

CITY COUNCIL AGENDA

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

REGULAR MEETING
November 18, 2013
7:00 PM

**CALL TO ORDER BY MAYOR ROGERS
PLEDGE OF ALLEGIANCE
MOMENT OF REFLECTION**

1 ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2 UNSCHEDULED PUBLIC APPEARANCES

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

3 CONSENT AGENDA

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

a. APPROVAL OF MINUTES

Regular Meeting of November 4, 2013

b. LIQUOR LICENSE SERIES 12 - FIESTA MEXICANA RESTAURANT

City Council will consider a request from Ms. Maria Rocio Cohen for a Series 12 Restaurant License to sell all spirituous liquors at Fiesta Mexicana Restaurant located at 1733 N. Dysart Road in Avondale. The Council will take appropriate action.

c. RESOLUTION 3152-1113 - MAINTENANCE IMPROVEMENT DISTRICT POLICY

City Council will consider a resolution approving a Maintenance Improvement District (MID) Policy to inform and assist developers in formation of the MID pursuant to state statute. that will act as a dormant tax assessment mechanism to generate funds necessary to maintain parkway landscaping and improvements in the event of failure of the Homeowners' Association to maintain those facilities. The Council will take appropriate action.

d. SECOND AMENDMENT - OFFICE LEASE AGREEMENT WITH PHOENIX SPEEDWAY, LLC

City Council will consider a request to approve the second amendment to the Office Lease Agreement with Phoenix Speedway, LLC d/b/a Phoenix International Raceway and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. RESOLUTION 3151-1113 - INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE TERRORISM LIAISON OFFICER

City Council will consider a resolution approving an Intergovernmental Agreement with the State of Arizona Department of Public Safety, Arizona Counter Terrorism Information Center relating to the Terrorism Liaison Officer program and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

4 COOPERATIVE PURCHASING AGREEMENT - ELXSI, INC., D/B/A CUES

City Council will consider a request to approve a cooperative purchasing agreement with ELXSI, Inc., d/b/a Cues for the purchase of a G016 high cube mounted cable color television inspection truck (CCTV truck) in an amount not to exceed \$334,700 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

5 PROFESSIONAL SERVICES AGREEMENT - MOSAIC ARTS CENTER

City Council will consider a request to approve a Professional Services Agreement with Mosaic Arts Center for after school programming, STEAM educational enrichment programs, community services, facility usage by the City of Avondale, provide an amount not to exceed \$50,000 for the contract period, and authorize the Mayor or the City Manager and the City Clerk to execute the necessary documents. The Council will take appropriate action.

6 PUBLIC HEARING - RESOLUTION 3148-1113 AND ORDINANCE 1531-1113 - ZONING ORDINANCE TEXT AMENDMENTS (PL-12-0226)

City Council will hold a public hearing and consider a resolution declaring as a public record a document entitled "City of Avondale Zoning Ordinance, Amended and Restated November 18, 2013", and an ordinance adopting the aforementioned document by reference. The Council will take appropriate action.

7 RESOLUTION 1353-1113 - AUTHORIZING A GROUND LEASE AND A LEASE PURCHASE AGREEMENT FOR REFINANCING THE ACQUISITION OF CERTAIN REAL PROPERTY

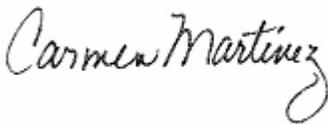
City Council will consider a resolution authorizing the execution and delivery of a ground lease and a lease-purchase agreement for refinancing the acquisition of real property located at 125 S. Avondale Blvd., declaring an emergency and authorizing the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

8 EXECUTIVE SESSION

- a. The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding the breach of a lease agreement for City Center property.

9 ADJOURNMENT

Respectfully submitted,



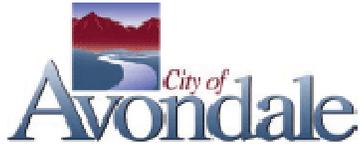
Carmen Martinez
City Clerk

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 pueden 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:
APPROVAL OF MINUTES

MEETING DATE:
November 18, 2013

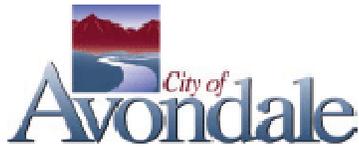
TO: Mayor and Council
FROM: Carmen Martinez, City Clerk (623) 333-1214
THROUGH: Charlie McClendon, City Manager

PURPOSE:
Regular Meeting of November 4, 2013

ATTACHMENTS:

[Click to download](#)

No Attachments Available



CITY COUNCIL REPORT

SUBJECT:

Liquor License Series 12 - Fiesta Mexicana
Restaurant

MEETING DATE:

November 18, 2013

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is recommending approval of a request from Ms. Maria Rocio Cohen for a Series 12 Restaurant License to sell all spirituous liquors at Fiesta Mexicana Restaurant located at 1733 N. Dysart Road in Avondale.

DISCUSSION:

The City Clerk's Department has received an application for a Series 12 Restaurant license to sell all spirituous liquors from Ms Maria Rocio Cohen for a Series 12 Restaurant License to sell all spirituous liquors at Fiesta Mexicana Restaurant located at 1733 N. Dysart Road in Avondale, Arizona.

As required by state law and city ordinance, the application was posted for the required period of time starting October 24, 2013 and a notice was published in the West Valley View on November 8 and November 12, 2013. No comments were received.

The Arizona Department of Liquor License and Control has accepted the submitted application as complete.

The Development Services, Finance, Fire and Police Departments have reviewed the application and are recommending approval. Their comments are attached.

RECOMMENDATION:

Staff is recommending approval of a request from Ms. Maria Rocio Cohen for a Series 12 Restaurant License to sell all spirituous liquors at Fiesta Mexicana Restaurant located at 1733 N. Dysart Road in Avondale.

ATTACHMENTS:

Click to download

- [Application](#)
- [Review by Departments](#)
- [Posting photos](#)
- [Vicinity Map](#)

Arizona Department of Liquor Licenses and Control

800 West Washington, 5th Floor

Phoenix, Arizona 85007

www.azliquor.gov

602-542-5141

APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

SECTION 1 This application is for a:

- MORE THAN ONE LICENSE
INTERIM PERMIT Complete Section 5
NEW LICENSE Complete Sections 2, 3, 4, 13, 14, 15, 16
PERSON TRANSFER (Bars & Liquor Stores ONLY) Complete Sections 2, 3, 4, 11, 13, 15, 16
LOCATION TRANSFER (Bars and Liquor Stores ONLY) Complete Sections 2, 3, 4, 12, 13, 15, 16
PROBATE/WILL ASSIGNMENT/DIVORCE DECREE Complete Sections 2, 3, 4, 9, 13, 16 (fee not required)
GOVERNMENT Complete Sections 2, 3, 4, 10, 13, 15, 16

SECTION 2 Type of ownership:

- J.T.W.R.O.S. Complete Section 6
INDIVIDUAL Complete Section 6
PARTNERSHIP Complete Section 6
CORPORATION Complete Section 7
LIMITED LIABILITY CO. Complete Section 7
CLUB Complete Section 8
GOVERNMENT Complete Section 10
TRUST Complete Section 6
OTHER (Explain)

SECTION 3 Type of license and fees LICENSE #(s): 12079680

1. Type of License(s): Restaurant
2. Total fees attached: \$ 255 Department Use Only

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE. The fees allowed under A.R.S. 44-6852 will be charged for all dishonored checks.

SECTION 4 Applicant

1. Owner/Agent's Name: Mr. Cohen, Maria Rocio
2. Corp./Partnership/L.L.C.: Fiesta Mexicana Restaurants No. 7, Inc.
3. Business Name: Fiesta Mexicana
4. Principal Street Location: 1733 N. Dupert Rd., Avondale, Maricopa, 85392
5. Business Phone: Pending 970-946-6360
6. Is the business located within the incorporated limits of the above city or town? YES
7. Mailing Address:
8. Price paid for license only bar, beer and wine, or liquor store: Type \$ Zip Type \$

DEPARTMENT USE ONLY

Fees: Application 100, Interim Permit, Site Inspection 50, Finger Prints 66 + 39, TOTAL OF ALL FEES \$ 255

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? YES
Accepted by: SG Date: 10/10/13 Lic. #: 12079680

SECTION 5 Interim Permit:

1. If you intend to operate business when your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01. 13 OCT 10 Lic. Lic. #1110
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. _____
4. Is the license currently in use? YES NO If no, how long has it been out of use? _____

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

I, _____, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER,
(Print full name)
 MEMBER, STOCKHOLDER, OR LICENSEE (circle the title which applies) of the stated license and location.

X _____ State of _____ County of _____
(Signature)
 The foregoing instrument was acknowledged before me this
 _____ day of _____
 Day Month Year

(Signature of NOTARY PUBLIC)

My commission expires on: _____

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

1. Individual:

| Last | First | Middle | % Owned | Mailing Address | City State Zip |
|------|-------|--------|---------|-----------------|----------------|
| | | | | | |

Partnership Name: (Only the first partner listed will appear on license) _____

| General-Limited | Last | First | Middle | % Owned | Mailing Address | City State Zip |
|---|------|-------|--------|---------|-----------------|----------------|
| <input type="checkbox"/> <input type="checkbox"/> | | | | | | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | | | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | | | |
| <input type="checkbox"/> <input type="checkbox"/> | | | | | | |

) Y R A S S E C E N F I 1

2. Is any person, other than the above, going to share in the profits/losses of the business? YES NO
 If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

| Last | First | Middle | Mailing Address | City, State, Zip | Telephone# |
|------|-------|--------|-----------------|------------------|------------|
| | | | | | |
| | | | | | |

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

- CORPORATION Complete questions 1, 2, 3, 5, 6, 7, and 8.
 L.L.C. Complete 1, 2, 4, 5, 6, 7, and 8.

1. Name of Corporation/L.L.C.: Fiesta Mexicana Restaurants No. 7, Inc
 (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 07-08-2003 State where Incorporated/Organized: Arizona
3. AZ Corporation Commission File No.: 1085782.7 Date authorized to do business in AZ: 07/08/2003
4. AZ L.L.C. File No: _____ Date authorized to do business in AZ: _____
5. Is Corp./L.L.C. Non-profit? YES NO

6. List all directors, officers and members in Corporation/L.L.C.:

| Last | First | Middle | Title | Mailing Address | City State Zip |
|--------|----------|---------|-----------|-----------------|----------------|
| Rangel | Martin | Arroyos | President | | |
| Rangel | Patricia | Cejade | Secretary | | |
| | | | | | |
| | | | | | |

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders who are controlling persons or who own 10% or more:

| Last | First | Middle | % Owned | Mailing Address | City State Zip |
|--------|----------|---------|---------|-----------------|----------------|
| Rangel | Martin | Arroyos | 50 | | |
| Rangel | Patricia | Cejade | 50 | | |
| | | | | | |
| | | | | | |

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach a percentage of ownership chart, and a director/officer/member disclosure for the parent entity. Attach additional sheets as needed in order to disclose personal identities of all owners.

SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

1. Name of Club: _____ Date Chartered: _____
 (Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)

2. Is club non-profit? YES NO

3. List officer and directors:

| Last | First | Middle | Title | Mailing Address | City State Zip |
|------|-------|--------|-------|-----------------|----------------|
| | | | | | |
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(ATTACH ADDITIONAL SHEET IF NECESSARY)

SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store License:

- 1. Current Licensee's Name: _____
(Exactly as it appears on license) Last First Middle
- 2. Assignee's Name: _____
Last First Middle
- 3. License Type: _____ License Number: _____ Date of Last Renewal: _____
- 4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

SECTION 10 Government: (for cities, towns, or counties only)

- 1. Governmental Entity: _____
- 2. Person/designee: _____
Last First Middle Contact Phone Number

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

SECTION 11 Person to Person Transfer:

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY-Series 06,07, and 09).

- 1. Current Licensee's Name: _____ Entity: _____
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
- 2. Corporation/L.L.C. Name: _____
(Exactly as it appears on license)
- 3. Current Business Name: _____
(Exactly as it appears on license)

4. Physical Street Location of Business: Street _____
City, State, Zip _____

5. License Type: _____ License Number: _____

6. If more than one license to be transferred: License Type: _____ License Number: _____

7. Current Mailing Address: Street _____
(Other than business) City, State, Zip _____

- 8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? YES NO
- 9. Does the applicant intend to operate the business while this application is pending? YES NO If yes, complete Section 5 of this application, attach fee, and current license to this application.

10. I, _____, hereby authorize the department to process this application to transfer the
(print full name)
privilege of the license to the applicant, provided that all terms and conditions of sale are met. Based on the fulfillment of these conditions, I certify that the applicant now owns or will own the property rights of the license by the date of issue.

I, _____, declare that I am the CURRENT OWNER, AGENT, MEMBER, PARTNER
(print full name)
STOCKHOLDER, or LICENSEE of the stated license. I have read the above Section 11 and confirm that all statements are true, correct, and complete.

(Signature of CURRENT LICENSEE) State of _____ County of _____
The foregoing instrument was acknowledged before me this

My commission expires on: _____ Day Month Year

(Signature of NOTARY PUBLIC)

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SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

13 OCT 10 Lic. Lic. #11110

1. Current Business: Name _____
(Exactly as it appears on license) Address _____
2. New Business: Name _____
(Physical Street Location) Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02)
- b) Hotel/motel license (§ 4-205.01)
- c) Government license (§ 4-205.03)
- d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 3.1 mile ft. Name of school Avondale School
Address 322 W. La Canada Blvd. Avondale AZ 85392
City, State, Zip
2. Distance to nearest church: 9 mile ft. Name of church Phoenix United Reformed
Address 2418 N. 127th Ln. Avondale, AZ 85392
City, State, Zip

3. I am the: Lessee Sublessee Owner Purchaser (of premises)

4. If the premises is leased give lessors: Name _____
Address _____
City, State, Zip _____

4a. Monthly rental/lease rate \$ _____ What is the remaining length of the lease ___ yrs. ___ mos.

4b. What is the penalty if the lease is not fulfilled? \$ _____ or other _____
(give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness for this license/location excluding the lease? \$ 0
Please list lenders you owe money to.

| Last | First | Middle | Amount Owed | Mailing Address | City State | Zip |
|------|-------|--------|-------------|-----------------|------------|-----|
| | | | | | | |
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| | | | | | | |
| | | | | | | |

SEE

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Restaurant

AMENDMENT

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

- 1. Current Business: Name _____
(Exactly as it appears on license) Address _____
- 2. New Business: Name _____
(Physical Street Location) Address _____
- 3. License Type: _____ License Number: _____
- 4. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 6, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizontal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

- a) Restaurant license (§ 4-205.02)
- b) Hotel/motel license (§ 4-205.01)
- c) Government license (§ 4-205.03)
- d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 869.50 ft. Name of school Tutor Time of Goodyear
Address 1730 N. Dysart Road, Goodyear, AZ. 85395
City, State, Zip

2. Distance to nearest church: 2269.87 ft. Name of church Kingdom In The Valley Christian Church
Address 13048 W. Rancho Santa Fe Blvd. Avondale, AZ 85397
City, State, Zip

3. I am the: Lessee Sublessee Owner Purchaser (of premises)

4. If the premises is leased give lessors: Name _____
Address _____
City, State, Zip

4a. Monthly rental/lease rate \$ _____ what is the remaining length of the lease ___ yrs. ___ mos.

4b. What is the penalty if the lease is not fulfilled? \$ _____ or other _____
(give details - attach additional sheet if necessary)

5. What is the total business indebtedness for this license/location excluding the lease? \$ 0
Please list debtors below if applicable.

| Last | First | Middle | Amount Owed | Mailing Address | City State | Zip |
|------|-------|--------|-------------|-----------------|------------|-----|
| | | | | | | |
| | | | | | | |
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| | | | | | | |

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Restaurant

13 OCT 31 11:14 PM '13

SECTION 13 - continued

- 7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?
 YES NO If yes, attach explanation.
- 8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? YES NO
- 9. Is the premises currently licensed with a liquor license? YES NO If yes, give license number and licensee's name:

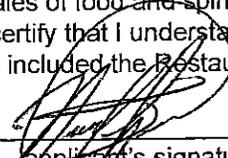
License # _____ (exactly as it appears on license) Name _____

SECTION 14 Restaurant or hotel/motel license applicants:

- 1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? YES NO
 If yes, give the name of licensee, Agent or a company name:

_____ and license #: _____
Last First Middle

- 2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.
- 3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.
- 4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this hotel/motel restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.



 applicant's signature

As stated in A.R.S § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection visit www.azliquor.gov and click on the "Information" tab.

MR
 applicants initials

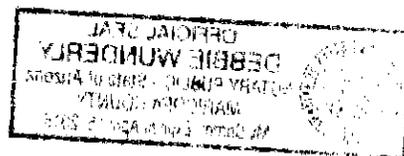
SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

- 1. Check ALL boxes that apply to your business:
 Entrances/Exits Liquor storage areas Patio: Contiguous
 Service windows Drive-in windows Non Contiguous
- 2. Is your licensed premises currently closed due to construction, renovation, or redesign? YES NO
 If yes, what is your estimated opening date? 11/25/2013
month/day/year
- 3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.
- 4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).
- 5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows, or increase or decrease to the square footage after submitting this initial drawing.

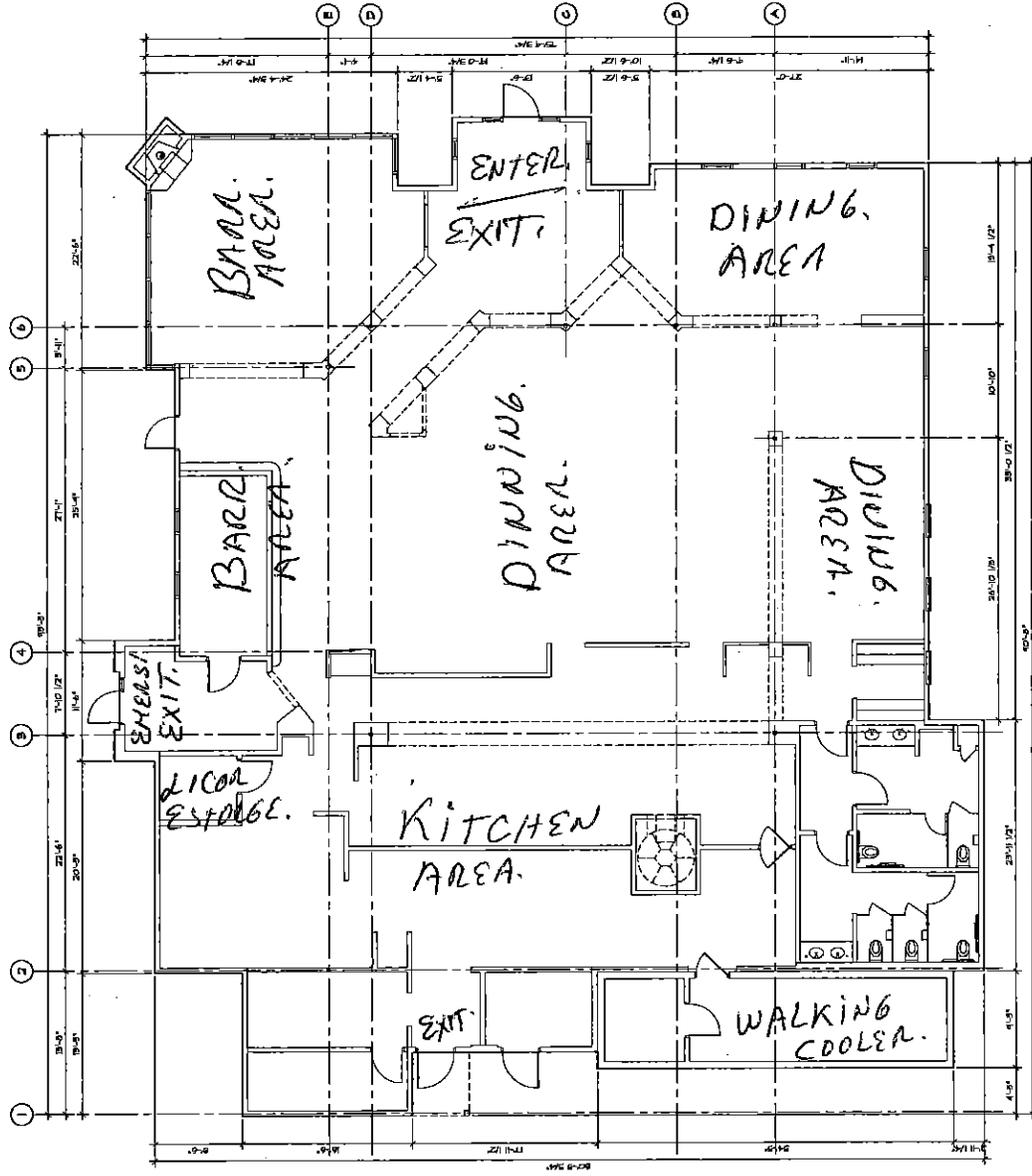
MR
 applicants initials

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13 OCT 10 Lic. Lic. #11114

DE RITO PARTNERS
Arizona's Retail Experts



SCALE: 3/16" = 1'-0"
DATE: 08/14/12

EXISTING BUILDING

6,706 SQ. FT.

1733 N. DYSART ROAD, GOODYEAR, AZ

Total Square Footage 6706
6,706 Sq.



ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

RESTAURANT OPERATION PLAN

LICENSE # 12079680

1. List by Make, Model and Capacity of your:

| | |
|---------------------------------------|-------------------|
| Grill | Champion 36 inch |
| Oven | Bogette 48 inch |
| Freezer | True 3 Doors 6' |
| Refrigerator | True 2 Doors 5' |
| Sink | Three compartment |
| Dish Washing Facilities | Proclean |
| Food Preparation Counter (Dimensions) | 2 1/2' x 12' |
| Other | |

2. Print the name of your restaurant: Fiesta Mexicana Restaurant

3. Attach a copy of your menu (Breakfast, Lunch and Dinner including prices).

4. List the seating capacity for:

- a. Restaurant area of your premises [197]
- b. Bar area of your premises [+ 84]
- c. Total area of your premises [281]

5. What type of dinnerware and utensils are utilized within your restaurant?

- Reusable
- Disposable

6. Does your restaurant have a bar area that is distinct and separate from the restaurant seating? (If yes, what percentage of the public floor space does this area cover). Yes _____ % No

7. What percentage of your public premises is used primarily for restaurant dining? (Does not include kitchen, bar, cocktail tables or game area.) 90 %

13 OCT 10 10:49 AM M1114

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

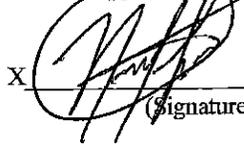
8. Does your restaurant contain any games or television? Yes No
If yes, specify what types and how many of each type (Televisions, Pool tables, Video Games, Darts, etc).
TV's 8 Samsung 40"

9. Do you have live entertainment or dancing? Yes No
(If yes, what type and how often?)

10. Use space below or attach a list of employee positions and their duties to fully staff your business.
1 Chef
5 Cooks
2 Dishwasher
7 server
4 busboys
1 Manager

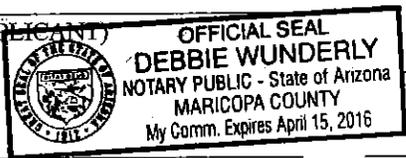
13 OCT 10 194 U.C. #1114

I, Martin Bongel Arroyos, hereby declare that I am the APPLICANT filing this application. I have
(Print full name)
read this application and the contents and all statements true, correct and complete.

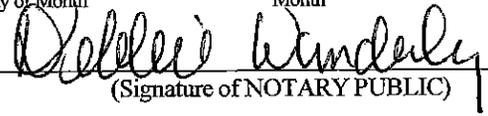
X 
(Signature of APPLICANT)

State of ARIZONA County of MARICOPA

The foregoing instrument was acknowledged before me this
9 day of OCTOBER, 2013.
Day of Month Month Year



My commission expires on::


(Signature of NOTARY PUBLIC)

State of Arizona
Department of Liquor Licenses and Control
800 W. Washington, 5th Floor
Phoenix, Arizona 85007-2934
www.azliquor.gov
(602)542-5141

13 OCT 10 Liq. Lic. #1144

RECORDS REQUIRED FOR AUDIT

Applies to Series 11 (Hotel/Motel W/Restaurant) & Series 12 (Restaurant) Only

MAKE A COPY OF THIS DOCUMENT AND KEEP IT WITH RECORDS REQUIRED BY THE STATE

In the event that your business is audited by the Department of Liquor, you will be asked to provide documentation of compliance with A.R.S. §4-205.02(H). Other documents that may be required for audit include and are not limited to:

1. All invoices and receipts for the purchase of food and spirituous liquor for the licensed premises.
2. A list of *all* food and liquor vendors.
3. The restaurant menu reflecting prices during the audit period.
4. A price list for alcoholic beverages on menu during the audit period.
5. Mark-up figures on food and alcoholic products during the audit period.
6. A recent, *accurate* inventory of food and liquor (taken within two weeks of the Audit Interview Appointment)
7. Monthly Inventory Figures - beginning and ending figures for food and liquor.
8. Chart of accounts (copy).
9. Financial Statements (Income Statements, Balance Sheets, etc).
10. General Ledger
 - A. Sales Journals/Monthly Sales Schedules
 - 1) Daily Sales Reports (to include the name of wait staff, bartender, etc. with sales for that day)
 - 2) Daily Cash Register Tapes - Journal Tapes and Z-tapes
 - 3) Dated Guest Checks
 - 4) Coupons/Specials/Discounts
 - 5) Any other evidence to support income from food and liquor sales
 - B. Cash Receipts/Disbursement Journals
 - 1) Daily Bank Deposit Slips
 - 2) Bank Statements and canceled checks
11. Tax Records
 - A. Transaction Privilege Sales, Use and Severance Tax Return (copies)
 - B. Income Tax Return - city, state and federal (copies)
 - C. Any supporting books, records, schedules or documents used in preparation of tax returns
12. Payroll Records
 - A. Copies of all reports required by the State and Federal Government
 - B. Employee Log (A.R.S. §4-119)
 - C. Employee time cards (actual document used to sign-in and -out each work day)
 - D. Payroll records for all employees showing hours worked each week and hourly wages
13. Off-Site Catering records (must be complete and separate from restaurant records)
 - A. All documents which support the income derived from the sale of food to be consumed off of the licensed premises
 - B. All documents which support purchases made for food to be consumed off of the licensed premises
 - C. All coupons/specials/discounts

The sophistication of record keeping varies from establishment-to-establishment. Regardless of each licensee's accounting methods, the amount of gross revenue derived from the sale of food and liquor must be substantially documented.

