

# CITY COUNCIL AGENDA

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

REGULAR MEETING  
June 4, 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. CONTRACT AWARD - WESTAIR GASES AND EQUIPMENT**

City Council will consider a request to award a contract to WestAir Gases and Equipment for the purpose of providing Carbon Dioxide at the Northside Arsenic Treatment Facility for an amount not to exceed \$39,000.00 annually, and to authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**b. PROFESSIONAL SERVICES AGREEMENTS FOR ROTATIONAL TOWING SERVICES**

City Council will consider a request to approve Professional Services Agreements with Alliance Towing, LLC, Coldwater Towing, LLC, E-Z Towing & Recovery, LLC and Go Tow Services, LLC for rotational towing services and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**c. FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT - TIGHTLINE SERVICES, INC. (DBA GOOSEBUMP MARKETING & EVENTS)**

City Council will consider a request to approve an amendment to the Amended and Restated Professional Services Agreement with Tightline Systems, Inc. (d/b/a Goosebump Marketing & Events) in an amount not to exceed \$12,500 annually and authorize the Mayor or the City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**d. PURCHASE AND SALE AGREEMENT - 545657, INC.**

City Council will consider a request to approve a Purchase and Sale Agreement authorizing the purchase of approximately 9.9 acres of real property generally located south of Roosevelt Street, north of Van Buren Street and east of Avondale Boulevard from 545657, Inc. in the amount of \$1,500,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. **CONSTRUCTION IMPROVEMENTS AGREEMENT - 545657, INC.**

City Council will consider a request to approve a Construction Improvements Agreement with 545657, Inc. authorizing the future demolition of existing structures on the property generally located south of Roosevelt Street, north of Van Buren Street and east of Avondale Boulevard and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. **RESOLUTION 3047-612 - AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT - CITY OF GOODYEAR FOR ANNUAL PARADE AND FESTIVAL**

City Council will consider a resolution approving an amended and restated Intergovernmental Agreement with the City of Goodyear to jointly host an annual parade and festival and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents. Council will take the appropriate action.

4 **2012 STATE LEGISLATIVE SUMMARY UPDATE**

City Council will receive a summary overview of key legislative actions that occurred during the 2012 State Legislative Session. For information and discussion only.

5 **PUBLIC HEARING – ZONING EXTENSION FOR DIAMOND P RANCH PAD ZONING, ALTERNATIVELY ORDINANCE 1495-612 - ZONING REVERSION**

City Council will hold a public hearing and consider a request by Ms. Carolyn Oberholtzer, Rose Law Group, for a one year extension of the PAD zoning for Diamond P Ranch, located on approximately 244 acres of land west of the southwest corner of Avondale Boulevard and Lower Buckeye Road. Alternatively, the Council will consider an ordinance reverting the zoning of the property back to Agricultural. The Council will take appropriate action.

6 **RESOLUTION 3042-612 – INTERGOVERNMENTAL AGREEMENT WITH BUCKEYE, PARKER AND TOLLESON FOR DIGITAL LIBRARY SERVICES**

City Council will consider a resolution to establish a consortium between the cities of Avondale, Buckeye, Parker, and Tolleson for contracting with Overdrive, Inc. for digital library reserve application services and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

7 **APPLICATION SERVICES AGREEMENT - OVERDRIVE, INC.**

City Council will consider a request to approve an Application Services Agreement with OverDrive, Inc. on behalf of the West Valley Consortium to purchase E-books and authorize the Mayor or the City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

8 **ADJOURNMENT**

Respectfully submitted,



Carmen Martinez  
City Clerk

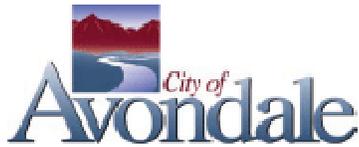
Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

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:**  
Contract Award - WestAir Gases and Equipment

**MEETING DATE:**  
June 4, 2012

**TO:** Mayor and Council  
**FROM:** Wayne Janis, P.E., Public Works Director (623) 333-4444  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council award a contract to WestAir Gases and Equipment for the purpose of providing Carbon Dioxide at the Northside Arsenic Treatment Facility for an amount not to exceed \$39,000.00 annually, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

When the Northside Arsenic Facility is in service, the chemical reaction between ferric chloride and available arsenic in the well water is best achieved at a neutral pH. The pH of water entering the site for treatment is higher than a neutral pH, so liquid carbon dioxide is injected into the raw water stream to lower the pH to a neutral value. This step promotes the chemical reaction and increases the arsenic removal during the treatment process.

**DISCUSSION:**

Anually, the arsenic treatment process uses a maximum 300,000 pounds of liquid carbon dioxide. Since there is no contract in place with a vendor for this service, water production staff competitively bid the carbon dioxide chemical supply services for the Northside Arsenic treatment facility.

The bid announcement for Water Treatment Chemicals-Liquid Carbon Dioxide from the City of Avondale Northside Arsenic Treatment Facility was advertised in the West Valley View, on April 13, 2012 and April 20, 2012. Invitation for bids was also posted in the Arizona Business Gazette on April 12, 2012. The bid opening was held on May 3, 2012. WestAir Gases and Equipment was the successful bid provider. The Water Production Staff estimates \$39,000 annually in expenditures for the purchase of carbon dioxide, for a cumulative total over the contract period not to exceed \$195,000, subject to budget approval.

**BUDGETARY IMPACT:**

The funding for the services to be provided under this contract will be available in the Water Production budget: 501-9122-00-7155.

**RECOMMENDATION:**

Staff is recommending that the City Council award a contract to WestAir Gases and Equipment for the purpose of providing Carbon Dioxide at the Northside Arsenic Treatment Facility for an amount not to exceed \$39,000.00 annually, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

Click to download

[Copy of Contract](#)





## INVITATION FOR BID

### SOLICITATION INFORMATION AND SCHEDULE

Solicitation Number: **PW 12-041.2**

Solicitation Title: **Water Treatment Chemicals - Liquid Carbon Dioxide**

Release Date: **April 12, 2012**

Advertisement Dates: **April 13, and April 20, 2012 West Valley View  
April 12, 2012 Arizona Business Gazette**

Prospective Bidders' Conference: **NOT APPLICABLE TO THIS SOLICITATION**

Final Date for Inquiries: **April 23, 2012**

Bid Deadline: **May 3, 2012  
3:00 PM (local-time, Phoenix, Arizona)**

Bid Opening: **May 3, 2012  
3:00 PM (local-time, Phoenix, Arizona)**

Procurement Representative: **Loretta Browning      lbrowning@avondale.org  
623-333-2029**

In accordance with the City of Avondale Procurement Code, competitive sealed Bids for the Materials specified herein will be received by the City Clerk at the City Clerk's Office at the above-referenced location until the date and time cited below (the "Bid Deadline"). Bids received by the Bid Deadline shall be publicly opened and the Bid Price read. Bids shall be in the actual possession of the City Clerk on, or prior to, the Bid Deadline Date. Late Bids shall not be considered except as provided in the City Procurement Code. Bids shall be submitted in a sealed envelope with the Solicitation Number and the Bidder's name and address clearly indicated on the front of the envelope.

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

ARTICLE I - DEFINITIONS

For purposes of this Invitation for Bids, the following definitions shall apply:

“Bid” or “Offer” means a responsive bid or quotation submitted by a Bidder in response to this IFB.

“Bid Deadline” means the date and time set forth on the cover of this IFB for the City Clerk to be in actual possession of the sealed Bids.

“Bid Opening” means the date and time set forth on the cover of this IFB for opening of sealed Bids.

“Bidder” means any person or firm submitting a competitive Bid in response to this IFB.

“Days” means calendar days unless otherwise specified.

“City” means the City of Avondale, an Arizona municipal corporation.

“Confidential Information” means that portion of a Bid, Proposal, Offer, Specification or protest that contains information that the person submitting the information believes should be withheld, provided (i) such person submits a written statement advising the City of this fact at the time of the submission and (ii) the information shall be so identified wherever it appears.

“Contract” means, collectively, the (i) Offer, (ii) Article I - Definitions, (iii) Article II – Bid Process; Bid Award, (iv) Article III - General Terms & Conditions, (v) Article IV – Special Terms and Conditions, if any, (vi) Specifications/Price Sheet, attached hereto as Exhibit A and incorporated herein by reference, (vii) Licenses; DBE/WBE Status Sheet, attached hereto as Exhibit B and incorporated herein by reference, (viii) References, attached hereto as Exhibit C and incorporated herein by reference, (ix) Acknowledgment(s) of Addenda Received, if any, attached hereto as Exhibit D and incorporated herein by reference, (x) Notice of Award, (xi) Notice to Proceed (xii) Purchase Order(s), attached hereto as Exhibit E and incorporated herein by reference, (xiii) any approved Change Order or Amendment, (xiv) Contractor’s Certificates of Insurance and a copy of the Declarations Page(s) of the insurance policies and (xv) Bid, Performance and Payment Bonds, if any.

“Contractor” means the individual, partnership, or corporation who has submitted a Bid in response to this IFB and who, as a result of the competitive bidding process, is awarded a contract for Materials or Services by the City.

“Invitation for Bids” or “IFB” means this request by the City for participation in the competitive bidding process according to all documents, including those attached or incorporated herein by reference, utilized for soliciting Bids for the Materials and/or Services in compliance with the City’s Procurement Code.

“Materials” means any personal property, including equipment, materials and supplies provided by the Contractor in conjunction with the Contract and shall include, in addition to materials incorporated in the Project, equipment and other material used and/or consumed in the performance of Services or Work.

“Multiple Award” means an award of an indefinite quantity contract for one or more similar products, commodities or services to more than one Bidder.

“Price” means the total expenditure for a defined quantity of a commodity or service.

“Procurement Agent” means the City Manager or authorized designee.

“Procurement Code” means the City of Avondale Procurement Code, as amended from time to time.

“Procurement Representative” or means a City employee, as designated on the cover of this IFB, who has specifically been designated to act as a contact person to the Bidders and/or Contractor, and who is responsible for monitoring and overseeing the Contractor’s performance under the Contract and for providing details pertaining to the Work.

“Project” means the purpose and work described as set forth in Section 2.1, Purpose; Scope of Work, of this IFB.

“Services” means the furnishing of labor, time or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance and as further defined in the Contract. This term does not include “professional and technical services” as defined in the Procurement Code.

“Specification” means any description of the physical characteristics, functional characteristics, or the nature of a commodity, product, supply or services. The term may include a description of any requirements for inspecting, testing, or preparing a supply or service item for delivery.

“Subcontractor” means those persons or groups of persons having a direct contract with the Contractor to perform a portion of the Work and those who furnish Materials according to the plans and/or Specifications required by this Contract.

“Work” means all labor, materials and equipment incorporated or to be incorporated in the Project that are necessary to accomplish the services required by this Contract.

## ARTICLE II – BID PROCESS; BID AWARD

2.1 Purpose; Scope of Work. The purpose of this IFB is to secure qualified Vendor(s) to provide NSF-approved liquid carbon dioxide (the “Materials”) to the Public Works Department’s Water Treatment Facilities. The selected Vendor shall provide transportation, delivery, and off-loading of the Materials into tanks or storage facilities at City site(s) as more particularly described in the Specifications/Price Sheet, attached hereto as Exhibit A and incorporated herein by reference. The Materials required under this IFB shall be provided at the Price(s) specified in Exhibit A, Specifications/Price Sheet. For the purpose of this solicitation, it is estimated that the City will require 150 tons per year of the Materials; provided, however, that the City does not guarantee any minimum or maximum number of purchases will be made pursuant to this solicitation. The resulting Contract is intended to be an indefinite quantity and indefinite delivery Contract for the Materials based on the City’s needs.

- As a matter of shipper standard procedures, a certificate of analysis is usually presented upon receiving carbon dioxide. One will be required prior to unloading.
- The product shall have been produced in accordance with the ANSI/NSF standard 60. A copy of the manufacturer’s certification document shall be submitted with the Bid or if the product has been repackaged, the re-packager shall certify in writing, that the purity of the product remains equal to that when shipped. This re-packager certification shall be signed by a principal of the repackaging firm and shall be on the re-packager’s letterhead.

2.2 Authority; Amendment of IFB. This IFB is issued under the authority of the City. No alteration may be made to this IFB or the resultant Contract without the express, written approval of the City in the form of an official IFB addendum or Contract amendment. Any attempt to alter this IFB/Contract without such approval is a violation of this IFB/Contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City including, but not limited to, Contract cancellation and suspension and/or debarment of the Bidder or Contractor.

2.3 Preparation/Submission of Bid. Vendors are invited to participate in the competitive bidding process for the Materials specified in this IFB. Bidders shall review their Bid submissions to ensure the following requirements are met.

A. Irregular or Non-responsive Bids. The City will consider as “irregular” or “non-responsive” and shall reject any Bid not prepared and submitted in accordance with the IFB and Specifications, or any Bid lacking sufficient information to enable the City to make a reasonable determination of compliance to the Specifications. Unauthorized or unreasonable exceptions, conditions, limitations, or provisions shall be cause for rejection. Bids may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City:

1. Bidder does not meet the minimum required skill, experience or requirements to perform the Services or provide the Materials.
2. Bidder has a past record of failing to fully perform or fulfill contractual obligations.
3. Bidder cannot demonstrate financial stability.
4. Bid submission contains false, inaccurate or misleading statements that, in the opinion of the City Manager or authorized designee, is intended to mislead the City in its evaluation of the Bid.

B. Specification Minimums. Bidders are reminded that the Specifications stated in this IFB are the minimum levels required and that Bids submitted must be for products that meet or exceed the minimum level of all features specifically listed in this IFB. Bids offering less than the minimums specified are not responsive and should not be submitted. Any catalog, brand name or manufacturer’s reference used is considered descriptive and not restrictive and is indicative of the type and quality of Materials the City desires to purchase. It shall be the Bidder’s responsibility to carefully examine each item listed in the Specifications. Bidders shall provide complete manufacturers’ descriptive literature regarding the Materials. Literature shall be sufficient in detail in order to allow full and fair evaluation of the Offer.

C. Required Submittal. Bidders shall provide all of the following documents to be considered a responsive Bid:

1. Complete, fully executed original of this IFB, signed in ink by a person authorized to bind the Bidder.
2. Offer.
3. Price Sheet.
3. Licenses; DBE/MBE Status.
4. References.
5. Acknowledgment for each Addendum received, if any.

D. Bidder Responsibilities. All Bidders shall (1) examine the entire Bid package, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting a Bid and (4) submit the entire, completed Bid package by the official Bid Deadline. Late Bids shall not be considered. Bids not submitted with an **original, signed** Offer page by a person authorized to bind the Bidder shall be considered non-responsive. Negligence in preparing a Bid confers no right of withdrawal after the Bid Opening, unless otherwise provided in the City’s Procurement Code.

E. Sealed Bids. All Bids shall be sealed and clearly marked with the IFB title and number on the lower left hand corner of the mailing envelope. A return address must also appear on the outside of the sealed Bid.

F. Address. All Bids shall be directed to the following address: City Clerk, 11465 West Civic Center Drive, Suite 200, Avondale, Arizona 85323, or hand-delivered to the City Clerk's office.

G. Bid Forms. All Bids shall be on the forms provided in this IFB. It is permissible to copy these forms if required. Telegraphic (facsimile), electronic (email) or mailgram Bids will not be considered.

H. Modifications. Erasures, interlineations, or other modifications in the Bid shall be initialed in original ink by the authorized person signing the Bid.

I. Withdrawal. At any time prior to the specified Bid Opening, a Bidder (or designated representative) may amend or withdraw its Bid. Facsimile, electronic (email) or mailgram Bid amendments or withdrawals will not be considered. No Bid shall be altered, amended or withdrawn after the specified Bid Deadline unless otherwise permitted pursuant to the City Procurement Code.

#### 2.4 Inquiries; Interpretation of Specifications; Scope of Work.

A. Inquiries. Any question related to the IFB, including any part of the Specifications, Scope of Work or other Contract Documents, shall be directed to the Procurement Representative whose name appears on the cover page of this IFB. Questions shall be submitted in writing by the date indicated on the cover page of this IFB; the City will not respond to any inquiries submitted later than the Final Date for Inquiries. The Vendor submitting such inquiry will be responsible for its prompt delivery to the City. Any correspondence related to the IFB shall refer to the title and number, page and paragraph. However, the Bidder shall not place the IFB number and title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed Bid and may not be opened until the Bid Opening. Any interpretations or corrections of the proposed Contract Documents will be made only by addenda duly approved and issued by the City. The City will not be responsible for any other explanations or interpretations of the Contract Documents.

B. Addenda. It shall be the Vendor's responsibility to check for addenda issued to this IFB. Any addendum issued by the City with respect to this IFB will be available at:

City of Avondale City Hall, 11465 West Civic Center Drive, Avondale, Arizona 85323  
Buyhub Website at [www.buyhub.com](http://www.buyhub.com)  
City of Avondale website at [www.avondale.org/procurement](http://www.avondale.org/procurement)

C. Approval of Substitutions. The materials, products, and equipment described in this IFB establish a standard or required function, dimension, appearance and quality to be met by any proposed substitution. No substitute will be considered unless written request for approval has been received by the City or its representative at least ten days prior to the Bid Deadline. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including any drawings, performance and test data and any other information necessary for evaluation of the substitute. If a substitute is approved, the approval shall be by written addendum to the IFB. Bidder shall not rely upon approvals made in any other manner.

D. Use of Equals. When the Specifications for materials, articles, products and equipment include the phrase "*or equal*," Bidder may bid upon and use materials, articles, products and equipment which will perform equally the duties imposed by the general design. The Procurement Representative will have the final approval of all materials, articles, products and equipment proposed to be used as an "equal." No such "equal" shall be purchased or installed without prior written approval from the Procurement Representative.

Approvals for "equals" before Bid Opening may be requested in writing to the Procurement Representative for approval. Requests must be received at least ten days prior to the Bid Deadline. The request shall include the name of the material, article, product or equipment for which the item is sought to be considered an equal and a complete description of the proposed equal including any drawings, performance and test data and any other information necessary for evaluation of the equal. If an equal is approved, the approval shall be by written addendum to the IFB. Bidder shall not rely upon approvals made in any other manner.

E. Bid Quantities. It is expressly understood and agreed by the parties hereto that the quantities of the various classes of Materials to be furnished under this Contract, which have been estimated as stated in the Bidders' Offer, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the Bidders' Offers presented for the Work under this Contract. The selected Contractor agrees that the City shall not be held responsible if any of the quantities shall be found to be incorrect and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of Material as estimated and the Materials actually provided. If any error, omission or misstatement is found to occur in the estimated quantities, the same shall not (1) invalidate the Contract or the whole or any part of the Specifications in accordance herewith and for the Prices herein agreed upon and fixed therefore, (2) excuse Contractor from any of the obligations or liabilities hereunder or (3) entitle Contractor to any damage or compensation except as may be provided in this Contract.

2.5 Prospective Bidders' Conference. A Prospective Bidders' Conference may be held. If scheduled, the date and time of the Prospective Bidders' Conference will be indicated on the cover page of this IFB. The Prospective Bidders' Conference may be designated as mandatory or non-mandatory on the cover of this IFB. Bids shall not be accepted from Vendors who do not attend a mandatory Prospective Bidders' Conference. Vendors are strongly encouraged to attend those Prospective Bidder's Conferences designated as non-mandatory. The purpose of the Prospective Bidders' Conference will be to clarify the contents of the IFB in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this IFB or any apparent omission or discrepancy should be presented to the City at the Prospective Bidders' Conference. The City will then determine if any action is necessary and may issue a written amendment or addendum to the IFB. Oral statements or instructions will not constitute an amendment or addendum to the IFB.

2.6 New Materials. All Materials to be provided by the Contractor and included in the Bid shall be new, unless otherwise stated in the Specifications.

2.7 Prices. Materials shall be provided at the unit prices as set forth in the Specifications/Price Sheet attached hereto as Exhibit A and incorporated herein by reference. Bid Prices shall be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price shall prevail. **NOTE: All pricing blanks must be filled in. Empty or unfilled spaces in the Price Sheet shall be deemed as a NO BID entry for that item.**

2.8 Payment; Discounts. Any Bid that requires payment in less than 30 Days shall not be considered. Payment discounts of 30 Days or less will be deducted from the Bid Price in determining the low Bid. The City shall be entitled to take advantage of any payment discount offered, provided payment is made within the discount period. Payment discounts shall be indicated on Price Sheet.

2.9 Taxes. The City is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item. It is the sole responsibility of the Bidder to determine any applicable State tax rates and calculate the Bid accordingly. Failure to accurately tabulate and applicable taxes may result in a determination that a Bid is non-responsive. The Bidder shall not rely on, and shall independently verify, any tax information provided by the City.

2.10 Federal Funding. It is the responsibility of the Bidder to verify and comply with federal requirements that may apply to the Work (the "Federal Requirements"). It is also the responsibility of the

Bidder to incorporate any necessary amounts in the Bid to accommodate for required federal record keeping, necessary pay structures or other matters related to the Federal Requirements, if any.

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

2.12 Public Record. All Bids shall become the property of the City. After Contract award, Bids shall become public records and shall be available for public inspection in accordance with the City's Procurement Code, except that any portion of a Bid that was designated as confidential pursuant to subsection 2.13 shall remain confidential from and after the time of Bid Opening to the extent permitted by Arizona law.

2.13 Confidential Information. If a Vendor/Bidder believes that a Bid, Specification, or protest contains information that should be withheld from the public record, a statement advising the Procurement Agent of this fact shall accompany the submission and the information shall be identified. The information identified by the Vendor or Bidder as confidential shall not be disclosed until the Procurement Agent makes a written determination. The Procurement Agent shall review the statement and information and shall determine in writing whether the information shall be withheld. If the Procurement Agent determines to disclose the information, the Procurement Agent shall inform the Vendor or Bidder in writing of such determination.

2.14 Vendor Licensing and Registration. Prior to the award of the Contract, the successful Bidder shall (A) be licensed with the Arizona Corporation Commission to do business in Arizona and (B) have a completed Request for Vendor Number on file with the City Financial Services Department. Bidders shall provide license information with the Bid, attached as Exhibit B and incorporated herein by reference. Upon the City's request, corporations, limited liability companies, partnerships or other entities shall provide a Certificate of Good Standing from the Arizona Corporation Commission.

2.15 Certification. By submitting a Bid, the Bidder certifies:

A. No Collusion. The submission of the Bid did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a City employee, officer, agent or elected official in connection with the submitted Bid or a resultant Contract. In the event that the resultant Contract is canceled pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Contractor an amount equal to 150% of the gratuity.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Contract.

E. No Signature/False Statement. Failure to sign the Bid, or signing it with a false statement, shall void the submitted Bid and any resulting Contract and the Bidder may be debarred from further bidding in the City.

2.16 Award of Contract.

A. Multiple Award. The City may, at its sole discretion, accept Bidder's Offer as part of a Multiple Award.

B. Line Item Option. Unless the Bidder's Offer indicates otherwise, or unless specifically provided within the Contract, the City reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the City. The City's flexibility with respect to the method of award also includes any items bid as alternates, which may be accepted or rejected, in whole or in part, at the City's sole discretion.

C. Evaluation. The evaluation of this Bid will be based on, but not limited to, the following: (1) compliance with Specifications, (2) Price, including alternates, if any and (3) Bidder qualifications to provide the Materials.

D. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this IFB, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all Bids or portions thereof and (3) reissue an IFB.

E. Offer. A Bid is a binding offer to contract with the City based upon the terms, conditions and specifications contained in this IFB and the Bidder's responsive Bid, unless any of the terms, conditions, or specifications is modified by a written addendum or contract amendment. Bids become binding Contracts when the Acceptance of Offer and Notice of Award is executed in writing by the City. Bidder Offers shall be valid and irrevocable for 90 days after the Bid Opening.

F. Protests. Any Bidder may protest this IFB issued by the City, the proposed award of a Contract, or the actual award of a Contract. All protests will be considered in accordance with the City Procurement Code.

ARTICLE III – GENERAL TERMS AND CONDITIONS

3.1 Term. This Contract shall be effective from the date it is fully executed by the City and remain in full force and effect for one year thereafter (the "Initial Term"), unless terminated as otherwise provided herein. After the expiration of the Initial Term, this Contract may be renewed for up to four successive one-year terms (each a "Renewal Term") if (A) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (B) at least 30 days prior to the end of the then-current term of the Contract, the Contractor requests, in writing, to extend the Contract for an additional one-year term and (C) the City approves the additional one-year term in writing (including any annual unit price adjustments as may be requested by the Contractor; provided, however, that unit price adjustments, if any, may not increase the unit price(s) by more than 5% from the previous year's unit rate), 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 Contract shall cause the Contract to terminate at the end of the then-current term of the Contract; provided however, that the City may, at its discretion and with the agreement of the awarded Contractor, elect to waive this requirement and renew the Contract. The Initial Term and any Renewal Terms are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Contract shall remain in full force and effect.

3.2 Scope of Work. This is an indefinite quantity and indefinite delivery Contract for Materials. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Contract. 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 Contract, the Contractor shall provide the Materials 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 written invoice, quote,

purchase order or other form of written agreement between the parties describing the Materials to be provided (each, a "Purchase Order"). Each Purchase Order approved and accepted by the parties pursuant to this Contract shall (A) contain a reference to this Contract and (B) be attached hereto as Exhibit E and incorporated herein by reference. Purchase Orders submitted without referencing this Contract will be subject to rejection. By signing this Contract, Contractor acknowledges and agrees that Purchase Order(s) containing unauthorized pricing, exceptions, conditions, limitations, or provisions in conflict with the terms of this Contract, other than City's project-specific quantities, configurations or delivery locations and/or dates, are hereby expressly declared void and shall be of no force and effect.

3.3 Compensation. The City shall pay Contractor at the unit rates as set forth in the Specifications/Price Sheet, attached hereto as Exhibit A. The Contractor shall not commence any billable work or provide any Materials under this Contract until Contractor receives an executed Purchase Order from the City.

3.4 Payments. The Contractor will be paid on the basis of invoices submitted following acceptance of the Materials. All invoices shall document and itemize all Materials delivered in sufficient detail to justify payment and shall include the Purchase Order number authorizing the transaction to the City Accounts Payable address indicated on the face of the Purchase Order, unless otherwise specified. All transportation charges must be prepaid by the Contractor. If invoice is subject to a cash discount, the discount period will be calculated from the date of receipt of the claim or the Materials, whichever is later.

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

3.6 Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful completion and delivery of services or Materials required pursuant to this Contract.

3.7 Deliveries. Time is of the essence for all orders placed under this Contract. Deliveries shall be made within 14 Days of Purchase Order placement to:

**City of Avondale**  
Northside Treatment Facility  
3850 North El Mirage Road  
Avondale, Arizona 85323

**Delivery Schedule Days/ Hours:**  
Monday through Thursday  
6:00 a.m. to 2:00 p.m.

Product documentation required by Section 3.15 shall be delivered to the City upon delivery of the Materials. Delivery shall not be considered complete until the City is in receipt of the manuals. Contractor shall retain title and control of all materials and Materials until they are delivered and the City has accepted delivery. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will notify the Contractor promptly of any damaged Materials and shall assist the Contractor in arranging for inspection. The City reserves the right to cancel and reject the Materials upon default by Contractor in time, rate or manner of delivery. The City also reserves the right to refuse shipments made in advance of any scheduled delivery date appearing on the Purchase Order.

3.8 Quantity. The quantity of Materials ordered must not be exceeded or reduced without the City Procurement Representative's permission in writing except in conformity with acknowledged industry tolerances.

3.9 Changes; Cancellation. The City reserves the right to cancel or make changes in the Materials to be furnished by the Contractor within a reasonable period of time after issuance of Purchase Orders. If such changes cause an increase or decrease in the amount due under the Purchase Order, or in the time required for Contractor's performance, an acceptable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. Any agreement for adjustment must be asserted in writing within ten days from when the change is ordered. Nothing in this Contract shall relieve the Contractor from proceeding without delay in the performance of the purchase order as changed.

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

3.11 Packing. No extra charges shall be made for packaging or packing material unless authority is expressly incorporated in this Contract. Contractor shall be responsible for safe packing which must conform to the requirement of carrier's tariffs. All shipments must carry the correct quantity, product identification, Purchase Order number, receiving address and product department plainly marked on all packages. Cars or trucks must be loaded to minimum weight requirements to assure lowest rate unless otherwise specified or shipper will be charged with excess freight that the City is required to pay.

3.12 Performance Warranty. All Materials supplied pursuant to this Contract shall be fully guaranteed by the Contractor for a minimum period of one year from the date of acceptance by the City (or such longer period as may be provided under manufacturer's warranties). Any defects in design, workmanship or materials that would result in non-compliance with Contract Specifications shall be fully corrected by the Contractor (including labor and shipping) without cost to the City. Contractor further agrees to execute any special guarantees as provided by the Contract or by law. Contractor shall require similar guarantees from all of its vendors or its subcontractors. Contractor shall include a complete and exclusive statement of the product warranty.

3.13 Price Warranty. Contractor shall give the City the benefit of any price reductions before actual time of shipment, except that should the Procurement Representative of the City permit shipment to be made prior to specified shipping date that the City shall have advantage of any price reduction before specified shipping date.

3.14 Inspection; Acceptance. All Materials are subject to final inspection and acceptance by the City. Materials failing to conform to the Specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Upon discovery of a non-conforming material or services, the City may elect to do any or all of the following by written notice to the Contractor: (A) waive the non-conformance; (B) stop the work immediately; or (C) procure compliant materials or services from other sources and withhold the cost of same from any payments due to the Contractor.

3.15 Waiver. Waiver by the City of a condition in any shipment shall not be considered a waiver of (A) any other terms of this Contract or (B) that condition for subsequent shipments.

3.16 Product Documentation. Product literature, books, manuals or CD's when possible, shall accompany each unit and provide complete and comprehensive information on all Materials, components and

accessories, as supplied to comply with the Specifications. The City shall have the right to reproduce any equipment/product documentation for City educational purposes only.

3.17 Product Discontinuance. In the event that a product brand or model is discontinued by the manufacturer, the City at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request permission to substitute a new product or model and provide the following: (A) a formal announcement from the manufacturer that the product or model has been discontinued, (B) documentation from the manufacturer that names the replacement product or model, (C) documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation, (D) documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model and (E) documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

3.18 No Replacement of Defective Tender. Every tender of Materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.

3.19 Shipment Under Reservation Prohibited. Contractor is not authorized to ship Materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

3.20 Liens. All Materials shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

3.21 Right to Assurance. Whenever one party to this Contract in good faith has reason to question the other party's intent to perform it may demand that the other party give a written assurance of its intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

3.22 Right to Inspect Plant. The City may, at reasonable times, inspect the part of the plant or place of business of the Contractor or its subcontractor that is related to the performance of this Contract.

3.23 Patents and Copyrights. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this Contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.

3.24 Advertising. Contractor shall not advertise or publish information concerning this Contract without prior, written consent of the City.

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

3.26 Indemnification. To the fullest extent permitted by law, 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 Contract. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

3.27 Insurance.

A. General.

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

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

3. Additional Insured. [INTENTIONALLY OMITTED]

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

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

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

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

8. Use of Subcontractors. If any work under this Contract is subcontracted in any way, Contractor shall execute written agreement(s) with its subcontractors containing the indemnification provisions set forth in this subsection and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractor and obtaining certificates of insurance verifying the insurance requirements.

9. Evidence of Insurance. Prior to commencing any work or services under this Contract, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Contract, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Contract and that such

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

a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

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

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

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

b. Contractor's insurance shall be primary insurance as respects performance of the Contract.

c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of Work or Services performed by Contractor under this Contract.

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

**B. Required Insurance Coverage.**

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

you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

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

3. Professional Liability. [INTENTIONALLY OMITTED]

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

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

3.28 Applicable Law; Venue. This Contract shall be governed by the laws of the State of Arizona and any suit pertaining to this Contract may be brought only in courts in Maricopa County, Arizona.

3.29 Termination; Cancellation.

A. For City’s Convenience. This Contract is for the convenience of the City and, as such, may be terminated without cause after receipt by Contractor of written notice by the City. Upon termination for convenience, Contractor shall be paid for all undisputed Materials delivered and services performed to the termination date.

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

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

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

E. Agreement Subject to Appropriation. This Contract is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Contract for payment of funds by the City shall be effective when funds are appropriated for purposes of this Contract and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Contract and the City shall keep the Contractor fully informed as to the availability of funds for the Contract. The obligation of the City to make any payment pursuant to this Contract 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 Contract during any immediately succeeding fiscal year, this Contract 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 Contract.

3.30 Miscellaneous.

A. Independent Contractor. The Contractor acknowledges and agrees that all Materials provided under this Contract are being provided as an independent contractor, not as an employee or agent of the City. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the City, shall determine the time of its performance of the services provided under this Contract so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 3.2 above. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Contractor do not intend to nor will they combine business operations under this Contract.

B. Laws and Regulations. The Contractor shall keep fully informed and shall at all times during the performance of its duties under this Contract ensure that it and any person for whom the Contractor is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Materials or services including, but not limited to, the following: (1) existing and future City and County ordinances and regulations, (2) existing and future state and federal laws and (3) existing and future Occupational Safety and Health Administration standards.

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

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

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

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

G. Entire Agreement; Interpretation; Parol Evidence. This Contract represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Contract are hereby revoked and superseded by this Contract. No representations,

warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Contract. This Contract shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Contract. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Contract.

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

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

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

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

L. Offset.

1. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Contractor any amounts Contractor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Contract.

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

M. Notices and Requests. Any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (3) given to a recognized and reputable overnight delivery service, to the address set forth below or (4) delivered by facsimile transmission to the number set forth below:

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

With copy to: GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Facsimile: (602) 254-4878  
Attn: Andrew J. McGuire, Esq.

If to Contractor: West Air Gases & Equip  
2450 E 16TH ST  
YUMA AZ 85365  
Facsimile: 760 432 8223  
Attn: Michael Cuader

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (4) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

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

O. Records and Audit Rights. Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Contract, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Contract to ensure that the Contractor and its subcontractors are complying with the warranty under subsection 3.30(P) below (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 (1) 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 Contract and (2) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 3.30(P) below. To the extent necessary for the City to audit Records as set forth in this subsection, 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 Contract for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Contract. 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 subsection. 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 subsection by insertion of the requirements hereof in any subcontract pursuant to this Contract.

P. 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 Contract and may result in the termination of this Contract by the City.

Q. 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 Contract pursuant to subsection 3.29(B) above.

R. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Contract, the IFB, the Specifications/Price Sheet, any City-approved Purchase Orders, invoices and the Contractor's response to the IFB, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 3.2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Contract (collectively, the "Unauthorized Conditions"), other than the City's project-specific quantities, configurations or delivery dates, are expressly declared void and shall be of no force and effect. Acceptance by the City of any Purchase Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this 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 Contract.

S. Non-Exclusive Contract. This Contract is entered into with the understanding and agreement that it is for the sole convenience of the City of Avondale. The City reserves the right to obtain like goods and services from another source, at its sole discretion.

T. Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Contractor. Contractor may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Contract in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Contract shall be transacted solely between the requesting Eligible Procurement Unit and Contractor. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Contract. The City shall not be responsible for any disputes arising out of transactions made by others.

