

**WORK SESSION**  
**June 1, 2015**  
**6:00 PM**

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**CALL TO ORDER BY MAYOR**

**1 ROLL CALL BY THE CITY CLERK**

**2. POLICING TOGETHER CAMPAIGN: LOCK, HIDE, KEEP CRIME PREVENTION**

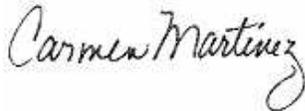
Council will receive information regarding the Avondale Police Department's new "Lock, Hide, Keep" crime prevention campaign, a program created to empower the community to not become victims of crime and reduce property crime. This item is for information and discussion only.

**3. AGRITOURISM PRESENTATION BY MILLENNIUM HIGH SCHOOL AGRICULTURAL ISSUES TEAM**

Students from Millennium High School's Agricultural Issues Team will do a special presentation on Agritourism to the City Council, to raise awareness of this topic and gather community feedback.

**4 ADJOURNMENT**

Respectfully submitted,



Carmen Martinez  
City Clerk

Council Members of the City of Avondale will attend either in person or by telephone conference call.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica.

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 oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles 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 estos aparezcan en estos videos o grabaciones de audio. Los padres puedan ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. 1-602.A.9.

## **DISCUSSION:**

In order to promote and educate the community on crime prevention, the department needs to approach the process as a partnership. When the police department includes the community in their daily crime prevention efforts, it creates a sense of pride and ownership in the community. To establish a sense of ownership, we have developed a crime prevention campaign of "Policing Together." This slogan will be attached to flyers, hash tagged in social media and added to news bulletins. It will be used as a method to empower and share ownership in the prevention of crimes to overall reduce the property crime rate.

To begin this campaign process, we will focus on reducing property crimes, a specific area where the community has expressed a concern via the survey conducted at the GAIN / RAN Event. To begin our education portion, we will use a catch phrase that will remind residents, business owners and visitors to secure all valuables. The phrase will be:

"Lock, Hide, Keep"

The message is simple:

- **Lock It:** Lock your vehicle every time you leave it unattended and always lock your valuables in the trunk. When you leave your residence, ensure your garage door is closed and all windows and doors are secured.
- **Hide It:** If you don't have a trunk, hide valuables under the seats, in the glove box, or other compartments within the vehicle. Secure jewelry, money and / or other valuables in a safe or other secured area of your residence.
- **Keep It:** Personal responsibility is the best prevention to safeguard personal property and to prevent becoming a victim.

## **BUDGET IMPACT:**

Existing funds will be used for the initial purchases of marketing items such as information cards, window decals, and metal signs. The initial quotes for such items is about \$3,745.95.

## **RECOMMENDATION:**

The Policing Together campaign does not require Council to take any action. This presentation is made to inform Council of a crime prevention opportunity that we are initiating in response to a recent citizen survey and Council direction. This item is for information, discussion and possible direction only.



## CITY COUNCIL AGENDA

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**SUBJECT:**

Policing Together Campaign: Lock, Hide, Keep  
Crime Prevention

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council**FROM:** Dale Nannenga, Chief of Police and Lt. Varney Lopez**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Council will hear a presentation on the Police Department's new "Lock, Hide, Keep" Crime Prevention Campaign targeting property crimes within the City of Avondale. This item is for information, discussion and possible direction purposes only.

**BACKGROUND:**

The Avondale Police Department has recorded criminal statistics and trends by using the CompStat philosophy method on a weekly basis. Officers and above can review the trends broken down by beats within the City of Avondale. The crime trends can change on a week to week basis, or establish a pattern throughout the year/s.

A trend that has been consistent on a yearly basis is "Non-Forced" burglaries. These burglaries are defined as the unsecured vehicle and unsecured residential burglaries. Citizens of Avondale continue to be victims by leaving their vehicles unsecured with valuable items within and/or leaving their residences alone for periods of time, with unsecured doors and items in view.

The last three calendar years have seen a consistent percentage of 39% of non-forced burglaries. This means victims do not lock their doors (vehicle/residential) and/or leave items in plain view to be victimized. This creates the crime of opportunity which in return keeps burglary statistics and property crime high in the City of Avondale.

With proper education through the public media, community events and various marketing avenues, citizens will understand the concept of securing their vehicles/homes and not leaving any valuable items in plain view. If successful, non-forced burglaries can decrease with time.

In response to the statistical analysis discussed above, responses in our recent citizen survey and council direction, the Police Department created a crime prevention program targeting property crimes within the City of Avondale. Establishing great communication and empowering the community to not be victims, accomplishes the model of community policing and a strategic plan to reduce property crime. The end goal is to provide education and continue partnerships with all citizens of Avondale on crime prevention measures that can deter them from becoming victims and decrease the overall non-forced burglaries.



## CITY COUNCIL AGENDA

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**SUBJECT:**

Agritourism Presentation by Millennium High School Agricultural Issues Team

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council

**FROM:** Pier Simeri, Director - Community Relations and Public Affairs

**THROUGH:** David Fitzhugh, City Manager

**PURPOSE:**

The Millennium High School Agricultural Issues Team, as part of a competition, is required to provide an informal skit and presentation. The goal of their presentation is to provide awareness of their topic, Agritourism, to community members and gather feedback.

**BACKGROUND:**

The MHS Agricultural Issues Team will be discussing Agritourism, which is a commercial enterprise at a working farm, ranch or agricultural plant conducted for the enjoyment of visitors that generates supplemental income for the owner. The team will discuss the various types of agritourism and provide examples.

**DISCUSSION:**

There are several reasons why agricultural businesses may choose to branch out into agritourism including diversification, promoting economic development, educating the public and increasing profit margins. As with any business venture, there exists both pros and cons thus it is important for these factors to be weighed carefully when deciding whether to diversify into agritourism. The team will discuss the pros and cons and also provide examples of businesses that are good examples of how to make agritourism successful.

**BUDGET IMPACT:**

No budgetary impact.

**RECOMMENDATION:**

The Millennium High School Agricultural Issues team is seeking feedback from council regarding agritourism.



# CITY COUNCIL AGENDA

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

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## REGULAR MEETING

June 1, 2015

7:00 PM

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### CALL TO ORDER BY MAYOR 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. **RE-APPOINTMENT OF JUDGES PRO TEMPORE**

City Council will consider a request to re-appoint six existing pro tempore judges to two-year terms expiring on June 1, 2017 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. Council will take the appropriate action.

##### b. **PROFESSIONAL SERVICE AGREEMENT - 3M COMPANY**

City Council will consider a request to approve a Professional Service Agreement with 3M for the servicing and licensing of City of Avondale Libraries self-check systems in an amount not to exceed \$51,099 and authorize the Mayor or the City Manager and City Clerk to execute the necessary documents. Council will take appropriate action.