REVOCAION OF YOUR LIQUOR LICENSE MAY OCCUR IF YOU FAIL TO COMPLY WITH A.R.S. §4-210(A)(7) AND A.R.S. §4-205.02(H)

A.R.S. §4-210(A)(7)

The Licensee fails to keep for two years and make available to the department upon reasonable request all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of spirituous liquors and, in the case of a restaurant or hotel-motel licensee, all invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of food.

A.R.S. §4-205.02 (H)

1. "Gross Revenue" means the revenue derived from all sales of food and spirituous liquor on the licensed premises, regardless of whether the sales of spirituous liquor are made under a restaurant license issued pursuant to this section or under any other license that has been issued for the premises pursuant to this article.

2. "Restaurant" means an establishment which derives at least forty per cent of its gross revenue from the sale of food, including sales of food for consumption off the licensed premises if the amount of these sales included in the calculation of gross revenue from the sale of food does not exceed fifteen percent of all gross revenue of the restaurant.

I, Martin Arroyos Rangel have read and fully
Print Full Name (first, middle, last)
understand all aspects of this statement.

[Signature]
Signature of Licensee

Notary

State of AZ County of MARICOPA
State County

The foregoing instrument was acknowledged before me this
9 day of OCTOBER, 2013
Day Month Year

My Commission Expires on: 15 APRIL 2016
Day Month Year

[Signature]
Signature of Notary

OFFICIAL SEAL
DEBBIE WUNDERLY
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires April 15, 2016

13 OCT 10 09:14 PM 114

MAKE A COPY OF THE DOCUMENT AND KEEP IT WITH RECORDS REQUIRED BY THE STATE

CHICKEN DISHES

Served with Rice and Beans. Cholesterol Free. Beans Available Upon Request.

- POLLO ASADO.....\$13.95
Marinated chicken breast served with pico de gallo and guacamole.
- POLLO A LA CREMA.....\$13.95
Chicken breast cooked with mushrooms in a white creamy sauce and mixed vegetables.
- CHICKEN FIESTA.....\$13.95
Chicken breast cooked in a very special sweet sauce.
- POLLO A LA FIESTA.....\$13.95
Chicken breast with sautéed onions in a vegetable sauce.
- POLLO CON ARROZ.....\$13.95
Zitouness chicken sautéed with mushrooms in a vegetable sauce (not served with beans).
- CRANTAS DE POLLO.....\$13.95
Fajitas de pollo cooked with onions and bell peppers.
- FAJITAS DE POLLO.....\$13.95
Chicken strips marinated and sautéed with grilled onion, bell peppers, served with guacamole and sour cream.

BEEF DISHES

Served with Rice and Beans

- STEAK RANCHERO.....\$18.95
7-ounce steak cooked in your liking and served with green onions, guacamole and pico de gallo.
- TAMPIQUEÑA.....\$17.95
Steak topped with fresh shrimp, onions, bell peppers and garnished with melted cheese.
- STEAK AL CHIPOTLE.....\$14.95
Steak cooked in special chipotle sauce.
- CARNE ASADA.....\$14.95
Sautéed steak cooked in a mild red sauce.
- CRANTAS DE RES.....\$14.95
Steak strips grilled with onions, bell peppers.
- BEEF FAJITAS.....\$14.95
Marinated steak delivered sizzling hot over a bed of sautéed onions, bell peppers.
- JACOS AL CARBON.....\$14.95
Pork chops marinated, deep fried and served in a soft corn tortilla, with pico de gallo and guacamole.
- JACOS AL PASTOR.....\$14.95
Steak marinated, cooked, dried and served in a soft corn tortilla with pico de gallo and guacamole.
- CHILE COLORADO.....\$11.95
Beef chunks in a mild red sauce.
- CHILE VERDE.....\$11.95
Pork chunks in a mild green tomatillo sauce.
- PICADILLO.....\$11.95
Shredded beef in a mild red sauce.

SEAFOOD

Served with Rice, Beans or Pasta. Cholesterol-Free. Beans Available Upon Request.

- CAMARONES A LA FIESTA.....\$14.95
Beef wrapped deep fried prawns, served with guacamole and mixed vegetables.
- CAMARONES A LA DIABLA.....\$14.95
Large prawns with mushrooms sautéed in garlic and red-hot sauce.
- CAMARONES AL MOJO DE AJO.....\$14.95
Prawns and mushrooms sautéed in special garlic sauce.
- CAMARONES A LA CREMA.....\$14.95
Prawns and mushrooms sautéed in a delicious white creamy sauce with mixed vegetables.
- CAMARONES A LA PLANCHA.....\$14.95
Grilled butterfly shrimp marinated in garlic sauce served with mushrooms, sour cream and guacamole.
- CAMARONES CON ARROZ.....\$14.95
Sautéed prawns and mushrooms in a very special sauce with green onions (no beans).
- CAMARONES AL CHIPOTLE.....\$14.95
Prawns, mushrooms, onions, sautéed in chipotle creamy sauce.

HOUSE SPECIALTIES

- FIESTA ESPECIAL.....\$17.95
Beef, chicken and shrimp sautéed in special sauce with vegetables, served with rice and beans.
- FILETE DE PESCADO.....\$13.95
Grilled or broiled, cooked in garlic sauce, served with rice and beans.
- PESCADO FRITO.....\$13.95
A whole fish sautéed with tomato salsa, avocado, onion and rice.
- JACOS DE CAMARON (3).....\$14.95
Prawns marinated and sautéed in butter with pico de gallo and topped with four tortillas.
- JACOS DE PESCADO (3).....\$13.95
Three fish, marinated and sautéed in butter with pico de gallo and onions.
- MOLARRA RELLENA.....\$18.95
A whole fish sautéed with shrimp, octopus, mixed vegetables and sour cream.
- ENCHILADAS A LA FIESTA.....\$14.95
Two four ounces filled with steak and chicken fajitas, served with guacamole, PORK CARAVITAS.
- DEEP FRIED PORK.....\$13.95
Deep fried pork, served with onion, bell peppers, pico de gallo, rice, beans and special sauce.

TOST BURRITOS

Served with Rice and Beans

- SUPER BURRITO.....\$11.95
Four tortillas filled with beef, chicken or pizza, rice, beans and cheese, topped with rice, onions, tomato, sour cream and guacamole.
- FLOR BURRITO.....\$14.95
Four tortillas filled with beef, chicken or pizza, topped with guacamole, garnished with fajita, lettuce, cheese, guacamole and sour cream.
- FAJITA BURRITO.....\$14.95
Steak or chicken wrapped in a flour tortilla with grilled onions and bell peppers.
- BURRITO.....\$9.95
Flour tortilla filled with beef, chicken or pizza.
- BURRITO VERDE.....\$10.95
Four chunks in a mild green sauce, wrapped in a flour tortilla and topped with cheese.
- BURRITO COLORADO.....\$10.95
Beef chunks cooked in a mild red sauce, wrapped in a flour tortilla.
- CHORIZO BURRITO.....\$9.95
Mexican sausage mixed with eggs, wrapped in a flour tortilla.
- BEAN AND CHEESE BURRITO.....\$9.95
Flour tortilla filled with beans and cheese, garnished with onions.
- SHRIMP BURRITO.....\$13.95
Flour tortilla filled with shrimp and sautéed with pico de gallo and butter, topped delicious creamy sauce an avocado slice and sour cream.

LAS ENCHILADAS

Served with Rice and Beans

- SUPER ENCHILADA.....\$11.95
Two wrapped corn tortillas with your choice of beef, chicken, or pizza, topped with lettuce, guacamole and sour cream.
- ENCHILADA RANCHERA.....\$11.95
Two wrapped corn tortillas filled with shredded chicken, topped with a overcast egg.
- ENCHILADA MOLE.....\$10.95
Two corn tortillas rolled and filled with chicken and topped with special sweet mole sauce.
- ENCHILADA SUZA.....\$10.95
Two corn tortillas rolled and filled with chicken and topped with green sauce and sour cream.
- ENCHILADAS A LA CREMA.....\$10.95
Two corn tortillas filled with chicken and topped with special cream sauce.
- ENCHILADAS.....\$10.95
Two corn tortillas filled and rolled with beef, chicken or pizza, topped with cheese.
- BEAN AND CHEESE ENCHILADA.....\$9.95
CHEESE AND ONION ENCHILADA.....\$9.95

TOSTITOS RANCHEROS

Served with Rice and Beans

- CHEESE ENCHILADA.....\$5.95
- BEEF TACO.....\$5.95
- QUESADILLA.....\$5.95
- 2 CHICKEN TOSTITOS RANCHEROS.....\$9.95
- BEAN AND CHEESE BURRITO.....\$5.95
- HAMBURGER WITH FRIES.....\$5.95
- CHEESEBURGER.....\$5.95
- CHICKEN FINGERS WITH FRIES.....\$5.95
- KIDS SOUP.....\$1.75

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Two corn tortillas filled and rolled with beef, chicken or pizza, topped with cheese.
- BEAN AND CHEESE ENCHILADA.....\$9.95
CHEESE AND ONION ENCHILADA.....\$9.95

TOSTITOS RANCHEROS

Served with Rice and Beans

- CHEESE ENCHILADA.....\$5.95
- BEEF TACO.....\$5.95
- QUESADILLA.....\$5.95
- 2 CHICKEN TOSTITOS RANCHEROS.....\$9.95
- BEAN AND CHEESE BURRITO.....\$5.95
- HAMBURGER WITH FRIES.....\$5.95
- CHEESEBURGER.....\$5.95
- CHICKEN FINGERS WITH FRIES.....\$5.95
- KIDS SOUP.....\$1.75

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

803.045

QUESTIONNAIRE

P1070234 SG

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with BLACK INK. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079680

(If the location is currently licensed)

1. Check appropriate box →

| | | |
|---|---|---|
| <input type="checkbox"/> Controlling Person (Complete Questions 1-19) Controlling Person or Agent must complete #21 for a Manager | <input checked="" type="checkbox"/> Agent (Complete All Questions except # 14, 14a & 21) Controlling Person or Agent must complete # 21 | <input type="checkbox"/> Manager (Only) (Complete All Questions except # 14, 14a & 21) Controlling Person or Agent must complete # 21 |
|---|---|---|

2. Name: Cohen Maria Rocio Date of Birth: 1/1/1971
 Last First Middle (NOT a Public Record)

3. Social Security Number: _____ Drivers License #: _____ State: Arizona
 (NOT a public record) (NOT a public record)

4. Place of Birth: Guajuato Guajuato Mexico Height: 5.7 Weight: 140 Eyes: Bro Hair: Bro
 City State Country (not county)

5. Marital Status Single Married Divorced Widowed

6. Name of Current or Most Recent Spouse: _____ Date of Birth: 1/1/
 (List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? Arizona If Arizona, date of residency: _____

8. Telephone number to contact you during business hours for any questions regarding this document. _____

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Fiesta Mexicana Premises Phone: Pending

11. Physical Location of Licensed Premises Address: 1733 N. Dysart Rd. Avondale Maricopa 85392
 Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

| FROM Month/Year | TO Month/Year | DESCRIBE POSITION OR BUSINESS | EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip) |
|-----------------|---------------|-------------------------------|---|
| Jan. 2007 | CURRENT | Real Estate Broker | Mc Dream Builder's Realty, LLC 1205 N. Matterhorn Rd. Payson, AZ 85541 |
| | | | |
| | | | |

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION 12 OR 13

13. Indicate your residence address for the last five (5) years:

| FROM Month/Year | TO Month/Year | Rent or Own | RESIDENTIAL Street Address If rented, attach additional sheet with name, address and phone number of landlord | City | State | Zip |
|-----------------|---------------|-------------|--|------|-------|-----|
| Dec. 2007 | CURRENT | Own | | | | |
| | | | | | | |
| | | | | | | |

If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?
If you answered YES, how many hrs/day? _____, and **answer #14a below**. If NO, skip to #15. YES NO

14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. YES NO

15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. YES NO

16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. YES NO

17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? YES NO

18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? YES NO

19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? YES NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved, and dispositions.
SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED

20. I, Maria Rene Cohen, hereby declare that I am the APPLICANT/REPRESENTATIVE
(print full name of Applicant)
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

X [Signature]
(Signature of Applicant)

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this 10 day of October, 2013
Month Year

My commission expires on: 12-2-16
Day Month Year

[Signature]
OFFICIAL SEAL
SELENA MARIE GONZALES
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires February 12, 2016

COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT APPROVING A MANAGER'S APPLICATION

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license. The manager named must be at least 21 years of age.

State of _____ County of _____
The foregoing instrument was acknowledged before me this _____ day of _____, _____
Month Year

X _____
Signature of Controlling Person or Agent (circle one)

(Signature of NOTARY PUBLIC)

Print Name

My commission expires on: _____
Day Month Year

13 OCT 10 11 PM EST

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

QUESTIONNAIRE

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with BLACK INK. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079680

(If the location is currently licensed)

1. Check appropriate box -> [] Controlling Person [] Agent [] Manager (Only)
(Complete Questions 1-19) (Complete All Questions except # 14, 14a & 21)
Controlling Person or Agent must complete #21 for a Manager Controlling Person or Agent must complete # 21

2. Name: Rangel Arroyos Martin Date of Birth: / /
Last First Middle (NOT a Public Record)

3. Social Security Number: Drivers License #: State:
(NOT a public record) (NOT a public record)

4. Place of Birth: City State Country (not county) Height: Weight: Eyes: Hair:

5. Marital Status [] Single [] Married [] Divorced [] Widowed

6. Name of Current or Most Recent Spouse: Date of Birth: / /
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? If Arizona, date of residency: / /

8. Telephone number to contact you during business hours for any questions regarding this document.

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Premises Phone: / /

11. Physical Location of Licensed Premises Address: Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

Table with 4 columns: FROM Month/Year, TO Month/Year, DESCRIBE POSITION OR BUSINESS, EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip). Includes a 'CURRENT' row.

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

Table with 7 columns: FROM Month/Year, TO Month/Year, Rent or Own, RESIDENTIAL Street Address, City, State, Zip. Includes a 'CURRENT' row.

'13 OCT 10 Lic. Lic. #11115

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

803,045

QUESTIONNAIRE

P1043065 SG

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with BLACK INK. An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079680

(If the location is currently licensed)

| | | |
|----------------------------|---|--|
| 1. Check appropriate box → | <input checked="" type="checkbox"/> Controlling Person (Complete Questions 1-19) | <input type="checkbox"/> Agent (Complete All Questions except # 14, 14a & 21) |
| | Controlling Person or Agent must complete #21 for a Manager Controlling Person or Agent must complete # 21 | |

2. Name: RANGEL MARTIN MARQUES Date of Birth: 1/1/1971
Last First Middle (NOT a Public Record)

3. Social Security Number: _____ Drivers License #: _____ State: COL
(NOT a public record) (NOT a public record)

4. Place of Birth: JALISCO JUCHITAN MEXICO Height: 5-7 Weight: 220 Eyes: BL Hair: BLK
City State Country (not county)

5. Marital Status Single Married Divorced Widowed

6. Name of Current or Most Recent Spouse: RANGEL PATRICIA CETA Date of Birth: _____
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? California If Arizona, date of residency: _____

8. Telephone number to contact you during business hours for any questions regarding this document. _____

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: 1733 N. Dysart Fiesta Mexicana Premises Phone: Pending

11. Physical Location of Licensed Premises Address: 1733 N. Dysart Rd Avondale Maricopa 85392
Street Address (Do not use P.O. Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

| FROM Month/Year | TO Month/Year | DESCRIBE POSITION OR BUSINESS | EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip) |
|-----------------|----------------|-------------------------------|---|
| <u>01/2000</u> | <u>CURRENT</u> | <u>Rangel Enterprises</u> | <u>98 Everett St Durango CO 81303</u> |
| | | | |

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

| FROM Month/Year | TO Month/Year | Rent or Own | RESIDENTIAL Street Address | City | State | Zip |
|-----------------|----------------|-------------|----------------------------|------|-------|-----|
| <u>11/2012</u> | <u>CURRENT</u> | <u>Own</u> | | | | |
| <u>4/2003</u> | <u>11/2012</u> | <u>Own</u> | | | | |
| | | | | | | |

If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?
If you answered YES, how many hrs/day? _____, and **answer #14a below**. If NO, skip to #15. YES NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. YES NO
15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. YES NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. YES NO
17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? YES NO
18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? YES NO
19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? YES NO

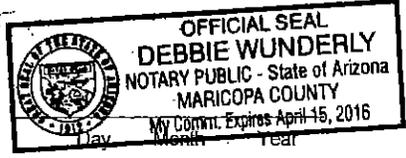
If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement.
Give complete details including dates, agencies involved, and dispositions.
SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED

20. I, Martin Rangel Arroyos, hereby declare that I am the APPLICANT/REPRESENTATIVE
(print full name of Applicant)
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

X 
(Signature of Applicant)

State of ARIZONA County of MARICOPA

The foregoing instrument was acknowledged before me this
9 day of OCTOBER, 2013
Debbie Wunderly Month Year
(Signature of NOTARY PUBLIC)



My commission expires on: _____

COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT APPROVING A MANAGER'S APPLICATION

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.
The manager named must be at least 21 years of age.

State of _____ County of _____

The foregoing instrument was acknowledged before me this

X _____
Signature of Controlling Person or Agent (circle one)

_____ day of _____
Month Year

(Signature of NOTARY PUBLIC)

Print Name
My commission expires on: _____
Day Month Year

**SEE
AMENDMENT**

13 OCT 10 11 AM '13

If you checked the Manager box on the front of this form skip to # 15

- 14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?
If you answered YES, how many hrs/day? _____, and answer #14a below. YES NO ^{MR}
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. YES NO ^{MR}
- 15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years? In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. YES NO
- 16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. YES NO
- 17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? YES NO
- 18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? YES NO
- 19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? YES NO

If any answer to Questions 15 through 19 is "YES" **YOU MUST** attach a signed statement. Give complete details including dates, agencies involved, and dispositions.
SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED

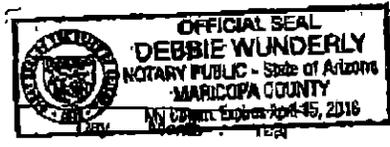
20. I, Martin Rangel Arroyos, hereby declare that I am the APPLICANT/REPRESENTATIVE filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

(Handwritten Signature)
 (Signature of Applicant)

AMENDMENT

State of ARIZONA County of Maricopa

The foregoing instrument was acknowledged before me this 9 day of October, 2013.
(Handwritten Signature)
 (Signature of NOTARY PUBLIC)



My commission expires on: _____

COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT APPROVING A MANAGER'S APPLICATION

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license. The manager named must be at least 21 years of age.

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, _____.

X _____
 Signature of Controlling Person or Agent (circle one)

 Month Year

Print Name _____

(Signature of NOTARY PUBLIC)

My commission expires on: _____
 Day Month Year

Question 19: Answer is Yes '13 OCT 10 LIT. LIC. #M1115

I own other liquor License in the
state of Colorado, Utah, New Mexico
and Page, AZ.



Martin Rangel Arroyos

Print Form

Arizona Department of Liquor Licenses and Control
800 West Washington, 5th Floor
Phoenix, Arizona 85007
www.azliquor.gov
602-542-5141

CERTIFICATE OF TITLE 4 TRAINING COMPLETION

Do Not Duplicate This Form

Certificates must be completed by a state-approved training course provider, in black ink, on an original form.

MARTIN RANGEL

Name (please print)



Signature

04/16/12

Training Completion Date

04/16/15

Certificate Expiration Date

(MANAGEMENT - 5 years from completion date)
(BASIC - 3 years from completion date)

Type of Training Completed (check Yes or No)

| | | | | | |
|---|--|------------|---|--|----------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | BASIC | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | ON SALE |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | MANAGEMENT | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | OFF SALE |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | BOTH | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | OTHER |

If Trainee Is Employed By A Licensee

Name of Licensee

Fiesta Mexican-Restaurant

Business Name

12093046

Liquor License #

Alcohol Training Program Provider Information

BARTENDING ACADEMY

Company or Individual Name (please print)

1250 EAST APACHE BLVD. SUITE 111 TEMPE, ARIZONA 85281

Tempe
City

AZ
State

Address
85281
Zip

(480) 9219925
Daytime Contact Phone #

I certify the above named individual has successfully completed the training specified above in accordance with Arizona Revised Statute, Arizona Administrative Code, and the training course curriculum approved by the Department of Liquor Licenses and Control:

JEFF PATTERSON

Name of Trainer (please print)



Trainer Signature

04/16/12

Date

Pursuant to A.R.S. § 4-112(G)(2), mandatory Title 4 liquor law training is required prior to the issuance of all new liquor license applications submitted after November 1, 1997.

The person(s) required to attend both the BASIC and MANAGEMENT Title 4 liquor law training, on- or off-sale, will include all of the following:

- Owner(s)
- Licensee/agent or manager(s) actively involved in daily business operation

A valid (not expired) Certificate of Title 4 Training Completion must be submitted to the Department of Liquor Licenses and Control before a liquor license application is considered complete.

Before acceptance of a manager's questionnaire and/or agent change for an existing liquor license, proof of attendance for the BASIC and MANAGEMENT Title 4 liquor law training (on- or off-sale) is required.

13 OCT 23 11:18 AM 2013

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

QUESTIONNAIRE

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In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079680

(If the location is currently licensed)

1. Check appropriate box -> [] Controlling Person (Complete Questions 1-19) [] Agent [] Manager (Only) (Complete All Questions except # 14, 14a & 21) Controlling Person or Agent must complete #21 for a Manager

2. Name: Leja de Rougel Patricia Date of Birth: / / (NOT a Public Record)

3. Social Security Number: Drivers License #: State: (NOT a public record)

4. Place of Birth: City State Country (not county) Height: Weight: Eyes: Hair:

5. Marital Status [] Single [] Married [] Divorced [] Widowed

6. Name of Current or Most Recent Spouse: Date of Birth: / / (List all for last 5 years - Use additional sheet if necessary) (NOT a public record)

7. You are a bona fide resident of what state? If Arizona, date of residency:

8. Telephone number to contact you during business hours for any questions regarding this document.

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Premises Phone:

11. Physical Location of Licensed Premises Address: Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st. Table with columns: FROM Month/Year, TO Month/Year, DESCRIBE POSITION OR BUSINESS, EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years: Table with columns: FROM Month/Year, TO Month/Year, Rent or Own, RESIDENTIAL Street Address (If rented, attach additional sheet with name, address and phone number of landlord), City, State, Zip

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

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

803,045

QUESTIONNAIRE

P1045159 SG

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In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

Liquor License #

12079680

(If the location is currently licensed)

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

1. Check appropriate box →

| | | |
|--|--|---|
| <input checked="" type="checkbox"/> Controlling Person (Complete Questions 1-19) Controlling Person or Agent must complete #21 for a Manager | <input type="checkbox"/> Agent (Complete All Questions except # 14, 14a & 21) Controlling Person or Agent must complete # 21 | <input type="checkbox"/> Manager (Only) (Complete All Questions except # 14, 14a & 21) Controlling Person or Agent must complete # 21 |
|--|--|---|

2. Name: Rangel Patricia Cepede Date of Birth: _____
Last First Middle (NOT a Public Record)

3. Social Security Number: _____ Drivers License #: _____ State: CO
(NOT a public record) (NOT a public record)

4. Place of Birth: Juchitan Talisco Mexico Height: 5'5 Weight: 170 Eyes: Blk Hair: Blk
City State Country (not county)

5. Marital Status Single Married Divorced Widowed

6. Name of Current or Most Recent Spouse: Rangel Martin Arroyos Date of Birth: _____
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? California If Arizona, date of residency: _____

8. Telephone number to contact you during business hours for any questions regarding this document. _____

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Fiesta Mexicana Premises Phone: Pending

11. Physical Location of Licensed Premises Address: 1733 N. Dysart Rd. Avondale, AZ Maricopa 85390
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

| FROM Month/Year | TO Month/Year | DESCRIBE POSITION OR BUSINESS | EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip) |
|-----------------|---------------|-------------------------------|---|
| 7/2000 | CURRENT | Rangel Enterprises | 98 Everett St. Durango, CO 81303 |
| | | | |
| | | | |

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↓

13. Indicate your residence address for the last five (5) years:

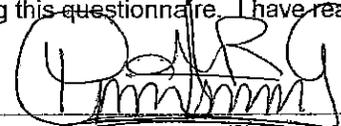
| FROM Month/Year | TO Month/Year | Rent or Own | RESIDENTIAL Street Address If rented, attach additional sheet with name, address and phone number of landlord | City | State | Zip |
|-----------------|---------------|-------------|---|------|-------|-----|
| 11/2012 | CURRENT | Own | | | | |
| 4/2003 | 11/2012 | Own | | | | |
| | | | | | | |

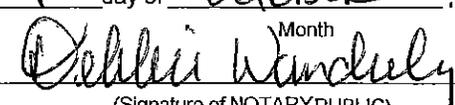
If you checked the Manager box on the front of this form skip to # 15

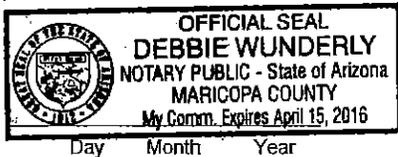
14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?
If you answered YES, how many hrs/day? _____, and **answer #14a below**. If NO, skip to #15. YES NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. YES NO
15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. YES NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. YES NO
17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? YES NO
18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? YES NO
19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? YES NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement.
Give complete details including dates, agencies involved, and dispositions.
SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED

20. I, Patricia Cepede Rangel, hereby declare that I am the APPLICANT/REPRESENTATIVE
(print full name of Applicant)
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

X 
(Signature of Applicant)

State of ARIZONA County of MARICOPA
The foregoing instrument was acknowledged before me this
9 day of OCTOBER, 2013
Month Year

(Signature of NOTARYPUBLIC)



My commission expires on: _____
Day Month Year

COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT APPROVING A MANAGER'S APPLICATION

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.
The manager named must be at least 21 years of age.

State of _____ County of _____
The foregoing instrument was acknowledged before me this
_____ day of _____
Month Year

(Signature of NOTARY PUBLIC)

X _____
Signature of Controlling Person or Agent (circle one)

Print Name
My commission expires on: _____
Day Month Year

**SEE
AMENDMENT**

13 OCT 10 11:41 AM '13

If you checked the Manager box on the front of this form skip to # 15

- 14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises? PR
if you answered YES, how many hrs/day? _____, and answer #14a below. If NO, skip to #15. YES NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)
If the answer to #14a is "NO", course must be completed before issuance of a new license or approval on
an existing license. PR
 YES NO
- 15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance,
regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in
a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. YES NO
- 16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments
or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal
traffic tickets and complaints. YES NO
- 17. Have you or any entity in which you have held ownership, been an officer, member, director or manager
EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended
or fined in this or any other state? YES NO
- 18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or
misrepresentation? YES NO
- 19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member,
director or manager on any other liquor license in this or any other state? YES NO

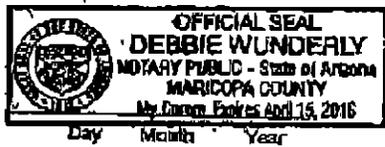
If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement.
Give complete details including dates, agencies involved, and dispositions.
SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED

20. I, Patricia Cejudo Rangel, hereby declare that I am the APPLICANT/REPRESENTATIVE
(print full name of Applicant)
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

AMENDMENT

X [Signature]
(Signature of Applicant)

State of ARIZONA County of MARICOPA



The foregoing instrument was acknowledged before me this
9 day of October, 2013
Debbie Wunderly Month Year
(Signature of NOTARY PUBLIC)

My commission expires on: _____
Day Month Year

**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT
APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.
The manager named must be at least 21 years of age.