EXHIBIT A  
TO  
INVITATION FOR BID NO. PW 12-041.2

[Specifications/Price Sheet]

See following page.



City of Avondale, AZ PW-12-041.2  
 WestAir Gases & Equipment  
 Typical AWAA Specs

Praxair NSF60 product is at a minimum Food grade and is available at Longbeach, CA.  
 The AWWA standard indicates the following specifications for CO2 in drinking water.  
 Note that Food Grade EXCEEDS the Level H 99.5% assay level.

The following is a excerpt of the acceptable QVL's from an AWWA document.  
 A full copy of the AWWA drinking water standard is available from AWWA if you wish to obtain a copy.

Table 1 Directory of limiting characteristics<sup>1</sup>

Limiting Characteristic	Quality Verification Levels (QVLs) <sup>1</sup>		
	G	H	I
Carbon dioxide, min% (measured)	99	99.5	99.9
Water, ppm (wt%) (vapor)	32	20	20
Dew point, °F (°C)	-60 (-51)	-67 (-55)	-67 (-55)
Total hydrocarbons (as methane)	50	50	50 <sup>3</sup>
Oxygen	50	50	30
Carbon monoxide	—	10 (vapor)	10
Hydrogen sulfide	—	0.5 <sup>1</sup> (vapor)	— <sup>7</sup>
Nitric oxide	—	5 <sup>4</sup>	—
Nitrogen dioxide	—	—	2.5
Ammonia	—	—	2.5
Sulfur dioxide	—	5	— <sup>7</sup>
Benzene	—	—	0.02
Carbonyl sulfide	—	0.5 <sup>1</sup>	— <sup>7</sup>
Nonvolatile residues, ppm (wt/wt)	10	10	10
Odor	Free of foreign odor or taste <sup>2</sup>		
Acetaldehyde	0.5	0.5	0.2
Acidity	—	—	To pass JECFA test <sup>6</sup>
Hydrogen cyanide	—	—	None detected <sup>7</sup>
Methanol	—	—	10.0
Phosline <sup>8</sup>	—	—	0.3
Total sulfur	0.5	0.5	0.1 <sup>5</sup>
Oil/grease (wt/wt)	—	—	5.0

EXHIBIT B  
TO  
INVITATION FOR BID NO. PW 12-041.2

[Licenses; DBE/WBE Status]

See following page.

LICENSE; DBE/WBE STATUS  
WATER TREATMENT CHEMICALS - LIQUID CARBON DIOXIDE – PW 12-041.2

**Attach a copy of your Business License to your bid submittal.**

\* Business License must be either a City of Avondale Privilege Tax Business License or an Arizona Transaction Tax (sales) Privilege Tax License

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise? Yes \_\_\_\_\_, No  \_\_\_\_\_.

If yes, please provide details and documentation of the certification.



ARIZONA DEPARTMENT OF REVENUE  
LICENSE & REGISTRATION SECTION

1600 WEST MONROE  
PHOENIX, ARIZONA 85007-2650

MUST BE  
DISPLAYED IN A  
CONSPICUOUS PLACE

T R A N S A C T I O N P R I V I L E G E T A X L I C E N S E

--NOT TRANSFERABLE--

THIS LICENSE IS ISSUED TO THE BUSINESS NAMED BELOW FOR THE ADDRESS SHOWN. CAN  
LICENSES, BY LAW, MAY NOT BE TRANSFERRED FROM ONE PERSON TO ANOTHER NOR CAN  
THEY BE TRANSFERRED FROM ONE LOCATION TO ANOTHER. ARIZONA LAW REQUIRES LI-  
CENSEES TO NOTIFY THE DEPARTMENT OF REVENUE IF THERE IS A CHANGE IN BUSINESS  
NAME, TRADE NAME, LOCATION, MAILING ADDRESS OR OWNERSHIP. IN ADDITION, WHEN  
BUSINESS IS DISCONTINUED OR BUSINESS LOCATION CHANGES, AND A NEW LICENSE IS  
ISSUED, THIS LICENSE MUST BE RETURNED TO THE ARIZONA DEPARTMENT OF REVENUE.

THE LICENSEE LISTED BELOW IS LICENSED TO CONDUCT BUSINESS UPON THE CONDITION  
THAT TAXES ARE PAID TO THE ARIZONA DEPARTMENT OF REVENUE AS ACCRUED UNDER  
PROVISIONS OF ARS TITLE 42, CHAPTER 8, ARTICLE 1.

ISSUED  
TO

WESTAIR GASES & EQUIPMENT  
PO BOX 620238  
SAN DIEGO, CA 92162-0338

ALL communications  
and Reports MUST  
REFER to this  
LICENSE NO.

14-037902-P

17 BUSINESS CODE

12/01/01 EFFECTIVE DATE

(DBA) WESTAIR GASES & EQUIPMENT  
2444 E. 16TH ST  
YUMA, AZ 85364

11/07/01 PRINT DATE

EXHIBIT C  
TO  
INVITATION FOR BID NO. PW 12-041.2

[References]

See following page.

REFERENCES  
WATER TREATMENT CHEMICALS - LIQUID CARBON DIOXIDE - PW 12-041.2

Provide the following information for three (3) clients for whom Bidder has provided materials or services of similar size and/or scope with the past (36) months. These references will be checked, so make sure all information is accurate and current. Failure to provide three (3) accurate or suitable references may result in disqualification.

1. Company: TRAX International  
Address: US Army Test Center  
City/State/Zip Code: YUMA AZ 85366  
Contact: Karen Morse Karen.morse@us.army.com  
Telephone Number: 928-328-6510  
Date of Contract Initiation: 2003- Present

Project Description:  
(Include Final Costs) Provide LIQUID CO<sub>2</sub> TO THE BASE  
SALES OF \$350-375,000/YR

2. Company: City of San Diego Water Treatment Plant  
Address: 10710 LAKE SCRIPPS DR  
City/State/Zip Code: SAN DIEGO CA 92131  
Contact: Richard Hopson rhopson@san-diego.gov  
Telephone Number: 858-635-7307  
Date of Contract Initiation: 2010 - Present

Project Description:  
(Include Final Costs) Provide NSF60 LIQUID OXYGEN FOR WATER  
Treatment Plant SALES OF \$132,000/YR

3. Company: CITY OF SAN DIEGO WATER TREATMENT PLANT  
Address: 5540 KIOWA DR  
City/State/Zip Code: LA MESA, CA 91942  
Contact: MICHAEL SIMPSON msimpson@san-diego.gov  
Telephone Number: 858 668 2773  
Date of Contract Initiation: 2010 - Present

Project Description:  
(Include Final Costs) Provide NSF 60 LIQUID OXYGEN FOR  
WATER TREATMENT PLANT

SALES OF <sup>C-1</sup> \$204,000/YR

EXHIBIT D  
TO  
INVITATION FOR BID NO. PW 12-041.2

[Acknowledgment of Addenda received, if any]

See following page(s).

I have read, received and  
acknowledge all questions,  
replies, addendums, etc pertaining  
to the IFB, if any.

Michael M. Crader

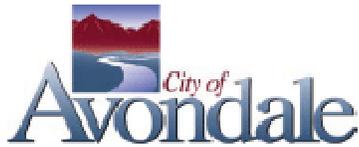
4/24/12

WestAir Tools & Equipment

EXHIBIT E  
TO  
INVITATION FOR BID NO. PW 12-041.2

[Purchase Orders]

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



# CITY COUNCIL REPORT

**SUBJECT:**

Professional Services Agreements for Rotational Towing Services

**MEETING DATE:**

June 4, 2012

**TO:** Mayor and Council  
**FROM:** Kevin Kotsur, Police Chief (623) 333-7201  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve Professional Services Agreements with Alliance Towing, LLC, Coldwater Towing, LLC, E-Z Towing & Recovery, LLC and Go Tow Services, LLC for rotational towing services and authorize execution of the necessary documents.

**BACKGROUND:**

For the past five years, the City of Avondale has maintained a rotational towing service contract with E-Z Towing and Western Towing. The current contract(s) are scheduled to expire on June 14, 2012. In order to continue to provide fair and equitable towing services for the City of Avondale, our citizens and visitors, and the tow companies interested in providing their services to the City of Avondale, two towing companies have met all the qualifications to be considered for this rotational towing service contract, Coldwater Towing and E-Z Towing. In addition, Alliance and Go Towing also met the qualifications with the exception of a final lot inspection (pending impound lot work and/or permit completion).

**DISCUSSION:**

The City of Avondale issued a Request for Proposals seeking to secure towing services for private tows and city tows which include, but not limited to the removal of wrecked vehicles from collision scenes, vehicles constituting traffic hazards, those vehicles where the driver has been placed under arrest, those vehicles declared abandoned and for city vehicles which have become disabled. There were numerous areas where interested vendors needed to be in full compliance in order to be considered and then awarded this one-year contract. These areas of compliance support the City's objectives related to providing quality internal and external customer service, as well as providing efficient and professional service. Examples of these areas of compliance include:

1. **Equipment**- Each tow company shall provide sufficient tow trucks of various sizes to service the City. These trucks must be equipped with the necessary equipment to prevent damage to towed vehicles and other necessary equipment to clean up accident scenes. All tow trucks must be equipped with a two-way radio system with 24 hour dispatching.
2. **Storage Facilities**- Each storage facility shall provide a fenced, lighted storage area with a secure fence at least six feet in height which provides adequate security. Each tow company shall maintain a storage yard located no further than a ten mile driving distance from Avondale City Hall. Additionally, there must be a segregated area of the facility for the storage of vehicles designated as "HOLDS" by the Avondale Police Department.
3. **Business Hours**- The tow company shall staff its vehicle storage facility during normal business hours for the purpose of vehicle release or appraisal. After hours, the tow company shall have a telephone number prominently posted on their storage location for after-hour release of vehicles.

4. **Fees**- Each tow company has submitted a fee proposal including all fees related to the towing and storage of vehicles. Towing fees are based on an hourly rate. Any subsequent charges after the first hour shall be imposed after the expiration of each 15 minutes period. The hourly rate may be charged beginning at time of dispatch and ending at the time the vehicle is off hook at the storage facility. Storage charges are to be imposed for each 24-hour period beginning at the time when the vehicle is off hook at the storage facility.
5. **Response Time** - The tow company shall respond and arrive at the requested scene within 20 minutes from receipt of a request for tow within the boundaries of the City, including county islands surrounded by the City boundaries. This covers the majority of all tow requests.
6. **Billings and Payment**- Each tow company must accept as a method of payment; cash, debit cards and credit cards, and may accept checks.

The rotation will work as follows: Prior to the final approval of Alliance and Go Towing, Coldwater Towing and E-Z Towing will initially be entered into the police CAD system alphabetically: Coldwater Towing and E-Z Towing. Coldwater Towing will be contacted first. If the contractor responds according to the contract, once the tow is completed, they will move to the bottom of the Qualified List. E-Z Towing would then move up to the #1 spot.

Upon successful completion of final lot inspections (pending impound lot work and/or permit completion) of Alliance and Go Towing, the tow companies will be entered into the police CAD system alphabetically: Alliance Towing, Coldwater Towing, E-Z Towing and Go Towing. Alliance Towing will be contacted first. If the contractor responds according to the contract, once the tow is completed, they will move to the bottom of the Qualified List. Coldwater Towing would then move up to the #1 spot, followed by E-Z Towing, and followed by Go Towing, followed by Alliance Towing.

If the contractor is unable to be contacted, fails to respond after acknowledging a call, fails to respond within the allotted time, or is unable to respond for any reason, the contractor will lose the tow and be placed at the bottom of the Qualified List. If such circumstances become a recurring problem, the contractor may face suspension or removal from the Qualified List.

Additionally, any and all complaints received from citizens and police employees related to the services provided by an individual tow company will be sent to the City's Procurement Officer for review. If the complaint is substantiated, it will be logged and over the course of time, the City of Avondale has the right to discontinue its contract with an individual tow company for multiple substantiated complaints, to include, but not limited to: poor customer service, extended response times, etc.

#### **BUDGETARY IMPACT:**

There are no financial obligations to the City of Avondale with this recommendation.

#### **RECOMMENDATION:**

Staff recommends Council approval the Professional Services Agreements with Alliance Towing, LLC, Coldwater Towing, LLC, E-Z Towing & Recovery, LLC and Go Tow Services, LLC for rotational towing services for a one year initial term which offers four, one-year successive renewal options and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

#### **ATTACHMENTS:**

Click to download

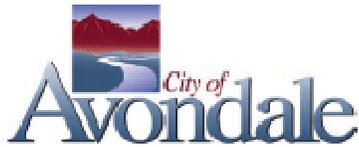
- [PSA - Alliance Towing](#)
- [PSA - Coldwater Towing](#)
- [PSA - E-Z Towing](#)
- [PSA - Go Towing](#)

## PSA – Alliance Towing

## PSA – Coldwater Towing

PSA – E-Z Towing

PSA – Go Tow



# CITY COUNCIL REPORT

**SUBJECT:**

First Amendment to Professional Services Agreement - Tightline Services, Inc. (dba Goosebump Marketing & Events)

**MEETING DATE:**

June 4, 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 approve an amendment to the Professional Services Agreement with Tightline Systems, Inc. (d.b.a. Goosebump) in an amount not to exceed \$12,500 annually and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

**BACKGROUND:**

On September 7, 2011 the City of Avondale entered into an agreement with Tightline Systems, Inc. (Goosebump) for services relating to event coordination for the 2012 Arizona Centennial Parade and Festival jointly hosted by the Cities of Avondale and Goodyear and a separate Avondale Birthday Celebration hosted by the City of Avondale only.

On February 13, 2012 the original agreement was amended as follows:

- Provide for additional compensation to the Contractor for additional Services related to securing sponsorships for the events
- Provide for reimbursement of certain expenses incurred in performance of the Services as necessary for successful execution of the Parade and Festival.

**DISCUSSION:**

The Centennial Parade and Festival and the Birthday celebration were funded for one year only. However, the event was very successful and both the City of Avondale and the City of Goodyear have committed to fund the event in future years and have included the event in their tentatively adopted budgets for FY 12-13. Goosebump was selected through a competitive process and exceeded all of staff's expectations.

Staff from both cities would like to continue to use Goosebump as the event coordinator for the event. Staff recommends that council approve the amended agreement as follows:

- Extend the contract for 3 years with 2 one year extensions
- Maintain the contract base service amount at \$10,000 annually
- Exclude the birthday celebration as a part of the agreement
- The sponsorship fee will change from a flat \$2000 to a onetime sponsorship fee of \$500 annually plus 15% of all sponsorships, calculated to include both in-kind and cash sponsorships
- Goosebump will receive an administrative fee equal to 3% of all costs related to the management of the event (not to exceed \$2,000).

- Amend section VI. 4. Date Changes: contractor shall not be responsible to pay expenses or fees if the date of the event changes through no fault of the contractor

**BUDGETARY IMPACT:**

The total cost of the agreement will not exceed \$12,500 annually or \$62,500 over the lifetime of this agreement.

Funding for this amendment has been approved as part of the City of Avondale FY 2012-2013 Annual Budget. Funds are available through the following line item:

PRLD-Recreation-Special Events: 101-8125-00-6181

**RECOMMENDATION:**

City Council will consider a request to approve an amendment to the Professional Services Agreement with Tightline Systems, Inc. (d.b.a. Goosebump) in an amount not to exceed \$12,500 annually and authorize the Mayor or the City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

**ATTACHMENTS:**

Click to download

[PSA](#)

**FIRST AMENDMENT  
TO  
AMENDED AND RESTATED  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
TIGHTLINE SYSTEMS, INC.**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT (this "First Amendment") is made as of June 4, 2012, between the City of Avondale, an Arizona municipal corporation (the "City") and Tightline Systems, Inc., an Arizona corporation d/b/a Goosebump Marketing & Events (the "Contractor").

RECITALS

A. The City and the Contractor entered into that certain Agreement dated September 7, 2011 (the "Original Agreement") relating to event coordination services (the "Services") for 2012 Arizona Centennial Events jointly hosted by the Cities of Avondale and Goodyear and a separate Avondale Birthday Celebration hosted by the City (collectively, the "2012 Events").

B. The Original Agreement was subsequently amended and restated on February 13, 2012 (the "Amended and Restated Agreement"), to (i) modify the Scope of Work with respect to the Services necessary for successful execution of both the 2012 Events, (ii) provide for additional compensation to the Contractor for additional Services related to the 2012 Events and (iii) provide for reimbursement of certain expenses incurred in performance of the Services as necessary for successful execution of the 2012 Events. The Original Agreement and the Amended and Restated Agreement are collectively referred to herein as the "Agreement."

C. The City has determined that additional event coordination services are necessary for an annual parade (the "Parade") and festival (the "Festival") hosted jointly with the City of Goodyear (the "Additional Services"). The Parade and the Festival are collectively referred to herein as the "Annual Events."

D. The City and the Contractor desire to enter into this First Amendment to (i) extend the term of the Agreement, (ii) modify the Scope of Work to include the Additional Services necessary for the Annual Events and (iii) increase the compensation to the Contractor as consideration for the Additional Services.

AGREEMENT

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

1. Term of Agreement. The term of the Agreement is hereby extended and shall remain in full force and effect until June 3, 2013 (the "Initial Term"), unless terminated as

otherwise provided pursuant to the terms and conditions of the Agreement. After the expiration of the Initial Term, the 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 and (ii) 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, 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. The Contractor shall provide the Additional Services as set forth in the Additional Scope of Work, attached hereto as Exhibit 1 and incorporated herein by reference.

3. Compensation. The City shall pay Contractor an amount not to exceed \$12,000.00 for the Additional Services as more particularly set forth in the Additional Scope of Work, attached hereto as Exhibit 1, inclusive of (i) an amount not to exceed \$10,000.00 as fees for the Additional Services related to the Annual Events and (ii) an administrative fee equal to three percent of all Reimbursable Expenses expended with respect to management of the Annual Events up to an amount not to exceed \$2,000.00. Additionally, in the event that the Contractor obtains sponsorships for the City in support of the Annual Events, the City shall pay the Contractor (i) a single payment sponsorship acquisition fee of \$500.00 and (ii) an amount equal to fifteen percent of the sponsorships obtained by the Contractor, calculated to include both in kind and cash sponsorships.

3.1 Expenses. In addition, the Contractor shall submit requests and receive reimbursement for certain Events-related expenses, including entertainment services, equipment and barricade services, as more particularly set forth in the Additional Scope of Work (the “Reimbursable Expenses”). In no event shall the City be obligated to pay an amount in excess of \$30,500.00 for Reimbursable Expenses. Reimbursable Expenses must be authorized in advance and in writing by the City. Requests for payment of Reimbursable Expenses must be accompanied by substantiating data reasonably acceptable to the City.

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

5. Non-Default. By executing this First Amendment, the Contractor affirmatively asserts that (i) the City is not currently in default, nor has been in default at any time prior to this First Amendment, under any of the terms or conditions of the Agreement and (ii) any and all claims, known and unknown, relating to the Agreement and existing on or before the date of this First Amendment are forever waived.

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

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]

**“Contractor”**

TIGHTLINE SYSTEMS, INC., an Arizona corporation  
d/b/a Goosebump Marketing & Events

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2012,  
by \_\_\_\_\_, as \_\_\_\_\_ of TIGHTLINE SYSTEMS, INC., an Arizona  
corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

(affix notary seal here)

EXHIBIT 1  
TO  
FIRST AMENDMENT  
TO  
AMENDED AND RESTATED  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
TIGHTLINE SYSTEMS, INC.

[Additional Scope of Work]

See following pages.

## **ADDITIONAL SCOPE OF WORK**

The Contractor shall provide event coordination services (the “Additional Services”) for annual events jointly hosted by the Cities of Avondale and Goodyear including: (i) a Parade and (ii) a Festival (each, an “Annual Event,” collectively, the “Annual Events”).

1. General Obligations. Contractor’s event coordination Additional Services shall include management and oversight of all phases of development, planning, production, enhancement and operation of all aspects of the Annual Events. These duties include, but are not limited to:

- Creating and/or updating budgets and timelines.
- Coordinating Annual Events layout(s).
- Securing/providing all necessary equipment.
- Securing/providing all vendors and vendor needs (security, décor, audio-video, food & beverage, hospitality room, breakfast catering, etc.)
- Securing all necessary permits (event, liquor etc.).
- Coordinating with City departments and property managers.
- Coordinating Annual Events committee meetings.
- Coordinating and scheduling Annual Events volunteers.
- Set-up and tear down of the Annual Events.
- Assisting with other related events, as deemed necessary by the City.
- Working with multiple City Departments as it pertains to Annual Event needs.
- Performing duties of coordinator through planning, day of Annual Event(s) and after the Annual Event(s) (final Annual Events wrap-up).
- Scheduling, hiring and oversight of all Annual Events entertainment, performances and stage areas.
- Coordinating and organizing all parade entries.
- Working with marketing staff to communicate all Annual Events details for website and/or other marketing efforts.
- Assisting with development and solicitation of sponsorship opportunities with respect to the Annual Events.

2. Annual Events Sponsorship. Contractor will recommend, promote and coordinate Annual Events sponsorship involvement and provide appropriate recognition of the secured sponsorships.

3. Annual Events Planning and Schedule. Contractor shall provide City with a complete Annual Events Plan which details the Annual Event schedules. The Annual Events Plan shall list all subcontractor contacts. Contractor shall oversee the schedule and rotation of the events entertainment and any proposed master of ceremony schedule. The Annual Events Plan are subject to City review and approval. The Annual Events Plan is due to City Representative no later than November 1 of the then-current Term.

4. Additional Responsibilities; Reimbursable Expenses for Annual Events. With respect to the Annual Events, the Contractor shall be responsible for hiring/providing, paying the costs of any performance entertainment, exhibitor(s) and/or vendor(s) (the “Subcontractor(s)”) as set forth herein. The City shall reimburse the Contractor for Annual Events-related Subcontractor services as set forth below and certain related expenses (the “Reimbursable Expenses”); provided, however, that no reimbursement for expenses shall be made without prior, written permission of the City. In no event shall the City be obligated to pay an amount in excess of \$30,500.00 for Reimbursable Expenses.

4.1 Entertainment. Contractor shall plan, hire/provide, coordinate and oversee performance entertainment activities and performance entertainment event stage(s) and equipment set-up as necessary to complete a professional and successful entertainment program for the Annual Events.

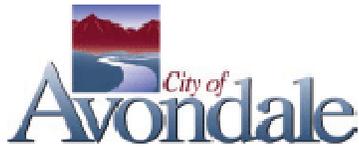
4.2 Crowd Management. Contractor shall make arrangements for crowd management equipment, personnel and police officer staffing onsite for the Annual Events.

A. Annual Events Staffing. Contractor shall coordinate with City staff to determine the appropriate numbers of workers are staffed in various locations to ensure the safety of the Annual Events.

B. Safety and Permitting. Contractor shall work with the local fire and police agencies to ensure the Annual Events site(s) meets all public safety requirements and to secure that all necessary permits and licenses. The Contractor shall ensure that local emergency services are aware of the Annual Events. Additionally, the Contractor shall provide safety services as deemed necessary by the City, including hiring/providing appropriate barricades, rope lines, traffic controls and pedestrian walk ways to be used for crowd management.

5. Financial Reporting. Contractor shall provide an Annual Events accounting report for all budgetary/sponsorship revenues and expenditures pursuant to generally accepted accounting principles as requested by the City. Such report(s) shall include copies of invoices and/or receipts for Reimbursable Expenses to ensure accuracy of bills. At a minimum, a final report and all supporting documentation shall be submitted to the City within ten business days after conclusion of the Annual Events. Reports shall be submitted electronically either via email or secure server. Reports shall be provided in MS Excel and/or as PDF documents when requested. Other reports may be requested on an as-needed basis. The City reserves the right to request modification to the formats as the need arises.

6. Date Changes. In the event the City chooses to change the date of the Annual Events, every effort will be made by Contractor to transfer all City staff, subcontractors, equipment, and Annual Events support, to the new date.



# CITY COUNCIL REPORT

**SUBJECT:**  
Purchase and Sale Agreement - 545657, Inc.

**MEETING DATE:**  
June 4, 2012

**TO:** Mayor and Council  
**FROM:** Daniel Davis, Economic Development Director (623) 333-1411  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a Purchase and Sale Agreement authorizing the purchase of approximately 9.9 acres of real property generally located south of Roosevelt Street, north of Van Buren Street and east of Avondale Boulevard from 545657, Inc. in the amount of \$1,500,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**DISCUSSION:**

On July 19, 2010, City Council adopted an Ordinance authorizing the acquisition of the subject property. The implementation and development of City Center continues to be a primary focus for Economic Development. The successful beginning for the American Sports Center facility and retail development continues to create additional development opportunities for the city. Staff has been able to negotiate a Purchase and Sale Agreement for approximately 9.9 acres of property from 545657, LLC on the adjacent property north of the Randall McDaniel Sports Complex.

The acquired property will enable the City of Avondale to extend 114th Avenue and Park Avenue from Dale Earnhardt Jr. Drive to Roosevelt Street providing improved traffic circulation throughout City Center and enhancing pedestrian connectivity from the existing hotels and restaurants. The property has been identified as a future Park and Ride/Transit Center and may be utilized for supplemental parking in the near term.

**BUDGETARY IMPACT:**

Funding for the purchase of the property is included in the FY 2012-13 Budget in the transit fund (Fund 333).

**RECOMMENDATION:**

Staff recommends that the City Council approve a Purchase and Sale Agreement authorizing the purchase of approximately 9.9 acres of real property generally located south of Roosevelt Street, north of Van Buren Street and east of Avondale Boulevard from 545657, Inc. in the amount of \$1,500,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**ATTACHMENTS:**

Click to download

[Purchase and Sale Agreement](#)

**PURCHASE AND SALE AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.**

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement") is made as of \_\_\_\_\_, 2012 (the "Effective Date"), between **545657, INC.**, a Washington corporation ("Seller") and the **CITY OF AVONDALE**, an Arizona municipal corporation (the "Buyer" or the "City").

In consideration of the covenants, terms, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Purchase and Sale of Property. Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions contained herein, certain rights to real property located in Maricopa County, Arizona, consisting of 9.9 acres of real property as generally described and depicted in Exhibit A-1, attached hereto and incorporated herein by reference together with all improvements, water rights, air rights, mineral rights, privileges and appurtenances thereto, including the right to any easements or rights-of-way adjacent to the real property and abandoned after the Escrow Opening Date (collectively, the "Acquisition Property").

2. Purchase Price. The total price to be paid for the Acquisition Property (the "Purchase Price") is \$1,500,000.00. Buyer will pay \$10,000 (the "Deposit") within five days after the Effective Date to an interest bearing escrow account with Escrow Agent, with interest accruing to Buyer. Such interest shall be included in any refund of the Deposit hereunder. The balance of the Purchase Price after application of any deposits made pursuant to this Agreement will be paid through the Escrow upon Closing by certified check or Federal wire transfer. Contemporaneously with the execution and delivery of this Agreement, Buyer has paid to Seller, as further consideration for this Agreement, the receipt of which Seller hereby acknowledges, the sum of \$100.00 (the "Independent Consideration"), in addition to the Deposit and the Purchase Price and independent of any other consideration provided hereunder, which Independent Consideration is fully earned by Seller and is not refundable under any circumstance.

3. Open and Close of Escrow.

a. Escrow Agent and Instructions. Promptly after execution of this Agreement by the parties, an escrow (the "Escrow") shall be opened with Stewart Title & Trust of Phoenix, 2930 East Camelback Road, Suite 210, Phoenix, Arizona 85016, Attn: Sue Leonard ("Escrow Agent") to facilitate the consummation of the sale of the Acquisition Property pursuant to this Agreement. This Agreement constitutes escrow instructions to Escrow Agent; however, if required by Escrow Agent, Buyer and the Seller shall execute and deliver to the Escrow Agent printed form escrow instructions ("Escrow Instructions") consistent with this Agreement. In the event of any conflict between the provisions of the printed form Escrow Instructions and this Agreement or any deed, instrument or document in connection with the transactions contemplated herein, the provisions of this Agreement or such deed, instrument or document shall control. No provision of the Escrow Instructions shall excuse any non-performance by either party. The assignment by Escrow Agent of an escrow number to this

transaction and the opening of the Escrow by Escrow Agent shall constitute Escrow Agent's acceptance of the instructions to, and other obligations of, Escrow Agent as set forth in this Agreement and the Escrow Instructions.

b. Escrow Opening Date. Escrow Agent shall notify the parties in writing as to the date on which it received fully executed copies of this Agreement, which date is called the "Escrow Opening Date."

c. Closing. The sale of the Acquisition Property for the consideration set forth in this Agreement and consummation of the transactions contemplated by this Agreement (the "Closing") shall occur on a date that is 90 days after the Escrow Opening Date at the office of Escrow Agent or at such other time and location as the parties may agree, which date shall be referred to as the "Closing Date." The Closing Date shall be deemed to be the date on which the parties shall have performed all actions necessary for the closing of the transaction, without regard to the date on which Escrow Agent actually records the deed or other closing documents. Seller and Buyer hereby authorize Escrow Agent to execute, at Closing, an affidavit of real property value as required by Arizona law.

d. IRC Reports. Escrow Agent, as the party responsible for closing the transactions contemplated hereby within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code"), shall file all necessary information reports, returns and statements (collectively the "Reports") regarding the transactions as may be required by the Code, including, but not limited to, the reports required pursuant to Section 6045 of the Code. Escrow Agent further agrees to indemnify and hold Buyer, Seller and their respective attorneys harmless for, from and against any and all claims, costs, liabilities, penalties, or expenses resulting from Escrow Agent's failure to file the Reports that Escrow Agent is hereby required to file.

e. Prorations and Escrow Fees. Escrow fees shall be paid equally by the parties. Special assessments or similar liens for work or improvements shall be paid by Seller. Real property, personal property and ad valorem taxes and other state or local taxes and charges affecting the Acquisition Property shall be prorated on the basis of the current year's rate and valuation, provided, that if the rate of, or valuation for, any such taxes, charges or assessments has not been fixed before the Closing Date, then the adjustment thereof at the Closing shall be upon the basis of the rate for the preceding year applied to the latest assessed valuation, and the same shall be re-prorated outside of Escrow when the actual figures therefor are available. If such an adjustment is required, the party required to reimburse the other shall make payment within ten days after request for reimbursement. Escrow Agent shall have no obligation with respect to such post-closing adjustment. Except as otherwise provided in this Agreement, all other closing costs shall be paid one-half by Seller and one-half by Buyer. Seller shall not, without the prior written consent of Buyer, consent to the imposition of any assessment against the Acquisition Property if such assessment would be required to be paid, in whole or in part, by Buyer. Seller shall give Buyer timely written notice of any proposed governmental action, which is not an action of Buyer, of which the Seller becomes actually aware.

4. Survey. Buyer may obtain a survey of the Acquisition Property (the "Survey") suitable to Buyer and Escrow Agent, containing the certification of the surveyor of the number of net square feet contained in the Acquisition Property, exclusive of any land lying within roadways, streets, highways, alleys, canals, wetlands, flood plains or rights of way or areas that are, by dedication or easement or use over time, open to public use. The Survey will show each Schedule B exception contained in the Title Report (defined below) and its effect on the

Acquisition Property. Buyer shall receive a Purchase Price credit at Closing for the cost of the Survey.

5. Condition of Title.

a. Title Report. Promptly after opening of Escrow, Escrow Agent shall deliver to Buyer and to Seller a preliminary title report or commitment (including matters revealed by an inspection of the Acquisition Property) dated no earlier than the Escrow Opening Date leading to the issuance of an ALTA extended owner's policy of title insurance in the amount of the Purchase Price insuring Buyer's interest in the Acquisition Property, together with readable copies of all instruments of record referred to therein (the "Title Report").

b. Title Review Period. Buyer shall have until 30 days after receipt of the Title Report (the "Title Review Period") within which to object in writing to Seller and Escrow Agent to the legal description or any matters affecting title shown on the Title Report, it being agreed that the Purchase Price is based upon free and clear title and only such other exceptions thereto as may be approved by Buyer, in its sole and absolute discretion. Buyer's failure to timely object to any of the matters affecting title shown on the Title Report within the Title Review Period will constitute Buyer's rejection of title subject to those matters.

c. Title Objections. If Buyer objects to any matters affecting title shown on the Title Report, Seller shall have until the Closing Date to cure any matters objected to by Buyer, but shall have no obligation to do so. If Seller does not cure those matters objected to by Buyer by the Closing Date, Buyer may, in its sole discretion, elect to (1) waive the matters objected to and close Escrow subject thereto or (2) cancel this Agreement by notice to Seller and Escrow Agent, whereupon the Escrow and this Agreement shall automatically terminate and neither party shall thereafter have any further obligations or liability to the other under this Agreement except as herein expressly provided for otherwise. If this Agreement and Escrow are terminated because Seller has failed to cure the matters objected to by Buyer or has elected not to attempt to cure such objected matters, then Escrow Agent shall without further instructions from either party return the Deposit to Buyer and any interest earned thereon.

d. Amended Title Report. Buyer shall have until five business days after receipt of an amended Title Report disclosing new matters affecting title to the Acquisition Property (and the Closing Date shall automatically be extended for such five business-day period, if appropriate) within which to object in writing to Seller and Escrow Agent to any matters affecting title set forth therein; whereupon Buyer shall have the same rights hereunder as described with respect to the objections to the first Title Report described in subsection 5(c) above. If Seller does not cure those matters objected to by Buyer within two business days after notice of Buyer's objection (and, if necessary, the Closing Date shall be appropriately extended until the expiration of the five business day period hereinabove provided and this two business day period; provided, however, that the Closing Date shall not be later than July 31, 2012), then Buyer may, in its sole and absolute discretion, elect either of the remedies set forth in subsection 5(c) above; provided, however, that, notwithstanding anything in this Agreement to the contrary, Buyer's rights and remedies shall not be limited with respect to any breach of Seller's covenant set forth in the following sentence. Seller covenants that between the Escrow Opening Date and the Closing Date it will not intentionally cause any material matter to arise or be imposed upon the Acquisition Property affecting title thereto as to which Seller does not cure or remove before Closing.

6. Title Insurance. Buyer's obligation to close Escrow is conditioned upon the commitment of Escrow Agent, or its affiliated title insurer, to issue to Buyer, at or promptly

following the Closing, an ALTA extended coverage owner's policy of title insurance insuring title to the Acquisition Property in Buyer in the amount of the Purchase Price, the policy to be subject only to the usual printed exceptions, conditions and stipulations in the form of policy and matters affecting title shown on the Title Report not objected to by Buyer in accordance with Section 5 hereof. Buyer shall pay the portion of the premium for an extended coverage owner's policy that is in excess of what the premium would have been for a standard owner's policy, and Seller shall pay for the costs of the balance of the premium. Seller and Buyer agree to comply with all reasonable requirements imposed by the title insurer as a condition to issuance of the policy (excluding matters affecting title which, by notice given to Escrow Agent and the other party within ten days after delivery of the Title Report, either Buyer or Seller reasonably determines should more properly be shown in the exceptions to title portion of the Title Report).

7. Conveyancing and Closing Documents.

a. By Seller. On the Closing Date, Seller shall deliver to Buyer:

(1) A special warranty deed, in the form attached hereto as Exhibit B (the "Special Warranty Deed"), conveying to Buyer title to the Acquisition Property, together with an executed affidavit of value (the "Affidavit of Value"), if applicable.