##### c. **CONSTRUCTION CONTRACT AWARD - J BANICKI CONSTRUCTION INC - WATERLINE ADDITIONS**

City Council will consider a request to award a construction contract to J Banicki Construction Inc to construct various waterline improvements in the amount of \$311,450 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. Council will take appropriate action.

##### d. **PROFESSIONAL SERVICES AGREEMENT - LEGAL SERVICES - ENGELMAN BERGER, P.C.**

City Council will consider a request to approve a contract for legal services with Engelman Berger, P.C. for joint legal representation in proceedings related to the Gila River General Stream Adjudication and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. Council will take appropriate action.

**e. RESOLUTION 3256-615 - DEVELOPMENT IMPACT FEE INCENTIVE PROGRAM**

City Council will consider a request to adopt Resolution 3256-615 approving a Development Impact Fee Incentive Program in the amount of \$2.0M for FY2015-16. Council will take appropriate action.

**f. RESOLUTION 3257-615 - SECOND AMENDMENT - INTERGOVERNMENTAL AGREEMENT - MARICOPA COUNTY HUMAN SERVICES - COMMUNITY ACTION PROGRAM**

City Council will consider a request to adopt a resolution approving the second amendment to an IGA with the Maricopa County Human Services Department for a grant in the amount of \$112,495 for the provision of Community Action Program Services during the fiscal year 2015-2016, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. Council will take appropriate action.

**4 DISCUSSION ITEMS**

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

**a. GARDEN PATCH LEASE AGREEMENT**

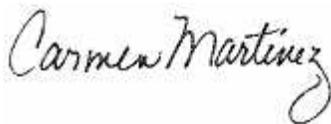
Vice Mayor Karlin would like to discuss the lease agreement with the Garden Patch, an Arizona non-profit corporation regarding the use of city-owned land located at the northeast corner of the civic center campus.

**5 EXECUTIVE SESSION**

The Council may hold an executive session pursuant to Ariz. Rev. Stat. § 38-431.03 (A)(4) for discussion or consultation with the City's Attorney in order to consider its position and instruct the City's Attorney regarding a proposed settlement agreement with HMC-CH, LLC.

**6 ADJOURNMENT**

Respectfully submitted,



Carmen Martinez  
City Clerk

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su consentimiento antes de que el Estado o cualquier otra entidad politica 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 estos aparezcan en estos videos o grabaciones de audio. Los padres puedan ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los ninos no sten presentes durante la grabacion de la junta. Si hay algun menor de edad presente durante la grabacion, la Ciudad dara por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. 1-602.A.9.



## CITY COUNCIL AGENDA

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**SUBJECT:**

Re-appointment of Judges pro tempore

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council

**FROM:** Abril Ruiz-Ortega, Court Administrator

**THROUGH:** David Fitzhugh, City Manager

**PURPOSE:**

Staff is requesting that the City Council re-appoint the existing judges pro tempore to two year terms expiring on June 1, 2017.

**BACKGROUND:**

Avondale City Code section 5-1 (f) gives the City Council the authority to appoint judges pro tempore. During its May 20, 2013 meeting, the City Council appointed pro tem judges to serve two year terms to fill in during the absence of the City Judge. The City Attorney advises that the term for pro-tem judges be not less than two years. Their terms expire June 1, 2015.

**DISCUSSION:**

Judge Jennings is recommending the Council re-appoint the following to an additional two-year term through June 1, 2017:

Hon. William Molner  
Hon. Craig Ring  
Hon. Joanne Landfair  
Hon. Sherri Tolar Rollison  
Hon. Tamika Nercella Cheatham  
Hon. E. Evans Farnsworth

The judges named above have been admitted to the practice of law for at least five years as required by Avondale City Code, Section 5-1 (f); have extensive judicial experience in the courts of limited jurisdiction and have completed the application, interview and selection process conducted with the help of the Avondale Human Resources department.

The panel of qualified judges authorized to serve in Avondale fill in for the absent City Judge when all sitting judges are summoned on an annual basis to judicial conferences and mandatory training. Pro tem judges also fill in during the City Judge's scheduled vacation leave and sick leave.

**BUDGET IMPACT:**

Judges pro tempore are compensated at an hourly rate of \$55.00 per hour. This rate is competitive with other West Valley courts. Funding for the pro tem judges is provided in the Court's budget line item 101-6200-00-6180 Other Professional Services.

**RECOMMENDATION:**

It is recommended that the City Council re-appoint the existing pro tempore judges listed above to two-year terms expiring on June 1, 2017.



## CITY COUNCIL AGENDA

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**SUBJECT:**

Professional Service Agreement - 3M Company

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council

**FROM:** Ava Gutwein, Acting Parks, Recreation and Libraries Director 623-333-2641

**THROUGH:** David Fitzhugh, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve the professional service agreement with 3M for the servicing and licensing of City of Avondale Libraries self-check systems in an amount not to exceed \$51,099.00 and authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

**BACKGROUND:**

On November 6, 2006 the City of Avondale entered into an agreement with 3M to purchase self-check machines and the related software and hardware applicable to the operation of the machines. In addition to purchasing the self-check machines, the City entered into a service and licensing agreement with 3M for the repair and maintenance of the self-check systems. Self-check machines are installed and operated at both the Avondale Civic Center Library and the Sam Garcia Western Avenue Library.

The 3m system service and licensing agreement was awarded through the Maricopa County Library District contract NIGP 20625. 3M does not offer multiple year contracts or automatic contract renewals. Therefore, all contracts and agreements with 3M must be renewed annually.

**DISCUSSION:**

The 3M self-check technology provides library patrons with the capability to check out and return library materials at multiple self-checkout kiosks. The capability increases patron privacy and convenience and increases staff efficiency. The current contract expires on June 30, 2015.

The term of the contract will be for one year in an amount not to exceed \$51,099.

**BUDGET IMPACT:**

All funds for 3M services are included in the FY 2015-2016 City of Avondale/PRLD/Libraries budget line item 101-8110-00-6310 - Library Administration.

**RECOMMENDATION:**

Staff recommends that the City Council approve the professional service agreement with 3M for the servicing and licensing of the City of Avondale Libraries self-check systems in an amount not to exceed \$51,099.00 and authorize the Mayor or City Manager and City Clerk to execute the applicable contract documents.

