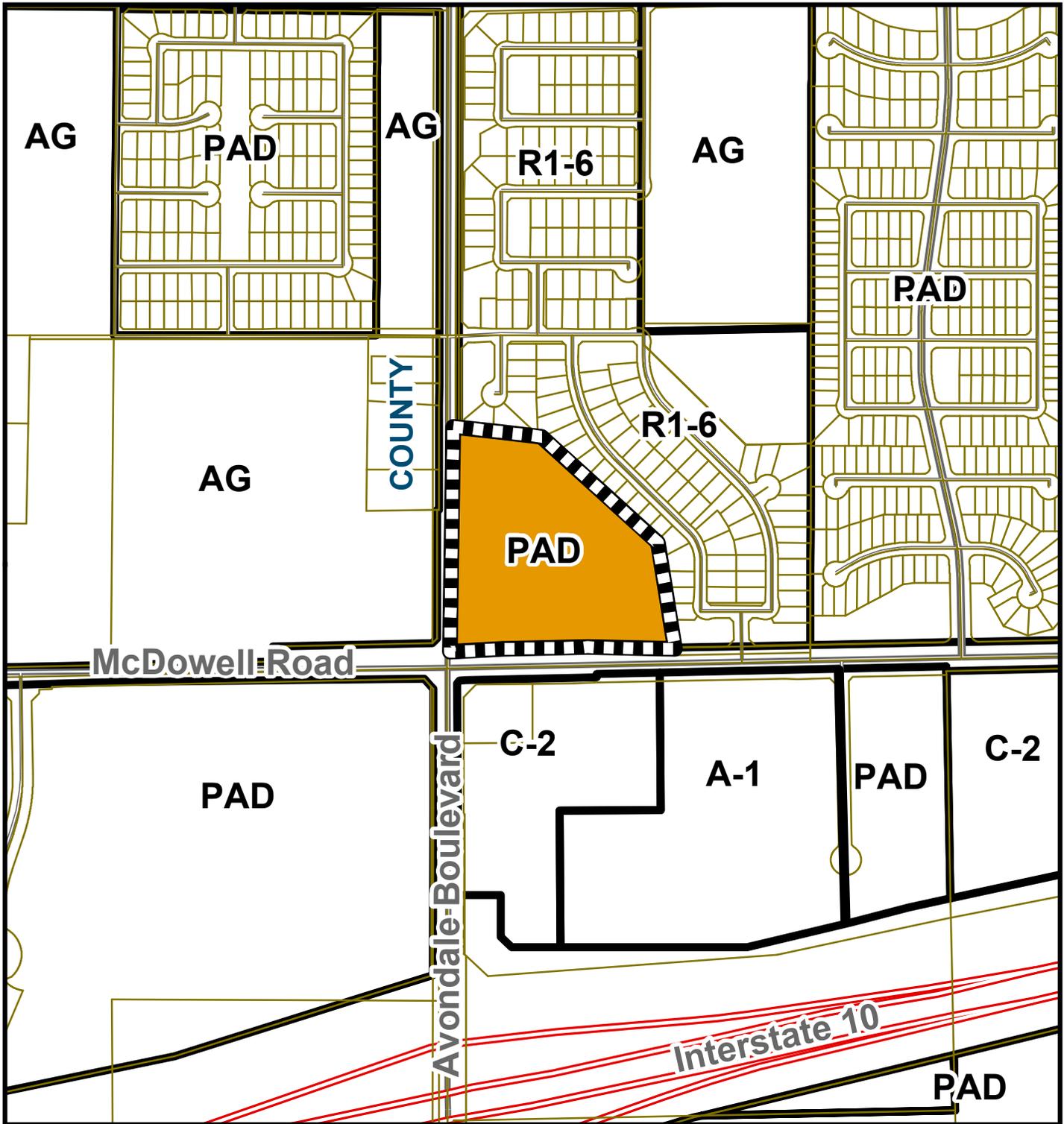
- [📄 Exhibit A - Zoning Vicinity Map](#)
- [📄 Exhibit B - Aerial Photograph](#)
- [📄 Exhibit C - Applicant's Extension Request dated November 9, 2011](#)
- [📄 Exhibit D - Approved Phoenix Children's Hospital PAD](#)
- [📄 Exhibit E - Ordinance 1333-1008, approving the Phoenix Children's Hospital PAD](#)
- [📄 Exhibit F - Excerpt from City Council Minutes, Regular Meeting of October 20, 2008 \(PAD Approval\)](#)

▣ [Exhibit G - Email from Michael Moskovitz, dated December 15, 2011, stating intention to begin construction of Phase I by January 31, 2012.](#)

▣ [Ordinance 1487-112](#)

**PROJECT MANAGER:**

Ken Galica, Planner II (623) 333-4019



### Zoning Vicinity Map



Subject Property





### Aerial Photograph



Subject Property



**MEMORANDUM**

**DATE:** November 9, 2011

**TO:** Ken Galica – City of Avondale

**FROM:** Dave Cottle, Vice President / PDC

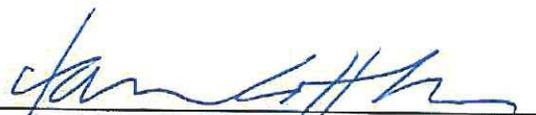
**RE:** Hospital PAD Extension – Phoenix Children's Hospital



Over the past years, PCH has been diligently trying to get our first phases of our project underway at our site at McDowell and Avondale Road in Avondale. Due to the economic downturn and resulting challenging economy over the last several years, we placed the project on hold in anticipation of an economic rebound. Over the past months, Developers have been more engaged to help us find creative solutions to fund the project and get it off the ground before the permit expires January 31 of next year. This site is a strategic priority for PCH and management is aggressively working to develop solutions and initiate phase I. We would sincerely appreciate a PAD extension, which we believe will truly benefit the process.

Please feel free to contact my office with any questions and/or concerns you may have.

Respectively,

  
\_\_\_\_\_  
Dave Cottle, Vice President  
Planning Design & Construction

11.9.11  
Date

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# Phoenix Children's Hospital Avondale Campus

Planned Area Development  
General Development Plan

Northeast Corner of Avondale Boulevard &  
McDowell Road

12.6 Acres

Prepared for  
City of Avondale, Arizona

August 2008  
*Revised*

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## Development Team

*Owner/Developer:*

**Phoenix Children's Hospital**

1813 E. Thomas Road  
Phoenix, AZ 85006  
602-546-0481  
Contact: David Cottle

*Architect:*

**HKS, Inc.**

1919 McKinney Avenue  
Dallas, TX 75201  
214-969-5599  
Contact: Ron Meyer

*Engineer:*

**Evans, Kuhn & Associates, Inc.**

7227 N. 16<sup>th</sup> Street, Suite 140  
Phoenix, AZ 85020  
602-241-0782  
Contact: John Kuhn

*Attorney:*

**Earl, Curley & Lagarde, P.C.**

3101 N. Central Avenue, Suite 1000  
Phoenix, AZ 85012  
602-265-0094  
Contact: Stephen C. Earl

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# Phoenix Children's Hospital Avondale Campus

## A. Property Description

The site is located at the northeast corner of Avondale Boulevard and McDowell Road (see Aerial, Exhibit A). The area of the site is 12.6 acres and is currently zoned C-1 (Neighborhood Commercial). The proposed zoning is PAD (Planned Area Development) to accommodate a children's hospital and other medically related uses for children. The site is located in a rapidly developing area within the City of Avondale and strategically located to provide critical care for children in the West Valley. The surrounding properties have the following land uses and zoning (see Existing Zoning Map, Exhibit B):

North: R1-6 – Donatella Subdivision  
East: R1-6 – Donatella Subdivision  
South: C-2 – Convenience Store and Vacant Commercial  
West: PAD – Vacant Commercial; County RU-43 – Single Family Residence

## B. Project Description

This is a proposal by Phoenix Children's Hospital (PCH) to establish a satellite specialty hospital, clinic and related medical office facilities for children in the West Valley. By 2030, the number of children in Maricopa County is projected to increase to 1.5 million, compared to 900,000 today (according to the Maricopa Association of Governments) and much of this growth will be in the West Valley. While PCH has already embarked on a major expansion of its main campus at Thomas Road and 20<sup>th</sup> Street in Phoenix (and several other major hospitals have also planned expansions of their pediatric departments), it will be important to also create additional specialized facilities for children in the West Valley. Now is the time to prepare to meet the needs of the future.

PCH opened within the Good Samaritan Hospital campus in 1983 and operated as an independent children's specialty hospital there for almost 20 years. Facing steady growth and an opportunity to establish its own campus, PCH purchased their 22-acre site at Thomas Road and State Route 51, originally occupied by the Phoenix Regional Medical Center, to build Arizona's first free-standing children's hospital. Construction and renovation of the site began in 2000, and PCH began its operations on this site as a specialized pediatric hospital in May 2002.

PCH plans to meet the community's need for increased capacity through a multi-year expansion on its main campus as well as satellite facilities/affiliations throughout the Valley. The PCH East Valley Urgent Care Center opened in the City of Mesa in December 2007. This network of pediatric care will provide comprehensive access for the highest quality care and healing of our Valley's sickest children. PCH also will continue to recruit

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the best physician specialists and sub-specialists, evolve its clinical practices, and work with leading local and national research partners to pioneer breakthroughs that ensure a long and healthy future for its young patients.

The PCH Avondale Campus is proposed initially for a pediatric clinic and a medical office building specializing in children's care (MOB). The final phase of the project will be the 48 bed full service children's hospital. The proposed theme of the facility is in keeping with the main PCH campus providing colorful and creative architectural styling acknowledging that it is a children's facility while being compatible to the surrounding development as well as the high quality expectations of the City of Avondale.

Overall, PCH is a non-profit organization that is also an economic driver of the greater community, contributing an estimated \$127 million through its annual employee payroll and an estimated \$9 million per year in uncompensated care. With the new facility, PCH will initially add approximately 35 new jobs with the clinic, and ultimately provide a total of approximately 375 new jobs with the hospital facility. In addition, the proposed MOB will create an additional approximately 105 jobs. Thus, through this project the City will see a total of 480 new, high quality jobs for this area.

As outlined in a later section of the PAD General Development Plan, the proposed use is supported by the Goals and Objectives of the General Plan and Freeway Corridor Specific Area Plan. The PAD is being requested to specifically define the intended uses of the site, and to accommodate setbacks and parking for the proposed development.

### **C. Land Use Development Plan**

The PCH Avondale site is proposed to be developed in three phases with the initial phase being a pediatric medical clinic with urgent care services in an approximately 35,800 square foot single-story building (see Development Plan, Exhibit C). An approximately 35,700 square foot two-story medical office building is planned as the second phase (to be built in conjunction with the first phase clinic), followed ultimately by a 113,800 square foot two-story hospital facility. The hospital phase will add approximately 95,800 square feet of building area and combined with portions of the initial clinic facility will create the total square footage of 113,800 square feet. The clinic phase is anticipated to commence construction as soon as development approvals are obtained. The MOB is anticipated to start at or near the same time frame as the clinic. The timing of hospital phase will be dictated by market demands. The currently anticipated start date is within the next five years. A concurrent master site plan has been filed with the City for approval in conjunction with the PAD rezoning request.

Access to the site will be provided from two driveways along Avondale Boulevard and a third access point on McDowell Road. All of the required off-site improvements will be installed with the first phase of development; however, the McDowell Road improvements will be subject to a development agreement with the City. Driveways have been located taking into consideration proposed median breaks and alignment of driveways in

corresponding projects opposite the site. In light of these considerations, full access is proposed at the northern Avondale Boulevard entry while the southern Avondale Boulevard entry is proposed for right-in/out only. The McDowell Road entry will be a ¾ access allowing right-in/out and left-in turning movements. A traffic study has been submitted under separate cover for review by the City.

## D. Land Uses

The proposed land uses for the PAD are listed below. The uses are all medically related uses as provided in the Zoning Ordinance within the C-1 and C-2 zoning districts.

### ***Permitted Uses***

- 1) Hospital.
- 2) Medical, Dental and Health Care Offices, Clinics, Laboratories, and associated facilities.
- 3) Surgery Center.
- 4) Medical Imaging.
- 5) Urgent Medical Care Facility.

### ***Accessory Uses***

- 1) Accessory uses customarily accessory or incidental to a permitted use including but not limited to pharmacy, cafeteria, gift shop, automatic teller machine.

## E. Development Standards

The minimum development standards for the project will comply with the C-1 zoning district except as modified within the PAD. Deviations in the landscape setback along McDowell Road and the hospital parking standards are being requested as part of the PAD. The development standards are proposed as follows:

<b>Development Standard</b>	<b>C-1 Requirement</b>	<b>Proposed</b>
<u>Setbacks</u>		
Avondale Blvd	20'	100'
McDowell Rd	30' - per Freeway Corridor SP	100'
Adjacent to Residential	25' one-story; 50' two-story	50' one & two-story
<u>Landscape Setbacks</u>		
Avondale Blvd	20'	20' minimum
McDowell Rd	40' – per Freeway Corridor SP	40' minimum except 29' minimum for limited area impacted by driveway turn lane on McDowell Road
Interior Property Line	10'	10' minimum
Building Height*	30'	30'

Lot Coverage	None	50%
Parking	1 space per 200 sq. ft. of building area	1 space per 200 sq. ft. Clinic/Medical Office; 1 space per 400 sq. ft. Hospital

\* Measured to roof deck for a flat roof per the Zoning Ordinance.

The reduced landscape setback along McDowell Road is necessary to accommodate a deceleration lane for the driveway entrance. Due to the constraints of the site and necessary parking for the proposed facility, the typical 40-foot landscape setback cannot be implemented in this one location. The reduced landscape setback will affect approximately 22% of the McDowell Road frontage, but this limited reduction of the landscaped setback is more than offset by the average landscape setback for the entire street frontage of approximately 65 feet. In addition, an enhanced corner monument, that will be a focal point into the development, is being placed at the intersection of McDowell Road and Avondale Boulevard, which includes a pedestrian refuge with seating and shade trees. The excess right-of-way along McDowell Road will also be landscaped and additional landscaping will be installed in the setback along the deceleration lane. The landscaped setback along McDowell Road not only averages 65 feet, but has up to a depth of 130 feet, where only 40 feet is required.

The parking for the development shall be provided to meet the following standards: 1 space per 400 square feet of hospital building area; 1 space per 200 square feet of medical office/clinic building area. The City of Avondale parking standard for a hospital is 1 space per 200 square feet. Through experience in dealing with hospitals throughout the Valley, parking demand is such that the 1:400 ratio provides an appropriate amount of parking. As demonstrated in the table below, other Valley communities require a ratio of parking in line with the proposed 1:400 ratio.

Hospital Characteristic	Avondale	Mesa	Glendale	Goodyear	Surprise	Phoenix	Tempe	Chandler	Gilbert
Doctors						1 space per Res. Doctor	1 space per Doctor		
Employee						1 space per 3 employees	0.5 spaces per employee		
Building Sq.Ft.	1 space per 400 sq ft	1 space per 400 sq ft		1 space per 400 sq ft					
Beds			1 space per bed		1 space per bed	1 space per 2 beds	0.5 spaces per bed	3 spaces per bed	1.5 spaces per bed

The proposed hospital will require 284 parking spaces according to this 1:400 ratio. The hospital parking standards in the other local municipalities listed above would calculate the required parking at or below the proposed 284 parking spaces proposed for the PCH hospital facility utilizing the total anticipated employee base of 375 employees. In total with this revised standard, the site at build out will be required to provide 552 parking spaces and 600 spaces are currently shown on the Development Plan.

The lighting will comply with the City of Avondale Zoning Ordinance requirements. Site screen walls will match the architectural character of the development and be provided to screen parking and mechanical equipment from the adjacent streets. Parapet and screen

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walls will be provided on the buildings to screen roof mounted equipment not exceeding the allowed heights of the Zoning Ordinance.

The development standards for the PCH site meet or **exceed** the City's minimum standards for the C-1 Zoning District, except for the limited reduced landscape setback along McDowell Road and the variation in hospital parking. And as noted earlier, there will be far greater landscaping provided along the street frontages than required by the C-1 zoning district. The proposed hospital parking standard will be sufficient to satisfy the parking needs of the hospital facility.

## **F. Architectural Design Criteria**

The PCH Avondale Campus exterior architecture design represents a unique use as a pediatric facility with vibrant colors and geometric shapes, though done in a tasteful way to blend with the surrounding area. The proposed facility will provide a landmark to showcase the quality of development that the City of Avondale has attracted. The materials and colors will match the new PCH main campus tower currently in development at Thomas Road and the 51 Freeway in the City of Phoenix as well as the recently opened PCH East Valley Urgent Care Center in the City of Mesa (see Elevations, Exhibit D; and, Development Photos, Exhibit E). In conjunction with the Master Site Plan submittal, full elevations and materials board are provided.

Architectural masonry units, concrete masonry units and composite metal panels will comprise most of the exterior. Fenestration will consist of aluminum and glass punched windows and window wall systems. The architectural and concrete masonry units will provide the majority of the vertical wall surface with the composite metal panels used as accents and mechanical equipment screens. The metal accents are also utilized to provide shading. The different colors are part of PCH branding and appeal to children. The base colors of the buildings are earth-tone in nature with red and yellow as the main accent colors. The accent colors are mainly concentrated at the main entry and focal point of the facility.

The exterior is designed to provide a welcoming and enjoyable first impression for children and adults. Since the hospital facility serves one of the basic needs of the community, the building needs to be identifiable and easy to find.

## **G. Site Design Criteria**

The clinic building and eventual hospital provides its primary architectural styling at the southwest corner of the site to place emphasis at the intersection of Avondale Boulevard and McDowell Road, which is a juncture of two of the City's primary transportation corridors. The main entries into the facility are located in this part of the facility. The use of rounded architectural features as well as both metal and color accentuate the prominent feature of the development.

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The two-story patient wing of the hospital will be located in northeast portion of the building and project toward the single-family development east of the site. There will be no windows along the end of the building that is closest to the residential to minimize any potential privacy concerns from the residents. This portion of the building is setback a minimum of 50 feet from the property line as currently allowed for a two-story building in the C-1 Zoning District, and a landscape buffer is shown with mature trees between the PCH site and the residential neighborhood. This tree lined buffer next to the residential neighborhood is being installed with the first phase of development, so that the trees will have several years to grow to a more mature condition before the hospital phase is constructed.

Parking is distributed across the site to minimize the size of parking fields, while providing the appropriate amount of parking for the development. The parking lots will be screened from the adjacent streets by landscape berms and three-foot screen walls that match the site architecture. Parking shade structures will be provided around the site and be styled to complement the project architecture. The shade structures will not be located in the front of the buildings along Avondale Boulevard and McDowell Road.

In addition to the parking lot screen walls, eight-foot screen walls matching the site architecture will be provided to screen the mechanical service area of the facility. Parapet walls and roof screen walls will be provided to screen roof mounted equipment. Trash enclosures will meet City design criteria and architecturally match the facility.

## **H. Landscaping**

A broad landscape palette has been created to complement the PCH Avondale Campus (see Preliminary Landscape Plan, Exhibit F). The use of accent Date Palms at the intersection of Avondale Boulevard and McDowell Road as well as at the main entries to the site will create focal interest and stately entries for the overall campus. An enhanced landscape and monument feature will be installed at the intersection of McDowell Road and Avondale Boulevard that includes a pedestrian refuge with seating and shade trees. In addition, a large landscape area is being provided along McDowell Road that will contain landscape berms, and parking screen walls for the McDowell Road "Boulevard" enhancements. Additional landscaping and trees are also provided along the McDowell Road area per the Specific Plan.

Screen wall materials will be consistent with the architectural character of the site. Specifically, the parking screen walls will be constructed of split-faced block. The landscape buffer will include 24-inch box trees spaced 20-feet on center along the residential area north and east of the site.

Over 25% of the site will be landscaped, which far exceeds the City's commercial standard of 10%. There is also a proposed patio/garden area on the east side of the hospital for patients and employees to enjoy. The area will have shade trees and be landscaped to

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provide a convenient rest area. As noted above, it is also significant that the perimeter buffer area lined with trees is being installed with the clinic phase so that this buffer will have time to grow towards maturity before the hospital phase is constructed.

## **I. Signs**

A sign program has been created for the PCH Avondale Campus for critical way-finding purposes associated with a clinic, medical office building and hospital devoted to children. A comprehensive sign package will be concurrently submitted in conjunction with the Master Site Plan. The sign plan calls for two freestanding monument signs along McDowell Road and two signs along Avondale Boulevard as well as appropriate wall signage to identify the facility and direct the public (see Sign Location Plan, Exhibit G).

The proposed freestanding monuments signs will be a maximum of six feet tall and 42 square feet in area. Monument signs matching those on the street frontage are also proposed on the interior of the site to provide directional guidance. The wall signage consists of one PCH Avondale Campus identification on McDowell Road and two on Avondale Boulevard as well as a single PCH logo on the Avondale Boulevard frontage. There will also be signage identifying the "Emergency" entrance and "Ambulance" entrance appropriately located on the building. The wall signage will be internally illuminated. All of the signage will be styled to complement the character of the campus (see Monument and Wall Signs, Exhibit H).

The proposed signage is a critical component of the development and justified to ensure timely identification of key services in emergency situations. In addition, the proposed signage will enhance the development and complement the theme of the pediatric facility.

## **J. Infrastructure**

A 65-foot right-of-way exists for McDowell Road and 55-foot right-of-way exists for Avondale Boulevard. Except for a dedicated right turn lane from McDowell Road onto northbound Avondale Boulevard, all street improvements are currently in place. Restriping of the existing half streets adjacent to the PCH site will be necessary to provide the ultimate lane configurations desired by the City of Avondale. An additional 15 feet of right-of-way is being required for the dedicated right turn lane on McDowell Road. The median in Avondale Boulevard will eventually be extended north restricting the south access into the PCH site to right in/out only. A traffic study has been submitted under separate cover for review by the City.

Regional drainage patterns generally direct storm water runoff from northeast to the southwest across the site. There is an existing retention basin in the southwest corner of the site to accommodate half street drainage from Avondale Boulevard and McDowell Road. This basin will remain. Basins are distributed around the site along with underground storage in the southern portion of the site. The basins and underground

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storage will accommodate the 100-year, two-hour storm event. A preliminary drainage report and plan will be submitted with the Master Site Plan. The site is located within the Zone "X" flood plain classification, which is between the 100-year and 500-year flood level with average depths of less than one foot.

The domestic water and fire protection will be serviced by and connected to existing water lines in Avondale Boulevard and McDowell Road. The existing water facilities have sufficient capacity to serve the development. Fire protection for this development will be serviced by a single eight-inch water loop water main that extends through the site from McDowell Road to Avondale Boulevard. Sewer service will be provided by connecting to existing sewer lines in Avondale Boulevard and McDowell Road. The sewer lines are adequate for the proposed development. Preliminary water and wastewater reports and plans will be submitted with the Master Site Plan.

## **K. Ownership and Maintenance**

The owner intends to retain single ownership and maintain the development. If at such time the project is split for multiple ownership, Conditions, Covenants and Restrictions (CC&Rs) will be created to ensure common maintenance and appearance of the development.

## **L. Conformance with Plans**

The General Plan Land Use Map designates the site as Commercial, which calls for Community and Neighborhood Retail and Office uses (see General Plan Land Use Map, Exhibit I). The General Plan places great importance on the McDowell Road corridor for employment and commercial uses. The Commercial designation is intended for development to provide the daily needs of goods and services of the residents in the community. The proposal supports the following Goals of the General Plan:

### Land Use

- Ensure land uses meet the long-term social and economic goals of the community.
- Plan land uses to minimize conflicts between them.
- Encourage development patterns that use land in an efficient and sustainable manner.

### Economic Development

- Plan land uses to support a diverse range of sustainable economic opportunity.

### Circulation

- Reduce Avondale residents' reliance on automobiles.

The site is also located within the Freeway Corridor Specific Plan area, which designates the site as Commercial. Again, the Commercial designation emphasizes the provision of goods and services to the community. This particular site is located along McDowell Road

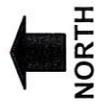
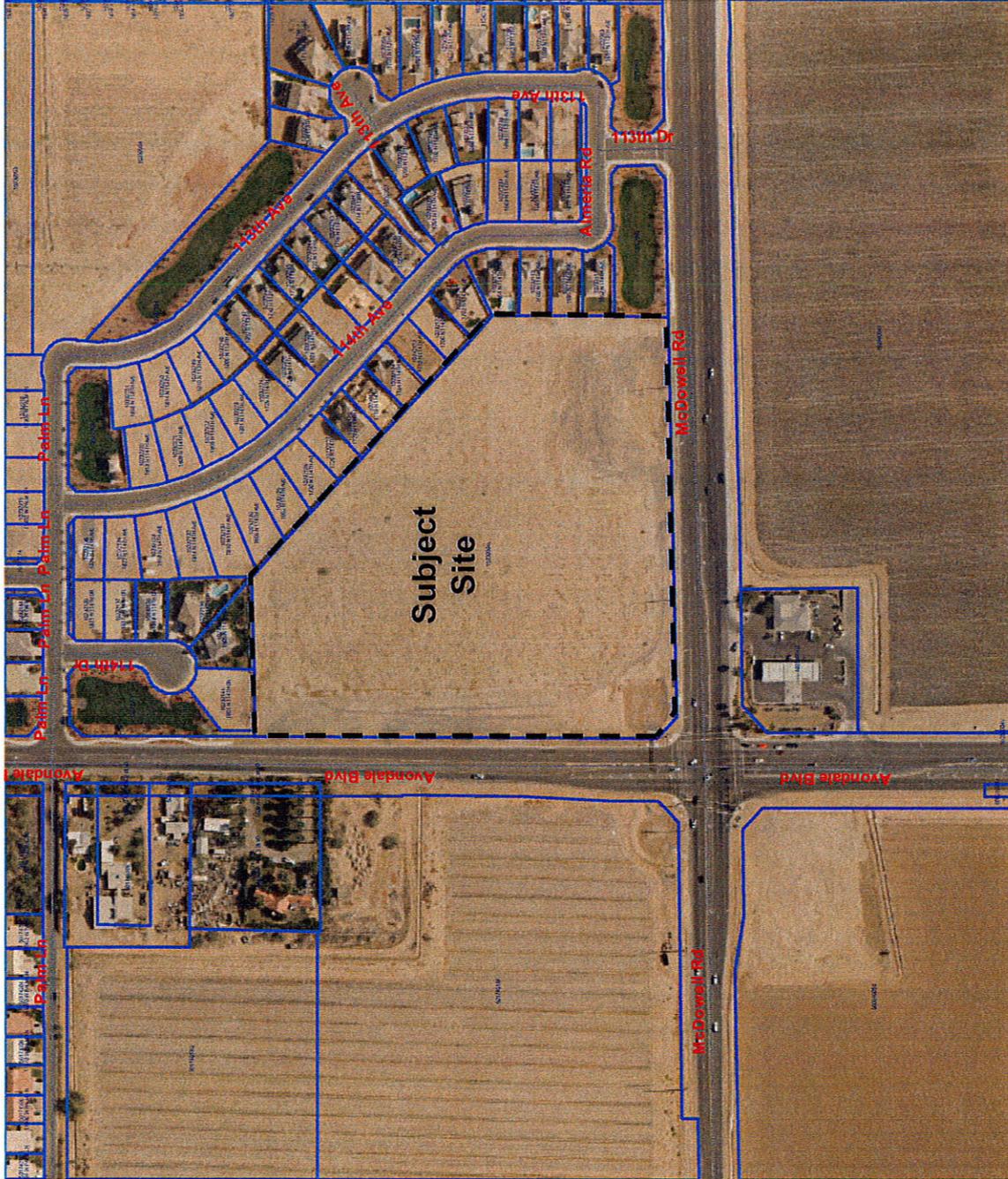
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that is identified in the Specific Plan as a “Boulevard” area emphasizing a unique theme to set the McDowell Road corridor apart from other Valley arterial streets. The proposed development has taken the Specific Plan design criteria for the Boulevard Area into consideration providing a larger landscape buffer along McDowell Road, enhanced site landscaping and natural elements for site screening.

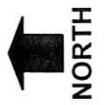
The proposed children’s clinic and hospital facilities will enhance the community by providing a critically important pediatric care facility near the center of Avondale minimizing the time and effort to travel to the main PCH campus for specialized needs. The hospital will provide a broad range of pediatric services that will improve the quality of life, especially the youngest within the community. The proposed land use is appropriate at this arterial intersection location and conforms to General Plan and Specific Plan.