(2) An affidavit affirming under penalty of perjury that Seller is not a "foreign person" as such term is defined in Section 1445(f)(3) of the Code. In the event Seller does not furnish such affidavit, Buyer may withhold (or direct Escrow Agent to withhold) from the funds due to Seller at the Closing, an amount equal to the amount required to be so withheld pursuant to Section 1445(a) of the Code, and such withheld funds shall be deposited with the Internal Revenue Service as required by Section 1445(a) and the regulations promulgated thereunder. The amount withheld, if any, shall nevertheless be deemed to be part of the Purchase Price paid to Seller.

(3) If applicable, the original, if available, or a photocopy of the Certificate of Grandfathered Groundwater Rights relating to the Acquisition Property and any instruments reasonably required to transfer any water rights relating to the Acquisition Property.

b. By Escrow Agent. On the Closing Date, Escrow Agent shall:

(1) Record or file, as appropriate, the closing instruments hereunder in the following order: (A) the Special Warranty Deed and (B) the Affidavit of Value, if applicable.

(2) Deliver the title insurance policy, as set forth in Section 6 of this Agreement, to the Buyer.

(3) Provide each party with a complete set of closing documents as they become available to Escrow Holder.

8. General Tests. Buyer, its agents and designees, shall have the right to enter upon the Acquisition Property at all times prior to the Closing Date for the purposes of inspecting the Acquisition Property and making and obtaining drainage, environmental, soil and engineering tests, and performing other tests, studies or inspections desired by Buyer (the "Inspections"). Notwithstanding the foregoing, prior to conducting any invasive testing on the Acquisition Property, Buyer will obtain the prior written consent of the Seller; provided however, that such consent of the Seller shall not be unreasonably withheld, conditioned or denied.

Notwithstanding anything to the contrary herein the reports relating to such Inspections shall not be finalized without (a) delivery of a preliminary report to the Seller; and (b) Seller's prior written approval of such preliminary report, provided however, that such approval of the Seller shall not be unreasonably withheld, conditioned or denied. Buyer shall deliver a copy of all final reports relating to the Inspections to Seller and shall certify such final report to Seller. Buyer agrees to indemnify, defend and hold harmless Seller for, from and against all claims, liabilities and damages, including attorneys' fees, for personal injury, physical damage to property or mechanics' or materialmen's liens which may be asserted against Seller as a result of Buyer's entry onto the Acquisition Property and inspection or testing thereof. Buyer shall, after its entry and testing, restore the Acquisition Property to substantially the same condition that existed prior to such entry and testing.

9. No Alterations to Acquisition Property. Seller shall make no modifications or alterations to the Acquisition Property between the Escrow Opening Date and the Closing Date, without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. As of the Closing Date, there will be no outstanding contracts made by Seller for any improvements to the Acquisition Property which have not been fully paid, and Seller shall cause to be discharged or bonded in accordance with law any mechanics' or materialmen's liens arising from any labor or material furnished prior to the Closing Date.

10. Representations of Seller. Seller represents and warrants to, and covenant with Buyer that:

a. Seller's Ownership. Seller owns fee simple title to the Acquisition Property. Seller has full authority to sell the Acquisition Property pursuant to the terms of this Agreement. The Acquisition Property is not subject to any unrecorded mortgages, liens, defects, adverse claims, encroachments, financing statements or encumbrances.

b. Seller Authority to Execute. The person executing this Agreement on behalf of Seller is duly authorized to do so and thereby bind Seller hereto.

c. Seller Company Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington, and has full power and authority to enter into and perform this Agreement in accordance with its terms. All proceedings of Seller to consummate the transaction contemplated by this Agreement and all documents and instruments required to be executed and delivered hereunder by Seller have been duly and validly authorized, and upon execution and delivery by Seller will constitute the valid and binding obligations of Seller in accordance with their terms.

d. Claims. There are no pending or threatened claims or litigation affecting the Acquisition Property. If Seller becomes aware of any of the foregoing after the Escrow Opening Date (whether arising before or after the Escrow Opening Date), but prior to the Closing Date, Seller shall give prompt written notice thereof to Buyer prior to the Closing Date.

e. Violations of Law; Defaults; Litigation; Unrecorded Arrangements. There is no violation of any laws, ordinances, rules or regulations with respect to the Acquisition Property, no default exists under any covenant, condition, restriction or easement applicable to the Acquisition Property, Seller has not received written notice from any governmental or other agency of any violation of any laws or ordinances with respect to the Acquisition Property, no litigation is pending, threatened or likely with respect to the Acquisition Property, Seller's interest therein, or that would inhibit Buyer from obtaining clear title to the Acquisition Property; and except as disclosed to Buyer in writing, there are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal affecting the Acquisition

Property in any way. If Seller becomes aware of any of the foregoing after the Escrow Opening Date (whether arising before or after the Escrow Opening Date), but prior to the Closing Date, Seller shall give prompt notice thereof to Buyer prior to the Closing Date.

f. No Special Assessment. Seller has received no written notice that there any special assessment actions being contemplated by any governmental authority.

g. Hazardous Substance. Except as disclosed in those certain (a) Phase I Environmental Site Assessment dated November 8, 2007 (AMEC Job No. 7-114-003042) and (b) Final Phase II Environmental Site Assessment dated November 24, 2008 (AMEC Job No. 7-114-003042), Seller represents and warrants that (i) no portion of the Acquisition Property is being used or has been used at any previous time for the treatment, storage, disposal, or processing of Hazardous Materials, as such term is defined below and (ii) there are no ongoing requirements or orders of any department of environmental resources or similar government agency for environmental cleanup with respect to the Acquisition Property. "Hazardous Materials" shall mean those materials, substances, wastes, pollutants or contaminants which are deemed to be hazardous, toxic or radioactive and shall include but not be limited to those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or other similar designations in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act 49 U.S.C. § 1801 *et seq.*, and any other federal, state or local governmental statutes, laws, codes, ordinances, rules, regulations and precautions, or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) petroleum products or byproducts, or petroleum, including crude oil or any fraction thereof, or natural gas, natural gas liquids, liquefied natural gas, synthetic gas or mixtures of synthetic gas and natural gas; (iii) asbestos; (iv) polychlorinated biphenyls; and (v) pesticides or herbicides.

h. Underground Storage Tanks. The Acquisition Property does not contain and has never contained any underground storage tanks containing petroleum products or wastes or other hazardous substances regulated by 40 C.F.R. § 280 and/or other applicable, federal, state or local laws, rules and regulations and requirements.

i. No Prior Soil Remediation. The Acquisition Property has never been subject to soil remediation.

j. Wetlands. Seller has received no written notice that the Acquisition Property contains any areas which could be characterized as disturbed, undisturbed or man made wetlands pursuant to federal, state or local laws, regulations, rules or procedural manuals or as "waters of the United States" pursuant to the Clean Water Act, as amended, or rules or regulations pursuant thereto, whether such characterization reflects current conditions or historic conditions which have been altered without the necessary permits or approvals.

Except to the extent Seller gives Buyer notice as hereinbelow provided, Seller represents and warrant to, and covenant with, Buyer that the foregoing representations and warranties will be true and correct as of the Closing Date. The foregoing representations and warranties shall survive the Closing and any investigation made by or on behalf of Buyer. Seller agrees to take no voluntary and intentional actions or omissions to act that would cause any of its representations, warranties or covenants in this Agreement to become untrue. If, after the Escrow Opening Date, Seller becomes aware that any of its representations, warranties or covenants are, or have become, untrue (whether occurring before or after the Escrow Opening Date), with or without the voluntary and intentional act or omission to act of Seller, then Seller shall immediately give written notice of such fact to Buyer. Within ten days after receipt of any

such notice from Seller (and, if necessary, the Closing shall be appropriately extended until the expiration of the ten-day period at Buyer's election), Buyer may, in its sole and absolute discretion and without obligation to do so, cancel this Agreement, in which event this Agreement and the Escrow shall automatically terminate and neither party shall thereafter have any further obligations or liability under this Agreement except as herein expressly provided for otherwise.

11. Conditions to Buyer's Obligation to Close. The Buyer's obligation to purchase the Acquisition Property from Seller is conditioned upon and subject to the satisfaction (unless waived in writing by Buyer in Buyer's sole and absolute discretion) of each of the following conditions on or before the Closing Date:

a. Warranties True. Seller's representations and warranties in this Agreement shall be true and correct in all respects on and as of the Escrow Opening Date and on and as of the Closing Date as if made on and as of the Closing Date.

b. Conditions Met. Seller shall have performed and complied with all agreements and conditions contained herein required to be performed or complied with by them prior to or at the Closing Date.

c. Documents in Escrow. Seller shall have deposited in Escrow or delivered to Buyer the documents required of Seller pursuant to this Agreement.

d. Title Commitment. Escrow Agent (or its title insurance affiliate, if appropriate) shall have committed to issue to Buyer at or promptly after the Closing the title insurance policy required under this Agreement.

If any of the conditions described in this Section 11 are not satisfied, Buyer, at its election, may (1) cancel this Agreement by notice to Seller and Escrow Agent, whereupon this Agreement and the Escrow shall automatically terminate and neither party shall thereafter have any further obligations or liability to the other hereunder except as herein expressly provided for otherwise, or (2) waive Seller's compliance with the condition and close Escrow subject thereto.

12. Representations of Buyer. Buyer represents and warrants to, and covenants with Seller that:

a. Authorized Signatory. The person executing this Agreement on behalf of Buyer is duly authorized to do so and thereby bind Buyer hereto. Within ten days of the Escrow Opening Date, Buyer shall deposit with Escrow Agent all evidence required by Escrow Agent for title insurance purposes of said person's authority to sign on behalf of and bind Buyer to this Agreement and all closing documents.

b. Municipal Organization. Buyer is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Arizona, and has full power and authority to enter into and perform this Agreement in accordance with its terms. All proceedings of Buyer to consummate the transaction contemplated by this Agreement and all documents and instruments required to be executed and delivered hereunder by Buyer have been duly and validly authorized, and upon execution and delivery by Buyer will constitute the valid and binding obligations of Buyer in accordance with their terms.

13. Conditions to Seller's Obligation to Close. Seller's obligation to sell the Acquisition Property to Buyer pursuant hereto is conditioned upon and subject to the satisfaction (unless waived in writing by Seller) of each of the following conditions on or before the Closing Date.

a. Warranties True. The Buyer's representations and warranties in this Agreement shall be true and correct in all material respects on and as of the Escrow Opening Date and on and as of the Closing Date as if made on and as of the date of the Closing Date.

b. Performance Complete. Buyer shall have performed and complied with all agreements and conditions herein required to be performed or complied with by it prior to or at the Closing Date.

If any of the conditions described in this Section 13 are not satisfied, Seller, in their sole discretion, may (1) cancel this Agreement by notice to Buyer and Escrow Agent, whereupon this Agreement and the Escrow shall be terminated automatically and neither party shall thereafter have any further obligations or liability to the other hereunder except as herein expressly provided for otherwise or (2) waive Buyer's compliance with the condition and close Escrow subject thereto.

14. Seller's Remedies. Except as otherwise expressly provided in this Agreement, if Buyer defaults under this Agreement, Seller's sole and exclusive right and remedy shall be to retain the Deposit as liquidated damages and terminate this Agreement. Seller hereby waives all other remedies. Neither party shall thereafter have any further obligations or liability to the other except as herein expressly provided for otherwise. The parties acknowledge that: (i) it would be impracticable to fix the actual damages suffered by Seller as a result of such default; and (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Seller for such default.

15. Buyer's Remedies. If Seller defaults under this Agreement, Buyer may, at its option, as Buyer's sole and exclusive remedy, either (a) cancel this Agreement in which case the Title Company is irrevocably instructed to return the Deposit, to Buyer, Seller shall be responsible for any escrow cancellation fees and Buyer may recover from the Seller all reasonable expenses paid or incurred by Buyer in connection with this Agreement, (b) pursue a suit for specific performance or (c) waive the default and proceed to Closing.

16. Breach; Cure. Failure or unreasonable delay by the Seller or City to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within five days after written notice thereof from the other Party, shall constitute a default under this Agreement; provided, however, that if the failure is such that more than five days would reasonably be required to perform such action or comply with any term or provision hereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said five day period and diligently proceeds to complete such performance or fulfill such obligation (the "Cure Period"); provided further, however, that no such cure period shall extend beyond the Closing Date, unless otherwise agreed to, in writing, by the parties. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. If a breach is not cured within the Cure Period, then the non-defaulting party shall, except as otherwise expressly provided herein, have all rights and remedies which may be available under law or equity, including without limitation the right to (a) specifically enforce any term or provision of this Agreement, (b) terminate this Agreement or (c) institute an action for damages.

17. Operation of Acquisition Property until the Closing. After the Escrow Opening Date, and prior to the Closing Date and delivery of possession of the Acquisition Property to Buyer, Seller shall make or cause to be made all repairs and replacements required with respect to any part or portion of the Acquisition Property to keep it in its present condition and

shall continue to maintain and operate the Acquisition Property in the normal manner to keep the Acquisition Property in such condition, ordinary wear and tear excepted.

18. Eminent Domain. If, prior to the Closing Date, any of the Acquisition Property is taken by the power of condemnation or eminent domain, or in the event notice is given by any governmental authority of, or an action is commenced with respect to, the taking of any part of the Acquisition Property by the power of condemnation or eminent domain, Seller shall give immediate written notice thereof to Buyer. Buyer may, in its sole discretion and within ten days after receipt of such notice from Seller or prior to the Closing Date, whichever period is shorter, elect to terminate this Agreement by written notice of such election to Seller and Escrow Agent. In the event Buyer elects to cancel this Agreement, neither party shall thereafter have any further obligation or liability to the other except as herein expressly provided for otherwise. If Buyer does not elect to so cancel this Agreement, all condemnation awards relating to the Acquisition Property and rights thereto are hereby assigned to Buyer and shall be paid to Buyer and the Purchase Price shall not be reduced.

19. Risk of Loss. Prior to the Closing Date, the risk of loss resulting from any cause, including, without limitation, fire or other casualty, to the improvements or any property, real or personal, subject to this Agreement shall be that of Seller. Seller shall keep the Acquisition Property insured against casualty until the Closing under its existing insurance policies or replacement policies with the same coverage existing as of the Escrow Opening Date. If, at any time prior to the Closing, the improvements on the Acquisition Property, if any, are destroyed or materially damaged, Buyer may elect (a) to terminate this Agreement and receive a refund of the Deposit, whereupon neither party shall thereafter have any further obligation or liability to the other except as herein expressly provided for otherwise or (b) to close Escrow, in which event all insurance proceeds from Seller's insurance are hereby assigned to Buyer and shall be paid to Buyer within ten days of a demand therefore.

20. Commissions. Seller shall be responsible for the payment of the brokerage fee or commission, payable only upon Closing, to Ray Cashen (Cashen Realty Advisors) pursuant to the terms of a separate agreement. Both parties represent that no other broker is involved in this Agreement and each party indemnifies the other against brokerage or commission claims arising out of the indemnifying party's actions.

21. Purchase of Acquisition Property Under Threat of Condemnation. The Buyer is a municipal corporation with the power of eminent domain. The Acquisition Property is being acquired for the purpose of constructing municipal facilities. Notwithstanding Seller's execution of this Agreement, this Agreement is entered into under the threat of condemnation by the Buyer.

22. General Provisions.

a. Further Instruments. Each party, promptly upon the request of the other, shall execute, acknowledge and deliver to the other any and all further instruments as may be necessary or proper to carry out the purpose and intent of this Agreement.

b. Assignment. Either party may assign or transfer its rights, duties and obligations under this Agreement only with the prior written consent of the other party, which consent may be withheld for any reason or for no reason. Any such transfer or assignment shall be subject to the terms of this Agreement.

c. Successors and Assigns. Except as otherwise provided herein, this Agreement and all the terms and provisions hereof shall be binding upon and inure to the benefit of the parties and their successors and assigns.

d. Entire Agreement. This Agreement along with the Construction Improvements Agreement ("Construction Agreement") in the form attached hereto as Exhibits C, contain the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, express or implied, concerning the sale contemplated by this Agreement. The Construction Agreement will be executed by the parties at Closing in the form attached hereto.

e. Modification of Agreement. No modification of this Agreement shall be effective unless in writing and signed by the parties hereto.

f. Waiver. The waiver of a breach of any term or condition of this Agreement may be made only in writing and shall not be deemed to constitute a waiver of subsequent breach of such term or condition, or a waiver of a breach or subsequent breach of any other term or condition.

g. Survival. All warranties, indemnities, representations and covenants made in this Agreement and the provisions of Section 22 shall survive the Closing.

h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement.

i. Terms. Common nouns and pronouns shall be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person may in the context require.

j. Descriptive Headings. The descriptive headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

k. Third Party Beneficiary. None of the terms or provisions of this Agreement shall be deemed or construed to create any third party beneficiary rights to any person who is not a party hereto unless expressly otherwise provided.

l. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (1) delivered to the party at the address set forth below, (2) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (3) given to a recognized and reputable overnight delivery service, to the address set forth below or (4) delivered by facsimile transmission to the number set forth below:

If to Seller: 545657, Inc.  
1145 Industrial Drive  
Spallumcheen Industrial Park  
Armstrong, B.C. Canada V0E 1B6  
Attn: Kenneth Regehr

If to the City: City of Avondale  
11465 West Civic Center Drive, Suite 200  
Avondale, Arizona 85323  
Attn: City Manager

With a copy to: Gust Rosenfeld, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire, Esq.

If to the Escrow Agent: Stewart Title & Trust of Phoenix  
2930 East Camelback Road, Suite 210  
Phoenix, Arizona 85016  
Attn: Sue Leonard

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (1) when delivered to the party, (2) three business days after being placed in the U.S. Mail, registered or certified, properly addressed, with sufficient postage, (3) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (4) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

m. Governing Law and Venue. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the laws of the State of Arizona. Any action at law or judicial proceeding instituted by any party relating to this Agreement shall be instituted in the state or federal courts located in Maricopa County, Arizona.

n. Attorneys' Fees. In the event of any controversy, claim or dispute between the parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover its costs and expenses, including without limitation, reasonable attorneys' fees, expert witness fees and investigators' fees, which shall be determined by the court if the matter is litigated or otherwise in a separate action brought for that purpose.

o. Time of the Essence. All dates and times for performance set forth in this Agreement are of the essence.

p. Severability. If any provision or provisions of this Agreement, or the application thereof to any person or circumstance be determined to be invalid or unenforceable to any extent by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

q. Time Periods. If the time for the performance of any obligation under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

r. Acceptance. If Seller has not accepted the offer of Buyer as herein set forth on or before 5:00 p.m., local time, Phoenix, Arizona, June 8, 2012 this offer shall be deemed revoked. Seller's acceptance shall occur when a fully executed copy of this Agreement is received by Escrow Agent.

s. Cancellation. This Agreement may be cancelled by the Buyer pursuant to ARIZ. REV. STAT. § 38-511.

22. Contingencies. Buyer shall have until 60 days after the Effective Date (the "Feasibility Period") to determine the feasibility of Buyer's planned development of the Acquisition Property. At any time prior to the end of the Feasibility Period, the Buyer may, for any reason in its sole and absolute discretion, cancel this Agreement and receive a refund of the Deposit. If Buyer does not cancel this Agreement by providing written notice to Seller and Escrow Agent prior to expiration of the Feasibility Period, the Buyer shall be deemed to have disapproved the feasibility of Buyer's planned development of the Property, in which event this Agreement shall be deemed terminated.

23. 1031 Exchange. Seller and Buyer acknowledge that the electing party may elect to effect the sale and purchase of the Acquisition Property as an exchange pursuant to Section 1031 of the Internal Revenue Code, provided the electing party utilizes the services of a "qualified intermediary" as defined in Treasury Regulation § 1.1031(k)-(g)(4)(iii) ("Intermediary") to effectuate such Section 1031 exchange and will cooperate in the accomplishment of that purpose provided only that (i) the other party shall not be required to be vested in title to any parcel other than the Acquisition Property, (ii) the other party shall incur no liability or expense beyond those inherent in an acquisition of the Acquisition Property for a cash payment nor be delayed in the Closing, (iii) the electing party shall have given the other party notice of its intentions to close this transaction as an exchange not less than five days prior to the Closing; such notice shall be given by either certified mail, postage prepaid, return receipt requested, facsimile or overnight delivery by a nationally recognized service. The electing party may assign this Agreement to an Intermediary without the other party's consent for purposes of effectuating a 1031 exchange. Notwithstanding an assignment to or substitution of the Intermediary to act in place of the electing party, the electing party agrees to unconditionally guarantee the full and timely performance by the Intermediary of the representations, warranties, obligations and undertakings of the Intermediary regarding a Section 1031 exchange, and in the event of breach, the other party may proceed directly against the electing party without the need to join the Intermediary. The other party agrees to execute such documents as are reasonably necessary or appropriate and to otherwise cooperate with the electing party to effectuate a Section 1031 exchange, and the electing party of such Section 1031 exchange indemnifies the other party against liability arising from the 1031 exchange except insofar as such liability is attributable to the failure of the other party to perform as required hereunder.

[SIGNATURES ON FOLLOWING PAGES]



**"Buyer"**

**CITY OF AVONDALE**, an Arizona  
Municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2012,  
by \_\_\_\_\_, as City Manager of the CITY OF AVONDALE, an  
Arizona municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A-1  
TO  
PURCHASE AND SALE AGREEMENT  
BETWEEN THE CITY OF AVONDALE  
AND  
545657, INC.**

[Legal Description and Map of Acquisition Property]

**SEE ATTACHED.**

Acquisition Property  
Parts of MCA 102-57-238 & 239

### Legal Description

That part of Lot 1 and Lot 2 of Avondale City Center Phase 1, as recorded in Book 1027 page 31 of the Official Records of Maricopa County Recorder, Maricopa County, Arizona being situated in the Southwest Quarter of Section 6, Township 1 North Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the brass disk in hand hole at the west quarter corner of said Section 6, from which the southwest corner thereof, monumented by a brass disk in hand hole, bears South 00 degrees 02 minutes 19 seconds East a distance of 2626.69 feet as a basis of bearing;

Thence North 88 degrees 59 minutes 16 seconds East a distance of 433.07 feet to a point on the north line of said Lot 1, and the True Point of Beginning;

Thence continuing along said north line North 88 degrees 59 minutes 16 seconds East a distance of 531.06 feet;

Thence departing from said line South 00 degrees 02 minutes 08 seconds East a distance of 534.88 feet;

Thence South 45 degrees 02 minutes 08 seconds East a distance of 53.74 feet;

Thence South 00 degrees 02 minutes 08 seconds East a distance of 162.65 to a point on the south line of said Lot 2, also being the north right-of-way line of Dale Ernhardt Drive;

Thence South 89 degrees 03 minutes 16 seconds West, along said south lot line for a distance of 495.76 feet;

Thence North 43 degrees 33 minutes 14 seconds West, a distance of 47.39 feet, continuing along said south lot line for the following three courses;

Thence North 89 degrees 03 minutes 05 seconds West a distance of 88.10 feet;

Thence South 46 degrees 26 minutes 46 seconds West a distance of 7.62 feet;

Thence departing from said south line, North 00 degrees 02 minutes 16 seconds West a distance of 451.86 feet to the beginning of a curve concave southeasterly and having a radius of 194.00 feet;

Acquisition Property  
Parts of MCA 102-57-238 & 239

Page two

Legal Description, Continued

Thence along the arc of said curve through a central angle of 35 degrees 34 minutes 00 seconds a distance of 120.44 feet to a point of reverse curve concave northwesterly having a radius of 106.00 feet;

Thence along the arc of said curve through a central angle of 33 degrees 39 minutes 09 seconds a distance of 62.26 feet;

Thence North 00 degrees 01 minutes 42 seconds West a distance of 79.06 feet to the True Point of Beginning;

Said parcel contains 9.74 gross acres area, more or less.

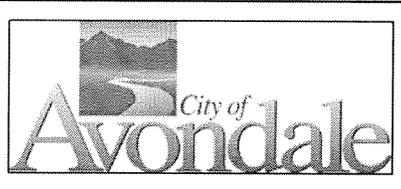
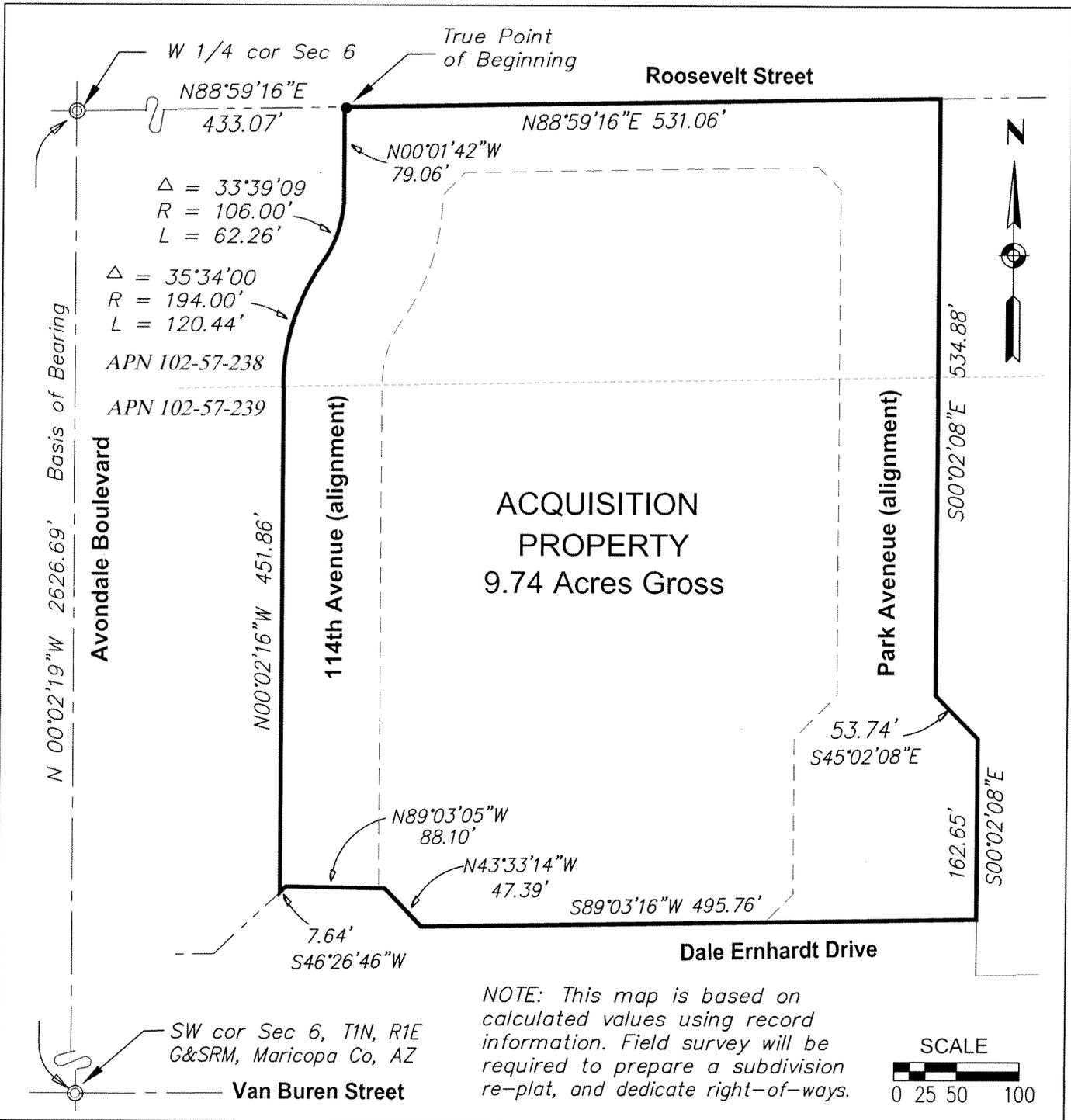


EXHIBIT MAP  
 ACQUISITION PROPERTY  
 Avondale City Center Phase 1  
 Book 1027, Page 31, MCR, Arizona

ENGINEERING  
 DEPARTMENT

DATE: 5-31-2012  
 DSN:  
 DRN: LS  
 CHK: CH

PROJECT NAME  
 Avondale City Center  
 PAGE  
 3 OF 3

**EXHIBIT B**

TO  
PURCHASE AND SALE AGREEMENT  
BETWEEN THE CITY OF AVONDALE  
AND  
545657, INC.

[Special Warranty Deed]

When Recorded Mail To:

City Clerk  
City of Avondale  
11465 West Civic Center Drive, Suite 200  
Avondale, Arizona 85323

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EXEMPT FROM AFFIDAVIT OF PROPERTY VALUE PURSUANT TO ARIZ. REV. STAT. § 11-1134(A)(3).

**SPECIAL WARRANTY DEED**

GRANTOR: 545657, Inc., a Washington corporation (the “Grantor”)

GRANTEE: City of Avondale, an Arizona municipal corporation (the “City”)

Grantor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby conveys to City all right, title and interest in the following real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto:

See Exhibit A, attached hereto and incorporated herein by reference.

The Grantor hereby binds itself and its successors to warrant and defend the title as against all acts of Grantor herein and none other.

[SIGNATURES ON FOLLOWING PAGES]



ACCEPTED BY:

“City”

CITY OF AVONDALE, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Marie Lopez Rogers, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

ACKNOWLEDGEMENTS

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2011,  
by Marie Lopez Rogers, the Mayor of the CITY OF AVONDALE, an Arizona municipal  
corporation, on behalf of the City of Avondale.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

EXHIBIT A  
TO  
SPECIAL WARRANTY DEED  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

[Legal Description and Map]

**SEE ATTACHED.**

Acquisition Property  
Parts of MCA 102-57-238 & 239

#### Legal Description

That part of Lot 1 and Lot 2 of Avondale City Center Phase 1, as recorded in Book 1027 page 31 of the Official Records of Maricopa County Recorder, Maricopa County, Arizona being situated in the Southwest Quarter of Section 6, Township 1 North Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the brass disk in hand hole at the west quarter corner of said Section 6, from which the southwest corner thereof, monumented by a brass disk in hand hole, bears South 00 degrees 02 minutes 19 seconds East a distance of 2626.69 feet as a basis of bearing;

Thence North 88 degrees 59 minutes 16 seconds East a distance of 433.07 feet to a point on the north line of said Lot 1, and the True Point of Beginning;

Thence continuing along said north line North 88 degrees 59 minutes 16 seconds East a distance of 531.06 feet;

Thence departing from said line South 00 degrees 02 minutes 08 seconds East a distance of 534.88 feet;

Thence South 45 degrees 02 minutes 08 seconds East a distance of 53.74 feet;

Thence South 00 degrees 02 minutes 08 seconds East a distance of 162.65 to a point on the south line of said Lot 2, also being the north right-of-way line of Dale Erhardt Drive;

Thence South 89 degrees 03 minutes 16 seconds West, along said south lot line for a distance of 495.76 feet;

Thence North 43 degrees 33 minutes 14 seconds West, a distance of 47.39 feet, continuing along said south lot line for the following three courses;

Thence North 89 degrees 03 minutes 05 seconds West a distance of 88.10 feet;

Thence South 46 degrees 26 minutes 46 seconds West a distance of 7.62 feet;

Thence departing from said south line, North 00 degrees 02 minutes 16 seconds West a distance of 451.86 feet to the beginning of a curve concave southeasterly and having a radius of 194.00 feet;

Acquisition Property  
Parts of MCA 102-57-238 & 239

Page two

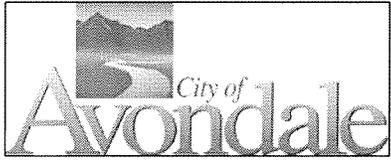
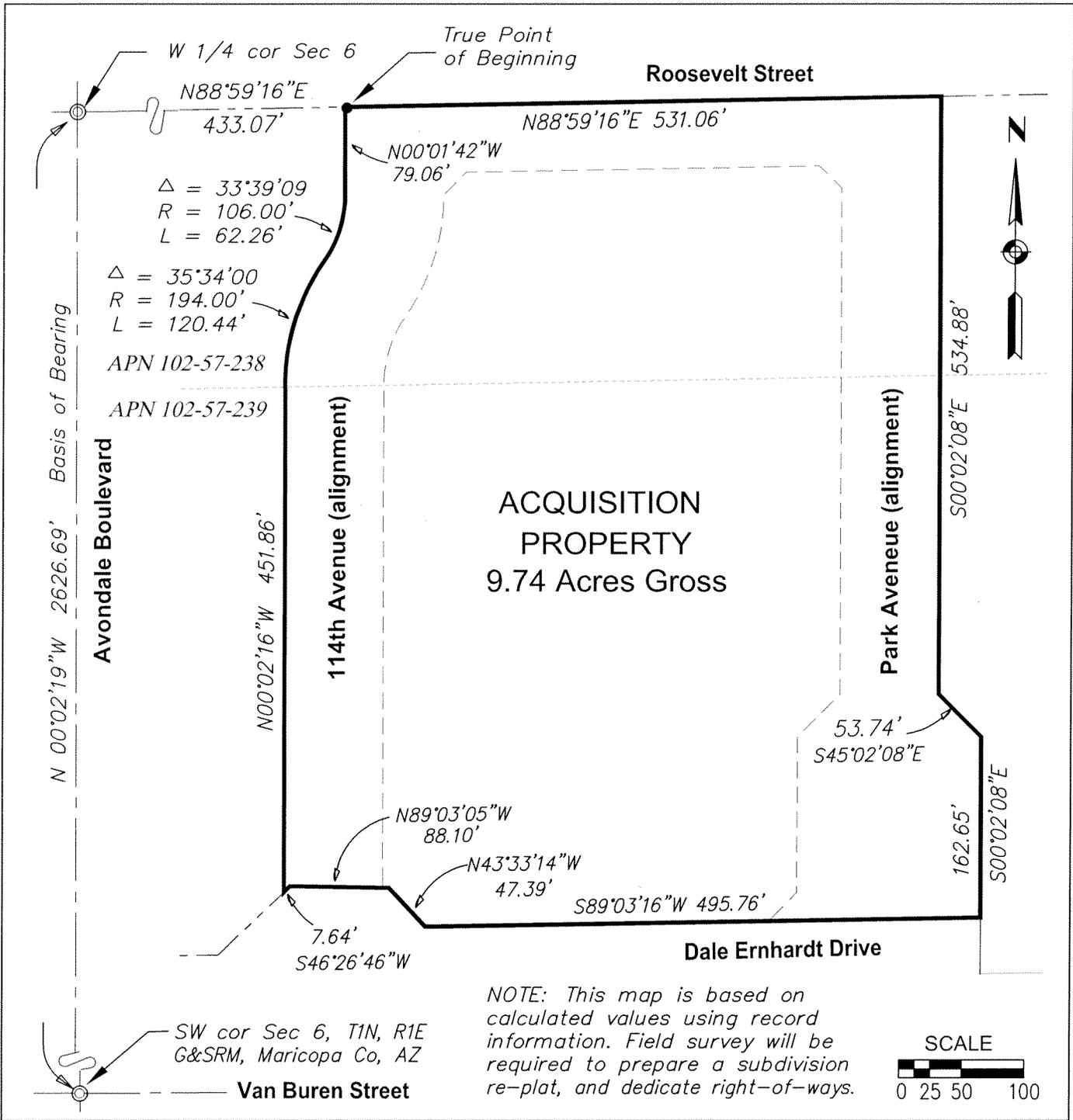
Legal Description, Continued

Thence along the arc of said curve through a central angle of 35 degrees 34 minutes 00 seconds a distance of 120.44 feet to a point of reverse curve concave northwesterly having a radius of 106.00 feet;

Thence along the arc of said curve through a central angle of 33 degrees 39 minutes 09 seconds a distance of 62.26 feet;

Thence North 00 degrees 01 minutes 42 seconds West a distance of 79.06 feet to the True Point of Beginning;

Said parcel contains 9.74 gross acres area, more or less.