State of _____ County of _____

X _____
Signature of Controlling Person or Agent (circle one)

The foregoing instrument was acknowledged before me this
_____ day of _____
Month Year

Print Name

(Signature of NOTARY PUBLIC)

My commission expires on: _____
Day Month Year

13 OCT 23 11:12 AM '13

Question 19: Answer is Yes

I own other liquor License in Page, AZ,
Colorado, New Mexico, Utah

Patricia Rangel

Patricia Rangel Cepede

Arizona Department of Liquor Licenses and Control
800 West Washington, 5th Floor
Phoenix, Arizona 85007
www.azliquor.gov
602-542-5141

CERTIFICATE OF TITLE 4 TRAINING COMPLETION

Do Not Duplicate This Form

Certificates must be completed by a state-approved training course provider, in black ink, on an original form.

PATRICIA RANGEL

Full Name (please print)

[Signature]
Signature

04/16/12

Training Completion Date

04/16/15

Certificate Expiration Date

(MANAGEMENT - 5 years from completion date)
(BASIC - 3 years from completion date)

Type of Training Completed (check Yes or No)

- | | | | | | |
|---|--|------------|---|--|----------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | BASIC | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No | ON SALE |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | MANAGEMENT | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | OFF SALE |
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | BOTH | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No | OTHER |

If Trainee Is Employed By A Licensee

Name of Licensee

Piasta Mexican-Restaurant

Business Name

12093046

Liquor License #

Alcohol Training Program Provider Information

BARTENDING ACADEMY

Company or Individual Name (please print)

1250 EAST APACHE BLVD. SUITE 111 TEMPE, ARIZONA 85281

Tempe

City

AZ

State

Address

85281

Zip

(480)

) 9219925

Daytime Contact Phone #

I certify the above named individual has successfully completed the training specified above in accordance with Arizona Revised Statute, Arizona Administrative Code, and the training course curriculum approved by the Department of Liquor Licenses and Control;

JEFF PATTERSON

Name of Trainer (please print)

[Signature]
Trainer Signature

04/16/12

Date

Pursuant to A.R.S. 4-112(G)(2), mandatory Title 4 liquor law training is required prior to the issuance of all new liquor license applications submitted after November 1, 1997.

The person(s) required to attend both the BASIC and MANAGEMENT Title 4 liquor law training, on- or off-sale, will include all of the following:
Owner(s)

Licensee/agent or manager(s) actively involved in daily business operation

A valid (not expired) Certificate of Title 4 Training Completion must be submitted to the Department of Liquor Licenses and Control before a liquor license application is considered complete.

Before acceptance of a manager's questionnaire and/or agent change for an existing liquor license, proof of attendance for the BASIC and MANAGEMENT Title 4 liquor law training (on- or off-sale) is required.

8/2009

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

13 OCT 23 11:18 AM 1108



DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SERIES 12: RESTAURANT

ROUTING:

- POLICE DEPARTMENT
 FIRE DEPARTMENT
 FINANCE DEPARTMENT
 DEVELOPMENT SERVICES

APPLICANT'S NAME: MARIA ROCIO COHEN

BUSINESS NAME: FIESTA MEXICANA

BUSINESS ADDRESS: 1733 N. DYSART ROAD

CITY: AVONDALE STATE: AZ ZIP CODE: 85392

DEPARTMENTAL COMMENTS:

APPROVED
 DENIED



SIGNATURE
Police Chief

TITLE

10/24/13
DATE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 18TH, 2013
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: OCT.31, 2013



DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SERIES 12: RESTAURANT

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: MARIA ROCIO COHEN

BUSINESS NAME: FIESTA MEXICANA

BUSINESS ADDRESS: 1733 N. DYSART ROAD

CITY: AVONDALE STATE: AZ ZIP CODE: 85392

DEPARTMENTAL COMMENTS:

APPROVED
 DENIED

Valerie Russell
SIGNATURE
Fire Inspector
TITLE

10/24/13
DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 18TH, 2013
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: OCT.31, 2013**



DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SERIES 12: RESTAURANT

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: MARIA ROCIO COHEN

BUSINESS NAME: FIESTA MEXICANA

BUSINESS ADDRESS: 1733 N. DYSART ROAD

CITY: AVONDALE STATE: AZ ZIP CODE: 85392

DEPARTMENTAL COMMENTS:

APPROVED

DENIED

SIGNATURE

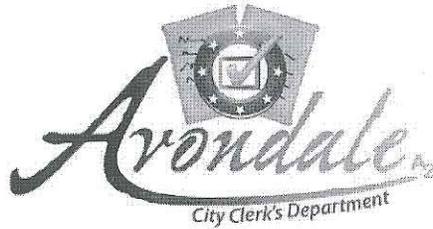
Chief Building Official

TITLE

10/29/13

DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 18TH, 2013
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: OCT.31, 2013**



DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SERIES 12: RESTAURANT

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: MARIA ROCIO COHEN

BUSINESS NAME: FIESTA MEXICANA

BUSINESS ADDRESS: 1733 N. DYSART ROAD

CITY: AVONDALE STATE: AZ ZIP CODE: 85392

DEPARTMENTAL COMMENTS:

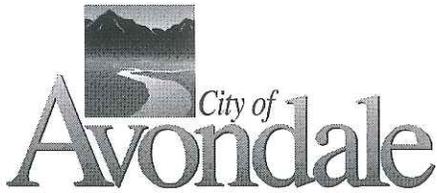
APPROVED
 DENIED

Jonny Faust
SIGNATURE

Zoning Specialist
TITLE

10/29/13
DATE

**THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 18TH, 2013
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: OCT.31, 2013**



DEVELOPMENT SERVICES

MEMORANDUM

DATE: October 29, 2013

TO: Carmen Martinez, City Clerk

FROM: Jennifer Fostino, Zoning Specialist

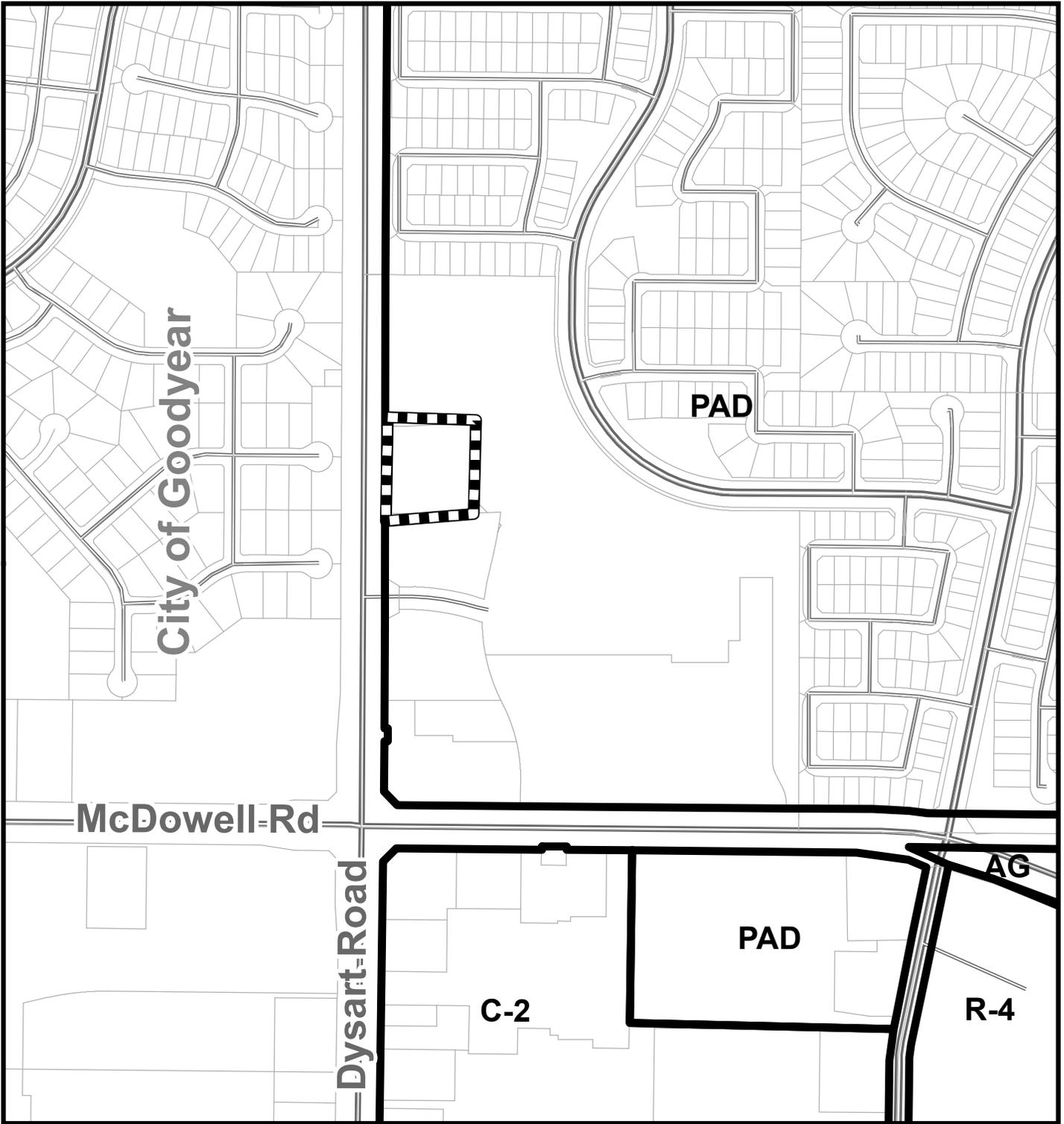
SUBJECT: Series 12 Liquor License for Fiesta Mexicana Restaurant
1733 N Dysart Rd

The proposed location is at the northeast corner of Dysart Road and McDowell Road in the Alameda Crossing shopping center. The building is existing and had previously been occupied by a restaurant tenant Cowgirls Steakhouse and Saloon.

Series 12 liquor licenses are exempt from any separation requirements from churches, schools, or fenced school recreational areas.

The General Plan designates the property as Local Commercial and the site is located within the Palm Valley PAD (Planned Area Development). A restaurant is a permitted use in the Palm Valley PAD.

Attachment: Zoning Vicinity Map
2013 Aerial Photograph



Zoning Vicinity Map



Fiesta Mexicana





2013 Aerial Photography



Fiesta Mexicana





DEPARTMENTAL REVIEW FORM

TYPE OF LICENSE:

SERIES 12: RESTAURANT

ROUTING:

POLICE DEPARTMENT

FIRE DEPARTMENT

FINANCE DEPARTMENT

DEVELOPMENT SERVICES

APPLICANT'S NAME: MARIA ROCIO COHEN

BUSINESS NAME: FIESTA MEXICANA

BUSINESS ADDRESS: 1733 N. DYSART ROAD

CITY: AVONDALE STATE: AZ ZIP CODE: 85392

DEPARTMENTAL COMMENTS:

APPROVED

DENIED



SIGNATURE

10/24/13
DATE

Tax Audit Supervisor
TITLE

THIS LICENSE IS SCHEDULED FOR THE COUNCIL MEETING OF: NOV. 18TH, 2013
PLEASE RETURN YOUR COMMENTS TO THE CITY CLERK'S OFFICE BY: OCT. 31, 2013

NOTICE

APPLICATION TO SELL ALCOHOLIC BEVERAGES
DATE POSTED: OCTOBER 24, 2013

A HEARING ON A LIQUOR LICENSE APPLICATION
SHALL BE HELD BEFORE THE AVONDALE CITY COUNCIL

LOCATION: 11465 WEST CIVIC CENTER DRIVE
DATE: MONDAY, NOVEMBER 18, 2013
AT 7:00 PM.

(HEARING DATES SUBJECT TO CHANGE,
TO VERIFY CALL: 623-333-1200)

SERIES 12: RESTAURANT LICENSE TO SELL ALL SPIRITUOUS LIQUORS

THE LOCAL GOVERNING BODY WILL RECOMMEND TO THE STATE LIQUOR BOARD WHETHER THE BOARD SHOULD GRANT OR DENY THE LICENSE. THE STATE LIQUOR BOARD MAY HOLD A HEARING TO CONSIDER THE RECOMMENDATION OF THE LOCAL GOVERNING BODY. ANY PERSON RESIDING OR OWNING OR LEASING PROPERTY WITHIN A ONE-MILE RADIUS MAY CONTACT THE STATE LIQUOR BOARD IN WRITING TO REGISTER AS A PROTESTER. TO REQUEST INFORMATION REGARDING PROCEDURES BEFORE THE BOARD AND NOTICE OF ANY BOARD HEARINGS REGARDING:

Fiesta Mexicana
1733 N. Dysart Road
Avondale, AZ. 85392

THIS APPLICATION, CONTACT: STATE LIQUOR BOARD - 800 W. WASHINGTON, 5TH FLOOR, PHOENIX, AZ 85007 STATE LIQUOR DEPT: (602) 542-9789
INDIVIDUALS REQUIRING ADA ACCOMMODATIONS CALL THE CITY CLERK AT: 623-333-1200.

Office stamp:

Arizona Department of Liquor Licenses and Control
800 West Washington, 5th Floor
Phoenix, Arizona 85007
www.azliquor.gov
602-542-5141

13 OCT 10 11p. Lic. 001150

APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, all Owners, Agents, Partners, Stockholders, Officers or Managers acting together in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 6 of the Liquor License Application.

SECTION 1 This application is for a:

INTERIM PERMIT Complete Section 9
 RESTAURANT LICENSE Complete Sections 2, 3, 4, 12, 14, 15, 16
 PERSON TRANSFER (Wine & Liquor Stores ONLY)
Complete Sections 2, 3, 4, 11, 12, 14, 15
 LOCATION TRANSFER (Wine & Liquor Stores ONLY)
Complete Sections 2, 3, 4, 12, 13, 14, 15
 PROVINCIAL ASSIGNMENT/NEW OFFICE LICENSE
Complete Sections 2, 3, 4, 6, 12, 13, 14, 15 (New not required)
 GOVERNMENT Complete Sections 2, 3, 4, 12, 13, 14, 15

SECTION 2 Type of ownership:

SOLE PROPRIETOR Complete Section 6
 INDIVIDUAL Complete Section 6
 PARTNERSHIP Complete Section 6
 REGISTRATION Complete Section 7
 LIMITED LIABILITY CO. Complete Section 7
 CLUB Complete Section 8
 GOVERNMENT Complete Section 10
 TRUST Complete Section 8
 OTHER (Specify)

SECTION 3 Type of license and fees LICENSE #0: 12070680

1. Type of License(s): Restaurant 2. Total fees attached: 255 3. Department Use Only: 47070194

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.
The fees allowed under A.R.S. 44-682 will be charged for all delinquent clients.

SECTION 4 Applicant

1. Owner/Agent's Name: Chris Maria Heidi
(Print or type name on 1 space between) Last First Middle
2. Corp./Partnership, L.L.C.: Fiesta Mexicana Restaurants, Adv. 7, Inc (Print or type name on 1 space between) (If none, do not print)
3. Business Name: Fiesta Mexicana (Print or type name on 1 space between) (If none, do not print)
4. Principal Street Location: 1233 N. Dysart Rd Avondale Arizona 85392
(Print or type name on 1 space between) City State Zip
5. Business Phone: 602-542-2366 Daytime Phone (Print or type number on 1 space between) (If none, do not print)
6. Is the business located within the incorporated limits of the above city or town? YES (Print or type YES or NO)
7. Mailing Address: _____ (Print or type name on 1 space between) (If none, do not print)
8. Price paid for license only, bar, beer and wine, or liquor store: Type _____ \$ _____ (Print or type name on 1 space between) (If none, do not print)

DEPARTMENT USE ONLY

Fees: 100 Application 50 Interim Permit 100 Site Inspection 50 Finger Prints 55 TOTAL OF ALL FEES 255

10.24.2013 14:39

733

AVAILABLE

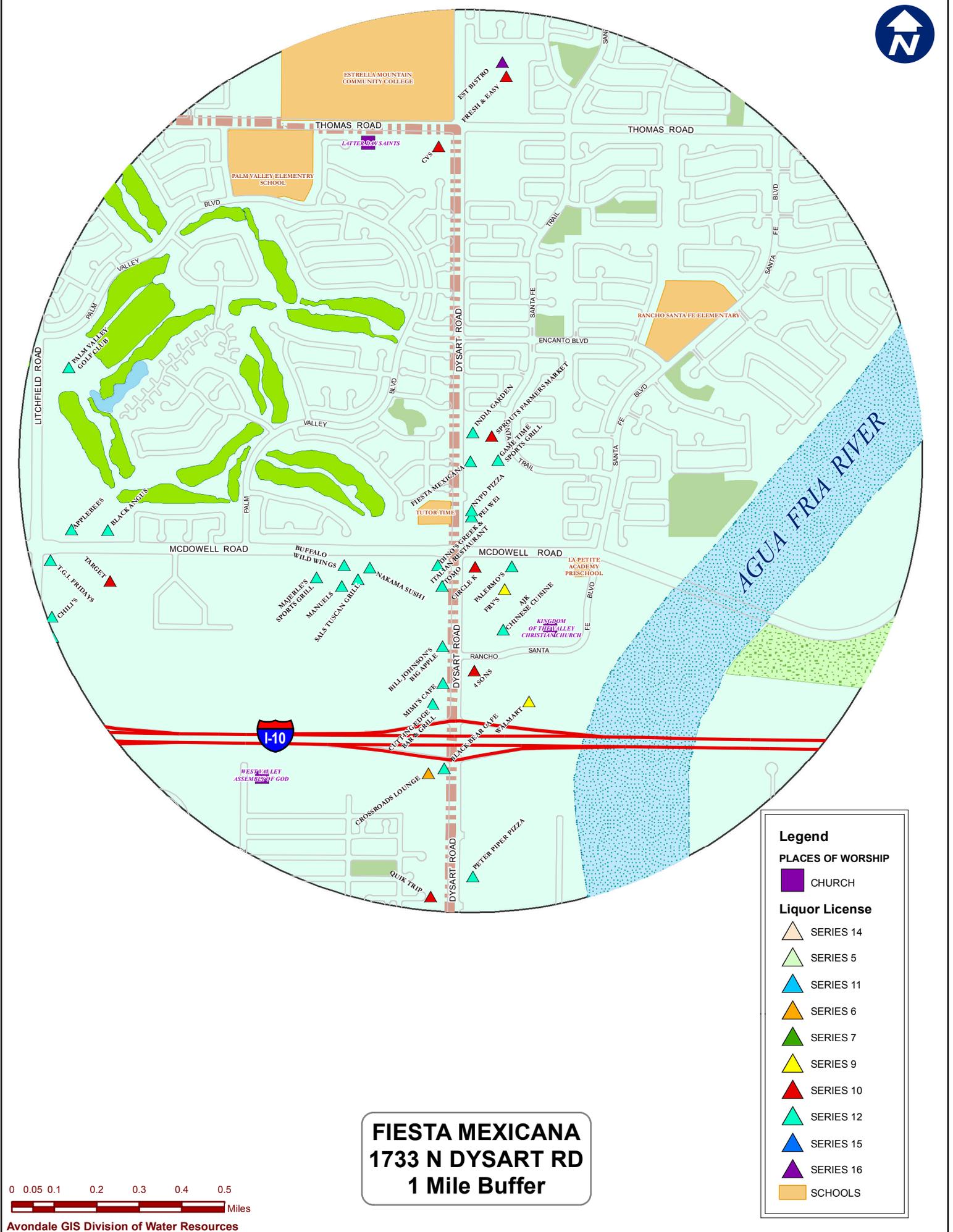
De Rito Partners

480-834-8500

www.derito.com

1733

10.24.2013 14:40



FIESTA MEXICANA
1733 N DYSART RD
1 Mile Buffer

Legend

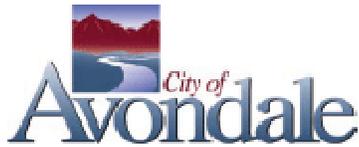
PLACES OF WORSHIP

- CHURCH

Liquor License

- SERIES 14
- SERIES 5
- SERIES 11
- SERIES 6
- SERIES 7
- SERIES 9
- SERIES 10
- SERIES 12
- SERIES 15
- SERIES 16
- SCHOOLS





CITY COUNCIL REPORT

SUBJECT:

Resolution 3152-1113 - Maintenance Improvement
District Policy

MEETING DATE:

November 18, 2013

TO: Mayor and Council

FROM: Tracy Stevens, Development and Engineering Services Director 623-333-4012

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a Maintenance Improvement District (MID) Policy. The purpose of the policy is to inform and assist developers in formation of the MID and provide a tool for the City to assist with maintenance of landscape areas in new residential subdivisions when a Home Owner's Association (HOA) becomes defunct or fails. It is the City's intent that the MID act as a dormant tax assessment mechanism to generate funds necessary to maintain parkway landscaping and improvements, which will only be triggered in the event of failure of the Homeowner's Association.

BACKGROUND:

Over the last few years the City has received requests to assist with landscape maintenance from HOA's that were struggling through the economic downturn. A few subdivisions were facing budget shortfalls with the increase in foreclosures and were witnessing distressed landscaping as a result of a reduction in the amount of assessment being paid. This situation could have resulted in the HOA's failing. As a proactive measure the MID is proposed to allow the developer of new subdivisions to form the district and allow the City to maintain the landscape areas if needed.

DISCUSSION:

Under the provisions of the City Code, developers are responsible to landscape their development projects subject to the approved plans prior to issuance of the Certificate of Occupancy. All subdivisions are required to provide landscaping along arterial and collector streets and other locations as required by the zoning ordinance, subdivision regulations, and zoning stipulations. Upon completion of the project, the HOA is responsible to maintain those areas and all other common areas within the neighborhood.

Under the MID, all residential subdivisions are subject to the formation of the district for the tracks, easements, irrigation, drainage improvements and other landscaping specifically along the parkways and public roadways. Once the MID is activated, under the state law all residents will receive on their property tax bill an additional charge for maintenance of the landscaping in those areas. However until such time as the Homeowners Association fails and the City assumes the maintenance responsibility, the charge to the property owners remains at \$ 0.00.

The requirements for the MID during the final plat stage include the applicant submitting the MID petition/waiver; application fee; legal description; MID diagram; table listing the rights of way, easements, lots, parcels and tracts of the areas to be included in the MID; landscape plan; a dedication statement on the Final Plat, and a note on the Final Plat stating the subdivision in subject to the MID.

BUDGETARY IMPACT:

The City will receive the MID tax a year in arrears and will need to recover the dollars rather than collect them in the same year they will be expended due to the county's property tax collection process.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution adopting the Maintenance Improvement District Policy.

ATTACHMENTS:

Click to download

[Resolution 3152-1113](#)

RESOLUTION NO. 3152-1113

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ADOPTING THE CITY OF AVONDALE MAINTENANCE IMPROVEMENT DISTRICT POLICY.

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

SECTION 1. The City of Avondale Maintenance Improvement District Policy (the “MID Policy”), is hereby adopted in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of the MID Policy adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Council of the City of Avondale, November 18, 2013.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3152-1113

(MID Policy)

See following pages.

MAINTENANCE IMPROVEMENT DISTRICT POLICY
City of Avondale

1. PURPOSE

The purpose of this document is to inform and assist developers in formation of a Maintenance Improvement District pursuant to ARIZ. REV. STAT. § 48-574 (a “MID”). It is the City’s intent that the MID act as a dormant tax assessment mechanism to generate funds necessary to maintain parkway landscaping and improvements, which will only be triggered in the event of failure of the applicable homeowners’ association (“HOA”) to maintain those facilities.

Under provisions of the City Code, all developers are responsible to completely landscape their development projects according to the approved plans prior to issuance of a Certificate of Occupancy. In particular, subdivisions are required to provide landscaping along certain arterial and collector streets and in other locations as provided in the zoning requirements, approval stipulations, engineering requests or subdivision requirements. In addition, developers may provide paths, trails, and other amenities in the common open space areas adjacent to arterial and collector streets (collectively, the improvements are referred to herein as the “Streetscape Improvements”).

Pursuant to the provisions of ARIZ. REV. STAT. § 48-574, the Mayor and City Council (the “Council”) are empowered to form a MID for maintenance, repair and improvements of pedestrian malls, off-street parking facilities and parkings and parkways (the “Allowed Uses”). The Council has determined that the Streetscape Improvements along arterial and collector streets are Allowed Uses; accordingly, all residential subdivisions approved after November 1, 2013 are subject to the formation of a MID.

Each HOA will continue to be responsible for maintaining the Streetscape Improvements within its development, including landscape, irrigation, hardscape, and drainage improvements within the public rights-of-way, easements, and tracts. The additional MID tax assessment charge to property owners will be \$0.00 while the HOA maintains the Streetscape Improvements. Charges will be assessed only at such time as the HOA fails to maintain the Streetscape Improvements and the City assumes maintenance responsibility under the MID.

2. DOCUMENTATION

Prior to recordation of the subdivision Final Plat, the developer is responsible to have the following documentation submitted to the City:

- 2.1 A fully-executed MID petition/waiver. Each owner/developer shall fully execute a MID petition/waiver. The petition/waiver must be executed in black ink only, and shall include the acreage of the subdivision, subdivision name, name of the owner/developer, the company name, company address, and date of execution.

- 2.2 One copy of the legal description of the MID boundary in compliance with the Arizona Boundary Survey Minimum Standards and Maricopa County Recorder requirements suitable for recording. The legal description shall be prepared and sealed by a professional Land surveyor registered in the State of Arizona. The legal description shall be accompanied with calculations showing it complies with the requirements of State Law.
- 2.3 The owner/developer shall provide a MID diagram prepared and sealed by a professional Land surveyor registered in the State of Arizona. The diagram shall be prepared in 8-1/2 inch x 11 inch size and comply with the Arizona Boundary Survey Minimum Standards. The MID diagrams shall contain the following information:
- A. Lettering, numbers, and drawings that are distinct and legible, sufficient to satisfy the requirements of the Maricopa County Recorder.
 - B. A north arrow on the MID diagram in a readily visible location with a bar scale indicating the approximate scale of the MID boundary.
 - C. The Title statement provided below at the top of each page:

“Maintenance Improvement District”
“Assessment Diagram”
of [Insert Subdivision Name]
 - D. A note that states the following:

NOTE

This improvement district is formed for the express purpose of providing the maintenance and operation of the sidewalks, landscaping, landscaped drainage facilities, and related improvements adjacent to and along the public roadways and parkways within the district.
 - E. Each MID boundary taken to the centerline of all adjacent roadways.
 - F. All lots identified by number and all tracts by letter. Show all lots, tracts and street rights-of-way intended to be within and perimeter of the district.
- 2.4 The owner/developer is responsible to provide a table on the diagram listing the rights-of-way, easements, lots, parcels and tracts of the areas (square footage and acreage) to be included in the MID.
- 2.5 The owner/developer shall provide an appropriately scaled copy of the landscape plans, if and in the form requested.