## **M. Master Site Plan and Site Plan Review**

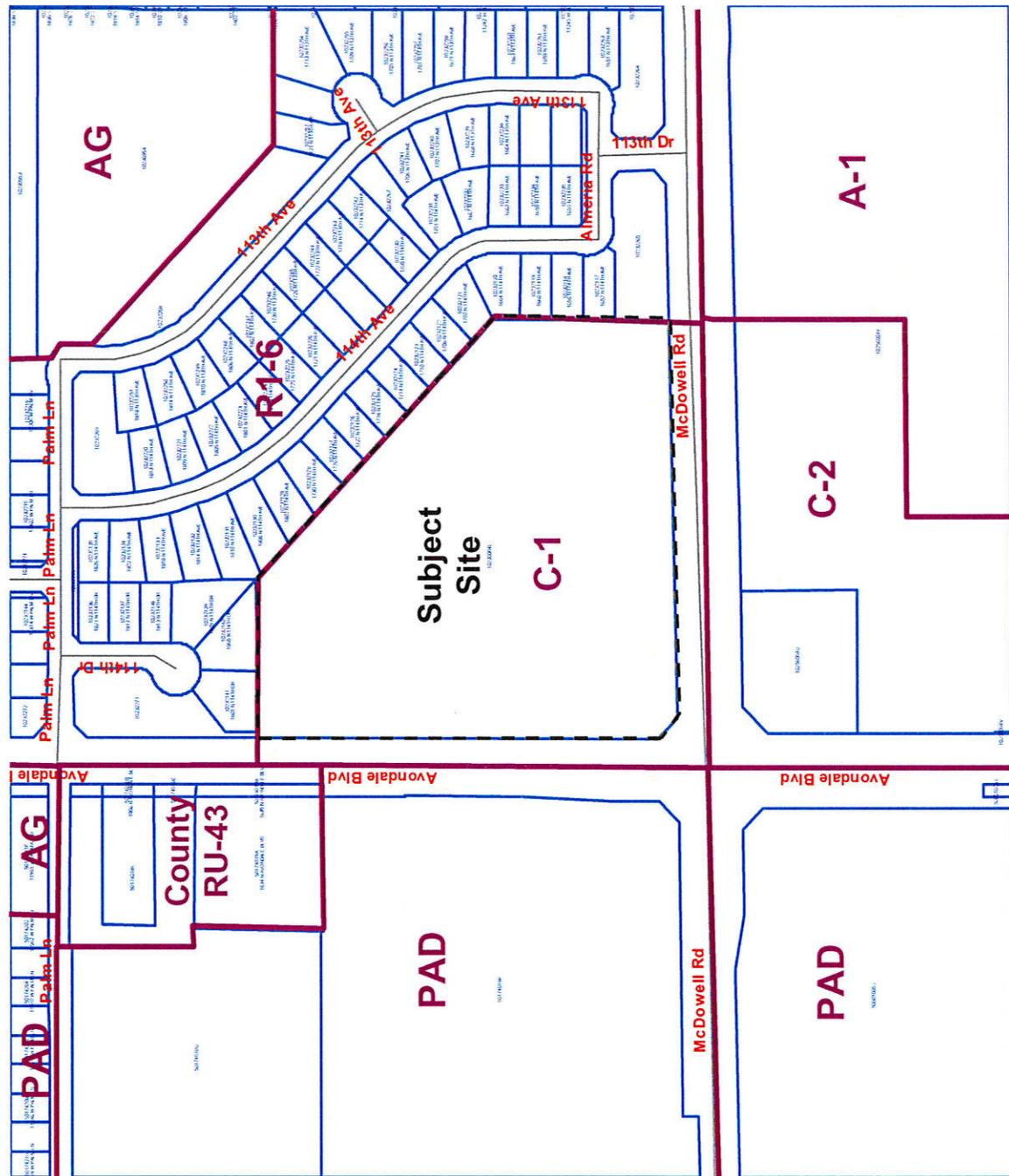
A concurrent Master Site Plan is being considered by the City with the proposed PAD rezoning. The Master Site Plan takes into consideration full development of the entire site. Any significant changes to this site plan that impact the intensity of the project will need to go back through the City’s review process to the City Council through a Master Site Plan amendment. Otherwise, individual site plans within the parameters of the approved Master Site Plan only require administrative staff approval.

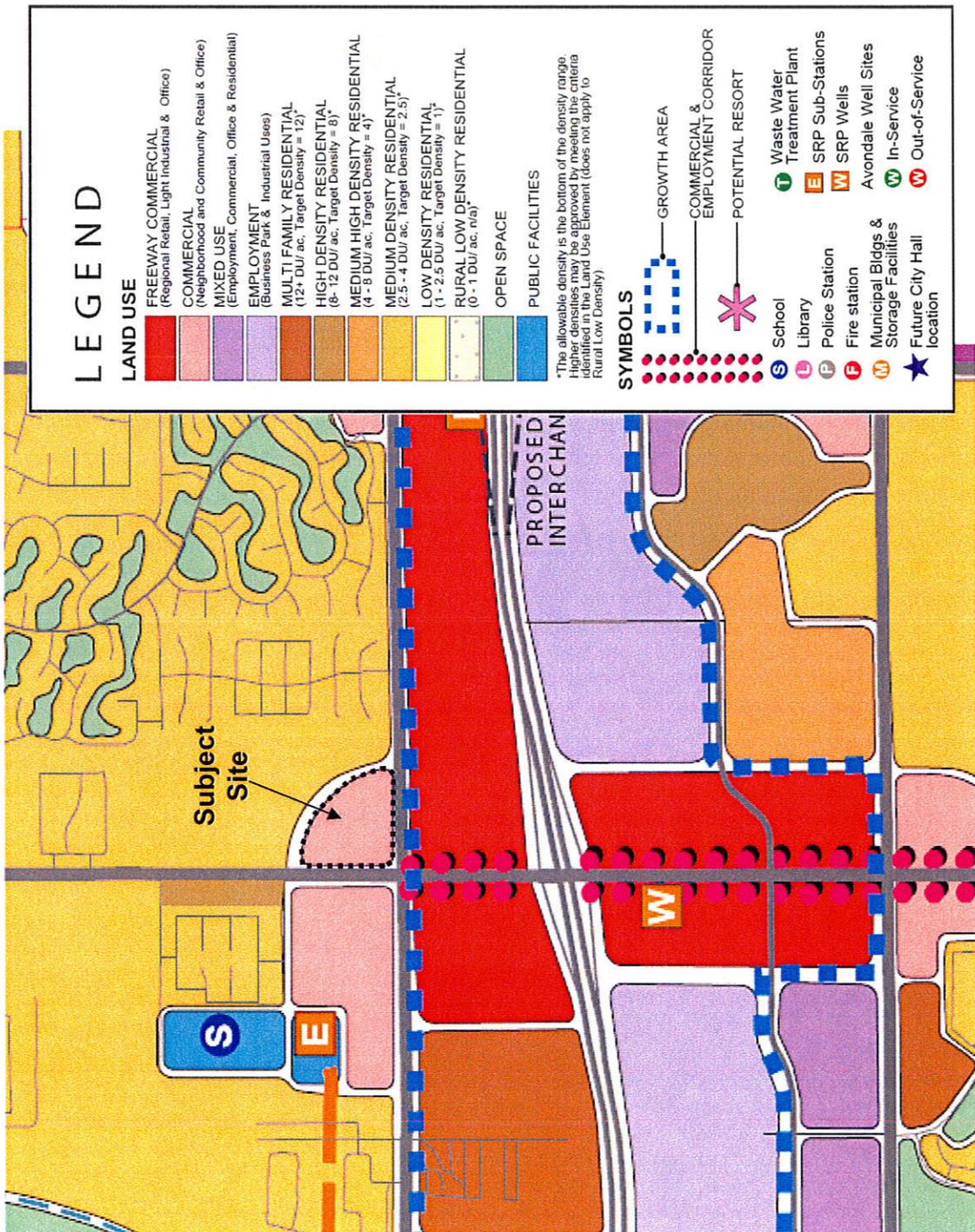


**Aerial**  
**Northeast Corner of Avondale Boulevard & McDowell Road**  
**Phoenix Children's Hospital Avondale Campus**



# Existing Zoning Map Phoenix Children's Hospital Avondale Campus





# LEGEND

- LAND USE**
- FREEWAY COMMERCIAL**  
(Regional Retail, Light Industrial & Office)
  - COMMERCIAL**  
(Neighborhood and Community Retail & Office)
  - MIXED USE**  
(Employment, Commercial, Office & Residential)
  - EMPLOYMENT**  
(Business Park & Industrial Uses)
  - MULTI FAMILY RESIDENTIAL**  
(12+ DU/ ac, Target Density = 12)
  - HIGH DENSITY RESIDENTIAL**  
(8- 12 DU/ ac, Target Density = 8)
  - MEDIUM HIGH DENSITY RESIDENTIAL**  
(4- 8 DU/ ac, Target Density = 4)
  - MEDIUM DENSITY RESIDENTIAL**  
(2.5 - 4 DU/ ac, Target Density = 2.5)
  - LOW DENSITY RESIDENTIAL**  
(1- 2.5 DU/ ac, Target Density = 1)
  - RURAL LOW DENSITY RESIDENTIAL**  
(0 - 1 DU/ ac, n/a)
  - OPEN SPACE**
  - PUBLIC FACILITIES**

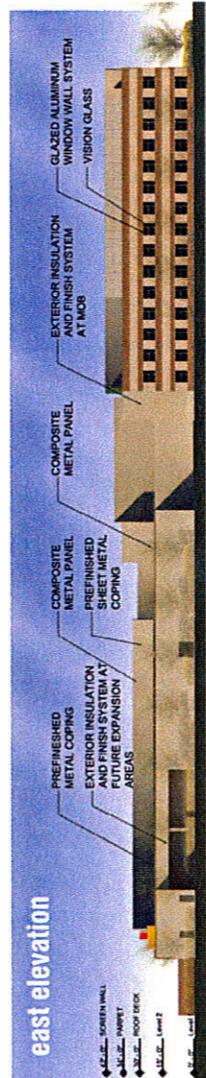
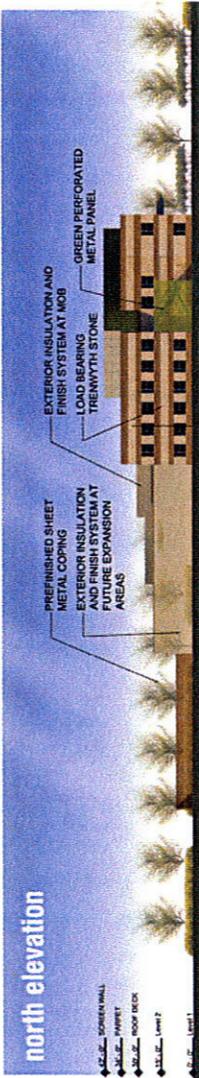
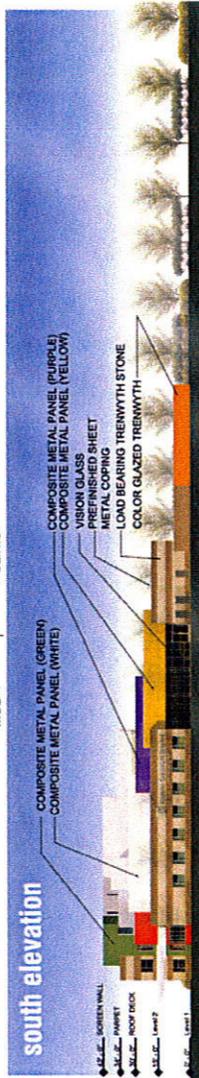
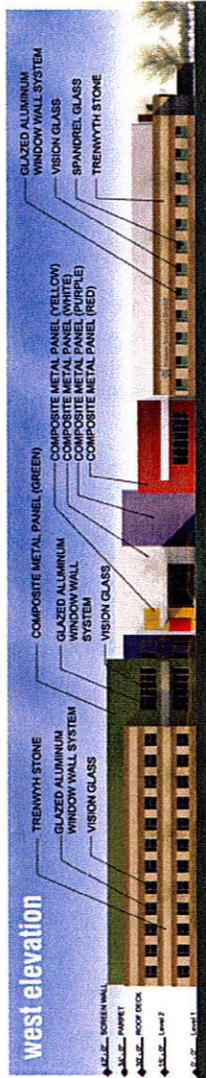
\*The allowable density is the bottom of the density range. Higher densities may be approved by meeting the criteria identified in the Land Use Element (does not apply to Rural Low Density)

- SYMBOLS**
- GROWTH AREA**
  - COMMERCIAL & EMPLOYMENT CORRIDOR**
  - POTENTIAL RESORT**
  - S** School
  - L** Library
  - P** Police Station
  - F** Fire station
  - M** Municipal Bldgs & Storage Facilities
  - ★** Future City Hall location
  - T** Waste Water Treatment Plant
  - E** SRP Sub-Stations
  - W** SRP Wells
  - W** Avondale Well Sites
  - W** In-Service
  - W** Out-of-Service



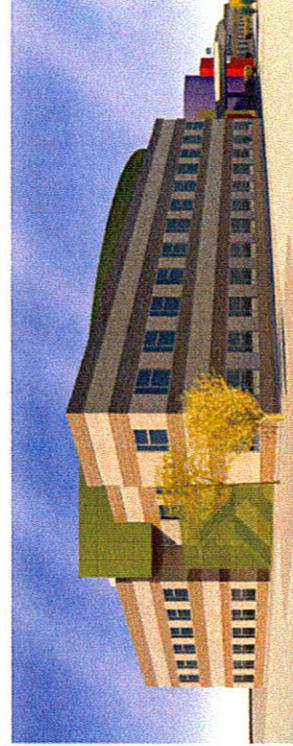
## General Plan Land Use Map Excerpt Phoenix Children's Hospital Avondale Campus

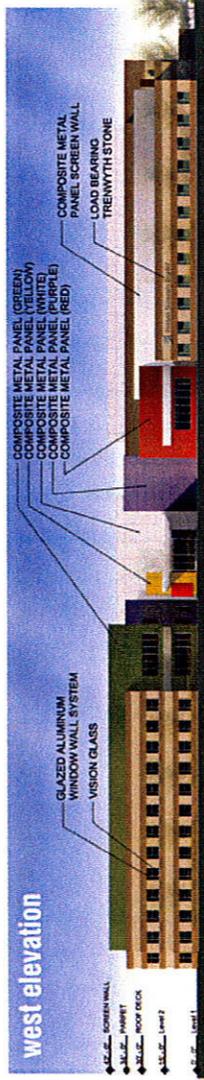




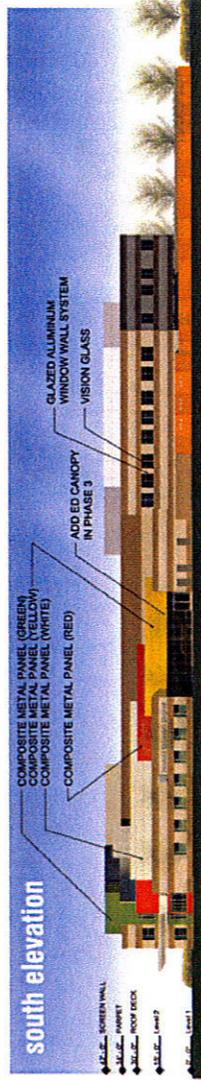
phase 1 & 2

CLINIC ← → MOB 0' 10' 20' 40' 60'

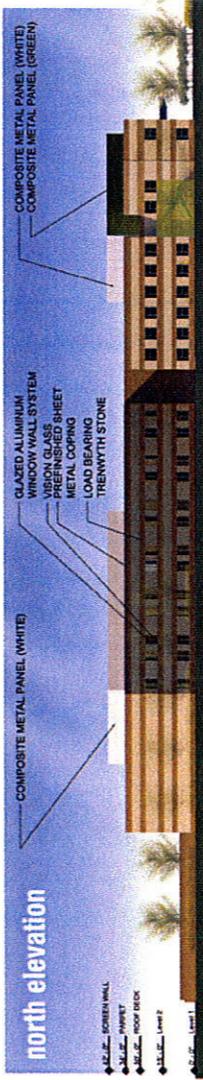




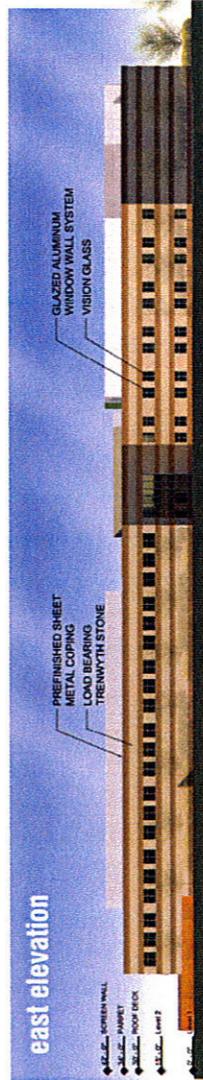
west elevation



south elevation



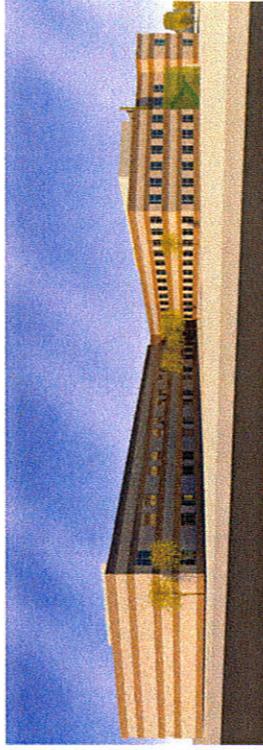
north elevation



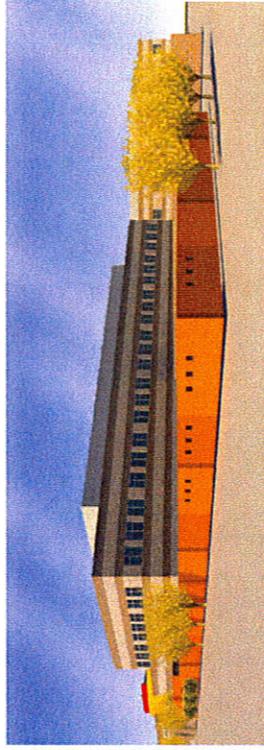
east elevation

0' 10' 20' 40' 60'

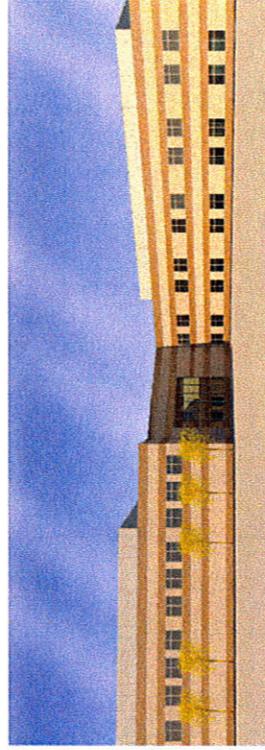
phase 3



north courtyard



service entry



east perspective



Phoenix Children's Hospital

Avondale, Arizona



**PCH East Valley Urgent Care Center**  
**Mesa, Arizona**



**PCH East Valley Urgent Care Center**  
**Mesa, Arizona**



**ORDINANCE NO. 1333-1008**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 12.6 ACRES OF LAND LOCATED AT THE NORTHEAST CORNER OF AVONDALE BOULEVARD AND MCDOWELL ROAD, AS SHOWN IN FILENAME Z-08-5, REZONING SUCH PROPERTY FROM NEIGHBORHOOD COMMERCIAL (C-1) TO PLANNED AREA DEVELOPMENT (PAD) AND IMPOSING CONDITIONS UPON SUCH CHANGE.

**WHEREAS**, the Council of the City of Avondale (the “City Council”) desires to amend the City of Avondale Zoning Atlas (the “Zoning Atlas”) pursuant to ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, all due and proper notices of public hearings on the intended amendment held before the City of Avondale Planning and Zoning Commission (the “Commission”) and the City Council were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the Commission held a public hearing on September 18, 2008, on the amendment to the Zoning Atlas pursuant to such notices and as required by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the Commission recommended approval; and

**WHEREAS**, the City Council held a public hearing regarding the amendment to the Zoning Atlas on October 20, 2008.

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

**SECTION 1.** That ± 12.6 acres of real property generally located at the northeast corner of Avondale Boulevard and McDowell Road, as shown in filename Z-08-5 (the “Property”), as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, are hereby rezoned from Neighborhood Commercial (C-1) to Planned Area Development (PAD), subject to the following conditions:

1. Development shall conform to the Phoenix Children's Hospital PAD General Development Plan date stamped September 18, 2008, except as modified by these stipulations. The master site plan, final landscape plan, and final building elevations shall generally conform to the exhibits contained within the Development Plan.
2. All perimeter and half-street improvements on Avondale Boulevard and McDowell Road adjacent to the site shall be completed with the first phase of development of the property. Required improvement standards are determined by the City of Avondale Engineering Design Guidelines.
3. The Developer shall relocate the traffic signal on the northeast corner of Avondale Boulevard and McDowell Road.
4. A bus stop transit pad for northbound traffic on Avondale Boulevard shall be provided and must be shown on final plans.
5. Any off-site improvements required pursuant to the traffic study will be required to be provided with this development per City standards, including additional right-of-way dedication if needed, such as turn lanes, deceleration lanes, intersection improvements and transit stops.
6. All required trees on the site shall have 2-inch minimum caliper measurements.
7. Pedestrian amenities must be added to the areas denoted as the "Pedestrian Plaza" and "Garden Area" and shown on the final construction documents. These areas must each contain the following items: pedestrian seating, trash receptacles, pedestrian lighting.

SECTION 2. That if any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

**PASSED AND ADOPTED** by the Council of the City of Avondale, October 20, 2008.

\_\_\_\_\_  
Marie Lopez Rogers, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1333-1008

[Legal Description and Map of the Property]

See following pages.



Evans, Kuhn  
& Associates, Inc.

7227 N. 16th Street  
Suite 140  
Phoenix, AZ 85020  
602.241.0782 phone  
602.248.9158 fax



March 31, 2008  
PCH – Avondale Campus  
Legal Description  
EKA# 5701  
Page 1 of 1

LEGAL DESCRIPTION  
OF A  
PARCEL OF LAND

A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 31;

THENCE NORTH 00 DEGREES 06 MINUTES 58 SECONDS EAST, 914.00 FEET ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31;

THENCE DEPARTING SAID WEST LINE, NORTH 88 DEGREES 52 MINUTES 31 SECONDS EASE, 356.00 FEET;

THENCE SOUTH 45 DEGREES 26 MINUTES 33 SECONDS EAST, 688.18 FEET;

THENCE SOUTH 00 DEGREES 06 MINUTES 58 SECONDS WEST, 421.51 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31;

THENCE SOUTH 88 DEGREES 52 MINUTES 31 SECONDS WEST, 847.45 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION OF LAND CONVEYED TO THE CITY OF AVONDALE IN INSTRUMENT RECORDED AS DOCUMENT NO. 2006-0053055 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

THAT PORTION OF A PARCEL OF LAND DESCRIBED IN DOCUMENT NO. 2003-1614620, RECORDS OF MARICOPA COUNTY, ARIZONA. SAID PARCEL BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOW:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 31, FKOM WHICH THE WEST QUARTER CORNER OF SAID SECTION 31 BEARS NORTH 00 DEGREES 06 MINUTES 52 SECONDS EAST, 2632.01 FEET, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF SAID PARCEL DESCRIBED IN DOCUMENT NO. 2003-1614620;

THENCE NORTH 00 DEGREES 06 MINUTES 52 SECONDS EAST, 914.00 FEET ALONG THE WEST LINE OF SAID SECTION 31 AND THE WEST LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL;

THENCE DEPARTING SAID WEST LINE OF SECTION 31, NORTH 88 DEGREES 52 MINUTES 25 SECONDS EAST, 55.01 FEET ALONG THE NORTH LINE OF SAID PARCEL TO THE EAST LINE OF THE WEST 55.00 FEET OF SAID SECTION 31;

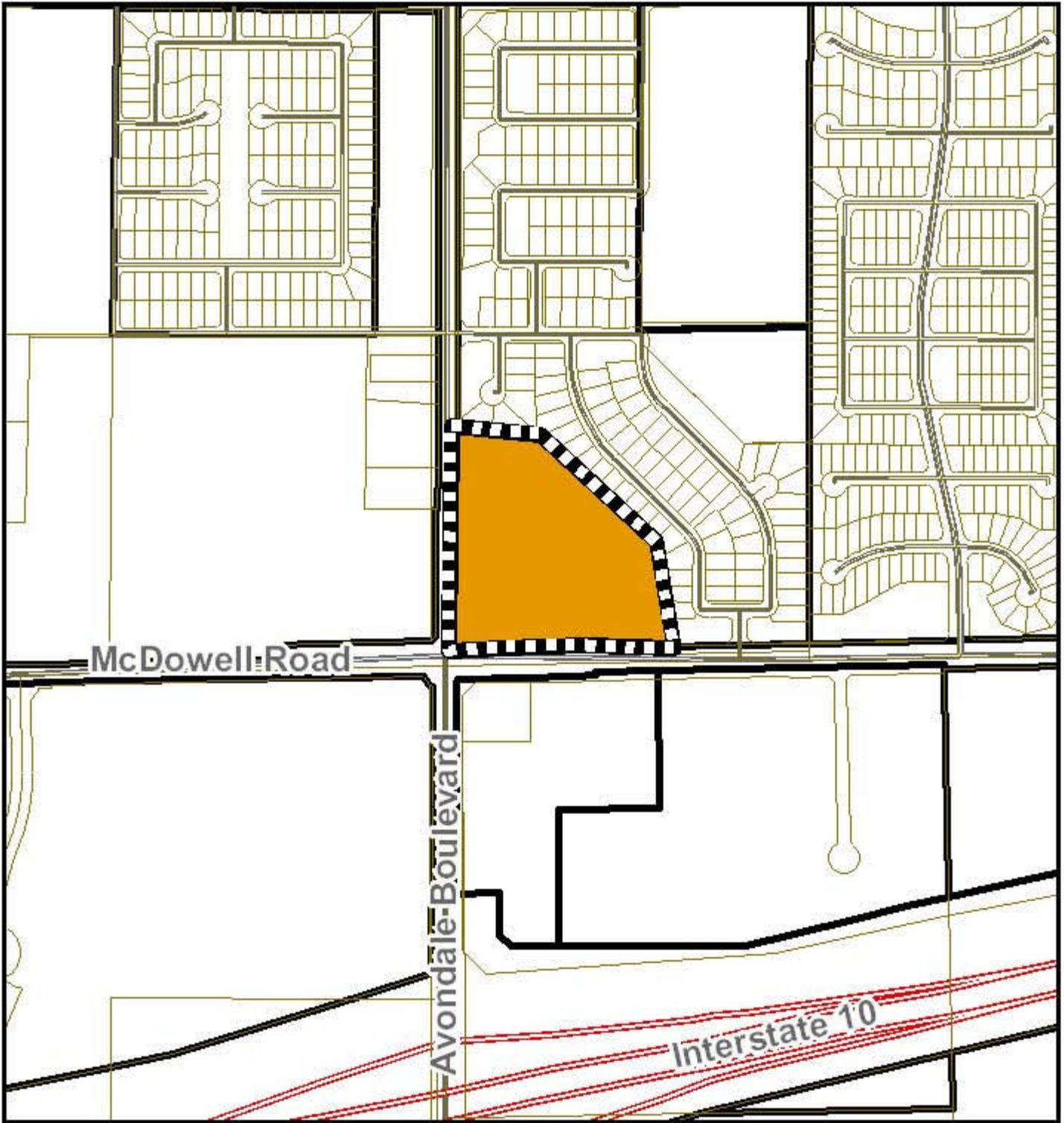
THENCE DEPARTING SAID NORTH LINE, SOUTH 00 DEGREES 06 MINUTES 52 SECONDS WEST, 808.97 FEET ALONG SAID EAST LINE OF THE WEST 55.00 FEET;

THENCE DEPARTING SAID EAST LINE OF THE WEST 55.00 FEET SOUTH 45 DEGREES 30 MINUTES 23 SECONDS EAST 55.97 FEET TO THE NORTH LINE OF THE SOUTH 65.00 FEET OF SAID SECTION 31;

THENCE NORTH 88 DEGREES 52 MINUTES 22 SECONDS EAST, 752.43 FEET ALONG SAID NORTH LINE OF THE SOUTH 65.00 FEET TO THE EAST LINE OF SAID PARCEL;

THENCE DEPARTING SAID NORTH LINE OF THE SOUTH 65.00 FEET, SOUTH 00 DEGREES 06 MINUTES 52 SECONDS WEST, 65.02 FEET ALONG SAID EAST PARCEL LINE TO THE SOUTH LINE OF SAID SECTION 31 AND SOUTHEAST CORNER OF SAID PARCEL;

THENCE SOUTH 88 DEGREES 52 MINUTES 22 SECONDS WEST 847.45 FEET ALONG THE SOUTH LINE OF SAID SECTION 31 AND SAID SOUTH PARCEL LINE TO THE POINT OF BEGINNING.



## Application Z-08-5



Subject Property



**City Council Regular Meeting – Excerpt of Meeting Minutes  
October 20, 2008**

**PUBLIC HEARING AND ORDINANCE 1333-1008 – PHOENIX CHILDREN’S  
HOSPITAL REZONING (Z-08-5)**

A public hearing and consideration of a request from Mr. Stephen Earl of Earl, Curley and LaGarde on behalf of Phoenix Children’s Hospital for the rezoning of 12.6 acres located at the northeast corner of McDowell Road and Avondale Blvd. from C-1 (Neighborhood Commercial) to PAD (Planned Area Development).

**PHOENIX CHILDREN’S HOSPITAL MASTER SITE PLAN (DR-08-5)**

Consideration of a request from Mr. Ron Meyer of HKS, Inc. on behalf of Phoenix Children’s Hospital for master and final site plan approval for a medical campus on a 12.6 acre parcel located at the northeast corner of Avondale Blvd. and McDowell Road.

Charlie McClendon, City Manager, stated that Ken Galica would present items 8 and 9 together; although, they will require separate actions.

Ken Galica, Planner II, Development Services Department, stated that staff is recommending approval of two applications for Phoenix Children’s Hospital, Z-08-5, (rezoning), and DR-08-5, (Master Site Plan approval). A public hearing is required for the rezoning application. The property is roughly 12.5 acres, it’s zoned C-1 (Neighborhood Commercial) and is located at the northeast corner of Avondale Blvd. and McDowell Road. The General Plan designates the subject property as Commercial and is within the Freeway Corridor Specific Plan. The proposed PAD has a highly limited list of permitted uses that are primarily medically related, such as medical offices and laboratories, surgery centers, hospitals, etc., as well as traditional accessory uses such as gift shops. All the uses, except for hospital, are allowed within the C-2 (Community Commercial) district. Hospitals are allowed in the C-3 (Freeway Commercial) district. The Freeway Corridor Plan indicates that this location is suitable for regional development.

Mr. Galica stated that the development standards are based almost entirely on the C-1 (Neighborhood Commercial) zoning district with some help from the Freeway Corridor Plan. There are two deviations from these standards. The applicant is proposing a parking ratio for the hospital use at 1 space for each 400 square feet of floor area. The standard of 1 to 400 is comparable to the standards used by cities such as Goodyear and Mesa. Avondale’s current standard is 1 to 200. Staff researched the issue and decided they can support the 1 to 400 ratio. He added that Staff will probably look at revising Avondale’s parking standards to fall in line with that of other cities. The second deviation is that the applicant is

proposing landscape setbacks from McDowell Road which are less than the Freeway Corridor Plan requirement of 40 feet. Those areas are when the deceleration lane into the turn lane cuts into the site. 78% of the frontage exceeds the minimum setback requirement of 40 feet, and the average setback is approximately 65 feet. Staff feels these setbacks more than adequately make up for the limited instances where the setback is around 36-37 feet.