ENGINEERING  
DEPARTMENT

EXHIBIT MAP  
 ACQUISITION PROPERTY  
 Avondale City Center Phase 1  
 Book 1027, Page 31, MCR, Arizona

DATE: 5-31-2012  
 DSN: \_\_\_\_\_  
 DRN: LS  
 CHK: CH

PROJECT NAME  
 Avondale City Center  
 PAGE  
 3 OF 3

**EXHIBIT C  
TO  
PURCHASE AND SALE AGREEMENT  
BETWEEN THE CITY OF AVONDALE  
AND  
545657, INC.**

[Construction Agreement]

**SEE ATTACHED.**

**CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.**

**THIS CONSTRUCTION IMPROVEMENTS AGREEMENT** (this "Agreement") is made and entered into as of the Effective Date between **545657, INC.**, a Washington corporation ("Owner") and the **CITY OF AVONDALE**, an Arizona municipal corporation ("City"). Owner and City are referred to collectively as the "Parties." The "Effective Date" shall be the date upon which the last of Owner and City executed this Agreement.

**RECITALS**

A. Owner is the owner of that certain real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Owner Property") and as depicted on Exhibit D attached hereto and incorporated herein by this reference.

B. City is the owner of that certain real property legally described on Exhibit B attached hereto and incorporated herein by this reference (the "City Property") and as depicted on Exhibit D.

C. City has agreed to demolish certain existing structures on the Owner Property, including existing houses, storage buildings and trees, which are depicted and labeled as "Tree Removal" and "Structure Demolition" on Exhibit C attached hereto and incorporated herein by this reference (collectively, the "Demolition Work") as set forth in this Agreement.

**AGREEMENTS**

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the faithful performance thereof, and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

1. Accuracy of Recitals. The Parties hereby acknowledge the accuracy of the Recitals which are incorporated herein by this reference.

2. Demolition Work. City, at its sole cost and expense, shall undertake and substantially complete the Demolition Work as described on Exhibit C by the date that is 12 months from the Effective Date (the "Completion Date"). Owner shall have a period of 30 days from Completion Date to provide City with a list of any incomplete or unsatisfactory items with respect to the Demolition Work ("Punchlist"). City shall be reasonably obligated within a reasonable amount of time, not to exceed 30 days from delivery of the Punchlist, to cure items set forth on the Punchlist. For the purposes of this Agreement, the Parties, or their successors in interest, shall not be considered in breach of, or in default of, the obligations set forth herein in the event of enforced delay in the performance of or inability to perform such obligations due to force majeure; it being the purpose and intent of this Section 2 that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Parties with respect to this Section 2 shall be extended for the period of the enforced delay.

3. Further Acts. Owner agrees to take all necessary action to enter into, execute and deliver any and all written documents necessary to carry out the terms of this

Agreement, including but not limited to easements and any other agreements deemed necessary by City.

4. License for Construction Activity. Owner grants to City, and its contractors, employees, agents, and representatives, a nonexclusive license over the Owner Property for performance of the Demolition Work to be performed by City under this Agreement, which shall automatically expire and be of no further force or effect on the earlier of (a) the Completion Date or (b) that date which is 24 months after the Effective Date.

5. Miscellaneous. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

(a) Nothing in this Agreement creates any relationship of trust or fiduciary relationship between City and Owner. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the independent contractor relationship between the parties unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

(b) This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

(c) For purposes of this Agreement, "force majeure" shall mean any event beyond the control of City, its contractors, or any entity controlled by City that delays the performance of any obligation under this Agreement despite City's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible.

(d) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below:

City: City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
Attn: City Manager

With a Copy to: Gust Rosenfeld, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire, Esq.

If to Owner: 545657, Inc.  
1145 Industrial Drive  
Spallumcheen Industrial Park  
Armstrong, B.C. Canada V0E 1B6  
Attn: Kenneth Regehr

Notices shall be effective upon receipt or refusal.

(e) This Agreement, including but not limited to any Exhibits which are or may in the future become a part of this Agreement, supersede any prior agreements between the Parties, and no oral statements, representations or prior written matter relating to the subject matter hereof, but not contained in this Agreement, shall have any force or effect. Nothing contained in this Agreement shall give rise to duties or covenants on the part of City, express or implied, other than the express duties and covenants set forth herein. ANY REPRESENTATION OF CITY'S AGENTS OR ANY THIRD PARTY WHICH IS NOT INCORPORATED IN THIS AGREEMENT SHALL NOT BE BINDING UPON CITY AND SHOULD BE CONSIDERED AS UNAUTHORIZED. This Agreement shall not be amended or added to in any way except by written instruments executed by the Parties or their respective successors in interest.

(f) The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

(g) Time is of the essence of this Agreement.

(h) In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

(i) Each person executing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of the corporation, limited liability company, or other entity for which he is signing, and that his or her signature binds said entity to the terms and provisions of this Agreement.

(j) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement.

(k) This Agreement shall be interpreted and construed in accordance with the laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511.

(l) If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

(m) In the event of any action or proceeding brought by either party against the other under the Contract Documents, the prevailing party will be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees.

(n) Any legal action relating to this Agreement shall be brought in either the Maricopa County Superior Court or in the United States District Court for the District of Arizona at the election of the Plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

***[signatures on the following pages]***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below.

**Owner**

**545657, INC.**, a Washington corporation

By \_\_\_\_\_

Its \_\_\_\_\_

Date of Execution: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Owner USA Inc., a Washington corporation, on behalf of the corporation.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

**City**

**CITY OF AVONDALE**, an Arizona  
Municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF ARIZONA        )  
                                  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2012,  
by \_\_\_\_\_, as City Manager of the CITY OF AVONDALE, an  
Arizona municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

Owner Property

Owner Property  
Parts of MCA 102-57-238 & 239

Legal Description

Lot 1 and Lot 2 of Avondale City Center Phase 1, as recorded in Book 1027 page 31 of the Official Records of Maricopa County Recorder, Maricopa County, Arizona being situated in the Southwest Quarter of Section 6, Township 1 North Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona.

EXCEPT therefrom the following described property:

Commencing at the brass disk in hand hole at the west quarter corner of said Section 6, from which the southwest corner thereof, monumented by a brass disk in hand hole, bears South 00 degrees 02 minutes 19 seconds East a distance of 2626.69 feet as a basis of bearing;

Thence North 88 degrees 59 minutes 16 seconds East a distance of 433.07 feet to a point on the north line of said Lot 1, and the True Point of Beginning;

Thence continuing along said north line North 88 degrees 59 minutes 16 seconds East a distance of 531.06 feet;

Thence departing from said line South 00 degrees 02 minutes 08 seconds East a distance of 534.88 feet;

Thence South 45 degrees 02 minutes 08 seconds East a distance of 53.74 feet;

Thence South 00 degrees 02 minutes 08 seconds East a distance of 162.65 to a point on the south line of said Lot 2, also being the north right-of-way line of Dale Erhardt Drive;

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Thence South 46 degrees 26 minutes 46 seconds West a distance of 7.62 feet;

Owner Property  
Parts of MCA 102-57-238 & 239

Page two

Legal Description, Continued

Thence departing from said south line, North 00 degrees 02 minutes 16 seconds West a distance of 451.86 feet to the beginning of a curve concave southeasterly and having a radius of 194.00 feet;

Thence along the arc of said curve through a central angle of 35 degrees 34 minutes 00 seconds a distance of 120.44 feet to a point of reverse curve concave northwesterly having a radius of 106.00 feet;

Thence along the arc of said curve through a central angle of 33 degrees 39 minutes 09 seconds a distance of 62.26 feet;

Thence North 00 degrees 01 minutes 42 seconds West a distance of 79.06 feet to the True Point of Beginning;

**EXHIBIT B**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

City Property

City Property  
Parts of MCA 102-57-238 & 239

#### Legal Description

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City Property  
Parts of MCA 102-57-238 & 239

Page two

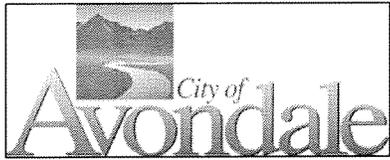
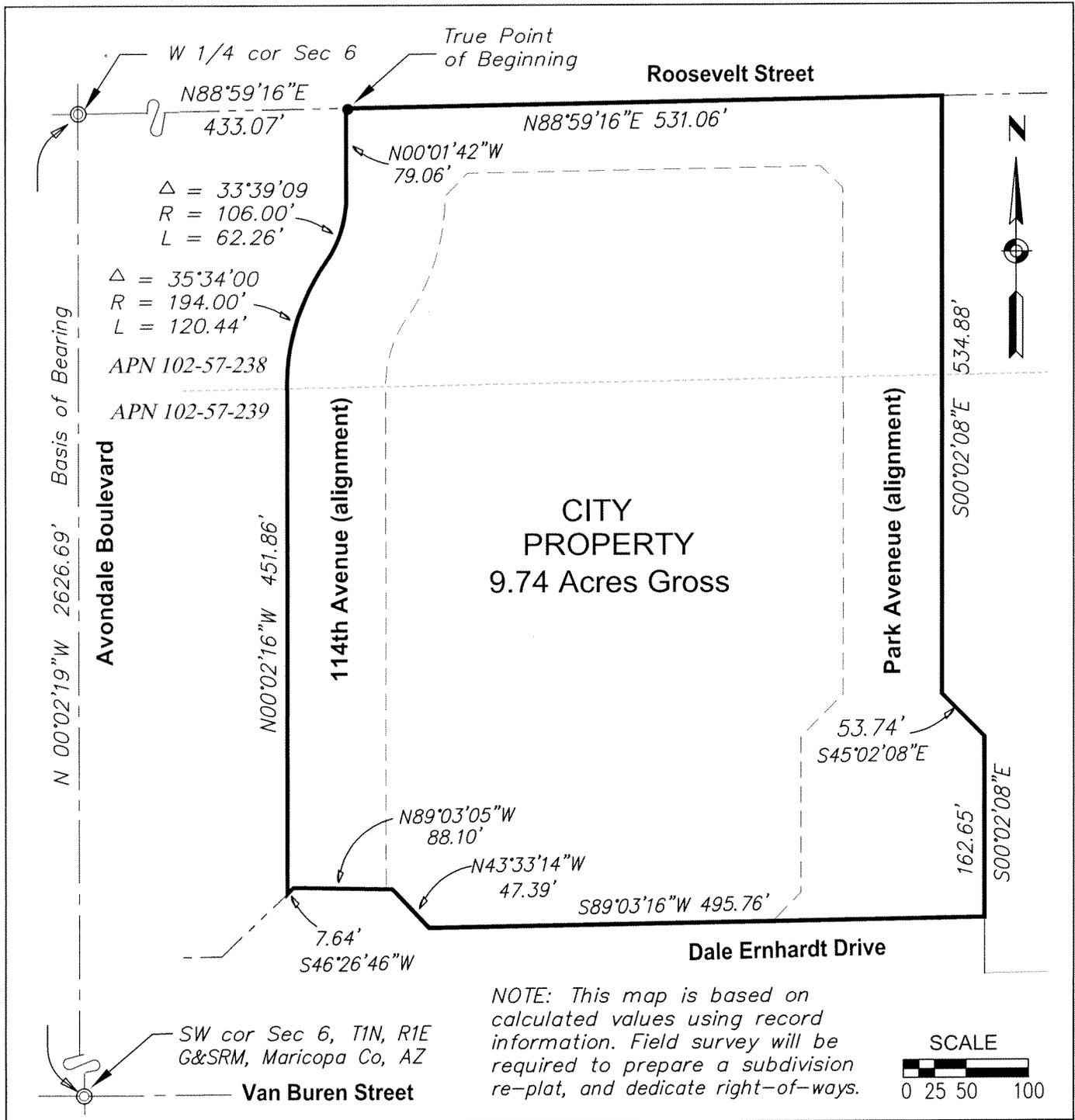
Legal Description, Continued

Thence along the arc of said curve through a central angle of 35 degrees 34 minutes 00 seconds a distance of 120.44 feet to a point of reverse curve concave northwesterly having a radius of 106.00 feet;

Thence along the arc of said curve through a central angle of 33 degrees 39 minutes 09 seconds a distance of 62.26 feet;

Thence North 00 degrees 01 minutes 42 seconds West a distance of 79.06 feet to the True Point of Beginning;

Said parcel contains 9.74 gross acres area, more or less.



ENGINEERING  
DEPARTMENT

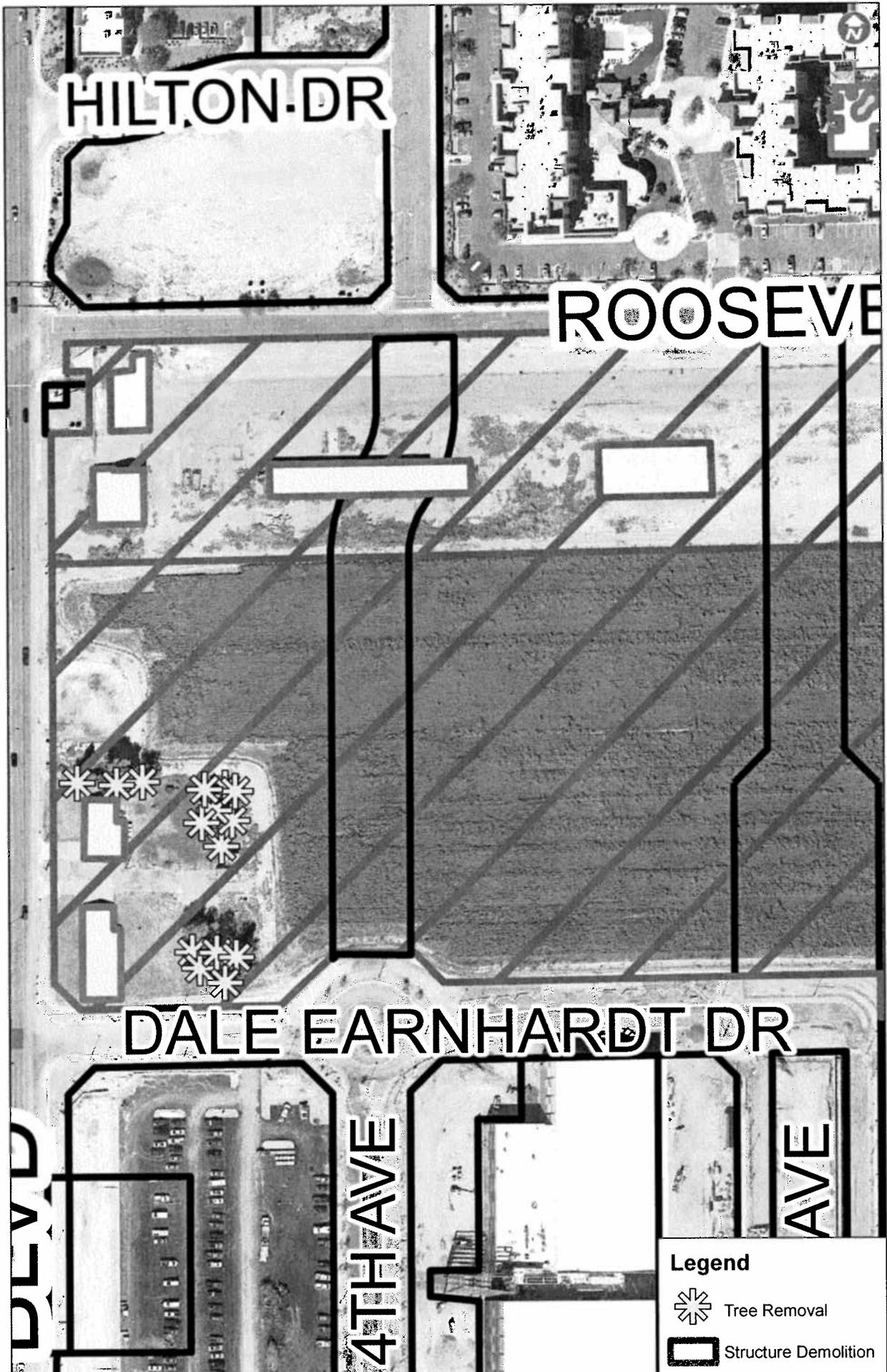
EXHIBIT MAP  
CITY PROPERTY  
Avondale City Center Phase 1  
Book 1027, Page 31, MCR, Arizona

DATE: 5-31-2012  
 DSN: \_\_\_\_\_  
 DRN: LS  
 CHK: CH

PROJECT NAME  
Avondale City Center  
 PAGE  
3 OF 3

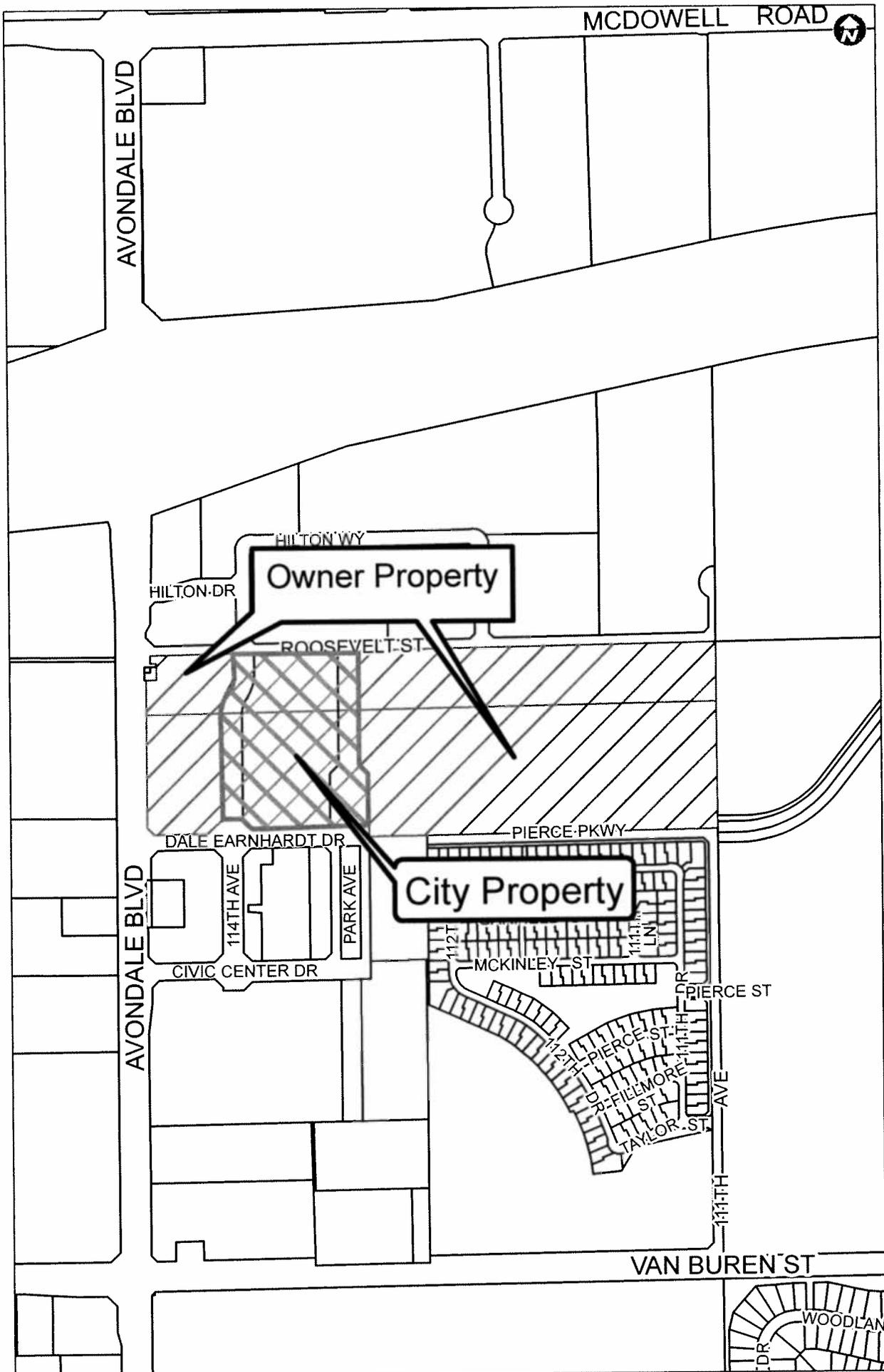
**EXHIBIT C**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

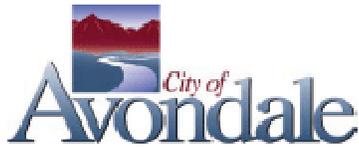
Demolition Work



**EXHIBIT D**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

Depiction of Owner Property and City





# CITY COUNCIL REPORT

**SUBJECT:**

Construction Improvements Agreement - 545657, Inc.

**MEETING DATE:**

June 4, 2012

**TO:** Mayor and Council

**FROM:** Daniel Davis, Economic Development Director (623) 333-1411

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a Construction Improvement Agreement with 545657, Inc., authorizing the future demolition of existing structures on property generally located south of Roosevelt Street, north of Van Buren Street and east of Avondale Boulevard.

**DISCUSSION:**

On July 19, 2010, City Council adopted an ordinance authorizing the acquisition of the subject property. The implementation and development of the Avondale City Center continues to be a primary focus for Economic Development. Staff was able to negotiate a Purchase and Sale Agreement for approximately 9.9 acres of property from 545657, LLC on the adjacent property north of the Randall McDaniel Sports Complex.

The acquired property will enable the City of Avondale to extend 114th Avenue and Park Avenue from Dale Earnhardt Jr. Drive to Roosevelt Street providing improved traffic circulation throughout City Center and enhancing pedestrian connectivity from the existing hotels and restaurants. The property has also been identified as a future Park and Ride/Transit Center and may be utilized for supplemental parking for City Center in the near term. The Construction Improvement Agreement commits the City to demolish the existing structures that are located in the Right-of-Way for the future road improvements and the adjacent property fronting Avondale Boulevard. The removal of two (2) vacant residential houses, storage buildings and old airplane hangar will improve the aesthetic visibility for the gateway into City Center and prepare the property for future development.

**BUDGETARY IMPACT:**

There is no cost for the Construction Improvement Agreement; however the city will contract with a qualified firm to provide the demolition work to remove the existing structures. The approval of the demolition contract will be presented to Council for action in the next 30-60 days.

**RECOMMENDATION:**

Staff recommends that the City Council approve a Construction Improvement Agreement with 545657, Inc., authorizing the future demolition of existing structures on property generally located south of Roosevelt Street, north of Van Buren Street and east of Avondale Boulevard.

**ATTACHMENTS:**

Click to download

[Construction Improvements Agreement](#)

**CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.**

**THIS CONSTRUCTION IMPROVEMENTS AGREEMENT** (this "Agreement") is made and entered into as of the Effective Date between **545657, INC.**, a Washington corporation ("Owner") and the **CITY OF AVONDALE**, an Arizona municipal corporation ("City"). Owner and City are referred to collectively as the "Parties." The "Effective Date" shall be the date upon which the last of Owner and City executed this Agreement.

**RECITALS**

A. Owner is the owner of that certain real property legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Owner Property") and as depicted on Exhibit D attached hereto and incorporated herein by this reference.

B. City is the owner of that certain real property legally described on Exhibit B attached hereto and incorporated herein by this reference (the "City Property") and as depicted on Exhibit D.

C. City has agreed to demolish certain existing structures on the Owner Property, including existing houses, storage buildings and trees, which are depicted and labeled as "Tree Removal" and "Structure Demolition" on Exhibit C attached hereto and incorporated herein by this reference (collectively, the "Demolition Work") as set forth in this Agreement.

**AGREEMENTS**

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the faithful performance thereof, and for other good and valuable consideration, the receipt of which are hereby acknowledged, the Parties hereto agree as follows:

1. Accuracy of Recitals. The Parties hereby acknowledge the accuracy of the Recitals which are incorporated herein by this reference.

2. Demolition Work. City, at its sole cost and expense, shall undertake and substantially complete the Demolition Work as described on Exhibit C by the date that is 12 months from the Effective Date (the "Completion Date"). Owner shall have a period of 30 days from Completion Date to provide City with a list of any incomplete or unsatisfactory items with respect to the Demolition Work ("Punchlist"). City shall be reasonably obligated within a reasonable amount of time, not to exceed 30 days from delivery of the Punchlist, to cure items set forth on the Punchlist. For the purposes of this Agreement, the Parties, or their successors in interest, shall not be considered in breach of, or in default of, the obligations set forth herein in the event of enforced delay in the performance of or inability to perform such obligations due to force majeure; it being the purpose and intent of this Section 2 that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Parties with respect to this Section 2 shall be extended for the period of the enforced delay.

3. Further Acts. Owner agrees to take all necessary action to enter into, execute and deliver any and all written documents necessary to carry out the terms of this

Agreement, including but not limited to easements and any other agreements deemed necessary by City.

4. License for Construction Activity. Owner grants to City, and its contractors, employees, agents, and representatives, a nonexclusive license over the Owner Property for performance of the Demolition Work to be performed by City under this Agreement, which shall automatically expire and be of no further force or effect on the earlier of (a) the Completion Date or (b) that date which is 24 months after the Effective Date.

5. Miscellaneous. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

(a) Nothing in this Agreement creates any relationship of trust or fiduciary relationship between City and Owner. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship. Any correspondence or other reference to "partners" or other similar terms will not be deemed to alter, amend or change the independent contractor relationship between the parties unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship.

(b) This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

(c) For purposes of this Agreement, "force majeure" shall mean any event beyond the control of City, its contractors, or any entity controlled by City that delays the performance of any obligation under this Agreement despite City's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible.

(d) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below:

City: City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
Attn: City Manager

With a Copy to: Gust Rosenfeld, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire, Esq.

If to Owner: 545657, Inc.  
1145 Industrial Drive  
Spallumcheen Industrial Park  
Armstrong, B.C. Canada V0E 1B6  
Attn: Kenneth Regehr

Notices shall be effective upon receipt or refusal.

(e) This Agreement, including but not limited to any Exhibits which are or may in the future become a part of this Agreement, supersede any prior agreements between the Parties, and no oral statements, representations or prior written matter relating to the subject matter hereof, but not contained in this Agreement, shall have any force or effect. Nothing contained in this Agreement shall give rise to duties or covenants on the part of City, express or implied, other than the express duties and covenants set forth herein. ANY REPRESENTATION OF CITY'S AGENTS OR ANY THIRD PARTY WHICH IS NOT INCORPORATED IN THIS AGREEMENT SHALL NOT BE BINDING UPON CITY AND SHOULD BE CONSIDERED AS UNAUTHORIZED. This Agreement shall not be amended or added to in any way except by written instruments executed by the Parties or their respective successors in interest.

(f) The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

(g) Time is of the essence of this Agreement.

(h) In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

(i) Each person executing this Agreement represents and warrants that he or she has authority to sign this Agreement on behalf of the corporation, limited liability company, or other entity for which he is signing, and that his or her signature binds said entity to the terms and provisions of this Agreement.

(j) This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this Agreement.

(k) This Agreement shall be interpreted and construed in accordance with the laws of the State of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511.

(l) If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

(m) In the event of any action or proceeding brought by either party against the other under the Contract Documents, the prevailing party will be entitled to recover all costs and expenses, including court costs and reasonable attorneys' fees.

(n) Any legal action relating to this Agreement shall be brought in either the Maricopa County Superior Court or in the United States District Court for the District of Arizona at the election of the Plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

***[signatures on the following pages]***

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below.

**Owner**

**545657, INC.**, a Washington corporation

By \_\_\_\_\_

Its \_\_\_\_\_

Date of Execution: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Owner USA Inc., a Washington corporation, on behalf of the corporation.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

**City**

**CITY OF AVONDALE**, an Arizona  
Municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF ARIZONA        )  
                                  ) ss.  
COUNTY OF MARICOPA    )

This instrument was acknowledged before me on \_\_\_\_\_, 2012,  
by \_\_\_\_\_, as City Manager of the CITY OF AVONDALE, an  
Arizona municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for the State of Arizona

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

Owner Property

Owner Property  
Parts of MCA 102-57-238 & 239

Legal Description

Lot 1 and Lot 2 of Avondale City Center Phase 1, as recorded in Book 1027 page 31 of the Official Records of Maricopa County Recorder, Maricopa County, Arizona being situated in the Southwest Quarter of Section 6, Township 1 North Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona.

EXCEPT therefrom the following described property:

Commencing at the brass disk in hand hole at the west quarter corner of said Section 6, from which the southwest corner thereof, monumented by a brass disk in hand hole, bears South 00 degrees 02 minutes 19 seconds East a distance of 2626.69 feet as a basis of bearing;

Thence North 88 degrees 59 minutes 16 seconds East a distance of 433.07 feet to a point on the north line of said Lot 1, and the True Point of Beginning;

Thence continuing along said north line North 88 degrees 59 minutes 16 seconds East a distance of 531.06 feet;

Thence departing from said line South 00 degrees 02 minutes 08 seconds East a distance of 534.88 feet;

Thence South 45 degrees 02 minutes 08 seconds East a distance of 53.74 feet;

Thence South 00 degrees 02 minutes 08 seconds East a distance of 162.65 to a point on the south line of said Lot 2, also being the north right-of-way line of Dale Erhardt Drive;

Thence South 89 degrees 03 minutes 16 seconds West, along said south lot line for a distance of 495.76 feet;

Thence North 43 degrees 33 minutes 14 seconds West, a distance of 47.39 feet, continuing along said south lot line for the following three courses;

Thence North 89 degrees 03 minutes 05 seconds West a distance of 88.10 feet;

Thence South 46 degrees 26 minutes 46 seconds West a distance of 7.62 feet;

Owner Property  
Parts of MCA 102-57-238 & 239

Page two

Legal Description, Continued

Thence departing from said south line, North 00 degrees 02 minutes 16 seconds West a distance of 451.86 feet to the beginning of a curve concave southeasterly and having a radius of 194.00 feet;

Thence along the arc of said curve through a central angle of 35 degrees 34 minutes 00 seconds a distance of 120.44 feet to a point of reverse curve concave northwesterly having a radius of 106.00 feet;

Thence along the arc of said curve through a central angle of 33 degrees 39 minutes 09 seconds a distance of 62.26 feet;

Thence North 00 degrees 01 minutes 42 seconds West a distance of 79.06 feet to the True Point of Beginning;

**EXHIBIT B**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

City Property

City Property  
Parts of MCA 102-57-238 & 239

#### Legal Description

That part of Lot 1 and Lot 2 of Avondale City Center Phase 1, as recorded in Book 1027 page 31 of the Official Records of Maricopa County Recorder, Maricopa County, Arizona being situated in the Southwest Quarter of Section 6, Township 1 North Range 1 East of the Gila and Salt River Meridian, Maricopa County, Arizona described as follows:

Commencing at the brass disk in hand hole at the west quarter corner of said Section 6, from which the southwest corner thereof, monumented by a brass disk in hand hole, bears South 00 degrees 02 minutes 19 seconds East a distance of 2626.69 feet as a basis of bearing;

Thence North 88 degrees 59 minutes 16 seconds East a distance of 433.07 feet to a point on the north line of said Lot 1, and the True Point of Beginning;

Thence continuing along said north line North 88 degrees 59 minutes 16 seconds East a distance of 531.06 feet;

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City Property  
Parts of MCA 102-57-238 & 239

Page two

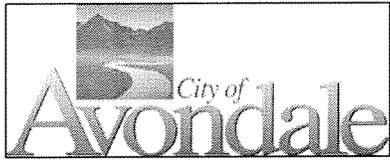
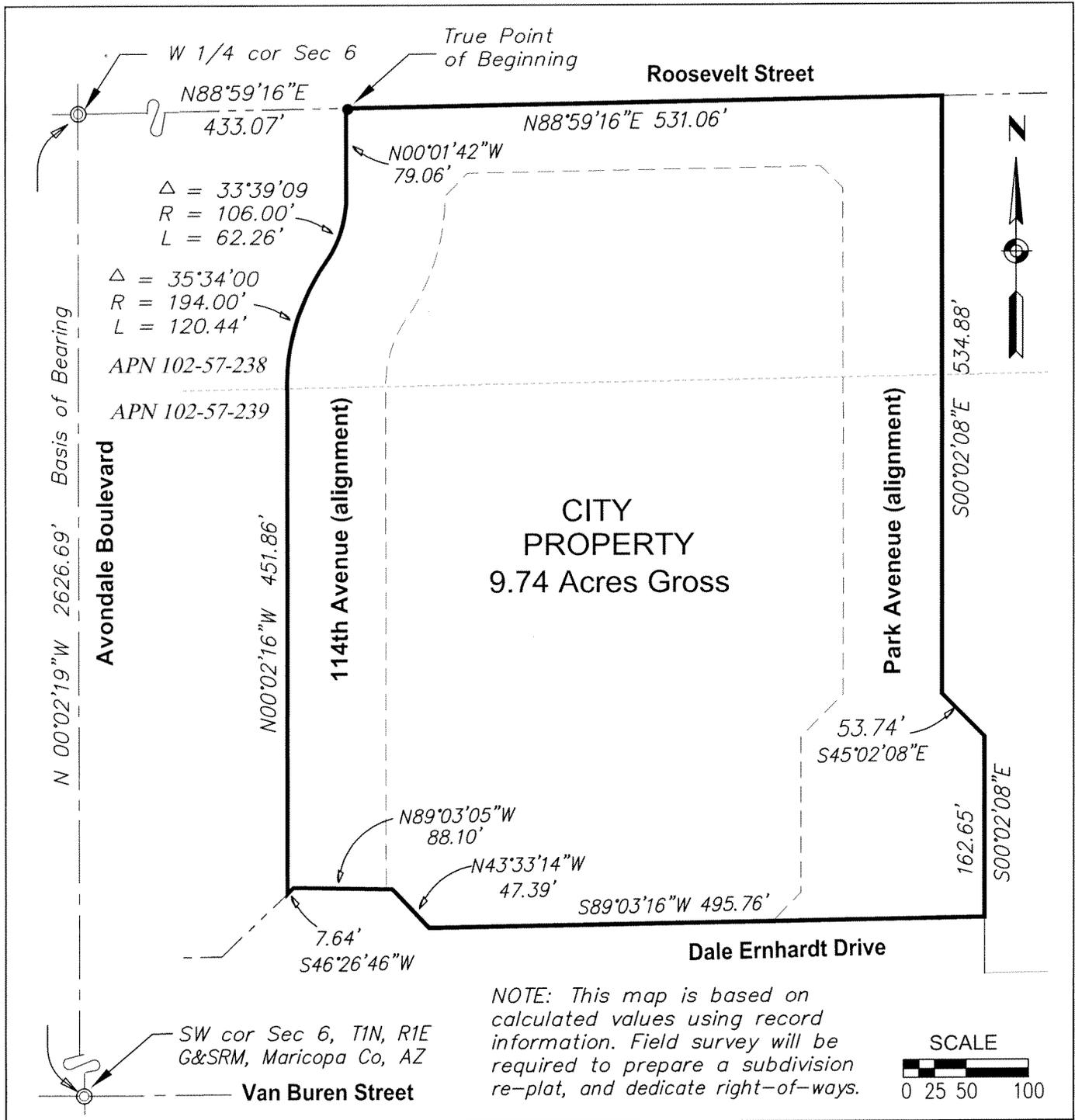
Legal Description, Continued

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Thence along the arc of said curve through a central angle of 33 degrees 39 minutes 09 seconds a distance of 62.26 feet;

Thence North 00 degrees 01 minutes 42 seconds West a distance of 79.06 feet to the True Point of Beginning;

Said parcel contains 9.74 gross acres area, more or less.