**ATTACHMENTS:**

Description

[PSA - 3M Company](#)

**ADDENDUM  
TO  
SERVICES AGREEMENT  
BETWEEN  
3M COMPANY  
AND  
THE CITY OF AVONDALE**

This ADDENDUM (“Addendum”) modifies the Services Agreement No. US46026 (the “Services Agreement”), executed contemporaneously with this Addendum and entered into between 3M Company, a Delaware corporation (“3M”), and the City of Avondale, an Arizona municipal corporation (the “Customer”). All of the capitalized terms not otherwise defined in this Addendum have the same respective meanings as contained in the Services Agreement. The following sections modify sections of the Services Agreement and add additional sections to the Services Agreement. The sections of the Services Agreement that are not expressly modified or replaced by this Addendum shall remain in effect pursuant to their terms. Collectively, the Services Agreement and this Addendum are referred to herein as the “Agreement.”

**1. The Software paragraph of the Terms and Conditions Section of the Services Agreement is hereby modified by adding language to read as:**

**Software Indemnification.** To the fullest extent permitted by law, 3M shall indemnify, defend and hold harmless the Customer and each council member, officer, employee or agent thereof (the Customer 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 an infringement or alleged infringement of any patent, copyright, trademark, trade name, or any other intellectual property right in conjunction with the design, manufacture or use of the licensed 3M Software or any associated software modifications, patches, enhancements, upgrades or improvements.

**2. The Entire Agreement paragraph in the Terms and Conditions section of the Services Agreement is hereby deleted in its entirety and replaced with a new Entire Agreement paragraph to read as follows:**

**Entire Agreement.** This Addendum, together with the Services Agreement, sets forth the entire agreement between the parties, and no representation, promise or condition not contained herein shall modify these terms whether made prior to or subsequent to the execution of this Addendum and the Services Agreement.

**3. A new paragraph, Termination for Convenience, is added to the Terms and Conditions section of the Services Agreement to read as follows:**

**Termination for Convenience.** This Agreement may be terminated with or without cause by either party upon 30 days' written notice to the other party. In the event of such termination, 3M shall refund to the Customer a pro rata portion of the annual fee paid by the Customer to 3M reflecting the remaining contract term terminated hereby.

**4. A new paragraph, Applicable Law, is added to the Terms and Conditions section of the Services Agreement to read as follows:**

**Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Arizona, and any suit pertaining to the Agreement may be brought only in courts located in Maricopa County, Arizona.

**5. A new paragraph, Conflict of Interest, is added to the Terms and Conditions section of the Services Agreement to read as follows:**

**Conflict of Interest.** This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Customer may, within three years after its execution, cancel this Agreement, without penalty or further obligation, made by the Customer 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 Customer or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of any other party to the Services Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

**6. A new paragraph, E-verify, is added to the Terms and Conditions section of the Services Agreement to read as follows:**

**E-verify.** To the extent applicable under ARIZ. REV. STAT. § 41-4401, 3M and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). 3M's or its subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Customer. The Customer retains the legal right to randomly inspect the papers and records of 3M and its subcontractors who work on this Agreement to ensure that 3M and its subcontractors are complying with the above-mentioned warranty.

**7. A new paragraph, Subject to Appropriation, is added to the Terms and Conditions section of the Services Agreement to read as follows:**

**Subject to Appropriation.** The Customer is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Customer's then current fiscal year. The Customer's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative

discretion of the Customer concerning budgeted purposes and appropriation of funds. Should the Customer elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Customer shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Customer has no obligation or duty of good faith to budget or appropriate the payment of the Customer's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The Customer shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Customer shall keep 3M informed as to the availability of funds for this Agreement. The obligation of the Customer to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Customer. 3M hereby waives any and all rights to bring any claim against the Customer from or relating in any way to the Customer's termination of this Agreement pursuant to this section.

**8. A new paragraph, Conflicting Terms, is added to the Terms and Conditions section of the Services Agreement to read as follows:**

**Conflicting Terms.** In the event of any inconsistency, conflict or ambiguity between this Addendum and the Services Agreement, the documents shall govern in the order listed in this Section.

**9. A new paragraph, Counterparts, is added to the Terms and Conditions section of the Services Agreement to read as follows:**

**Counterparts.** The Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date of the last signature below.

“3M”

3M COMPANY, a Delaware corporation

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

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

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

Date: \_\_\_\_\_

(ACKNOWLEDGMENT)

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2015, before me personally appeared \_\_\_\_\_  
\_\_\_\_\_, the \_\_\_\_\_ of 3M COMPANY, a Delaware corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

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

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

**“Customer”**

CITY OF AVONDALE,  
an Arizona municipal corporation

\_\_\_\_\_  
David W. Fitzhugh, City Manager

ATTEST:

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

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On \_\_\_\_\_, 2015, before me personally appeared David W. Fitzhugh, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the City of Avondale.

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

(Affix notary seal here)

3M Library Systems  
3M Center  
PO Box 33900  
St. Paul, MN 55133-3900  
800-328-0067



## SERVICE AGREEMENT EXPIRATION NOTICE

April 27, 2015

Service Agreement: US46026

**Service Agreement Expiration Date: June 30, 2015**

3M Account # : QDS3097

AVONDALE CIVIC CENTER LIBRARY

Attn: **AVA GUTWEIN**

11350 W CIVIC CTR

AVONDALE, AZ 85323

Dear AVA,

I'm writing to you today to remind you that in 90 days your 3M Service Agreement will expire. You will need to renew your Service Agreement to continue coverage on your 3M™ Library Systems equipment.

In today's world there is no smarter investment than a 3M Service Agreement. It provides peace of mind knowing that your 3M Library Systems equipment will be functioning when you need it most to provide the services your customers have come to rely upon.

### **Complete equipment coverage**

3M Library Systems advanced solutions help enhance the productivity of your library staff through industry leading technology. Even though great care goes into every product we build, it's impossible to manufacture a system that is 100% reliable for as long as you own it. That's why there is no smarter investment than a 3M Service Agreement.

Our Service Agreement covers labor, parts and equipment modifications necessary to keep your equipment operating at peak performance.

In short, we take care of practically everything.

### **Rapid response to your service needs**

You can request service via our 800 number 24 hours a day, 7 days a week. While many issues can be quickly resolved over-the-phone, should you require on-site service, we offer a nationwide network of trained professionals ready to return your 3M system to full operation.

3M Library Systems  
3M Center  
PO Box 33900  
St. Paul, MN 55133-3900  
800-328-0067

**Help eliminate expensive surprises**

Your 3M Service Agreement helps you continue to receive the value provided by your 3M Library Systems purchase, and no one knows how to maintain your 3M equipment better than 3M service professionals. Should you choose not to renew your 3M Service Agreement, will you be ready for the unexpected?