The PAD has design standards tied to the conceptual elevations included in the development plan narrative. The architecture on the site will use Phoenix Children's Hospital's trademark vibrant colors and geometric shapes. The building features changes in wall planes and use of textured material to create visual interest. Landscaping will be provided throughout the site in excess of the minimum requirements of the Zoning Ordinance.

Access to the site will be provided from a full access driveway at the northwest corner of the site from Avondale Blvd., and a full access driveway at the southeast corner of the site from McDowell Road. The Staff Reports indicates that the McDowell Road access will be a three-point access; however, the City's Engineer has determined that the intersection would be best serviced by a full access and one of the stipulations has thus been revised. An additional right-in/right-out driveway is located south of the primary entrance off of Avondale Blvd. Through a Development Agreement, the City will be handling the design and construction of McDowell Road and the City will be reimbursed the full cost of those improvements by the hospital when the hospital phase is constructed, which according to the applicant, is probably about five to six years off. The Development Agreement will be presented for Council approval within the next month or so.

Mr. Galica explained that the site plan includes three buildings totaling roughly 167,000 square feet in floor area. The first phase will include a 36,000 square foot clinic/urgent care facility and a 36,000 square foot medical office building. A 114,000 square foot hospital will be built at a later phase. When this occurs, the urgent care facility will be converted into an emergency room. The site also includes an outdoor service yard of approximately 11,000 square feet to house mechanical equipment required by the hospital, which will be screened by an 8 foot masonry wall with a combination of the natural color of masonry and orange glazing applied to the masonry. The proposed Master Site Plan provides a total of 603 parking spaces dispersed in a series of smaller lots. The proposal exceeds minimum requirements established by the PAD by 51 spaces and meets or exceeds all ADA requirements.

The site plan has taken numerous measures to ensure that potential impacts of the facility on surrounding residential uses are mitigated. The buildings are a minimum of 50 square feet away from any residential property line. Windows overlooking residential yards are sparsely populated, and a 10 to 12 foot

landscape buffer including 24 inch box trees is provided along property lines which abut residential lots.

Mr. Galica stated the landscape plan has a mix of Evergreen Elms, Palo Verde, Chitalpas, Thornless Mesquites, Western Redbuds, Purple Leaf Plums, Date Palm trees, 17 varieties of shrubs and be four types of accents and ground cover provided. The applicant has provided 349 trees on the site, 235 of which are the 2 inch caliper, 24 inch box size. Staff has included a stipulation to increase the size of 114 trees which are smaller than 2 inches in caliper. The site plan includes two outdoor areas designed for pedestrians including a plaza at the southwest corner of the site and a garden area to the east of the hospital building. Staff has recommended a stipulation stating that seating, trash receptacles, decorative paving, and pedestrian lighting be provided in these areas.

The proposed architecture is contemporary. The public-facing elevations will bring energy and variety to the area. The materiel includes six varieties of exposed block and aluminum paneling coated in vibrant shades of green, yellow, purple, red, silver, white, and orange. Use of color is primarily used at the major building entry points in order to establish these as focal points of the facility. Earth tone colors are emphasized on the east and north-facing elevations to ensure compatibility with the adjacent residences. All four sides of the building incorporate tremendous change in wall plane to create shadowing.

Staff finds that the rezoning request and site plan application meet all required findings for approval. On September 18, 2008, the Planning Commission recommended approval of the rezoning application subject to 10 stipulations, three of which were deleted after reviewing them with the applicant; staff is therefore recommending approval subject to seven stipulations. The Planning Commission also recommended approval of the Site Plan application subject to 25 stipulations; three of which have been deleted by staff. Mr. Galica reported that after the Staff Reports were distributed, the City Engineer determined that a full access driveway on McDowell Road will be the best option. Staff recommends approval of the Site Pan application subject to 21 stipulations.

Mayor Lopez Rogers invited questions and comments.

In response to a question from Vice Mayor Weise, Mr. Galica indicated that only on resident attended the neighborhood meeting and endorsed the project; he added another neighborhood called to ask when the ambulances would turn their sirens off on approach to the facility. The hospital indicated their policy is for ambulances to turn off sirens as soon as the ambulances pass the nearest public street intersection.

Vice Mayor Weise asked what would be done to mitigate the truck traffic generated by the facility. Mr. Galica replied that the site is designed for flow of

service vehicles and to accommodate pedestrians and traditional automobile traffic.

Vice Mayor Weise asked if the applicant had any plans to have a NICU (Neonatal Intensive Care Unit) in Avondale.

Steven Earl, 3101 N. Central Avenue, Phoenix, AZ, stated his group represents the Phoenix Children's Hospital. A wonderful new NICU facility has been introduced at the main campus, the Avondale campus will be a full service hospital. They plan to open phases one and two at about this time next year, with the hospital planned for four or five years down the road. The main campus will be the finest children's hospital in the United States. He added that the Avondale campus, which will be called the Avondale Hospital.

Council Member Karlin asked if there would be a bus bay. Mr. Galica replied that one of the stipulations for site plan approval is to show a bus bay on the final construction plans. There will be one on Avondale Blvd.

Mayor Lopez Rogers opened item 8 for public hearing.

Mayor Lopez Rogers stated this is a great opportunity and the City is very excited about the project. She closed the public hearing and asked to have the ordinance read.

Andrew McGuire, City Attorney, read Ordinance 1333-1008 by title only. Council Member Karlin moved to approve the ordinance. Vice Mayor Weise seconded the motion.

1. Development shall conform to the Phoenix Children's Hospital PAD General Development plan date stamped September, except as modified by these stipulations. The master site plan, final landscape plan, and final building elevations shall generally conform to the exhibits contained within the PAD document.
2. All perimeter and half-street improvements on Avondale Blvd. and McDowell Road adjacent to the site shall be completed with the first phase of development of the property. Required improvement standards are determined by the City of Avondale Engineering Design Guidelines.
3. The applicant shall relocate the traffic signal on the northeast corner of Avondale Blvd. and McDowell Road.
4. A bus stop transit pad for northbound traffic on Avondale Blvd. shall be provided and must be shown on final plans.

5. Any off-site improvements required as per the results of the traffic study will be required to be provided with this development per City standards, including additional ROW dedication if needed, such as turn lanes, deceleration lanes, intersection improvements and transit stops.
6. All required trees on the site shall have 2 inch minimum caliper measurements.
7. Pedestrian amenities must be added to the areas denoted as the “Pedestrian Plaza” and “Garden Area” and shown on the final construction documents. These areas must each contain the following items: pedestrian seating, trash receptacles, pedestrian lighting.

Mayor Lopez Rogers invited further discussion, and hearing none, called for a vote.

ROLL CALL VOTE AS FOLLOWS:

Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Weise	Aye
Council Member Wolf	Excused
Council Member Karlin	Aye
Council Member McDonald	Aye

The motion passed unanimously.

## Ken Galica

---

**From:** Michael Moskowitz <MMoskowitz@ensembledevman.com>  
**Sent:** Thursday, December 15, 2011 3:08 PM  
**To:** Ken Galica  
**Cc:** Sammi Curless; Ken Sowers; Randy McGrane; Tracy Stevens; Sue McDermott; 'Cottle, David'; Randy McPherson; Kelly R. Knowlton (kknowlton@hksinc.com); 'John Kuhn'; 'dfoster@phoenixchildrens.com'; Sue Abee  
**Subject:** PCH Avondale

Ken,

I'm happy to report some favorable updates on the PCH Clinic project in Avondale. PCH and Ensemble have agreed to proceed with the Project and our intention is to break ground before our current permit expires at the end of January. We are finalizing our internal documentation and we are under way with a general contract bid. We have the approvals we need from both Ensemble and PCH to move forward so we are just down to logistics to make this happen. Needless to say, we are thrilled to be able to tell you this and we expect to have a coordinated press release ready before long.

In picking back up the project we would like your assistance in helping us set up a few meetings so we can confirm some details and arrangements;

1) Our civil engineer, John Kuhn, indicated while we had fully approved building plans when we deferred the project back in 2009 that we did not have fully approved offsite plans (for Avondale Road). We would like your assistance getting John a sit down meeting with the appropriate reviewers so that he can pick up from the last set of corrections and complete the plans timely. We also need to understand if there is concern with our proposed timing to get to a ground breaking on the approved plans if there is still work to do on the offsite engineering. Our preference, of course, would be to resolve any outstanding correction issues and have a fully approved offsite plan in hand when we pull the permit and break ground. John Kuhn is copied on this e-mail so I would ask you to directly coordinate with him on getting a meeting facilitated. Kelly Knowlton with HKS may or may not want to participate and Randy McPherson with Ensemble who will be our Project Manager should be invited to this meeting as should Dennis Foster with PCH (Dennis may or may not elect to attend).

2) We still intend to phase the project and our ground breaking will be with respect to the approved Phase 1 plans which means we will be doing the Phase I site work, Avondale offsite work, and clinic building as our initial project. The Phase II MOB project will follow later. We would like to sit down with the appropriate building department personnel to ascertain what this means in terms of our MOB plans and what approvals we will be able to maintain on those and what may need to be redesigned and resubmitted before we can build the MOB project. I would like to attend that meeting along with Kelly from HKS, Dave Cottle and/or Dennis Foster from PCH, and Randy McPherson from Ensemble.

Thank you for all of your help to date keeping this project alive and thank you in advance for helping us arrange for these important meetings. Needless to say, we are hoping to get these meetings on calendar sooner rather than later.

Kind regards,

Michael

**Michael Moskowitz**

Managing Director  
Ensemble Real Estate Services, Inc.  
[mmoskowitz@ensemble.net](mailto:mmoskowitz@ensemble.net)  
Direct 602-912-8956

4722 North 24th Street, Suite 400  
Phoenix, AZ 85016  
[www.ensemble.net](http://www.ensemble.net)  
CA Real Estate Lic #01242032

*Ensemble is making a concerted effort to help reduce paper waste. Please consider the environment before printing this e-mail.*

**ORDINANCE NO. 1487-112**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 12.6 ACRES GENERALLY LOCATED AT THE NORTHEAST CORNER OF AVONDALE BOULEVARD AND MCDOWELL ROAD, AS SHOWN IN FILENAME PL-11-1079, REVERTING THE ZONING ON SUCH PROPERTY FROM PLANNED AREA DEVELOPMENT (PAD) TO NEIGHBORHOOD COMMERCIAL (C-1).

**WHEREAS**, the Council of the City of Avondale (the “City Council”) approved Ordinance No. 1333-1008 on October 20, 2008, rezoning that certain  $\pm$  12.6 acre parcel of land generally located at the northeast corner of Avondale Boulevard and McDowell Road, as more particularly described and depicted in Ordinance No. 1333-1008, (the “Subject Property”), from Neighborhood Commercial (C-1) to Planned Area Development (PAD) and imposing conditions upon such rezoning (the “Rezoning”); and

**WHEREAS**, the Rezoning was subject to a condition imposed pursuant to provisions of the City of Avondale Zoning Ordinance (the “Zoning Ordinance”), requiring that the development of the first phase of the project on the Subject Property must have commenced within three years of the effective date of the ordinance approving the PAD zoning on the property (the “Time Condition”); and

**WHEREAS**, the Time Condition upon the Rezoning has not been met and the City Council desires to revert the zoning on the Subject Property from Planned Area Development (PAD) to Neighborhood Commercial (C-1); and

**WHEREAS**, the City Council desires to amend the City of Avondale Zoning Atlas (the “Zoning Atlas”) pursuant to ARIZ. REV. STAT. § 9-462.04 to reflect the change in zoning on the Subject Property due to the Rezoning reversion; and

**WHEREAS**, all due and proper notice of the public hearing on the intended Rezoning reversion and Zoning Atlas amendment held before the City Council were given in the time, form, substance and manner provided by the Zoning Ordinance; and

**WHEREAS**, the City Council held a public hearing regarding the Rezoning reversion and amendment to the Zoning Atlas on January 17, 2012.

**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 Planned Area Development (PAD) zoning for the ± 12.6 acre parcel of real property generally located at the northeast corner of Avondale Boulevard and McDowell Road, as shown in filename PL-11-0179, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, is hereby reverted to Neighborhood Commercial (C-1) zoning and the Zoning Atlas is hereby amended to reflect the reversion from PAD to C-1.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Avondale, January 17, 2012.

\_\_\_\_\_  
Marie Lopez Rogers, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1487-112

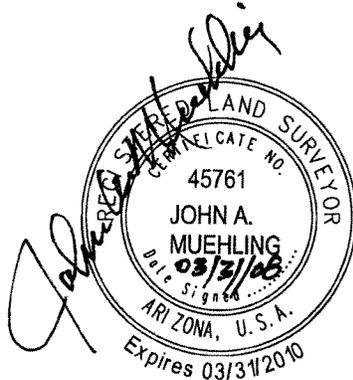
(Legal Description and Map)

See following pages.



Evans, Kuhn  
& Associates, Inc.

7227 N. 16th Street  
Suite 140  
Phoenix, AZ 85020  
602.241.0782 phone  
602.248.9158 fax



March 31, 2008  
PCH – Avondale Campus  
Legal Description  
EKA# 5701  
Page 1 of 1

LEGAL DESCRIPTION  
OF A  
PARCEL OF LAND

A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 31;

THENCE NORTH 00 DEGREES 06 MINUTES 58 SECONDS EAST, 914.00 FEET ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31;

THENCE DEPARTING SAID WEST LINE, NORTH 88 DEGREES 52 MINUTES 31 SECONDS EASE, 356.00 FEET;

THENCE SOUTH 45 DEGREES 26 MINUTES 33 SECONDS EAST, 688.18 FEET;

THENCE SOUTH 00 DEGREES 06 MINUTES 58 SECONDS WEST, 421.51 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31;

THENCE SOUTH 88 DEGREES 52 MINUTES 31 SECONDS WEST, 847.45 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION OF LAND CONVEYED TO THE CITY OF AVONDALE IN INSTRUMENT RECORDED AS DOCUMENT NO. 2006-0053055 OF OFFICIAL RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

THAT PORTION OF A PARCEL OF LAND DESCRIBED IN DOCUMENT NO. 2003-1614620, RECORDS OF MARICOPA COUNTY, ARIZONA. SAID PARCEL BEING A PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOW:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 31, FKOM WHICH THE WEST QUARTER CORNER OF SAID SECTION 31 BEARS NORTH 00 DEGREES 06 MINUTES 52 SECONDS EAST, 2632.01 FEET, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF SAID PARCEL DESCRIBED IN DOCUMENT NO. 2003-1614620;

THENCE NORTH 00 DEGREES 06 MINUTES 52 SECONDS EAST, 914.00 FEET ALONG THE WEST LINE OF SAID SECTION 31 AND THE WEST LINE OF SAID PARCEL TO THE NORTHWEST CORNER OF SAID PARCEL;

THENCE DEPARTING SAID WEST LINE OF SECTION 31, NORTH 88 DEGREES 52 MINUTES 25 SECONDS EAST, 55.01 FEET ALONG THE NORTH LINE OF SAID PARCEL TO THE EAST LINE OF THE WEST 55.00 FEET OF SAID SECTION 31;

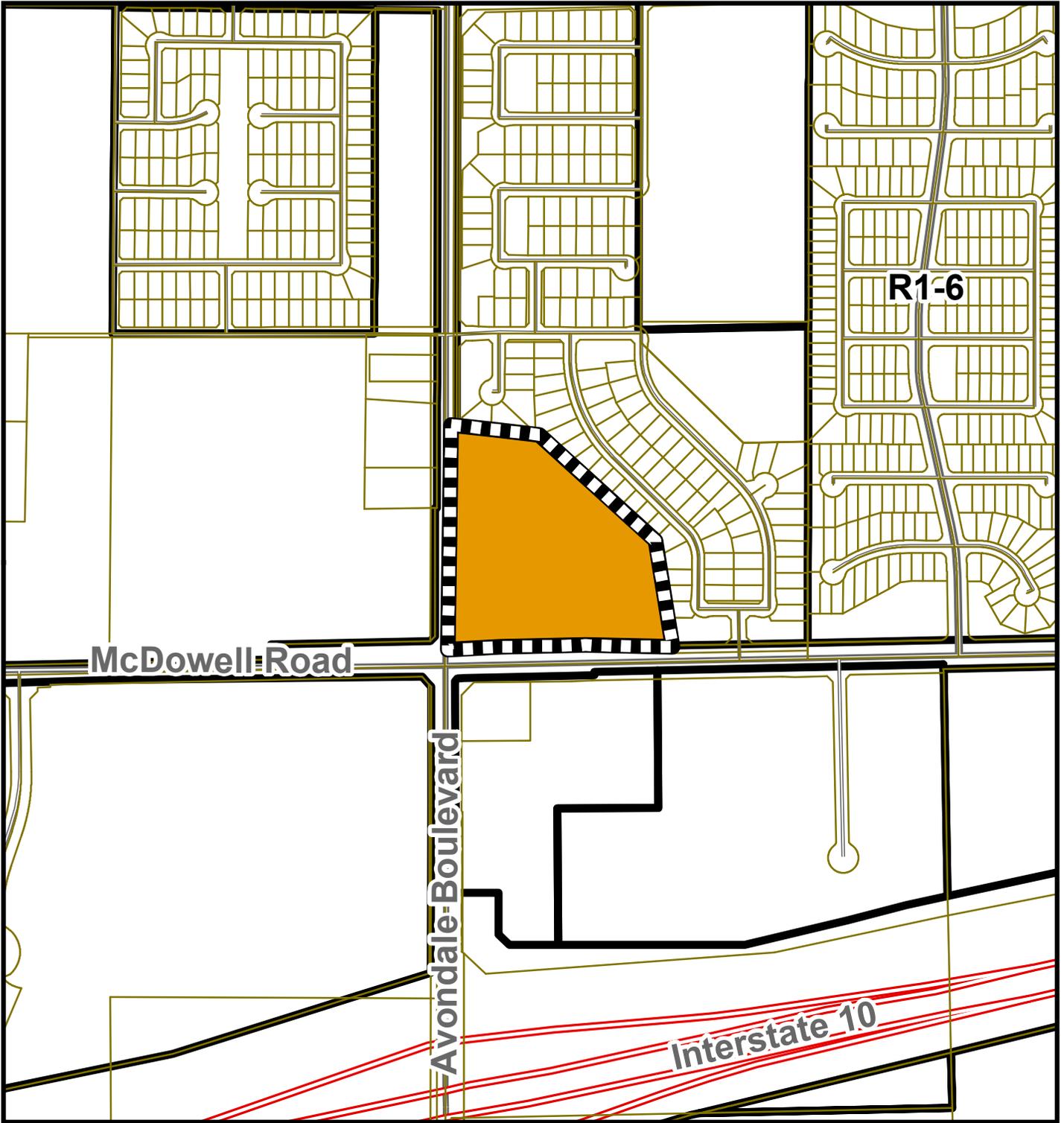
THENCE DEPARTING SAID NORTH LINE, SOUTH 00 DEGREES 06 MINUTES 52 SECONDS WEST, 808.97 FEET ALONG SAID EAST LINE OF THE WEST 55.00 FEET;

THENCE DEPARTING SAID EAST LINE OF THE WEST 55.00 FEET SOUTH 45 DEGREES 30 MINUTES 23 SECONDS EAST 55.97 FEET TO THE NORTH LINE OF THE SOUTH 65.00 FEET OF SAID SECTION 31;

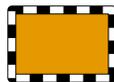
THENCE NORTH 88 DEGREES 52 MINUTES 22 SECONDS EAST, 752.43 FEET ALONG SAID NORTH LINE OF THE SOUTH 65.00 FEET TO THE EAST LINE OF SAID PARCEL;

THENCE DEPARTING SAID NORTH LINE OF THE SOUTH 65.00 FEET, SOUTH 00 DEGREES 06 MINUTES 52 SECONDS WEST, 65.02 FEET ALONG SAID EAST PARCEL LINE TO THE SOUTH LINE OF SAID SECTION 31 AND SOUTHEAST CORNER OF SAID PARCEL;

THENCE SOUTH 88 DEGREES 52 MINUTES 22 SECONDS WEST 847.45 FEET ALONG THE SOUTH LINE OF SAID SECTION 31 AND SAID SOUTH PARCEL LINE TO THE POINT OF BEGINNING.

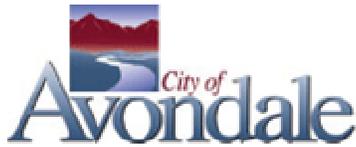


**Application PL-11-0179**



**Subject Property**





# DEVELOPMENT SERVICES

**SUBJECT:**

Public Hearing and Ordinance 1485-112 – Zoning Reversion for Three Rivers Commerce Park

**MEETING DATE:**

January 17, 2012

**TO:** Mayor and Council

**FROM:** Sue McDermott, Development Services Director/City Engineer (623) 333-4211

**THROUGH:** Charlie McClendon, City Manager (623) 333-1015

---

**REQUEST:** Hold a public hearing and adopt an Ordinance reverting the zoning of the Three Rivers Commerce Park Planned Area Development (PAD) to Agricultural (AG).

**PARCEL SIZE:** Two parcels comprising approximately 80 gross acres

**LOCATION:** Northeast corner of Van Buren Street and 105<sup>th</sup> Avenue (Exhibits A and B)

**APPLICANT:** City of Avondale

**OWNER:** Multiple Owners: Arizona Land Company, LLC (480) 488-0350 (North Half); Maricopa County Public Finance Corporation (South Half)

**BACKGROUND:**

The property was annexed on March 17, 1986 and rezoned from AG (Agricultural) to PAD (Planned Area Development) on January 17, 2006 (Exhibits C, D, and E). The original PAD development plan and Ordinance allowed for commerce park type uses with additional allowances for automobile related uses along the Roosevelt Street frontage, directly adjacent to the Automall.

A final plat which divided the original property into two 35 net acre parcels and dedicated necessary right-of-way was approved by the City Council on January 16, 2007. These two halves are presently under separate ownership. The southern 35 acres adjacent to Van Buren Street is owned by Maricopa County. In past discussions with the City, the County has indicated a desire to use this property for a West Court Complex; the development on the County owned portion is on indefinite hold. The northern 35 acres adjacent to Roosevelt Street is owned by Arizona Land Company, LLC.

On December 8, 2008, a major amendment to the Three Rivers PAD was approved by the City Council (Exhibits F, G, and H). The major amendment, which primarily impacted the north 35 acres owned by Arizona Land Company, increased the maximum allowable building height to six stories (if certain conditions can be met), allowed restricted outdoor storage subject to several conditions, increased the minimum amount of landscaping and open space required on the site, required conformance with the Design Manual, and allowed for limited phasing of off-site infrastructure subject to approval by the City Engineer. The approval of the amendment was subject to 9 stipulations.

A Master Site Plan for the north 35 acres and a Final Site Plan for Phase I of the project, which included 5 flex-industrial buildings featuring screened and integrated outdoor storage areas, were approved by the City Council on August 3, 2009. The Site Plan approvals expired on August 3, 2011.

Under the terms of the PAD Ordinance, the Three Rivers PAD original three year validity period ended on January 17, 2009. The PAD amendment, which also served to extend the PAD to December 8, 2009, used the first of the four allowed extensions. On December 14, 2009, the City Council approved the second of the allowed one year extensions (Exhibit I), extending the PAD through December 8, 2010. On February 22, 2011, the City Council approved the third of the allowed one year extensions (Exhibit J), extending the PAD through December 8, 2011.

On December 8, 2011, the PAD Development Plan expired before development of the property occurred. In the months prior to the expiration, the current property owners were made aware of the upcoming expiration and chose not to pursue a fourth and final one-year extension of the PAD as allowed by the Zoning Ordinance. As such, the property's zoning is now eligible for reversion under the terms of Zoning Ordinance Section 6.

The Zoning Ordinance requires certified notification of property owners subject to zoning reversion. On December 15, 2011, the owner of the southern half of the property (Maricopa County Public Finance Corporation) was mailed a certified letter stating that the City Council would hold a public hearing to consider reverting the PAD zoning of the property back to AG on January 17, 2012. The certified letter was received on December 22, 2011. The City was unable to send certified mail to the owner of the northern half of the property (Arizona Land Company, LLC/Paragon Properties) because that corporation utilizes a PO Box. As a result, the City hand delivered a copy of the required notice to a company representative on December 16, 2011. Copies of the notification letters and receipts of delivery are attached as Exhibit K.

Upon reversion, a rezoning of the property will be required before private development can occur on the site. Under Arizona law, Maricopa County, being the owner of the southern portion of the site, will have the ability to develop their portion for a public use, previously identified as a court complex, regardless of the zoning in place on the property.

#### **SUMMARY OF REQUEST:**

This is a City-initiated request to amend the zoning map to revert the zoning classification from PAD back to the previous zoning, Agricultural (AG).

Section 603.D of the Zoning Ordinance requires that development of the first phase commence within three years of rezoning to PAD, with Council having the authority to grant up to four additional one-year extensions. If the 3 year time condition and subsequent extensions expire without development, the PAD zoning is subject to reversion to the previous zoning. On December 8, 2011, the 3 year time condition expired without development for this PAD and a fourth one-year time extension was not requested. Neither property owner is recorded as being opposed to this matter.

#### **PARTICIPATION:**

Public notifications are not required for PAD Reversions.

#### **PLANNING COMMISSION ACTION:**

The Planning Commission does not review PAD Reversions.

#### **ANALYSIS:**

Section 603.D of the Zoning Ordinance states that a PAD is conditioned on development of the first phase of the project commencing within three years of the effective date of the ordinance approving the PAD zoning on the property.

Section 603.D.4 of the Zoning Ordinance provides a procedure to revert the zoning of a property to its prior zoning classification by City Council should the time condition expire.

The subject property was rezoned from AG to PAD on January 17, 2006 and subsequently extended three times. Development of the first phase did not commence prior to December 8, 2011. The property owners were aware of the pending expiration and chose not to request a final one year extension of the time condition. The owners were notified by certified letter (or equivalent), per Section 603.D.4 of the Zoning Ordinance that the City Council would hold a public hearing to consider whether to revert the zoning on the property back to AG on January 17, 2012. The property owners have not recorded opposition to this request.

**Conclusion:**

Staff recommends approval of the request to revert the zoning on the property to its prior zoning classification of AG in accordance with the procedures outlined in Zoning Ordinance Section 6.

**FINDINGS:**

1. The property was zoned to PAD on January 17, 2006, conditioned upon commencing development of the first phase of development within three years. Three subsequent extensions were approved by the City Council requiring that development commence by December 8, 2011.
2. Commencement of the first phase of development did not occur prior to December 8, 2011.
3. Section 603 of the Zoning Ordinance allows for the City Council to revert the zoning on a property to its previous zoning classification after expiration of a time condition.
4. The previous zoning classification of the property was Agricultural (AG).

**RECOMMENDATION:**

Staff recommends that the City Council adopt an ordinance **APPROVING** application PL-11-0198, a request to revert the zoning of the expired Three Rivers Planned Area Development (PAD) to Agricultural (AG).

**PROPOSED MOTION:**

I move that the City Council accept the findings and **ADOPT** the Ordinance approving application PL-11-0198, a request to revert the zoning of the Three Rivers Planned Area Development (PAD) to its previous zoning classification of Agricultural (AG).