ENGINEERING  
DEPARTMENT

EXHIBIT MAP  
CITY PROPERTY  
Avondale City Center Phase 1  
Book 1027, Page 31, MCR, Arizona

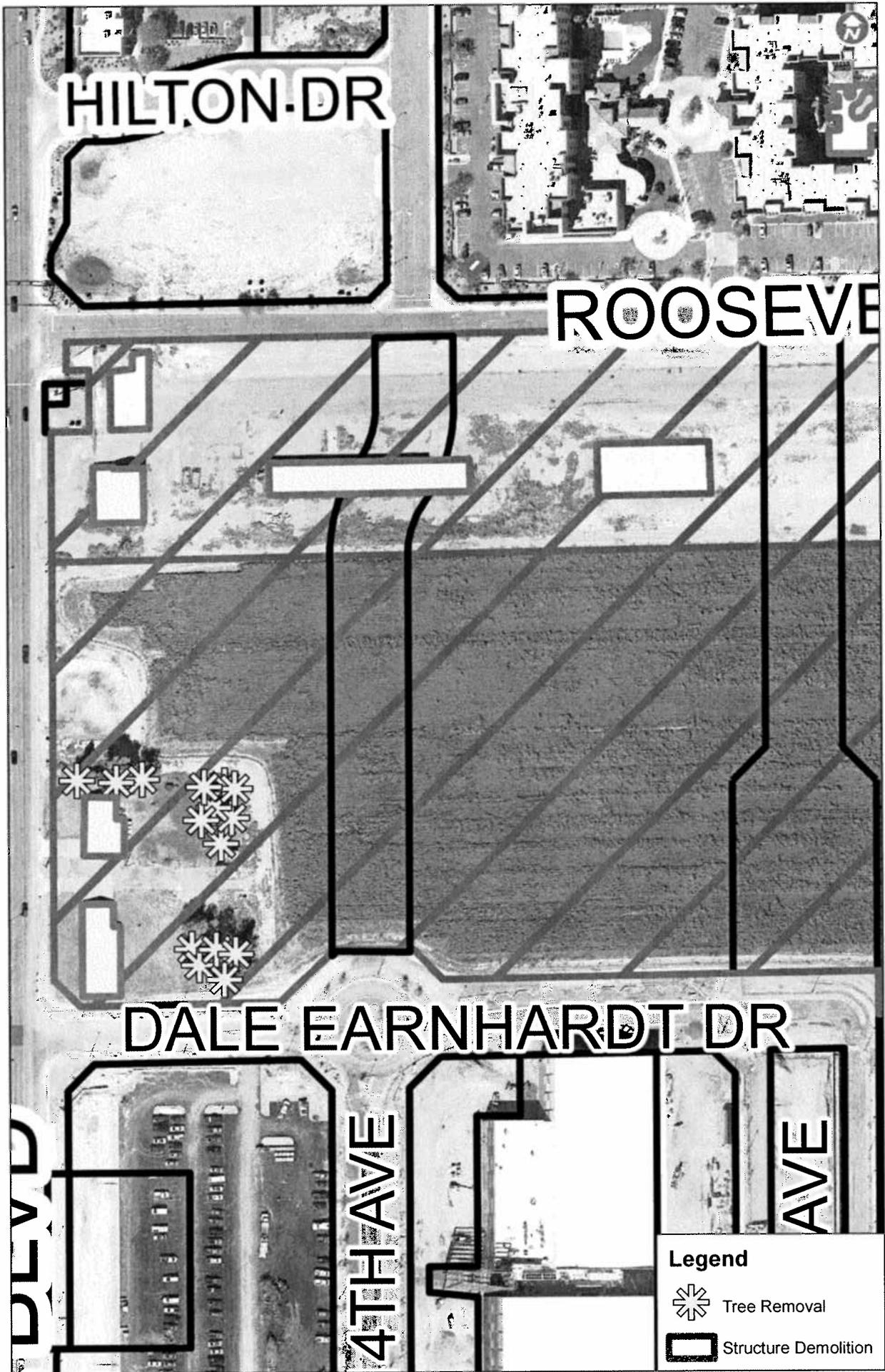
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 DRN: LS  
 CHK: CH

PROJECT NAME  
Avondale City Center

PAGE  
3 OF 3

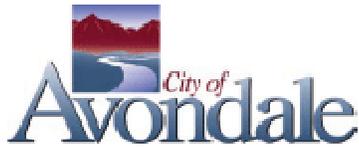
**EXHIBIT C**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

Demolition Work



**EXHIBIT D**  
TO  
CONSTRUCTION IMPROVEMENTS AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
545657, INC.

Depiction of Owner Property and City



# CITY COUNCIL REPORT

**SUBJECT:**

Resolution 3047-612 - Amended and Restated Intergovernmental Agreement - City of Goodyear for annual parade and festival

**MEETING DATE:**

June 4, 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 approving an amended and restated Intergovernmental Agreement (IGA) with the City of Goodyear to jointly host an annual parade and festival and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

**BACKGROUND:**

On October 17, 2011 City Council approved an Intergovernmental Agreement (IGA) with the City of Goodyear to jointly host an Arizona Centennial Parade and Event.

On Jan 9 2011 City Council approved the first amendment to this agreement, approving the following changes:

1. Collection of Funds: Avondale is designated as the collector of funds for parade and vendor entries.
2. The total amount paid by either party for all cost associated with this event shall not exceed \$40,000.
3. Sponsorships: The event coordinator will solicit sponsorships for the event for a fee of \$2000. The fee will be divided equally among the cities.
4. Centennial Group Fundraisers: Either city's centennial committees will be afforded the opportunity to host fundraisers in conjunction with the parade and festival.
5. The event coordinator will solicit a barricade company; cities will jointly share costs for barricades, traffic plan and street closures associated with the parade. The police departments for Avondale and Goodyear will work cooperatively with the program coordinators to develop and implement the traffic plan.
6. Sanitation: Goodyear will sweep/clean up the parade route on the afternoon/evening prior to the event. Avondale will sweep/clean up the parade route immediately following the event.
7. The City of Avondale will provide public safety personnel to secure EMCC Property as agreed upon by the City of Avondale and the Maricopa County Community College District (MCCCD).
8. Budget Reconciliation: No later than 45 days prior to the festival, cities will agree on a program budget; Avondale will reconcile the budget no later than 30 days following the festival.

**DISCUSSION:**

The Centennial Parade and Festival was a very successful event. The Centennial Parade and Festival was held on Saturday, February 25, 2012. There were a total of 85 parade entrants and over 5,000 spectators attended the parade and festival. Staff, attendees, spectators, and participants enjoyed the parade. City Council elected to co-host a parade and festival with the City of Goodyear

on an annual basis and funding for the event is included as part of the proposed FY 2012 -2013 annual budget.

The original IGA with the City of Goodyear to co-host the parade and festival was for one year only. Staff would like to request that the City Council amend the agreement and approve the following changes to the IGA:

1. Event Name: The parade and festival will be titled: The Tale of Two Cities without the sub line "Centennial Event". The original event was developed as part of the Arizona Centennial Celebration. Future events will not need to recognize the Centennial.
2. The total amount paid by either party for all costs associated with this event shall not exceed \$60,000. The increase of \$20,000 will be shared by both parties. Staff from both cities agrees to the increase due to proposed additions to the event.
3. The base fee for the Event Coordinator will increase from \$7,500 to \$10,000. Staff from both cities agree to the increase due to proposed additions to the event.
4. The terms of the agreement will be for three years with two automatic one-year renewals unless either party terminates the agreement in writing 60 days prior to the date of the termination.

**BUDGETARY IMPACT:**

Funding for this event is included as part of the proposed City of Avondale FY 2012-2013 Annual Budget. The funds are available through line item:  
101-8125-006181 Special Events.

**RECOMMENDATION:**

Staff recommends that the City Council approve a resolution authorizing the second amendment to the Intergovernmental Agreement (IGA) with the City of Goodyear to jointly host an annual Parade and Event and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

**ATTACHMENTS:**

Click to download

[Resolution 3047-612](#)

**RESOLUTION NO. 3047-612**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GOODYEAR RELATING TO AN ANNUAL PARADE AND FESTIVAL.

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

SECTION 1. The Amended and Restated Intergovernmental Agreement with the City of Goodyear relating to an annual parade and festival (the “Amended and Restated IGA”) is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Amended and Restated IGA 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, June 4, 2012.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 3047-612

[Amended and Restated IGA]

See following pages.

**AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
THE CITY OF GOODYEAR**

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of June 4, 2012 by and between the City of Avondale, an Arizona municipal corporation ("Avondale") and the City of Goodyear ("Goodyear") an Arizona municipal corporation. Avondale and Goodyear are sometimes collectively referred to in this Agreement as the "Parties" and each individually as a "Party."

RECITALS

A. Avondale and Goodyear desire to coordinate an annual parade (the "Parade") and festival (the "Festival") to jointly celebrate the two Parties' histories (together, the Parade and the Festival referred to hereinafter as the "Program").

B. The Parties desire to hold the Parade on a route originating in Goodyear at approximately the intersection of Thomas Road and Litchfield Road, running east along Thomas Road and crossing into Avondale, before terminating at approximately the intersection of Thomas Road and North Dysart Road in Avondale.

C. Subject to the approval of the appropriate governing body, the Parties desire to hold the Festival upon the grounds of the Estrella Mountain Community College ("EMCC") located at 3000 North Dysart Road in Avondale (the "EMCC Property").

D. The Parties desire to enter into this Agreement to set forth the terms by which the Parties will jointly coordinate the Program, including Program planning, Program development, and Program administration.

E. The Parties are authorized and empowered to enter into this Agreement pursuant to A.R.S. §§ 11-951 and 11-952 and their respective City Charters or other governing authority.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2015 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive

one-year terms (each, a “Renewal Term”) if (i) each Party deems the Agreement to be in the best interests of such Party, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Agreement, either Party requests, in writing, to extend the Agreement for an additional one-year term and (iii) each Party approves the additional one-year term in writing (including any cost adjustments approved as part of this Agreement), as evidenced by the signature thereon of each Party’s City Manager, which approval may be withheld by either Party for any reason. Both Parties’ 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 either Party may, with the agreement of the other Party, 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. Avondale’s Obligations.

2.1 Festival Location. The Parties intend for the Festival to be located on the EMCC Property and held each year during the Term of this Agreement on a date that is acceptable to each Party. Avondale shall coordinate the location for the Festival with EMCC or its governing body, the Maricopa County Community College District of Maricopa County, Arizona (the “MCCCD”) by way of separate written agreement. Goodyear acknowledges that use of the EMCC Property is subject to final approval of the MCCCD Governing Board. In the event such approval is not granted, Avondale and Goodyear shall reasonably cooperate to select an alternate location for the Festival.

2.2 Event Coordinator. Avondale shall procure the services of a qualified individual or firm to act as the event coordinator for the Program (the “Coordinator Services”).

2.3 Festival Security. In coordination with the MCCCD, Avondale shall provide appropriate public safety personnel to secure the EMCC Property to such extent and during such times as Avondale and the MCCCD shall mutually agree. Avondale will be responsible for providing police personnel for the Festival at their sole expense.

3. Joint Cost Obligations and Revenue Sharing.

3.1 Costs of Program. Goodyear and Avondale shall each bear 50% of the total costs of the Program, not to exceed a total combined cost of \$60,000 (including, without limitation, costs for event coordinator services, barricade services, and promotions paid to third parties).

3.1.1 Each City shall pay for any overtime costs associated with its own police, fire, traffic management and sanitation services for both the Parade and Festival.

3.1.2 It is the intent of the Parties that the combined total amount paid by the Parties for all costs associated for this Program shall not exceed \$60,000.

### 3.2 Revenue Sharing.

3.2.1 Goodyear and Avondale shall each receive 50% of the total revenue generated from the Program, which includes but is not limited to revenue resulting from parade entries, vendor spaces, and net profits of sponsorships. Avondale shall be responsible for collecting, accounting for and distributing any Program revenues to Goodyear in accordance with this Section.

3.2.2 Budget Reconciliation. The Cities will agree on a program budget no later than 45 days prior to the Festival. Avondale will reconcile the budget and provide a copy of the final reconciliation documents to Goodyear no later than 30 days after the Festival.

### 4. Joint Obligations.

4.1 Program Access. Each Party shall provide access to its property as may be reasonably required for successful staging of the Program, which property shall include without limitation, access to each Party's streets, sidewalks and other related facilities.

4.2 Program Approval. The Program shall be approved by each Party's City Manager, or authorized designee, who shall act as the Program liaison and approval authority for the Program.

4.3 Program/Traffic Management. The police departments for Avondale and Goodyear will work cooperatively to create a traffic plan and street closures associated with the Parade. Any overtime costs incurred by each City for its own police personnel will be paid by that City.

4.4 Fire/Paramedics. Fire and paramedic needs for the Program will be addressed pursuant to the terms of the Fire Mutual Aid Agreement.

4.5 Sanitation Services. Goodyear will be responsible for sweeping and cleaning up the parade route prior to the Parade starting and Avondale will be responsible for sweeping and cleaning the parade route after the Parade ends. Each City will pay the cost incurred for its own portion of the sweeping and cleaning services.

4.6 Promotion. Both Parties shall promote the Program on the Parties' web pages, Program guides, if any, and information releases, if any and as appropriate. Each Party hereby grants to the other Party a license to use the registered logos and copyright of such granting Party, for the purpose of promoting the Program. Each Party's use of any registered logos or copyright of the other Party is subject to review and approval of the other Party. Both Parties shall have the unlimited right to use the logo created specifically for the program, for the purpose of promoting the Program.

4.7 Permitting. To the extent applicable, each Party shall provide to the other Party at no cost any required approvals or permits for the Program. Program vendors,

participants or other persons participating in the Program shall be subject to the Parties' event permitting rules and procedures.

4.8 Manner of Financing. Subject to Section 8.3, below, each Party shall provide for its financial obligations under this Agreement through its annual budget process or by separate resolution as allowed by law and as deemed appropriate by its city council.

5. Indemnification. To the fullest extent permitted by law, each Party shall indemnify, defend and hold harmless the other Party and each council member, officer, employee or agent thereof (the Party being indemnified and any such person referred to herein as 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 other Party, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage secured by the indemnifying Party will in no way be construed as limiting the scope of the indemnity in this Section. This Section shall survive the termination or expiration of this Agreement for one year from the date of such termination or expiration.

6. Insurance. Each Party agrees to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement, including but not limited to public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insurance program may fulfill the insurance requirement.

7. Applicable Law. This Agreement shall be governed by the laws of the State of Arizona.

8. Termination; Cancellation.

8.1 For Convenience. This Agreement may be terminated by either Party with or without cause upon 30 days' written notice to the other Party.

8.2 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.

8.3 Agreement Subject to Appropriation. The provisions of this Agreement for payment of funds or the incurring of expenses by Avondale or Goodyear shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. Each Party shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement and each Party shall keep the other Party fully informed as to the availability of funds for the Agreement. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of such Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of such Party. If the City Council of either Party 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 each Party shall be relieved of any subsequent obligation under this Agreement.

9. Miscellaneous.

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

9.2 Amendments. This Agreement may be modified only by a written amendment signed by each Party’s City Manager, or authorized designee.

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

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

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

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

9.7 Assignment. No right or interest in this Agreement shall be assigned by a Party to this Agreement without prior, written permission of the other Party signed by the City Manager, or authorized designee, and no delegation of any duty of any Party shall be made without prior, written permission of the other Party signed by the City Manager, or authorized

designee. Any attempted assignment or delegation by either Party in violation of this provision shall be a breach of this Agreement.

9.8 Subcontracts. No subcontract shall be entered into with any other party to furnish any of the material or services specified herein without the prior written approval of the either Party to this Agreement.

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

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

9.11 Disposition of Property Upon Termination. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

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

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

With copy to:            GUST ROSENFELD, P.L.C.  
                                  One East Washington Street, Suite 1600  
                                  Phoenix, Arizona 85004-2553  
                                  Facsimile: (602) 254-4878  
                                  Attn: Andrew J. McGuire, Esq.

If to Goodyear: City of Goodyear  
190 North Litchfield Road  
Goodyear, Arizona 85338  
Fax: 623-882-7520  
Attn: Brian Dalke, Interim City Manager

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

9.13 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under ARIZ. REV. STAT. § 23-214(A). A Party's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and the non-breaching Party may terminate this Agreement. The Parties retain the legal right to inspect the papers of the other Party to ensure that the party is complying with the above-mentioned warranty under this Agreement.

9.14 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391, *et seq.* and 35-393.06, *et seq.*, the Parties hereby warrant, and represent to each other that the Parties and the Parties' subcontractors do not have, and will not have a scrutinized business operation in either Sudan or Iran during the term 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.

**“Avondale”**

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)

**“Goodyear”**

CITY OF GOODYEAR, an Arizona  
municipal corporation

\_\_\_\_\_  
Brian Dalke, Interim City Manager

ATTEST:

\_\_\_\_\_  
Lynn Mulhall, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA        )

This instrument was acknowledged before me on \_\_\_\_\_, 2012,  
by Brian Dalke, as Interim City Manager of the CITY OF GOODYEAR, an Arizona municipal  
corporation, on behalf of the City of Goodyear.

(affix notary seal here)

\_\_\_\_\_  
Notary Public in and for the State of Arizona

INTERGOVERNMENTAL AGREEMENT DETERMINATION

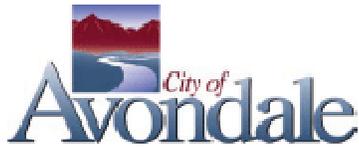
In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned City Attorneys acknowledge that: 1) they have reviewed the above Agreement on behalf of their respective client; and, 2) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to each Party.

---

Andrew J. McGuire  
Avondale City Attorney

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Roric Massey  
Goodyear City Attorney



# CITY COUNCIL REPORT

**SUBJECT:**  
2012 State Legislative Summary Update

**MEETING DATE:**  
June 4, 2012

**TO:** Mayor and Council  
**FROM:** Shirley Gunther, Intergovernmental Affairs Manager (623) 333-1612  
**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff will provide a summary of the actions of the 2012 Second Regular Session of the 50th Arizona Legislature.

**BACKGROUND:**

At the conclusion of each legislative session, staff provides a summary overview of the measures that were debated during the session. Staff will summarize bills and the events of the legislative session and review the key measures that passed and those that failed.

**DISCUSSION:**

**Overview**

The Second Regular Session of the 50th Legislature adjourned May 3, 2012 at 8:25 p.m. The Legislature failed to meet its self imposed deadline of 100 days and instead, was in session for 114 days. The Legislature introduced 1,544 bills, memorials and resolutions; 387 bills passed; 26 bills were vetoed and 362 bills were signed into law by the Governor. The General Effective date of bills is August 2, 2012.

This session was full of unique circumstances. It is the first session where three members resigned during the session: Senator Bundgaard, Representative Patterson and Representative Miranda, and another House member, Representative Ben Arredondo was indicted on May 16. The Goldwater Institute ramped up its lobbying efforts to try and make the most of the rare Republican super majority. They were key proponents on measures that sought to limit or remove local control for municipalities. The session saw a significant number of anti-city bills.

The Legislature and the Governor were successful at approving a \$8.6B budget for FY 2013. The budget was negotiated as part of a package of other bills. One of those key bills was the Governor's Personnel Reform package. The measure allows more flexibility in the hiring and termination process of state employees.

The legislature passed many bills this session that will have an affect on the City of Avondale in areas related to Economic Development, Public Safety, Pension Plans, the Courts, Planning and Finance.

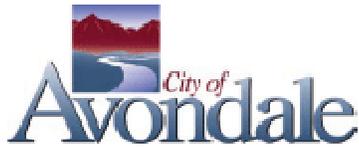
**RECOMMENDATION:**

For update and discussion only.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# DEVELOPMENT SERVICES

**SUBJECT:**

Public Hearing – Zoning Extension for Diamond P Ranch PAD Zoning, Alternatively Ordinance 1495-612 - Zoning Reversion

**MEETING DATE:**

June 4, 2012

**TO:** Mayor and Council

**FROM:** Sue McDermott, Development Services Director/City Engineer (623) 333-4211

**THROUGH:** Charlie McClendon, City Manager

---

**REQUEST:** A one-year extension of Planned Area Development zoning on the subject property to April 16, 2013.

**PARCEL SIZE:** Approximately 244 acres

**LOCATION:** Southwest of the southwest corner of Avondale Boulevard and Lower Buckeye Road

**APPLICANT:** Ms. Carolyn Oberholtzer, Rose Law Group (480) 505-3934

**OWNER:** Avondale Dairy Holdings, LLC (Brett Heron, RED Development) (480) 556-8813 and Silver Bullet, LLC (Michael Pylman)

**BACKGROUND:**

The property is identified as Low Density Residential (density 1 - 2.5 dwelling units/acre, target 1 dwelling unit/acre) along Lower Buckeye Road (in the current General Plan), and the balance of the property Medium Density Residential (density 2.5 - 4 dwelling units/acre, target 2.5 dwelling units/acre) on the General Plan Land Use Map (Exhibit A). The property is zoned Planned Area Development (PAD) (Exhibit B). The property is vacant and currently operates as a dairy farm (Exhibit C).

On March 17, 2008, the City Council annexed the property into the City and zoned it Agricultural (AG). At the same meeting, the City Council approved application Z-07-4 and rezoned the property to Planned Area Development (PAD) through Ordinance 1296-308 (Exhibits E and F). At the March 17, 2008 meeting, City Council also approved a Preliminary Plat for the property as case PP-07-2.

The Preliminary Plat expired March 17, 2009.

On June 20, 2011, the City Council granted a one-year extension of PAD zoning for this property by approval of application PL-11-0033. That extension expired April 16, 2012.

**SUMMARY OF REQUEST:**

The applicant is requesting a one year extension of the expiration date of the PAD zoning to April 16, 2013 (Exhibit H).

**PARTICIPATION:**

Not required.

## **PLANNING COMMISSION ACTION:**

Not required.

## **ANALYSIS:**

According to Section 603.D of the Zoning Ordinance, the PAD zoning of Diamond P Ranch expired April 16, 2012, which is four years after the effective date of the ordinance rezoning the property to PAD. The Zoning Ordinance states that PAD zoning expires three years after rezoning to PAD unless construction of onsite or offsite improvements commences or unless an extension of PAD zoning is granted by City Council. One such one-year extension of PAD zoning was granted by City Council on June 20, 2011 by approval of application PL-11-0033 (Exhibit G - agenda item 9).

### Density & Lot Sizes

The Diamond P Ranch development furthers City Council's vision for Avondale south of Lower Buckeye Road by providing low density residential development on larger lots as compared to existing residential development north of Lower Buckeye Road. Along Lower Buckeye Road where the current General Plan Land Use Map identifies Low Density Residential (1 - 2.5 du/ac), the development proposes 42 large lots on 29.67 acres for a density of 1.41 du/ac. Overall, the PAD provides for a maximum of 589 lots for single family detached homes and 130 single family attached homes on 244 acres, for an overall density of 2.9 dwelling units per acre (du/ac). The density is at the low end of the General Plan Medium Density Residential Land Use category (2.5 - 4 du/ac). If the 130 single family attached homes are not constructed, and instead a school is built (see below), the overall development density is 2.4 du/ac.

The PAD provides for four lot sizes for single family detached homes, corresponding to the R1-15, R1-8, and R1-6 Single Family Residential Zoning Districts. They are 105' x 200', 73' x 120', 68' x 115' and 63' x 115'. The single family attached lot size is 30' x 90' and corresponds to the R-2 Multiple Family Residential Zoning District.

The PAD development standards exceed the current Zoning Ordinance by providing for greater lot coverage by buildings (45% and 50% compared to 40%), reduced front yard setbacks for side-entry garages (12' compared to 15'), and increased height for the single family attached homes (up to 3-stories and 40' compared to 2-stories and 30'). The PAD is more restrictive by providing for greater lot areas, greater lot lengths, a minimum of four elevations and 4 floor plans per lot size category, and each development phase to have a different architectural character to provide a sense of unique neighborhood.

### School Site or Single Family Attached

In the center of the property is an 18.67 acre site identified by the PAD as being for a school site or single family attached. The property was laid out and designed per Littleton School District specifications for a primary school (K - 8). The property is not dedicated for a school, and was not credited towards minimum Open Space requirements for the PAD. If a school wishes to develop on the site, they would have to acquire the land. Alternatively, if during PAD development no school is able to acquire the land, the site could be developed with up to 130 two- and three-story single family attached homes.

### Open Space

The PAD provides for a minimum of 14.78% active Open Space. The current Zoning Ordinance standard is a minimum of 15%, but at the time of PAD approval the minimum standard was 10%. Active Open Space consists of multi-use trails and parks developed with lawns and furniture, such as, ramadas, barbeques, volleyball, and half-court basketball. The total of active Open Space and passive Open Space, consisting of non-landscaped areas beneath the powerlines outside the multi-use trail improvements, exceeds 20% of the site.

## Phasing

Construction of all perimeter offsite infrastructure improvements shall be in the first phase of development, and shall also include the internal collector streets of 119 the Avenue and Elwood Drive connecting Lower Buckeye Road and Avondale Boulevard.

## PAD Zoning Reversion

If the PAD zoning extension is granted, this would be the second of a maximum of four one-year extensions allowed by the Zoning Ordinance. The one year extension would expire April 16, 2013. If the PAD zoning extension is not granted, Section 603.D of the Zoning Code provides for the ability of City Council to revert the zoning to the previous zoning of Agriculture (AG). As a matter of standard procedure, staff has prepared an Ordinance to revert the zoning from PAD to AG should the City Council so desire, and the required notification to the applicant and property owner by Certified Letter has been done per the Section 603.D of the Zoning Code.

All conditions of approval provided for in Ordinance 1296-308, rezoning the property to PAD, continue in effect if this extension is granted (Exhibit E).

## **Conclusion:**

Based on the information provided by the applicant and the analysis by staff, staff recommends approval of the requested one-year extension of PAD zoning.

## **FINDINGS:**

The proposed request substantially complies with the requirements of the General Plan, the Zoning Ordinance, and the Single Family Residential Design Manual.

## **RECOMMENDATION:**

Staff recommends that the City Council **APPROVE** application PL-12-0075.

## **PROPOSED MOTION:**

I move that the City Council **APPROVE** application PL-12-0075, a request for a one-year extension of PAD zoning for Diamond P Ranch to expire April 16, 2013.

*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

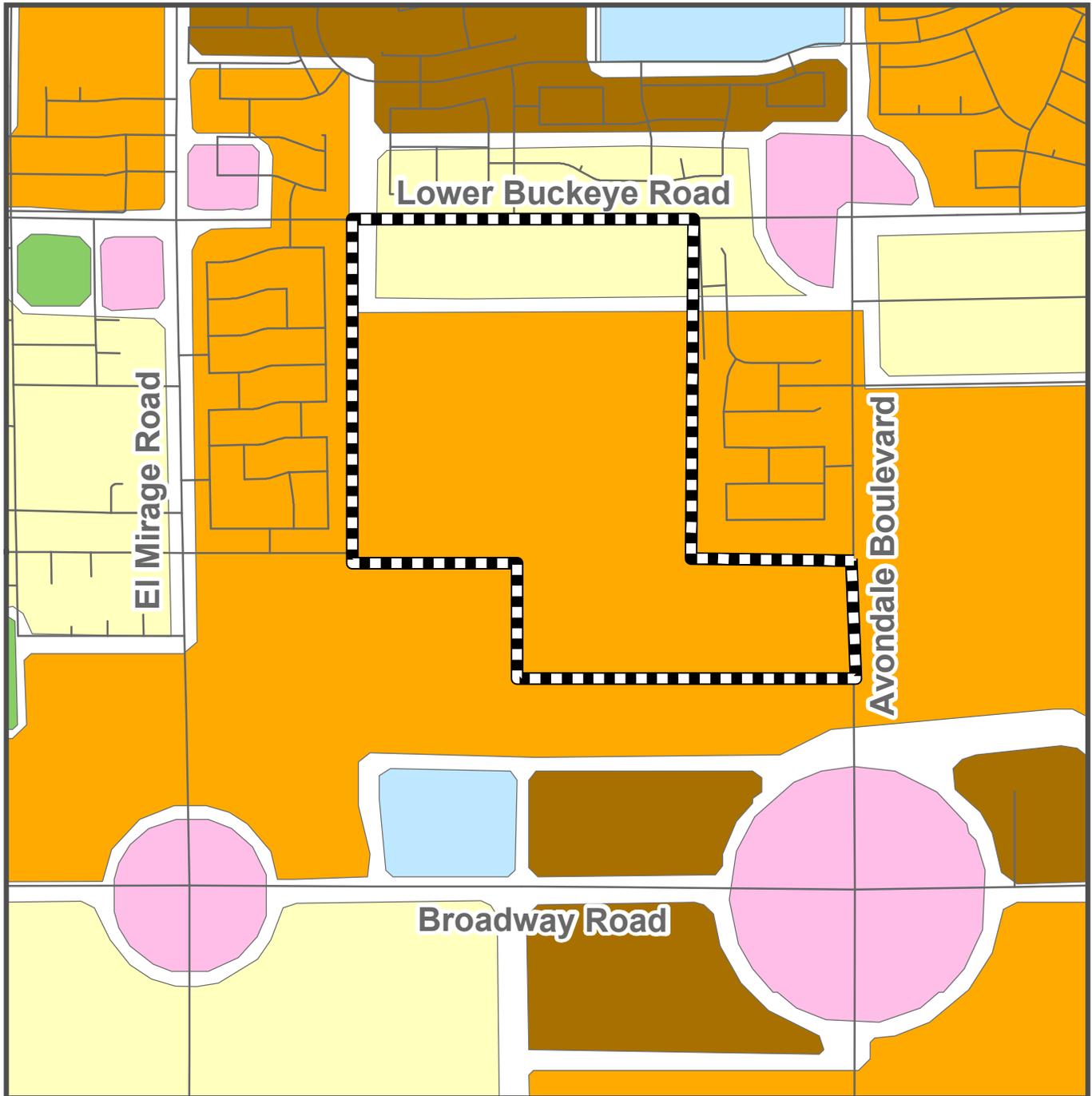
- [Attachment A - General Plan Vicinity Map](#)
- [Exhibit B - Zoning Vicinity Map](#)
- [Exhibit C - Vicinity Aerial Photo 2011](#)
- [Exhibit D - Summary of Related Facts](#)
- [Exhibit E - Ordinance 1296-308 Rezoning Avondale Crossing to PAD](#)
- [Exhibit F - PAD Narrative](#)
- [Exhibit G - Council Minutes June 20, 2011](#)
- [Exhibit H - Applicant's Request Narrative](#)
- [Ordinance 1495-612](#)

## **FULL SIZE COPIES (Council Only):**

None

**PROJECT MANAGER:**

Eric Morgan, Planner II (623) 333-4017



Diamond P Ranch PAD Extension  
PL-12-0075

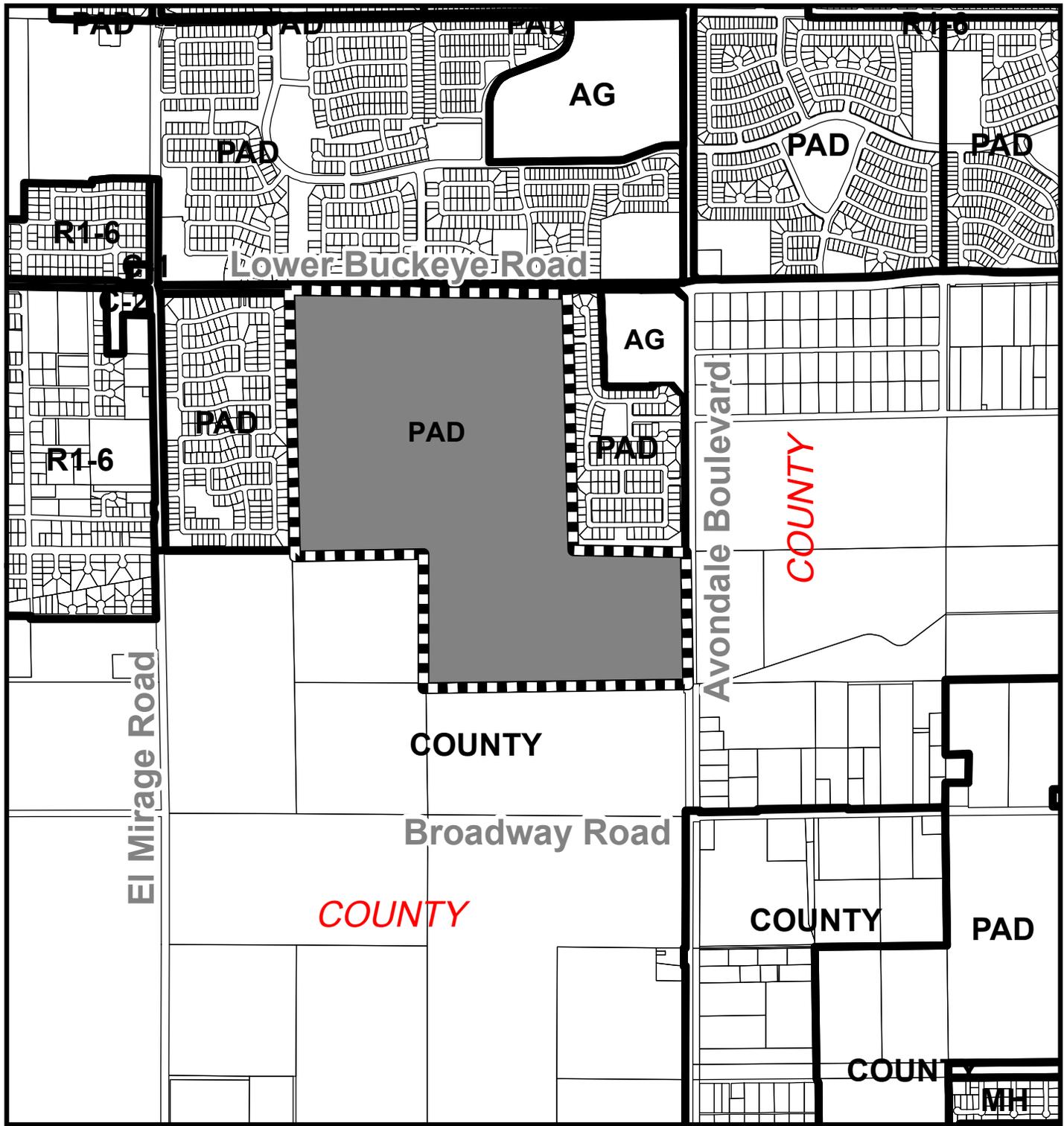
General Plan Land Use Map

- |  |   |
|--|---|
|  Commercial                 |  Medium High Density Residential |
|  Employment                 |  Mixed Use                       |
|  Freeway Commercial         |  Multi Family Residential        |
|  High Density Residential   |  Open Space                      |
|  Low Density Residential    |  Public Facilities               |
|  Medium Density Residential |   |



Subject Property





**Zoning Vicinity Map  
Diamond P Ranch PAD Extension  
PL-12-0075**



**Subject Property**





**Aerial Photograph 2011  
Diamond P Ranch PAD Extension  
PL-12-0075**



**Subject Property**



*SUMMARY OF RELATED FACTS*  
*APPLICATION PL-12-0075 DIAMOND P RANCH PAD EXTENSION*

<i>THE PROPERTY</i>	
PARCEL SIZE	Approximately 244 acres
LOCATION	S & W of SWC of Avondale Blvd. & L. Buckeye Rd.
PHYSICAL CHARACTERISTICS	Relatively flat, sloping slightly SW
EXISTING LAND USE	Dairy farming
EXISTING ZONING	Planned Area Development (PAD)
ZONING HISTORY	Annexed 3/17/2008, Rezoned to PAD 3/17/2008; 1 <sup>st</sup> PAD zoning extension 6/20/2011
DEVELOPMENT AGREEMENT	No.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	Planned Area Development (PAD) – Del Rio Ranch
EAST	Planned Area Development (PAD) – Fleming Farms & COUNTY
SOUTH	COUNTY - farmland
WEST	Planned Area Development (PAD) – Cantada Ranch

<i>GENERAL PLAN</i>
<p>A portion of the subject property along Lower Buckeye Road is designated as <b>Low Density Residential</b> (density 1 – 2.5 dwelling unit/ac) on the General Plan Land Use Map.</p> <p>The balance of the subject property is designated as <b>Medium Density Residential</b> (density 2.5 – 4 dwelling unit/ac) on the General Plan Land Use Map.</p>

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Littleton Elementary School District Tolleson Union High School District
ELEMENTARY SCHOOLS	Littleton Elementary School
HIGH SCHOOL	La Joya Community High School

<i>STREETS</i>	
<b>Lower Buckeye Road</b>	
Classification	Arterial
Existing half street ROW	33 feet
Standard half street ROW	55 feet
Existing half street improvements	1-lane
Standard half street improvements	2-lanes, ½ of landscape median/turn lane, bike lane, detached sidewalk, curb & gutter, street

	lights and landscaping
<b>Avondale Boulevard</b>	
Classification	Arterial
Existing half street ROW	33 feet
Standard half street ROW	65 feet
Existing half street improvements	1-lane
Standard half street improvements	3-lanes, ½ of landscape median/turn lane, bike lane, detached sidewalk, curb & gutter, street lights and landscaping

<b>117<sup>th</sup> Avenue</b>	
Classification	Minor Collector
Existing half street ROW	None
Standard half street ROW	35 feet
Existing half street improvements	None
Standard half street improvements	1-lane, ½ median/turn lane, bike lane, detached sidewalk, curb & gutter, street lights, and landscaping

<b>119<sup>th</sup> Avenue</b>	
Classification	Minor Collector
Existing half street ROW	None
Standard half street ROW	40 feet
Existing half street improvements	None
Standard half street improvements	1-lane, ½ median/turn lane, bike lane, detached sidewalk, curb & gutter, street lights, and landscaping

<b>Elwood Street</b>	
Classification	Minor Collector
Existing half street ROW	None
Standard half street ROW	40 feet
Existing half street improvements	None
Standard half street improvements	1-lane, ½ median/turn lane, bike lane, detached sidewalk, curb & gutter, street lights, and landscaping

<b>UTILITIES</b>	
<p>There is an existing 19” water line in Lower Buckeye Road, and a 16” water line being constructed in Avondale Boulevard.</p> <p>There are existing 18” sewer line in Lower Buckeye Road, and an existing 30” sewer line in Avondale Boulevard.</p>	

ORD1296308-6-1-1--N

**ORDINANCE NO. 1296-308**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 245 ACRES LOCATED WEST AND SOUTH OF THE SOUTHWEST CORNER OF LOWER BUCKEYE ROAD AND AVONDALE BOULEVARD AS SHOWN IN FILENAME Z-07-4, 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. § 9-452.04; and

**WHEREAS**, the Commission held a public hearing on Thursday, February 21, 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 March 17, 2008.