2.6 The dedication statement of the Final Plat shall include the following paragraph:

The City is hereby granted an easement for maintenance of landscaping, irrigation, drainage facilities, hardscape and retention areas on tract(s) *(insert number or letter of each tract)*. This easement may be exercised by the City of Avondale at any such time when the Grantor, its successors or assignees, including a homeowners association formed over this subdivision fails to exist and provide the required maintenance and operation of the landscaping, irrigation, drainage facilities, retention areas, and/or hardscape.

2.7 Each Final Plat shall include a note that states that the subdivision is subject to a MID.

**PETITION, WAIVER AND CONSENT TO FORMATION
OF A MUNICIPAL IMPROVEMENT DISTRICT
BY THE CITY OF AVONDALE**

MID#

Subdivision Name

To: Honorable Mayor and Council
City of Avondale, Arizona

Pursuant to Arizona Revised Statutes, Sections 48-574, the undersigned property owner respectfully petitions the Council of the City of Avondale, Arizona (the "City Council") to order the formation of a Municipal Improvement District (the "District") under Arizona Revised Statutes, Title 48, Chapter 4, Article 2. In support of this petition, the undersigned agrees to waive certain rights under Arizona Law and to consent to the formation and completion of the District.

1. Area of District. The proposed District is described by a diagram and by a legal description on Exhibit "A" that is attached hereto and incorporated herein by reference. The proposed District consists of _____ acres and is entirely within the corporate boundaries of the City of Avondale.
2. Ownership. The undersigned (is) (are) the sole owner(s) of the real property within the proposed District.
3. Purpose. The District is proposed to be formed for the purpose of the operation, maintenance, repair and improvements of landscape, irrigation, drainage and retention facilities and hardscape adjacent to designated public roadways, and parkways within the proposed District.
4. Public Convenience and Necessity. The necessity for the proposed District is for the operation, maintenance, repair and improvements of landscape, irrigation, drainage and retention facilities and hardscape adjacent to designated public roadways and parkways within the proposed District by the levying of special assessments in the proposed District.
5. Waiver and Consent. The petitioners, with full knowledge of their rights being waived hereunder, hereby expressly waive all of the following:
 - (a) Any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings resulting in the adoption of the Resolution of Intention and the Resolution Ordering the Work relating to the District.
 - (b) All protest rights whatsoever under ARIZ. REV. STAT. §48-579(A) and (B), as amended.

(c) All objections to the filing of and adoption by the City of the plans and specifications, the Engineer's estimate and the Assessment Diagram, all of which provide for the completion of the District.

Further, the improvements described above are of more than local or ordinary public benefit.

IN WITNESS WHEREOF, the parties have executed this Petition and Waiver Agreement as of _____, 20_____.

[SIGNATURES ON FOLLOWING PAGES]

ACCEPTED AND APPROVED BY:

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2013,
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

(affix notary seal here)

DEVELOPER'S MAINTENANCE IMPROVEMENT DISTRICT CHECKLIST

The Maintenance Improvement District (MID) first submittal shall be made with the Final Plat submittal.

First Submittal to include:

- MID application fee
- 8-1/2 inch x 11 inch MID diagram (area table to be included on the diagram), with original seal and signature of the Arizona Registered Land Surveyor preparing the document.
- Legal description of the MID boundary, with original Arizona Registered Land Surveyor seal and signature (the legal description shall be accompanied with back-up material showing it meets all requirements).

Final Submittal to include:

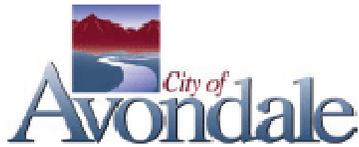
- 8-1/2 inch x 11 inch MID diagram with original seal and signature of the Arizona Registered Land Surveyor preparing the document, in recordable format.
- Fully executed petition, with original signatures and dates.
- Legal description of the MID boundary, with original seal and signature of the Arizona Registered Land Surveyor.
- Scaled copy of landscape plans (if requested).
- AutoCAD drawing of the MID that can be opened with and compatible with the City's most current software program. The MID shall be drawn to scale with ties to record PLSS monumentation.

Informational Notes:

- Final Plat shall include in the dedication statement the following:

The City is hereby granted an easement for maintenance of landscaping, irrigation, drainage facilities, hardscape and retention areas on tract(s) (insert number or letter of each tract). This easement may be exercised by the City of Avondale at any such time when the Grantor, its successors or assignees, including a homeowners association formed over this subdivision fails to exist and provide the required maintenance and operation of the landscaping, irrigation, drainage facilities, retention areas, and/or hardscape.

- Final Plat shall include a note that states the subdivision is subject to a MID. The MID boundary shall be identified on the plat by name.



CITY COUNCIL REPORT

SUBJECT:

Second Amendment - Office Lease Agreement with
Phoenix Speedway, LLC

MEETING DATE:

November 18, 2013

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 the second amendment to the Lease Agreement with Phoenix Speedway Corporation d/b/a Phoenix International Raceway and authorizes the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

The City of Avondale purchased the Avondale Corporate Center building on September 11, 2013. The office building is located at 125 S. Avondale Boulevard, on the Avondale Civic Center campus. When the purchase was completed, the city assumed the position as Landlord for the two (2) existing tenants in the building, Phoenix International Raceway and University of Medical Sciences Arizona. On October 21, 2013, staff recommended, and council approved the amendments to the agreements. The University of Medical Sciences Arizona lease amendment was executed, however Phoenix Speedway Corporation requested a couple of additional modifications to their amendment.

DISCUSSION:

There is one substantive modification that is included within the new lease amendment from the previous amendment presented on October 21, 2013. The amendment includes a provision that provides the tenant two (2) 5-year options to extend the Lease Term with respect to either the original premises only or the original premises and the expansion space, and increases the base rent by three percent (3%) annually during each exercised option period. The lease agreement already provides for the normal notification, procedures, and time requirements for the landlord to cure the default. The agreement also provides that if the landlord doesn't fix the problem, the tenant may elect to take the necessary steps to correct the default and be reimbursed for the actual out-of-pocket costs. Section 37: Subject to Appropriations; additional language was added that if the Landlord (City Council) fails to appropriate money sufficient to pay the amounts as set forth in this Lease during any immediately succeeding fiscal year, then tenant shall have the right to pay such expenses itself and offset those expenses against the Base Rent payments each month. If the tenant does not exercise such right, then Tenant and Landlord each shall have the right to terminate the lease at the end of the current fiscal year by providing written notice of such by October 31 of that year.

BUDGETARY IMPACT:

The opportunity for the tenant to extend the term of the lease for two (2) 5-year periods would potentially provide additional revenue to the overall lease and extend the agreement from ten (10) years to twenty (20) years.

RECOMMENDATION:

Staff recommends that the City Council approve the second amendment to the Lease Agreement with Phoenix Speedway LLC d/b/a Phoenix International Raceway and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[Lease Agreement](#)

**SECOND AMENDMENT
TO
OFFICE LEASE AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PHOENIX SPEEDWAY, LLC**

THIS SECOND AMENDMENT TO OFFICE LEASE AGREEMENT (this “Second Amendment”) is entered into as of the Effective Date, by and between the City of Avondale, an Arizona municipal corporation (the “Landlord”) and Phoenix Speedway, LLC (f/k/a Phoenix Speedway Corp.), a Delaware limited liability company (the “Tenant”). Landlord and Tenant are referred to collectively as the “Parties.” The “Effective Date” shall be the date upon which the last of the Landlord and Tenant execute this Second Amendment.

RECITALS

A. Landlord, as successor in interest, and Tenant entered into that certain Office Lease Agreement dated December 16, 2003, as amended by that certain First Amendment dated September 30, 2005, (collectively, the “Lease”), regarding that certain real property generally located at the southeast corner of Avondale Boulevard and Coldwater Springs in Avondale, Arizona. Unless otherwise defined, all capitalized terms shall have the meaning set forth in the Lease.

B. The Parties desire to amend the Lease as set forth in this Second Amendment.

AGREEMENT

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

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

2. Amendment to Lease. The Lease is hereby amended as follows:

(a) The Basic Lease Information as it relates to the “Term” is hereby deleted in its entirety and replaced as follows:

“The term shall commence on September 1, 2004, which is the Commencement Date and expire on August 31, 2023, subject to adjustment and earlier termination as provided in Sections 30 and 31 of the Lease.”

(b) The Basic Lease Information as it relates to the “Base Rent,” Paragraph 1 is hereby deleted and replaced as follows:

“Base Rent shall be the following amounts for the following periods of time:

| Lease Month | Annual Base Rent Per Rentable Square Foot (not including Rent Tax) |
|----------------------------|--|
| Effective Date – 8/31/2014 | \$16.08 |
| 9/1/2014 – 8/31/2016 | \$17.30 |
| 9/1/2016 – 8/31/2019 | \$18.30 |
| 9/1/2019 – 8/31/2023 | \$19.30” |

(c) The Basic Lease Information as it relates to “Landlord’s Address” is hereby deleted and replaced as follows:

| | |
|--|---|
| “For all Notices: City of Avondale 11465 West Civic Center Drive Phoenix, Arizona 85323 Attention: Charlie McClendon | With a required copy to: Gust Rosenfeld P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attention: Andrew J. McGuire, Esq.” |
|--|---|

(d) The last three sentences of Paragraph 8(b)(i) of the Lease is hereby deleted and replaced as follows:

“Notwithstanding anything to the contrary in the Lease, during the eighty-fifth (85th) Lease Month and in calendar year 2020 (assuming Tenant has not exercised its right to terminate this Lease as set forth below) Landlord shall install new building-standard carpet and paint (in colors reasonably selected by Tenant from colors provided by Landlord) in the Premises. Landlord shall bear all cost of carpet installation and painting, including, without limitation, the reasonable costs to move Tenant’s furniture during the installation and painting. The carpet removal and installation and painting shall not be done during Normal Business Hours.”

(e) Section 26(f) of the Lease is hereby deleted and replaced as follows:

“(f) Notices and Requests. Any notice or other communication required or permitted to be given under the Lease 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 or (3) given to a recognized and reputable overnight delivery service, to the address set forth in the Basic Lease Information Section of the Lease 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 or (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. 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."

(f) Section 28 of the Lease is hereby deleted and replaced as follows:

"28. Parking. Landlord shall provide 15 covered reserved parking spaces and two visitor parking spaces designated for Tenant's exclusive use at no cost to Tenant for the term of the Lease (and any extension thereof) as depicted and labeled "PIR Existing Parking" and "(6) Covered Reserved Parking" on Exhibit L attached to the Lease. To the extent available, Landlord shall provide Tenant, upon written request therefor, with up to eight additional covered, reserved parking spaces, at a cost of \$35.00 per parking space per month, which amount, together with any and all applicable Rent Tax thereon shall be payable in advance by Tenant at the same time as Rent is payable hereunder. Landlord shall not permit Tenant's parking ration (i.e., 4 parking spaces for each 1,000 rentable square feet within the Premises) to be adversely affected by other prospective Building tenants or other tenants within the Project. Tenant shall not permit is population density within the Premises as a whole to adversely affect the parking ratio (i.e., 4 parking spaces for each 1,000 rentable square feet within the Premises) of other prospective Building tenants or other tenants within the Project."

(g) Section 31 of the Lease is hereby deleted and replaced as follows:

"31. Option to Extend Term. Provided Tenant is not in default under this Lease, Landlord shall grant Tenant two (2) 5-year options to extend the Lease Term with respect to either the Original Premises only or the Original Premises and the Expansion Space, provided, however, that the Base Rent shall increase three percent (3%) annually during each exercised option period. Tenant shall notify Landlord in writing at least one hundred and eighty (180) days prior to the expiration of the initial Lease Term of its intent to exercise its first option to extend the Lease. If Tenant does not timely notify Landlord, all options of Tenant to extend shall expire. The one hundred and eighty (180) day notice provided shall also apply to the second 5-year option to extend in the same manner as outlined herein."

(h) The following language is added to the end of the Lease as follows:

"Section 35. Landlord's Limitation. Notwithstanding anything in the Lease to the contrary, Tenant hereby agrees that Landlord's obligations, warranties,

representations, indemnities, covenants and liabilities under the Lease and this Second Amendment shall be limited to the extent permitted by Arizona law.

Section 36. Conflict of Interest. This Lease is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Landlord may cancel this Lease without penalty or further obligations by the Landlord or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Lease on behalf of the Landlord or any of its departments or agencies is, at any time while the Lease or any extension of the Lease is in effect, an employee of any other party to the Lease in any capacity or a consultant to any other party of the Lease with respect to the subject matter of the Lease.

Section 37. Subject to Appropriations. This Lease is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Lease for payment of funds by the Landlord shall be effective when funds are appropriated for purposes of this Lease and are actually available for payment. The Landlord shall be the sole judge and authority in determining the availability of funds under this Lease and the Landlord shall keep the Tenant fully informed as to the availability of funds for the Lease. The obligation of the Landlord to make any payment pursuant to this Lease is a current expense of the Landlord, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Landlord. If the Landlord's City Council fails to appropriate money sufficient to pay the amounts as set forth in this Lease during any immediately succeeding fiscal year, then Tenant shall have the right to pay such expenses itself and offset those expenses against the Base Rent payments each month. If Tenant does not exercise such right, then Tenant and Landlord each shall have the right to terminate this Lease at the end of then-current fiscal year by providing written notice of such by October 31 of that year and the Landlord and the Tenant shall be relieved of any subsequent obligation under this Lease."

(i) The first sentence of the first paragraph of Section 1 of Exhibit C is deleted and replaced to read as follows:

"In addition to Base Rent, Tenant shall pay to Landlord, the amount (per rentable square feet in the Premises) (the "Additional Rent") by which the annual Operating Costs (defined below) per rentable square foot in the Project for each year of the Term exceed the annual Operating Cost for the Project for previous calendar year (the "Base Year"); provided however, that commencing on November 1, 2013 the Base Year for 2013, for purposes hereof shall be \$6.50 per rentable square foot."

(j) The following shall be added to the end of the third paragraph of Section 2 of Exhibit C to read as follows:

"Pursuant to Arizona Revised Statutes ("ARIZ. REV. STAT.") §§ 42-6201 et seq. (the "Excise Tax Statutes") the Building and the Project, will not be assessed

property taxes because the City is fee owner of the Building and the Project. Pursuant to the Excise Tax Statutes, the Building and the Project is instead subject to the assessment or levy of a government property lease excise tax (the "GPLET"). The GPLET is calculated in accordance with the provisions of ARIZ. REV. STAT. § 42-6203. Notwithstanding anything to the contrary contained herein or elsewhere in the Lease, the GPLET shall be deemed to be included in the definition of Taxes as part of the Operating Costs under the Lease as detailed in Section 2 of Exhibit C. In addition to paying Tenant's proportionate share of Taxes as part of the Operating Costs according to the terms of Section 2 of Exhibit C, Tenant shall pay all taxes applicable to all other property in the Premises that is not taxed as real property. Failure of Tenant to pay the GPLET after notice and an opportunity to cure is an Event of Default under the Lease that could result in the termination of Tenant's interest in the Lease and of its right to occupy the Premises. Tenant shall remit all GPLET to Landlord and Landlord shall submit annual payments to the Maricopa County Treasurer's Office."

(k) Exhibit L of the Lease is hereby deleted and replaced with Exhibit L attached to this Second Amendment.

3. Estimate of Operating Costs Acknowledgement. Tenant hereby acknowledges Landlord's good faith estimate of the Operating Costs of the Project for 2013 to be \$8.50 per rentable square foot, of which Tenant shall be responsible for \$6.50 per rentable square foot as Operating Costs for the Premises, in accordance with the provisions of Section 1 of Exhibit C of the Lease. Tenant hereby agrees to pay Landlord on a monthly basis, the amount of \$2,588.33 (\$2.00 per rentable square foot/12 months) as Additional Rent for the Premises, starting November 1, 2013.

4. Memorandum of Lease Acknowledgement. Tenant hereby acknowledges that in accordance with ARIZ. REV. STAT. § 42.6202(C), Landlord will record a memorandum of the Lease and this Second Amendment in the Maricopa County Recorder's Office.

5. Guaranty of Lease. Contemporaneously with the execution of this Second Amendment, Tenant shall cause International Speedway Corporation, a Florida corporation, to execute and deliver to Landlord the Guaranty of Lease in the form in Exhibit I of the Lease.

6. Brokerage Fees. Neither Landlord nor Tenant has dealt with any broker or agent in connection with the negotiation of this Second Amendment, other than the Hogan Group LLC, Matthew A. Lyons, PLLC (the "Broker"), who represents the Tenant and who shall be compensated by Tenant under a separate agreement. Landlord shall compensate Broker in the amount of \$59,945.80. Tenant shall indemnify, defend and hold Landlord harmless for, from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through or under Tenant. Landlord shall indemnify, defend and hold Tenant harmless for, from and against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through or under Landlord. The foregoing indemnities shall survive the expiration or earlier termination of the Lease.

7. Effect of Amendment. Except as specifically modified by this Second Amendment, the Lease remains in full force and effect and is in all events ratified, confirmed and approved.

8. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Second Amendment and the Lease, the documents shall govern in the order listed herein.

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

10. Counterparts. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment as of the last date set forth under the signatures of the Parties below.

“LANDLORD”

CITY OF AVONDALE, an
Arizona municipal corporation

Charles P. McClendon, City Manager

Date: _____

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

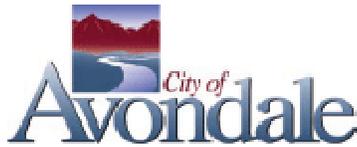
This instrument was acknowledged before me on _____, 2013,
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona
municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT L



CITY COUNCIL REPORT

SUBJECT:

Resolution 3151-1113 - Intergovernmental Agreement with the State of Arizona Relating to the Terrorism Liaison Officer

MEETING DATE:

November 18, 2013

TO: Mayor and Council

FROM: Dale Nannenga, Acting Chief of Police 623-333-7207

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council adopt a resolution authorizing an Intergovernmental Agreement between the City of Avondale and the State of Arizona Department of Public Safety, Arizona Counter Terrorism Information Center (ACTIC) and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents.

BACKGROUND:

The Arizona Fusion Center, also known as the Arizona Counter Terrorism Information Center (ACTIC), is a joint effort between the Arizona Department of Public Safety, Arizona Department of Homeland Security, Federal Bureau of Investigation and other participating agencies.

To support the Arizona homeland security effort, the Arizona Fusion Center was established and became operational in October of 2004. The center operates on a 24/7 basis, providing both intelligence, investigative and technical support to state, local, tribal and federal law enforcement agencies as well as other agencies critical to Arizona and the country's homeland security efforts.

DISCUSSION:

The proposed IGA establishes an agreement between the City of Avondale and the State of Arizona Department of Public Safety, Arizona Counter Terrorism Information Center to assign an employee as a Terrorism Liaison Officer (TLO). The TLO will conduct activities related to domestic preparedness, CBRNE response services, any activities associated with terrorism awareness to include the sharing of intelligence information with the department, performing threat and vulnerability assessments, and respond to incidents that are designated by ACTIC to help provide intelligence. The IGA also establishes an agreement for the TLO to dedicate at least 40 hours per month to activities related to this IGA as described above.

Certified TLOs are required to possess a CBRNE capable vehicle. Such vehicle will be purchased with a grant awarded to the City of Avondale by the Urban Area Security Initiative (UASI) which City Council approved on September 9, 2013.

BUDGETARY IMPACT:

There are no additional costs for the program as the position is staffed by a budgeted detective position and any overtime will be covered by current budgeted funds. The City of Avondale is able to apply for reimbursement of all travel expenses related to a State of Arizona emergency incident (i.e. FEMA, AZ DEMA, etc.). Furthermore, travel for DPS ACTIC approved TLO training shall be reimbursed by DPS ACTIC, subject to availability of grant funding.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution authorizing an Intergovernmental Agreement between the City of Avondale and the State of Arizona Department of Public Safety, Arizona Counter Terrorism Information Center and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[Resolution 3151-1113](#)

RESOLUTION NO. 3151-1113

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE TERRORISM LIAISON OFFICER PROGRAM.

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

SECTION 1. The Intergovernmental Agreement with the Arizona Department of Public Safety, Arizona Counter Terrorism Information Center relating to the Terrorism Liaison Officer Program (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, November 18, 2013.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3151-1113

(Agreement)

See following pages.



ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

JANICE K. BREWER ROBERT C. HALLIDAY
Governor Director

September 9, 2013

The City of Avondale
Dale Nannenga, Acting Chief
11485 W. Civic Center Drive
Avondale, AZ 85323

Re: Intergovernmental Agreement (IGA) between the Arizona Department of Public Safety and the City of Avondale

Dear Acting Chief Nannenga:

Attached for review and signature are three (3) originals of the above-referenced IGA. Please acquire signatures on each of the agreements and return them to the address below for further processing.

Michael A. Orose, Major
Intelligence Bureau
Arizona Counter Terrorism Information Center
Arizona Department of Public Safety
P.O. Box 6638, Mail Drop 3900
Phoenix, Arizona 85005-6638

When the documents are received from your agency, they will be sent to The AZ Department of Public Safety's legal department for approval and signatures.

Final distribution of the completed IGA's will be as follows: (1) The City of Avondale (1) The Department of Public Safety (legal) and (1) for the Arizona Counter Terrorism Information Center.

Sincerely,


Michael A. Orose, Major
Intelligence Bureau
Arizona Counter Terrorism Information Center

MO/nb

Attachments

**INTERGOVERNMENTAL AGREEMENT
ARIZONA COUNTER TERRORISM INFORMATION CENTER
STATEWIDE TERRORISM LIAISON OFFICER PROGRAM
USAI LEVEL A**

I. Purpose

This Intergovernmental Agreement (IGA) is entered into by the State of Arizona Department of Public Safety, Arizona Counter Terrorism Information Center (ACTIC), hereinafter referred to as "DPS", and the City of Avondale hereinafter referred to as "Agency".

The purpose of this Agreement shall be to enhance the ACTIC Terrorism Liaison Officer (TLO) program intelligence collection process and domestic preparedness for Chemical, Biological, Radiological, Nuclear, Explosive (CBRNE) response services concerning the activities of terrorism.

II. Authority

AZDPS ACTIC is authorized and empowered to enter into this IGA pursuant to A.R.S. § 41-1713 and both parties are authorized and empowered to enter into this IGA pursuant to A.R.S. § 11-952.

Now, in consideration of the mutual promises set forth herein, the parties to this Agreement hereby agree to the following terms and conditions:

III. Participation

The Agency agrees to assign a sworn police officer, law enforcement analyst who has been authorized by his/her Agency to respond as needed in support of the Agency and/or DPS ACTIC in accordance to the provisions of this agreement. This person is herein referred to as a Terrorism Liaison Officer (certified TLO). Prior to receiving any reimbursements, equipment, and/or funding, the TLO must complete the TLO training offered by the DPS ACTIC. If the TLO fails to complete the training, he/she is ineligible for this program. A person who completes the training is known as an Arizona certified TLO.

During the duration of this assignment, the certified TLO must work at least 40 hours per month related to the purpose of this agreement. Specifically, the TLO will conduct activities related to domestic preparedness, CBRNE response services, any activities associated with terrorism awareness, and to include the sharing of Intelligence information with the Department, performing Threat and Vulnerability Assessments, and respond to incidents that are designated by ACTIC to help provide Intelligence. The TLO must submit their TLO time and activity weekly to DPS ACTIC electronically through the Homeland Security Information Network (HSIN) documenting work relating to the purpose of this Agreement. TLOs are required to adhere to all DPS ACTIC guidelines, policies, and procedures, including the ACTIC Privacy Policy and Civil Rights Procedure Guide, while participating in the ACTIC TLO Program.

During the assignment period, the Agency and DPS ACTIC agree to allow the certified TLO to maintain all benefits, rights, and privileges available to said certified TLO as if they were assigned on a full-time basis to the Agency during this period. The assigned certified TLO must abide by all of the applicable rules and regulations of the Agency and are subject to its disciplinary process.

IV. Equipment and Vehicle(s)

The vehicle(s) and equipment purchased for and assigned to said certified TLO shall be CBRNE capable and shall remain in the custody of the agency for use by the certified TLO pursuant to this Agreement.

Contingent upon the availability of Urban Area Security Initiative (UASI) funding, equipment and vehicles will be purchased by the Agency. Vehicle(s) and equipment will be purchased from the current list of authorized equipment approved by the DPS ACTIC Director and in support of the Federal Department of Homeland Security (DHS) authorized equipment list.

All assigned and purchased equipment and vehicle(s) issued to a certified TLO pursuant to this Agreement will be maintained in good working order by the Agency. The Agency will be required to make all necessary repairs to the vehicle(s) and equipment. In the event that issued or purchased equipment is damaged, lost, stolen or no longer operative, the Agency will be responsible for the expenses for replacement in kind, repair, or reimbursement, whichever is applicable.

TLO vehicle(s) purchased by the Agency will only be assigned to and operated by the designated certified TLO. It will be the responsibility of the Agency to repair or replace in kind, the vehicle in the event of collision or theft. The vehicle will be maintained in good working order per the Agency's vehicle maintenance policies. If the Agency lacks vehicle maintenance policies, the vehicle will be maintained per the vehicle manufactures maintenance policies.

The reimbursed grant monies have included funding for an extended warranty and a theft deterrent system to be purchased at the time of vehicle purchase. It is the Agency's responsibility to maintain the vehicle under the text of the warranty and per the manufacturer's recommended specifications. Maintenance expenses and items not covered by the extended warranty will be the responsibility of the Agency.

An annual inventory of equipment issued to the Agency and assigned to certified TLO(s) will be conducted by the Agency and presented to the Director of DPS ACTIC in writing no later than the first day of May following each year this IGA is in effect.

The Agency represents that it is self-insured and will include all assigned vehicle(s) and equipment provided pursuant to this Agreement, within the scope of the Agency's insurance coverage.

V. Reimbursement for Travel Expenses

Each agency is responsible to apply for reimbursement of all travel expenses related to a State of Arizona emergency incident (i.e. FEMA, AZ DEMA, etc.).

Travel for DPS ACTIC approved TLO training shall be reimbursed by DPS ACTIC, subject to availability of grant funding, in accordance with Arizona Department of Administration guidelines.