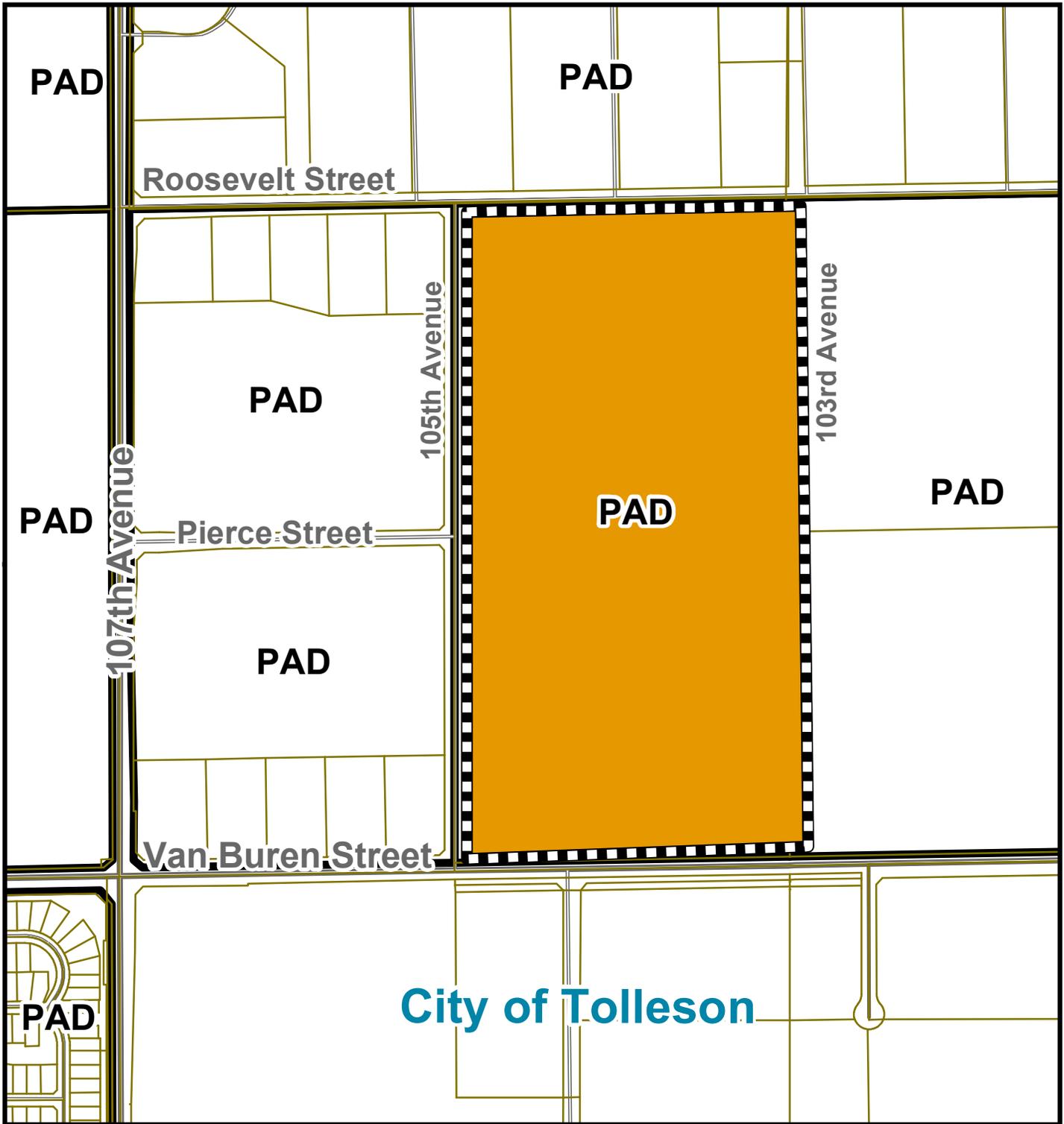
**ATTACHMENTS:**

Click to download

- [Exhibit A - Zoning Vicinity Map](#)
- [Exhibit B - Aerial Photograph](#)
- [Exhibit C - Approved Three Rivers PAD \(pre-2008 Amendment\)](#)
- [Exhibit D - Ordinance 1165-106, approving the Three Rivers PAD](#)
- [Exhibit E - Excerpt from City Council Minutes, Regular Meeting of January 17, 2006 \(PAD Approval\)](#)
- [Exhibit F - Approved Major Amendment to Three Rivers PAD](#)
- [Exhibit G - Ordinance 1339-1208, approving a Major Amendment to the Three Rivers PAD](#)
- [Exhibit H - Excerpt from City Council Minutes, Regular Meeting of December 8, 2008 \(Major PAD Amendment Approval and Extension 1\)](#)
- [Exhibit I - Excerpt from City Council Minutes, Regular Meeting of December 14, 2009 \(Approval of PAD Extension 2\)](#)
- [Exhibit J - Excerpt from City Council Minutes, Regular Meeting of February 22, 2011 \(Approval of PAD Extension 3\)](#)
- [Exhibit K - Notification of Reversion to Property Owners and Delivery Receipts](#)
- [Ordinance 1485-112](#)

**PROJECT MANAGER:**

Ken Galica, Planner II (623) 333-4019



### Zoning Vicinity Map



Subject Property





### Aerial Photograph



Subject Property



**THREE RIVERS  
COMMERCE PARK**

**NEC 105<sup>th</sup> Avenue and  
Van Buren Street**

**General Development Plan and  
Program**

**79.98-Acre Parcel**

**Prepared for  
City of Avondale, Arizona**

**December 5, 2005**

# General Development Plan

## Development Team

---

*Developer/Applicant:*

**Three Rivers Commerce Park, LLC**

15955 N. Dial Boulevard, Suite 1B  
Scottsdale, AZ 85260  
Contact: Ken Madden

*Planner:*

**DFD Cornoyer Hedrick**

2425 E. Camelback Road, Suite 400  
Phoenix, AZ 85016  
602-381-4848  
Contact: Mike Edwards

*Engineer:*

**A.E.C. Consultants, Inc.**

1710 E Indian School Road, Suite 100  
Phoenix, AZ 85016  
602-264-1427  
Contact: David Hall

*Attorney:*

**Earl, Curley & Lagarde**

3101 N. Central Avenue, Suite 1000  
Phoenix, AZ 85012  
602-265-0094  
Contact: Michael J. Curley

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# General Development Plan Narrative

## Introduction

The proposed PAD site is intended to be developed as a commerce park for employment uses with a campus feel that incorporates a common landscape, entry feature, and screen wall theme. The site is divided into two Parcels where buildings within each Parcel will share a common architectural theme. The architectural theme may vary from parcel to parcel; however, guidelines are provided in this narrative to set parameters for architecture, building materials and colors to ensure compatibility in development on the entire site. To ensure that the project is developed appropriately, a "Master Site Plan" for each Parcel is required to be reviewed by the Planning Commission and approved by City Council prior to administrative review and approval of "Individual Site Plans" for buildings or uses. The "Master Site Plans" will determine the architectural theme, locations of buildings, parking, circulation, and landscaping for the entire Parcel.

This is a request to rezone 79.98-acres located on the northeast corner of 105<sup>th</sup> Avenue and Van Buren Street from Agriculture (AG) to Planned Area Development (PAD) to allow employment uses (see Aerial Map, Exhibit A). In accordance with Section 603 of the PAD District, this is a General Development Plan and Program (GDPP). The GDPP identifies the general development theme for the site including: permitted land uses, development standards, design criteria, street cross sections, landscape theme, screen wall theme, and entry monument signage.

The site fronts along Van Buren Street on the south and Roosevelt Street on the north, between 103<sup>rd</sup> and 105<sup>th</sup> Avenues. The site is located across Van Buren Street from the Tolleson city limits. The site is located in the middle of a rapidly developing employment / commercial area within the Cities of Avondale and Tolleson. The surrounding properties have the following land uses and zoning (see Existing Zoning, Exhibit B):

- North: Developing automall with 14 dealerships complete or nearly complete. The automall has full perimeter improvements. The automall is zoned PAD (Planned Area Development) in Avondale.
- East: Agricultural uses zoned AG (Agricultural) in Avondale.
- South: Warehousing/distribution employment uses. The warehousing/distribution uses are zoned I-1 (light industrial) and the agricultural uses in the area are zoned I-1 and C-2 (commercial) all in Tolleson.
- West: PAD zoning for Commerce Park and Retail uses on the adjacent 80-acre parcel across 105<sup>th</sup> Avenue (see Context Plan, Exhibit C). The commerce park currently contains the Universal Technical Institute and Coyote Honda motorcycle dealership.

The site enjoys excellent regional access due to its geographic location to two freeways, Interstate-10 (I-10) and the Agua Fria Freeway 101. The site is approximately 900-feet south of the I-10 Freeway that connects Phoenix to Los Angeles. There are two I-10 freeway interchanges within one mile of the site. A full I-10 Freeway diamond interchange is at 99<sup>th</sup> Avenue, and a half diamond I-10 Freeway interchange at 107<sup>th</sup> Avenue. The Agua Fria Freeway 101 is approximately one and one-half miles east of the site and has a full stack interchange with I-10. The Agua Fria Freeway 101 connects I-10 to Interstate-17

by passing through the northern suburbs of Glendale and Phoenix. The proximity of both I-10 and the Agua Fria Freeway 101 greatly expands the site's employment shed and market area in terms of available labor supply, access to major markets, and business linkages.

Arterial and collector streets such as Van Buren Street, 105<sup>th</sup> Avenue, 103<sup>rd</sup> Avenue, and Roosevelt Street provide easy local north-south and east-west access to the site. Van Buren Street will be a six lane arterial when fully developed. Roosevelt Street will be a two-lane collector street between the existing automall and the site. Both 103<sup>rd</sup> and 105<sup>th</sup> Avenues will be two lane collector streets between Van Buren and Roosevelt Streets only. Public streets adjacent to the PAD site provide excellent access and marketing windows with high visibility to the planned employment users.

## General Plan

The General Plan land use map identifies the entire site to be developed with Employment (Business Park and Industrial Uses) (see General Plan Land Use Map, Exhibit D). The General Plan places great importance on the I-10 Freeway Corridor for employment, industrial and retail uses. The Plan indicates that the corridor along the I-10 Freeway is to be developed with more intense uses. The corridor is intended to allow flexibility by allowing different types of employment uses. Employment uses are defined as general-office; enclosed industrial along with retail and commercial uses that support the employment uses.

The Economic Development Element of the General Plan iterates that residents desire a community that offers employment opportunities. The City targeted a 0.5 jobs-to-population ratio to be achieved during the implementation of the General Plan. The proposed PAD rezoning on the subject property within the I-10 Freeway corridor will ultimately yield approximately 3,500 office, light manufacturing and service related jobs (80 acres x 43,560 sq. ft. x 0.40 lot coverage x 2.50 employees + 1,000 sq. ft. per employee = 3,485). This PAD will help achieve the desired 0.5 jobs-to-population ratio identified in the General Plan, and will provide the intense employment development desired along the I-10 Freeway corridor. The proposed PAD is consistent with the adopted General Plan Land Use Map, and adjacent existing land uses including the automall, UTI, Coyote Honda, and Warehouse/Distribution facilities.

## PAD Plan

The 79.98 gross acre PAD Plan includes two Parcels. Parcels A and B are both approximately 40 acres in area. Both Parcels can accommodate large to medium single-tenant or multi-tenant buildings (see PAD Plan, Exhibit E). The Parcels have street frontage on all sides. All perimeter landscaping, entrances, and screen walls will follow a common design theme to create an integrated project.

The PAD Plan shows major streets and perimeter landscape improvements, but the exact building locations, architecture, parking fields, internal street circulation and other defining details are not shown because the final users of the PAD site are not yet known.

To ensure some flexibility for the future users, but to also provide assurances on the quality of the development for the City, this PAD requires that a "Master Site Plan" for each Parcel be reviewed by the Planning Commission and approved by the City Council prior to the administrative review and approval of "Individual Site Plans" for buildings or uses within a Parcel. The Master Site Plan will include: internal circulation, signage, building footprints, parking, preliminary water, sewer and drainage analysis, and landscaping for the entire Parcel.

The architectural theme may vary from parcel to parcel; however, guidelines are provided in this narrative to set parameters for architecture, building materials and colors to ensure compatibility among Parcels across the entire site. As a Parcel develops, the Master Site Plan for the undeveloped portions of the Parcel may be updated to reflect needed changes due to change in users or other factors, requiring a Master Site Plan amendment.

A Master Site Plan or a major amendment to a Master Site Plan shall be reviewed by the Planning Commission and approved by the City Council. Minor amendments to a Master Site Plan may be reviewed and approved by staff administratively. Major amendments shall be any changes that increase traffic, increase building square footage, significantly change building orientation or footprints, have an impact on adjacent uses, or include changes that alter the character of the Master Site Plan including changes to approved building architecture or materials. All other changes are considered minor amendments.

## **Circulation**

The PAD Plan is designed to continue the perimeter and internal collector street system approved for the adjacent commerce park to the west. Perimeter street improvements for each Phase are planned to be completed with the construction of the initial Individual Site Plan. Half-street improvements will be completed along Van Buren Street, Roosevelt Street, 103<sup>rd</sup> Avenue, 105<sup>th</sup> Avenue and full street improvements along Pierce Street. Pierce Street continues from the commerce park to the west and allows future connection to the parcel to the east. The right-of-way for streets will be dedicated through a map of dedication or final plat in conjunction with the Master Site Plan approval of each phase.

The need for other internal streets will be dependent on the location and layout of end users. If internal streets are necessary the streets will be public, constructed to City of Avondale local street standards, and provided as part of the Master Site Plans.

Both of the PAD Parcels have public street access on all sides which will provide sufficient opportunities to route traffic to and from the site. Entry drive locations and pedestrian connections will be identified in the Master Site Plans.

The half-width perimeter streets and full-width Pierce Street improvements include: pavement, vertical curbs, gutters, detached sidewalks with 15 to 20-foot landscape tracts adjacent to the rights-of-way. The Van Buren Street cross section identifies a raised median to be completed by others. Pierce Street will be a collector street that provides a 60-foot right-of-way with 44 feet of pavement back-of-curb to back-of-curb with attached sidewalk on each side. Perimeter streets and Pierce Street cross sections are shown in Exhibit F. Depending on end users, thicker pavement sections may be necessary for truck traffic. The pavement thickness will be determined at the time of Master Site Plan approval in accordance with the requirements of the City Engineer.

## **Landscape Plan**

The landscaping will enhance the project and set the tone for a unified development. A Master Landscape Plan for each Parcel will be submitted for review and approval in conjunction with each Master Site Plan. A Landscape Concept Plan is provided as Exhibit G and illustrates a tree lined streetscape for the project as well as a proposed plant list. The Plan provides a 20-foot wide landscape area outside the right-of-way along the frontage of Van Buren Street and Roosevelt Street, and provides a 15-foot wide landscape area outside the right-of-way along the frontages of Pierce Street, 103<sup>rd</sup> Avenue, and 105<sup>th</sup> Avenue. Any internal streets will also provide a 15-foot wide landscape area outside the right-of-way along the street frontages.

A street tree theme consisting of a combination of Southern Live Oaks and other canopy trees will create a unifying element to the commerce park. The street trees will alternate between a 24-inch box Southern Live Oak and 15-gallon canopy tree every 20 feet along the landscape frontage with two 36-inch box Date Palms at each Phase's perimeter street intersections as well as at any major entries into the commerce park from Roosevelt, Pierce and Van Buren Streets. The street trees will also continue along any internal streets of the project. The trees along with automatic irrigation will be installed along the perimeter streets of each Phase with initial development of the Phase. Any internal street trees will be installed with each individual site.

The maintenance of the perimeter landscape areas will be the responsibility of the developer/owner unless the project is subdivided at which time Covenants, Conditions and Restrictions (CC&Rs) will be established that form a property owners' association that will be responsible for maintenance. CC&Rs will be provided at the time of final plat review.

The parking lot and screen walls for the project will undulate a minimum of three feet every 150 feet of wall length to create variety and depth along street frontages. The design, materials and colors of the screen walls shall be common throughout the project (see Screen Wall, Exhibit I).

Each individual site's landscaping will reinforce the overall landscaping theme of the project. This will be accomplished through full landscaping of front and side yards including retention basins, foundation plantings and following the landscape palette provided in the PAD.

## **Permitted Uses**

1. Offices for professional, administrative, clerical, financial, medical, sales or other business services with assembly, distribution of parts, supplies or products related to the office or business service.
2. Business class/extended-stay hotel.
3. Medical and dental laboratories, and research and product development laboratories.
4. Commercial, trade, or business schools.
5. Automobile engine repair, body repair, upholstery, painting facilities and similar uses where all service bays shall be completely screened from street view including all roll-

up doors. Work is not to be done outdoors and no dismantled vehicles shall be located outside. These uses shall only be located in the north half of Parcel A to provide complimentary uses to the Automall to the north.

6. Manufacturing or assembly of finished products with distribution of parts, supplies or products related to the business so long as the primary use of the property does not include the basic processing and compounding of raw materials or food products.
7. Retail commercial operations directly related to the primary use, provided it does not exceed 10 percent of the gross floor area of the primary use.
8. Retail sales and service of custom cabinets, custom materials for homes or offices such as countertops/floors/ceilings/walls, custom windows or doors, custom or specialized electronics for home or office, custom furniture for home or office, and custom or specialized parts or equipment for vehicles.
9. Warehousing/storage that is ancillary to a permitted use.

### **Uses Permitted Subject to a Conditional Use Permit**

1. New vehicle sales and leasing in Parcels A only.
2. Athletic clubs, health clubs, gymnasiums, gymnastic clubs.

### **Prohibited Uses**

1. Contractors' yards as a primary use.
2. Mini-storage, dead vehicle storage, RV storage, truck parking or storage.
3. Sexually oriented businesses.
4. Bulk warehousing and distribution where the warehousing and distribution of parts, supplies and products is the exclusive use of the building, and it is the principal business.
5. Outdoor storage.

### **Development Standards**

- The development standards from the Commerce Park (CP) Zoning District identified in Section 4 of the Zoning Ordinance shall apply to all Parcels except as modified by this PAD.
- Prior to construction on each Parcel, a Master Site Plan for the Parcel and an Individual Site Plan for a use shall be approved consistent with this PAD.

- Landscaping in the PAD shall comply with the landscaping requirements identified in Sections 5 and 6 of the Zoning Ordinance except as modified by this PAD. All development in the project shall comply with screening standards identified in Sections 5 and 6 of the Zoning Ordinance and exhibits in this PAD.
- All development shall comply with the parking requirements, schedule and parking space standards identified in Section 8 of the Zoning Ordinance.
- Appropriate street dedications shall be required at the time of Master Site Plan or final plat approvals as applicable.
- Driveway entrances to lots along the frontage of Van Buren Street shall be shared with the adjacent lot when possible to limit the number of curb cuts along Van Buren Street. The lots with Van Buren Street frontage shall provide cross-access easements with adjacent lots. Lots throughout the project shall provide shared access with cross-access easements along all streets where feasible. The final locations of driveways and cross-access easements shall be determined in conjunction with the Master Site Plans and Individual Site Plans.
- Exterior pole mounted lighting shall be consistent throughout the project area and comply with Zoning Ordinance requirements. The typical lighting will be established with the first Master Site Plan and be utilized throughout the project. The lighting shall be fully shielded, directed down, and have a maximum 1-foot candle at the property line.
- In the event where the text of the Zoning Ordinance and the PAD differ, the PAD shall prevail.

## **Design Criteria**

The provisions of this section seek to create an attractive, high quality mixture of architectural styles with emphasis on a mixed-use office and commerce park appearance. The design of each building within the overall development will be compatible through the use of common materials and colors while creating a strong individual identity consistent with their individual use and purpose. Representative photos of the intended character of the commerce park are included as Exhibit J.

### **Individual Site Plan Approval**

All Individual Site Plans are reviewed and approved administratively. Administrative denials of site plans may be appealed in accordance with the Zoning Ordinance. All projects shall use the following design review guidelines to ensure the quality of the project and building architecture.

### **Architecture**

Buildings within the PAD shall be consistent with the following architectural elements:

- For all buildings at least three of these elements shall repeat horizontally. Buildings with facades greater than 100 feet in length shall include several of the elements listed below, repeated at appropriate intervals, either horizontally or vertically:
  - Color change. Recognizable, but not strongly contrasting.
  - Texture change.
  - Material change.
  - Architectural variety and interest through a change in plane such as offsets, reveals, archways or projecting ribs.
  - Wall plane projections or recesses.
- Variations in rooflines or parapets shall be used to reduce the scale of the buildings. Roof size, shape, material, color and slope shall be coordinated with the scale and theme of the building.
- Service and exit doors shall be integrated into the architecture of the elevations.
- Reduction of building mass shall be achieved by using a combination of the following techniques:
  - Variation in the rooflines and form.
  - Use of ground level arcades and covered areas.
  - Use of protected and recessed entries.
  - Use of vertical elements on or in front of expansive blank walls.
  - Use of pronounced wall plane offsets and projections.
  - Use of focal points and vertical accents.
  - Inclusion of windows on elevations facing streets and pedestrian areas.
  - Retaining a clear distinction between roof, body and base of a building.
- Roof lines, relative building heights, orientation of entrances and other major architectural elements of the buildings shall be designed within the context of the overall PAD. Building design shall complement the surrounding area, with contrast encouraged where appropriate or beneficial to the overall development.
- All buildings shall have clearly defined customer entrances incorporating elements such as:
  - Canopies or porticos.
  - Overhangs.
  - Recesses/projections.
  - Arcades.
  - Raised corniced parapets over the door.
  - Peaked roof forms.
  - Arches.
  - Entrance framed by outdoor pedestrian features or enhanced landscaping.
  - Architectural details such as tile work and moldings integrated into the building structure to frame the entryway.
- Service entries, site-mounted equipment, trash containers and other ancillary structures shall be screened from view, both from adjacent properties and surrounding streets.

- All buildings shall be designed, constructed so that all four sides of a building shall receive consistent architectural treatment.
- Any accessory buildings, enclosures, carports, covered parking structures and equipment, whether attached or detached from the principal building shall be of similar compatible design and materials as the principal building.
- The design of service and loading areas shall be designed as an integral part of the building architecture.
- Any roof access ladders shall be located inside the building.
- All roof drainage shall be internal.

### **Building Materials**

Buildings within the PAD shall be consistent with the following building materials:

- Primary buildings materials shall include: common clay brick; poured in place, tilt-up or pre-cast concrete provided that surfaces include scoring, texture or have a painted finish; textured concrete or panels; stucco or EIFS (exterior insulated finish systems) type systems provided that finishes must be smooth or sand finish; integrally colored concrete block with smooth face and/or split-face block units; or other similar materials.
- All tilt or pre-cast concrete panels or smooth face block shall include methods for improving the design such as: additional color and texture, bays, windows, notched parapets, canopies, reveals, building wall undulation, corner windows, additional materials etc.
- Accent materials shall include: granite, marble, natural stone, block, brick, ceramic tile, treated wood or other similar materials.
- Roofs may be flat with parapet walls, sloped with concrete tile, standing metal seam, or equivalent architectural materials.

### **Color Palette**

- A detailed color and materials palette will be reviewed and approved with each Individual Site Plan.
- Colors and materials should be used to create visual harmony within the PAD. The approved colors are as follows:
  - Primary building colors shall be desert hues and other "earth tones" muted shades of blues, greens and reds found in the natural desert, and colors appearing in natural stone.
  - Accent colors on buildings shall complement the primary building colors and include combinations of desert hues, earth tones, muted shades of greens, reds and colors found in natural stone. Brighter colors such as orange, red, blue, green, yellow, purple and similar colors may be used as accents on buildings as approved in the Individual Site Plan review process.

## Prohibited Materials and Color Palette

- Wood, except for limited amounts of trim.
- Corrugated metal and pre-engineered metal-sided buildings.
- Bright colors such as orange, red, blue, green, yellow, purple and similar colors, as a primary color on a building.
- Spanish or mission-type barrel roof tile.

## Signage

Signage for the PAD should be designed to enhance the identity of the overall development and the individual businesses within. A Master Sign Package shall be submitted for review and approval with the Master Site Plan for each Phase.

- Freestanding Monuments:
  - One freestanding monument along each Van Buren Street and Roosevelt Street shall be provided for commerce park identification only. A conceptual entry monument is provided in Exhibit I. The location of the monuments will be determined at the time of Master Site Plan/Master Sign Package approval. Monument signage shall be maintained by the developer/owner or property owners' association if the project is subdivided.
  - Monuments shall not exceed six feet in height and 30 feet in width with a maximum sign area of 25 square feet.
  - Sign materials and colors shall be consistent with the exterior architecture of the buildings. Lettering shall be raised metal.
  - No other freestanding signage shall be allowed in the commerce park.
- Building Signage:
  - Signage shall be systematically located and styled to support the architectural design.
  - Single-tenant building signage:
    - One square foot of signage for each linear foot of street frontage up to a maximum 50 square feet of signage on each street frontage not to exceed a total of 100 square feet of building signage shall be allowed.
    - Sign placement shall occur below the edge of the roof.
    - Lettering shall be reverse pan channel letters with solid consistent color that compliments the building color.
  - Multi-tenant building signage:

- One square foot of signage for each linear foot of the suites street frontage with a maximum of 25 square feet of signage per suite shall be allowed.
- Sign placement shall occur below the edge of the roof.
- Signs will be mounted above each respective suite, placed consistently along the building face, and located on the upper part of the exterior wall within a dedicated sign band.
- Lettering shall be reverse pan channel letters with solid consistent color that compliments the building color.

## Grading and Drainage

The PAD site slopes from northeast to southwest. On-site retention basins will be designed and constructed as part of the development of each user as approved in the Individual Site Plans.

## Public Utilities and Services

The following identifies the providers of utilities and public services:

Sewer .....	City of Avondale
Water.....	City of Avondale
Electricity .....	Salt River Project (SRP)
Telephone.....	Qwest Communications
Cable TV.....	Cox Communications
Gas .....	Southwest Gas Company
Refuse.....	City of Avondale or Private
Fire and Emergency.....	City of Avondale
Police .....	City of Avondale

**Water** The site is served water with an existing 16-inch water line in 107<sup>th</sup> Avenue and extended along Roosevelt Street through the Griffith Commerce Park development to the west. Additional water lines will be constructed to serve individual lots as determined in the Master Site Plans. These water lines will be installed in the perimeter and interior streets. The Van Buren Street water line will be 16-inch. The 103<sup>rd</sup> Avenue water line will be 12-inch. The water lines in the interior streets will be 8-inch.

**Sewer** The site is served sewer with an existing 15-inch sewer line in Van Buren Street, 107<sup>th</sup> Avenue and Roosevelt Street. An additional sewer stub is located in Pierce Street and

will be utilized as appropriate. Additional 8-inch sewer lines and stubs will be constructed to serve individual lots as determined in the Master Site Plans. Sewer manholes will be placed every 400-feet and an 8-inch stub will be extended to adjacent properties from the manholes.

The average daily sewer flows can be estimated based on the City of Avondale Engineering Design Standards Book. The exact sewer flows will not be known until Master Site Plans for the Parcels are complete. Commerce park land uses will generate approximately 1,000 gallons per acre per day. Commercial land uses will generate 3,000 gallons per acre per day. The estimated wastewater flow will be approximately 148,370 gallons per day.

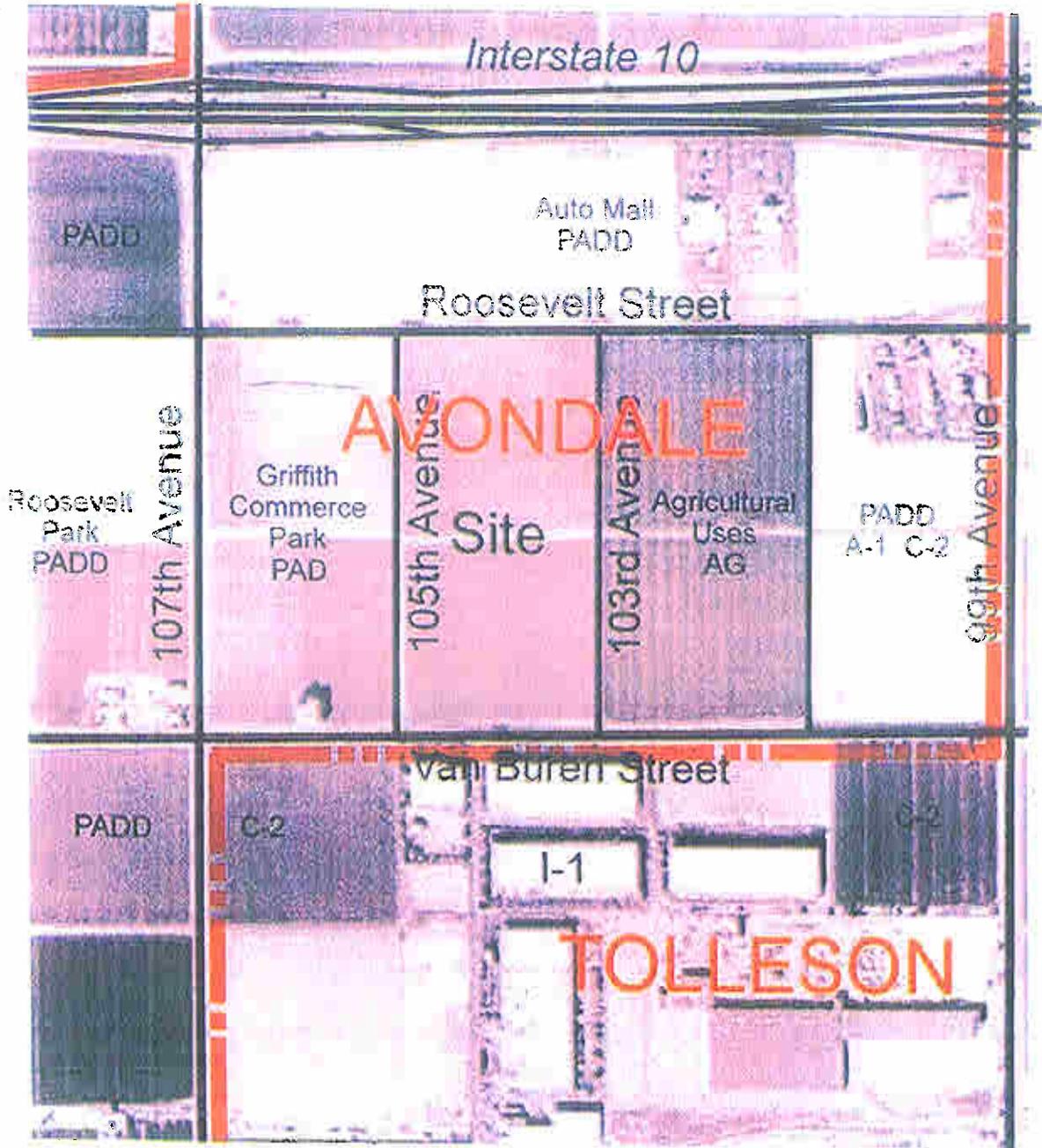
Fire Hydrants The hydrants will be installed at 300-foot intervals on the site's interior and at 1,000-foot intervals on Van Buren Street. Additional fire hydrants and water lines may be required for individual lots depending on the Master Site Plans. Domestic and fire flow requirements can not be calculated without specific Master Site Plans, however it appears that the City's infrastructure can deliver the water required to adequately serve development on the site.