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

**SECTION 1.** That ± 245 acres of real property generally located west and south of the southwest corner of Lower Buckeye Road and Avondale Boulevard as shown in filename Z-07-4, 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 be in substantial conformance with the development plan and narrative Planning Division date stamped February 8, 2008.

2. Right-of-way shall be dedicated to the City as required by the then-current version of the City's adopted transportation plan. For reference purposes only, as of the date of this Ordinance, the required right-of-way dedications are as follows:
  - A. Lower Buckeye Road - 55 feet width half-street.
  - B. Avondale Boulevard - 65 feet width half-street.
  - C. 119th Avenue - 80 feet width full-street.
  - D. 117th Avenue - 70 feet width full-street once the roadway transitions onto the subject property from Fleming Farms PAD.
  - E. Elwood Street - 80 width full street.

Additional requirements for improvements, traffic signals and right-of-way for deceleration lanes, turn lanes, transit stops, etc., may be required during the site plan process depending upon the findings of traffic studies and analysis.

3. Cost contribution towards traffic signals are required as follows:
  - A. Lower Buckeye Road & 119th Avenue 50% of the cost to signalize the intersection.
  - B. Avondale Boulevard & Elwood Street 25% of the cost to signalize the intersection.

Additional traffic signals may be required based upon the findings of traffic studies and analysis, and as determined by the City Engineer.

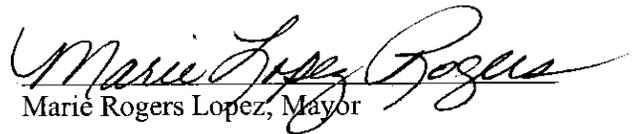
4. Prior to recording of a final plat, the developer shall:
  - A. Obtain ownership of the existing irrigation well ADWR Well Registration No. 55-565981, and transfer that ownership to the City at no cost to the City.
  - B. Provide a roughly square well site of approximately 7,000 square feet, no more than 660 feet from the location of the existing irrigation well, for subsequent purchase by the City.
  - C. Design and construct a pressurized transmission line from the new well site to an existing transmission line at 119th Ave and Lower Buckeye Road, the cost of which shall be for reimbursed by the City upon the City's acceptance of the completed transmission line.
5. Prior to recording of a final plat, the developer shall abandon, per the Arizona Department of Water Resources (ADWR) well abandonment rules, any existing domestic and/or irrigation wells that will not be transferred to the City. This includes, but is not limited to, ADWR Well Registration Nos. 55-634912, 55-625282, and 55-625281.
6. Prior to issuance of the first Certificate of Occupancy for any structure on the property , extinguish and pledge all existing Grandfathered Irrigation Rights, in conformance with

Arizona law, to the City's Assured Water Supply account at the ADWR. This includes, but is not limited to, rights Nos. 58-106098.0003 (75.2 acres), 58-106096.0004 (21.741 acres) 58-110594.0002 (50.0 acres), and 58-106096.0003 (371.88 acres).

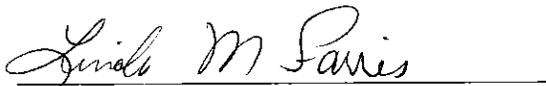
7. Developer shall submit a full traffic study prepared by a professional Traffic Engineer to the City not later than the first to occur of the Master Site Plan application or Preliminary Plat application. A site-specific traffic study shall be required for the proposed school/proposed Townhomes (R-2) site.
8. A preliminary plat shall be required for the single-family attached townhomes site prior to development. The preliminary plat shall require recommendation from Planning Commission and approval by City Council. The preliminary plat shall not be an administrative approval by staff.
9. The developer of Diamond P Ranch shall relocate the existing high-voltage power pole located in the northwest corner of Elwood Street and Avondale Boulevard to outside of the proposed right-of-way.
10. All areas within the power line easements not part of the multi-use trail system shall be covered with decomposed granite and provide landscaping.
11. All perimeter off-site improvements shall be completed with the first phase of development.

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, March 17, 2008.

  
Marie Rogers Lopez, Mayor

ATTEST:

  
Linda M. Farris, City Clerk

APPROVED:

  
Andrew J. McGuire, City Attorney

**EXHIBIT A  
TO  
ORDINANCE NO. 1296-308**

**[Map and Legal Description]**

See following pages.

## **Exhibit A**

**All that portion of the Northeast quarter of the Northwest quarter of Section 1, Township 1 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:**

**COMMENCING at the Northwest corner of Section 1, marked by a ½ inch rebar and cap RLS 34404;**

**thence along the North line of the Northwest quarter of the Northwest quarter, South 87 degrees 55 minutes 47 seconds East, a distance of 1309.61 feet to a brass cap in hand hole marking the Northwest corner of the Northeast quarter of the Northwest quarter;**

**thence leaving said North line, South 00 degrees 14 minutes 07 seconds West, a distance of 65.00 feet to a point on the Southerly right-of-way line of McDowell Road as conveyed in Book 2328 of Deed, page 135, said point being the TRUE POINT OF BEGINNING;**

**thence along the South right-of-way line of McDowell Road, South 88 degrees 58 minutes 51 seconds East, a distance of 697.99 feet;**

**thence leaving said right-of-way, South 02 degrees 50 minutes 49 seconds West, a distance of 931.23 feet;**

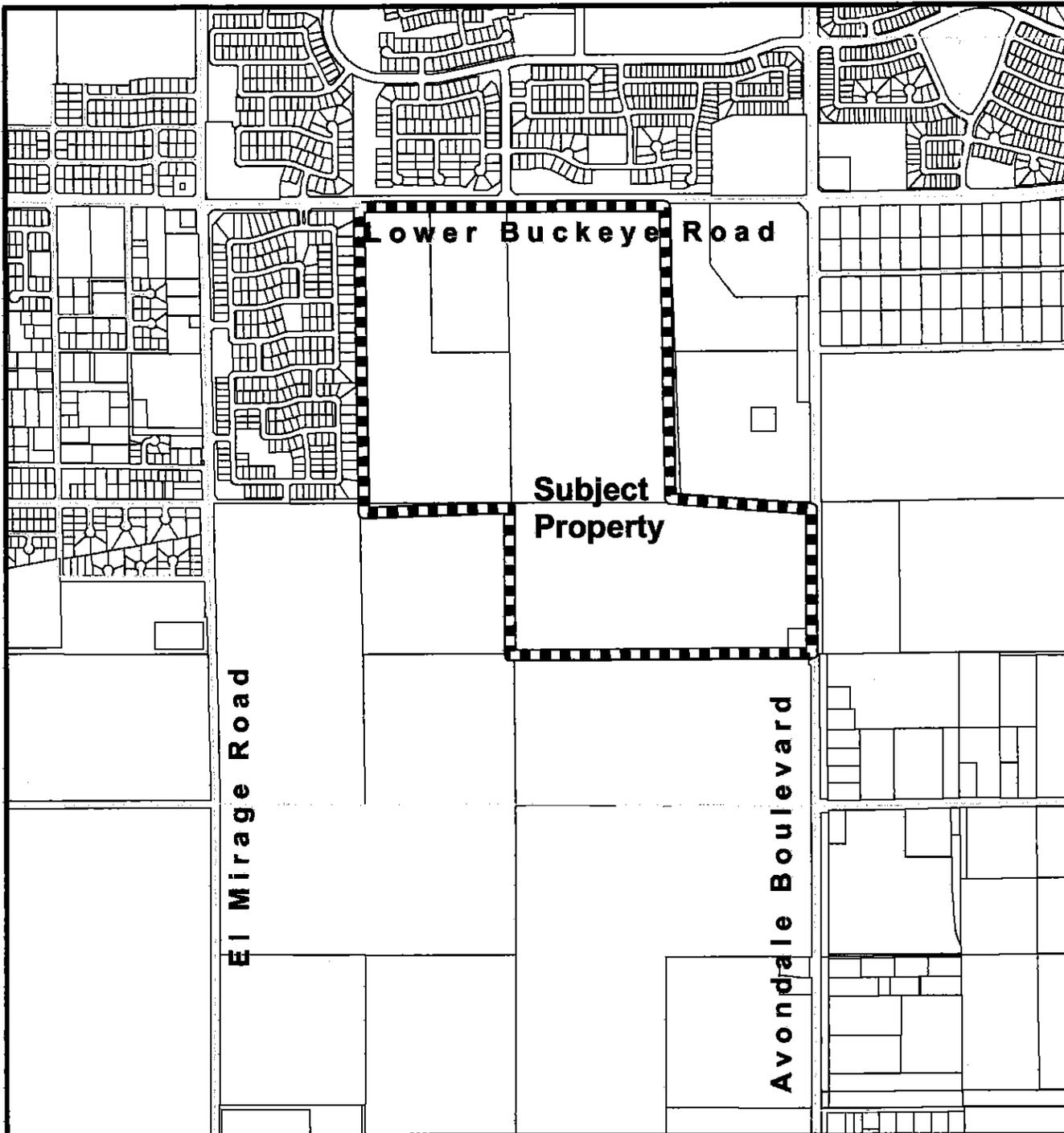
**thence South 65 degrees 24 minutes 06 seconds West, a distance of 121.63 feet;**

**thence South 45 degrees 59 minutes 06 seconds West, a distance of 22.80 feet;**

**thence South 20 degrees 42 minutes 06 seconds West, a distance of 10.52 feet;**

**thence South 89 degrees 44 minutes 13 seconds West, a distance of 525.12 feet to a point on the West line of the Northeast quarter of the Northwest quarter;**

**thence along said West line, North 00 degrees 14 minutes 07 seconds East, a distance of 1021.22 feet to the TRUE POINT OF BEGINNING**



**Z-07-4**  
**Diamond P Ranch**



**Subject Property**



## Exhibit F – PAD Narrative

Minutes of the Regular Meeting held June 20, 2011 at 7:17 p.m. in the Council Chambers.

**MEMBERS PRESENT**

Mayor Lopez Rogers and Council Members

Jim McDonald, Vice Mayor  
Jim Buster  
Stephanie Karlin  
Frank Scott  
Charles Vierhout  
Ken Weise

**ALSO PRESENT**

Charlie McClendon, City Manager  
David Fitzhugh, Assistant City Manager  
Rogene Hill, Assistant City Manager  
Christopher Reams, Parks, Recreation and Libraries Director  
Kevin Artz, Finance and Budget Director  
Eric Morgan, Development Services Department  
Ken Galica, Development Services Department  
Andrew McGuire, City Attorney  
Carmen Martinez, City Clerk

**1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK**

Carmen Martinez, City Clerk, read a statement of participation regarding public appearances.

**2 RECOGNITION ITEMS (MAYOR PRESENTATIONS)**

a. Debra Undhjem - IMS Marathon

Chris Reams introduced Debra Undhjem, founder of the IMS Marathon. Debra Undhjem indicated that this year's marathon was a great success and various organizations and cities have benefitted from the event. Next year's event is already being planned and will follow the same route. She asked Council Members to mark their calendars for next year's event. She presented Mayor Lopez Rogers with a check in the amount of \$3,000.

**3 UNSCHEDULED PUBLIC APPEARANCES**

There were no requests to speak.

**4 CONSENT AGENDA**

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

**a. APPROVAL OF MINUTES**

1. Work Session of June 6, 2011
2. Regular Meeting of June 6, 2011

**b. AUTHORIZATION TO PROCEED - ANNEXATION OF REMNANT PORTIONS OF PARCELS IN SOUTH AVONDALE**

A request for authorization to proceed with the annexation of various remnant portions of parcels in South Avondale in order to close the gaps and facilitate future development of the area.

**c. RESCHEDULING OF CITY COUNCIL MEETINGS**

A request to reschedule the regularly scheduled council meetings of July 4 in observance of the 4th of July holiday and December 19 to allow for a winter break.

**d. THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT - CAPITALEdge ADVOCACY LLC**

A request to approve the Third Amendment to the Professional Services Agreement with Capitaledge Advocacy LLC to extend the term for one year and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**e. ADDENDA TO LICENSE AGREEMENTS - 3M COMPANY**

A request to approve the addenda to two license agreements with 3M Company for the servicing and licensing of City of Avondale Libraries' self-check systems and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

**f. CONSTRUCTION CONTRACT AWARD - D&K ENTERPRISES, LLC FOR THE AVONDALE TRAFFIC OPERATIONS CENTER BUILDING RENOVATIONS PROJECT**

A request to award a construction contract to D&K Enterprises, LLC for the Avondale Traffic Operations Center Building Renovations Project in the amount of \$54,550.00 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

**g. FINAL PLAT - COLDWATER QUIKTRIP (PL-11-0065)**

A request for approval of a Final Plat for Coldwater QuikTrip that subdivides the property into three lots and dedicates easements to the public.

**h. MINOR LAND DIVISION - VASQUEZ PROPERTY AT ILLINI STREET SOUTHEAST OF VERMEERSCH ROAD**

A request by Maria Vasquez for approval of a Minor Land Division that includes dedication of a public utility easement and an overhead utility easement.

**i. RESOLUTION 2982-611 - SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR CHILDHOOD IMMUNIZATIONS**

A resolution amending an Intergovernmental Agreement with the Maricopa County Department of Public Health relating to the childhood immunization program extending the term of the agreement to February 29, 2012.

**j. RESOLUTION 2983-611 - INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR FY2009 JARC FUNDS**

A resolution approving an Intergovernmental Agreement with the Arizona Department of Transportation Public Transportation Division for the Rural and Small Urban Application Section 5316, Job Access and Reverse Commute Transportation Program; to provide funding to support transit operation for the START Route 131 or the Avondale Circulator, in the amount of \$145,000 with a 50% match requirement and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**k. RESOLUTION 2984-611 - INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY FOR THE MC85 AND AVONDALE BOULEVARD INTERSECTION SCOPING STUDY**

A resolution authorizing an Intergovernmental Agreement with Maricopa County Department of Transportation for the purpose of cost sharing in a Scoping Study for the intersection of MC85 and Avondale Boulevard, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

**l. RESOLUTION 2986-611 - GRANT PROPOSAL TO THE GILA RIVER INDIAN COMMUNITY FOR THE SOUTHWEST FAMILY ADVOCACY CENTER**

A resolution supporting the submittal of a grant proposal to the Gila River Indian Community for \$82,000 to create a Prevention/Community Outreach position at the Southwest Family Advocacy Center to provide prevention/education/awareness services to victims and their families and to schools and other agencies within the three communities of Avondale, Goodyear and Buckeye and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**m. RESOLUTION 2987-611 - INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GLENDALE FOR LANDFILL SERVICES**

A resolution approving an Intergovernmental Agreement with the City of Glendale relating to landfill services, and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents. The City Council will take appropriate action.

**n. RESOLUTION 2988-611 - CITY OF AVONDALE FUND BALANCE POLICY AND STABILIZATION ARRANGEMENT**

A resolution adopting the City of Avondale Fund Balance Policy and Stabilization Arrangement.

Vice Mayor McDonald moved to approve the consent agenda as presented. Council Member Weise seconded the motion.

**ROLL CALL VOTE AS FOLLOWS:**

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

**5 PUBLIC HEARING - PROPERTY TAX LEVY AND FY 2011-2012 FINAL BUDGET**

A public hearing on the proposed property tax levy and final budget and expenditure limit for the 2011-2012 fiscal year in the amount of \$163,154,810.

City Manager Charlie McClendon indicated the notice of tonight's public hearing for the property tax levy and final budget adoption was posted as required by law. Staff received emails regarding this item which were forwarded to Council. He introduced Kevin Artz to present this item. The Council will take official action to approve the tax levy at the August 1, 2011 meeting.

Kevin Artz, Finance and Budget Director reviewed the specifics of this item as more particularly described in the council report and budget document. He indicated there are no salary adjustments in the budget, but there is a one-time health care contribution from a reimbursement the City received from the health insurance carrier.

Regarding the property tax levy, Mr. Artz reviewed some historical data regarding property values and tax rates. He explained that the increase from \$1.10 up to \$1.33 per one hundred dollars of assessed valuation is necessary in order for the city to meet its financial obligations. Mr. Artz explained that homeowners will see a very slight increase in the amount of tax they pay to the City and reviewed an example using an average home in Avondale which would result in an increase of slightly over \$1.50 for the entire year. Mr. Artz reviewed a chart comparing property values, total tax levies and GO Bond debt. He indicated that even with the proposed increase debt service payments are about \$2 million more than what is being collected in secondary property taxes. He presented a comparison of neighboring cities and indicated that five cities are also proposing an increase in the property tax rate and expects that the remaining cities will also propose an increase in the next year or so.

Mayor Rogers announced that staff is available to review taxpayers' information on an individual basis if they desire. Kevin Artz confirmed that staff has reviewed information with about a dozen residents and amounts have varied between a \$5 decrease to a \$10 increase.

Council Member Buster asked for confirmation that City will collect about \$400,000 less in spite of the increase. Kevin Artz replied that there will be approximately a \$300,000 decrease in the total levy. Mr. Artz clarified a question from Council Member Buster indicating that the total amount includes both primary and secondary numbers and the secondary tax rate number includes \$652,000 the city gets back from the Federal Government for Building America Bonds that were issued as taxable bonds. In response to a subsequent question from Council Member Buster, Mr. Artz explained that the State is hitting its projections for sales tax, so the City is receiving a little more from state shared revenues and indicated he believes it is likely that the state will hit 5% growth on their numbers. A 3% growth rate is realistic for the city.

Vice Mayor McDonald asked what would happen if Council decided not to increase the property tax rate. Kevin Artz indicated the difference would come from fund balance for this year, however, in future years council would need to consider a tax rate increase or find another source of funding for the city to meet its obligations. Kevin indicated that with staff's recommendation, there will still be a shortfall, but would be able to draw down the fund balance over the next three years. He indicated that if Council chose not to increase the rate this year, future increases would need to be more steep at approximately \$1.15 next year and \$1.74 the following year. Staff's recommendation is for a slight increase now to

avoid steep tax increases in the future. Vice Mayor McDonald commented that nobody likes to hear talk of tax increases but staff's proposal is geared to softening the burden on homeowners. He added that the City has been fiscally responsible and needs to make sure it is able to cover its debt.

In reply to a comment from Council Member Scott, Mr. Artz confirmed that as required by law the tax increase will be used to repay the bonds which have been used to build infrastructure; it cannot be used for ongoing expenses. Council Member Scott commented that the city has reduced its workforce and employees have not received an increase in the past three years and commented that the City has been very prudent. He indicated this is a "pay as you go" option and while he does not like it is necessary and the right thing to do.

Council Member Weise commented that no matter how small, he looks at a tax increase as a last resort. He commented that the Council has been fiscally conservative and wondered if the City has done enough. Capital improvement projects have been coming in under budget. Wants to ensure that staff has looked at all possibilities. He expressed appreciation for Kevin and his staff for being responsive to residents and ensuring that the process is transparent.

Council Member Vierhout commented asked if GO bonds were all approved by voters. Mr. Artz confirmed that the bonds were approved by voters.

Council Member Buster thanked Kevin for his foresight in dealing with the downturn in the economy. He asked if there is a limitation on raising the secondary property tax rate. Mr. Artz confirmed that while the primary rate can only be increased by 2%, there is no limit for the secondary. In response to a subsequent question from Council Member Buster, Mr. Artz that the amount the City receives from the Federal Government from the Build America Bonds is mistakenly included in the schedule as property tax and should instead be listed under the Federal reimbursement line item.

Mayor Rogers opened the public hearing. There being no requests to speak, Mayor Rogers closed the public hearing.

## 6 RECESS TO SPECIAL MEETING

Vice Mayor McDonald moved to recess to the special meeting. Council Member Weise seconded the motion.

### ROLL CALL VOTE AS FOLLOWS:

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

## **7 RECONVENE REGULAR MEETING**

City Council reconvened to the regular meeting at 8:07 pm.

## **8 MASTER SITE PLAN FOR COLDWATER COMMONS AND SITE PLAN FOR QUIKTRIP (PL-10-0143)**

A request by Mr. Juan D. Romero for approval of the approximately 7.08 acre Coldwater Commons Master Site Plan, and approval of the approximately 2.1 acre QuikTrip Site Plan within Coldwater Commons.

Charlie McClendon introduced Eric Morgan to present this item.

Eric Morgan, Development Services Department reviewed the particulars of this item as more specifically described in the council report. He indicated that the Planning Commission held a public hearing on the request and is recommending City Council approval subject to the following 14 stipulations:

1. Development shall be in conformance with the Coldwater Commons Master Site Plan, QuikTrip Site Plan, Elevation Plans, Landscape Plan, Comprehensive Sign Plan, and Final Traffic Impact Analysis date stamped April 28, 2011, except as modified by the conditions of approval below.
2. The plan expires one year from the date of approval unless a building permit has been issued.
3. All development shall be done in accordance with the City of Avondale General Engineering Requirements Manual and the City of Avondale Supplement to MAG Uniform Specifications and Details.
4. All landscape areas shall be maintained by the property owner in accordance with the approved plan date stamped March 29, 2011.
5. No exterior equipment, including but not limited to mechanical equipment and roof ladders, shall be visible to the public or from an off-site location.
6. Landscape material adjacent to the property line shall not impede the pedestrian or fire lane access routes.
7. All undeveloped pads, portions of the development or center shall be treated with decomposed granite for dust control until such time of development of those areas.
8. Prior to issuance of a permit, a Minor Land Division map dedicating the necessary public right-of-way and easements shall be recorded.
9. Prior to Site Plan approval for an Assisted Living use on the property, City Council approval of an amendment to the Coldwater Springs Planned Area Development (PAD) shall be required.
10. Variation from the approved Master Site Plan may warrant improvements to public and private infrastructure, and these costs shall be the responsibility of the developer.
11. Deliveries of fuel and convenience store merchandise shall be prohibited between 10 p.m. and 6 a.m. Store merchandise shall be delivered through the rear of the building.
12. The median in Coldwater Springs Boulevard shall be landscaped in the first phase of development in accordance with the General Engineering Requirements Manual and the Landscape Ordinance.

13. Prior to issuance of a building permit, the excess dirt on the entire master planned site shall be removed.
14. Revise the location of the fire hydrants prior to approval of construction documents, as required by the Fire Marshal.

Council Member Weise asked if the proposed landscape would obstruct the view by police. Mr. Morgan indicated that Quik Trip staffs their convenience stores at a higher level than other similar establishments and added that the landscaping will not block the view from the street. Council Member Weise commented he was glad the traffic issue coming from Avondale Boulevard has been resolved.

Council Member Vierhout commented that the plan is superior to the existing gas stations in the vicinity of his place of employment in Kierland Commons.

As requested by Council Member Karlin, Mr. Morgan reviewed the route that gas delivery trucks will follow within the site. He commented that the route is the most practical due to the size of the vehicles and the radius they need in order to make the required turns. Council Member Karlin asked how many tanks would be available and the kind of fuel that will be dispensed. Mr. Morgan indicated there would be four, one of them being diesel fuel.

Vice Mayor McDonald moved to approve the Master Site Plan for Coldwater Commons and the Site Plan for QuikTrip subject to the 14 stipulations. Council Member Weise seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

**9 PUBLIC HEARING – ZONING EXTENSION FOR DIAMOND P RANCH PAD ZONING, ALTERNATIVELY ORDINANCE 1461-611 - ZONING REVERSION**

A public hearing and consideration of a request by Ms. Carolyn Oberholtzer, Rose Law Group, for a one year extension of PAD zoning for Diamond P Ranch, located on approximately 244 acres of land southwest of the southwest corner of Avondale Boulevard and Lower Buckeye Road. Alternatively, consideration of an ordinance reverting the zoning of the Diamond P Ranch PAD to its previous zoning classification of Agricultural.

Eric Morgan reviewed the particulars of this item as more specifically described in the council report. Mr. Morgan indicated that staff is recommending approval of the request.

Vice Mayor McDonald asked what kind of contact staff has had with the applicant over the last year. Mr. Morgan indicated that he's heard from them a few times a year with general questions. He added that the property owners have attended General Plan meetings and have shown interest in the City's plans for the southern area of Avondale. The proposed development will conform with the General Plan.

Mayor Rogers indicated this is their first request for an extension and opened the public hearing. There being no requests to speak Mayor Rogers closed the public hearing.

Vice Mayor McDonald moved to approve a one year extension of PAD zoning for Diamond P Ranch to expire April 16, 2012; Council Member Karlin seconded the motion.

**ROLL CALL VOTE AS FOLLOWS:**

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

**10 PUBLIC HEARING AND ORDINANCE 1462-611 – ZONING REVERSION FOR AVONDALE SPECTRUM (PL-11-0052)**

A public hearing and consideration of a request by the City of Avondale Zoning Administrator to adopt an Ordinance reverting the Planned Area Development zoning of Avondale Spectrum, which expired April 21, 2011, to its previous zoning classification of Agricultural.

Charlie McClendon introduced Ken Galica of the Development Services Department to present this item. He indicated that unlike the previous item, the property owner has not maintained regular communication with the City.

Ken Galica reviewed the particulars of this item as more particularly described in the Council report. He indicated that the property owner has not requested an extension of the PAD zoning and staff is therefore recommending that the zoning on the property be reverted back to Agricultural zoning.

Mayor Rogers opened the public hearing, there being no requests to speak Mayor Rogers closed the public hearing.

Vice Mayor McDonald moved to adopt Ordinance 1462-611 reverting the Planned Area Development zoning of Avondale Spectrum to Agricultural. Council Member Scott seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

**11 PUBLIC HEARING AND ORDINANCE 1463-611- ZONING REVERSION FOR AVONDALE MARKETPLACE (PL-11-0048)**

A public hearing and consideration of a request by the City of Avondale Zoning Administrator to adopt an Ordinance reverting the Planned Area Development zoning of Avondale Marketplace, which expired March 20, 2011, to its previous zoning classification of Agricultural.

Ken Galica of the Development Services Department reviewed the particulars of this item as more specifically described in the council report. He explained that the property owner has chosen not to pursue their option for a last extension of the PAD zoning as they are not in the position to develop the property as originally proposed within the near future.

Mayor Rogers opened the public hearing, there being no requests to speak, Mayor Rogers closed the public hearing.

Vice Mayor McDonald moved to accept the findings and adopt Ordinance 1463-611 approving application PL-11-0048, a request to revert the zoning of Avondale Marketplace from Planned Area Development to its previous zoning classification of Agricultural. Council Member Scott seconded the motion.

ROLL CALL VOTE AS FOLLOWS:

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

**12 PAYMENT AUTHORIZATION - CITY OF GLENDALE FOR SYSTEM UPGRADES TO THE REGIONAL WIRELESS COOPERATIVE SYSTEM**

A request to authorize payment of \$74,853.80 to the City of Glendale for system upgrades to the regional wireless cooperative (RWC) system.

Chief Kotsur reviewed the particulars of this item as more specifically described in the council report. He indicated that previous communications systems were not reliable and put officers at risk. The proposed system will allow for reliable and immediate communication within the Department, with other public safety agencies and the public works department. He explained in addition to the amount that is included in the annual budget a one-time payment of \$74,853.80 to the City of Glendale is necessary to join the RWC.

Council Member Scott asked if the relationship with Glendale was good. Chief Kotsur indicated that Avondale has an excellent relation with Glendale and has seen great cooperation to tackle issues.

Council Member Karlin commented that the NLC has encouraged building of relationships with other agencies to enhance communications between departments during emergencies and is glad to know that Avondale has managed to build those good relationships with other cities.

Vice Mayor McDonald moved to approve a onetime payment of \$74,853.80 to the City of Glendale to migrate to the RWC. Council Member Karlin seconded.

**ROLL CALL VOTE AS FOLLOWS:**

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye
Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

**13 EXECUTIVE SESSION**

An executive session pursuant to ARIZ. REV. STAT. § 38-431.03 (A)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding negotiations for two potential Development Agreements.

Council Member Weise moved to adjourn into executive session. Vice Mayor McDonald seconded the motion.

**ROLL CALL VOTE AS FOLLOWS:**

Vice Mayor McDonald	Aye
Council Member Scott	Aye
Council Member Vierhout	Aye
Mayor Rogers	Aye
Council Member Weise	Aye

Council Member Karlin	Aye
Council Member Buster	Aye

Motion carried unanimously.

**14 ADJOURNMENT**

There being no further business before the Council, Council Member Buster moved to adjourn the meeting. Council Member Vierhout seconded the motion.

Meeting was adjourned at 9:14 p.m.

  
\_\_\_\_\_  
Mayor Lopez-Rogers

  
\_\_\_\_\_  
Carmen Martinez, CMC  
City Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the Council of the City of Avondale held on the 20th day of June 2011. I further certify that the meeting was duly called and held and that the quorum was present.

  
\_\_\_\_\_  
City Clerk

# Diamond P Ranch

## PAD Zoning Extension Narrative



### 1. Location:

Intersection: West of the SWC of Avondale Blvd & Lower Buckeye Road  
Size: Approximately 244 acres

### 2. History

Annexation: Approved by City Council on March 17, 2008

Current Use of Property: Dairy Farm

Zoning: Rezoning from AG to PAD approved March 17, 2008 and effective April 17, 2008. One year extension approved June 20, 2011.

Subsequent Actions: A Preliminary Plat and the related preliminary water and sewer design reports were approved March 17, 2008.

Following the Preliminary Plat approval, numerous plans and reports were commenced by Coe & Van Loo Engineers for Diamond P Ranch at a cost of over \$500,000. These plans and reports were 95% complete in the second quarter of 2009 and Coe and Van Loo was preparing to submit them to the City of Avondale when the prior owner began to experience financial difficulties and the existing bank loan matured. Given the state of the financial markets at the time, the owner was unable to refinance the property, and the bank began foreclosure proceedings in the second quarter of 2009. With the foreclosure of the property in process, the prior owner did not submit the improvements plans.

In late 2009 the bank foreclosed on the northern 166 acres of Diamond P Ranch and entertained several offers to purchase the property from developers and dairy farmers. By early 2010 a company formed by RED Realty Advisors, LLC opened escrow and ultimately purchased this portion of property on March 31, 2010.

An extension of the PAD zoning was submitted in early 2011 and approved by the City Council on June 20, 2011.

Today, RED Realty Advisors, LLC and Silver Bullet, LLC are working together to position the property for residential development once the market recovers.

### 3. Request

We are requesting that the PAD be extended for the second of four permitted one year extensions which, if granted, would extend the PAD approval to April 17, 2013.

#### **4. Justification**

The property was not able to be developed within the initial approval period and subsequent one year extension because of the following factors:

- The severe downturn in the residential land market that began in the fall of 2008 and continues to this day.
- The multiple changes in ownership that occurred for a portion of the property in 2009 and 2010.
- A continuing flow of foreclosed homes into the market, and the reduced property values that result from those sales. The reduced housing values make new lot development unfeasible at this time.

Since the PAD extension was approved last year the Littleton School District has contacted us to discuss a school location that differs in location and size from the originally approved location.