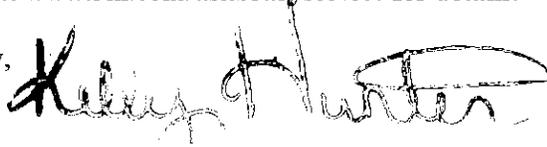
Time and materials charge labor rates are \$250 per hour plus a callout charge of \$325 to \$425 depending on your service zone. You will also be responsible for the cost of any necessary replacement parts. You can see that just a single call could more than cover the cost of a whole year's Service Agreement coverage. Is it really worth it to take a chance?

**Renewing is easy**

Give yourself the peace of mind that renewing your 3M Service Agreement provides today. Just fax or mail a renewal purchase order to the number or address indicated below. You can also use your Visa or MasterCard (just call the number below for information on doing this). Your renewal price is guaranteed for a limited time, so please take a moment and renew today!

**Did you know you can now place a service call or renew your service contract on line?  
Visit us at [www.3m.com/uslibraryservice](http://www.3m.com/uslibraryservice) for details.**

Sincerely,



Service Sales Representative  
Telephone: 800-328-0067, Opt 1, Opt 2  
Fax: 888-263-1916

Return to: 3M Library Systems Contracts  
Attn: Contract Administrator  
PO Box 33900  
St Paul, MN 55133-3900

**P.S. If someone else is responsible for responding to this notice, please forward this letter to them! Thank You!**



3M Library Systems  
3M Center  
PO Box 33900  
St. Paul, MN 55133-3900  
800-328-0067

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**TOTAL**      \$51,099.00  
Please Add Applicable Tax: \$  
*Payment Terms are "Net 30"*

Notes:

3M Library Systems  
3M Center  
PO Box 33900  
St. Paul, MN 55133-3900  
800-328-0067

Please indicate your intentions below:

**Yes**, I wish to renew the Service Agreement: US46026 (Please attach your Purchase Order and return it to the address listed below.)

**Please indicate billing frequency preference:**

Annual  Semi-annual  Quarterly  Monthly  
( \$100.00 Fee ) ( \$200.00 Fee ) ( \$600.00 Fee )

**Purchase Order Number:** \_\_\_\_\_ (Please provide if you require a purchase order on your invoice.)

Indicate here if you wish to pay by check. (Please DO NOT enclose a check. You will be invoiced at a later date.)

**No**, I do not wish to renew the Service Agreement.

Reason for Cancellation: \_\_\_\_\_  
\_\_\_\_\_

I am interested in purchasing additional library equipment. Please have my Sales Representative contact me.

**Please enter below the name of the person authorizing the renewal or cancellation of the Service Agreement.**

\_\_\_\_\_  
Name (Please Print) Telephone Number Fax Number Date

\_\_\_\_\_  
Email Address

Service Sales Representative  
Telephone: 800-328-0067, Opt 1, Opt 2  
Fax: 888-263-1916

Return to: 3M Library Systems Contracts  
Attn: Contract Administrator  
PO Box 33900  
St. Paul, MN 55133-3900

**\*\*\*THIS IS NOT AN INVOICE\*\*\***

# Terms and Conditions

## WHAT WE WILL DO:

**Hardware:** In consideration of payment of the agreement price, 3M will furnish labor and replacement parts necessary to maintain the Equipment specified in this agreement in proper operating condition during the term of this agreement, provided that the Equipment is installed by an authorized 3M Service Provider and used as directed. This Service Agreement covers Equipment failure during normal usage. 3M agrees to provide:

- On-site remedial maintenance during On-Site Coverage Hours When 3M is notified that the Equipment is not in good working order. 3M will provide a toll-free telephone number for Customer to place, and 3M will receive, Equipment maintenance service calls twenty-four (24) hours per day, seven (7) days per Week.
- All labor, service parts and Equipment modifications 3M deems necessary to maintain the Equipment in good working order. All service parts will be furnished on an exchange basis and will be new parts or parts of equal quality. For certain Equipment, 3M reserves the right to replace the entire unit with new equipment or equipment of equal quality when 3M determines that replacement is more economical than on-site repair. All Equipment and service parts removed for replacement become the property of 3M.

**Software:** In consideration of payment of the agreement price, 3M will furnish over-the-phone software support and remote troubleshooting of the 3M Software specified in this agreement as well as updates necessary to maintain the 3M Software specified in this agreement in proper operating condition during the term of this agreement, provided that the 3M Software is installed and used as directed. 3M agrees to provide:

- All software configuration modifications 3M deems necessary to maintain the 3M Software in good working order
- 3M Software updates
- Internet Filter list updates (as applicable)
- A toll-free telephone number for Customer to place and 3M to receive software support calls. Over-the-phone software support calls may be placed twenty-four (24) hours per day, seven (7) days per week. Calls will be addressed during 3M Software Support Coverage Hours in the order they were received.

**WHAT IS NOT COVERED:** The basic maintenance fee does not include and 3M is not obligated to provide or perform repair of damage or increase in service time caused by (i) failure of Customer to provide continually a proper operating environment and supply of power as prescribed by the Equipment manufacturer; (ii) accident; (iii) Acts of God, including but not limited to fire, flood, water, wind and lightning; (iv) neglect, abuse or misuse; (v) failure of Customer to follow 3M's published operating instructions; (vi) modification, service or repair of the Equipment by other than 3M authorized personnel; (vii) use of Equipment for purposes other than for which designed; (viii) painting or refinishing the equipment; (ix) relocation of the equipment; (x) replacement of broken or damaged cabinetry, to include items such as lattices, base covers, book check covers, etc.; (xi) electrical work external to the Equipment; (xii) cosmetic restoration (e.g., filling of holes in floor or walls, plugging or wire run openings, removal of tape residue, etc.) after removal or relocation of equipment for any reason; (xiii) restoration of Equipment performance when it has been degraded by placement of unauthorized interference sources within the affected range of said equipment; (xiv) service requests related to use of markers (strips) other than those manufactured by 3M or its authorized distributor(s), (xv) modification, or repair of the 3M Software by other than 3M authorized personnel; (xvi) use of the 3M Software for purposes other than for which designed; (xvii) virus / hacker activity; (xviii) Non-3M Software related updates and upgrades including, but not limited to, Operation System, Anti-Virus, Intrusion Detection. (xix) labor or materials associated with consumables such as receipt printer paper, separator jaws, patron counter batteries, and similar items.

**RENEWAL:** This agreement is NOT automatically renewable. If a renewal agreement is offered by 3M, the agreement price quoted will reflect the age of the product and the service costs at the time of renewal.

**ENTIRE AGREEMENT:** This instrument sets forth the entire agreement between the parties, and no representation, promise or condition not contained herein shall modify these terms whether made prior to or subsequent to the execution of this agreement.