## Phasing

The PAD proposes two Parcels. The following adjacent street improvements are required when each Parcel is developed:

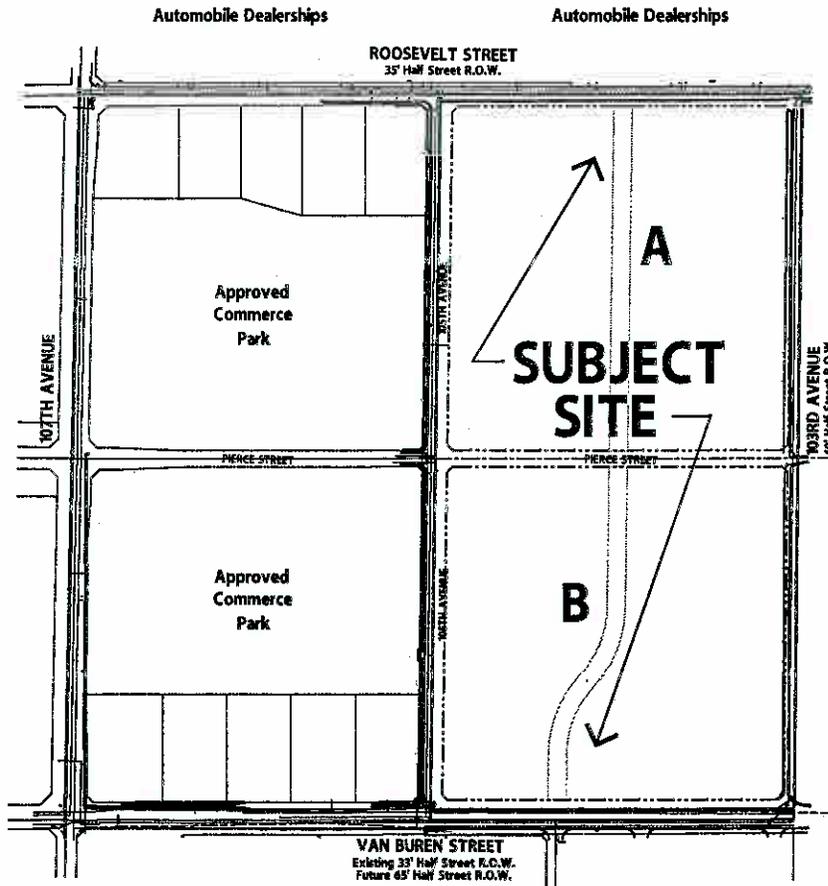
- Development of Parcel A shall include:
  - South half of Roosevelt Street.
  - West half of 103<sup>rd</sup> Avenue and east half of 105<sup>th</sup> Avenues between Roosevelt Street and Pierce Street.
  - North half of Pierce Street.
- Development of Parcel B shall include:
  - North half of Van Buren Street.
  - West half of 103<sup>rd</sup> Avenue and east half of 105<sup>th</sup> Avenues between Pierce Street and Van Buren Street.
  - South half of Pierce Street.
- The project will be master planned in two phases though construction within each phase will be dependent on Individual Site Plans. Once construction begins in a phase, all of the perimeter streets will be installed in conjunction with the construction of the first Individual Site Plan. Internal streets will be indicated on the Master Site Plan of each Phase and the necessary street improvements to adequately serve each Individual Site Plan will be installed in conjunction with the site construction. The chronology of the Phases and Individual Site Plans depends on market conditions. Parcels can be subdivided, however the phasing remains the same. The Parcels can be combined and a Master Site Plan is required for the combined Parcels.
- Prior to administrative approval of an Individual Site Plan, a Master Site Plan must be reviewed by the Planning Commission and approved by City Council for the particular Parcel that the Individual Site Plan is located.

# Proposed 80 Acre PAD



## Aerial Map





City of Tolleson  
I-1 & C-2 Undeveloped  
Unsubdivided

Prepared By:  
DFDCornoyerHedrick  
2425 E. Camelback Road #400  
Phoenix, Az. 86016  
(602)381-4848  
Contact: Mike Edwards

# Context Plan

Date: 12.2.05

0' 100' 200' 300' 400'

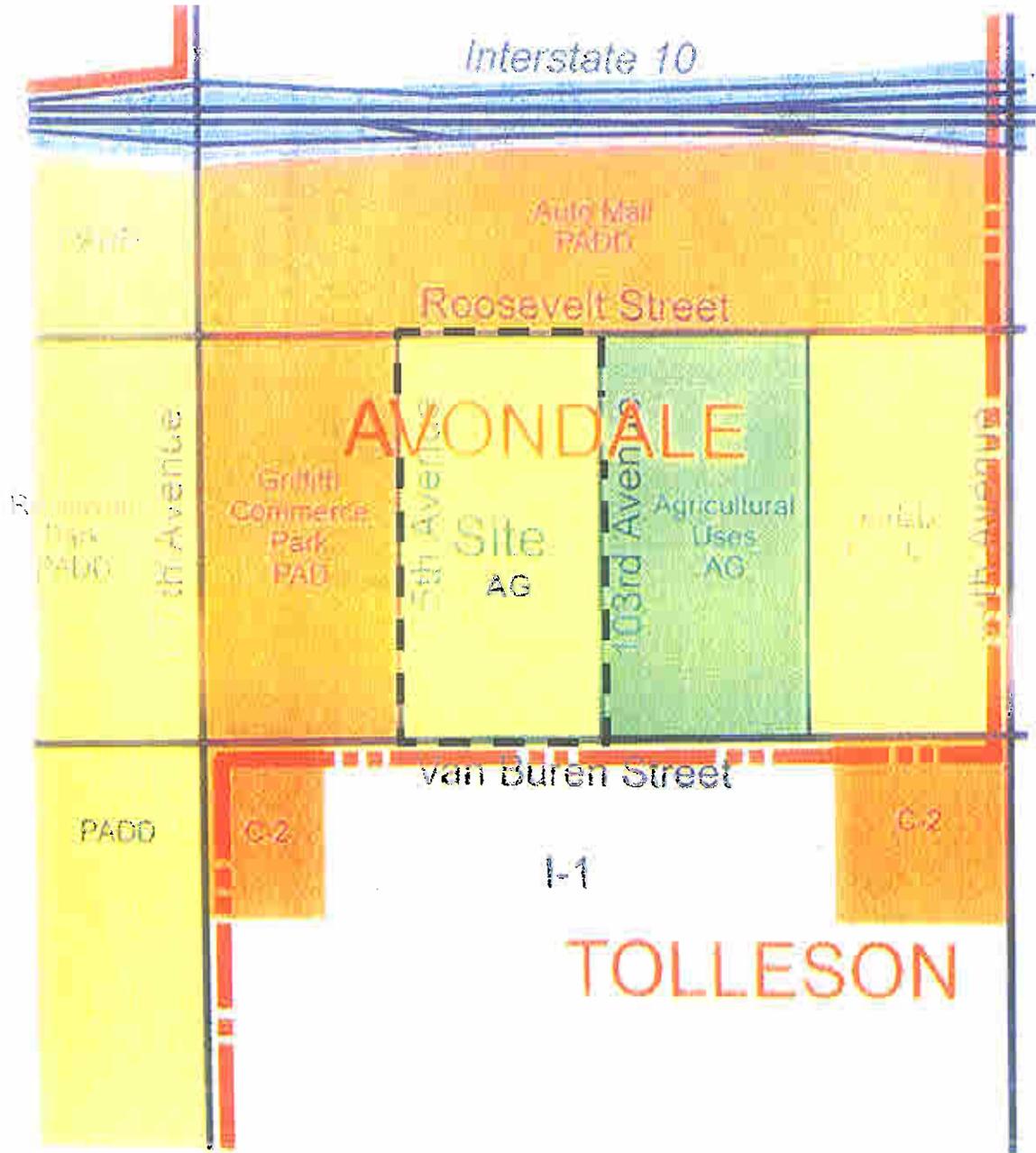
Three Rivers Commerce Park  
Avondale, Arizona

**SHILOH**  
DEVELOPMENT

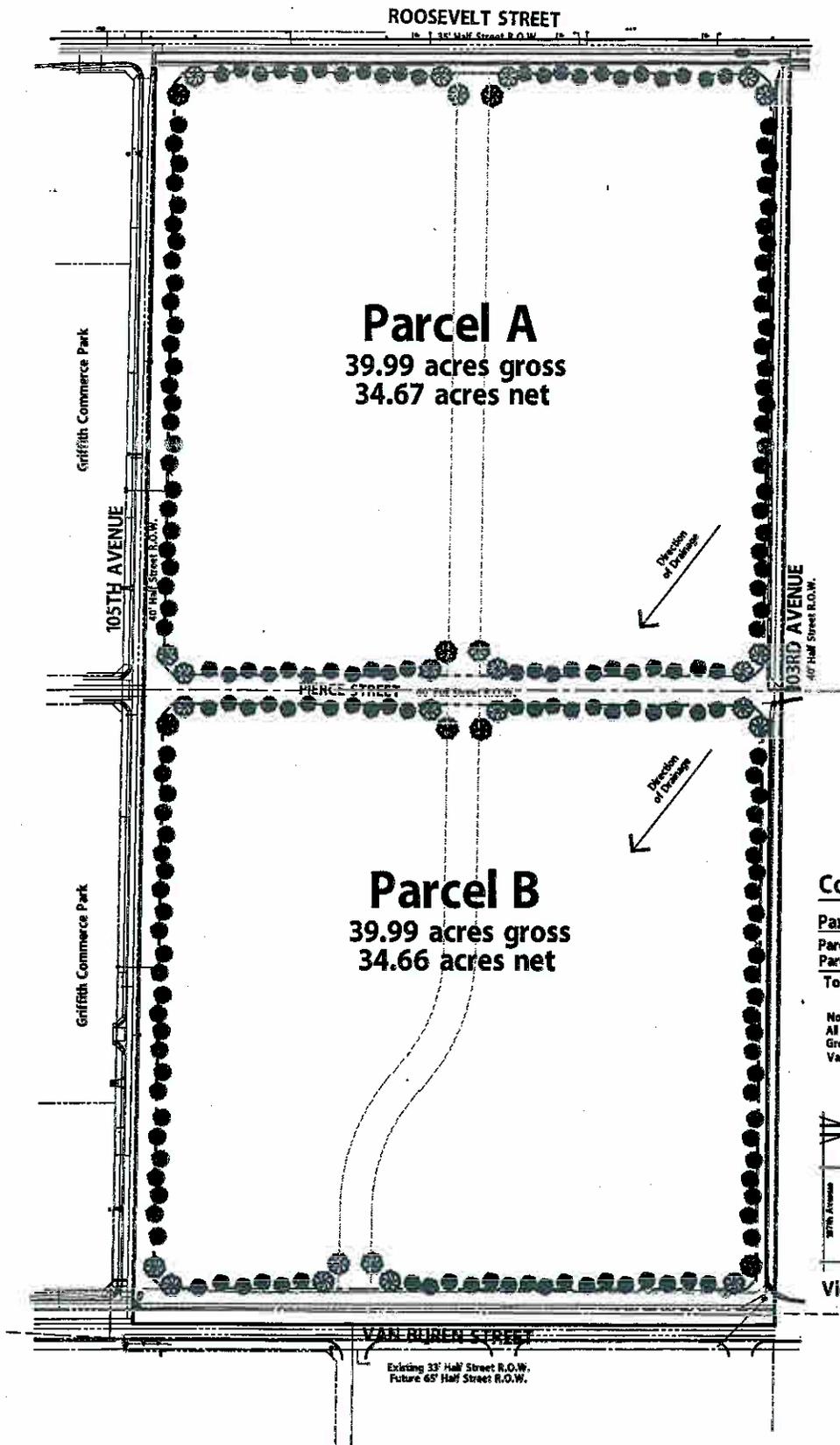
architects  
interior architecture  
space planning  
facilities management  
land planning  
landscape architecture  
graphic design

CS17  
11AUG.05

# Proposed 80 Acre PAD



Existing Zoning



**Conceptual Plan Data:**

Parcel/Phase:	Gross Acres:	Net Acres:
Parcel A	39.99	34.67
Parcel B	39.99	34.66
<b>Totals:</b>	<b>79.98</b>	<b>69.33</b>

Note:  
All Calculations are Approximate.  
Gross Acres Includes Existing  
Van Buren St. 33' R.O.W.



**Conceptual PAD Plan**

Prepared By:  
DFDCornoyerHedrick  
2425 E. Camelback Road #400  
Phoenix, Az. 86016  
(602)381-4848  
Contact: Mike Edwards

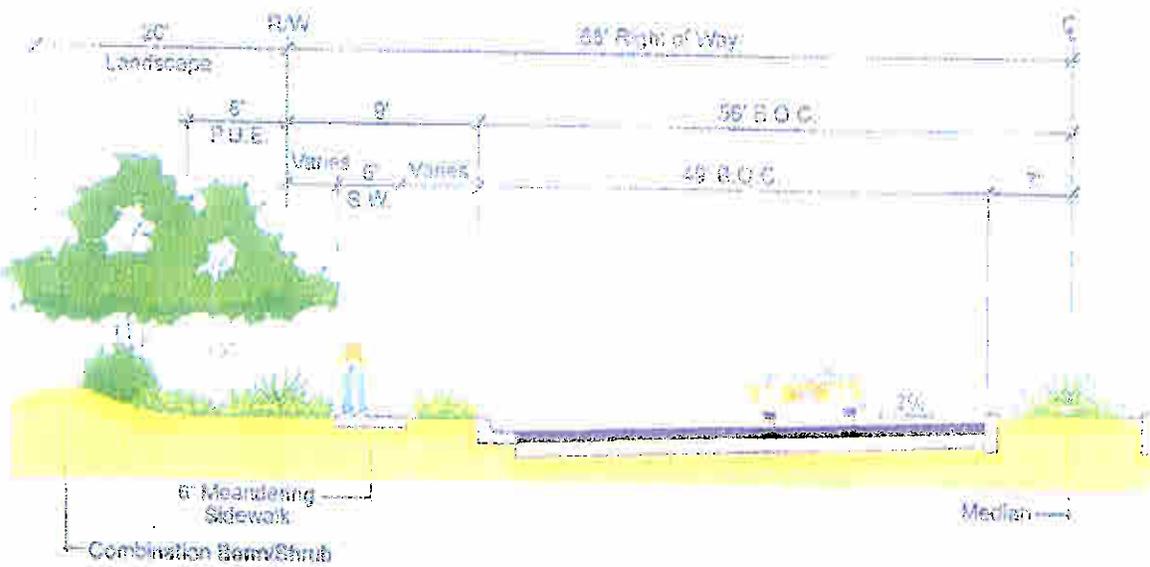
Date: 12.2.05

architects  
interior architecture  
park planning  
facility management  
land planning  
landscape architecture  
graphic design

Three Rivers Commerce Park  
Avondale, Arizona

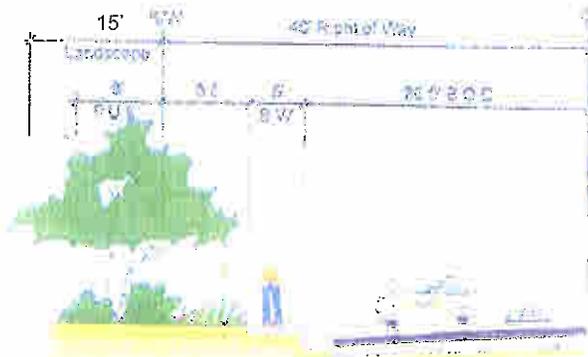
**SHILOH**  
DEVELOPMENT

0517  
PLAUG05



Typical Section: Van Buren Street

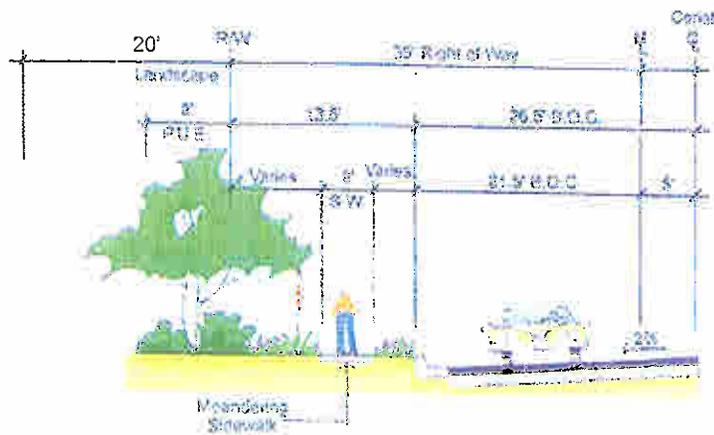
**Note: Trees to be located outside of the PUE per Engineering Department's request**



Typical Section: 105th & 103rd Avenues

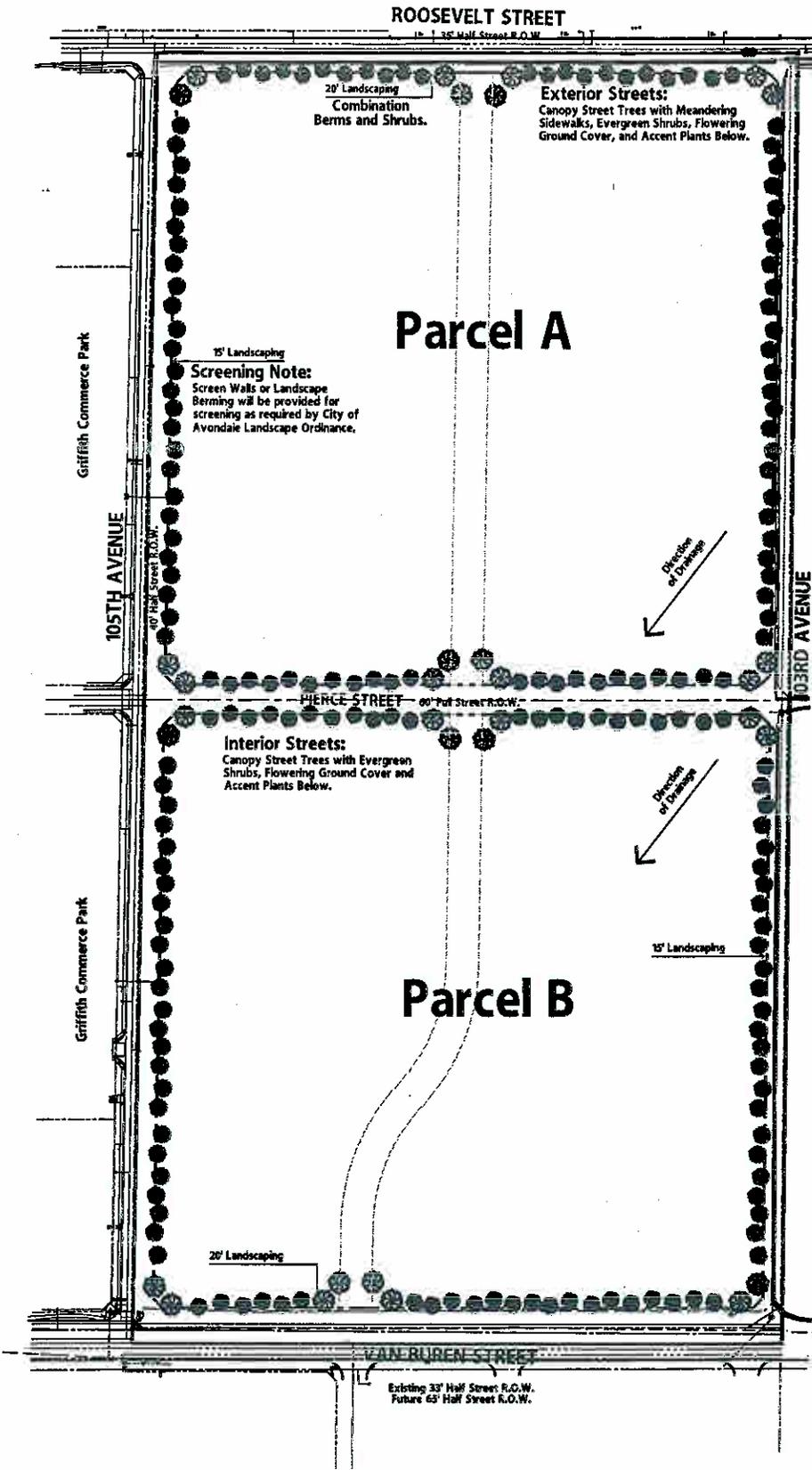


Typical Section: Pierce Street



Typical Section: Roosevelt Street Looking West

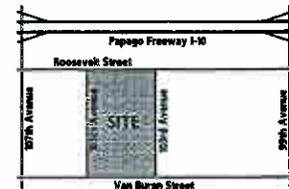
Note: Trees to be located outside of the PUEs per Engineering Department's request



**Proposed Plant Materials List:**

- |                      |                       |
|----------------------|-----------------------|
| <b>Canopy Trees:</b> | <b>Palm Trees:</b>    |
| Acacia               | Date Palms            |
| Southern Live Oak    |                       |
| Sissoo Tree          |                       |
| Mesquite             |                       |
| <b>Shrubs:</b>       | <b>Ground Covers:</b> |
| Bougainvillea        | Trailing Acacia       |
| Bird of Paradise     | Dwarf Coyote Bush     |
| Fairy Duster         | Ground Morning Glory  |
| Cassia               | Trailing Lantana      |
| Texas Ranger         |                       |
| Deer Grass           |                       |
| Dwarf Oleander       |                       |
| Ruelle               |                       |
| <b>Accents:</b>      | <b>Lawns:</b>         |
| Agave                | Santa Anna            |
| Aloe                 | Rye Overseed (winter) |
| Desert Marigold      |                       |
| Desert Spoon         |                       |
| Red Yucca            |                       |
| Penstemon            |                       |

Note: No Lawn to be installed in R.O.W.  
Internal streets will have 15' landscape frontage.



Vicinity Map

# Landscape Concept Plan

Prepared By:  
DFDComoyerHedrick  
2425 E. Camelback Road #400  
Phoenix, Az. 86016  
(602)381-4848  
Contact: Mike Edwards

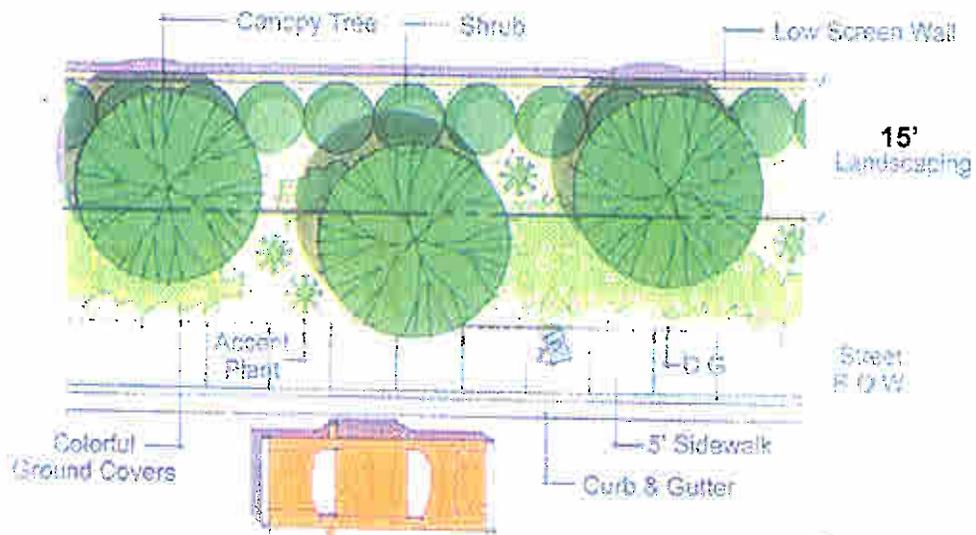
Date: 12.2.05



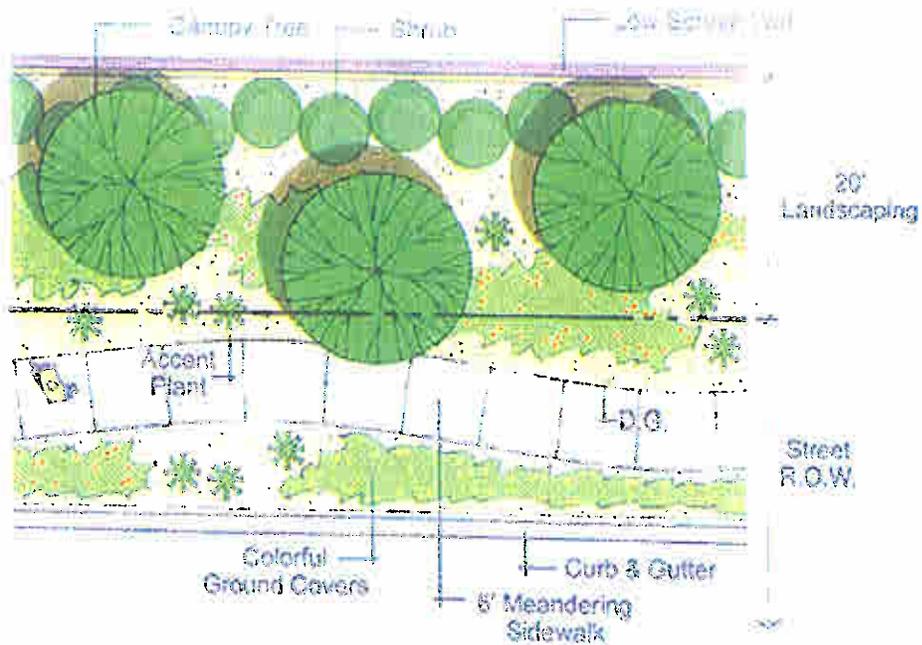
Three Rivers Commerce Park  
Avondale, Arizona

**SHILOH**  
DEVELOPMENT

0517  
11AUG05

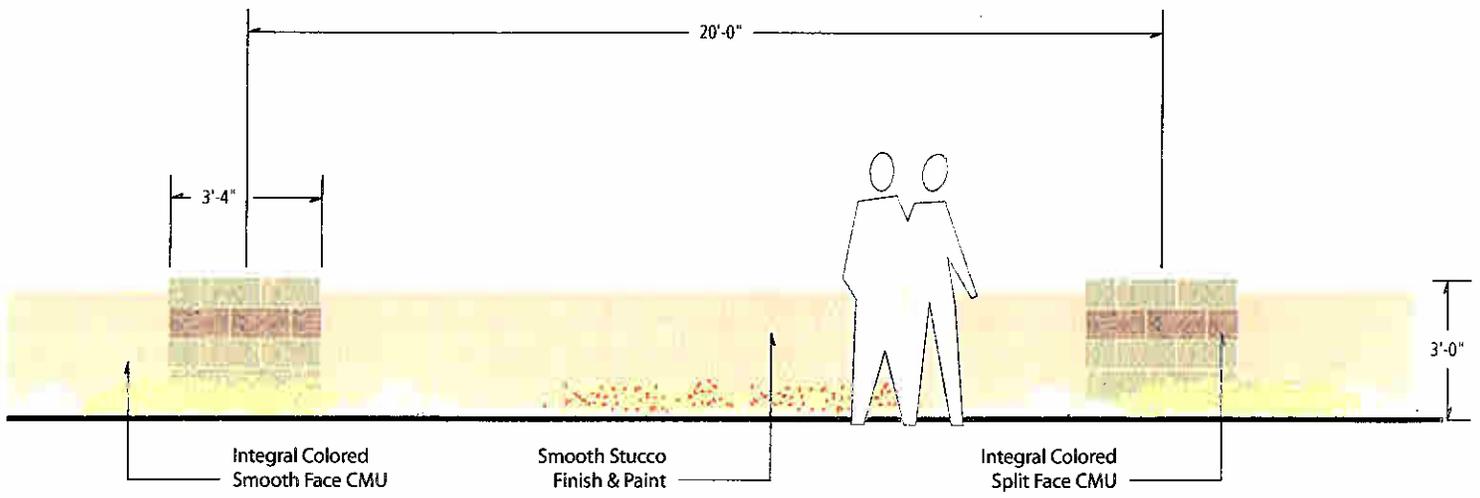


Typical 15' Landscape Tract  
105th Ave., 103rd Ave., **Pierce**

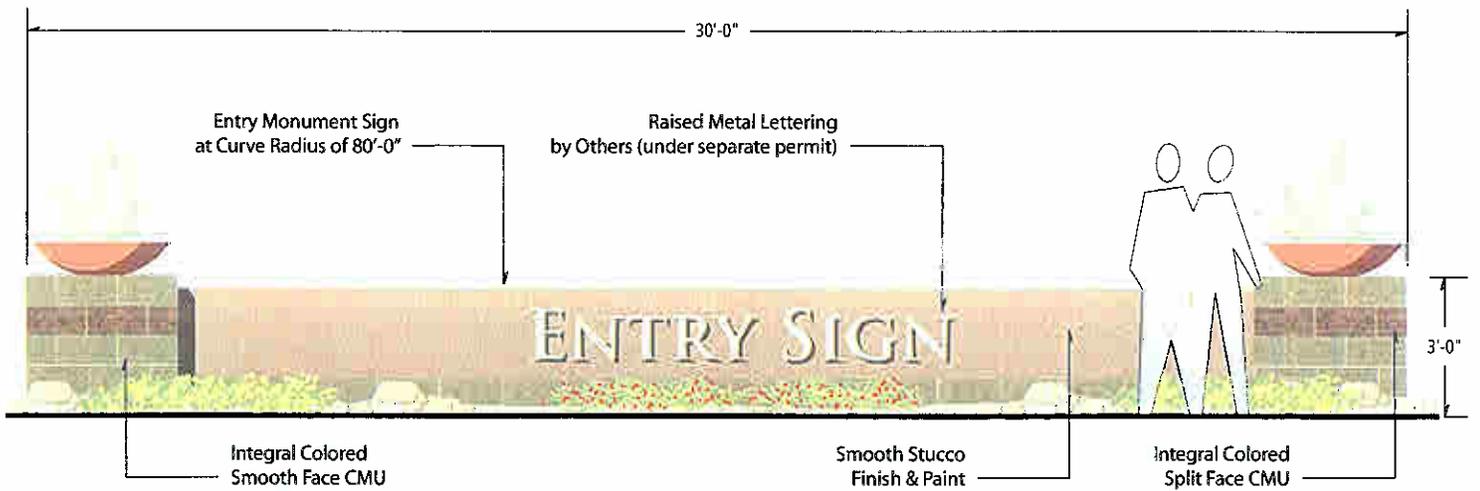


Typical 20' Landscape Tract  
Van Buren Street  
**Roosevelt Street**

Note: Trees to be located outside of the PUEs per Engineering Department's request