VI. Non-discrimination

The Parties shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliations, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Agency shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

Each party to this Agreement shall act in its individual capacity and not as an agent, employee, partner, joint venturer, associate, or any other representative capacity of the other. Each party shall be solely and entirely responsible for its acts or the acts of its agents and employees during the performance of this Agreement.

VII. Indemnification

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

VIII. Arbitration

To the extent required by A.R.S. §§ 12-1518(B) and 12-133, the Parties agree to resolve any dispute arising out of this agreement by arbitration.

IX. Effective Date/Duration

This IGA shall become effective upon the final signatures on each of three (3) originals by both parties, and shall remain in effect until such time that either party submits a 30-day written notice to terminate this Agreement to the other party. Any modification of this Agreement shall be by written amendment executed by the governing bodies of both parties. Upon termination of this IGA, any and all property used in connection with this IGA will be promptly returned to the party holding title thereto.

This Agreement replaces any and all previous agreements regarding UASI TLO Level A participation executed by the parties regarding domestic preparedness CBRNE response services and the TLO program.

X. Termination

Either party may terminate this Agreement for convenience or cause upon thirty (30) days written notice to the other party.

In accordance with Department of Homeland Security grant guidelines for vehicle(s) and equipment purchased:

- 1) Upon termination of this Agreement, all assigned and purchased vehicles and equipment acquired pursuant to this Agreement shall be subject to the provisions between grantor and grantee as outlined in the original grant award.
- 2) After the serviceable life of the vehicle(s) and equipment, final disposition is the responsibility of the Agency.

XI. Audit of Records

Pursuant to A.R.S. § 35-214, the [other side] shall retain and shall contractually require each subcontractor to retain all data, books and other records (“records”) relating to this Agreement for a period of five years after completion of the Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the [other side] shall produce the original of any or all such records. TLO time shall be recorded and submitted to ACTIC through the Homeland Security Information Network (HSIN).

XII. Fees

In no event shall either party charge the other for any administrative fees for any work performed pursuant to this Agreement.

XIII. Jurisdiction

Agency accepts that receipt of federal grant funding requires it to permit its certified TLO(s) to work outside of Agency’s regular jurisdictional boundaries.

XIV. Worker’s Compensation Benefits

Pursuant to A.R.S. § 23-1022 D., for the purposes of worker’s compensation coverage, all employees covered by this Agreement shall be deemed to be an employee of both agencies. The primary employer shall be solely liable for payment of worker’s compensation benefits.

XV. Non-Availability of Funds

This Agreement shall be subject to available funding, and nothing in this agreement shall bind any party to expenditures in excess of funds appropriated and authorized for purposes outlined in this Agreement.

XVI. E-verify

To the extent applicable under A.R.S. § 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 A.R.S. § 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 Party’s 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 Party.

Any notice required to be given under this Agreement will be provided by mail to:

AZDPS
Intelligence Bureau
Arizona Counter Terrorism Information Center
P.O. Box 6638 – MD 3900
Phoenix, Arizona 85005-6638

Avondale Police Department
Acting Chief Dale Nannenga
11485 W. Civic Center Drive
Avondale, AZ 85323

XI. Conflict of Interest This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

[SIGNATURES ARE ON THE NEXT PAGE]

IN WITNESS WHEREOF, THE PARTIES HEREBY SUBSCRIBE THEIR NAMES:

State of Arizona

The City of Avondale

By: _____
Colonel Robert C. Halliday, Director
Arizona Department of Public Safety

By: _____
Charles McClendon
City Manager

Date: _____

Date: _____

Approved as to Form:

Approved as to Form:

Assistant Attorney General

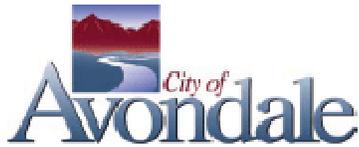
Andrew McGuire
City Attorney

Date: _____

Date: _____

Attest: _____

Date: _____



CITY COUNCIL REPORT

SUBJECT:

Cooperative Purchasing Agreement - ELXSI, Inc.,
d/b/a Cues

MEETING DATE:

November 18, 2013

TO: Mayor and Council

FROM: Wayne Janis, P.E., Public Works Director, 333-4411

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that the City Council approve a cooperative purchasing agreement with ELXSI, Inc., d/b/a Cues for the purchase of a G016 high cube mounted cable color television inspection truck (CCTV truck) in an amount not to exceed \$334,700 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

During the 2013/14 fiscal year budget the City Council approved the purchase of CCTV truck in the sewer equipment replacement fund at a budgeted amount of \$150,000. The cost of the truck will exceed the amount previously approved by Council.

DISCUSSION:

The City is able to attach to Houston-Galveston Area Council of Governments (HGAC) contract for the purchase of sewer cleaning, hydro-excavating, inspection equipment and miscellaneous services. Under the HGAC contract, the current cost of the CCTV truck is \$334,700. Staff is proposing to utilize a portion of the onetime funding approved in the sewer collections operating budget for sewer pipeline rehabilitation to cover the additional \$184,700 necessary to purchase the truck.

The current CCTV truck was purchased in 2007 to fit within an existing budget of \$150,000. At that time it was necessary to trim back on the technology and options that would enhance the ability to assess sewer system conditions. In the last few years, this scaled back model has become problematic and expensive to maintain. The new truck will provide the technology and equipment to properly assess the sewer conditions as well as improve customer service regarding sewer lateral assessment. The new unit will provide cutting edge technology packaged in a high quality vehicle with the highest of quality equipment that will provide superior customer service to the residents.

The City of Avondale CCTV program is a key element to the citywide asset management program. By assessing and recording the internal condition of the city's sewer system, staff is capable of systematically repairing or replacing the sewer collection system infrastructure. The process benefits the city in several ways:

1. **Reducing Sewer Spills:** By viewing the condition of the sewer system, key problem areas can be promptly addressed to reduce the potential for unhealthy and potentially damaging sewage spills. Also, this has become a highly regulated area that could result in regulatory action or fines.
2. **Condition Assessment:** By using international sewer condition assessment standards, Avondale staff can determine the need and criticality of repairing or replacing the sewer system

assets. The work can then be properly funded and performed in order to optimize ratepayer dollars in maintaining a viable city sewer infrastructure.

3. Reducing Cost and Risk: Performing the televising in-house enables prompt response to customer needs, insures quality condition assessments, and eliminates most of the expensive contracts needed if vendors are utilized. The televising also insures that all work performed to the system complies with the City of Avondale quality standards.

The current truck will be sold at auction.

BUDGETARY IMPACT:

Partial funding is available in the equipment replacement and operating funds of \$150,000. One-time funding approved in the sewer collections operating budget for sewer pipeline rehabilitation will cover the additional \$184,700 necessary to purchase the truck.

RECOMMENDATION:

Staff recommends that the City Council approve a cooperative purchasing agreement with ELXSI, Inc., d/b/a Cues for the purchase of a G016 high cube mounted cable color television inspection truck in an amount not to exceed \$334,700 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

ATTACHMENTS:

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[CPA - ELXSI, INC.](#)

DUE TO ITS SIZE, THIS DOCUMENT
HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/33448>



CITY COUNCIL REPORT

SUBJECT:

Professional Services Agreement - Mosaic Arts Center

MEETING DATE:

November 18, 2013

TO: Mayor and Council

FROM: Gina Montes, Neighborhood & Family Services Director (623) 333-2727

THROUGH: Charlie McClendon, City Manager

PURPOSE:

The City Council will consider an agreement with the Mosaic Arts Center to provide after school programming, STEAM educational enrichment programs and facility usage by the City of Avondale.

BACKGROUND:

The Mosaic Arts Center (MAC) is a non-profit arts and education organization based at 12 East Western Avenue. It offers science, technology, engineering and math (STEM) education through the arts, also known as STEAM. The MAC moved into the Western Avenue location approximately a year ago bringing an important asset to the street in a formerly vacant building. The MAC has been active in the Historic Avondale Art Walk and has developed relationships with schools, businesses and other non-profit organizations in support of educational programming for youth. Its mission and work aligns with many of the City's priorities to support the educational system, revitalize Historic Avondale and provide opportunities for youth. Its presence presents an opportunity for a strategic and mutually beneficial partnership with Mosaic Arts Center.

DISCUSSION:

The Mosaic Arts Center is located at a highly visible location on Western and Central avenues and has capacity to expand its offerings. The proposed agreement for \$50,000 would enable the Mosaic Arts Center to expand their offerings to augment existing city youth services and special events. The agreement will also include several organization and capacity-building requirements which will support the MAC's long-term viability and ability to serve the community effectively. An additional \$10,000 will be allocated to support an organizational consultant which will provide capacity-building support and technical assistance. This amount would be included in a separate contract administered by the Neighborhood and Family Services Department.

Under the agreement, the Mosaic Arts Center will be required to participate in major community and City-sponsored special events, including the Historic Avondale Art Walk, Tale of Two Cities Festival, the Tres Rios Festival, Resident Appreciation Night and the Week of the Young Child events. At the events, Mosaic Arts Center will offer interactive displays, educational activities and demonstrations within its STEAM curriculum. The agreement would also require STEAM programming for five hours on Wednesday afternoons when the schools have early dismissal. In addition, a minimum of five hours of programming will be required on Saturdays. An additional 10 hours will be required to be provided for a total of 20 hours of weekly programming. During the summer months, the MAC will be required to provide a Summer Food Program open to the community. In addition, the MAC will be required to organize a speaker/workshop series open to the public focused on STEAM.

Both the Parks, Recreation and Libraries and Neighborhood & Family Services departments would partner to provide programming which could be through use of the facility alone or in partnership with

Mosaic Arts Center. The programs will be determined jointly with the MAC. The agreement also requires that City departments be allowed a minimum of 10 hours of facility use per month at no cost for public meetings, City programs or other activities.

The agreement also includes requirements for the Mosaic Arts Center to provide outcomes data and use an evidence-based curriculum. All programs will be required to operate under the Kids At Hope framework.

BUDGETARY IMPACT:

Total cost for the agreement with Mosaic Arts Center will be \$50,000. An additional cost of \$10,000 for an organizational consultant is also required. The total of \$60,000 is available in the Economic Opportunities Fund.

RECOMMENDATION:

Staff recommends approval of the Professional Services Agreement with Mosaic Arts Center to provide after school programming, STEAM educational enrichment programs, community services and facility usage by the City of Avondale and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Click to download

[PSA](#)

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
MOSAIC ARTS CENTER**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is entered into as of November 18, 2013, between the City of Avondale, an Arizona municipal corporation (the “City”) and Mosaic Arts Center, an Arizona nonprofit corporation (“Mosaic”).

RECITALS

A. The City desires to engage a firm to (i) provide curriculum and arts and education programming for Avondale residents in Historic Avondale, (ii) allow the City to use its facilities for City meetings, activities and programs upon request, and (iii) provide interactive activities for the public at City-sponsored events (the “Services”).

B. Mosaic offers science, technology, engineering and math education through the arts (“STEAM”) programs out of a facility located in Historic Avondale at 12 East Western Avenue, Avondale, AZ 85323 (the “Facility”) that it rents for a fee.

C. Mosaic has experience in providing the Services and pursuant to Avondale City Code, Section 25-23, the City has determined that Mosaic is the reasonable and practical source to provide the Services within the City.

D. The City and Mosaic desire to enter into this Agreement for the purpose of (i) establishing the terms and conditions by which Mosaic may provide the City with Services, as more particularly set forth in Section 2 below and (ii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Services.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until November 17, 2014 (the “Initial Term”), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Agreement, Mosaic requests, in writing, to extend the Agreement for an additional one-year term and (iii) the City approves the additional one-year term in writing (including any price adjustments approved as part of this Agreement), as evidenced by the City Manager’s signature thereon, which approval may be withheld by the City for any reason.

Mosaic'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 Mosaic, 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. Mosaic shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference.

3. Compensation. The City shall pay Mosaic for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed \$50,000.00 for the Services. The maximum aggregate amount for this Agreement shall not exceed \$250,000.00.

4. Payments. For the Initial Term, the City shall pay Mosaic an initial payment of \$15,000.00 for the first month of the Agreement and thereafter for an Initial Term shall pay Mosaic monthly an amount not to exceed \$3,181.81, based upon work performed and completed to date. For each subsequent Renewal Term, if any, the City shall pay Mosaic monthly an amount not to exceed \$4,166.66, based upon work performed and completed to date.

5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

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

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

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

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

10. Indemnification. To the fullest extent permitted by law, Mosaic 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 Mosaic, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

11. Insurance.

11.1 General.

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

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

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

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

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

F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. 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 Mosaic. Mosaic shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. 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. Mosaic shall be solely responsible for any such deductible or self-insured retention amount.

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

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Mosaic will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Mosaic's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Mosaic's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this

Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

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

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

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

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

(2) Mosaic’s insurance shall be primary insurance with respect to performance of the Agreement.

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

(4) If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

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

include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. [INTENTIONALLY OMITTED]

C. Professional Liability. [INTENTIONALLY OMITTED]

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

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

12. Termination; Cancellation.

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

12.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party’s nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to Mosaic for the undisputed portion of its fee due as of the termination date.

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

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

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

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

13. Miscellaneous.

13.1 Independent Contractor. Mosaic acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Mosaic, 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 Mosaic, its employees or subcontractors. Mosaic, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Mosaic meets the requirements of its agreed Scope of Work as set forth in Section 2 above and Exhibit A. Mosaic is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Mosaic do not intend to nor will they combine business operations under this Agreement.

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

13.3 Laws and Regulations. Mosaic 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 Mosaic is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, 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 standards.

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

13.5 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.

13.6 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.

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

13.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned by Mosaic without prior, written permission of the City, signed by the City Manager. Any attempted assignment or delegation by Mosaic in violation of this provision shall be a breach of this Agreement by Mosaic.

13.9 Subcontracts. No subcontract shall be entered into by Mosaic with any other party to furnish any of the material or services specified herein without the prior written approval of the City. Mosaic is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Mosaic.

13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy

available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release Mosaic from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

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

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

13.13 Offset.

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

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

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

If to the City: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Charles P. McClendon, City Manager

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

If to Mosaic: Mosaic Arts Center
12 East Western Avenue
Avondale, AZ 85323
Attn: Ellen Gergely, Vice President

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 or (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. 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.

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

13.16 Records and Audit Rights. To ensure that Mosaic and its subcontractors are complying with the warranty under subsection 13.17 below, Mosaic's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Mosaic and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Mosaic's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of Mosaic's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Mosaic and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Mosaic pursuant to this Agreement. Mosaic 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 Mosaic or its subcontractors reasonable advance notice of intended audits. Mosaic shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

13.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, Mosaic 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). Mosaic's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

13.18 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work and any invoices, the documents shall govern in the order listed herein.

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

[SIGNATURES ON FOLLOWING PAGES]

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

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

Charles P. McClendon, City Manager

ATTEST:

Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2013,
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]

“Mosaic”

MOSAIC ARTS CENTER, an Arizona
nonprofit corporation

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2013, by
_____, as _____ of MOSAIC ARTS CENTER, an Arizona
nonprofit corporation, on behalf of the corporation.

(affix notary seal here)

Notary Public in and for the State of Arizona

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
MOSAIC ARTS CENTER

[Scope of Work]

See following pages.

Mosaic Arts Center (“Mosaic”) Scope of Work

1. Organizational Requirements – Mosaic shall:

1.1 Maintain consistent hours of operation during which the Mosaic Arts Center is open, not less than 20 hours per week, including, but not limited to, Wednesday for a minimum of five hours, from 12 pm to 5 pm and Saturdays for a minimum of five hours from 12 pm to 5 pm. The remaining ten hours should be distributed among Monday, Tuesday, Thursday and Friday, allowing for Sunday closure unless Mosaic schedules additional events not pertaining to this Agreement.

1.2 Post a schedule of events/calendar of activities on its website and the building.

1.3 Provide the City with monthly financial reports and quarterly programmatic reports with back-up documentation.

1.4 Define a marketing strategy for Mosaic, including improvements to the website, collateral material, social media and other outlets as appropriate.

1.5 Seek technical assistance from the Arizona Center for After School Excellence or a similar organization.

1.6 Participate in training and technical assistance by a consultant approved by the City. The City may recommend a consultant upon Mosaic’s request.

1.7 Identify and inform the City of possible grants, calendars and specific strategies to apply to all that pertain to the Mosaic’s vision.

1.8 Participate as a member in the Historic Avondale Merchants Association.

1.9 Develop policies and procedures for all activities, from keeping track of individuals, visitors, and students, etc. that come to Mosaic, to photo releases, parental consents, number of students per class or number of adults allowed with a student.

2. Programmatic Requirements – Mosaic shall:

2.1 Develop/adapt curriculum and tie activities and programming to that curriculum.

2.2 Demonstrate a clear connection between program activities being provided and an evidence-based science, technology, engineering and math (“STEM”) curriculum. Complete syllabus should be developed for all classes, courses or other activities. The syllabus should cite the specific evidence-based STEM curriculum upon which each activity is based.

2.3 Register program participants and obtain parental consent for drop-in services.

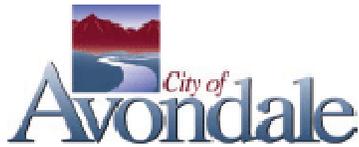
2.4 Provide both quantitative and qualitative program outcome data to the City (supported by pre-post-tests, attendance rosters, participant registration forms, participant surveys)

2.5 Organize a Special Speakers/workshop session once a month and invite artists, professors or other interested parties from Arizona State University (“ASU”), Estrella Mountain Community College, University of Arizona, Phoenix Art Museum, ASU Art Museum, the Phoenix Symphony, architects, and engineers, etc.

3. Provision of Arts and Education Programs for Avondale Residents – Mosaic shall:
 - 3.1 Provide an after school arts and education program on Wednesday afternoons from 12 p.m. to 5 p.m. during the school year on school campuses within the Avondale Elementary School District and at the Boys & Girls Club at no cost to the participants.
 - 3.2 Provide arts and education programs at the Mosaic facility (located at 12 East Western Avenue, Avondale, AZ 85323) (the “Mosaic Facility”) for students attending the Avondale Elementary School District, for children in the Boys & Girls Club and for Avondale residents, at no cost to the participants.
 - 3.3 Communicate the availability of the programs to the Avondale Elementary School District.

4. Use of Mosaic Arts Center Facility – Mosaic shall:
 - 4.1 Allow the City to use the Mosaic Facility for a minimum of 10 hours per month for public meetings and activities upon the City’s verbal or written request at least one week in advance.
 - 4.2 Partner with the City’s Parks, Recreation and Libraries Department and the Neighborhood & Family Services Department to provide at the Mosaic Facility special interest classes, summer programs, story time and other programs as determined by the City. The use of the Mosaic Facility for these partnered programs will not count towards the City’s 10 hours of monthly Mosaic Facility use.
 - 4.3 Operate a summer food program site out of the Mosaic Facility.

5. Participation in Public Events – Mosaic shall provide interactive science, technology, engineering and math education through the arts activities to the public at the following events by arriving during event set-up, providing interactive activities for the complete duration of each event:
 - 5.1 Monthly Historic Avondale Art Walk – as a participant and not organizer
 - 5.2 Tres Rios Festival
 - 5.3 Resident Appreciation Night
 - 5.4 Tale of Two Cities Festival
 - 5.5 Week of the Young Child Event



DEVELOPMENT SERVICES

SUBJECT:

Public Hearing - Resolution 3148-1113 and Ordinance 1531-1113 - Zoning Ordinance Text Amendments (PL-12-0226)

MEETING DATE:

November 18, 2013

TO: Mayor and Council

FROM: Tracy Stevens, Development and Engineering Services Director

THROUGH: Charlie McClendon, City Manager

REQUEST: Approval of a Comprehensive Text Amendment to the Avondale Zoning Ordinance

LOCATION: Citywide

APPLICANT: City of Avondale

BACKGROUND:

The Avondale Zoning Ordinance was adopted in 1990. Beginning in 2007, the Planning Division undertook the substantial task of analyzing the Zoning Ordinance and proposing amendments that would create a more usable Ordinance reflective of the current desires of the City's residents, business owners, and property owners. On April 7, 2008, the City Council adopted the first of these text amendments to Section 3, Commercial Districts. On April 18, 2011, the City Council adopted an Ordinance amending Section 1, Administration and Procedures, the last in the series of text amendments. In total, between April 2008 and April 2011, fourteen Zoning Ordinance Text Amendments were adopted by the City Council, revising nearly all Zoning Ordinance sections or creating new sections. A comprehensive Zoning Ordinance update was approved on December 5, 2011.

Soon after, the General Plan 2030 was adopted resulting in a new vision for the City moving forward. The goals now emphasize the importance of environmental and economic sustainability. To help the City achieve the goals set forth by the General Plan 2030, additional changes to the Zoning Ordinance are being proposed. These proposed changes will ensure the Zoning Ordinance remains consistent and up-to-date with industry standards, and assist the City in redevelopment and developing a sustainable community.

SUMMARY OF REQUEST:

The following proposed amendments are outlined below and identified in Attachment A:

Section 1

- Section 102: A notice of violation is recommended to change from requiring registered mail with a return receipt to first class mail with postage prepaid.
- Section 103: The following terms are recommended additions to the Zoning Ordinance: Antique or Collectible Store, Development and Engineering Services Director, Natural Vegetative Screen, Revitalization Area, Outdoor Dining, and Perimeter Wall. The following terms with modifications: Cigar Bar/Tobacco Lounge/Smoke Shop, Non-Chartered Financial Institution, Sidewalk Café, Height of Sign, Way-Finding Sign, and Suburban Development. The

following term is proposed to be deleted: Natural Screen Walls.

- Section 110: Recommending to remove the need for a neighborhood meeting for Zoning Text Amendments. This requirement places a burden on the applicant for text amendments that affect the entire City and not a specific area that the applicant can target for property owner notification. However, for staff/city initiated text amendments staff will continue to provide a meeting.

Section 2

- Section 201: A new R1-10 section is recommended in an effort to offer larger lot sizes within the suburban residential land use designation. R1-8 is recommended to be reclassified to suburban residential from urban residential.
- Section 202-204: Places of Worship are proposed to be permitted with Conditions dependent upon meeting the requirements set forth in this section and removed as a Conditional Use Permit.
- Section 204: Guest homes in the R1-35 and R1-15 zoning districts, are recommended to no longer be required to submit a site plan prior to the issuance of a building permit. Instead a plot plan in conformance with the requirements set forth by the Zoning Ordinance must be submitted and approved in an effort to streamline the process.
- Section 205: The minimum lot area/unit (square feet) for R-3 is recommended to increase from three thousand (3,000) square feet to three thousand six hundred thirty square feet (3,630). R-4 is decreasing from one thousand nine hundred eighty (1,980) to one thousand four hundred fifty two (1,452).
- Section 206: The requirement for frontages abutting a freeway, arterial or collector street shall not contain more than two (2) houses in succession that exceed one (1) story height is recommended for removal. A breakdown of percentages of net area that shall be devoted to open space and amenities has been added to this section, along with the requirement of a minimum separation of fifteen (15) feet for a detached garage from a single family residential area or zoning district has been added. The landscaping portion of this section has been relocated to Section 1204 Landscape Design Standards.
- Section 207: Perimeter walls for Manufactured Home Parks will be required to follow the requirements set forth in Section 1207 Walls and Fences.

Section 3

- Section 303: In the land use matrix, adult day care is proposed to be amended from prohibited to permitted with a Conditional Use Permit in the C-O and C-1 zoning districts. Cigar bar, tobacco lounge, and smoke shops are proposed to be changed from permitted in the C-2 and C-3 zoning districts, to permitted with a Conditional Use Permit. Sidewalk café is proposed as an accessory use in the C-1, C-2, and C-3 zoning districts.
- Section 304: Uses Permitted with Conditions, health and exercise centers are recommended to increase in size from three thousand (3,000) square feet to seven thousand (7,000) square feet in the C-1 zoning district.
- Section 305: Cigar bars, tobacco lounges, and smoke shops have been added to the Conditional Use list that require body piercing studios, tattoo parlors, non-chartered financial services, pawnshops, liquor stores, and plasma centers to have a minimum separation between each use listed and from sexually oriented businesses.
- Section 307: The Old Town Avondale Business District (OTAB) map that shows the expansion of the boundaries of the OTAB district has been removed. Within the OTAB Land Use Matrix in Section 307, cigar bars and hookah lounges have been removed from the list. Multi-family dwellings no longer require a Conditional Use Permit in the Neighborhood Sub-District, but are permitted with conditions. Music studios are recommended as permitted in the Neighborhood Sub-District instead of requiring a Conditional Use Permit. Grocery stores are proposed as permitted with conditions in the Neighborhood Sub-District. All references to the Old Town Avondale Business District Design Guidelines have been removed and replaced with Historic

Avondale Design and Development Guidelines, currently underway.

Section 4

- Section 402: Metals collecting, crushing and recycling facility has been reclassified in the land use matrix as recycling facility, metals collecting and crushing.

Section 5

- Section 504: Historic Avondale Infill Overlay District (HAIO) has been added as part of the Special Districts. The purpose of this district is to promote and facilitate the development and redevelopment of vacant, underutilized, or abandoned properties within the City's revitalization area. It has been established as a method to address potentially incompatible development standards while maintaining the character of the surrounding area, and further the City Council's goals for revitalization of Historic Avondale.

Section 7

- Section 705: A parking clarification is recommended for Seasonal Sales and Special Events to ensure that it meets the parking surface requirements set forth in Section 803.A.
- Section 707: While light levels may still not exceed 1-foot candle at the property line, this section has been amended to remove the requirement to measure this at ten (10) feet above ground.
- Section 709: The requirement that overhead electrical (less than 69kV), telephone, cable TV or other utility lines located on a site or within the right-of-way adjacent to a site must be placed underground, is proposed to be removed from the Zoning Ordinance. This requirement is currently in the City Code. Internalizing all downspouts has been added to this section, also.

Section 8

Section 803: Provisions for Seasonal Sales and Special Events surface parking have been added. A dust control plan for the event is now proposed, along with the stabilization of the lot upon completion of the event, per Maricopa County Air Quality Rules and Regulations.

- Section 804: Pre-schools have been added to the parking schedule.
- Section 805: Parallel parking spaces have changed from a minimum of ten (10) feet wide to ten in a half (10.5).

Section 9

- Section 905: Temporary signs are no longer authorized to be placed on, attached to or hung from a tree without receiving prior City approval.
- Section 912: Lost pet signs, neighborhood and community event signs, seasonal sales, and traffic directional signs are proposed without requiring permit.
- Section 913: The disbursement of special promotion temporary signage is proposed to change from ten (10) consecutive days no more than three (3) times a year with 30 days between each display to a maximum of thirty (30) days each calendar year. Way-finding signs in this section have changed from being allowed in the OTAB and City Center (CC) zoning districts, to only being allowed through a City sponsored program.