We will continue to work with staff over the coming year to make sure that we have the best unit mix for the market, evaluate the needs of the Littleton School District and continue our involvement in the General Plan 2030 process.

**ORDINANCE NO. 1495-612**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE OFFICIAL ZONING ATLAS OF THE CITY OF AVONDALE FOR APPROXIMATELY 245 ACRES GENERALLY LOCATED WEST AND SOUTH OF THE SOUTHWEST CORNER OF LOWER BUCKEYE ROAD AND AVONDALE BOULEVARD AS SHOWN IN FILE NUMBER PL-12-0075, 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. 1296-308 on March 17, 2008, rezoning that certain ± 245 acre parcel of land generally located at west and south of the southwest corner of Lower Buckeye Road and Avondale Boulevard, as more particularly described and depicted in Ordinance No. 1296-308, as corrected by Ordinance No. 1458-511 (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 Subject 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) (the “Rezoning Reversion”); 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 June 4, 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 ± 245 acre parcel of real property generally located west and south of the southwest corner of Lower Buckeye Road and Avondale Boulevard, as shown in file number PL-12-0075, 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 Rezoning 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, June 4, 2012.

\_\_\_\_\_  
Marie Lopez Rogers, Mayor

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
ORDINANCE NO. 1495-612

(Legal Description and Map)

See following pages.

## Exhibit A

### LEGAL DESCRIPTION

That part of Section 24, Township 1 North, Range 1 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the Maricopa County Highway Department Brass Cap in handhole marking the North Quarter Corner of said Section 24, from which the City of Avondale Brass Cap flush marking the Northeast Corner of said Section 24 bears South 89°52'51" East, a distance of 2,653.37 feet;

Thence South 89°52'51" East, along the North line of the Northeast Quarter of said Section 24, a distance of 1,419.13 feet to a point on the East line of Parcel No. 1 as described in Warranty Deed recorded in Instrument No. 98-0207373, Maricopa County Records;

Thence South 01°42'54" East, departing said North line along said East line, a distance of 2,639.37 feet to a point on the North line of the Southeast Quarter of said Section 24;

Thence South 89°33'23" East, along said North line, a distance of 1,116.18 feet to a point on a line which is parallel with and 33.00 feet Westerly, as measured at right angles, from the East line of the Southeast Quarter of said Section 24;

Thence South 00°10'01" West, along said parallel line, a distance of 1,106.44 feet to a point on the North line of that certain parcel of land described in Instrument No. 86-546801, Maricopa County Records;

Thence North 89°23'38" West, departing said parallel line along said North line, a distance of 200.00 feet to a point on the West line of said parcel of land;

Thence South 00°10'01" West, along said West line, a distance of 215.00 feet to a point on the South line of the North Half of the Southeast Quarter of said Section 24;

Thence North 89°23'38" West, along said South line, a distance of 2,389.43 feet to the Southwest Corner of the North Half of the Southeast Quarter of said Section 24;

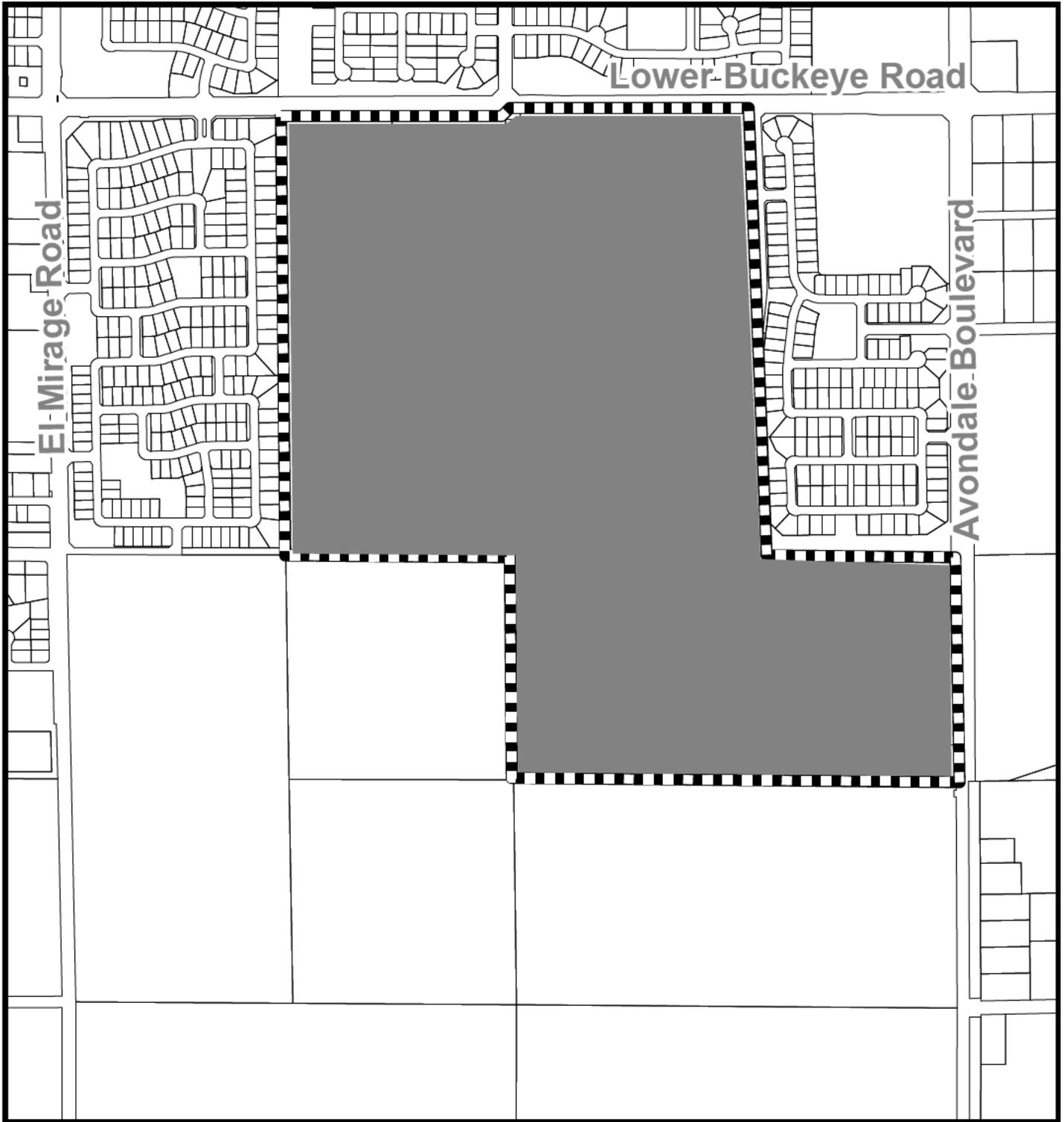
Thence North 00°18'32" West, along the West line of the Southeast Quarter of said Section 24, a distance of 1,314.20 feet to the 1/2" Rebar marking the Center of said Section 24;

Thence North 89°32'38" West, along the South line of the Northwest Quarter of said Section 24, a distance of 1,316.48 feet to the Southwest Quarter of the East Half of the Northwest Quarter of said Section 24;

Thence North  $00^{\circ}31'31''$  West, along the West line of the East Half of the Northwest Quarter of said Section 24, a distance of 2,621.98 feet to the Northwest Corner thereof;

Thence South  $89^{\circ}53'01''$  East, along the North line of the Northwest Quarter of said Section 24, a distance of 1,326.44 feet to the Point of Beginning.

Containing 244.928 Acres, more or less.

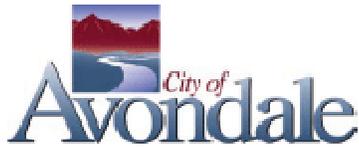


**Application  
PL-12-0075**



**Subject Property**





# CITY COUNCIL REPORT

**SUBJECT:**

Resolution 3042-612 – Intergovernmental Agreement with Buckeye, Parker and Tolleson for digital library services

**MEETING DATE:**

June 4, 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 approve a resolution that will establish a consortium between the cities of Avondale, Buckeye, Parker, and Tolleson to purchase E-Books and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

The cities of Avondale, Buckeye, Parker, and Tolleson seek to establish a purchasing consortium for the purpose of purchasing E-Books from OverDrive, Inc. (Overdrive). Consortium members (Members) will be able to purchase E-Books from OverDrive at a rate lower than an individual City rate. The City of Avondale will save approximately \$3000 - \$6000 per year as a member of the consortium. In addition each member city library patrons will have access to expanded materials through all participating city databases.

**DISCUSSION:**

E-Book Technology is very popular among library patrons. However, the initial investment in the new technology can be costly for one municipality alone. Consortium membership has the following advantages to participating municipalities:

- Member libraries can purchase e-books at a reduced rate: The City of Avondale annual participation fee will be \$9,000. The non consortium participation annual fee for the City of Avondale is \$12,000.
- Member libraries are able to access a wide variety of e-book titles

The initial term of the consortium will be for three (3) years with two (2) additional automatic one (1) year terms. Any participating city can opt out of the consortium with ninety (90) days notice. An opt out by any city will not change the agreement for the remaining cities.

**BUDGETARY IMPACT:**

There is no budgetary impact to joining the consortium. Funds will be required to purchase materials under a separate agreement with an ebook provider. All funds for the purchase of the E-Book program are included in the PRLD General Fund operating budget: 101-8105-00-7100.

**RECOMMENDATION:**

Staff recommends that the City Council approve a resolution that will establish a consortium between the cities of Avondale, Buckeye, Parker, and Tolleson to purchase E-Books and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

## ATTACHMENTS:

Click to download

[Resolution 3042-612](#)

**RESOLUTION NO. 3042-612**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF BUCKEYE, TOWN OF PARKER AND CITY OF TOLLESON FOR CONTRACTING WITH OVERDRIVE, INC. FOR DIGITAL LIBRARY RESERVE APPLICATION SERVICES.

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

SECTION 1. The Intergovernmental Agreement with the Town of Buckeye, Town of Parker and City of Tolleson relating to contracting with OverDrive, Inc. for digital library reserve application services (the "Agreement") is hereby approved in substantially the form attached hereto as Exhibit A.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps necessary to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 4, 2012.

---

Marie Lopez Rogers, Mayor

ATTEST:

---

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

---

Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 3042-612

[Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT  
FOR CONTRACTING WITH OVERDRIVE, INC.  
FOR DIGITAL LIBRARY RESERVE APPLICATION SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made by and between the Arizona municipal corporations listed on Exhibit A, attached hereto and incorporated herein by reference, on behalf of their respective public libraries (each referred to individually as an “Initial Participating Library” and collectively identified as the “Initial Participating Libraries”), to join in a group license of Overdrive, Inc., (“OverDrive”) application services and downloadable digital media by entering into an agreement with OverDrive (the “OverDrive Agreement”). The group license will provide downloadable digital media to library patrons of Participating Libraries through a shared website (the “Library Website”), thus reducing costs and increasing the variety of materials available to library users. All capitalized terms not defined in this Agreement shall have the meanings set forth in the OverDrive Agreement.

RECITALS

A. The Initial Participating Libraries have authority to enter into the Agreement pursuant to ARIZ. REV. STAT. § 11-952.

B. Each Initial Participating Library maintains a public library, the objective of each of which is to serve the public purpose of providing residents access to knowledge through technological resources which assist them in meeting their informational, recreational, educational and cultural needs.

C. The Initial Participating Libraries desire to join in a group license of OverDrive application services and downloadable digital media to further the public purpose of providing patrons of each Initial Participating Library with access to an increased variety of downloadable digital media at a reduced cost to the Initial Participating Libraries.

D. The Initial Participating Libraries desire to allow other Arizona municipal corporations, on behalf of their public libraries (each, an “Additional Participating Library”), to become parties to this Agreement upon adoption hereof, unchanged, by each such Additional Participating Library. The list of Additional Participating Libraries shall be attached hereto as Exhibit B and incorporated herein by reference and shall be updated and substituted herein upon the approval of the Council of the municipality of each new Additional Participating Library. The Initial Participating Libraries and the Additional Participating Libraries are individually referred to as a “Participating Library” or collectively referred to as “Participating Libraries.”

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 Participating Libraries hereby agree as follows:

1. Term. The initial term of this Agreement shall be effective as of the date of the first Initial Participating Library's signature hereon and shall remain in full force and effect until the expiration or termination of the OverDrive Agreement.

2. Participating Library Obligations.

2.1 Design of Library Website. The City of Avondale ("Avondale") will serve as OverDrive's point of contact on behalf of the Initial Participating Libraries with regard to the design of the Library Website during the development of the Library Website. If the Initial Participating Libraries have comments or suggestions with regard to design and development of the Library Website, they shall communicate the same to Avondale to relay to OverDrive. Avondale, acting on behalf of the Initial Participating Libraries, retains final approval on the design of the Library Website.

2.2 System and Network. Each Participating Library shall provide a suitable network and Internet system for integration of Application Services into the Library Website or other systems. Each Participating Library shall be responsible for its own expenses and costs under this Agreement and the OverDrive Agreement in the preparation, systems integration, use of the Application Services, or for any performance of its duties hereunder.

2.3 Integration and Implementation of Library Website. After OverDrive has created and designed the Library Website, OverDrive will confer and cooperate with each Participating Library and its information technology department to implement, integrate and ensure the functionality, of the Library Website, the Digital Library Reserve, the Application Services and to effectuate compliance with the Digital Library Reserve Guidelines to the extent possible. Each Participating Library shall cooperate with OverDrive during the development of the Library Website. If problems arise with a Participating Library's use of the Library Website, the Digital Library Reserve or the Application Services, such Participating Library shall contact OverDrive to resolve the issues. If the Library Website, the Digital Library Reserve or the Application Services are not functional or the services do not comply with the Digital Library Reserve Guidelines after the OverDrive's assistance during the development stage, a Participating Library may terminate the OverDrive Agreement in accordance with its provisions and may terminate its participation in this Agreement as set forth in Section 3 below.

2.4 Payment of Fees and Taxes. Each Participating Library shall pay OverDrive any and all applicable fees and taxes for joining the Library Website and ongoing services provided by OverDrive. Participating Library shall direct to OverDrive any dispute relating to fees or taxes. Each Participating Library acknowledges that if a Participating Library fails to timely pay OverDrive, the non-paying Participating Library is solely responsible for that payment and may not take any negative action against another Participating Library.

2.5 Use of Content. Each Participating Library shall share its Content with other Participating Libraries and shall use the Content in accordance with the terms and conditions of the OverDrive Agreement.

2.6 Copyright Protection; Patron Authentication; Data Security. Each Participating Library shall establish policies and procedures to abide by the Digital Library

Reserve Guidelines as described in Schedule “B” attached to the OverDrive Agreement. Each Participating Library shall keep appropriate documentation and systems information to validate the number of downloads of Digital Products and Content. Each Participating Library shall make reasonable efforts to maintain the security of Patron data or information and reasonably cooperate with OverDrive to achieve OverDrive’s and its Publishers’ and suppliers’ objectives of protecting certain intellectual property interests relating to OverDrive supplied Digital Products and Content.

2.7 Personnel; Operation of Library Website. Each Participating Library shall assign personnel with appropriate skills and expertise in computer, data processing and related services to enable operation of the Application Services and the Library Website and to provide Primary Support for that Participating Library’s Patrons. Participating Libraries shall use reasonable efforts to operate the Digital Library Reserve and the Library Website in compliance with the terms of this Agreement and the OverDrive Agreement. After development of the Library Website, each Participating Library shall include a direct hyperlink and/or logo linked to the DLR service from that Participating Library’s home page and other appropriate sub-pages. Such link or logo shall be featured no less prominently than other electronic resources or services including but not limited to EBSCOhost, Recorded Books, Ingram and 3M.

2.8 Integrating Participating Library Catalog with Library Website. With the exception of the Application Services configured and hosted by OverDrive, each Participating Library is solely responsible for all aspects of its own catalog integration, operation, training, support and/or maintenance necessary for the operation of and its connection to the Library Website. This may include requiring a Participating Library to obtain, at its own expense, a 3M Standard Interchange Protocol (“SIP”), the second version of 3M’s SIP (“SIP2”) or other similar protocol software license from a third party vendor to support direct integration of the Application Services with their Integrated Library System (“ILS”) as well as the cost for customized MARC records it may obtain from a third party supplier, such as OCLC.

2.9 Updating and Protecting Information. Each Participating Library shall keep its Digital Library Reserve Account information current and alert OverDrive of any changes in the main personnel assigned to provide the Participating Library’s Primary Support. Each Participating Library shall use reasonable efforts to ensure that information or data relevant to the operation of the Library Website will be treated as required by applicable law and reasonable and customary commercial practices.

2.10 Primary Support. Each Participating Library agrees to perform Primary Support for its Patrons who use the Library Website. Each Participating Library will perform requested installation, upgrade, and reasonable technical services for the Application Services on the Participating Library’s network and system pursuant to installation and support procedures and policies as developed and communicated by OverDrive and as modified from time-to-time. OverDrive will provide Participating Library with the procedures and policies for installation and support, as well as any other instructional materials, regarding Primary Support.

2.11 No Participating Library Warranties for Application Services. Each Participating Library represents and agrees that it will not make any representations or create any warranties, expressed or implied, concerning the Application Services and products. Each

Participating Library will take reasonable steps to ensure that its employees, agents, and others under its direction, abide by the terms and conditions of this provision and this Agreement. Each Participating Library shall, at its own expense, comply with all applicable laws, ordinances, rules and regulations that may be required in any jurisdiction or administrative agency in connection with the use and/or operations of the Application Services.

2.12 Patron Support Resources on Library Website. Avondale shall post on the Library Website OverDrive-supplied Frequently Asked Questions and other support information and links to assist with providing Patrons with answers to frequently asked questions.

3. Termination of Agreement. A Participating Library may terminate its participation in this Agreement by providing not less than 30 days' written notice of the intent to terminate the Agreement to the other Participating Libraries. All Content on the Library Website shall remain accessible to the other Participating Libraries. Following termination of participation by one or more Participating Libraries, this Agreement shall remain in full effect with respect to the remaining Participating Libraries and Avondale will distribute an updated Exhibit B (Additional Participating Libraries List) to all Participating Libraries. If all Participating Libraries terminate this Agreement, this Agreement shall terminate and the Content shall be returned to OverDrive within 30 days' of termination.

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

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

4. Applicable Law; Venue. In the performance of this Agreement, all Participating Libraries to the Agreement shall abide by and conform to any and all laws of the United States, the State of Arizona, 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.

5. Indemnification. Each Participating Library (each, an “Indemnitor”) agrees, to the extent permitted by law, to indemnify, defend and hold harmless the other Participating Libraries (each, an “Indemnitee”) 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 Indemnitee 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 Indemnitor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

6. Insurance.

6.1 General Insurance Requirements. The Participating Libraries mutually agree to provide for their respective financial responsibilities relating to liability arising out of this Agreement and the OverDrive Agreement through either the purchase of insurance or the provision of self-funded insurance program.

6.2 Workers’ Compensation Insurance. All Participating Libraries to the Agreement agree that they are not joint employers for the purpose of workers’ compensation coverage. To the extent that employees of one Participating Library performs duties on behalf of another Participating Library with respect to the OverDrive Agreement, such employee shall be deemed to be an “employee” of both public agencies while performing such duty pursuant to this Agreement solely for the purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers’ Compensation laws. The primary employer shall be solely liable for any workers’ compensation benefits which may accrue. Each Participating Library shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers’ compensation.

7. Miscellaneous. The Participating Libraries further agree as follows:

7.1 Amendment. This Agreement may be modified only by a written amendment signed by all of the Participating Libraries; provided, however, that this Agreement may be amended unilaterally for the sole purpose of allowing an Additional Participating Library to join in this Agreement. After approval of this Agreement in its entirety, and prior to entering into the OverDrive Agreement, each new Additional Participating Library shall submit a fully executed signature page, in the form attached hereto, to all of the other Participating Libraries. Avondale will also distribute an updated Exhibit B (Additional Participating Libraries List) to all Participating Libraries.

7.2 Relationship of Participating Libraries; Authority. Each Participating Library to the Agreement shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the others. Each Participating Library shall be solely and entirely responsible for its acts or acts of its agents and employees during the performance of this Agreement. This Agreement shall not be construed to imply authority to perform any tasks, or accept any responsibility, not expressly set forth herein. This Agreement shall be strictly construed against the creation of a duty or responsibility unless the intention to do so is clearly and unambiguously set forth herein.

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

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

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

7.6 Assignment. None of the Participating Libraries may assign or delegate any of its rights hereunder.

7.7 Waiver. Failure of any Participating Library to exercise any right or option arising out a breach of this Agreement shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

7.8 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

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

a recognized and reputable overnight delivery service, to the address set forth below or (D) delivered by facsimile transmission to the number set forth below:

If to an Initial Participating Library: See Exhibit A

If to an Additional Participating Library: See Exhibit B

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

7.10 Agreement Subject to Appropriation. The performance by each Participating Library to this Agreement of its respective obligations under the Agreement is subject to actual availability of funds appropriated by each Participating Library for such purposes. Each Participating Library to the Agreement shall be the sole judge and authority in determining the availability of funds under the Agreement and each Participating Library shall keep the other Participating Libraries fully informed as to the availability of funds for its obligations. The obligation of each Participating Library to fund any obligation pursuant to the Agreement is a current expense of such Participating Library, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Participating Library. If the Council of a Participating Library fails to appropriate money sufficient to meet its obligations as set forth in the Agreement during any immediately succeeding fiscal year, the Agreement shall terminate with respect to that Participating Library at the end of the then-current fiscal year and such Participating Library shall thereafter be relieved of any subsequent obligation under the Agreement. The Agreement will remain in full effect for the remaining Participating Libraries to the Agreement.

7.11 E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The parties each retain the legal right to randomly inspect the papers and records of the other party and the other parties' subcontractors who work under this Agreement to ensure that the other party and its subcontractors are complying with the above-mentioned warranty. The parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other parties. The parties and their respective subcontractors shall cooperate with the other parties' random inspections including granting the

inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

7.12 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, each Participating Library certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this Section, the term “scrutinized business operations” shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If it is determined by a court of competent jurisdiction that a Participating Library submitted a false certification, that Participating Library’s participation in this Agreement shall terminate without any further action by any other Participating Library. This Agreement will remain in full force and effect with respect to the remaining Participating Libraries.

IN WITNESS WHEREOF, the Participating Libraries have executed this Agreement on the dates of their respective signatures written below.

[SIGNATURES ON THE FOLLOWING PAGES]

**“Participating Library”**

CITY OF AVONDALE, an Arizona  
municipal corporation

\_\_\_\_\_  
Marie Lopez Rogers, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Carmen Martinez, City Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Andrew J. McGuire, City Attorney

**“Participating Library”**

TOWN OF BUCKEYE, an Arizona  
municipal corporation

\_\_\_\_\_  
Jackie A. Meck, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lucinda Aja, Town Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Scott W. Ruby, Town Attorney

**“Participating Library”**

TOWN OF PARKER, an Arizona  
municipal corporation

\_\_\_\_\_  
Dan Beaver, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Candy Cockrell CMC, Town Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Scott W. Ruby, Town Attorney

**“Participating Library”**

CITY OF TOLLESON, an Arizona  
municipal corporation

\_\_\_\_\_  
Adolfo F. Gámez, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Chris Hagen, City Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
Scott W. Ruby, City Attorney

**Participating Library – Sample Signature Page**

CITY/TOWN NAME, an Arizona  
municipal corporation

\_\_\_\_\_  
\_\_\_\_\_, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City/Town Clerk

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned Attorney acknowledges that (i) she/he has reviewed the above agreement on behalf of her/his client and (ii) as to her/his client only, has determined that the Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

\_\_\_\_\_  
\_\_\_\_\_, City/Town Attorney

EXHIBIT A  
TO  
INTERGOVERNMENTAL AGREEMENT  
FOR CONTRACTING WITH OVERDRIVE, INC.  
FOR DIGITAL LIBRARY RESERVE APPLICATION SERVICES

[Initial Participating Libraries]

See following pages.

**INTERGOVERNMENTAL AGREEMENT  
FOR CONTRACTING WITH OVERDRIVE, INC.  
FOR DIGITAL LIBRARY RESERVE APPLICATION SERVICES**

**INITIAL PARTICIPATING LIBRARIES**

1. City of Avondale

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

With copy to: GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Facsimile: (602) 254-4878  
Attn: Andrew J. McGuire, Esq.

2. Town of Buckeye

Notice to: Town of Buckeye  
530 East Monroe Avenue  
Buckeye, Arizona 85326  
Facsimile: (623) 349-6099  
Attn: Stephen S. Cleveland, Town Manager

With copy to: GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Facsimile: (602) 340-1538  
Attn: Scott W. Ruby, Esq.

3. Town of Parker

Notice to: Town of Parker  
1314 11th Street  
P.O. Box 610  
Parker, Arizona 85344  
Facsimile: (928) 669-5247  
Attn: Lori Wedemeyer, Town Manager

With copy to: GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Facsimile: (602) 340-1538  
Attn: Scott W. Ruby, Esq.

4. City of Tolleson

Notice to: City of Tolleson  
9555 West Van Buren Street  
Tolleson, Arizona 85353  
Facsimile: (623) 907-2629  
Attn: Reyes Medrano, Jr., City Manager

With copy to: GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Facsimile: (602) 340-1538  
Attn: Scott W. Ruby, Esq.

EXHIBIT B  
TO  
INTERGOVERNMENTAL AGREEMENT  
FOR CONTRACTING WITH OVERDRIVE, INC.  
FOR DIGITAL LIBRARY RESERVE APPLICATION SERVICES

[Additional Participating Libraries]

See following pages.

**INTERGOVERNMENTAL AGREEMENT  
FOR CONTRACTING WITH OVERDRIVE, INC.  
FOR DIGITAL LIBRARY RESERVE APPLICATION SERVICES**

**ADDITIONAL PARTICIPATING LIBRARIES**

1. City/Town Name

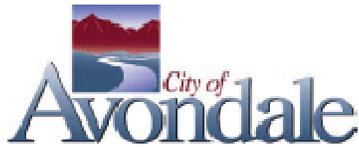
Notice to: City/Town Name  
Address  
Address  
Facsimile: \_\_\_\_\_  
Attn: \_\_\_\_\_, Title

With copy to: Name of Company  
Address  
Address  
Facsimile: \_\_\_\_\_  
Attn: \_\_\_\_\_

2. City/Town Name

Notice to: City/Town Name  
Address  
Address  
Facsimile: \_\_\_\_\_  
Attn: \_\_\_\_\_, Title

With copy to: Name of Company  
Address  
Address  
Facsimile: \_\_\_\_\_  
Attn: \_\_\_\_\_



# CITY COUNCIL REPORT

**SUBJECT:**  
Application Services Agreement - OverDrive, Inc.

**MEETING DATE:**  
June 4, 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 approve an Application Services Agreement on behalf of the West Valley Consortium (the Consortium) to purchase E-books and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

**BACKGROUND:**

Earlier this evening, the City Council approved an Interlocal Agreement between the cities of Avondale, Buckeye, Parker and Tolleson to establish a purchasing consortium to purchase E-Books from OverDrive, Inc. The Consortium members may purchase E-Books at a rate lower than each cities' individual rate outside of the consortium. Only Cities or other municipalities under 100,000 residents may join the Consortium. The City of Avondale will perform the duties of the Consortium Administrator as outlined in the agreement.

The City of Avondale is authorized by the consortium to approve the agreement on behalf of all consortium members (each member will sign the Library Participation Form for Consortium - Schedule C)

**DISCUSSION:**

The initial term of the services agreement between the Consortium and OverDrive, Inc. (OverDrive) will be for three years. The agreement shall automatically renew for successive terms of 12 months unless any of the parties give written notice at least 90 days before the expiration of the then current term of intent not to renew. The Consortium as a whole or individual Consortium members may opt out of this agreement with ninety (90) days notice. An opt out by any city will not change the agreement for the remaining cities.

The Responsibility of each consortium member is outlined below:

Consortium Administrator - City of Avondale only

The City of will perform the following duties as the Consortium Administrator:

- Coordinate the approval and required signatures from all consortium members. Each consortium member will sign the Library Participation Form for Consortium - Schedule C.
- The City of Avondale will sign the full length agreement on behalf of all consortium member cities.
- The City of Avondale will have no other powers or responsibilities outside of regular Consortium member rights and responsibilities as outline in the OverDrive Service Agreement.

### Consortium member cities

All consortium member cities will perform the following duties and responsibilities as outlined in the OverDrive Services Agreement:

- Provide access to a suitable network and Internet Service
- Pay an annual administration fee to OverDrive based on population size
- Assign personnel to operate the program services and website
- Be responsible for all aspects of catalog integration, operation, training, support and maintenance as required, relating to the individual City
- Keep all Digital Library information current
- Provide patron support
- All participant cities will work directly with Overdrive for billing, administration, ordering, and all associated account issues.

The responsibilities of OverDrive are outlined below:

- Provide the services outlined in the agreement to all the Consortium members
- Create and implement the Consortium website. The names, logos, and trademarks of all member cities will be incorporated
- Independently work with each member city for E-Book program administration, ordering, processing, and billing.

### **BUDGETARY IMPACT:**

Each participating City will pay an annual participation fee based on a population tier system as outlined below:

Tier 1 population up to 5,000	\$1,500 per year
Tier 2 population up to 25,000	\$3,000 per year
Tier 3 population up to 50,000	\$6,000 per year
Tier 5 population up to 100,000	\$9,000 per year

The City of Avondale annual participation fee will be \$9,000. The non consortium participation annual fee for the City of Avondale is \$12,000.

Each city will also pay a one time integration fee of \$500 and each city will pay for individual E-Book titles requested.

All funds for the purchase of the E-Book program are included in the PRLD General Fund operating budget:

101-8105-00-7100 Library Books (Civic Center Library)  
101-8100-00-7100 Library Books (Sam Garcia Library)

### **RECOMMENDATION:**

Staff recommends that the City Council approve an Application Services Agreement on behalf of the West Valley Consortium to purchase E-books and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

### **ATTACHMENTS:**

Click to download

[Application Services Agreement](#)

**Digital Library Reserve  
Application Services Agreement**

**1. INTRODUCTION**

This Agreement is made and entered into this 15 day of May 2012 by and between OverDrive, Inc., (hereinafter referred to as "OverDrive"), a Delaware corporation, Valley Tech Center, Suite N, 8555 Sweet Valley Drive, Cleveland, OH 44125 USA and the City of Avondale, the Town of Buckeye, the Town of Parker, the City of Tolleson (hereinafter referred to collectively as "Participating Libraries," "Southwest Valley Library Consortium" or "Consortium" and individually as a "Participating Library"):

Attached and incorporated in this Agreement are the following Schedules:

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Schedule "A"– Digital Library Reserve Application Services and Fee Schedule  
Schedule "B" – Digital Library Reserve and Consortium Website Guidelines  
Schedule "C" – Library Participation Form – Southwest Valley Library Consortium

WHEREAS, OverDrive is an authorized provider of digital media technology and services to libraries including those related to the management and copyright protection of content in eBook, audio book, and media in digital formats; and

WHEREAS, Participating Libraries are seeking to provide such services; and

WHEREAS, Participating Libraries seek to license the use of and deploy software products, technology and services including those licensed to OverDrive by Microsoft® Corporation, Adobe® Systems Inc. or other vendors of Digital Rights Management ("DRM") technologies.

THEREFORE, the parties agree as follows:

**2. DEFINITIONS**

As used in this Agreement, the following definitions shall apply:

- 2.1 "Agreement" shall mean this Agreement between OverDrive and Participating Libraries, and all Schedules and attachments.
- 2.2 "Application Services" or "Application(s)" shall mean the Digital Library Reserve, OverDrive, Microsoft® Corporation, Adobe® Systems Incorporated, Adobe Benelux, B.V. and any other third party products or services identified in this Agreement or Schedules attached to the Agreement.
- 2.3 "Application Services Fees" or "Annual Fees" shall be the amounts payable by each Participating Library to OverDrive in accordance with the terms of this Agreement and associated Schedules.
- 2.4 "Consortium" or "Library" shall mean all of the Participating Libraries, collectively.
- 2.5 "Consortium Website" shall mean the Internet-based application that provides Patrons access to Digital Products operated in association with Digital Library Reserve and as a component of the Consortium's website address ("URL").
- 2.6 "Content" or "Digital Products" shall consist of digital titles available for loan to Patrons at the Consortium Website distributed using the Application Services.
- 2.7 "Digital Library Reserve" or "DLR" shall mean the integrated digital book collection and lending services utilizing OverDrive, Microsoft, Adobe or other third party software applications and services that relate to the Consortium Website for managing the Digital Products.
- 2.8 "Digital Library Reserve Guidelines" shall mean the terms and conditions of utilizing the Digital Rights Management Application Services, any changes of which the Participating Libraries may review.
- 2.9 "Effective Date" shall mean the date upon which the Consortium Website goes live.

2.10 “Legal Service Area Population” shall mean the number of people in the geographic area for which a public library has been established to offer services and from which (or on behalf of which) the library derives income, plus any areas served under contract for which the library is the primary service provider. The determination of this population figure is the responsibility of the state library agency and shall be as reported by the Institute of Museum and Library Services.

2.11 “Patron(s)” shall mean those persons that Participating Library authorizes to access, use, and connect to the Consortium Website via the Internet, and download products from or otherwise utilize the Application Services and/or access Digital Products from the Participating Library using the Application Services.

2.12 “Primary Support” shall mean services provided by each Participating Library for its own Patrons for its day-to-day support, technical aid, help and other assistance for Patron’s use of the Consortium Website, Applications or for any issues arising from the use of the Consortium Website.

2.13 “Secondary Support” shall mean technical support services to be provided by OverDrive to the Participating Libraries including reasonable efforts to assist Participating Libraries in providing Primary Support, reasonable efforts to correct, fix, or circumvent errors, provide updates, enhancements, and new versions of the Application Services.

### **3. DIGITAL LIBRARY RESERVE APPLICATION SERVICES**

3.1 Rights and Services. OverDrive shall provide the Digital Library Reserve Application Services to Participating Libraries under the terms and conditions of this Agreement and the associated license agreements from its Digital Rights Management (“DRM”) technology or Digital Product and Content suppliers. This right is non-transferable and applies solely to the server-based operation, management and use of the Digital Library Reserve applications in unaltered, object code form. Nothing under the terms and conditions of this Agreement, including any of the Attachments and Schedules, grant any right to Participating Libraries to the use of, or access to, any Application Services source code. This right does not include any right to reproduce the Application Services, to distribute copies or versions of any modules of the Application Services to any third parties including its Patrons, or to make and/or sell variations or derivative works of the Application Services. Sole ownership of copyrights and other intellectual and proprietary rights to the Application Services shall remain solely with OverDrive or its suppliers.

3.2 Participating Library’s Responsibility for System and Network. Each Participating Library assumes responsibility for providing a suitable network and Internet system for integration of Application Services into the Consortium Website or other systems after the development of the Consortium Website. All parties acknowledge that any expenditures or commitments are made solely at the risk of the party making such expenditures or commitments. Each Participating Library agrees that it shall be responsible for its own expenses and costs under this Agreement and that OverDrive shall have no obligation to reimburse any Participating Library for any expenses or costs incurred by such Participating Library in the preparation, systems integration, use of the Application Services, or for any performance of Participating Library’s duties hereunder.