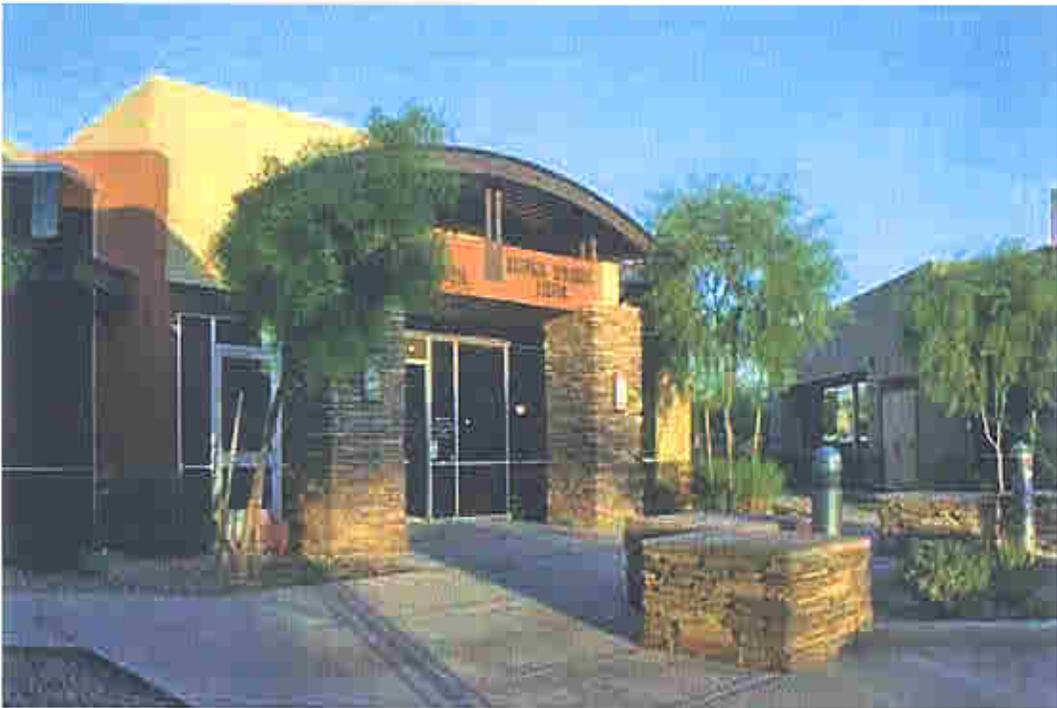


3' SCREEN WALL



ENTRY MONUMENT WALL

<p>DFD CormoyerHedrick</p> <p>© 2005 DFD CormoyerHedrick</p>	<p>DESCRIPTION</p> <p>Entry Monument Sign Concept</p>	<p>SCALE 1/4"=1'</p> <p>PROJECT Avondale Office</p> <p>NUMBER TBD</p> <p>DATE 12.4.2005</p> <p>REVISED</p>	<p>DRAWING NO.</p> <p><b>GD</b> <b>101</b></p>
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Office Suites



Office Suites



Corporate Center



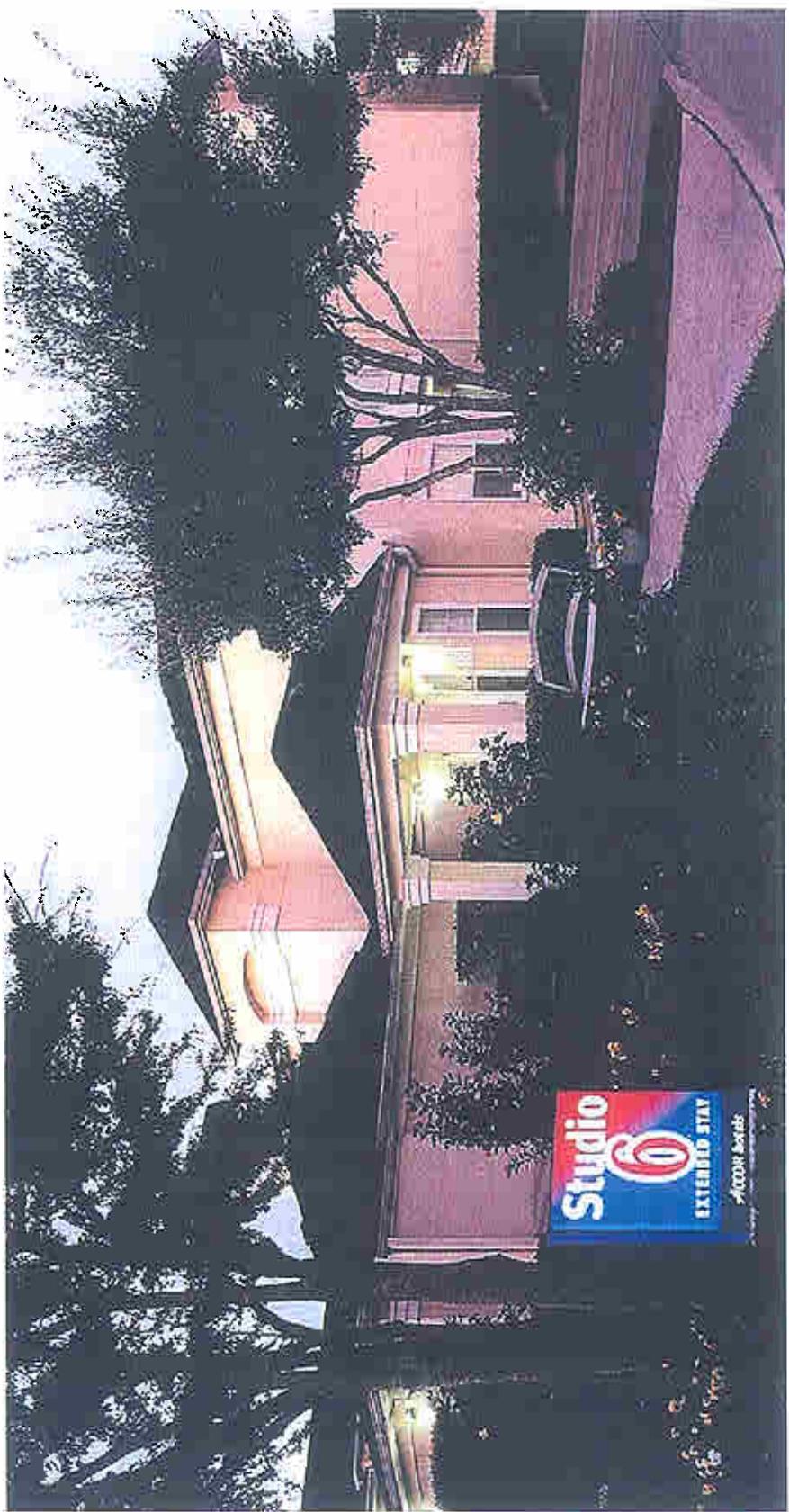
Commerce Park



Commerce Park



Retail Commercial



Hotel

**ORDINANCE NO. 1165-106**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 80 ACRES GENERALLY LOCATED AT THE NORTHWEST CORNER OF VAN BUREN STREET AND 103RD AVENUE AS SHOWN IN FILENAME A-03-622, REZONING SUCH PROPERTY FROM AGRICULTURAL (AG) TO PLANNED AREA DEVELOPMENT (PAD) AND IMPOSING CONDITIONS UPON SUCH CHANGE.

**WHEREAS**, the Council of the City of Avondale (the "City Council") desires to amend the City of Avondale Zoning Atlas (the "Zoning Atlas") pursuant to ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, all due and proper notices of public hearings on the intended amendment to be held before the City of Avondale Planning and Zoning Commission (the "Commission") and the City Council were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the Commission held a public hearing on Thursday, December 15, 2005, on the amendment to the Zoning Atlas pursuant to such notices and as required by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the City Council held a public hearing regarding the amendment to the Zoning Atlas on January 17, 2006.

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

**SECTION 1.** That  $\pm$  80 acres of certain real property generally located at the northwest corner of Van Buren Street and 103rd Avenue as shown in filename A-03-622 (the "Property"), more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, are hereby rezoned from Agricultural (AG) to Planned Area Development (PAD), subject to the following conditions:

1. Development shall be in conformance with the Three Rivers Commerce Center General Development Plan date stamped December 5, 2005 except as modified by these stipulations.
2. In accordance with Section 607.A of the Zoning Ordinance, development of the first development unit shall commence within two (2) years of the date upon which the PAD zoning is approved.

3. Access to all parcels shall be provided by interior local streets only as determined at the time of master site plan approval. No parcels or individual lots shall be allowed direct access to Roosevelt Street, Van Buren Street, 103rd Avenue, or 105th Avenue.
4. Perimeter walls shall be installed adjacent to all streets. The design of all perimeter walls shall match Exhibit I. All interior screen walls shall match the architecture of the building.
5. All signage shall comply with the City of Avondale Sign Ordinance with the following exceptions:
  - a. Entry monuments that identify the commerce park shall be permitted per the General Development Plan and Program and these stipulations.
  - b. Each parcel shall have no more than one freestanding sign. The location of the signs shall be limited to the interior street.
  - c. The provisions of Section 909.C.6 concerning a freeway pylon sign shall not apply.
  - d. Sign fields for all wall signs shall be determined at time of final site plan approval. In addition, the sign cannot exceed 80% of the length or 70% of the height of the sign field.
  - e. Exposed raceways shall not be permitted.
  - f. Commerce park identification signs shall be provided at the intersections of all streets and the entrances into the park as determined at time of master site plan approval.
6. Automobile related uses shall only be permitted as part of a master planned automobile center with a maximum size of ten acres adjacent to Roosevelt Street.
7. All vehicle sales and leasing type uses shall be prohibited.
8. Prior to division of the property, a property owner's association shall be formed and funded for the maintenance of perimeter walls, landscaping, common open space areas, and center monument signage. A property owner's association will be formed with covenants, conditions and restrictions (CC&Rs) outlining responsibilities for maintenance of common tracts and regulations for consistency and maintenance of the project, including but not limited to landscaping, screen walls and individual signage prior to issuance of a building permit on any portion of Parcels A or B.
9. The landscaping for 103rd Avenue shall include the street tree theme.
10. Pedestrian refuge areas with a minimum of 100 square feet shall be provided for each individual lot. Each pedestrian refuge area shall include seating, landscaping and shade.
11. The developer shall provide a traffic study at the time of master site plan approval. The study shall include analysis for future traffic signals.
12. The developer shall be responsible for their proportionate share of the cost of the design and construction of any traffic signals as determined at the time of master site plan approval.
13. Street improvements shall be required as follows as determined by the City Engineer:

<b>Street</b>	<b>Right-of-way Required</b>	<b>Street Improvements</b>
Van Buren Street	65' half street	3.5 travel lanes, bike lane, curb and gutter, detached sidewalks, street lights and landscaping.
103rd Avenue	40' half street	1.5 travel lanes, curb and gutter, attached sidewalks, street lights and landscaping
Roosevelt Street	35' half street	1.5 travel lanes, curb and gutter, detached sidewalks, street lights and landscaping.
105th Avenue	40' half street	1.5 travel lanes, bike lane, curb and gutter, attached sidewalks, street lights and landscaping
Pierce Street	80' full street	2 travel lanes, median, curb and gutter, attached sidewalks, street lights and landscaping
Internal Local Streets	60' full street	1 travel lane, curb and gutter, detached sidewalks, street lights and landscaping.

14. Street improvements adjacent to Parcel A shall include the full length of the south half of Roosevelt Street, the full length of the east half of 105th Avenue, the full length of the west half of 103rd Avenue and the full width of Pierce Street. The improvements for all street segments adjacent to Parcel A shall include pavement, curb and gutter and streetlights. Landscaping and sidewalks shall be installed as determined at time of master site plan approval.
15. Street improvements adjacent to Parcel B shall include the full length of the north half of Van Buren Street, the full length of the east half of 105th Avenue, the full length of the west half of 103rd Avenue and the full width of Pierce Street. The improvements for all street segments adjacent to Parcel A shall include pavement, curb and gutter and streetlights. Landscaping and sidewalks shall be installed as determined at time of master site plan approval.
16. To the extent allowed by law, all Type 1 and Irrigation Grandfathered Groundwater Rights appurtenant to the property shall be properly extinguished and the resulting Assured Water Supply credits pledged to the City of Avondale's account at the Arizona Department of Water Resources prior to division of the property.

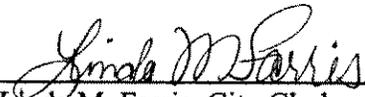
**SECTION 2.** If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

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

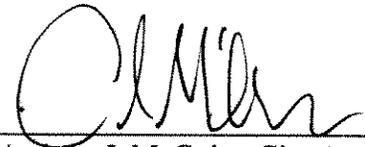
**PASSED AND ADOPTED** by the Council of the City of Avondale, January 17, 2006.

  
Marie Lopez-Rogers, Mayor

ATTEST:

  
Linda M. Farris, City Clerk

APPROVED:

  
Andrew J. McGuire, City Attorney

**Excerpt of the Minutes of the regular City Council meeting held January 17, 2006 at 7:00 p.m. in the Council Chambers.**

**11) PUBLIC HEARING – ORDINANCE – PAD ZONING – THREE RIVERS COMMERCE PARK – A-03-622**

A public hearing and consideration of an ordinance rezoning from AG (Agricultural) to PAD (Planned Area Development) 79.98 acres located at the northwest corner of 103<sup>rd</sup> Avenue and Van Buren Street.

Dean Svoboda, Planning and Building Services Director, explained the city's General Plan shows the subject property and the surrounding area as one of the prime employment areas within the community. He said the project will be developed in two phases, with 40 acre parcels on the north and south separated by Pierce Street. He stated the applicant is proposing to do a separate master plan for each parcel, with the internal streets, landscape theme and basic arrangement determined at that time. He noted the master plan will come before the City Council for approval. He explained the commerce park will permit a variety of different types of office uses, one or more extended stay hotels, medical and dental laboratories, research and development, trade businesses, commercial schools, light manufacturing and assembly of finished products and certain types of custom retail sales and service. He stated some uses will be subject to conditions, including those related to vehicle service, noting such uses would only be permitted if they were part of a master planned auto service center. He said such auto service center could consist of up to 10 acres, would have to be located adjacent to the Roosevelt Street alignment and the service bays would have to be completely screened from the street view. He explained the intent is to capture a need for this type of use in the area, while minimizing adverse affects on the overall character of the area. He said uses permitted under Conditional Use Permits include health and fitness clubs and gymnasiums. He stated new and used vehicle sales or leasing, contractors yards, mini storage, dead vehicle storage, bulk warehousing and distribution and sexually oriented businesses would be prohibited.

Mr. Svoboda said the Planning Commission recommended approval, subject to 15 stipulations on December 15, 2005. He stated, given the added stipulations, staff believes the project meets the intent of the city's General Plan, will optimize the use of the property, result in compatible land use relationships and is consistent with the existing and desired character for the area.

1. Development shall be in conformance with the Three Rivers Commerce Center General Development Plan date stamped December 5, 2005 except as modified by these stipulations.
2. In accordance with Section 607 A of the Zoning Ordinance, development of the first development unit shall commence within two (2) years of the date upon which the PAD zoning is approved.
3. Access to all parcels shall be provided by interior local streets only as determined at the time of master site plan approval. No parcels or individual lots shall be allowed direct access to Roosevelt Street, Van Buren Street, 103<sup>rd</sup> Avenue, or 105<sup>th</sup> Avenue.
4. Perimeter walls shall be installed adjacent to all streets. The design of all perimeter walls shall match Exhibit I. All interior screen walls shall match the architecture of the building.
5. All signage shall comply with the City of Avondale Sign Ordinance with the following exceptions:
  - a. Entry monuments that identify the commerce park shall be permitted per the General Development Plan and Program and these stipulations.
  - b. Each parcel shall have no more than one freestanding sign.
  - c. Provisions of Section 909.C.6 concerning freeway commercial corridor signage shall not apply.

- d. Sign fields for all wall signs shall be determined at time of final site plan approval. In addition, the sign cannot exceed 80% of the length or 70% of the height of the sign field.
  - e. Exposed raceways shall not be permitted.
  - f. Commerce park identification signs shall be provided at the intersections of all streets and the entrances into the park as determined at time of master site plan approval.
6. Automobile related uses shall only be permitted as part of a master planned automobile center with a maximum size of ten acres adjacent to Roosevelt Street.
  7. Vehicle sales and leasing shall be prohibited.
  8. A property owner’s association shall be formed and funded for the maintenance of perimeter walls, landscaping, common open space areas, and center monument signage. A property owner’s association will be formed with covenants, conditions and restrictions (CC&Rs) outlining responsibilities for maintenance of common tracts and regulations for consistency and maintenance of the project, including but not limited to landscaping, screen walls and individual signage.
  9. The landscaping for 103<sup>rd</sup> Avenue shall include the street tree theme.
  10. Pedestrian refuge areas with a minimum of 100 square feet shall be provided for each individual lot. Each pedestrian refuge area shall include seating, landscaping and shade.
  11. The developer shall provide a traffic study at the time of master site plan approval. The study shall include analysis for future traffic signals.
  12. The developer shall be responsible for their proportionate share of the cost of the design and construction of any traffic signals as determined at the time of master site plan approval.
  13. Street improvements shall be required as follows as determined by the City Engineer:

<b>Street</b>	<b>Right-of-way Required</b>	<b>Street Improvements</b>
Van Buren Street	65’ half street	3.5 travel lanes, bike lane, curb and gutter, detached sidewalks, street lights and landscaping.
103 <sup>rd</sup> Avenue	40’ half street	1.5 travel lanes, curb and gutter, attached sidewalks, street lights and landscaping
Roosevelt Street	35’ half street	1.5 travel lanes, curb and gutter, detached sidewalks, street lights and landscaping.
105 <sup>th</sup> Avenue	40’ half street	1.5 travel lanes, bike lane, curb and gutter, attached sidewalks, street lights and landscaping
Pierce Street	80’ full street	2 travel lanes, median, curb and gutter, attached sidewalks, street lights and landscaping
Internal Local Streets	60’ full street	1 travel lane, curb and gutter, detached sidewalks, street lights and landscaping.

14. Street improvements adjacent to Parcel A shall include the full length of the south half of Roosevelt Street, the full length of the east half of 105th Avenue, the full length of the west half of 103<sup>rd</sup> Avenue and the full width of Pierce Street. The improvements for all street segments adjacent to Parcel A shall include pavement, curb and gutter and streetlights. Landscaping and sidewalks shall be installed as determined at time of master site plan approval.
15. Street improvements adjacent to Parcel B shall include the full length of the north half of Van Buren Street, the full length of the east half of 105th Avenue, the full length of the west half of 103<sup>rd</sup> Avenue and the full width of Pierce Street. The improvements for all street segments adjacent to Parcel B shall include pavement, curb and gutter and streetlights. Landscaping and sidewalks shall be installed as determined at time of master site plan approval.

He stated that staff subsequently reviewed the wording of stipulations five and eight and believes that they should be revised for clarification as follows:

5. All signage shall comply with the City of Avondale Sign Ordinance with the following exceptions:
  - a. Entry monuments that identify the commerce park shall be permitted per the General Development Plan and Program and these stipulations.
  - b. Each parcel shall have no more than one freestanding sign. THE LOCATION OF THE SIGN SHALL BE LIMITED TO THE INTERIOR STREET.
  - c. THE provisions of Section 909.C.6 concerning a FREEWAY PYLON SIGN ~~freeway commercial corridor signage~~ shall not apply.
  - d. Sign fields for all wall signs shall be determined at time of final site plan approval. In addition, the sign cannot exceed 80% of the length or 70% of the height of the sign field.
  - e. Exposed raceways shall not be permitted.
  - f. Commerce park identification signs shall be provided at the intersections of all streets and the entrances into the park as determined at time of master site plan approval.

8. PRIOR TO DIVISION OF THE PROPERTY, a property owner's association shall be formed and funded for the maintenance of perimeter walls, landscaping, common open space areas, and center monument signage. A property owner's association will be formed with covenants, conditions and restrictions (CC&Rs) outlining responsibilities for maintenance of common tracts and regulations for consistency and maintenance of the project, including but not limited to landscaping, screen walls and individual signage.

Council Member Lynch said she often hears from residents that Avondale has a shortage of automobile leasing businesses, expressing her opinion the subject site represents an ideal location for such a business. She asked why staff is recommending that all automobile leasing be prohibited. Mr. Svoboda said a similar question was asked at the Planning Commission hearing. He explained one of the intents of the employment district is to generate jobs for the community and one of the concerns in working with the applicant was that storing vehicles for lease would take up a great deal of ground area without contributing many jobs to the community. He stated this is one of the few prime employment areas of the city, whereas there are a wide range of other locations where auto leasing might be appropriate. Council Member Lynch asked if they could stipulate that only a certain number of vehicles be stored on site. Mr. Svoboda said it is within Council's discretion to do so if it believes such a land use is warranted at the subject location. He expressed his opinion, however, there are other industrial areas of the city where the cars could be stored at the same location as the rental office. He said other nearby commercial opportunities for auto leasing offices will also be coming forward in the near future.

Council Member Lynch asked if Cox has been identified as the provider for cable, explaining she is concerned about lawsuits that are beginning to come forward over agreements between developers and particular vendors. Andy Moore, applicant's representative, said Cox is generally the provider, but to his knowledge the applicant is not locked into any kind of deal with Cox. Council Member Lynch asked if a small vendor could come in and submit a bid to be the provider. Mr. Moore said, to his knowledge, yes.

Mayor Lopez-Rogers opened the meeting up for public comment on this item. As no comments were made, she closed the public hearing.

Andrew McGuire, City Attorney, read Ordinance 1165-106, by title only.

Council Member Lynch said the area will be quite large and, other than a Wendy's restaurant and the truck stop, no restaurants are provided. She expressed her opinion the area would be ideal for a moderately sized coffee shop and larger lunch room that could be used by employees from all of the businesses in the area. Mr. Svoboda said they discussed the issue of restaurants at great length with the applicant. He noted in the near future staff will bring some requests forward to Council for a mix of ancillary service type uses. He said in this case, however, staff felt it was paramount to focus on employment generation given the limited amount of prime employment space. He pointed out all of the parcels along Roosevelt and along Van Buren are currently zoned C-2 and can accommodate restaurant uses as can the commercial corner in the Interstate Commerce Center and a large portion of the Roosevelt Park development. Council Member Lynch said, while she understands staff's rationale, she would prefer not to force employees to drive elsewhere to eat. Mr. Svoboda explained the city also wants to avoid the b-grade commercial that can often develop when retail space is provided in areas intended for employment uses.

Council Member Lynch moved to approve the ordinance. Council Member Vice Mayor Wolf seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Council Member Earp	Aye
Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez Rogers	Aye
Vice Mayor Wolf	Aye
Council Member Lynch	Aye

Motion carried unanimously.

# The Three Rivers North PAD Amendment Narrative

## Introduction

The Three Rivers PAD site is being developed as a commerce park for employment uses with a campus feel that incorporates a common landscape, entry feature, and screen wall theme. The site is divided into two Parcels: the south half owned by Maricopa County and planned for the County's west courts facility and the north half remaining in private ownership and now planned for a broader mix of commerce park/employment uses. This PAD amendment on the 40 acre North Parcel is being requested to expand the mix of uses allowed with additional employment-related and limited retail uses and to provide additional flexibility in development standards to maximize the site's potential for implementing community goals for the Freeway Corridor.

The North Parcel will continue to feature buildings sharing a common architectural theme. The architectural theme may vary from parcel to parcel; however, guidelines are provided in this narrative to set parameters for architecture, building materials and colors to ensure compatibility in development on the entire site. To ensure that the project is developed appropriately, a "Master Site Plan" for each Parcel is required to be reviewed by the Planning Commission and approved by City Council prior to administrative review and approval of "Individual Site Plans" for buildings or uses. The "Master Site Plans" will determine the architectural theme, locations of buildings, parking, circulation, and landscaping for the entire Parcel.

In accordance with Section 603 of the PAD District, this is a General Development Plan and Program (GDPP). The GDPP identifies the general development theme for the site including: permitted land uses, development standards, design criteria, street cross sections, landscape theme, screen wall theme, and entry monument signage. To better communicate the overall now more specific planning direction for the North Parcel and the proposed expanded mix of uses, a Conceptual Master Site Plan is being included with this PAD amendment submittal.

The overall Three Rivers PAD site fronts along Van Buren Street on the south and Roosevelt Street on the north, between 103<sup>rd</sup> and 105<sup>th</sup> Avenues. The site is located across Van Buren Street from the Tolleson city limits. The site is located in the middle of a rapidly developing employment / commercial area within the Cities of Avondale and Tolleson. The surrounding properties have the following land uses and zoning (see Existing Zoning, Exhibit B):

- North: Developing automall with 14 dealerships complete or nearly complete. The automall has full perimeter improvements. The automall is zoned PAD (Planned Area Development) in Avondale.
- East: Across 103<sup>rd</sup> Avenue, vacant undeveloped land zoned PAD for Commerce Park employment-related uses in Avondale.
- South: Warehousing/distribution employment uses. The warehousing/distribution uses are zoned I-1 (light industrial) and the agricultural uses in the area are zoned I-1 and C-2 (commercial) all in Tolleson.
- West: PAD zoning for Commerce Park and Retail uses on the adjacent 80-acre parcel across 105<sup>th</sup> Avenue (see Context Plan, Exhibit C). The commerce park currently contains the Universal Technical Institute and Coyote Honda motorcycle dealership.

The site enjoys excellent regional access due to its geographic location to two freeways, Interstate-10 (I-10) and the Agua Fria Freeway 101. The site is approximately 900-feet south of the I-10 Freeway that connects Phoenix to Los Angeles. There are two I-10 freeway interchanges within one mile of the site. A full I-10 Freeway diamond interchange is at 99<sup>th</sup> Avenue, and a half diamond I-10 Freeway interchange at 107<sup>th</sup> Avenue. The Agua Fria Freeway 101 is approximately one and one-half miles east of the site and has a full stack interchange with I-10. The Agua Fria Freeway 101 connects I-10 to Interstate-17 by passing through the northern suburbs of Glendale and Phoenix. The proximity of both I-10 and the Agua Fria Freeway 101 greatly expands the site's employment shed and market area in terms of available labor supply, access to major markets, and business linkages.

Arterial and collector streets such as Van Buren Street, 105<sup>th</sup> Avenue, 103<sup>rd</sup> Avenue, and Roosevelt Street provide easy local north-south and east-west access to the site. Van Buren Street will be a six lane arterial when fully developed. Roosevelt Street will be a two-lane collector street between the existing automall and the site. Both 103<sup>rd</sup> and 105<sup>th</sup> Avenues will be two lane collector streets between Van Buren and Roosevelt Streets only. Public streets adjacent to the PAD site provide excellent access and marketing windows with high visibility to the planned employment users.

### Request

This is a request to amend the PAD land use and development standards for the 40 acre Three Rivers North Parcel only, which is bounded on the north by Roosevelt Street, on the south by Pierce Street, on the east by 103<sup>rd</sup> Avenue, and on the west by 105<sup>th</sup> Avenue (see Aerial Map, Exhibit A). The amendment is intended to provide the flexibility in both uses and development standards necessary to implement the proposed Conceptual Master Site Plan on the 40 acre North Parcel now that the 40 acre South Parcel has been acquired by the County for a courts facility. With this use established on the South Parcel, the development on the North Parcel is planned to become a more compact employment-oriented complex with an expanded mix of uses

to meet both market demand and Freeway Corridor goals, including the express intent to utilize the full potential of development sites within the corridor.

The PAD amendment would allow development on the North Parcel to take advantage of the Freeway Corridor Specific Plan amendment allowing increased height based upon satisfaction of specified criteria. The criteria are included within the amended PAD to provide the option of meeting any of the required four (4) criteria. Throughout the narrative, potential criteria that could be selected for use on a particular development parcel with buildings identified for greater height are also discussed. The amendment would also take advantage of the recent Zoning Ordinance amendment adding flexibility in Employment District uses, including the inclusion of support retail services and other permitted retail uses. The PAD amendment proposes implementing the increased height option now allowed under the Freeway Corridor Specific Plan, providing a limited amount of highly restricted outdoor storage as an accessory use on one development parcel within the PAD, and bringing the North Parcel into compliance with Avondale's current design guidelines adopted after the original PAD approval. No amendment is being requested for the 40 acre South Parcel.

The North Parcel is in an area identified for increased heights according to the Freeway Corridor Specific Plan. Taller buildings within this parcel will have freeway visibility because of the low-scale automobile dealerships north of Roosevelt. The added height and freeway visibility is intended to attract corporate users and other high quality office tenants, as well as a hotel user. In addition to identifying an area within the PAD for limited accessory outdoor storage use, the Conceptual Master Site Plan also depicts a complex of four (4) larger office buildings that could integrate some limited ground floor retail uses with three (3) floors of office above. One parcel has also been identified for a potential hotel use, which may require additional height as well. The amendment identifies several potential criteria that could be met to achieve greater height for the larger office building complex and potentially for the hotel. Added height for both of these proposed uses is consistent with the Freeway Corridor Specific Plan which identifies the Corridor area as an appropriate location for the City's most intense scale of development and as a high profile location for employment and other economic activities.

This PAD amendment proposes the addition of restricted outdoor storage in association with the primary use of industrial/office flex facilities. The complex of industrial/office flex uses with restricted outdoor storage as an accessory use is intended to provide a transitional land use buffer between the intensity of the auto dealership to the north and the larger scale class a offices proposed on the remaining approximately 20 acres south of this complex. Strict standards have been incorporated into this PAD to clearly define the restrictions on the accessory outdoor storage use. Both the Conceptual Master Site Plan and conceptual elevations for the industrial/office flex facilities are being submitted with this PAD amendment request to better convey the intent and character of the proposed restricted outdoor storage accessory use.

The flex buildings feature an upscale design that will reinforce the high-end image intended for commerce park development in this area. The buildings are proposed to include a small attached accessory outdoor storage area designed as part of the primary building. As the Conceptual Master Site Plan shows, the outdoor storage areas are oriented interior to the storage area and do not face onto perimeter streets. This site plan configuration is consistent with the Freeway Corridor Specific Plan intent to allow “only limited outdoor storage areas not visible to the freeway traveler.” The outdoor storage areas are limited to 25% of the overall building area footprint and will be enclosed by concrete and/or masonry block walls with exterior finishes matching the primary building. The storage enclosure walls on the ends of the building will be raised and designed to be consistent with and look similar to side building walls to maximize screening at the end locations. The storage area gate will be solid, and no storage materials will exceed the height of the lowest adjacent screen wall.