Section 12

- Section 1203: References the Arizona Department of Water Resources Drought Tolerant/Low Water Use Plant list. This will ensure the City is always in conformance with the most current version. Per Section 1203, a landscape plan is required when existing trees are to be

- preserved-in-place, salvaged, or relocated, along with a statement as to how the trees will be protected. Plant sizes, quantities, materials, and locations have also changed in this section.
- Section 1204: A new requirement is proposed which states that all plants and trees that have a mature width and/or height that interferes with overhead utility lines will be located a minimum of ten (10) feet from the utility line alignment. Other changes to this section include new requirements for the design and slope of retention basins, landscaping packages for single family residential subdivision developments, and special landscaping treatment and entry features for multi-family developments. Plant sizes, quantities, materials, and locations have also changed in this section.
 - Section 1205: Landscape Plans now include the following information in the preliminary and final landscape plans/maintenance schedule: Underground utilities, transmission lines, site lighting, utility cabinets, product information, construction easements, construction notes, landscape details, materials schedule, pruning directions and examples, and irrigation schedule.
 - Section 1207: Submitting samples of wall materials, colors, and textures with the Preliminary Site Plan is a proposed addition. Breaks in perimeter walls to allow for pedestrian access to adjacent streets and developments has also been added, along with excluding the need for interior walls/fences for single family or multi-family residential developments to expand Avondale's connections and further walkability efforts throughout the City. Both will help promote connectivity between adjacent neighborhoods. Plant sizes, quantities, materials, and locations have also changed in this section.
 - Section 1208: Irrigation systems are recommended to be maintained in accordance with a Landscape Maintenance Schedule. Plant materials must now be pruned in conformance with not only the approved manual, but the current version of the American National Standard, ANSI A300 – Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices.

PARTICIPATION:

A meeting was held with the business owners on Western Avenue on June 20, 2013 at the Sam Garcia Library to discuss the Historic Avondale Infill Overlay District. There were fifteen people in attendance, representing nine different businesses on Western Avenue within the Old Town Avondale Business District. Staff briefly described the upcoming changes to the Zoning Ordinance and future Design Guidelines for Historic Avondale, along with concepts for the new Historic Avondale Design Guidelines and street improvements for Dysart Road and Western Avenue. The attendees were pleased with the changes being proposed and the City's assistance in helping revitalize the area.

A second Neighborhood Meeting to discuss the proposed Zoning Ordinance text amendments was held on August 22, 2013 at the Sam Garcia Library. There were thirteen (13) attendees, not including four (4) staff members. The meeting was advertised in the August 6, 2013 edition of the West Valley View. Staff also visited various businesses within the Historic Avondale area and citizens on Hill Drive informing them about the neighborhood meeting on August 1, 2013. Additionally, a draft of the proposed Ordinance was distributed via email on August 19, 2013, to all persons on the Interested Parties List, which includes residents, developers, and business owners. We have received positive input from business owners and residents concerning the Zoning Ordinance update.

A notice of this Planning Commission hearing was published in the West Valley View on October 1, 2013. No additional comments have been received to date. No comments were received and no interested parties spoke on the item at the Planning Commission meeting.

A notice of this City Council hearing was published in the West Valley View on November 5, 2013. No additional comments have been received prior to the publication of this report.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on October 17, 2013, and voted 7-0 to recommend approval of the request as recommended by staff (Exhibit B).

ANALYSIS:

This proposal addresses a number of issues that staff has identified since the last Zoning Ordinance update, to include:

- Diversify Avondale's housing stock;
- Re-evaluate allowable uses within zoning districts;
- Creating tools to support Historic Avondale revitalization;
- Make temporary signage more business friendly;
- Bring the Landscape Ordinance up-to-date, and require more aesthetic landscape treatments

The goal is to make revisions where necessary to ensure that the Ordinance is working optimally to further the goals and objectives of the City, its residents, and elected officials. The proposed amendments achieve this goal, correct and clarify the identified issues, further Avondale's competitive advantages for economic development opportunities, and remain current with industry changes.

A Zoning Ordinance is a living document requiring continuous review and updating to function appropriately and achieve the goals of the community and its leaders. Staff will continue to monitor the Zoning Ordinance and propose amendments to further City goals and objectives into the future.

FINDINGS:

1. The proposed amendments meet the intent of the General Plan.
2. The proposed amendments constitute an overall improvement to the Zoning Ordinance.

RECOMMENDATION:

The City Council should **APPROVE** Application PL-12-0226, a City initiative to comprehensively amend the Avondale Zoning Ordinance.

PROPOSED MOTION:

- I move that the City Council adopt Resolution 3148-1113 declaring as a public record the document entitled "City of Avondale Zoning Ordinance, Amended and Restated November 18, 2013."
- I move that the City Council adopt Ordinance 1531-1113 adopting by reference the document entitled "City of Avondale Zoning Ordinance, Amended and Restated November 18, 2013."

ATTACHMENTS:

Click to download

- [Exhibit B - Planning Commission Minutes](#)
- [Resolution 3148-1113](#)
- [Zoning Ordinance](#)
- [Ordinance 1531-1113](#)

PROJECT MANAGER:

Jennifer Fostino, Zoning Specialist



**AGENDA
PLANNING COMMISSION
REGULAR MEETING**

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

**Thursday, October 17, 2013
6:30 P.M.**

I. CALL TO ORDER

Chair Scibienski called the Regular Meeting to order at approximately 6:30 p.m.

II. ROLL CALL

The following members and representatives were present:

COMMISSIONERS PRESENT

Sean Scibienski, Chair
Michael Demlong, Vice Chair
Lisa Amos, Commissioner
Michael Long, Commissioner
Angela Cotera, Commissioner
Kevin Kugler, Commissioner
Grace Carrillo, Commissioner

CITY STAFF PRESENT

Tracy Stevens, Development & Engineering Services Director
Chris Schmaltz, Legal Counsel
Jennifer Fostino, Zoning Specialist
Jackie Keller, Landscape Architect/Urban Designer
Linda Herring, Development Services Representative

III. OPENING STATEMENT

Chair Scibienski read the Opening Statement.

IV. APPROVAL OF MINUTES

• August 15, 2013 Regular Meeting

Chair Scibienski invited a motion to approve the minutes. Commissioner Carrillo moved to accept the minutes from the August 15, 2013 regular meeting with a correction to the voting on PL-11-0080, a Resolution adopting the amended Freeway Corridor Specific Plan (FCSP). Commission Carrillo voted Aye and Commissioner Amos was excused. Commissioner Cotera seconded the motion. The motion passed unanimously.

V. SCHEDULED PUBLIC APPEARANCES

There were no scheduled public appearances.

VI. WITHDRAWALS AND CONTINUANCES

There were no withdrawals or continuances.

VII. PUBLIC HEARING ITEMS

1. PL-12-0226

This is a public hearing before the Planning Commission to review and solicit public input on application PL-12-0226, a City initiated request for a comprehensive Zoning Ordinance amendment. Staff Contact: Jennifer Fostino

Jennifer Fostino, Zoning Specialist, presented an update to the Zoning Ordinance. The Zoning Ordinance was approved in 1990, and extensively updated between 2008 and 2011 to stay current with changing industry standards. The Zoning Ordinance is being amended to meet the new vision, goals and policies set forth in General Plan 2030, such as larger home sites, coordinating connectivity between and within neighboring communities, and honoring the character of Historic Avondale.

Ms. Fostino highlighted some of the proposed changes. In Section 1, the requirement for an applicant to hold a neighborhood meeting on Zoning Text Amendments would be removed. However, for City initiated amendments, staff will still hold public meetings. In Section 2, a new Suburban Residential zoning district, R1-10 is added to the Medium Density land use designation. In Section 3, the designation Cigar Bar/Tobacco Lounge/Smoke Shop is no longer be permitted outright in the C-2 and C-3 district, and would instead require a Conditional Use permit. These uses would also be removed from the Old Town Avondale Business (OTAB) District Land Use Matrix.

Ms. Fostino said Section 5 proposes a new overlay district, called the Historic Avondale Infill Overlay (HAIO) that stretches from Van Buren Street to Lower Buckeye Road and the Agua Fria River to the Goodyear city limits. This change would leave OTAB intact, but provide a tool for developing properties in the

remaining historic areas of Avondale. HAIO fulfills a desire expressed by the City Council to provide for flexible and creative development standards while retaining the historic character and small-town atmosphere of Historic Avondale. It would give the development community another option during the rezoning process, and facilitate redevelopment of vacant, underutilized, or abandoned properties in the area. The goal is to encourage a creative, artistic, pedestrian-oriented destination that complements the character of the district.

Ms. Fostino explained that HAIO applicants would be required to meet certain findings during the overlay rezoning process. Applications would be processed in the same manner as all other rezoning cases, and go through the public notice and hearing process. Anything not addressed in the development plan would revert to the underlying zoning district.

Ms. Fostino said Section 7 proposes minor changes to the design requirements for Non-Residential districts to include the removal of undergrounding utility lines, which is already required in the City Code. A requirement to internalize all downspouts has been added. Section 8 would add new control measures for temporary parking for seasonal sales and special events to ensure that County dust control regulations are met. Section 9 would no longer require a permit for neighborhood and community event signs, seasonal sale and special event signs, or traffic directional signs. Section 12 would change plant sizes, quantities, and locations along streets, medians, parking areas, and single and multi-family development to provide better shade, lower reflective heat, and reduce maintenance issues.

Ms. Fostino stated that staff met with Western Avenue business owners to discuss HAIO and the OTAB Design and Development Guidelines. A neighborhood meeting was held on August 22. The proposed amendment meets the intent of the General Plan by diversifying the housing stock, creating tools to help revitalize Historic Avondale, and bringing the Landscape Ordinance up to date. It constitutes an overall improvement to the Zoning Ordinance. Staff recommends approval. She explained minor changes to the memorandum that was given to the Planning Commission regarding the text amendment.

Commissioner Cotera requested a reason for the deletion of the neighborhood meeting requirement from Section 1. Ms. Fostino explained the difficulties involved in having applicants send out meeting notices, since text amendments affect not just one location, but the City as a whole. A better approach would be to have the City reach out to the public through established channels of communication.

Commissioner Kugler commended staff for modernizing the Zoning Ordinance. He attributed the lack of public presence at the hearing as a sign that the changes are generally acceptable.

Commissioner Amos requested an explanation for the Section 7 changes regarding light intensity measurements. Tracy Stevens, Development & Engineering Services Director, explained the challenges involved in measuring

light intensity ten feet away from the source, and said the revision would allow staff to take measurements from the property line instead.

Vice Chair Demlong inquired about the feedback from the public meeting with Western Avenue business owners. Ms. Fostino responded that they expressed concern about parking and sidewalk space, but also excitement about the design guidelines. Some long-time business owner expressed skepticism about the plans, but most were very enthusiastic. Vice Chair Demlong expressed his approval of the revisions to the landscaping requirements. He felt palm trees planted near faux-palm cell towers should be at staggered heights to better support the illusion.

Chair Scibienski said the HAIIO would benefit the area by providing new opportunities for growth and making City processes easier. He opened the public hearing. After acknowledging that there were no requests to speak, Chair Scibienski closed the public hearing.

Commissioner Long moved that the Planning Commission APPROVE application PL-12-0226, a City initiated request for a comprehensive Zoning Ordinance text amendment, to include the revisions set forth in the memorandum dated October 14, 2013, entitled "A Request for a Comprehensive Amendment to the Avondale Zoning Ordinance." Commissioner Kugler seconded.

ROLL CALL VOTE

| | |
|------------------------------|-----|
| Sean Scibienski, Chair | Aye |
| Michael Demlong, Vice Chair | Aye |
| Lisa Amos, Commissioner | Aye |
| Michael Long, Commissioner | Aye |
| Angela Cotera, Commissioner | Aye |
| Kevin Kugler, Commissioner | Aye |
| Grace Carrillo, Commissioner | Aye |

Approved 7-0.

VI. OTHER BUSINESS

#

VII. PLANNING STAFF REPORT

Tracy Stevens, Development & Engineering Services Director, said staff is in the process of arranging a Planning Commission tour of the Lakin Ranch property in November as part of a work session. Sunbelt Holdings intends to submit a formal development application in January.

X. COMMISSION COMMENTS AND SUGGESTIONS

Commissioner Cortera stated that December would be her final Planning Commission meeting.

XI. ADJOURNMENT

Chair Scibienski entertained a motion to adjourn the regular meeting. Commissioner Cotera moved to adjourn. Vice Chair Long seconded the motion. The motion passed unanimously.

With no further business, the meeting concluded at approximately 6:53 P.M.

NEXT MEETING: November 21, 2013

FOR SPECIAL ACCOMMODATIONS

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 meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, impresión grande o intérprete, 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.

Staff Signature

Date

RESOLUTION NO. 3148-1113

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED THE "CITY OF AVONDALE ZONING ORDINANCE, AMENDED AND RESTATED NOVEMBER 18, 2013."

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

SECTION 1. That certain document entitled the "City of Avondale Zoning Ordinance, Amended and Restated November 18, 2013," of which three copies are on file in the office of the City Clerk and open for public inspection during normal business hours, is hereby declared to be a public record and said copies are ordered to remain on file with the City Clerk.

PASSED AND ADOPTED by the Council of the City of Avondale, November 18, 2013.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

DUE TO ITS SIZE, THIS DOCUMENT
HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/33450>

ORDINANCE NO. 1531-1113

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ADOPTING BY REFERENCE THAT CERTAIN DOCUMENT KNOWN AS THE "CITY OF AVONDALE ZONING ORDINANCE, AMENDED AND RESTATED NOVEMBER 18, 2013."

WHEREAS, all due and proper notices of public hearings on this Ordinance held before the City of Avondale Planning and Zoning Commission (the "Commission") and the Council of the City of Avondale (the "City Council") were given in the time, form, substance and manner provided by ARIZ. REV. STAT. § 9-462.04; and

WHEREAS, the Commission held a public hearing regarding the subject matter of this Ordinance on October 17, 2013, after which the Commission recommended to the City Council that the amendments to the City of Avondale Zoning Ordinance (the "Zoning Ordinance") contemplated by this Ordinance be approved; and

WHEREAS, the City Council held an additional public hearing on this Ordinance on November 18, 2013.

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

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

SECTION 2. The document known as the City of Avondale Zoning Ordinance, Amended and Restated November 18, 2013 (the "Amended Zoning Ordinance"), three copies of which are on file in the office of the City Clerk, which document was made a public record by Resolution No. 3148-1113 of the City of Avondale, Arizona, is hereby referred to, adopted and made a part hereof as if fully set out in this Ordinance.

SECTION 3. The City of Avondale Zoning Ordinance is hereby replaced by the Amended Zoning Ordinance.

SECTION 4. Any person who fails to comply with any provision of the Amended Zoning Ordinance shall be subject to civil and criminal penalties as set forth in Section 102 of the Amended Zoning Ordinance. Civil penalties shall not exceed \$1,000.00. Criminal penalties shall constitute a class one misdemeanor, punishable by a fine not to exceed \$2,500.00 or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense.

SECTION 5. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Amended Zoning Ordinance adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 6. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, November 18, 2013.

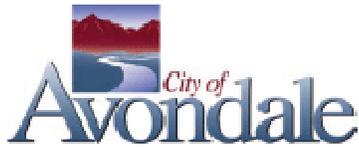
Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney



CITY COUNCIL REPORT

SUBJECT:

Resolution 1353-1113 - Authorizing a Ground Lease and a Lease Purchase Agreement for Refinancing the Acquisition of Certain Real Property

MEETING DATE:

November 18, 2013

TO: Mayor and Council

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

THROUGH: Charlie McClendon, City Manager

PURPOSE:

Staff is requesting that Council adopt a resolution authorizing the execution and delivery of a ground lease and a lease-purchase agreement for refinancing the acquisition of real property located at 125 S. Avondale Blvd. and declaring an emergency.

BACKGROUND:

On August 12, 2013, Council approved a Purchase and Sale Agreement for the acquisition of property located at 125 S. Avondale Boulevard in the amount of \$2,775,000. The property subsequently closed on September 11, 2013.

When the property was purchased, the City assumed two tenant leases with Phoenix International Raceway (PIR) and University Medical Sciences of Arizona. The two leases account for approximately 61% of the leasable space in the building.

As indicated in the August 12, 2013 Council report, the acquisition of the property provides future expansion options of City facilities. The acquisition cost of the property is significantly below the City's cost to acquire property, design and construct a similar size building.

In addition to approving the Purchase and Sale Agreement, Council approved the use and transfer of Contingency funds to acquire the property.

DISCUSSION:

The City has the option to enter into a lease-purchase agreement with a bank, which will allow the City to reimburse the General Fund the purchase price and finance the purchase over a ten-year period. The option is attractive as it allows the City to match the revenues that will be received from the existing tenants and any additional revenue from new tenants to the debt service costs over a ten-year period.

Initial projections indicate the City should receive approximately \$2.05M in revenue from the two existing leases (3 year lease with University Medical Services and 10 year lease with PIR). The two existing leases will cover approximately 66% of the projected debt service costs. The City will continue to market the balance of the vacant space, and when leased, will provide additional revenue to pay debt service costs. At the end of ten-years, the lease will be paid-off and the majority, if not all, of the debt service costs will be paid from rental income the City received.

The City's financial advisors (Stifel Nicolaus) put out an invitation to bid for the lease-purchase agreement. On November 5, 2013, the City received 5 bids from interested banks. Staff is analyzing the bid documents to determine which bid is most advantageous to the City.

The attached resolution delegates to the Finance and Budget Director the authority to determine: (1) the identity of the Lessor; (2) the total principal amount of the agreement (not to exceed \$2,900,000; (3) the final principal maturity schedule; (4) the interest rate on the agreement (not to exceed 5.0%); (5) provisions for prepayment provisions and (6) sales date, price and other terms.

Staff intends to have the above information available for Council at the meeting on November 18, 2013.

The resolution also declares an emergency, resulting in the resolution being effective immediately, in an effort to secure the most attractive financing terms available.

RECOMMENDATION:

Staff recommends that Council adopt a resolution authorizing the execution and delivery of a ground lease and a lease-purchase agreement for refinancing the acquisition of certain real property located at 125 S. Avondale Blvd. and declaring an emergency.

ATTACHMENTS:

Click to download

[Resolution 3153-1113](#)

RESOLUTION NO. 3153-1113

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A GROUND LEASE AND A LEASE-PURCHASE AGREEMENT FOR REFINANCING THE ACQUISITION OF CERTAIN REAL PROPERTY AND A PLACEMENT AGENT AGREEMENT FOR THE PLACEMENT THEREOF WITH A LESSOR; MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; DELEGATING THE DETERMINATION OF CERTAIN MATTERS WITH RESPECT THERETO TO THE FINANCE AND BUDGET DIRECTOR OF THE CITY; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY

WHEREAS, the Mayor and Council (the “City Council”) of the City of Avondale (the “City”), heretofore determined that (i) it is necessary and desirable to refinance the acquisition of land and buildings located at 125 South Avondale Boulevard (the “Site”) by leasing and lease-purchasing back the Site (the “Refinancing”) and (ii) the Refinancing furthers the purposes of the City and is in the public interest; and

WHEREAS, a financial institution to be selected as provided herein (the “Lessor”) will provide moneys for the Refinancing as provided in a Lease-Purchase Agreement, to be dated as of the first day of the month of the date of the execution and delivery thereof (the “Lease-Purchase Agreement”), by and between the City and the Lessor; and

WHEREAS, to secure the Lease-Purchase Agreement, the City Council hereby determines to ground lease the Site to the Lessor pursuant a ground lease, to be dated as of the first of the month of the date of the execution and delivery thereof (the “Ground Lease”); and

WHEREAS, payments paid by the Lessor to the City pursuant to the Ground Lease and by the City to the Lessor pursuant to the Lease-Purchase Agreement represent fair rental value of the associated, leased property; and

WHEREAS, in order to provide terms and conditions for the Lease-Purchase Agreement with the Lessor, the City Council further hereby determines to enter into a Placement Agent Agreement with Stifel, Nicolaus & Company, Incorporated (the “Placement Agent Agreement”); and

WHEREAS, there have been placed on file with the City Clerk and presented at the meeting at which this Resolution was adopted (i) a proposed form of the Ground Lease which is

attached hereto as Exhibit A; (ii) a proposed form of the Lease-Purchase Agreement which is attached hereto as Exhibit B; and (iii) a proposed form of the Placement Agent Agreement attached hereto as Exhibit C.

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

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

SECTION 2. The Finance and Budget Director of the City is hereby authorized and directed to determine on behalf of the City: (i) the identity of the Lessor; (ii) the total principal amount of the Lease-Purchase Agreement (not to exceed \$2,900,000); (iii) the final principal and maturity schedule of the Lease-Purchase Agreement; (iv) the initial interest rate on the Lease-Purchase Agreement (but not to be in excess of 5.00% percent per annum) and the dates for payment of such interest; (v) the provisions for prepayment in advance of the Lease-Purchase Agreement and (vi) the sales date, sales price and other sales terms of the Lease-Purchase Agreement (including for original issue discount and premium and placement compensation). The forms, terms and provisions of the Ground Lease, the Lease-Purchase Agreement and the Placement Agent Agreement, in substantially the form of such documents (including exhibits thereto) presented at the meeting at which this Resolution was considered, are hereby approved, with such insertions, omissions, and changes as shall be approved by the City Manager, or in the absence thereof, an Assistant City Manager of the City, the execution of such documents being conclusive evidence of such approval, and the City Manager, or in the absence thereof, an Assistant City Manager of the City are hereby authorized and directed to execute and deliver the Ground Lease, the Lease-Purchase Agreement and the Placement Agent Agreement. The obligation of the City to make the Lease Payments (as such term is defined in the Lease-Purchase Agreement) will not constitute a general obligation of the City, the State of Arizona or any political subdivision thereof for which the City, the State of Arizona or any political subdivision thereof is obligated to levy or pledge any form of *ad valorem* property taxation nor does the obligation to make the Lease Payments constitute a general obligation of the City, the State of Arizona or any political subdivision thereof within the meaning of the Constitution of the State of Arizona, statutes thereof or otherwise.

SECTION 3. After the execution and delivery to the Lessor of the Lease-Purchase Agreement, this Resolution shall be and shall remain irrevocable until the Lease Payments and all other amounts required to be paid by the City pursuant to the provisions of the Lease-Purchase Agreement shall have been fully paid, cancelled and discharged or until the Lease-Purchase Agreement shall have been terminated pursuant to the respective provisions thereof.

SECTION 4. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any remaining provisions of this Resolution.

SECTION 5. All ordinances, orders or resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any ordinance, order or resolution or any part thereof.

SECTION 6. All actions of the officers and agents of the City which conform to the purposes and intent of this Resolution and which further the Refinancing as contemplated by this Resolution, whether heretofore or hereafter taken are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary or appropriate to carry out the terms and intent of this Resolution.

SECTION 7. The immediate operation of this Resolution is necessary to provide for the Refinancing on the most attractive terms available to the City and the preservation of the public health and welfare; an emergency is hereby declared to exist; this Resolution shall be in full force and effect from and after its passage and approval by the City Council as required by law and this Resolution is hereby exempt from the referendum provisions of the City's Charter and the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Council of the City of Avondale, November 18, 2013.

Marie Lopez Rogers, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3153-1113

(Form of Ground Lease)

See following pages.

When recorded, please mail to:

Michael Cafiso, Esq.
Suite 700
2375 East Camelback Road
Phoenix, Arizona 85016

GROUND LEASE

by and between

CITY OF AVONDALE, ARIZONA,
as Lessor,

and

_____,
as Lessee

Dated as of _____ 1, 2013

GROUND LEASE

THIS GROUND LEASE, made and entered into as of _____ 1, 2013 (hereinafter referred to as this "Ground Lease"), by and between the City of Avondale, Arizona, a municipal corporation of the State of Arizona (hereinafter called the "City"), and _____, a _____ authorized to do business in the State of Arizona (hereinafter called the "Lessee");

W I T N E S S E T H:

WHEREAS, the Lessee, pursuant hereto, is leasing from the City the real property described in the Exhibit hereto (hereinafter referred to as the "Site"), and simultaneously pursuant to a Lease-Purchase Agreement of even date herewith (hereinafter referred to as the "Lease-Purchase Agreement"), the City is, pursuant to the Lease-Purchase Agreement, subleasing the Site from the Lessee under the terms and conditions set forth in the Lease-Purchase Agreement; and

WHEREAS, the City has good and marketable title to the Site in fee simple absolute, free and clear of all liens and encumbrances subject to Permitted Encumbrances (as such term is defined in the Lease-Purchase Agreement) and has obtained all consents and approvals required for the lease of the Site pursuant to this Ground Lease; and

WHEREAS, in consideration of the lease of the Site by the City to the Lessee, the Lessee is entering into the Lease-Purchase Agreement and making funds available to cause the Refinancing (as such term is defined in the Lease-Purchase Agreement), such funds having been advanced to, or upon the order of the City or made available for the City's use on the effective date of this Ground Lease and constituting the only payment to be made hereunder;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the above premises and the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree that:

SECTION 1. The City hereby leases the Site to the Lessee, and the Lessee hereby leases the Site from the City, from the date hereof to and including June 1, 20__, or for such shorter period until payment in full or the making of provisions for the payment in full of the obligations of the City pursuant to the Lease-Purchase Agreement, in consideration of providing amounts necessary to accomplish the Refinancing (as such term is defined in the Lease-Purchase Agreement).

SECTION 2. The Lessee shall, upon payment in full of the obligations of the City pursuant to the Lease-Purchase Agreement and upon the termination of this Ground Lease, surrender the Site to the City free and clear of all liens and encumbrances created by any act of the Lessee.

SECTION 3. The City shall not create, or permit to be created, any liens or encumbrances on the Site other than Permitted Encumbrances.

SECTION 4. The Lessee shall not sublease the Site nor assign this Ground Lease, except in connection with any sublease or assignment contemplated by the Lease-Purchase Agreement.

SECTION 5. The City shall at all times have free, unlimited and unrestricted access, ingress and egress into and about the Site.

SECTION 6. (A) In the event that the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of this Ground Lease, which default continues for 30 days following notice and demand for correction thereof to the Lessee, the City may exercise any and all remedies granted by law, except that no merger of this Ground Lease and of the Lease-Purchase Agreement shall be deemed to occur as a result thereof and the City shall have no right to terminate this Ground Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease-Purchase Agreement remains in effect, the City will continue to pay the Lease Payments (as such term is defined in the Lease-Purchase Agreement) to the Lessee.

(B) In the event of the occurrence of an event of default or termination due to non-appropriation under the Lease-Purchase Agreement, the Lessee may (i) exercise the remedies provided in the Lease-Purchase Agreement, (ii) use the Site for any lawful purpose and (iii) exercise all options provided herein.