Library Systems  
3M Center, Building 225-4N-14  
St. Paul, MN 55144-1000  
1-800-328-0067  
[www.3M.com/library](http://www.3M.com/library)

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## CITY COUNCIL AGENDA

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**SUBJECT:**

Construction Contract Award - J Banicki  
Construction Inc - Waterline Additions

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council**FROM:** Cindy Blackmore, Public Works Director, 623-333-4410**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is requesting that the City Council approve a request to award a construction contract to J Banicki Construction Inc to construct various waterline improvements in the amount of \$311,450 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

**BACKGROUND:**

As part of the City's efforts to move City infrastructure off of private property, this project will move City meters to the public right-of-way to be accessible to City staff. In addition, to prevent potential contamination of the City's potable water supply the users are required to purchase and install backflow prevention devices. The affected users have already purchased the backflow prevention devices as prescribed by the City's Cross Connection Coordinator. In order to coordinate the construction of the two components, the Construction Contract will include the installation of the meters and the backflow prevention devices. See attached vicinity map. These facilities include:

- Newport Apartments. This facility is just south of Van Buren on Dysart Rd. This project will construct a new meter vault in an easement recently accepted by City Council, add a system backflow preventer, then reconnect the new system to the apartment complex.
- Legacy Apartments. This facility is just south of Van Buren St, and extends between Central Avenue and La Jolla St. This project will construct two new meter vaults and backflow preventers on either end of the complex. An easement was recently approved by City Council for the vault off of Central Avenue.
- Bowling Alley properties. These properties are south of Van Buren St east of Central Avenue. This project will move meters from inside of the properties to City rights-of-way, add backflow preventers, and reconnect the new meters to the existing service lines inside of the properties. Currently the system has a single feed for the fire system. This project will provide dual feeds for the system, which will make the fire system safer and provide additional water for fire purposes.

Two additional waterline replacements and extensions will be completed with this project that are needed for completion of the Maricopa County Department of Transportation project to expand and improve the Avondale Blvd & MC-85 intersection. This work will include extending a waterline north of the railroad tracks, and replacement of a section of waterline just south of the tracks to better protect the line during construction of the railroad improvements.

## **DISCUSSION:**

Invitation-for-Bid notices were published in the West Valley View on April 14, 2015 and April 21, 2015 and in the Arizona Business Gazette on April 16, 2015. A mandatory pre-bid meeting was held on April 22, 2015. Three (3) responsive bids were received and opened on July 30, 2014. Each bid package was reviewed. The bids ranged from approximately \$311,450 to \$388,775. Firms submitting bids and the amount of their bids are as follows:

J Banc Construction Inc	\$311,450
Redpoint	\$317,000
RK Sanders	\$388,775

The attached Bid Tabulation Sheet has the detailed bid item breakdown of each submitted bid. J Banicki Construction Inc with a bid of \$311,450 was determined to have submitted the lowest responsive bid. Staff contacted references provided and J Banicki Construction Inc did receive positive recommendations. J Banicki Construction Inc has completed similar work. Staff contacted the Registrar of Contractors and found no claims on file against this contractor. Staff determined that J Banicki Construction Inc is competent and qualified for this project. A tentative construction schedule is as follows:

City Council Approval	6/1/15
Notice of Award	6/2/15
Notice to Proceed	6/29/15
Completion	9/2015

## **BUDGET IMPACT:**

Funding for this project will come from Line Item 514-1343-00-8520 in the amount of \$311,450.

## **RECOMMENDATION:**

Staff recommends that the City Council approve a construction contract with J Banicki Construction Inc to construct various waterline improvements in the amount of \$311,450 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

## **ATTACHMENTS:**

### **Description**

[Construction Contract Award - J. Banicki Construction Inc. - Water Additions](#)

CONSTRUCTION CONTRACT AWARD

J. BANICKI CONSTRUCTION, INC.

WATERLINE ADDITIONS

Invitation for Bid

Bid Tab

Vicinity Map

DUE TO ITS SIZE, THIS DOCUMENT

HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/36258>



## CITY COUNCIL AGENDA

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**SUBJECT:**

Professional Services Agreement - Legal  
Services - Engelman Berger, P.C.

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council**FROM:** Cindy Blackmore, Public Works Director, 6923-333-4410**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Council will consider a request to approve a contract for legal services with Engelman Berger, P.C. for joint legal representation in proceedings related to the Gila River General Stream Adjudication and authorize the Mayor or City Manager and City Clerk to execute the applicable contract documents.

**BACKGROUND:**

The law firm of Engelman Berger, P.C. currently represents the City of Avondale in water issues, among those is the Gila River General Stream Adjudication. The existing Contract for Legal Services specifies financial accommodations and contains a Scope of Services for the firm of Engelman Berger, P.C. to serve as joint outside counsel for the Cities of Avondale, Chandler, Glendale, Mesa and Scottsdale and expires on June 30, 2015.

Engelman Berger, P.C. has organized and attended meetings between the five participating cities and others, prepares appropriate documentation, attends hearings, and performs other related activities. Services performed under this Contract are consistent with the Intergovernmental Agreement (IGA) among the participating cities.

**DISCUSSION:**

Although a considerable amount of work has been completed, there is still more to be done. The new contract allows for an hourly rate of \$350.00 for Lead Attorney and an increase to the hourly rate of \$15.00 each year on the anniversary date. Counsel will bill for the reasonable expenses incurred in performing its legal services. These expenses will include long-distance telephone charges, fax charges, electronic research charges, delivery charges, mail expense associated with any filing fees, transcripts, travel expenses, including, without limitation, meals and lodging, for settlement negotiations and meetings outside of the Phoenix Metropolitan Area.

The new contract is effective on July 1, 2015 and shall expire on June 30, 2016 with the provision that it may be renewed for one additional one year period upon the approval of the City Attorney.

**BUDGET IMPACT:**

The total annual cost to the City of Avondale for all attorneys' fees rendered under this Contract, including all expenses of any description of services rendered, shall not exceed \$25,500.00 and a total aggregate amount not to exceed \$51,000.00. Funding is available in the Water Resource operating budget and is typically paid from account number 501-9112-00-6060 (Attorney Fees).

**RECOMMENDATION:**

Staff recommends that the City Council approve a Contract for Legal Services with Engelman Berger, P.C. for an amount not to exceed \$25,500.00 per year and a total aggregate amount not to exceed \$51,000.00 and authorize Mayor or City Manager and City Clerk to execute the applicable contract documents.