3.3 Creation of Consortium Website. OverDrive will create and implement a Consortium Website for the Participating Libraries’ use of the Application Services (as detailed in Schedule “A”) that will include search function (by title category, author, keyword), multiple categories with multiple listing option, auditing and reporting functions and access to a protected web portal to manage the Consortium’s catalogs of Digital Product. Consortium will have the ability to manage and promote Digital Products from a password-protected Digital Library Reserve administrative web portal.

3.4 Design of Consortium Website. During the development of the Consortium Website, OverDrive will confer with the City of Avondale regarding the design of the Consortium Website. The City of Avondale, acting on behalf of the Participating Libraries, retains final approval on the design of the Consortium Website to support the needs of Participating Libraries, as they exist on the Effective Dates. Upon request by a Participating Library, OverDrive may include such Participating Library’s name, logos, colors and trademarks on the Consortium Website in accordance with design suggestions and the Participating Library’s request. OverDrive acknowledges that each Participating Library owns all of its own trademarks, service marks, trade names and logos (the “Marks”) and that OverDrive has no rights to use them except as conferred by this Agreement. OverDrive agrees that it will not use any of the Marks in any way not contemplated by this Agreement without advance approval of the Participating Library and that the Participating Library may withdraw its approval of use of the Marks at any time with or without cause. OverDrive agrees that it will promptly cease using any of the Marks or any materials in which the Marks are used upon withdrawal of approval by the Participating Library. OverDrive reserves the right to display its branding, trademarks, logos, and/or other third party marketing or promotional materials

related to the Application Services on the Consortium Website. OverDrive will implement an inventory management system to permit Participating Libraries to browse, select and acquire rights to Digital Products in supported formats and as permitted by OverDrive's publishers and suppliers. OverDrive will create the appropriate download links from the Consortium Website for the secure delivery of Content to authorized Participating Library Patrons. All Content available at the Consortium Website shall have at least a seven (7) day lending period, or other minimum lending period as otherwise required by suppliers or publishers of Content.

3.5 Integration and Implementation of Consortium Website. During the development of the Consortium Website, OverDrive shall confer and cooperate with each Participating Library and its information technology department to implement, integrate and ensure the functionality of the Consortium Website, the Digital Library Reserve, and the Application Services and to effectuate compliance with the Digital Library Reserve Guidelines to the extent possible. To the extent that OverDrive's modifications to the Consortium Website result in any Claims as set forth in Section 10.1 below, OverDrive shall indemnify Participating Libraries as set forth in Section 10.1 below.

3.6 Additions of Parties to this Agreement. Arizona public libraries with Legal Service Area Populations under 100,000 shall be eligible to enter into this Agreement on a quarterly basis. Before a library may be eligible to enter into this Agreement, the library must submit a completed Schedule "C" to OverDrive. Any current OverDrive customer (standalone system) shall not be eligible to enter into this Agreement. Notwithstanding the foregoing, OverDrive shall have sole discretion to approve any and all new libraries that seek to enter into this Agreement.

3.7 Digital Library Reserve Access. Digital Library Reserve is for remote use only (outside of the Participating Library). Without the use of OverDrive Download Station Software, Patrons and all other users of DLR cannot download Digital Content to any Participating Library computers or devices. Participating Library shall have the option to purchase an OverDrive Download Station Software license for each of its public workstations at all of its branch locations.

#### **4. FEES AND PAYMENT**

4.1 Annual Fee. Each Participating Library shall pay OverDrive the Annual Fee for its own library for using the Consortium Website and ongoing services provided to such Participating Library, in accordance with Schedule "C". Participating Libraries shall make payments to OverDrive in U.S. funds. If a Participating Library fails to timely pay OverDrive, OverDrive may seek remedy only against the Participating Library that has failed to timely pay and may not take any negative action or seek remedies from any other Participating Library.

4.2 Selection of Content. During the term of this Agreement, Participating Libraries may select titles and material subject to standard terms and pricing. A Digital Product in the Consortium Website that is checked out by a Patron will not be available for another Patron to check out unless multiple copies of the title have been purchased, or until expiration of the first Patron's time period. After a Participating Library has used all of the allotment of its Annual Fee toward Content selection as set forth in Schedule C and Participating Library selects additional Content for purchase, OverDrive shall send an invoice to that Participating Library for any additional Content selection, and the Participating Library shall pay OverDrive within 30 days of presentation of invoice. The invoice statement shall include a record of the Content delivered and prices in sufficient detail to justify payment.

4.3 Payment of Taxes. The payment obligations stated in this Section are exclusive of any federal, state, municipal or other governmental taxes, sales taxes, duties, excise taxes or tariffs now or hereafter imposed on the production, storage, sale, transportation, import, export, licensing or use of the Application Services or for operation or sales activity of the Consortium Website. Such charges, shall be paid by Participating Library or, in lieu of payment of any tax, Participating Library shall provide an exemption certificate acceptable to OverDrive and the applicable authority.

#### **5. COPYRIGHT PROTECTION, PATRON AUTHENTICATION AND DATA SECURITY**

During the initial term of this Agreement and any renewal periods, Participating Library will reasonably cooperate with OverDrive to achieve OverDrive's and its publishers' and suppliers' objectives of protecting certain intellectual property interests relating to OverDrive-supplied Digital Products and Content. Each Participating Library shall establish policies and procedures to abide by the Digital Library Reserve Guidelines as described in the attached Schedule "B". Each Participating Library shall keep appropriate documentation and systems information, and provide OverDrive limited access to systems to validate the total number of downloads of Digital Products and Content, authenticate Patrons and as may be necessary to correct or diagnose any errors in the systems. Each Participating Library shall provide OverDrive access to a test Patron account for purposes of validating the systems' performance relating to the Application Services. Each Participating Library

will reasonably cooperate with OverDrive to correct or adjust systems as may be required to compensate for any errors or omissions disclosed by such test. Any such test will be conducted by OverDrive at its own expense and during the Participating Library's regular business hours and in such a manner as not to interfere with Participating Library's normal activities. Nothing in this Section shall entitle OverDrive to view, track, save or use any Patron data or information relating to the identity of Patrons accessing any components of the Application Services. OverDrive shall comply with its Privacy Policy and shall use commercially reasonable efforts to provide notice to each Participating Library of any changes to the Privacy Policy.

## **6. RESPONSIBILITIES OF PARTICIPATING LIBRARIES**

6.1 Personnel; Operation of Consortium Website. Each Participating Library shall assign personnel with appropriate skills and expertise in computer, data processing, and related services to enable operation of the Application Services and the Consortium Website and to provide Primary Support for that Participating Library. Each Participating Library shall use reasonable efforts to utilize the Digital Library Reserve and Consortium Website in compliance with the terms of this Agreement and all Schedules. After development of the Consortium Website, each Participating Library shall include a direct hyperlink and/or logo linked to the DLR service from that Participating Library's home page and other appropriate sub-pages. Such link or logo shall be featured no less prominently than other electronic resources or services, including but not limited to EBSCOhost, Recorded Books, Ingram and 3M. Each and every Participating Library shall be required to complete and return a Participation Form (attached hereto as Schedule "C") to OverDrive.

6.2 Integrating Participating Library Catalog with Consortium Website. With the exception of the Application Services configured and hosted by OverDrive, each Participating Library is solely responsible for all aspects of its own catalog integration, operation, training, support and/or maintenance necessary for the operation of and connection to the Consortium Website. This may include requiring a Participating Library to obtain at its own expense a 3M Standard Interchange Protocol ("SIP"), the second version of 3M's SIP or other similar protocol software license from a third party vendor to support direct integration of the Application Services with their Integrated Library System ("ILS") as well as the cost for customized MARC records it may obtain from a third party supplier, such as OCLC.

6.3 Updating and Protecting Information. Each Participating Library shall keep its Digital Library Reserve Account information current and alert OverDrive of any changes in the main personnel assigned to provide the Participating Library's Primary Support. Each Participating Library shall use reasonable efforts to ensure that information or data relevant to the operation of the Consortium Website will be treated as required by applicable law and reasonable and customary commercial practices as requested by OverDrive.

6.4 Primary Support. Each Participating Library agrees to perform Primary Support for its Patrons who use the Consortium Website. Each Participating Library will perform requested installation, upgrade, and reasonable technical services for the Application Services on the Participating Library's network and system pursuant to installation and support procedures and policies as developed and communicated by OverDrive and as modified from time-to-time. OverDrive will provide Participating Library with the procedures and policies for support, as well as any other instructional materials, regarding Primary Support. OverDrive support personnel will be available to each Participating Library for Secondary Support by e-mail and phone.

6.5 No Participating Library Warranties for Application Services. Each Participating Library represents and agrees that it will not make any representations or create any warranties, expressed or implied, concerning the Application Services and products. Participating Library will take reasonable steps to ensure that its employees, agents, and others under its direction, abide by the terms and conditions of this provision and this Agreement. Participating Library shall at its own expense comply with all applicable laws, ordinances, rules and regulations that may be required in any jurisdiction or administrative agency in connection with the use and/or operations of the Application Services.

## **7. OVERDRIVE'S OBLIGATIONS**

7.1 Create Consortium Website. In accordance with Section 3.3 above, OverDrive shall create and make functional a Consortium Website that will be in compliance with the requirements listed in the Schedules and attachments hereto.

7.2 Support during Development of Consortium Website. OverDrive shall provide commercially reasonable support for the Participating Libraries to assist with the implementation and integration of the Consortium Website, Digital Library Reserve and Application Services during the development of the Consortium Website. OverDrive shall provide technical

support and Secondary Support and shall train Participating Libraries as necessary during development of the Consortium Website.

7.3 Compliance with Digital Library Reserve Guidelines and Product Description. As part of the Application Services OverDrive shall either implement the required services directly or oversee the necessary procedures to ensure compliance with the Digital Library Reserve Guidelines. OverDrive will use reasonable efforts to make the Application Services perform substantially in accordance with the current product descriptions. However, Participating Library acknowledges that inevitably some errors may exist in the Application Services, and the presence of such errors shall not be a material breach of this Agreement. OverDrive's sole obligation with regard to such errors shall be to use commercially reasonable efforts to correct such errors and provide Secondary Support as stated in this Agreement. OverDrive shall provide Secondary Support through a web form (or other methods as may be available in the future) currently available in the administrative portal. Upon submission of the web form by a Participating Library, OverDrive will confirm receipt via email to the contact provided on the web form and will use commercially reasonable efforts to correct such errors. In the event a Participating Library is necessary to assist in correcting such errors, OverDrive shall provide such services during the Participating Library's operating hours.

7.4 Maintenance and Service of Consortium Website. OverDrive shall perform any routine maintenance, updates or services for the Consortium Website during the monthly maintenance window, as may be communicated to Consortium through its administrative portal.

## **8. OVERDRIVE'S OPTION TO MODIFY APPLICATION SERVICES**

OverDrive has the right, at any time, to make such modifications to the Application Services as it sees fit to the operation, performance, or functionality of the Application Services or as required by OverDrive's suppliers. If such modifications require Participating Libraries' participation or implementation, OverDrive shall provide at least 48 hours' advance notice.

## **9. WARRANTY**

9.1 Warranties. OverDrive represents and warrants to each Participating Library that it has the necessary rights to enter into this Agreement and that it has the necessary ownership and intellectual property rights and licenses to the Application Services to grant the licenses herein. OverDrive warrants that the Application Services will operate as intended if properly used by Participating Library and Patrons as instructed by OverDrive. If any errors are discovered, Participating Library shall promptly notify OverDrive in writing, including, but not limited to an online form, e-mail or letter, as to the description of the problem, whereupon OverDrive shall use reasonable efforts to correct such problems within a reasonable time thereafter. Corrections will be provided to Participating Library with instructions for implementation. The remedies set forth in this Agreement shall be Participating Library's sole remedies for breach of this Agreement.

9.2 LIMITATION OF WARRANTIES AND LIABILITY. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE RIGHTS AND REMEDIES GRANTED TO PARTICIPATING LIBRARY AND ITS PATRONS UNDER THIS PARAGRAPH CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY OF PARTICIPATING LIBRARY AND ITS PATRONS AGAINST OVERDRIVE FOR BREACH OF WARRANTY, EXPRESS OR IMPLIED, OR FOR ANY ERRORS OR DEFECTS IN THE APPLICATION SERVICES. IN NO EVENT SHALL OVERDRIVE OR ITS SUPPLIERS BE LIABLE TO PARTICIPATING LIBRARY OR ITS PATRONS FOR ANY DAMAGES ARISING FROM OR RELATED TO FAILURE OR INTERRUPTION OF THE APPLICATION SERVICES, OR FOR INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFIT OR OPPORTUNITY, LOSS OF USE OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE LICENSE, TRANSFER OR USE OF THE APPLICATION SERVICES. WITH THE EXCEPTION OF ENFORCING RIGHTS REGARDING PATENTS, COPYRIGHTS, TRADEMARKS, OR TRADE NAMES, INCLUDING ACTIONS FOR DAMAGES AND EQUITABLE RELIEF, AS SET FORTH IN SECTION 12.7 BELOW, OVERDRIVE'S LIABILITY HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT RECEIVED BY OVERDRIVE UNDER THIS AGREEMENT.

## **10. INDEMNIFICATION**

10.1 Indemnification. To the fullest extent permitted by law, OverDrive agrees to indemnify, defend and hold harmless every Participating Library, each of its council members, officers, employees or agents thereof (the Participating Library and any such person being herein called an "Indemnified Party"), for, from and against all losses, claims, damages, liabilities, Digital Library Reserve Application Services Agreement –Southwest Valley Library Consortium

costs and expenses (including, but not limited to, reasonable attorney 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 grossly negligent acts, intentional misconduct or willful omissions, in connection with the work or services of OverDrive, including any breach of OverDrive’s warranty that it has the required rights to the Application Services and that the Application Services does not infringe any ownership or intellectual property right of a third party, provided that OverDrive: (A) is notified within 30 days after Participating Library receives notice of such claim; (B) is solely in charge of the defense of and any settlement negotiations with respect to such claim; (C) receives Participating Library’s cooperation in the defense or settlement of such claim; (D) has the right, upon either the occurrence of or the likelihood (in the reasonable opinion of OverDrive) of the occurrence of a finding of infringement, either to procure for Participating Libraries the right to continue use of the Application Services, or to replace the relevant portions of the Application Services with other equivalent, non-infringing portions that are compatible with the Participating Library’s current network and system. If OverDrive is unable to accomplish either of the options set forth in (D) above, with Participating Library’s consent, OverDrive shall either remove the portion of the Application Services in issue and refund to Participating Library the value of such portion, or refund to Library the entire amount paid pro-rata under this Agreement as it relates to the incident that gave rise to the claim and remove the entire Application Services after 30 days’ written notice to the Participating Library.

10.2 Limitation on Indemnification. OverDrive shall have no obligation to Participating Library to defend or satisfy any claims made against Participating Library that arise from use, marketing, licensing, or disposition of the Application Services by Participating Library, other than as permitted by this Agreement. OverDrive shall not be responsible to indemnify Participating Library for claims arising from the use or license of third party software, including DRM, where OverDrive is not afforded such corresponding indemnification from said third party vendor. In the event a claim arises from use of non-OverDrive technology, where the vendor of such product or technology does not indemnify OverDrive, then OverDrive is not liable to extend indemnification under this section to Participating Libraries for any such claims.

## 11. TERM AND TERMINATION

11.1 Term. This Agreement shall take effect on the Effective Date and, unless terminated pursuant to the relevant provisions of this Agreement, shall have an initial term of three years. The Agreement shall automatically renew for successive terms of 12 months unless any of the parties gives written notice at least 90 days before the expiration of the then current term, of intent not to renew. Following non-renewal by one or more Participating Libraries, this Agreement shall remain in full force and effect with respect to the remaining Participating Libraries. Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

11.2 Bankruptcy; Insolvency. This Agreement may be immediately terminated by written notice by a party (A) in the event of a filing by or against any of the other parties of a petition for relief under the United States Bankruptcy Code or any similar petition under the insolvency laws of any jurisdiction, where such filing is not dismissed within 30 days after the date of the filing.

11.3 Termination for Non-Appropriation. Any Participating Library may terminate their participation in this Agreement as set forth in Section 12.13 below if the Council of a Participating Library fails to appropriate money sufficient to meet its obligations as set forth in the Agreement during any immediately succeeding fiscal year.

11.4 Termination for Breach. In addition to provisions authorizing termination hereunder, any party shall have the right to terminate this Agreement as a result of a material breach of the Agreement by another party that is not cured within 30 days after written notice of such breach. Following termination by one or more Participating Libraries, this Agreement shall remain in full effect with respect to the remaining Participating Libraries.

11.5 Termination of License and Services. Upon termination and/or expiration of this Agreement, and except as otherwise provided in this Agreement, the license granted to each Participating Library by this Agreement shall be terminated immediately and each Participating Library shall make no further use of all or any part of the Application Services or any confidential information received from OverDrive. Following termination of participation by one or more Participating Libraries, this Agreement shall remain in full force and effect with respect to the remaining Participating Libraries.

11.6 Payments and Refunds for Termination. In the event of termination of this Agreement, OverDrive shall refund the Participating Libraries only the undisputed, pro-rated portion of its Annual Fee that has been paid for the then-current term and any undisputed fees from invoices submitted prior to the termination date (for the avoidance of doubt, any invoice

submitted to a Participating Library for Digital Products purchased shall be deemed an undisputed invoice, regardless if it occurs after the termination of this Agreement), less any amount of the Annual Fee that has previously been used for the selection of Digital Products.

## **12. GENERAL PROVISIONS**

12.1 Independent Contractor. OverDrive acknowledges and agrees that services provided under this Agreement are being provided as an independent contractor. Nothing in this Agreement authorizes either party to act as a legal representative or agent of the other for any purpose. It is expressly understood that this Agreement does not establish a franchise relationship, partnership, principal-agent relationship, or joint venture. Neither party shall have the power to bind the other with respect to any obligation to any third party. Each party is solely responsible for its employees, including terms of employment, wages, hours, required insurance, and daily direction and control. OverDrive and Participating Libraries are not prohibited from entering into other contracts. This is a non-exclusive contract and Participating Libraries reserve the right to obtain like services from another source when necessary. Participating Libraries and OverDrive do not intend to combine business operations under this Agreement.

12.2 Confidential Information. OverDrive and Participating Libraries acknowledge that each will receive confidential information from the other relating to technical, Application Services and operational affairs of the other. Each party agrees that all confidential information of the other party shall be held in confidence and shall not be disclosed, notwithstanding any laws and regulations permitting public access to documents and information that are considered public.

12.3 No Waiver. The failure of either party to exercise any right or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same of any other term of the Agreement.

12.4 Notice. All notices, requests, demands or other communications required to be given pursuant to the Agreement shall be in writing and shall be deemed to have been given, if sent by U.S. mail, registered or certified mail, return receipt requested, postage prepaid, addressed to the parties at their place of business or to such other addresses as the parties direct in writing. Notice to OverDrive shall be addressed to OverDrive at the address provided in the Introduction or at its current address as notified to Participating Libraries, Attention: President or to such person or to such address as OverDrive may designate. Notice to Participating Libraries shall be addressed to the addresses for each Participating Library as provided in Schedule "C" to this Agreement, Attention to the individual signing on behalf of Library or to such person or to such address as Library may designate.

12.5 Force Majeure. None of the parties shall be deemed in fault of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies, or any other causes beyond the control of such party provided that such party gives the other written notice thereof promptly and, in any event, within 15 days of discovery thereof and uses its best efforts to cure the delay. In the event of such Force Majeure, the time of performance or cure shall be extended for a period equal to the duration of the Force Majeure but in no event shall exceed three months.

12.6 Assignment. OverDrive may assign this Agreement upon written notice to Participating Libraries. This Agreement may not be assigned by Participating Library, nor any duty hereunder be delegated by Participating Library without the prior written consent of OverDrive. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, legal representatives, successors and permitted assigns.

12.7 Limitations of Liability. In the event of failure of either party to fulfill any of its obligations hereunder, the initial remedy of the other party under this Agreement shall be to request performance of such obligation. If such performance is not rendered, the other party may terminate the Agreement pursuant to Paragraph 11.4, and where appropriate, bring an action for any moneys due and payable hereunder for services rendered. However, either party shall be entitled to enforce its rights regarding patents, copyrights, trademarks, or trade names, by any appropriate action, including actions for damages and equitable relief.

12.8 Injunctive Relief. The parties to this Agreement recognize that a remedy at law for a breach of the provisions of this Agreement relating to trademark, copyright, and other intellectual property rights, will not be adequate for the protection of OverDrive or Participating Libraries, and accordingly OverDrive and Participating Libraries shall have the right to obtain, in addition to any other relief and remedies available to it, injunctive relief to enforce the provisions of this Agreement.

12.9 Severability. In the event that a court of competent jurisdiction determines that any portion of the Agreement is unenforceable, void, invalid or inoperative, the remaining provisions of this Agreement shall not be affected and shall continue in effect as though such invalid provisions were deleted.

12.10 All Disputes Arising From the Agreement. This Agreement shall be governed by the laws of the State of Ohio, without regard to any conflict of laws principles. Any dispute regarding this Agreement, the Agreement formation or the relationship that has been established by this Agreement shall be brought in the state or federal courts residing in the State of Ohio, United States of America, and the local laws of Ohio will apply to any such action related to the above without regard to any conflicts of laws principles. Any legal action brought concerning this Agreement or any dispute hereunder, including but not limited to an action to enforce or challenge an arbitration award, shall be brought only in the courts of the State of Ohio, USA, in the County of Cuyahoga, or in the federal courts located in such state (and county). Both parties submit to venue and jurisdiction in these courts. In the event that an action or claim arises outside of the exclusive jurisdiction specified herein which names OverDrive as a party, each Participating Library agrees to cooperate with any and all efforts to remove the matter to the exclusive jurisdiction named herein.

12.11 Entire Agreement; Headings; Amendments. This Agreement constitutes the entire Agreement and understanding of the parties and supersedes all prior and contemporaneous Agreements, understandings, negotiations and proposals, oral or written. Section headings are provided for convenience purposes only and do not provide any modifications or substantive meaning to the terms and conditions of this Agreement. This Agreement may be amended or modified only by a subsequent Agreement in writing signed by each of the parties and may not be modified by course of conduct.

12.12 Binding. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors. In the event OverDrive enters into an agreement to sell substantially all the assets of OverDrive, this Agreement shall be binding upon the purchaser.

12.13 Agreement Subject to Appropriation. The performance by each Participating Library of its respective obligations under the Agreement is subject to actual availability of funds appropriated by each Participating Library for such purposes. Each Participating Library represents and warrants that it has appropriated and budgeted the necessary funds to make all payments required pursuant to this Agreement for the remainder of the fiscal year in which the payment term commences; and that it currently intends to make payments for the full contract term as scheduled in the applicable payment schedule herein if funds are appropriated for the payment in each succeeding fiscal year by its governing body. Each Participating Library reasonably believes that monies in an amount sufficient to make all payments can and will lawfully be appropriated. Each Participating Library shall be the sole judge and authority in determining the availability of funds under the Agreement. Each Participating Library shall keep the other Participating Libraries and OverDrive fully informed as to the availability of funds for its obligations. The obligation of each Participating Agency to fund any obligation pursuant to the Agreement is a current expense of such Participating Library, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Participating Agency. If the Council of a Participating Library fails to appropriate money sufficient to meet its obligations as set forth in the Agreement during any immediately succeeding fiscal year, the Agreement shall terminate with respect to that Participating Library at the end of the then-current fiscal year and such Participating Library shall thereafter be relieved of any subsequent obligation under the Agreement. The Agreement will remain in full effect for the remaining Participating Libraries to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives:

Accepted and Agreed:

**OverDrive, Inc.**  
**("OverDrive")**  
8555 Sweet Valley Drive, Suite N  
Cleveland, Ohio 44125 USA

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

By (Signature): \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name (Print): \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Town of Buckeye**  
530 East Monroe Avenue  
Buckeye, Arizona 85326  
Facsimile: (623) 349-6099  
Attn: Jackie A. Meck, Mayor

**Town of Parker**  
1314 11th Street  
P.O. Box 610  
Parker, Arizona 85344  
Facsimile: (928) 669-5247  
Attn: Dan Beaver, Mayor

By (Signature): \_\_\_\_\_

By (Signature): 

Name (Print): \_\_\_\_\_

Name (Print): Dan Beaver

Title: \_\_\_\_\_

Title: Mayor

Date: \_\_\_\_\_

Date: 5.15.2012

**City of Tolleson**  
9555 West Van Buren Street  
Tolleson, Arizona 85353  
Facsimile: (623) 936-7117  
Attn: Reyes Medrano, Jr., City Manager

By (Signature): \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Accepted and agreed this 15 day of May 2012 by:

Parker Public  
**("Participating Library")**  
Town of Parker

By (Signature): 

Name (Print): Dan Beaver

Title: Mayer

Please fill out the following with the appropriate contacts:

**Billing Contact(s)**

Name(s), email address, and billing address of contacts to receive billing:

Name: <u>JENNIFER ALCAIDA</u>	Name: _____
Email: <u>payroll@ci.parker.az.us</u>	Email: _____
Address: <u>P.O. Box 610</u>	Address: _____
<u>PARKER, AZ 85344</u>	_____

**ILS Change Contact(s)**

Names(s) and email address of contacts allowed to request ILS changes for your library:

Name: _____	Name: _____
Email: _____	Email: _____

**Collection Contact(s)**

Name(s) and email address of contacts who will work on collection management:

Name: _____	Name: _____
Email: _____	Email: _____

**Promotional Materials Contact(s)**

Name(s) and email address of contacts to work with our Partner Services Team on promotion:

Name: _____	Name: _____
Email: _____	Email: _____

**Schedule "A"**  
**Digital Library Reserve**  
**Application Service and License Fee Schedule**

The following modules comprise Digital Library Reserve library services for library administration of a circulating digital content collection. All prices are in USD.

Application Service	Service Information	Annual Fee	Application License and Hosting Fee
Digital Library Reserve Server (DLR-S)	DLR is the digital content repository and database established for each library. Included is support for delivery and fulfillment of eBooks, digital audio books, download music and video. Includes associated copyright protection services (DRM). Included with this fee are all third party software and technology licenses. Services are hosted at the secure DLR hosting center. Access to library-managed services is accomplished via secure admin web services. The library utilizes a PC, Internet connection and Web browser (Internet Explorer 5.5 or higher) to administer its digital collection. No additional hardware or software is required by library.	Per Schedule C	
DLR Consortium Website (DLR-PW)	This is the patron facing website that incorporates the library's look-and-feel. The Consortium Website is a complete digital book center providing browsing, searching, promotional and checkout services for patrons to explore and download digital media to their own PC or mobile devices.	Included	
DLR Content Reserve Collection Access (DLR-CRCA)	This module enables the library collection staff to administer approval plans and development profiles to aid in building its digital content collection from Digital Library Reserve. Each account has access to eBooks, audio books, music and video from leading suppliers. Digital Library Reserve offers a large collection of best-selling popular, academic, business and educational titles.	Included	
DLR Patron Authentication Integration (DLR-PAI)	OverDrive personnel will work with library automation personnel to integrate its existing patron authentication system. Will support present library card, student ID, or other authentication to insure access of titles is limited to library patrons.	Integration of one ILS included	Subsequent integrations subject to additional fees
DLR OPAC Record Integration (DLR-OPAC)	OverDrive will assist Library to coordinate access to MARC records for integration into the library catalog for patron searching and direct access to eBook and audio book titles. Included in the record will be a direct link for patrons to view the eBook and audio book title and status for lending. MARC records are available for purchase by Library from third party vendors.	MARC Records available for purchase from third party vendors	
DLR Open Content Collection (DLR-OPC)	This module permits uploading and circulation of digital content from local sources (i.e. community historical documents, materials, photographs and locally authored or produced texts, audio and video materials) not procured from a third party vendor into its collection. For all such materials uploaded via this module, Library will be responsible for obtaining the necessary rights and/or licenses prior to upload.	Included	
DLR Windows® Media Server (DLR-WMS)	Support for download or streaming of copyright protected digital audio and video using Microsoft® Windows® Media Series 9 and up. * OverDrive reserves the right to limit bandwidth and impose additional hosting fee charges.	Included*	Increased bandwidth subject to additional charges

**Schedule "B"**  
**Digital Library Reserve and Consortium Website Guidelines**

1. Patron Support Resources. Participating Library will provide Primary Support, at a minimum, via e-mail and/or by phone for its Patrons in direct support of all Patron inquiries, issues, and problems relating to the Consortium Website. The City of Avondale will post on the Consortium Website OverDrive-supplied Frequently Asked Questions and other support information and links to assist with providing Patrons with answers to frequently asked questions. Each Participating Library will cooperate with OverDrive to implement practices as recommended by OverDrive to reduce the instances of Patron technical support issues.
2. Copyright Protection, Patron Authentication and Data Security. Each Participating Library will take reasonable steps to cooperate with OverDrive to prevent unwarranted intrusion into data managed or maintained by OverDrive or on behalf of Consortium. This includes reasonable steps to protect its password and access to Consortium's administrative website for management of its Digital Library Reserve and Consortium Website.

For Digital Products and Content that Participating Library acquires rights from OverDrive for re-distribution and lending to Patrons, Participating Library agrees to deploy the following practices and methods to respect the Copyright Protection and Patron Authentication terms of OverDrive's Publishers and suppliers:

- A. Participating Library will take respect and cooperate with the DRM protection settings as designated by Publisher that may restrict copying, sharing and/or printing.
  - B. Participating Library acknowledges that Digital Product titles selected will not entitle Participating Library to access a copy of the title, but will enable its Consortium Website the right to provide download access to the title for its Patrons as fulfilled through the Application Services after the DRM services have been applied.
  - C. Participating Libraries are not granted any license to use titles for any "online" use, except for the display of Digital product cover art, excerpts and metadata as designated by Publisher and available from OverDrive.
  - D. Participating Libraries will be allowed to loan to their Patrons ("check-out") Digital Products or Content via a download link from the Consortium Website. Each Participating Library acknowledges that all circulating Digital Products will have a predetermined period for an automatic self-expiring use period or "time-out", which shall not be less than seven days or other minimum lending period as required by publishers and suppliers, in accordance with Section 3.4 of this Agreement.
  - E. A Digital Product in the Consortium Website that is checked out by a Patron will not be available for another Patron to check out unless multiple copies of the title have been purchased, or until expiration of the first Patron's time period.
  - F. Participating Library will take reasonable measures to ensure that only authorized Patrons of the Participating Library have access to the Consortium Website for access to Digital Products or Content.
  - G. Access to the Application Services shall be limited to those patrons of each Participating Library that have the required relation to the Participating Library to receive a library card ("Authorized Patrons"). Each Participating Library shall not provide access to the Application Services to any end users who are not Authorized Patrons. Authorized Patrons shall be defined as individuals who can provide proof of residency, employment, or enrollment in school or similar institution in the Participating Library's service area. Online library card applications and issuance, with or without any fees, that provide access to the Application Services without proof of the required library relation (as referenced in the foregoing sentence) shall not be permitted. OverDrive reserves the right to immediately terminate this Agreement as to a Participating Library if such Participating Library intentionally provides access to the Application Services to end users who are not Authorized Patrons.
3. Third Party Logo and Trademark Use Guidelines. Participating Library acknowledges that the Consortium Website will utilize and rely upon third party software and technologies provided by Microsoft Corporation, Adobe Systems, Inc., and other technology suppliers. During the development of the Consortium Website, as may be required, OverDrive shall provide to Participating Libraries the applicable guidelines for utilizing the registered trademarks, logos, and software products associated with the Consortium Website. Participating Libraries agree to abide by the terms and conditions of these third party suppliers. OverDrive shall provide to Participating Libraries all necessary links, art, logos and instructions to permit it to comply with this provision.

**Schedule "C"**  
**Library Participation Form - Southwest Valley Library Consortium**

1. In consideration of lending digital materials, Participating Library agrees to abide by the terms and conditions of the Agreement.
2. **Annual Participation Fee.** Each Participating Library shall pay OverDrive an Annual Fee for joining and ongoing services provided to Participating Libraries. The Annual Fee shall include any and all services relating to use of the Application Services including the DLR System License, configuration and customization of website services, third party software licenses, hosting, bandwidth, and maintenance of the application services and staff training. The Annual Fee shall be based upon Participating Library's Legal Service Area Population as reported by the then current information available at the Institute of Museum and Library Services (<http://harvester.census.gov/imls/search/index.asp?&LibraryName>).

**Annual Fee for 2012 - 2015**

			Please check one:
Tier 1	Legal Service Area Population up to 5,000	<b>\$1,500</b> per year	_____
Tier 2	Legal Service Area Population of 5,001 – 25,000	<b>\$3,000</b> per year	_____
Tier 3	Legal Service Area Population of 25,001 – 50,000	<b>\$6,000</b> per year	_____
Tier 4	Legal Service Area Population of 50,001 – 100,000	<b>\$9,000</b> per year	_____

After the initial term of three years as set forth in Section 11.1 of the Agreement, the Annual Fee is subject to change for any one-year extension of the Agreement (if extended in accordance with Section 11.1 of the Agreement). The Annual Fee shall be due and payable within thirty (30) days of receipt of invoice.

3. **Allocation of Annual Fee.** The Annual Participation Fee collected during each year shall be allocated as follows: one-third towards configuration, system fees, and maintenance, and two-thirds toward selection of Content for the shared collection. At any time during this Agreement, a Participating Library may select additional Content subject to standard terms and pricing. If Participating Library selects Content in excess of the Participating Library's two-thirds Content selection allotment, OverDrive shall invoice the Participating Library at standard terms and pricing, and Participating Library shall pay OverDrive within thirty (30) days of receipt of invoice.
4. **Additional Participating Libraries.** Arizona Public Libraries with Legal Service Area Populations under 100,000 shall be eligible to enter into this Agreement on a quarterly basis. Before a library may be eligible to enter into this Agreement, the library must submit a completed Schedule "C" to OverDrive. Any current OverDrive customer (standalone system) shall not be eligible to enter into this Agreement. Notwithstanding the foregoing, OverDrive shall have sole discretion to approve any and all new libraries that seek to enter into this Agreement.
5. **One-Time Integration Fee.** Participating Libraries entering into this Agreement after the go-live of the Consortium Website shall pay a One-Time Integration Fee of \$500 to OverDrive, in addition to the Annual Fee for the new Participating Library. The One-Time Integration Fee shall be due and payable within thirty (30) days of receipt of invoice.
6. DLR is for remote use only (outside of the Participating Library). Without the use of OverDrive Download Station software, Patrons and all other users of DLR cannot download Digital Content to any Participating Library computers or devices.
7. Each Participating Library shall include a direct hyperlink and/or logo linked to the DLR service from such Participating Library's home page and other appropriate sub-pages. Such link or logo shall be featured no less prominently than other electronic resources or services including but not limited to EBSCOhost, Recorded Books, Ingram and 3M.
8. Each Participating Library acknowledges it may incur additional license fees or costs related to MARC records, SIP or similar protocol for patron authentication. All such fees shall be at such Participating Library's own expense, and are not included in the Participation Fee.
9. Each Participating Library acknowledges that if it withdraws from this Agreement prior to the expiration of Agreement with OverDrive, all content, products, and services that have been purchased with the Participating Library's monetary and in-kind contributions to the Participating Libraries shall remain with the Consortium.