SECTION 7. The Lessee, at all times during the term of this Ground Lease, shall peaceably and quietly have, hold and enjoy the Site subject to the provisions of the Lease-Purchase Agreement.

SECTION 8. All liabilities under this Ground Lease on the part of the Lessee are solely liabilities of the Lessee, and the City hereby releases each and every director, officer, employee and agent of the Lessee from any personal or individual liability under this Ground Lease. No director, officer, employee or agent of the Lessee shall at any time or under any circumstances be individually or personally liable under this Ground Lease for anything done or omitted to be done by the Lessee hereunder.

SECTION 9. All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Site or the Lessee's interest in the Site created by this Ground Lease (including both land and improvements on the Site) will be paid by the City in accordance with the Lease-Purchase Agreement.

SECTION 10. In the event the whole or any part of the Site is taken by *eminent domain* proceedings, the interest of the Lessee shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Lessee or its assignee, and, subject to the provisions of the Lease-Purchase Agreement, the balance of the award, if any, shall be paid to the City.

SECTION 11. No merger of title or estates is intended by the City or the Lessee pursuant to the provisions of the Lease-Purchase Agreement or this Ground Lease.

SECTION 12. If any term or provision of this Ground Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Ground Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 13. This Ground Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Ground Lease is subject to and shall be interpreted under the laws of the State of Arizona.

SECTION 14. Enforcement of the terms and conditions of this Ground Lease, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Ground Lease shall give or allow any such claim or right of action by any other or third person or entity on this Ground Lease. It is the express intention of the parties hereto that any person or entity, other than the parties to this Ground Lease, receiving services or benefits under this Ground Lease shall be deemed to be incidental beneficiaries only.

SECTION 15. (A) To the extent applicable by provision of law, this Ground Lease is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, the provisions of which are incorporated herein and which provides that the City may within three (3) years after its execution cancel any contract (including this Ground Lease) without penalty or further obligation made by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time. The Lessee covenants not to employ as an employee, an agent or, with respect to the subject matter of this Ground Lease, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Ground Lease on behalf of the City within three years from the execution of this Ground Lease, unless a waiver of Section 38-511, Arizona Revised Statutes, is provided by the City. No basis exists for the City to cancel this Ground Lease pursuant to Section 38-511, Arizona Revised Statutes, as of the date hereof.

(B) To the extent applicable under Section 41-4401, Arizona Revised Statutes, the Lessee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the "e-verify" requirements under Section 23-214(A), Arizona Revised Statutes. The breach by the Lessee of the foregoing shall be deemed a material breach of this Ground Lease and may result in the termination of the services of the Lessee by the City. The City retains the legal right to randomly inspect the relevant papers and records of the Lessee to ensure that the Lessee is complying with the above-mentioned warranty. The

Lessee shall keep such relevant papers and records open for random inspection by the City during normal business hours by the City. The Lessee shall cooperate with the random inspections by the City including granting the City entry rights onto its property to perform such random inspections and waiving its rights to keep such relevant papers and records confidential.

IN WITNESS WHEREOF, the City and the Lessee have caused this Ground Lease to be executed in their respective names, and the City has caused this Ground Lease to be attested, all by their duly authorized officers.

”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 _____, 2013, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.

Notary Public in and for the State of Arizona

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT

LEGAL DESCRIPTION OF THE SITE

EXHIBIT B
TO
RESOLUTION NO. 3153-1113

(Form of Lease-Purchase Agreement)

See following pages.

When recorded, please mail to:

Michael Cafiso, Esq.
Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, Arizona 85016

LEASE-PURCHASE AGREEMENT

by and between

_____,
as Lessor,

and

CITY OF AVONDALE, ARIZONA,
as Lessee

Dated as of _____ 1, 2013

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- Exhibit A - Description of the Site
- Exhibit B - Delivery Costs
- Exhibit C - Schedule of the Lease Payments

* * *

LEASE-PURCHASE AGREEMENT

THIS LEASE-PURCHASE AGREEMENT, made and entered into as of _____ 1, 2013 (hereinafter referred to as this "Lease-Purchase Agreement" or "Agreement"), by and between _____, a _____ authorized to do business in the State of Arizona, as lessor (with its successors and assigns, hereinafter called the "Lessor"), and the City of Avondale, Arizona, a municipal corporation of the State of Arizona, as lessee (hereinafter called the "City");

W I T N E S S E T H:

WHEREAS, the City is authorized to enter into lease-purchase agreements pursuant to Title 9, Arizona Revised Statutes; and

WHEREAS, it has been determined that in order to accomplish the purposes of the City, it is necessary and desirable to lease-purchase certain land and buildings pursuant to this Lease-Purchase Agreement and pay delivery costs as further described on Exhibit B (hereinafter called the "Project"); and

WHEREAS, the Lessor provided moneys to finance the Project as provided for in this Lease-Purchase Agreement and is lease-purchasing such land and buildings to the City pursuant to this Lease-Purchase Agreement;

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the above premises and of the mutual covenants herein contained and for other valuable consideration, the parties hereto agree that:

ARTICLE I

DEFINITIONS AND EXHIBITS

SECTION 1.1 Definitions. Unless the context otherwise requires and in addition to the terms defined hereinabove, the terms defined in this Section shall, for all purposes of this Lease-Purchase Agreement, have the meanings herein specified.

"Average Principal"[??] means the simple average of (i) the aggregate principal components of the Lease Payments outstanding on the Prepayment Date, and (ii) the aggregate principal components of the Lease Payments scheduled, as of the Prepayment Date (taking into account any prior prepayments), but for the prepayment, to be due at the Maturity Date (plus any accrued and unpaid fees or other sums owed hereunder).

"AYD"[??] means the difference (but not less than zero) between: (i) the U.S. Treasury constant maturity yield, as reported in the H.15 Report for the Closing Date, for a maturity that is the same as the term of the Lease Payments on the Closing Date (rounded to the

nearest whole number of months) or, if no such maturity is reported, an interpolated yield based on the reported maturity that is next shorter than, and the maturity reported that is next longer than, the term of the Lease Payments on the Closing Date, and (ii) the U.S. Treasury constant maturity yield, as reported in the H.15 Report for the Prepayment Date for a maturity that is the same as the remaining term of the Lease Payments at the Prepayment Date (rounded to the nearest whole number of months) or, if no such maturity is reported, then the interpolated yield using the method described in (i) above, but based on the remaining term of the Lease Payments on the Prepayment Date. If the H.15 Report is not available for any day, then the H.15 Report for the immediately preceding day on which yields were last reported will be used.

“Closing Date” means _____, 2013.

“Days Remaining”[??] means the number of days from the Prepayment Date through the Maturity Date.

“Delivery Costs” means the costs listed on Exhibit B hereto.

“Environmental Law” means any past, present or future federal, state, or local statutory or common law or any regulation, ordinance, code, plan, regulatory or court order, decree, permit, grant, restriction, policy or agreement issued, entered, promulgated or approved thereunder, relating to Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.* (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.* (“RCRA”); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (“FWPCA”); the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.* (“HMTA”); the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. § 11001 *et seq.*; the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*; the Atomic Energy Act, 42 U.S.C. § 2014, *et seq.*; the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Rivers and Harbors Act of 1899, 33 U.S.C. § 401 *et seq.*; the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. § 651 *et seq.*; and their state analogs, state counterparts, and other state laws, regulations, and statutes relating to protection of human health, safety or the environment, including those relating to (i) releases, discharges, emissions or disposals to air, water, land or ground water; (ii) the use, handling or disposal of polychlorinated biphenyls (PCB’s), asbestos, radon, lead paint or urea formaldehyde; (iii) the treatment, storage, transportation, refinement, disposal or management of Hazardous Substances (including virgin or used petroleum, crude oil, heating oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated by any environmental law, or may or could pose a hazard to the health and safety of the occupants of the Site; (iv) the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances; (v) the transportation, storage, disposal, management or release of gaseous or liquid substances; (vi) underground or aboveground storage tanks; (vii) any explosive or radioactive material; (viii) freshwater wetlands; (ix) radon gas; (x) endangered species; and (xi) *Stachybotrys*

2072461.3

chartarum and other molds, and any rules, regulations, guidance, orders, injunctions, judgments, declarations, notices or demands promulgated or issued thereunder.

“*force majeure*” means, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; order or restraints of any kind of the government of the United States of America or the State or their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; explosions; breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of the City and not resulting from its negligence.

“Governmental Authority” means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

“Ground Lease” means the Ground Lease of even date herewith by and between the City, as lessor, and Lessor, as lessee.

“H.15 Report”[??] means the Federal Reserve Board’s Statistical Release H.15, “Selected Interest Rates”. Weekly releases of, and daily updates to, H.15 Reports generally are available at the Federal Reserve Board’s website, www.federalreserve.gov. If the H.15 Report is replaced or otherwise unavailable, Lessor may designate the replacement report or another report reasonably comparable to the H.15 Report, which shall be used in place of the H.15 Report.

“Hazardous Substances” means any chemical, material or substance (a) listed, defined or regulated as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “infectious waste,” or “toxic substances” or words of similar impact under any applicable Environmental Laws, including FWPCA, RCRA, CERCLA and HMTA, or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law; (b) the release of or the exposure to which is prohibited, limited or regulated by any Environmental Law or (c) that poses a hazard to health, safety or the environment. “Hazardous Substance” does not include (y) a substance regularly used in the cleaning and maintenance of the Site and that is a material referenced at 40 C.F.R. § 261.4(b)(1), the “household waste” exclusion under RCRA, but only if the quantity and manner of its use are customary and prudent and do not violate applicable law or (z) automotive motor oil in immaterial quantities, if leaked from vehicles in the ordinary course of the operation of the Site and cleaned up in accordance with reasonable property management procedures and in a manner that does not violate applicable law.

“Lease Payment” or “Lease Payments” mean any payment due from the City to Lessor under Article IV.

“Material Adverse Effect” means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the City, (b) the ability of the City to carry out its business in the manner conducted as of the date of this Lease-Purchase Agreement or to meet or perform its obligations under this Lease-Purchase Agreement on a timely basis or (c) the validity or enforceability of this Lease-Purchase.

“Material Litigation” means any action, suit, proceeding, inquiry or investigation against the City in any court or before any arbitrator of any kind or before or by any Governmental Authority, which (i) if determined adversely to the City, may have a Material Adverse Effect, (ii) seeks to restrain or enjoin any of the transactions contemplated by this Lease-Purchase Agreement, or (iii) may adversely affect the ability of the City to perform its obligations under this Lease-Purchase Agreement.

“Maturity Date”[??] means July 1, 20__.

“Net Proceeds” means any insurance proceeds or condemnation award, paid with respect to the Site, remaining after payment therefrom of all expenses incurred in the collection thereof.

“Payment Date” means, with respect to Exhibit D hereto, the date upon which any of the Lease Payments is due and payable.

“Percent Prepaid”[??] means the percentage determined by dividing the principal components of the Lease Payments being prepaid by the principal components of the Lease Payments outstanding on the Prepayment Date.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general *ad valorem* property taxes and assessments, if any, not delinquent, or which the City may, pursuant to provisions of Article V, permit to remain unpaid; (ii) the Ground Lease, this Agreement and any leases, sub-leases and assignments in place on the date of execution and delivery hereof which are made in accordance with the provisions hereof; (iii) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; and (iv) easements, rights-of-way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Agreement.

“Prepayment Date”[??] means the date on which Lessor received the prepayment.

“Prepayment Fee”[??] means if the City makes any prepayment of the outstanding principal component of any Lease Payment (other than prepayments described in Section 8.1(iii) hereof or made on or after _____, 20__) shall pay to Lessor a prepayment fee equal to the quotient of (i) the product of (a) AYD, times (b) Average Principal, times (c) Percent Prepaid, times (d) Days Remaining, divided by (ii) 360. Notwithstanding the

foregoing, the Prepayment Fee shall be zero for prepayments made on or after _____, 20__ or those described in Section 8.1(iii) hereof.

“Prepayment Price”[???] means, as of any date before payment or provision for payment of all or a portion of the applicable principal components indicated in Exhibit D hereto, an amount equal to the total of the remaining principal components plus the amount of interest accrued to the date of such prepayment on such amount as calculated by Lessor and confirmed by the City on the basis of a 360 day year composed of 12 months of 30 days each, plus any applicable Prepayment Fee.

“Refinancing” means the reimbursement of the cash payment made by the City for the Site.

“Regulations” means the Regulations referred to in the definition of “Code”.

“Site” means the Site described in Exhibit A hereto.

“State” means the State of Arizona.

“Term” means the period commencing as of the date hereof and continuing until the end of the current fiscal period of the City, and thereafter for such additional fiscal periods of the City as are necessary to complete the anticipated total term through and including July 2, 20__, unless terminated prior thereto, in accordance with Section 4.2.

SECTION 1.2 Exhibits. The exhibits hereto are by reference made a part of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1 Representations and Warranties of the City. The City represents and warrants as follows:

(a) the City is a municipal corporation of the State, duly incorporated and validly existing under the Constitution and laws of the State,

(b) the Constitution and the laws of the State authorize the City to enter into this Agreement and the Ground Lease and to enter into the transactions contemplated by, and to carry out its obligations under, the aforesaid agreements, and the City has duly authorized and executed the aforesaid agreements,

(c) neither the execution and delivery of this Agreement or the Ground Lease nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any

restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City, or upon the Site, except Permitted Encumbrances,

(d) the City has budgeted and has available for the current fiscal period of the City sufficient funds to comply with its obligations hereunder,

(e) the City has an immediate need for, and expects to make immediate use of, the Site, which need is not temporary or expected to diminish in the foreseeable future,

(f) the Ground Lease and this Lease-Purchase Agreement are legal, valid and binding obligations of the City enforceable in accordance with their respective terms, except as such enforceability may be limited by (i) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law),

(g) there are no circumstances presently affecting the City that could be reasonably expected to alter its foreseeable need for the Site and the improvements thereon or adversely affect its ability or willingness to budget funds for the payment of the Lease Payments and other payments due hereunder,

(h) no consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with the execution and delivery of the Ground Lease and this Lease-Purchase Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect,

(i) there is no action, suit, proceeding, inquiry or investigation before or by any court or Governmental Authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a Material Adverse Effect or which would materially and adversely affect the consummation of the transactions contemplated by, or the validity of, the Ground Lease and this Lease-Purchase Agreement, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any Governmental Authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease-Purchase Agreement,

(j) the City is the owner in fee of title to the Site, and no lien or encumbrance on the Site materially impairs the City's use of the Site or the improvements thereon for the purposes for which it is, or may reasonably be expected to

be, held; and the City has disclosed all liens and encumbrances (including unrecorded liens and encumbrances) to Lessor,

(k) the Site and the improvements thereon will be used by the City only for the purpose of performing one or more governmental or proprietary functions of the City consistent with the permissible scope of the City's authority, and the lease of the Site and the improvements thereto for use by the City is in the best interest of the City,

(l) Except as otherwise disclosed in writing to Lessor, the Site is free of all Hazardous Substances, and the City is in full compliance with all applicable Environmental Laws and

(m) the Site is not located in a flood hazard area and have never been subject to material damage from flooding.

SECTION 2.2 Representations and Warranties of Lessor. Lessor represents and warrants as follows:

(a) Lessor is a _____ duly organized and validly existing as a corporation under the laws of the State of _____ with full corporate power to enter into this Agreement and the Ground Lease; is possessed of full power to own and hold real and personal property and to lease and sell the same and has duly authorized the execution and delivery of the aforesaid agreements and

(b) neither the execution and delivery of this Agreement or the Ground Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Lessor is now a party or by which Lessor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessor, or upon the Site, except Permitted Encumbrances.

ARTICLE III

DEPOSIT AND USE OF MONEYS

SECTION 3.1 Payment on Closing Date. On the Closing Date, Lessor shall pay \$_____ to the City.

SECTION 3.2 Delivery Costs. The City shall pay the Delivery Costs from the amount paid to it pursuant to Section 3.1.

ARTICLE IV

AGREEMENT TO LEASE; TERMINATION OF THIS AGREEMENT; RIGHTS UPON TERMINATION; LEASE PAYMENTS

SECTION 4.1 Lease. Lessor hereby subleases the Site to the City, and the City hereby subleases the Site from Lessor for the Term, upon the terms and conditions set forth in this Agreement.

SECTION 4.2 Termination of this Agreement. The Term shall terminate upon the earliest of any of the following events:

(a) a default by the City and election of Lessor to terminate this Agreement under Article X;

(b) the payment by the City of all of the Lease Payments due during the Term or of the Prepayment Price together with all other amounts due and payable hereunder; or

(c) the failure of the City to obtain proper appropriation or approval of the full amount of funds necessary to make the Lease Payments during any fiscal period of the City subsequent to the current fiscal period of the City which shall terminate all of the right, title and interest in and obligations of the City under this Agreement and to the Site, effective on the last day of the last fiscal period for which appropriation or approval was properly obtained, and for which the City shall furnish written notification to Lessor no less than 60 days prior to the effective date of any such termination. To the extent it may legally do so, the City hereby waives any right which it now has or which may be acquired or conferred upon it by any law or order of any court or other Governmental Authority to terminate this Agreement or its obligations hereunder, except in accordance with the express provisions hereof.

SECTION 4.3 Lease Payments; Lease Payments to Be Unconditional; Discharge.

(a) The Lease Payments due on _____ 1, 20__, shall constitute payment in full by the City for the use of the Site and the improvements thereon from the date hereof to such date. Subject to the previous sentence and the provisions of Section 4.2 and Article VIII, the City shall pay to Lessor as rental for the occupancy of the Site, the Lease Payments (denominated into components of principal due on each indicated Payment Date and interest due on the total of such principal remaining unpaid or unprovided for on each indicated Payment Date computed on the basis of twelve 30 day months and a 360 day year) for the Site and the improvements thereon in the respective amounts specified in Exhibit C hereto to be due and payable on the respective Payment Dates specified in Exhibit C hereto. [In the event the City should fail to make any of the payments required in this Section within 10 days of the respective Payment Dates specified in Exhibit C, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City shall pay the same

with interest thereon, to the extent permitted by law, from the date of default to the date of payment at the rate of _____% per annum.???

(b) Subject to the provisions of Section 4.2, the obligation of the City to pay the Lease Payments and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional. Notwithstanding any dispute between the City and Lessor or any other person, the City shall pay the Lease Payments when due and shall not withhold the Lease Payments pending final resolution of such dispute nor shall the City assert any right of set-off or counterclaim against its obligation to pay the Lease Payments. The obligation of the City to pay the Lease Payments shall not be abated for any reason, including through accident or unforeseen circumstances. The City shall not suspend or discontinue payment of the Lease Payments for which an appropriation has been made and, except for a failure to appropriate, shall not terminate this Agreement for any cause, including, without limiting the foregoing, any acts or circumstances that may constitute destruction of or damage to the Site, commercial frustration of purpose or any failure of Lessor to perform and observe any agreement whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

(c) Each of the Lease Payments, except the Lease Payment due _____ 1, 20__, shall be for the use of the Site for six months.

(d) The Lease Payments coming due and payable during each such six-month period constitute the total rental for the Site and the improvements thereon for such period and will be paid by the City in each such period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Site and the improvements thereon during each such period. The total of the Lease Payments due during each such period are not in excess of the fair rental value of the Site and the improvements thereon during such periods.

(e) None of the provisions contained herein shall be deemed to represent or to constitute indebtedness or a general obligation of the City, and the full faith and credit of the City is not pledged to the payment of the Lease Payments. This Lease-Purchase Agreement, and all of the Lease Payments to be made hereunder, shall be subject to annual appropriation by the City. No part of the Lease Payments and other payments payable pursuant hereto shall be payable out of any *ad valorem* property taxes imposed by the City for its general obligation bonds. The payment of the Lease Payments from *ad valorem* property taxes (other than those imposed by the City for its general obligation bonds) shall be at the sole option of the City and shall not constitute a pledge of the general taxing power of the City; provided, further, *ad valorem* property taxes and other City moneys shall not be used for the Lease Payments unless the same shall have been duly appropriated by the City according to law.

(f) All of the Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of

the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(g) Notwithstanding any other provision hereof, the City may on any date secure the payment of all of the Lease Payments to become due and payable including by exercising the purchase option of Section 8.1 (i) by depositing under an escrow or depository trust agreement, in trust, at or before maturity, noncallable direct obligations of the United States of America which are fully sufficient to pay all of the Lease Payments when due at or before their respective Payment Dates or (ii) by depositing, in trust, under an escrow or depository trust agreement, noncallable direct obligations of the United States of America in such amount as shall be certified by a national firm of certified public accountants acceptable to Lessor and the City as being fully sufficient, together with the interest to accrue thereon, to pay and discharge all of the Lease Payments at or before their respective Payment Dates. In the event of a deposit pursuant to this subsection, all obligations of the City under this Agreement, and all security provided by this Agreement for said obligations, shall cease and terminate, excepting only the obligations of the City to make, or cause to be made, the Lease Payments and all other amounts due and payable hereunder from the deposit made by the City pursuant to this Section.

SECTION 4.4 Possession and Enjoyment. Lessor shall provide the City with quiet use and enjoyment of the Site, and the City shall peaceably and quietly have and hold and enjoy the Site, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Lessor shall, at the request and cost of the City, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent Lessor may lawfully do so. Lessor shall have the right to inspect the Site as provided in Section 7.2.

SECTION 4.5 Title to the Site; Effect of Payment or Provision Thereof.

(a) Title to the Site shall be retained by the City, subject to the Ground Lease.

(b) If the City has paid all of the Lease Payments or the Prepayment Price with respect to all of the Lease Payments or provided for such payment or prepayment pursuant to Section 4.3(h), Lessor shall deliver to the City any and all certificates, releases, bills of sale or deeds necessary to vest unencumbered title to the Site in the City and shall in such regard authorize, execute and deliver to the City a release of any and all liens created under the provisions of this Agreement and the Ground Lease. Lessor shall defend and eliminate any claims adverse to the title to the Site, and save and hold the City harmless therefrom; provided, however, that obligations of Lessor under this sentence shall not extend to claims arising out of actions by the City or persons asserting claims under it.

SECTION 4.6 Effect of Termination. Upon termination of this Agreement pursuant to Section 4.2(a) or (c) hereof and as provided in Section 10.2, the City shall transfer possession of the Site to Lessor. If the City fails to so transfer possession to the Site to Lessor as provided in this Section on or before the date of termination of this Agreement, the City shall pay to

Lessor upon demand, for the hold-over period, a portion of the total payment for the applicable period as set forth in Exhibit C hereto *prorated* from the date of termination of this Agreement to the date the City transfers such possession of the Site to Lessor.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1 Maintenance and Modification by the City. The City shall, at its own expense, maintain, preserve and keep the Site and the improvements thereon in good repair and condition and shall from time to time make all repairs and improvements necessary to keep the Site and the improvements thereon in such condition. Lessor shall have no responsibility for any of these repairs or improvements. (The City shall not permit any mechanics or other lien to be established or remain against the Site for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City; provided that if any such lien is established and the City shall first notify Lessor of the intention of the City to do so, the City may in good faith contest any lien filed or established and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide Lessor with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to Lessor. Lessor shall cooperate fully with the City in any such context, upon the request and at the expense of the City.)

SECTION 5.2 Taxes, Other Governmental Charges and Utility Charges.

(a) The City shall occupy and operate the Site for authorized governmental or proprietary functions, and for this reason, it is contemplated that taxes will not be assessed against the Site. However, in the event taxes are assessed against the Site, the City shall pay all property and excise taxes and other charges of any kind whatsoever which are at any time lawfully assessed or levied against all or any part of the Site, or which become due with respect thereto.

(b) The City shall pay all taxes, assessments, however designated, and governmental charges of any kind whatsoever that may at any time be lawfully levied or assessed against or with respect to the Lease Payments, this Agreement, the Site, or the use or the operation thereof, including but not limited to any taxes, assessments and governmental charges paid or payable by Lessor in respect to the foregoing, exclusive of franchise taxes and taxes measured by the net income of Lessor. Without limiting the generality of the foregoing, unless otherwise requested by Lessor, the City shall, on Lessor's behalf and in Lessor's name, pay all transaction privilege taxes to the proper State authorities; failing such request, the City shall pay an amount equal to such taxes to Lessor as determined to be owed by the applicable taxing authority or under guidance published by such authority.

(c) The City shall also pay when due all gas, water, sewer, steam, electricity, heat, power, telephone and other utility charges incurred in the operation, maintenance, use, occupancy and upkeep of the Site and all special assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Site; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term, as and when the same become due. The City shall not be required to pay any federal, State or local income, inheritance, estate, succession, transfer, gift, franchise, gross receipts, profit, excess profit, capital stock, corporate or other similar tax payable by Lessor, its successors or assigns, unless such tax is made in lieu of or as a substitute for any real estate or other tax upon property.

(d) The City may, at the City's expense and in the City's name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless Lessor shall notify the City that, in the opinion of an attorney duly admitted to the practice of law before the highest court of the State, who is not an employee of Lessor or the City, by nonpayment of any such items, the interest of Lessor in the Site will be materially endangered or the Site or any part thereof shall be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide Lessor with full security against any loss which may result from nonpayment, in form satisfactory to Lessor.

SECTION 5.3 Liability Insurance; Indemnification. To the extent that the City may be liable for injuries to or death of any person, or damage or loss of any property, the City shall take such measures as may be necessary to insure that any such liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition or the operation of the Site or any part thereof, is covered by a general liability policy or the blanket general liability insurance policy required to be maintained by the City hereunder. The City shall maintain general liability insurance against liabilities for injury to or death of any person or damage to or loss of property arising out of or in any way relating to the Site, or any part thereof, in amounts not less than \$1,000,000 for personal injury to or death of any one person, \$3,000,000 for all injuries and death resulting from any one accident, and \$1,000,000 for property damage in any one occurrence. The Net Proceeds of all such insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds may be paid. It is understood that this insurance covers any and all liability of the City and its officers, employees and agents.

SECTION 5.4 Other Insurance. The City shall assume the risk of loss and shall procure and maintain continuously in effect, with respect to the Site, all-risk and flood insurance, if, in the opinion of the City, such flood insurance is available at reasonable cost, subject only to the standard exclusions contained in the policy, in such amount as will be at least sufficient so that a claim may be made for the full replacement cost of any part thereof damaged or destroyed. Any policy, rider or endorsement evidencing insurance required in this paragraph shall be carried

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in the names of the City and Lessor. Such insurance may be written with deductible amounts of \$25,000.

SECTION 5.5 Requirements for All Insurance. All insurance policies required by this Article shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State; shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to both parties at least ten (10) days before the cancellation or revision becomes effective and shall name the City and Lessor as insured parties. Before the expiration of any such policy, the City shall furnish to Lessor evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, unless such insurance is no longer obtainable, in which event, the City shall notify Lessor of this fact.

SECTION 5.6 Advances. If the City shall fail to perform any of its obligations under this Article, Lessor may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at the rate of _____ percent per annum from the date of the advance to the date of repayment.