**ATTACHMENTS:****Description**

[PSA - Legal Services Agreement - Engelman Berger](#)

## CONTRACT FOR LEGAL SERVICES

This CONTRACT FOR LEGAL SERVICES (the "Contract") is entered into and is effective as of July 1, 2015, by and between the CITY OF AVONDALE, an Arizona municipal corporation (the "City"), and the law firm of ENGELMAN BERGER, P.C. ("Counsel").

### RECITALS

- A. The Cities of Avondale, Chandler, Glendale, Mesa, and Scottsdale, pursuant to an Intergovernmental Agreement Relating To Joint Legal Representation In The Gila River General Stream Adjudication effective August 1, 2006 (the "IGA"), have entered into that certain Contract for Legal Services with Counsel, effective August 1, 2006 (the "Contract for Legal Services").
- B. The current renewal of the Contract for Legal Services expires on June 30, 2015 and is extended by this Contract effective July 1, 2015. Each City, respectively, and Counsel now wish to extend the term by which such legal services are provided by entering into this form of Contract.

### AGREEMENT

**NOW THEREFORE**, in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Counsel hereby agree as follows:

- 1. **Scope of Services.** Counsel agrees to represent City in the action known as The Gila River General Stream Adjudication and related matters and litigation (the "Adjudication") in accordance with the terms of this Contract and direction provided by the City to serve as its chief legal counsel in the Adjudication.
  - 1.1 Counsel agrees to perform legal services specified in this Contract and as identified in any litigation plan adopted by the cities who are parties to the IGA. The City Attorney for the City ("City Attorney") agrees to collectively direct and manage Counsel's activities with other city attorneys employed or retained by the cities who are parties to the IGA (each, an "IGA City", or collectively, the "IGA Cities"). City Attorney will further ensure that Counsel's activities are under and in accordance with the terms of this Contract; provided, that Counsel shall not be required to perform additional legal services under this Contract if the combined amount of legal services and costs has reached the maximum limit as provided in paragraph 3 of this Contract.
  - 1.2 Counsel agrees to represent City in any hearings relating to interlocutory issues identified by the Arizona Supreme Court as the subject of interlocutory appeals in the Adjudication ("interlocutory issues"). This representation shall include preparation of any and all briefs or other

pleadings, presentation of an expert witness, cross-examination of other witnesses, and oral argument as specified by City.

- 1.3 Counsel agrees to represent City regarding issues which are appealed to the Arizona Supreme Court or the United States Supreme Court from the Little Colorado River Adjudication and the Gila River Adjudication. This representation shall include activities as directed by the City Attorney.
- 1.4 Counsel agrees to review City's status as to the Statements of Claimant, and as to the Adjudication, in order to determine issues of common concern with other IGA Cities, e.g., prior decrees, abandonment and forfeitures, federally reserved rights to groundwater, appurtenancy, agency, and other parties' water rights, for the purpose of development of issues the City Attorney will direct Counsel to address in the Adjudication.
- 1.5 Counsel agrees to review relevant portions of the Adjudication records, such as prior pleadings, court orders, transcripts and steering committee reports, which are relevant for the purpose of development of issues the City Attorney will direct Counsel to address in the Adjudication.
- 1.6 Counsel may assist City on any matters before the trial court and special master in the Little Colorado River Adjudication and Gila River Adjudication.
- 1.7 Counsel may assist City on any matters before any court addressing the issue of the application of the public trust doctrine on Arizona streams including, but not limited to, Center for Biological Diversity v. Smith, (Maricopa County Superior Court Case No. CV 2002-000171).
- 1.8 Counsel agrees to assist City in developing a position on normal flow accounting issues and on severance, transfer, abandonment, and forfeiture issues. It is understood that these tasks will be undertaken in addition to work on the interlocutory issues pursuant to direction given by City.
- 1.9 During the term of this Contract, Counsel agrees to prepare any and all notices of appearance, statements of position and briefs, and to present oral argument which may be scheduled by the Arizona Supreme Court or the United States Supreme Court as to the interlocutory issues.
- 1.10 Should Counsel, City Attorney and all other city attorneys employed or retained by IGA Cities determine that technical consultants are required to assist Counsel in his performance of this Contract, such technical consultants may be employed only with the express consent of City Attorney, under such terms and conditions as the City Attorney may specify.
- 1.11 Subject to the activities contemplated in paragraph 11 of this Contract, Counsel shall meet with appropriate representatives of City as necessary to

discuss and evaluate the water interests of City and to discuss and evaluate the status of City's water claims in this Adjudication.

- 1.12** City shall provide Counsel a summary of its claim filed in the Adjudication, a description of its water supply and demand, the amount of each component of its water supply (i.e., Kent Decree rights, CAP rights, groundwater pumping, effluent use, etc.), projections of future water supply and demand for City, and other information necessary to assist Counsel in its representation of City in the Adjudication.
- 1.13** When reasonably feasible, at least 10 calendar days prior to their due date, Counsel shall furnish City with draft copies of all motions or briefs to be filed on behalf of City that may be dispositive of a particular issue. If Counsel is unable to meet this 10 day deadline, Counsel shall promptly endeavor to make other arrangements satisfactory to City to address the strategy and major positions in the motion or brief to be filed on behalf of City.
- 1.14** The Counsel will perform services describe in subparagraphs 1.6, 1.7, and 1.10 only upon the direction of the unanimous consensus of city attorneys who are employed or retained by the IGA Cities.
- 2.** **Term of Contract.** Unless terminated as provided below, the term of this Contract shall expire on June 30, 2016; provided, this Contract may be renewed for one (1) additional one (1) year period upon the approval of the City Attorney.
- 3.** **Authorized Expenditures for Legal Services and Expenses.** City agrees to pay Counsel for services rendered hereunder according to the hourly rates and expenses set forth in Exhibit A, with City paying 21.25% of the total cost for all attorneys' fees rendered under this Contract and 20% of the total cost for all expert fees. The total annual cost to City for all attorneys' fees rendered under this Contract, including all expenses of any description for services rendered, shall not exceed \$25,500.00, and except as set forth below, City shall not be liable under this Contract for any amount in excess of \$25,500.00 per year, for services rendered under this Contract. The case budget for legal services and expenses will not include the costs of experts authorized pursuant to paragraph 6.

  - 3.1.** The hourly rates for Counsel will include word processing services, clerical overtime and all other overhead expenses of Counsel which will not be billed to City; provided, that the expenses identified in Exhibit A will be separately itemized and billed to City.
  - 3.2.** Only one attorney for Counsel may bill for performing the same major task, such as attending the same deposition, meeting, or hearing, unless Counsel has received the prior approval of the City Attorney; provided, that, without the prior approval of City Attorney, more than one attorney may bill for and assist in work related to research and preparation of pleadings and other documents prepared by Counsel. City and other IGA

Cities will appoint a contract manager, who may be the City Attorney and authorize such person to perform duties specified in this Contract.