The materials that could be stored in these limited outdoor areas include plumbing equipment or building materials, stone pavers, brick and similar items that could be stored on pallets lower than wall height. Vehicles or any large equipment that would extend over the height of the walls would not be allowed to be stored in these areas. This type of very restricted, internally-oriented, screened, integrally designed accessory outdoor storage is not the same type of primary outdoor storage use with chain link, open fencing and/or razor wire. The latter more intensive type of storage as a primary use, which is used to store large equipment, RV's, junk vehicles or other unsightly items, is typically associated with heavy industrial areas and would not be permitted as part of the PAD. This more intensive outdoor storage primary use would not be appropriate in a commerce park setting and therefore would continue to be prohibited in the Three Rivers PAD.

The proposed industrial/office/flex buildings, which include a small accessory outdoor storage area, by contrast, are appropriate commerce park uses and have been configured and designed to be aesthetically compatible with the surrounding hotel and office uses within the remainder of the Three Rivers PAD. These facilities are intended to serve small businesses such as general contractors, home construction companies, kitchen and bath specialties, window coverings, golf equipment outfitters, martial arts schools, plumbing suppliers, commercial and residential pool companies, stone and tile distributors. All of these small business/employment uses are necessary to serve community needs and are appropriate in a commerce park setting.

The proposed amendment of the PAD permitted use list to include the restricted outdoor storage as an accessory use is needed to accommodate small businesses who also provide employment opportunities important to the job mix in any community. The successful commerce park developments in the valley, including the Scottsdale Airpark and Deer Valley Airpark, all combine a mix of small business facilities with similarly restricted outdoor storage like the ones proposed, large office complexes and showroom/warehouse uses. Only limited accessory outdoor storage that is well-screened and aesthetically compatible, similar to what is being proposed under this amendment, is permitted in these high-quality commerce park areas.

## **General Plan**

The General Plan land use map identifies the entire site to be developed with Employment (Business Park and Industrial Uses) (see General Plan Land Use Map, Exhibit D). The General Plan places great importance on the I-10 Freeway Corridor for employment, industrial and retail uses. The Plan indicates that the corridor along the I-10 Freeway is to be developed with more intense uses. The corridor is intended to allow flexibility by allowing different types of employment uses. Employment uses are defined as general-office; enclosed industrial along with retail and commercial uses that support the employment uses.

The Economic Development Element of the General Plan iterates that residents desire a community that offers employment opportunities. The City targeted a 0.5 jobs-to-population ratio to be achieved during the implementation of the General Plan. The PAD zoning on the subject property within the I-10 Freeway corridor could ultimately yield up to approximately 3,500 office, light manufacturing and service related jobs (80 acres x 43,560 sq. ft. x 0.40 lot coverage x 2.50 employees ÷ 1,000 sq. ft. per employee = 3,485). This PAD will help achieve the desired 0.5 jobs-to-population ratio identified in the General Plan, and will provide the intense employment development desired along the I-10 Freeway corridor. The PAD is consistent with the adopted General Plan Land Use Map, and adjacent existing land uses including the automall, UTI, Coyote Honda, and Warehouse/Distribution facilities.

The proposed PAD amendment advances these General Plan goals as well as the objectives of the Freeway Corridor Specific Plan to “assure the highest and best use of freeway corridor sites,” “encourage the full spectrum of regional and community services, [and] employment opportunities,” and to establish a distinctive architectural image in the Corridor.

## **PAD Plan**

Again, the 79.98 gross acre PAD Plan includes two Parcels. The North and South Parcels are approximately 40 acres in area. The Parcels have street frontage on all sides. All perimeter landscaping, entrances, and screen walls will follow a common design theme to create an integrated project. The South Parcel, adjacent to Van Buren Street, is currently in the design phase by Maricopa County and will be developed as the County’s west courts facility. The North Parcel, located between Pierce and Roosevelt streets, is being planned in conjunction with a 25-acre parcel located to the west at the northwest corner of 105<sup>th</sup> Avenue and Pierce Street within the Griffith PAD. These combined parcels can accommodate large to medium single tenant or multi-tenant buildings (see PAD Plan, Exhibit E). The North Parcel is planned to provide a mix of land uses which may, in addition to office, include limited supporting retail, hotel, and employment-related uses.

The Conceptual Master Site Plan proposed for the 40-acre North Parcel has been designed with an approximately 2.16 acre parcel reserved on the southeast corner of 105<sup>th</sup> Avenue and Roosevelt Street for a potential hotel use. The office retail four (4) story buildings are located south of this hotel site along 105<sup>th</sup> Avenue and industrial/office flex buildings with restricted outdoor storage as an accessory use are east of the hotel site, and immediately south of the auto dealership across the street.

The PAD Conceptual Master Site Plan for the North Parcel shows major streets and perimeter landscape improvements, together with general building locations, architecture, parking fields, internal street circulation and other defining details. Perimeter walls are provided for parking screening purposes adjacent to public streets, but will not be used around buildings adjacent to the streets.

To ensure some flexibility for the future users, but to also provide assurances on the quality of the development for the City, this PAD requires that a "Master Site Plan" for each Parcel be reviewed by the Planning Commission and approved by the City Council prior to the administrative review and approval of "Individual Site Plans" for buildings or uses within a Parcel. The Master Site Plan will include: internal circulation, signage, building footprints, parking, preliminary water, sewer and drainage analysis, and landscaping for the entire Parcel.

The parking for the project will be designed to mitigate the visual impact of the parking fields on the environment through the use of appropriately located and well-designed screen walls in conjunction with enhanced landscaping and potentially garages either structured or underground. It is intended that mitigation of the visual impact of the project's parking could be designed to meet one of the criteria for additional height. The architectural theme will be consistent throughout the project with individual variations based on use and building types; however, guidelines are provided in this narrative to set parameters for architecture, building materials and colors to ensure compatibility among Parcels across the entire site. As a Parcel develops, the Master Site Plan for the undeveloped portions of the Parcel may be updated to reflect needed changes due to change in users or other factors, requiring a Master Site Plan amendment.

Public art shall be provided in compliance with the newly adopted Section 11 of the zoning ordinance and could also be incorporated within specified development parcels within the North Parcel as another way to satisfy the criteria for increased height. Whenever feasible, the public art would be installed on the development site in a location that allows the public art to be visible to the public from a public right-of-way or from other public property at all times. In the event that this is not feasible, the developer may request approval from the City to place the public art on the development site in a location to which the public has free and unrestricted access. The artwork would be appropriate for the selected site and could include elements such as one-of-a-kind building features and enhancements such as custom designed gates, benches and fountains or artist designed landscape art enhancements such as walkways, bridges or art features within a garden or a freestanding sculpture suitable for

the site. The art design would be proportional in size to the scale of the development and aesthetically enhance the surrounding area. The provision of public art could be used to meet one of the criteria for additional height. Public art locations would then be identified on Individual Site Plans.

A Master Site Plan or a major amendment to a Master Site Plan shall be reviewed by the Planning Commission and approved by the City Council. Minor amendments to a Master Site Plan may be reviewed and approved by staff administratively. Major amendments shall be any changes that increase traffic, increase building square footage, significantly change building orientation or footprints, have an impact on adjacent uses, or include changes that alter the character of the Master Site Plan including changes to approved building architecture or materials. All other changes are considered minor amendments.

## **Circulation**

The PAD Plan is designed to continue the perimeter and internal collector street system approved for the adjacent commerce park to the west. Perimeter street improvements for the Three Rivers North PAD (North Parcel) are planned to be completed on a phased basis as approved through the Master Site Plan process. Ultimately, with the completion of development on both the North and South Parcels, half-street improvements will be completed along Van Buren Street, Roosevelt Street, 103<sup>rd</sup> Avenue, 105<sup>th</sup> Avenue and full street improvements along Pierce Street. Pierce Street continues from the commerce park to the west and allows future connection to the parcel to the east. The right-of-way for streets will be dedicated through a map of dedication or final plat in conjunction with the Master Site Plan approval of each phase.

The need for other internal streets will be dependent on the location and layout of end users. If internal streets are necessary the streets will be public, constructed to City of Avondale standards, and provided as part of the Master Site Plans.

Both of the PAD Parcels have public street access on all sides which will provide sufficient opportunities to route traffic to and from the site. Entry drive locations and pedestrian connections will be identified in the Master Site Plans.

When installed, the half-width perimeter streets and full-width Pierce Street improvements are to include: pavement, vertical curbs, gutters, detached sidewalks with 15 to 20-foot landscape tracts adjacent to the rights-of-way. The Van Buren Street cross section identifies a raised median to be completed by Maricopa County or any subsequent developer of the 40 acre South Parcel. Pierce Street will be a collector street that provides a 60-foot right-of-way with 44 feet of pavement back-of-curb to back-of-curb with attached sidewalk on each side. Perimeter streets and Pierce Street cross sections are as shown in Exhibit F of the original PAD. Depending on end users, thicker pavement sections may be necessary for truck traffic. The pavement thickness

will be determined at the time of Master Site Plan approval in accordance with the requirements of the City Engineer.

## **Landscape Plan**

The landscaping will enhance the project and set the tone for a unified development. A Master Landscape Plan for each Parcel will be submitted for review and approval in conjunction with each Master Site Plan. The landscape plan will include a minimum 10 percent of the net site area as landscaping/open space, which shall include setback areas and parking lot landscaping. Landscaping that exceeds the minimum requirements and provides an exceptional level of landscape design could also be used to meet one of the height criteria. Such enhanced landscaping would be intended to promote ease of pedestrian movement and to create unique and inviting pedestrian environments and/or distinctive pedestrian gathering areas. A Landscape Concept Plan is provided as Exhibit G and illustrates a tree lined streetscape for the project as well as a proposed plant list. The Plan provides a 20-foot wide landscape area outside the right-of-way along the frontage of Van Buren Street and Roosevelt Street, and provides a 15-foot wide landscape area outside the right-of-way along the frontages of Pierce Street, 103<sup>rd</sup> Avenue, and 105<sup>th</sup> Avenue. Any internal streets will also provide a 15-foot wide landscape area outside the right-of-way along the street frontages.

A street tree theme consisting of a combination of Southern Live Oaks and other canopy trees will create a unifying element to the commerce park. The street trees will alternate between a 24-inch box Southern Live Oak and 15-gallon canopy tree every 20 feet along the landscape frontage with two 36-inch box Date Palms at each Phase's perimeter street intersections as well as at any major entries into the commerce park from Roosevelt, Pierce and Van Buren Streets. The street trees will also continue along any internal streets of the project. The trees along with automatic irrigation will be installed along the perimeter streets of each Phase with initial development of the Phase. Any internal street trees will be installed with each individual site.

The maintenance of the perimeter landscape areas will be the responsibility of the developer/owner unless the project is subdivided at which time Covenants, Conditions and Restrictions (CC&Rs) will be established that form a property owners' association that will be responsible for maintenance. CC&Rs will be provided at the time of final plat review.

The parking lot and screen walls for the project will undulate a minimum of three feet every 150 feet of wall length to create variety and depth along street frontages. The design, materials and colors of the screen walls shall be common throughout the project (see Screen Wall, Exhibit I).

Each individual site's landscaping will reinforce the overall landscaping theme of the project. This will be accomplished through full landscaping of front and side yards

including retention basins, foundation plantings and following the landscape palette provided in the PAD.

## **Permitted Uses**

1. Offices for professional, administrative, clerical, financial, medical, sales or other business services with assembly, distribution of parts, supplies or products related to the office or business service.
2. Business class/extended-stay hotel.
3. Medical and dental laboratories, and research and product development laboratories.
4. Commercial, trade, or business schools.
5. Automobile engine repair, body repair, upholstery, painting facilities and similar uses where all service bays shall be completely screened from street view including all roll-up doors. Work is not to be done outdoors and no dismantled vehicles shall be located outside. These uses shall only be located in the north half of Parcel A to provide complimentary uses to the Automall to the north.
6. Manufacturing or assembly of finished products with distribution of parts, supplies or products related to the business so long as the primary use of the property does not include the basic processing and compounding of raw materials or food products.
7. Limited retail uses intended to support and serve the primary uses on the commerce park campus located on the ground floor of a multi-story building.
8. Retail sales and service of custom cabinets, custom materials for homes or offices such as countertops/floors/ceilings/walls, custom windows or doors, custom or specialized electronics for home or office, custom furniture for home or office, and custom or specialized parts or equipment for vehicles.
9. Warehousing/storage that is ancillary to a permitted use.
10. Outdoor storage associated with an on-site primary use shall be limited to the northern 20 acres. Such outdoor storage associated with an on-site primary use shall comply with the following development standards:
  - A. Storage areas shall be attached, fully screened, and designed as part of the primary building;
  - B. Storage areas shall be constructed of concrete and/or masonry block with exterior finishes to match the primary building;

- C. Storage areas gates shall be opaque;
  - D. Stored materials shall not exceed the height of the lowest adjacent wall;
  - E. Outdoor storage areas shall be limited to a maximum of 25% of the overall building area footprint (footprint includes both primary building and associated outdoor storage area).
11. Additional uses listed as permitted in the CP (Commerce Park) Zoning District that are not otherwise prohibited by this PAD document.

## **Uses Permitted Subject to a Conditional Use Permit**

1. New vehicle sales and leasing in Parcels A only.
2. Athletic clubs, health clubs, gymnasiums, gymnastic clubs.

## **Prohibited Uses**

1. Contractors' yards as a primary use.
2. Mini-storage, dead vehicle storage, RV storage, truck parking or storage.
3. Sexually oriented businesses.
4. Bulk warehousing and distribution where the warehousing and distribution of parts, supplies and products is the exclusive use of the building, and it is the principal business.
5. Outdoor storage as a primary use or otherwise not in compliance with the restrictions listed under permitted uses, number 10 above.
6. Activities conducted outdoors, other than the storage-related activities allowed above.

## **Development Standards**

- The development standards from the Commerce Park (CP) Zoning District identified in Section 4 of the Zoning Ordinance shall apply to all Parcels except as modified below.
- The maximum building height shall not exceed 56 feet or 4 stories subject to meeting four of the following criteria:

- The project supports the boulevard streetscape concept and provides street and landscaping improvements which exceed the minimum requirements.
- The project provides a mix of land uses which may, in addition to office, include retail, hotel, and entertainment uses.
- The project exhibits extraordinary architectural design quality.
- The project provides a daycare or preschool facility primarily for employees.
- The project provides and incorporates public art into the site.
- The project provides cultural amenities such as libraries, museums, art galleries either on or off-site.
- The project is “pedestrian-friendly,” providing for ease of pedestrian movement, unique pedestrian environments, or distinctive pedestrian gathering places.
- The project goes to extraordinary efforts to mitigate the impact of parking on the visual environment by use of structured or underground garages or exceptional landscaping treatment.
- The project provides unique transit stops within or adjacent to the site.
- An additional 2 stories or 28 feet, for a total maximum building height of 6 stories or 84 feet is allowed for all uses with the exception of retail provided the following additional criteria are met:
  1. The additional height is needed to further the City’s strategic plan for economic development;
  2. Buildings will exhibit superior design features that are appropriate for a community landmark;
  3. The additional height will not result in incompatible land use relationships; and
  4. The additional height will not adversely affect the future development or ongoing vitality of the city center area along Avondale Boulevard.
- Any restricted outdoor storage shall be accessory to the primary use and limited to 25% of the overall building area footprint. The outdoor storage shall be fully screened from adjacent views by a solid masonry wall and solid gate that match the building architecture.
- Prior to construction on each Parcel, a Master Site Plan for the Parcel and an Individual Site Plan for a use shall be approved consistent with this PAD.

- Landscaping in the PAD shall comply with the landscaping requirements identified in Sections 5 and 6 of the Zoning Ordinance except as modified by this PAD. All development in the project shall comply with screening standards identified in Sections 5 and 6 of the Zoning Ordinance and exhibits in this PAD.
- All development shall comply with the parking requirements, schedule and parking space standards identified in Section 8 of the Zoning Ordinance. The parking for the project shall be designed to mitigate the visual impact of the parking fields on the environment through the use of appropriately located and well-designed screen walls in conjunction with enhanced landscaping or potentially garages either structured or underground.
- Appropriate street dedications shall be required at the time of Master Site Plan or final plat approvals as applicable.
- Driveway entrances to lots along the frontage of Van Buren Street shall be shared with the adjacent lot when possible to limit the number of curb cuts along Van Buren Street. The lots with Van Buren Street frontage shall provide cross-access easements with adjacent lots. Lots throughout the project shall provide shared access with cross-access easements along all streets where feasible. The final locations of driveways and cross-access easements shall be determined in conjunction with the Master Site Plans and Individual Site Plans.
- Exterior pole mounted lighting shall be consistent throughout the project area and comply with Zoning Ordinance requirements. The typical lighting will be established with the first Master Site Plan and be utilized throughout the project. The lighting shall be fully shielded, directed down, and have a maximum 1-foot candle at the property line.
- In the event where the text of the Zoning Ordinance and the PAD differ, the PAD shall prevail.

## **Design Criteria**

The provisions of this section seek to create an attractive, high quality mixture of architectural styles with emphasis on a mixed-use office and commerce park appearance. The design of each building within the overall development will be compatible through the use of common materials and colors while creating a strong individual identity consistent with their individual use and purpose. Representative photos of the intended character of the commerce park are included as Exhibit J.

### **Individual Site Plan Approval**

All Individual Site Plans are reviewed and approved administratively. Administrative denials of site plans may be appealed in accordance with the Zoning Ordinance. All

projects shall use the following design review guidelines to ensure the quality of the project and building architecture.

## **Architecture**

All buildings within the PAD shall be in conformance with the City of Avondale Design Manual for Commercial, Industrial, and Multi-family Development.

As a supplement to the City of Avondale Design Manual, all buildings within the PAD shall be consistent with the following architectural elements, which are intended to provide extraordinary architectural design quality which could be considered in satisfaction of one of the criteria for additional height:

- For all buildings at least three of these elements shall repeat horizontally. Buildings with facades greater than 100 feet in length shall include several of the elements listed below, repeated at appropriate intervals, either horizontally or vertically:
  - Color change. Recognizable, but not strongly contrasting.
  - Texture change.
  - Material change.
  - Architectural variety and interest through a change in plane such as offsets, reveals, archways or projecting ribs.
  - Wall plane projections or recesses.
- Variations in rooflines or parapets shall be used to reduce the scale of the buildings. Roof size, shape, material, color and slope shall be coordinated with the scale and theme of the building.
- Service and exit doors shall be integrated into the architecture of the elevations.
- Reduction of building mass shall be achieved by using a combination of the following techniques:
  - Variation in the rooflines and form.
  - Use of ground level arcades and covered areas.
  - Use of protected and recessed entries.
  - Use of vertical elements on or in front of expansive blank walls.
  - Use of pronounced wall plane offsets and projections.
  - Use of focal points and vertical accents.
  - Inclusion of windows on elevations facing streets and pedestrian areas.
  - Retaining a clear distinction between roof, body and base of a building.
- Roof lines, relative building heights, orientation of entrances and other major architectural elements of the buildings shall be designed within the context of the overall PAD. Building design shall complement the surrounding area, with contrast encouraged where appropriate or beneficial to the overall development.

- All buildings shall have clearly defined customer entrances incorporating elements such as:
  - Canopies or porticos.
  - Overhangs.
  - Recesses/projections.
  - Arcades.
  - Raised corniced parapets over the door.
  - Peaked roof forms.
  - Arches.
  - Entrance framed by outdoor pedestrian features or enhanced landscaping.
  - Architectural details such as tile work and moldings integrated into the building structure to frame the entryway.
- Service entries, site-mounted equipment, trash containers and other ancillary structures shall be screened from view, both from adjacent properties and surrounding streets.
- All buildings shall be designed, constructed so that all four sides of a building shall receive consistent architectural treatment.
- Any accessory buildings, enclosures, carports, covered parking structures and equipment, whether attached or detached from the principal building shall be of similar compatible design and materials as the principal building.
- The design of service and loading areas shall be designed as an integral part of the building architecture.
- Any roof access ladders shall be located inside the building.
- All roof drainage shall be internal.

### **Building Materials**

Buildings within the PAD shall be consistent with the following building materials:

- Primary buildings materials shall include: common clay brick; poured in place, tilt-up or pre-cast concrete provided that surfaces include scoring, texture or have a painted finish; textured concrete or panels; stucco or EIFS (exterior insulated finish systems) type systems provided that finishes must be smooth or sand finish; integrally colored concrete block with smooth face and/or split-face block units; or other similar materials.
- All tilt or pre-cast concrete panels or smooth face block shall include methods for improving the design such as: additional color and texture, bays, windows, notched

parapets, canopies, reveals, building wall undulation, corner windows, additional materials etc.

- Accent materials shall include: granite, marble, natural stone, block, brick, ceramic tile, treated wood or other similar materials.
- Roofs may be flat with parapet walls, sloped with concrete tile, standing metal seam, or equivalent architectural materials.

### **Color Palette**

- A detailed color and materials palette will be reviewed and approved with each Individual Site Plan.
- Colors and materials should be used to create visual harmony within the PAD. The approved colors are as follows:
  - Primary building colors shall be desert hues and other “earth tones” muted shades of blues, greens and reds found in the natural desert, and colors appearing in natural stone.
  - Accent colors on buildings shall complement the primary building colors and include combinations of desert hues, earth tones, muted shades of greens, reds and colors found in natural stone. Brighter colors such as orange, red, blue, green, yellow, purple and similar colors may be used as accents on buildings as approved in the Individual Site Plan review process.

### **Prohibited Materials and Color Palette**

- Wood, except for limited amounts of trim.
- Corrugated metal and pre-engineered metal-sided buildings.
- Bright colors such as orange, red, blue, green, yellow, purple and similar colors, as a primary color on a building.
- Spanish or mission-type barrel roof tile.

### **Signage**

Signage for the PAD should be designed to enhance the identity of the overall development and the individual businesses within. A Master Sign Package shall be submitted for review and approval with the Master Site Plan for each Phase.

- Freestanding Monuments:

- One freestanding monument along each Van Buren Street and Roosevelt Street shall be provided for commerce park identification only. A conceptual entry monument is provided in Exhibit I. The location of the monuments will be determined at the time of Master Site Plan/Master Sign Package approval. Monument signage shall be maintained by the developer/owner or property owners' association if the project is subdivided.
- Monument signage shall be maintained by the developer/owner or property owners' association if the project is subdivided.
- Monuments shall not exceed six feet in height and 30 feet in width with a maximum sign area of 25 square feet.
- Sign materials and colors shall be consistent with the exterior architecture of the buildings. Lettering shall be raised metal.
- No other freestanding signage shall be allowed in the commerce park.
- Building Signage:
  - Signage shall be systematically located and styled to support the architectural design.
  - Single-tenant building signage:
    - One square foot of signage for each linear foot of street frontage up to a maximum 50 square feet of signage on each street frontage not to exceed a total of 100 square feet of building signage shall be allowed.
    - Sign placement shall occur below the edge of the roof.
    - Lettering shall be reverse pan channel letters with solid consistent color that compliments the building color.
  - Multi-tenant building signage:
    - One square foot of signage for each linear foot of the suites street frontage with a maximum of 25 square feet of signage per suite shall be allowed.
    - Sign placement shall occur below the edge of the roof.
    - Signs will be mounted above each respective suite, placed consistently along the building face, and located on the upper part of the exterior wall within a dedicated sign band.

- Lettering shall be reverse pan channel letters with solid consistent color that compliments the building color.

## Grading and Drainage

The PAD site slopes from northeast to southwest. On-site retention basins will be designed and constructed as part of the development of each user as approved in the Individual Site Plans.

## Public Utilities and Services

The following identifies the providers of utilities and public services:

Sewer .....	City of Avondale
Water .....	City of Avondale
Electricity .....	Salt River Project (SRP)
Telephone .....	Qwest Communications
Cable TV .....	Cox Communications
Gas.....	Southwest Gas Company
Refuse .....	City of Avondale or Private
Fire and Emergency .....	City of Avondale
Police .....	City of Avondale

Water The site is served water with an existing 16-inch water line in 107<sup>th</sup> Avenue and extended along Roosevelt Street through the Griffith Commerce Park development to the west. Additional water lines will be constructed to serve individual lots as determined in the Master Site Plans. These water lines will be installed in the perimeter and interior streets. The Van Buren Street water line will be 16-inch. The 103<sup>rd</sup> Avenue water line will be 12-inch. The water lines in the interior streets will be 8-inch.

Sewer The site is served sewer with an existing 15-inch sewer line in Van Buren Street, 107<sup>th</sup> Avenue and Roosevelt Street. An additional sewer stub is located in Pierce Street and will be utilized as appropriate. Additional 8-inch sewer lines and stubs will be constructed to serve individual lots as determined in the Master Site Plans. Sewer manholes will be placed every 400-feet and an 8-inch stub will be extended to adjacent properties from the manholes.

The average daily sewer flows can be estimated based on the City of Avondale Engineering Design Standards Book. The exact sewer flows will not be known until Master Site Plans for the Parcels are complete. Commerce park land uses will generate approximately 1,000 gallons per acre per day. Commercial land uses will generate 3,000 gallons per acre per day. The estimated wastewater flow will be approximately 148,370 gallons per day.

Fire Hydrants The hydrants will be installed at 300-foot intervals on the site's interior and at 1,000-foot intervals on Van Buren Street. Additional fire hydrants and water lines may be required for individual lots depending on the Master Site Plans. Domestic and fire flow requirements can not be calculated without specific Master Site Plans, however it appears that the City's infrastructure can deliver the water required to adequately serve development on the site.

## Phasing

The PAD proposes two 40 acre Parcels, the North Parcel and the South Parcel (owned by Maricopa County). The following adjacent street improvements are required for the ultimate development of each parcel:

- Development of the North Parcel (Parcel A) shall include:
  - South half of Roosevelt Street.
  - West half of 103<sup>rd</sup> Avenue and east half of 105<sup>th</sup> Avenues between Roosevelt Street and Pierce Street.
  - North half of Pierce Street.
- Development of the South Parcel (Parcel B) shall include:
  - North half of Van Buren Street; including median
  - West half of 103<sup>rd</sup> Avenue and east half of 105<sup>th</sup> Avenues between Pierce Street and Van Buren Street.
  - South half of Pierce Street.
- The project will be master planned in these two 40 acre phases though construction within each Phase will be dependent on Individual Site Plans. Perimeter and internal streets will be indicated on the Master Site Plan of each Phase and the necessary street improvements to adequately serve each Individual Site Plan will be installed in conjunction with the site construction, subject to receiving City approval. The chronology of the Phases and Individual Site Plans depends on market conditions. Parcels can be subdivided, however the phasing remains the same. The Parcels can be combined and a Master Site Plan is required for the combined Parcels.
- Prior to administrative approval of an Individual Site Plan on either the North or South Parcel, a Master Site Plan, including any proposed phasing of development and perimeter street improvements, must be reviewed by the Planning Commission

and approved by City Council for the particular Parcel that the Individual Site Plan is located.

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**ORDINANCE NO. 1339-1208**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE GENERAL DEVELOPMENT PLAN AND PROGRAM AND STIPULATIONS OF ZONING APPROVAL IN ORDINANCE 1165-106 FOR THE THREE RIVERS COMMERCE PARK PAD FOR APPROXIMATELY 80 ACRES LOCATED AT THE SOUTHEAST CORNER OF ROOSEVELT STREET AND 105TH AVENUE AS SHOWN IN FILENAME Z-07-13.

**WHEREAS**, on January 17, 2006, the Council of the City of Avondale (the "City Council") approved the Three Rivers Commerce Park PAD rezoning for approximately 80 acres of real property located at the southeast corner of 105th Avenue and Roosevelt Street (the "Subject Property"); and

**WHEREAS**, the City Council desires to amend the Roosevelt Park PAD Development Plan and Program, specifically pertaining to the northernmost 40 acres of the Subject Property as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, to (i) increase the maximum allowable building height from two to six stories, (ii) revise the permitted uses to allow restricted accessory outdoor storage and support retail uses, and (iii) amend related stipulations.; and

**WHEREAS**, all due and proper notices of public hearings on the intended amendment held before the City of Avondale Planning and Zoning Commission (the "Commission") and the City Council were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the Commission held a public hearing on Thursday, November 20, 2008, on this Ordinance pursuant to such notices and as required by ARIZ. REV. STAT. § 9-462.04; and

**WHEREAS**, the Commission recommended to the City Council that this Ordinance be approved; and

**WHEREAS**, the City Council held a public hearing regarding this Ordinance on Monday, December 8, 2008.

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

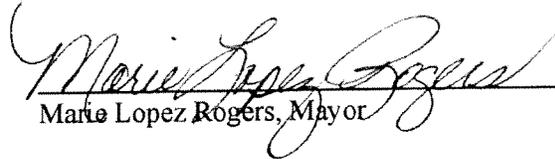
SECTION 1. That the Three Rivers Planned Area Development (PAD) is hereby amended, as shown in File Z-07-13, subject to the following conditions:

1. Development of the subject property shall conform to the Three Rivers North PAD Amendment Narrative and Conceptual Building Elevations date stamped November 13, 2008, except as modified by these stipulations.
2. The stipulations of approval for the Three Rivers Planned Area Development, Ordinance 1165-106, shall remain in full force and effect on the subject property, except as follows:
  - a. Stipulation #3 of Ordinance 1165-106 shall be revised to read, "Access to all parcels shall be determined at the time of Master Site Plan approval with only limited direct access allowed on Roosevelt Street, Van Buren Street, 103rd Avenue or 105th Avenue, subject to receiving City approval and meeting engineering requirements."
  - b. Stipulation #4 of Ordinance 1165-106 shall be deleted in its entirety.
  - c. Stipulation #10 of Ordinance 1165-106 shall be deleted in its entirety.
3. Development of the southern 40 acres of the original Three Rivers PAD is not subject to this amendment. Development on that parcel shall conform to Ordinance 1165-106.
4. Office development on the southern 20 acres of the Three Rivers north parcel shall meet standards for "Class A" office construction as understood in the Phoenix Metropolitan Region.
5. Outdoor storage areas shall be interior oriented and may not face onto perimeter streets or primary drive aisles. Storage enclosure walls on the ends of the building shall be raised and designed to be consistent with and look similar to side building walls to maximize screening at the end locations.
6. Development on the site shall be completed in accordance with the City of Avondale General Engineering Requirements Manual and City of Avondale Supplement to MAG Uniform Standard Specifications and Details.
7. Additional requirements for improvements, traffic signals, and right-of-way for deceleration lanes, turn lanes, and transit stops, may be required during the site plan review process as determined by the City Engineer.
8. Staff may consider additional phasing of offsite infrastructure based on economic viability considerations provided by the developer subject to input and approval from the City Engineer.