SECTION 5.7 Transfers of and Liens and Encumbrances Against the Site. The City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to, or rent, sublet (except as provided herein), pledge, loan, mortgage or attempt in any manner to dispose of, the Site, other than the respective rights of Lessor and the City as herein provided and Permitted Encumbrances. Except as expressly provided in this Article, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City shall reimburse Lessor for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.8 Loss or Damage. The City shall bear the entire risk of loss, theft, destruction, damage or disrepair of the improvements on the Site or any part thereof for any cause whatsoever. No such loss, theft, destruction, damage or disrepair to such improvements shall relieve the City of the obligation to pay the Lease Payments or from any other obligation under this Agreement. In the event of any of the foregoing, unless the City shall have elected to exercise its option pursuant to Article VIII, the City shall repair the Site, restoring it to its previous condition. There shall be applied for such purpose, or if the City exercises its option pursuant to Article VIII, as much as may be necessary of any Net Proceeds resulting from claims for such losses as well as any additional moneys of the City necessary and legally available therefor.

SECTION 5.9 Notices; Providing Budgets and Audits. (a) The City shall provide to Lessor:

- (i) prompt written notice of any Material Litigation, or any investigation, inquiry or similar proceeding by any Governmental Authority that is reasonably likely to have a Material Adverse Effect,
- (ii) with reasonable promptness, such other material information respecting the City, and the operations, affairs and financial condition of the City as Lessor may from time to time reasonably request and
- (iii) prompt written notice of any material default by the City under any material term, condition or provision of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound.

(b) The City shall provide notice to Lessor when the budget of the City for the next fiscal period of the City and the audited financial statements of the City for the preceding fiscal period of the City are available on the website of the City. The former shall be available within 30 days after the beginning of such fiscal period of the City, and the latter shall be available within 210 days of the end of such fiscal period of the City. Upon request and to the extent available, the City shall provide unaudited financial statements to Lessor for any fiscal period of the City for which audited financial statements are not yet available.

SECTION 5.10 Environmental Covenants

(a) The City will comply with all applicable Environmental Laws with respect to the Site and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Site.

(b) The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of applicable Environmental Laws with respect to the Site and any operations conducted thereon or any conditions existing thereon to Lessor, and the City will notify Lessor in writing immediately of any release, discharge, spill or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Site, or the people, structures or other property thereon, provided that no such notification shall create any liability or obligation on the part of Lessor.

(c) The City will permit Lessor, its agents, or any experts designated by Lessor to have full access to the Site during reasonable business hours for purposes of such independent investigation of compliance with all applicable Environmental Laws, provided that Lessor has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

SECTION 6.1 Damage, Destruction and Condemnation. If, prior to the termination of this Agreement (i) the improvements on the Site is destroyed (in whole or in part) or are damaged by fire or other casualty or (ii) title to or the temporary use of the Site or the interest of the City in the Site shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under Governmental Authority or sale in lieu of either, then the City shall have the rights with respect to the Net Proceeds specified in this Article, but only if the City undertakes to use such proceeds for the repair or replacement of the Site.

SECTION 6.2 Application of Net Proceeds. The Net Proceeds of any insurance or condemnation award resulting from any event described in Section 6.1 shall be applied as provided in this Section. If the City determines that the repair or replacement of the improvements on the Site is economically or practicably feasible, then all of the Net Proceeds shall be applied to the prompt repair, restoration, modification and improvement or replacement of the improvements on the Site by the City. Any remaining balance of the Net Proceeds shall be paid to the City.

SECTION 6.3 Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of the repair or replacement of the improvements on the Site in accordance with Section 6.2, subject to the allocation of other funds that are lawfully available, the City shall either: (a) complete the work or replacement and pay any cost in excess of the amount of the Net Proceeds, with the understanding that the City shall not be entitled to any reimbursement from Lessor for any such amounts expended nor any diminution of the Lease Payments due with respect to the Site or (b) exercise its purchase option in accordance with Article VIII, in which event the Net Proceeds shall be used therefor.

SECTION 6.4 Cooperation of Lessor. Lessor shall cooperate fully with the City, at the expense of the City, in filing any proof of loss with respect to any insurance policy covering the casualties described in Section 6.1 and in the defense of any prospective or pending condemnation proceeding with respect to the Site, or any part thereof and shall, to the extent it may lawfully do so, permit the City to litigate in any proceeding resulting therefrom in the name of and on behalf of Lessor. In no event shall Lessor voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim or any prospective or pending condemnation proceeding with respect to the Site or any part thereof without the written consent of the City.

ARTICLE VII

DISCLAIMER OF WARRANTIES; ACCESS

SECTION 7.1 Disclaimer of Warranties. Lessor makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Site or any part thereof or any other representation or warranty with respect to the Site. In no event shall Lessor be liable for incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or for the existence, furnishing, functioning or use by the City of the Site.

SECTION 7.2 Lessor's Access.

(a) Lessor shall have the right at all reasonable times to enter upon the Site and to examine and inspect the Site. Lessor shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site in the event of failure by the City to perform its obligations hereunder.

(b) The City shall comply with all laws, regulations and ordinances relating to, and shall provide all permits and licenses necessary for, the use or maintenance of the Site.

ARTICLE VIII

PURCHASE OPTION, EXERCISE OF OPTION AND RELEASE OF LESSOR'S INTEREST

SECTION 8.1 Purchase Option. The City shall have the option to purchase the leasehold on the Site on any date by paying the Prepayment Price, but only if it is not in default under Section 10.1(a)(i) or (ii) of this Agreement. Notwithstanding the preceding sentence, the City shall also have the option to purchase the leasehold on the Site on any date by paying the Prepayment Price, upon the occurrence of any of the following events:

(i) All or part of the Site is taken through the power of eminent domain or is sold in lieu thereof or

(ii) All or part of the improvements on the Site is damaged or destroyed.

All fees and other prepaid charges are earned fully as of the date hereof and will not be subject to refund, except as required by law. Subject to the Prepayment Fee and other conditions provided herein, the City may pay all or a portion of the amount owed hereunder before it is due. Prepayment in full shall consist of payment of the remaining unpaid principal components of the Lease Payments together with all accrued and unpaid interest and all other amounts, costs and

expenses for which the City is responsible hereunder or under any other agreement with Lessor pertaining to the Lease Payments before such amounts are due together with any Prepayment Fee. Prepayment in part shall consist of payment of any portion of the unpaid principal components of the Lease Payments before it is due together with any Prepayment Fee. Unless otherwise agreed by Lessor in writing and provided that the City is current on all amounts due, payments applied to the Lease Payments before Lessor' creation of a billing statement for the next payment due will be applied entirely to principal, and payments applied to the Lease Payments after the creation of such billing statement will be applied according to that billing statement. Unless otherwise agreed by Lessor in writing and provided that the City is current on all amounts due, payments applied to the Lease Payments before the Lessor' creation of a billing statement for the next payment due shall not relieve the City of the City's obligation to continue making, uninterrupted, Lease Payments.

SECTION 8.2 Exercise of Option. The City shall give Lessor notice of its intention to exercise its option not less than sixty (60) days in advance of the date of exercise (other than prepayments described in Section 8.1(iii) hereof) and, unless amounts for such purpose are deposited pursuant to Section 4.3(h), shall deposit with Lessor on the date of exercise an amount equal to the Prepayment Price. If the City exercises its option to purchase the leasehold in the Site pursuant to this Article, the amount to be paid by the City under this Section shall be reduced by any Net Proceeds to be applied to the amount to be so paid by the City in accordance with Section 6.2.

SECTION 8.3 Release of Lessor's Interest. Upon exercise of the option granted by this Article by the City, Lessor shall transfer and convey all of the right, title and interest of Lessor in the Site to the City by delivery of all necessary documents.

ARTICLE IX

ASSIGNMENT AND SUBLEASING; INDEMNIFICATION

SECTION 9.1 Assignment by Lessor.

(a) The rights of Lessor under this Agreement, including the right to receive and to enforce payment of the Lease Payments to be made by the City under this Agreement, may be assigned by Lessor at any time with the consent of the City.

(b) No assignment or reassignment of any of the right, title or interest of Lessor in this Agreement shall be effective unless and until the City shall have received a duplicate original counterpart of the document by which the assignment or reassignment is made, disclosing the name and address of each such assignee.

(c) The City shall keep a complete and accurate record of all such assignments in form necessary to comply with the provisions of section 149(a) of the Code.

SECTION 9.2 Assignment and Subleasing by the City.

(a) This Agreement may not be assigned by the City without the written consent of Lessor.

(b) The Site or any portion thereof may be further subleased by the City, without the consent of Lessor, subject to all of the following conditions:

(i) this Agreement and the obligation of the City to make the Lease Payments hereunder shall remain obligations of the City;

(ii) the sublessee shall assume the obligations of the City hereunder to the extent of the interest subleased and

(iii) no sublease by the City shall cause the Site to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State.

SECTION 9.3 Release and Indemnification Covenants. The City shall, to the extent permitted by applicable law, indemnify and save Lessor harmless for, from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on, the Site by the City, (ii) any breach or default on the part of the City in the performance of any of its obligations under this Agreement, (iii) any act or negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Site, (iv) any act or negligence of any assignee or sublessee of the City or of any agents, contractors, servants, employees or licensees of any assignee or sublessee or the City with respect to the Site, (v) the acquisition, construction, improvement and equipping of the Site, (vi) the clean-up of any Hazardous Substances or toxic wastes from the Site or (vii) any claim alleging violation of any applicable Environmental Laws, or the authorization of payment of the costs thereof, each to the maximum extent permitted by law. No indemnification is made under this Section or elsewhere in this Agreement for willful misconduct or gross negligence under this Agreement by Lessor, or its officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Term for any reason. The City and Lessor each agree to promptly give notice to each other and Lessor of any claim or liability hereby indemnified against following learning thereof.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 Events of Default Defined.

(a) The following shall be “events of default” under this Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Agreement, with respect to the Site, any one or more of the following events and with respect to each of which the City shall furnish written notification to Lessor:

(i) Failure by the City to pay any of the Lease Payments for which amounts have been appropriated to be paid hereunder at the time specified herein;

(ii) Failure by the City to pay any other payment required to be paid hereunder at the time specified herein and the continuation of said failure for a period of seven (7) business days after written notice given by Lessor that the payment referred to in such notice has not been received;

(iii) Failure by the City to observe and to perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clauses (i) and (ii) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by Lessor; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected and

(iv) The filing by the City of a voluntary petition in bankruptcy or failure by the City to promptly lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the federal bankruptcy statutes (11 U.S.C. §§101-1532), as amended, or under any similar acts which may hereafter be enacted.

During the Term, the City shall provide to Lessor immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an event of default under this Lease-Purchase Agreement, together with a detailed statement by a City representative of the steps being taken by the City to cure the effect of such event of default.

(b) With regard to this Section and to Section 10.2 hereof, if by reason of *force majeure* the City is unable, in whole or in part, to carry out its obligations under this Agreement with respect to the Site, other than its obligation to pay the Lease Payments, the City shall not be deemed in default during the continuance of such inability. The City shall, however, remedy, to the extent that it is legally able and with all reasonable dispatch, the cause or causes preventing the City from carrying out its agreement; provided that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the City, and the City shall not be required to make

settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the City, unfavorable to the City.

SECTION 10.2 Remedies on Default and Non-Appropriation. Upon the occurrence and continuance of any event of default specified in Section 10.1 or in the event this Agreement is terminated pursuant to Section 4.2(c), Lessor may proceed to, at its option:

(a) Terminate this Agreement and re-lease all or any portion of the Site, subject to the Ground Lease. If Lessor terminates this Lease-Purchase Agreement (and notwithstanding any re-entry upon the Site by Lessor in any manner whatsoever or the re-leasing of the Site), the City shall pay to Lessor all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of the Lease Payments, including, if as a result of any event of default specified in Section 10.1, any deficiency arising out of the re-leasing of the Site, or, if Lessor is unable to re-lease the Site, then for the full amount of all Lease Payments due under this Agreement. Any surplus received by Lessor from such re-leasing shall be applied by Lessor to the Lease Payments due under this Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to terminate this Agreement, and no termination of this Agreement shall be or become effective by operation of law, or otherwise, unless and until Lessor shall have given written notice to the City of the election on the part of Lessor to terminate this Agreement. No surrender of the Site or of the remainder of the Term hereof or any termination of this Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by Lessor by such written notice.

(b) Take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as the lessor of the Site.

If Lessor does not elect to terminate this Agreement in the manner provided for in subparagraph (a) above, the City shall remain liable for the full amount of all of the Lease Payments to the end of the Term only at the same time and in the same manner as hereinabove provided for the payment of the Lease Payments hereunder, notwithstanding such entry or re-entry by Lessor or any suit in unlawful detainer, or otherwise, brought by Lessor for the purpose of effecting such re-entry or obtaining possession of the Site or the exercise of any other remedy by Lessor. The City hereby irrevocably appoints Lessor as the agent and attorney-in-fact of the City to enter upon and re-lease the Site upon the occurrence and continuation of an event of default and to remove all personal property whatsoever situated upon the Site, to place such property in storage or other suitable place in Maricopa County, Arizona, for the account of and at the expense of the City, and the City shall, to the extent permitted by applicable law, save Lessor harmless for, from and against any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Site and the removal and storage by Lessor or its duly authorized agents in accordance with the provisions herein contained. The terms of this Agreement constitute full and sufficient notice of the right of Lessor to re-lease the Site in the event of such re-entry without effecting a surrender of this Agreement, and no acts of Lessor in effecting such re-

leasing shall constitute a surrender or termination of this Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise.

SECTION 10.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient in order to entitle Lessor to exercise any remedy reserved to it by this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

SECTION 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party should bring suit and employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party shall, on demand therefor and to the extent permitted by applicable law, pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party in the litigation of such suit.

SECTION 10.5 No Additional Waiver Implied By One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI

ADMINISTRATIVE PROVISIONS

SECTION 11.1 Notices.

(a) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid:

If to the City:

City of Avondale, Arizona
11465 West Civic Center Drive
Avondale, Arizona 85323
Attention: Finance & Budget Director

If to Lessor:

Attention: _____

(b) Lessor and the City, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

SECTION 11.2 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, Lessor and the City and their respective successors or assigns.

SECTION 11.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

SECTION 11.4 Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified with the written consent of the City and Lessor.

SECTION 11.5 Further Assurances and Correction Instruments. Lessor and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Site or intended so to be or for carrying out the expressed intention of this Agreement.

SECTION 11.6 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 11.8 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Agreement.

SECTION 11.9 Net-net-net Lease. This Agreement is a “net-net-net lease,” and the Lease Payments are an absolute net return to Lessor, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 11.10 Certain State Law Requirements.

(a) To the extent applicable by provision of law, this Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, the provisions of which are incorporated herein and which provides that the City may within three (3)

years after its execution cancel any contract (including this Agreement) without penalty or further obligation made by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time. Lessor covenants not to employ as an employee, an agent or, with respect to the subject matter of this Agreement, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City within three years from the execution of this Agreement, unless a waiver of Section 38-511, Arizona Revised Statutes, is provided by the City. No basis exists for the City to cancel this Agreement pursuant to Section 38-511, Arizona Revised Statutes, as of the date hereof.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, Lessor shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes. The breach by Lessor of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of Lessor by the City. The City retains the legal right to randomly inspect the applicable employment papers and records of Lessor to ensure that Lessor is complying with the above-mentioned warranty. Lessor shall keep such applicable employment papers and records open for random inspection during normal business hours by the City. Lessor shall cooperate with the random inspections by the City including granting the City entry rights onto its property to perform such random inspections and waiving its respective rights to keep such applicable employment papers and records confidential.

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer; and the City has caused this Agreement to be executed and attested in its name by its duly authorized officers, as of the day and year first above written.

“LESSOR”

_____,
a(n) _____

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 2013, by _____, as _____ of _____, a(n) _____, on behalf of the _____.

Notary Public in and for the State of _____

(affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"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 _____, 2013,
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)

EXHIBIT A

DESCRIPTION OF THE SITE

EXHIBIT B

DELIVERY COSTS

| | |
|--------------------------------|-----------|
| Placement Agent Fees | \$ |
| Town Counsel fees and expenses | |
| Greenberg Traurig, LLP | |
| Gust Rosenfeld P.L.C. | |
| Purchaser's Counsel | |
| Total | <u>\$</u> |

EXHIBIT C

SCHEDULE OF THE LEASE PAYMENTS

| <u>Payment Date</u> | <u>Principal</u> | <u>Interest</u> | <u>Semiannual Payment</u> | <u>Fiscal Total</u> |
|-------------------------|------------------|-----------------|-------------------------------|-------------------------|
| | \$ | \$ | \$ | \$ |

| | | | |
|----|----|----|----|
| \$ | \$ | \$ | \$ |
|----|----|----|----|

EXHIBIT C
TO
RESOLUTION NO. 3153-1113

(Form of Placement Agent Agreement)

See following pages.

PLACEMENT AGENT AGREEMENT

_____, 2013

MAYOR AND COUNCIL
CITY OF AVONDALE, ARIZONA

Re: City of Avondale, Arizona Lease-Purchase Agreement, dated as of
_____ 1, 2013

Upon the terms and conditions and based upon the representations, warranties and covenants set forth herein, Stifel, Nicolaus & Company, Incorporated (the "Placement Agent") offers to enter into this Placement Agent Agreement (this "Placement Contract") with the City of Avondale, Arizona (the "City"), which, upon acceptance of this offer and subject to Paragraph 5 hereof, shall be binding upon the City and the Placement Agent. This offer is made subject to acceptance of this Placement Contract by the City before or on _____, 2013, and, if not so accepted, will be subject to withdrawal by the Placement Agent upon notice delivered to your office at any time prior to acceptance hereof. If the obligations of the Placement Agent shall be terminated for any reason permitted hereby, neither the Placement Agent nor the City shall be under further obligation hereunder.

The above-captioned obligation (the "Obligation") is to be entered into pursuant to a Resolution of the Mayor and Council of the City adopted on November 18, 2013 (the "Resolution").

1. The Placement Agent shall use its best efforts to locate an entity to act as ground lessee/lessor for the Obligation (the "Purchaser") at a purchase price to be paid thereby determined as provided in the Resolution (the "Purchase Price") and on terms consistent with the Resolution. If the Purchaser purchases the Obligation on the hereinafter defined Closing Date, the City will pay a placement fee equal to \$_____ (the "Fee") to the Placement Agent.

2. The undersigned, on behalf of the City, but not individually, hereby represents and warrants to the Placement Agent (and it shall be a condition of the obligation of

the Placement Agent to perform under this Placement Contract that it shall be represented and warranted on the Closing Date) that:

(a) The City is duly organized and validly existing under the laws of the State of Arizona (the "State") with power to adopt the Resolution, perform the agreements on its part contained therein and in the agreements approved thereby and cause the execution and delivery of the Obligation.

(b) The City has complied and, in all respects on the Closing Date will be in compliance, with all of the provisions of applicable law of the State.

(c) The City has duly adopted the Resolution, and the City has duly authorized and approved the execution and delivery of this Placement Contract and the Obligation and the Ground Lease (as such term is defined in the Resolution and, with this Placement Contract, collectively, the "Documents"), as well as the performance of its obligations contained in the Obligation and the consummation by it of all other transactions contemplated hereby.

(d) The City is not in breach of or default under any applicable law or administrative regulation of the State or any department, division, agency or instrumentality thereof, or of the United States, or any applicable judgment or decree or any loan agreement, note, resolution, certificate, agreement or other instrument to which the City is a party or is otherwise subject, which breach or default would materially and adversely affect the City or its ability to perform its duties and obligations under the Documents, and the execution and delivery of the Documents, the adoption of the Resolution and the execution and delivery of the Obligation and compliance with the provisions of each will not conflict materially with or constitute a material breach of or default under any applicable law or administrative regulation of the State or under any certificate, agreement or other instrument to which the City is a party or is otherwise subject, which breach or default would materially and adversely affect the City or its ability to perform its duties and obligations under the Documents.

(e) No litigation is pending or overtly threatened in any court in any way affecting the existence of the City or the title of the members of the Council of the City to their respective offices or seeking to restrain or to enjoin the sale, execution or delivery of the Obligation, or the collection or pledge of any revenues pledged or to be pledged under the Documents to pay the principal of and interest on the Obligation, or in any way contesting or affecting the validity or enforceability of the Obligation, the Resolution or the Documents, or contesting the powers of the City or the members of the Council with respect to the Obligation.

3. (a) At or prior to 11 a.m. M.S.T. on November __, 2013, or such other date agreed to by the City and the Placement Agent ("the Closing Date"), the Obligation will be delivered together with the other documents hereinabove mentioned, upon payment of the Purchase Price by wire transfer, in immediately available funds, to the Treasurer. Delivery as aforesaid shall be made at a time and place, as shall have been mutually agreed upon by authorized representatives of the Placement Agent and the City,

and such payment shall be made simultaneously therewith. This payment and delivery is herein called the “Closing.”

(b) On the Closing Date, the Placement Agent shall receive a copy of each of the following documents, each dated the Closing Date:

(i) a certified copy of the Resolution and executed versions of the Documents;

(ii) an opinion of Special Counsel, Greenberg Traurig, LLP (“Special Counsel”) in form and substance satisfactory to the Placement Agent;

(iii) a certificate, signed by an authorized officer of the City, to the effect that (i) the representations, warranties and covenants of the City contained herein are true and correct in all material respects on and as of the Closing Date, with the same effect as if made on the Closing Date; (ii) no litigation is pending or, to the knowledge of such officer, threatened in any court in any way affecting the existence of the City or the titles of its officers or directors to their respective positions, or seeking to restrain or to enjoin the sale, execution or delivery of the Obligation, or the collection of any revenues or assets of the City pledged or to be pledged to pay the principal of and interest on the Obligation, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Obligation, the Resolution or the Documents, or contesting the powers of the City or its authority with respect to the Obligation, the Resolution or the Documents (but in lieu of or in conjunction with such certificate, the Placement Agent may, in the sole discretion of an authorized representative thereof, accept certificates or opinions of counsel to the City, acceptable to such representative, that in the opinion of such counsel the issues raised in any pending or threatened litigation are without substance or that the contentions of all plaintiffs therein are without merit) and (iii) the City has complied in all material respects with the Resolution and the terms of the Obligation and the Documents and satisfied all material conditions on its part to be performed or satisfied at or prior to the delivery of the Obligation and

(iv) such additional certificates, instruments or opinions as Special Counsel, the City or the Placement Agent may deem necessary or desirable.

All certificates, instruments, opinions and documents referred to above and any resolutions shall be in form and substance satisfactory to authorized representatives of Special Counsel, the City and the Placement Agent.

4. The obligation of the Placement Agent to use its best efforts to place the Obligation shall be subject to the performance by the City of the obligations thereof provided hereby in all material respects at or prior to the Closing, and the accuracy in all material respects of the representations and warranties of the City contained herein and shall also be subject to the following conditions:

(a) The Documents shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the Placement Agent;

(b) The City shall have arranged for payment of the Fee at the time of the Closing and

(c) All of the other obligations of the City required under or specified in this Placement Contract and the Resolution to be performed at or prior to the Closing shall have been performed in all material respects.

5. This Placement Contract may be terminated by the Placement Agent by notification in writing to you at your office if at any time subsequent to the date hereof and at or prior to the Closing: (i) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission shall be issued or made to the effect that the offering, sale and execution and delivery of the Obligation without registration thereof or obligations of the general character of the Obligation is in violation of any provision of the Securities Act of 1933 or of the Trust Indenture Act of 1939; (ii) in the Congress of the United States, legislation shall be enacted or a bill shall be favorably reported out of committee of either house, or a decision by a court of the United States shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that securities of the City or of any similar body are not exempt from the registration, qualification or other requirements of the Securities Act of 1933 or the Trust Indenture Act of 1939; (iii) the United States shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency; (iv) there shall have occurred a general suspension of trading on the New York Stock Exchange; (v) a general banking moratorium shall have been declared by the United States, State of New York, or the State authorities; (vi) there shall have occurred since the date of this Placement Contract any materially adverse change in the affairs or financial condition of the City or (vii) the purchase of and payment for the Obligation on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission.

6. There shall be paid solely from the proceeds of the sale of the Obligation, upon or promptly after the Closing: (a) the fees and disbursements of Special Counsel and of any other counsel or consultants retained by the City and (b) the Fee. The Placement Agent shall be under no obligation to pay any expenses incident to this Placement Contract.

7. The agreements and all representations and warranties herein set forth have been and are made for the benefit of the Placement Agent and the City, and no other person shall acquire or have any right under or by virtue of this Placement Contract.

8. This Placement Contract shall become effective upon the execution of the acceptance hereof by an authorized officer of the City and shall be valid and enforceable as of the time of such acceptance. This Placement Contract may be executed in several counterparts, each of which shall be regarded as an original (with the same effect as if the signatures thereto

and hereto were upon the same document) and all of which shall constitute one and the same document.

9. This Placement Contract shall be governed by and construed in accordance with the law of the State. As required by the provisions of Section 38-511, Arizona Revised Statutes, as amended, notice is hereby given that the State, its political subdivisions (including the City) or any department or agency of either may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the Governor or the chief executive officer or governing body of the political subdivision is received by all other parties to the contract unless the notice specifies a later time. The State, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract. This Section is not intended to expand or enlarge the rights of the City hereunder except as required by such Section. Each of the parties hereto hereby certifies that it is not presently aware of any violation of such Section which would adversely affect the enforceability of this Placement Contract and covenants that it shall take no action which would result in a violation of such Section.

10. If any provision of this Placement Contract shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Placement Contract invalid, inoperative or unenforceable to any extent whatever.

Respectfully submitted,

STIFEL, NICOLAUS & COMPANY, INCORPORATED

B. Mark Reader, Managing Director

ACCEPTED this _____ day of _____, 2013.

CITY OF AVONDALE,
an Arizona municipal corporation

Charles P. McClendon, City Manager

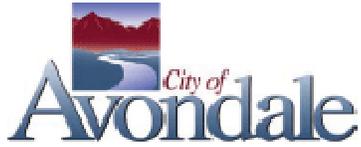
ATTEST:

Carmen Martinez, City Clerk

CERTIFICATION

I hereby certify that the foregoing Resolution No. 3153-1113 was duly passed and adopted by the Mayor and the Council of the City of Avondale, Arizona, at a regular meeting held on the 18th day of November, 2013, and the vote was ____ ayes and ____ nays and that the Mayor and ____ Councilmembers were present thereat.

Carmen Martinez, City Clerk



CITY COUNCIL REPORT

SUBJECT:
EXECUTIVE SESSION

MEETING DATE:
November 18, 2013

TO: Mayor and Council
FROM: Carmen Martinez
THROUGH: Charlie McClendon, City Manager

ATTACHMENTS:

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No Attachments Available