4. **Payment for Service Billing Format.** Counsel shall prepare and distribute to City a monthly billing for services rendered under this Contract.
  - 4.1 The monthly billing shall consist of one aggregate billing of all services furnished to City and other IGA Cities under this Contract, with expert services that are authorized pursuant to paragraph 6 identified separately from the other furnished services.
  - 4.2 Counsel shall indicate clearly on each bill the allocated portion to be paid separately by City.
  - 4.3 Counsel agrees to assess expert fees equally amongst all IGA Cities. The amount of expert fees for City shall not exceed \$4,000.
  - 4.4 Within thirty (30) days of receipt of each monthly bill, City shall remit to Counsel its allocated portion of the aggregate monthly billing.
5. **Lead Attorney.** William H. Anger shall serve as Lead Attorney to City. Counsel shall not substitute another Lead Attorney to City and other IGA Cities without the prior written consent of City and other IGA Cities.
6. **Subcontracting/ Assignment; Experts.** Services covered by this Contract shall not be assigned or subcontracted, in whole or in part, without the prior written notice and consent of the City Attorney. Technical experts shall not be retained by Counsel at the expense of City without the prior written consent of the City Attorney. This Contract specifically contemplates that experts may be hired during the Contract term upon the unanimous written consent of all City Attorneys employed or retained by other IGA Cities for purposes related to whether federal reserved rights exist for state trust lands, the resolution of Tribal or Indian Community claims, and any other issues in the Adjudication as needed. The total cost to City for such expert services shall not exceed \$4,000.00.
7. **Insurance.** Counsel shall secure and maintain during the life of this Contract a Certificate of Insurance evidencing that Counsel carries Errors and Omission Professional Liability with limits no less than \$1,000,000. Insurance evidenced by this certificate shall not expire, be canceled, or be materially changed without 15 days prior written notice to City.
8. **Independent Contractor.** The services provided by Counsel under this Contract are those of an independent contractor, not an employee.
9. **Termination Under A.R.S. § 38-511.** In accordance with A.R.S. § 38-511, City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City's departments or creating the Contract on behalf of

City's departments or agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee or any other party of the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of this Contract. The cancellation shall be effective when written notice from City is received by all other parties to the Contract, unless the notice specifies a later time.

10. **Common Interests and Conflicts of Interest.** City acknowledges that Counsel is jointly representing City and other IGA Cities on matters stated in paragraph 1 of this Contract. To achieve economies of scale and to maximize the effectiveness of City in the Adjudication, City authorizes Counsel to seek strategies and positions in the Adjudication that advance the common interests of all IGA Cities. However, City also recognize that from time to time issues may arise in the Adjudication concerning which City and other IGA Cities may have diverse, incompatible or conflicting interests.

10.1 Counsel will fully and timely inform and explain to City the factual and legal basis for each conflict of interest among IGA Cities which Counsel perceives as a result of the performance of its duties under this Contract respecting issues raised in Adjudication; and

10.2 City will disclose to Counsel perceived or known conflicts of interest among the IGA Cities respecting issues raised in the Adjudication.

10.3 In the event the IGA Cities, with Counsel's assistance, are unable to resolve a conflict of interest among them, such conflicts shall be dealt with in accordance with the Supreme Court's Rules of Professional Conduct; provided, however, this Contract shall be construed to confer upon City and upon Counsel a direct obligation to negotiate in good faith in an attempt to resolve such concerns in order to allow Counsel to continue to represent the remaining IGA Cities in situations where the rules would require Counsel to cease representing City.

10.4 For convenience or cause other than a conflict of interest among the IGA Cities, City may withdraw from future obligations under this Contract upon written notice to Counsel. In such case, City will promptly pay Counsel for its proportional share of all legal services and expenses incurred up to the date of withdrawal. Upon request of City, Counsel shall provide City, within 30 days after receiving the written withdrawal notice from City, a copy of Counsel's files provided that City has paid Counsel for the photocopy charges incurred in copying said file. In the event City's withdrawal raises issues regarding use by Counsel for the other IGA Cities of confidential or privileged information, such conflict will be dealt with in accordance with the Supreme Court's Rules of Professional Conduct; provided, City will negotiate in good faith with Counsel and the other IGA Cities in order to allow Counsel to continue to represent the other IGA Cities in situations where such Rules would require Counsel to cease representing one or more IGA Cities.

- 10.5 Counsel will notify City if one of the IGA Cities has withdrawn from the joint representation contemplated in paragraph 10.
- 10.6 Given the large number of diverse and interested parties in the Adjudication, Counsel shall generally have the right to continue to represent or to undertake to represent existing or new clients in any matter consistent with the Supreme Court's Rules of Professional Conduct.
11. **Separate Representation.** This Contract does not prohibit IGA City or Cities from retaining the Counsel to perform legal services related to the Adjudication that are different in kind to those services performed under this Contract as long as: (i) Counsel is retained by a separate contract; (ii) the IGA City or Cities are billed separately for the services; and (iii) the services are not in furtherance of an issue in which the separately contracting IGA City or Cities have directly conflicting interests with City.
12. **Immigration Law Compliance.**
- 12.1 Counsel, on its own behalf and on behalf of any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 12.2 Any breach of warranty under subparagraph 12.1 above is considered a material breach of this Contract and is subject to penalties up to and including termination of this Contract.
- 12.3 City retains the legal right to inspect the papers of Counsel or a subcontractor employee who performs work under this Contract to ensure that Counsel or any subcontractor is compliant with the warranty under subparagraph 12.1 above.
- 12.4 City may conduct random inspections, and, upon request of City, Counsel will provide copies of papers and records of Counsel demonstrating continued compliance with the warranty under subparagraph 12.1 above. Counsel agrees to keep papers and records available for inspection by City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this paragraph.
- 12.5 Counsel agrees to incorporate into any subcontracts under this Contract the same obligations imposed upon Counsel and expressly accrue those obligations directly to the benefit of City. Counsel also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Contract the same obligations above and expressly accrue those obligations to the benefit of City.

- 12.6 Counsel's warranty and obligations under this section to City are continuing throughout the term of this Contract or until such time as City determines, in its sole discretion, that Arizona law has been modified and that compliance with this paragraph is no longer a requirement.
- 12.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

**ENGELMAN BERGER, P.C.**

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

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

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

\_\_\_\_\_  
David W. Fitzhugh, City Manager

ATTEST:

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

## **EXHIBIT A**

During the term of the Contract, Counsel will bill the Cities at the hourly rate of \$350.00 for the time of William H. Anger and other shareholders in the firm; Counsel's hourly rate may increase by \$15.00 per hour each year on the anniversary of the Effective Date. All other attorneys in the firm or attorneys contracted by the firm to perform services under this Contract will be billed at the rate not to exceed \$280.00 per hour which rate may be increased by \$15.00 per hour on the anniversary of the Effective Date. Paralegals will be billed at the rate of \$180.00 per hour, which rate may be increased by \$10.00 per hour on the anniversary of the Effective Date.