9. Development of the first development unit shall commence within one (1) year of the date of approval. The City Council may extend the validity of the PAD after one year if sufficient progress is made in the Planning and development process.

SECTION 2. That if any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

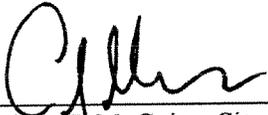
**PASSED AND ADOPTED** by the Council of the City of Avondale, December 8, 2008.

  
Marie Lopez Rogers, Mayor

ATTEST:

  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

  
Andrew J. McGuire, City Attorney

**City Council Regular Meeting – Excerpts of Meeting Minutes  
December 8, 2008**

**5 PUBLIC HEARING AND ORDINANCE 1339-1208 - AMENDMENT TO THE  
THREE RIVERS PAD (Z-07-13)**

A public hearing and Ordinance 1339-1208 to approve a request from Ms. Lynne Lagarde of Earl, Curley and Lagarde, P.C. on behalf of Mr. Michael Blenis of Arizona Land Company, LLC for an amendment to the Three Rivers Planned Area Development (PAD) to apply only to 40 acres of the property located at the northeast corner of Van Buren Street and 105<sup>th</sup> Avenue.

Ken Galica, Planner II, indicated that presented this item indicating this amendment request is only for the 40 acres at the northeast corner of Van Buren Street and 105<sup>th</sup> Avenue. The amendment will amend the PAD in five specific areas by: adding allowed uses; increasing maximum building heights; increasing minimum landscaping requirements, requiring developments must adhere to the design manual for commercial industrial and multi-family residential development and allowing for the phasing of off-site improvements subject to approval by the City Engineer. He added that the amendment would allow for residential outdoor storage as an accessory to the primary use.

Mr. Galica explained that contrary to the existing PAD and City policy, the applicant is recommending stipulation #8 that would allow for the developer to only build those streets adjacent to the phase of the project being built subject to approval from the City Engineer.

Individually and collectively, Council Members expressed their objection for allowing piecemeal construction of infrastructure. They indicated they would be in favor of extending the PAD for one year instead of two years as allowed under the PAD.

Mayor Rogers indicated she had two speaker cards one being from Michael Blenis, who is in support of this Amendment but does not wish to speak.

Ms Lynne Lagarde, Earl, Curley and Lagarde on behalf of Arizona Land Company, explained the reasons that have made it necessary for them to submit the request for amendment, including selling of the southern portion of the property to Maricopa County for their court facility, the City's adoption of the Freeway Corridor Specific Plan among others. She indicated that the applicant has modified the project to better complement the area and take advantage of the new minimum heights and allowable uses. Ms Lagarde cautioned the Council that not extending the PAD would cause delays in the development of the property.

Mayor Rogers opened the public hearing. There being no requests to speak, Mayor Rogers closed the public hearing.

City Attorney read Ordinance 1339-1208 by title only.

Council Member Wolf moved to adopt Ordinance 1339-1208 subject to the following stipulations including new stipulation #9 to incorporate the extension of the PAD approval for one year with the understanding that it could be reviewed if sufficient progress is made in the planning and development process. Vice Mayor Weise seconded the motion.

1. Development of the subject property shall conform to the Three Rivers North PAD Amendment Narrative and Conceptual Building Elevations date stamped November 13, 2008, except as modified by these stipulations.
2. The stipulations of approval for the Three Rivers Planned Area Development, Ordinance 1165-106, shall remain in full force and effect on the subject property, except as follows:
  - a. Stipulation #3 of Ordinance 1165-106 shall be revised to read, "Access to all parcels shall be determined at the time of Master Site Plan approval with only limited direct access allowed on Roosevelt Street, Van Buren Street, 103<sup>rd</sup> Avenue or 105<sup>th</sup> Avenue, subject to receiving City Approval and meeting engineering requirements."
  - b. Stipulation #4 of Ordinance 1165-106 shall be deleted in its entirety.
  - c. Stipulation #10 of Ordinance 1165-106 shall be deleted in its entirety.
3. Development of the southern 40 acres of the original Three Rivers PAD is not subject to this amendment. Development on that parcel shall conform to Ordinance 1165-106.
4. Office development on the southern 20 acres of the Three Rivers north parcel shall meet standards for "Class A" office construction as understood in the Phoenix Metropolitan Region.
5. Outdoor storage areas shall be interior oriented and may not face onto perimeter streets or primary drive aisles. Storage enclosure walls on the ends of the building shall be raised and designed to be consistent with and look similar to side building walls to maximize screening at the end locations.
6. Development on the site shall be completed in accordance with the City of Avondale General Engineering Requirements Manual and City of Avondale Supplement to MAG Uniform Standard Specifications and Details.

7. Additional requirements for improvements, traffic signals, and right-of-way for deceleration lanes, turn lanes, and transit stops, may be required during the site plan review process as determined by the City Engineer.
8. Staff may consider additional phasing of offsite infrastructure based on economic viability considerations provided by the developer subject to input and approval from the City Engineer.
9. Development of the first development unit shall commence within one (1) year of the date of approval. The City Council may extend the validity of the PAD after one year if sufficient progress is made in the planning and development process.

ROLL CALL VOTE AS FOLLOWS:

Council Member Scott	Aye
Council Member Buster	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Weise	Aye
Council Member Wolf	Aye
Council Member Karlin	Aye
Council Member McDonald	Aye

Motion carried unanimously.

**City Council Regular Meeting – Excerpts of Meeting Minutes  
December 14, 2009**

**6 PUBLIC HEARING - TIME EXTENSION FOR THREE RIVERS PAD  
ZONING (ZE-09-1)**

A public hearing and consideration of a request from Ms. Lynne LaGarde of Earl Curley & LaGarde, P.C. on behalf of the Arizona Land Company, LLC and Maricopa County Public Finance Corporation for a two year extension to commence development of the Three Rivers PAD located at the northeast corner of Van Buren Street and 105th Avenue.

Charlie McClendon, City Manager, introduced Ken Galica to present this item.

Ken Galica indicated the PAD was originally approved in January 2006 and was due to expire two years later; a one year extension was granted in February 2008. In December 2008, Council reviewed and approved a major amendment to the PAD which included a additions to the list of permitted uses and increased maximum building height and extended it until December 2009.

In March of 2009 the Council adopted a revision to the PAD section of the Zoning Ordinance. The revision increased the initial period for development from two years to three years. While previously the ordinance was unclear as to the term of an extension, the amendment allows for the Council to grant up to four (4) one year extensions at their discretion.

The Council approved the Three Rivers North Master Site Plan in August of this year. Approval of the master site plan should be considered significant progress towards development of the site.

The extension request being considered tonight was submitted in November of this year. Staff considers it to be the second of the allowed four under the new ordinance, the first one being the extension granted concurrent with the PAD amendment. While the applicant says that the two year extension until 2011 is needed to secure users, staff does not interpret the language of the ordinance as giving the authority to grant the two-year request. Staff is recommending granting a one year extension of the PAD zoning until December 8, 2010 subject to the request modified by staff.

Mayor Rogers opened the public hearing.

Lynne Lagarde of Early Curley and Lagarde addressed the Council on behalf of client. Ms. Lagarde indicated that she is asking Council to apply the new ordinance procedure to the subject PAD. She explained that the PAD was approved in 2006 which was preceded by two years of planning and commented that the original PAD was nothing but 80 acres with landscaping on the outside and streets. Applicant did a lot of work prior to coming for PAD amendment last year and added that if she and

her client had known they would be in this position, they would have called it a new PAD zoning rather than an amendment as it is the equivalent to a new PAD. Ms Lagarde indicated that she is asking the Council to approve an original 3 year period to the PAD. She added that her client has invested several hundred thousand dollars in this project and if the Council allows for the PAD to expire, her client will have to spend time and money to go through the process again. Other cities in the valley are approving PADs for two years to accommodate for the declining economy and to remain competitive and have shovel ready projects when the economy improves. She indicated that they are asking the Council to apply the new ordinance to the amendment because she feels it is equivalent to a PAD approval.

Vice Mayor Weise asked Mr. Galica if the applicant has always shown considerable effort. Mr. Galica indicated that has been the case since he has been involved with this project. Andrew McGuire, City Attorney indicated that there was an extensive public comment process prior to adoption of the new PAD ordinance and added that the applicant is asking for the Council to apply rules to an amendment that took place before adopting of the ordinance and he does not feel there is the flexibility to do that. He indicated that at the time of the text amendment, Council was not interested in having too much flexibility in the process.

Council Member Scott commented Ms. Lagarde and her client indicating that the Council recognizes there is a tough economy, but staff's recommendation reflect the Council's desires.

Council Member McDonald asked what are the costs associated with an extension. Mr. Galica indicated that it is about \$2,100. Council Member McDonald commented that while the amount is not small change it is not a significant amount relative to the size of the project. He indicated that he likes the project and commended the applicant for continuing to work on it. He added that staff is simply doing what council has asked them to do.

There being no more requests to speak, Mayor Rogers closed the public hearing.

Vice Mayor Weise moved to approve a one-year extension for Three Rivers PAD Zoning until December 8, 2010; Council Member Karlin seconded the motion.

**ROLL CALL VOTE AS FOLLOWS:**

Council Member McDonald	Aye
Council Member Scott	Aye
Council Member Earp	Aye
Mayor Lopez-Rogers	Aye
Vice Mayor Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

**Motion carried unanimously**

**City Council Regular Meeting – Excerpt of Meeting Minutes  
February 22, 2011**

**PUBLIC HEARING - TIME EXTENSION FOR THREE RIVERS PAD ZONING  
ALTERNATIVELY ORDINANCE 1447-211 - ZONING REVERSION**

A public hearing and a request by Mr. Ryan Eller, Paragon Properties, Ltd., to extend the validity of the Three Rivers Planned Area Development (PAD) for one year from the date of expiration, until December 8, 2011. Alternatively, City Council will consider an ordinance reverting the zoning of the Three Rivers PAD from Planned Area Development (PAD) to its previous zoning classification of Agricultural (AG).

Mr. Galica presented a request for a one-year zoning extension for the Three Rivers PAD. The property is located on the southeast corner of Roosevelt St. and 105th Avenue. It was originally zoned in 2006. The extension would be for one year from the previous expiration date, which occurred on December 8, 2010. This would be the third extension of four allowed. One of the key differentiators is that the applicant has processed a site plan and has continued to actively seek development on the property. The master site plan calls for four phases. The first phase is for flex industrial buildings with limited outdoor storage. The second phase is for single story industrial/office space. The third phase is for a hotel, while the fourth phase is a series of four multi-story Class A office buildings with structured parking. The fourth phase is geared to take advantage of the proposed County court complex on the southern half of the 80 acres.

He listed five justifications for the request:

- The approved PAD and site plan remain consistent with the City's goals and objectives for development in this area.
- The property owner continues to work towards locating commerce park users on the site.
- Expiration and reversion of the PAD would substantially reduce the number of shovel-ready sites within the city.
- Expiration and reversion would reduce the inventory of zoned land for Economic Development staff to market.
- The applicant has spent a lot of time and money to get the project to the final stage without actually building it.

Staff recommends approval of the extension for another year. An ordinance has been prepared should the Council instead decide to revert the property's zoning to AG.

Council Member Weise noted that the property is well located near the auto mall. The applicant has been trying to make the project work and he would be inclined

to grant an extension. Council Member Karlin concurred. The applicant's effort makes a difference.

Vice Mayor McDonald inquired about progress over the last two years and asked how that differed from every other request. Mr. Galica responded that the site plan approval was within the last two years, which is the most substantial step so far. Staff has actively worked with the applicant to find users for the site. In response to a question from Vice Mayor McDonald, Mr. Galica stated that this is the only site-planned, build-to-suit, industrial park in the city. Council Member Vierhout noted he would support the extension since one of the Council's is to attract light industrial uses.

Mayor Rogers opened the public hearing.

Ryan Eller of Paragon Properties thanked the Council for considering the request. He said the development team and the lender are dedicated to realizing the project. The owners also have 25 acres just to the west of this location with PAD approval. The two sites could potentially be tied together. He commended the City for streamlining its site plan approval process, which allows Avondale to be more competitive.

Vice Mayor McDonald inquired about the lender. Mr. Eller explained that the lender stands behind the project. They want the project to happen, but they want to avoid putting up vacant buildings. The developers are aggressively marketing the project.

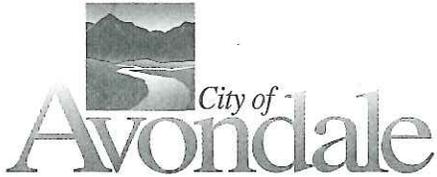
Mayor Rogers closed the public hearing.

Vice Mayor McDonald moved to grant a time extension for the Three Rivers PAD for one year until December 8, 2011. Council Member Karlin seconded.

ROLL CALL VOTE AS FOLLOWS:

Vice Mayor McDonald	Aye
Council Member Scott	Absent
Council Member Vierhout	Aye
Mayor Lopez-Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried 6-0.



December 15, 2011

HAND DELIVERED

Arizona Land Company, LLC  
7208 East Cave Creek Road, Suite A  
Carefree, Arizona 85377  
Attention: Mr. Ryan Eller

RE: Three Rivers Planned Area Development (PAD)  
Reversion of Zoning to Agricultural (Case PL-11-0198)  
NEC of Van Buren Street and 105<sup>th</sup> Avenue

To Whom it May Concern:

Avondale Zoning Ordinance Section 603.D specifies that Planned Area Development (PAD) zoning expires if development in that district has not commenced within the three years following the zoning approval. The Three Rivers PAD was approved on January 17, 2006, amended on December 8, 2008, and subsequently extended three times through December 8, 2011. Because development did not occur in the allotted time period, the Three Rivers PAD expired on December 8, 2011. Please be aware that I had

Upon expiration of a PAD, the City Council may revert the zoning of a property to its previous designation. As such, the Planning Division has initiated an application (PL-11-0198) to revert the zoning of the subject property to its previous zoning of Agricultural (AG). This letter shall serve as official notification of the upcoming reversion hearing, scheduled for the City Council meeting of Tuesday, January 17, 2012 at 7:00 p.m. The meeting will occur in the City Council Chambers at Avondale City Hall, 11465 W. Civic Center Drive, Avondale, Arizona 85323. You are welcome to attend the meeting and address the City Council on this matter should you so desire. If you are unable to attend the meeting, any written comments submitted before the date of the meeting will be made part of the case file and shared with the City Council.

Please contact me should you have any questions about the upcoming proceedings or if you need any further assistance. I can be reached at (623) 333-4019 or emailed at [kgalica@avondale.org](mailto:kgalica@avondale.org).

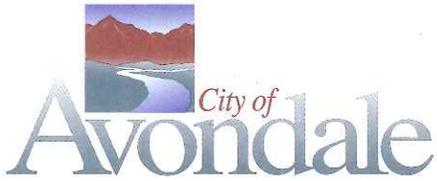
Sincerely,

Ken Galica  
Planner II

---

**Development Services and Engineering Department**  
**Planning Division**

11465 W. Civic Center Drive, #110 • Avondale, AZ 85323  
Phone: (623) 333-4000 • Fax: (623) 333-0400 • TDD: (623) 333-0010  
[www.avondale.org/developmentservices](http://www.avondale.org/developmentservices)



The signatures below certify that the notice of Zoning Reversion has been hand-delivered to a representative of Arizona Land LLC/Paragon Properties at least fifteen days prior to the January 17, 2012 City Council Meeting, as required by Avondale Zoning Ordinance Section 603.D.

Stacey Bridge-Denzak

City of Avondale

Development Services Department

12-16-11

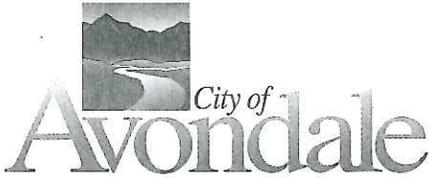
Date

Authorized Representative

Paragon Properties/Arizona Land LLC

12-16-11

Date



December 15, 2011

**CERTIFIED MAIL**

Maricopa County Public Finance Corporation  
301 West Jefferson Street, Suite 960  
Phoenix, Arizona 85003

RE: Three Rivers Planned Area Development (PAD)  
Reversion of Zoning to Agricultural (Case PL-11-0198)  
NEC of Van Buren Street and 105<sup>th</sup> Avenue

To Whom it May Concern:

Avondale Zoning Ordinance Section 603.D specifies that Planned Area Development (PAD) zoning expires if development in that district has not commenced within the three years following the zoning approval. The Three Rivers PAD was approved on January 17, 2006, amended on December 8, 2008, and subsequently extended three times through December 8, 2011. Because development did not occur in the allotted time period, the Three Rivers PAD expired on December 8, 2011.

Upon expiration of a PAD, the City Council may revert the zoning of a property to its previous designation. As such, the Planning Division has initiated an application (PL-11-0198) to revert the zoning of the subject property to its previous zoning of Agricultural (AG). This letter shall serve as official notification of the upcoming reversion hearing, scheduled for the City Council meeting of Tuesday, January 17, 2012 at 7:00 p.m. The meeting will occur in the City Council Chambers at Avondale City Hall, 11465 W. Civic Center Drive, Avondale, Arizona 85323. You are welcome to attend the meeting and address the City Council on this matter should you so desire. If you are unable to attend the meeting, any written comments submitted before the date of the meeting will be made part of the case file and shared with the City Council.

Please contact me should you have any questions about the upcoming proceedings or if you need any further assistance. I can be reached at (623) 333-4019 or emailed at [kgalica@avondale.org](mailto:kgalica@avondale.org).

Sincerely,

Ken Galica  
Planner II

---

**Development Services and Engineering Department  
Planning Division**

11465 W. Civic Center Drive, #110 • Avondale, AZ 85323  
Phone: (623) 333-4000 • Fax: (623) 333-0400 • TDD: (623) 333-0010  
[www.avondale.org/developmentservices](http://www.avondale.org/developmentservices)

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Maricopa County Public Finance  
Corporation  
301 West Jefferson Street, Suite 960  
Phoenix, Arizona 85003

## 2. Article Number

(Transfer from service label)

91 7199 9991 7031 0360 3962

PS Form 3811, February 2004

Domestic Return Receipt

102585-02-M-1540

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

Charles Tuschler

 Addressee Addressee

## B. Received by (Printed Name)

Charles Tuschler

## C. Date of Delivery

- Delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

RECEIVED DEC 22 2011

## 3. Service Type

- Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

## 4. Restricted Delivery? (Extra Fee)

 Yes

FRONT

UNITED STATES POSTAL SERVICE

PHOENIX AZ 852



Happy Holidays

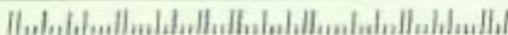
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

32 DEC 2011 9M13 L

\* Sender: Please print your name, address, and ZIP+4 in this box \*

Ken Calica  
City of Avondale  
Planning Division  
11465 W Civic Center Dr, Ste 110  
Avondale, AZ 85323

104



BACK

**ORDINANCE NO. 1485-112**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 80 ACRES GENERALLY LOCATED AT THE NORTHWEST CORNER OF VAN BUREN STREET AND 103RD AVENUE, AS SHOWN IN FILENAME PL-10-0136, REVERTING THE ZONING ON SUCH PROPERTY FROM PLANNED AREA DEVELOPMENT (PAD) TO AGRICULTURAL (AG).

**WHEREAS**, the Council of the City of Avondale (the “City Council”) approved Ordinance No. 1165-106 on January 17, 2006, rezoning that certain ± 80 acre parcel of land generally located at the northwest corner of Van Buren Street and 103rd Avenue, as more particularly described and depicted in Ordinance No. 1165-106, (the “Subject Property”), from Agricultural (AG) to Planned Area Development (PAD) and imposing conditions upon such rezoning (the “First Rezoning”); and

**WHEREAS**, the City Council approved Ordinance No. 1339-1208 on December 8, 2008, amending the general development plan and program and the stipulations of zoning approval in Ordinance No. 1165-106 and extending the validity of the First Rezoning until December 8, 2009 (the “Second Rezoning”); and

**WHEREAS**, the First Rezoning and the Second Rezoning (collectively, the “Rezoning”) were subject to a condition imposed pursuant to provisions of the City of Avondale Zoning Ordinance (the “Zoning Ordinance”), requiring that the development of the first phase of the project on the Subject Property must have commenced within three years of the effective date of the ordinance approving the PAD zoning on the property unless the City Council has approved an extension of the Rezoning (the “Time Condition”); and

**WHEREAS**, pursuant to provisions of the Zoning Ordinance, on December 14, 2009, the City Council approved a one-year extension of the Rezoning until December 8, 2010 (the “First Extension”); and

**WHEREAS**, pursuant to provisions of the Zoning Ordinance, on February 22, 2011, the City Council approved a one-year extension of the Rezoning until December 8, 2011 (the “Second Extension”); and

**WHEREAS**, the City of Avondale has not received an application for subsequent extension of the Rezoning; and

**WHEREAS**, the original Time Condition, the First Extension and the Second Extension upon the Rezoning have not been met, and the City Council desires to revert the zoning on the Subject Property from Planned Area Development (PAD) to Agricultural (AG); and

**WHEREAS**, the City Council desires to amend the City of Avondale Zoning Atlas (the “Zoning Atlas”) pursuant to ARIZ. REV. STAT. § 9-462.04 to reflect the change in zoning on the Subject Property due to the Rezoning reversion; and

**WHEREAS**, all due and proper notice of the public hearing on the intended Rezoning reversion and Zoning Atlas amendment held before the City Council were given in the time, form, substance and manner provided by the Zoning Ordinance; and

**WHEREAS**, the City Council held a public hearing regarding the Rezoning reversion and amendment to the Zoning Atlas on January 17, 2012.

**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 Planned Area Development (PAD) zoning for the ± 80 acre parcel of real property generally located at the northwest corner of Van Buren Street and 103rd Avenue, as shown in filename PL-10-0136, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, is hereby reverted to Agricultural (AG) zoning and the Zoning Atlas is hereby amended to reflect the reversion from PAD to AG.

SECTION 3. If any provision of this Ordinance is for any reason held by any court of competent jurisdiction to be unenforceable, such provision or portion hereof shall be deemed separate, distinct and independent of all other provisions and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps 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, January 17, 2012.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1485-112

(Legal Description and Map)

See following pages.

PARCEL NO. 1  
Legal Description

A portion of the Southwest quarter Section 5 Township 1 North, Range 1 East of the Gila and Salt River Base and Meridian more fully described as follows:

Commencing at the Center of said Section 5 from which the South Quarter corner of Section 5 bears South 00 degrees 16 minutes 54 seconds East a distance of 2638.44 feet;

Thence South 00 degrees 16 minutes 54 seconds East along the East line of said Southwest quarter a distance of 2,225.81 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 00 degrees 16 minutes 54 seconds East along said East line a distance of 412.63 feet to the aforementioned South quarter corner of said Section 5;

Thence South 88 degrees 51 minutes 22 seconds West along the South line of said Southwest quarter to the Southwest corner of the East half of the Southwest quarter of Section 5;

Thence North 00 degrees 13 minutes 06 seconds West along the West line of the East half of the Southwest quarter a distance of 412.63 feet;

Thence North 88 degrees 51 minutes 22 seconds East a distance of 1321.70 feet to the TRUE POINT OF BEGINNING;

EXCEPT the South 33.00 feet.

Area = 545,407 SF or 12.52081 Acres

Prepared By: AEC Consultants, Inc.  
1710 E. Indian School Rd., #100  
Phoenix, Arizona 85016  
(602) 264-1427

Date: March 24, 2003

AEC Job No. 02087

PARCEL NO. 2  
Legal Description

A portion of the Southwest quarter Section 5 Township 1 North, Range 1 East of the Gila and Salt River Base and Meridian more fully described as follows:

Commencing at the Center of said Section 5 from which the South Quarter corner of Section 5 bears South 00 degrees 16 minutes 54 seconds East a distance of 2638.44 feet;

Thence South 00 degrees 16 minutes 54 seconds East along the East line of said Southwest quarter a distance of 390.26 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 00 degrees 16 minutes 54 seconds East along said East line a distance of 1835.55 feet;

Thence South 88 degrees 51 minutes 22 seconds West a distance of 1321.70 feet to a point on the West line of the East half of the Southwest quarter of said Section 5;

Thence North 00 degrees 13 minutes 06 seconds West along said West line a distance of 1834.68 feet;

Thence North 88 degrees 49 minutes 01 seconds East a distance of 1319.69 feet to the TRUE POINT OF BEGINNING.

Area = 2,423,325 SF or 55.63189 Acres

Prepared By: AEC Consultants, Inc.  
1710 E. Indian School Rd., #100  
Phoenix, Arizona 85016  
(602) 264-1427

Date: March 24, 2003

AEC Job No. 02087

PARCEL NO. 3  
Legal Description

A portion of the Southwest quarter Section 5 Township 1 North, Range 1 East of the Gila and Salt River Base and Meridian more fully described as follows:

Beginning at the Center of said Section 5 from which the South Quarter corner of Section 5 bears South 00 degrees 16 minutes 54 seconds East a distance of 2638.44 feet;

Thence South 00 degrees 16 minutes 54 seconds East along the East line of said Southwest quarter a distance of 390.26 feet;

Thence South 88 degrees 49 minutes 01 seconds West a distance of 1319.69 feet to a point on the West line of the East half of the Southwest quarter of Section 5;

Thence North 00 degrees 13 minutes 06 seconds West along said West line a distance of 390.26 feet to the Northwest corner of the East half of the Southwest quarter of Section 5;

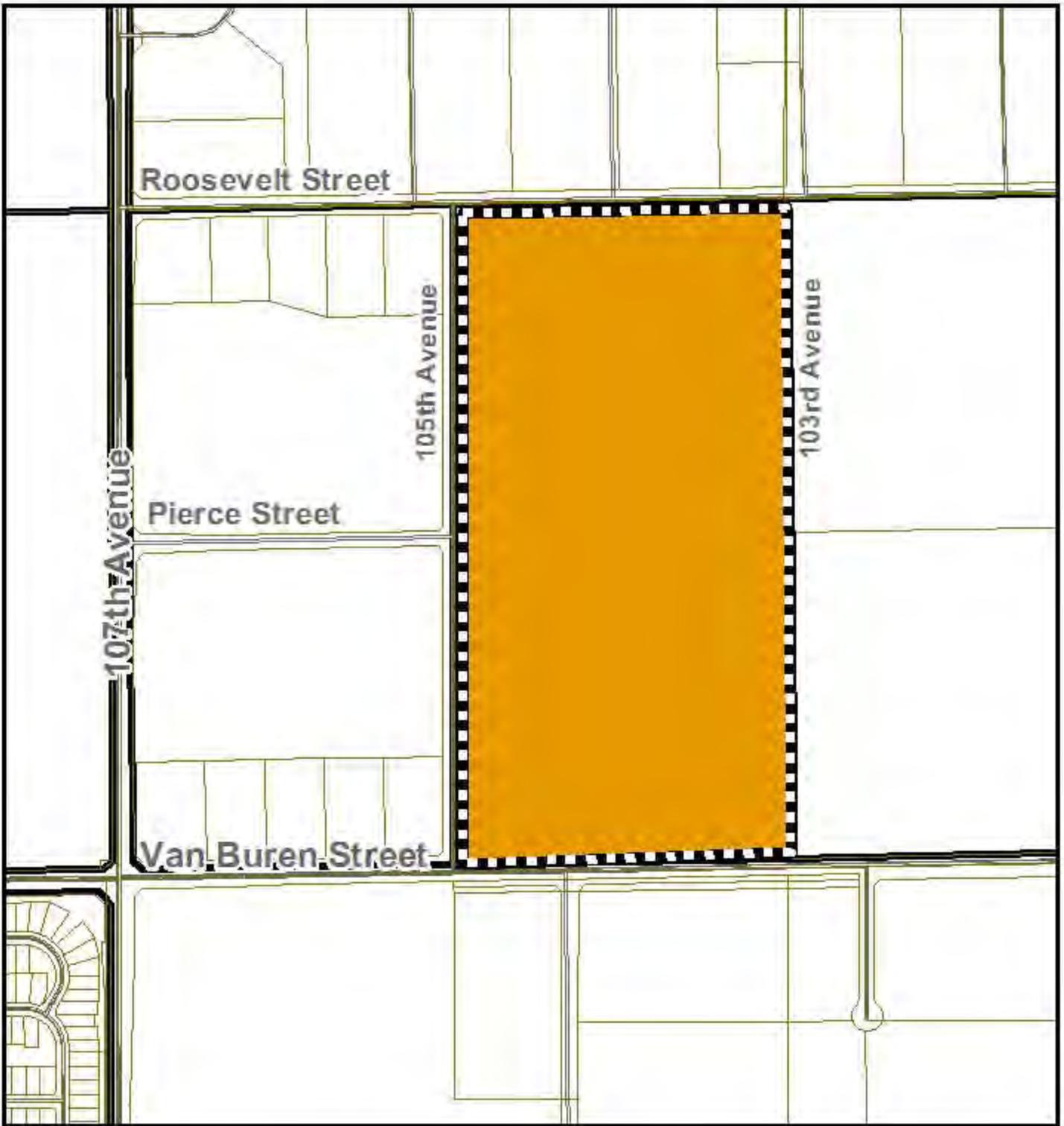
Thence North 88 degrees 49 minutes 01 seconds East a distance of 1319.26 feet to the POINT OF BEGINNING.

Area = 514,871 Sq. Ft. or 11.8198 Acres

Prepared By: AEC Consultants, Inc.  
1710 E. Indian School Rd., #100  
Phoenix, Arizona 85016  
(602) 264-1427

Date: March 24, 2003

AEC Job No. 02087



**Application PL-10-0136**



**Subject Property**