Counsel will bill for the reasonable expenses incurred in performing its legal services. These expenses will include long-distance telephone charges, fax charges, electronic research charges, delivery charges, mail expense associated with any filing in the case, printing and copying, and payments to third parties for filing fees, transcripts, travel expenses, including, without limitation, meals and lodging, for settlement negotiations and meetings outside of the Phoenix metropolitan area, and other items for the Cities' benefit under this Contract.



## CITY COUNCIL AGENDA

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**SUBJECT:**

Resolution 3256-615 - Development Impact Fee  
Incentive Program

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council**FROM:** Kevin Artz, Assistant City Manager**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff recommends the City Council adopt Resolution 3256-615 approving a Development Impact Fee Incentive Program in the amount of \$2.0M for FY2015-16. Council will take appropriate action.

**BACKGROUND:**

On May 19, 2014, Council approved resolution 3189-514, which adopted the City's 2014 development fees. The development fees, which are based upon the City's land use assumptions and infrastructure improvement plan, were adopted at the maximum justifiable fee, in the amount of \$17,707 (single family residential with a ¾ inch water meter).

On May 4, 2015, Staff presented options to Council to reduce the burden of development impact fees, in an effort to spur residential and commercial growth. Council directed staff to bring forward a resolution that would create a \$2.0M DIF Incentive Program and appropriate funds in the City's FY 2015-16 budget. The tentative budget adopted on May 18, 2015 includes the \$2.0M incentive program.

**DISCUSSION:**

The proposed Resolution creates a Development Impact Fee Incentive Program in the amount of \$2.0M. Any property for which a building permit is issued after June 1, 2015, is eligible to receive a 20% discount on the development fee amount otherwise due. The discount is available on a first come basis. The 20% discount does not apply to property eligible for a discount under the City's previously adopted Infill Incentive Program.

The Resolution also directs the City Manager and Finance Director to include funding for the \$2.0M DIF Incentive Program in the City Manager's Recommended Budget for the next three fiscal years. The City Council will make the final determination if the DIF Incentive Program is included in the City's adopted budget for each fiscal year.

Staff has received numerous correspondence from the development community in support of the DIF Incentive Program and applauding the City for being proactive and creative. Preliminary feedback from the development community indicates that the Program has created significant discussion and that Avondale is well positioned to see new residential and commercial growth.

Two residents spoke in opposition to the Program when the options were presented to Council on May 4, 2015, and one followed up with an email directly to City Council outlining the reasons she opposed the item.

**BUDGET IMPACT:**

The City's tentatively adopted FY 2015-16 budget includes the DIF Incentive Program in the amount of \$2.0M. It is anticipated that the Incentive Program will generate new development activity, that will in turn generate new revenue from construction sales tax and building permits that will fund the DIF Incentive Program.

The DIF Incentive program will be evaluated each year during the City's annual budget process.

**RECOMMENDATION:**

Staff recommends Council adopt a Resolution approving a Development Impact Fee Incentive Program in the amount of \$2.0M for FY 2015-16.

**ATTACHMENTS:**

**Description**

[Resolution 3256-615 - Development Impact Fee](#)

[DIF Program supporting correspondence](#)

**RESOLUTION NO. 3256-615**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A DEVELOPMENT IMPACT FEE INCENTIVE PROGRAM FOR THE CITY.

**WHEREAS**, a change in State Law required all Arizona municipalities, including the City of Avondale (the “City”), to adopt new development impact fees (“DIF”) under the new statutory scheme prior to August 1, 2014; and

**WHEREAS**, the City conducted the necessary fee study and adopted its required changes by Ordinance 3189-514 on May 19, 2014, resulting in an increase in its DIF from \$16,298 (single family residence, assuming a 3/4” water meter) to \$17,707; and

**WHEREAS**, the recessionary period in the latter part of the 2000s severely impacted the Arizona homebuilding industry, which resulted in a sharp drop in the number of net residential building permits in Avondale; and

**WHEREAS**, as the recessionary period came to a close, homebuilding showed signs of a modest rebound, with net residential building permits rising considerably from the recessionary low points; and

**WHEREAS**, while net residential building permits have increased in recent years, Avondale has lagged behind other neighboring communities in terms of the overall rate of increase; and

**WHEREAS**, the City’s current growth rate (i) stifles capital investment in the City’s infrastructure due to insufficient increases in the amounts of property tax, transaction privilege taxes from new construction and transaction privilege taxes from retail sales that would be otherwise generated from new residents in Avondale, and (ii) places the City at risk for a reduction in State-shared revenues if the City’s population grows at a slower rate than other Arizona communities; and

**WHEREAS**, the development community has consistently stated that the City’s DIF are a significant factor when considering whether to build new homes in Avondale; and

**WHEREAS**, market experts have indicated Avondale would experience additional growth in residential development if its DIF were more competitive with neighboring communities. Such additional residential growth is also expected to generate additional

commercial growth; and

**WHEREAS**, at the January 10, 2015, Council of the City of Avondale (the “City Council”) visioning retreat, City staff was directed to present to the City Council options to help spur new development; and

**WHEREAS**, at the May 4, 2015, City Council meeting, staff presented options for consideration, including an incentive program that would create a City-funded component of the current DIF program in an amount sufficient to effectively lower City DIF by 20%, from \$17,707 to \$14,166 (single family residence, assuming a 3/4” water meter); and

**WHEREAS**, City staff estimates that an additional \$3,500 to \$4,000 in revenue would be generated per new home from building permits and transaction privilege taxes charged on new construction; and

**WHEREAS**, the City Council is empowered by ARIZ. REV. STAT. § 9-500.11 to expend funds for the purpose of economic development.

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

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

SECTION 2. The City Council finds and determines it is in the City’s best interest to create an incentive for new development to increase City tax revenues and to ensure the City’s population grows in relative proportion to its neighbors.

SECTION 3. The City Council finds and determines that consideration of a multi-year allocation of City revenues to provide a 20% DIF incentive is in the City’s best interests and is a proper expenditure under ARIZ. REV. STAT. § 9-500.11.

SECTION 4. The Avondale DIF Incentive Program (the “Program”) is hereby created, as follows:

1. Any property for which a building permit is issued after June 1, 2015, is eligible to receive a 20% discount on the DIF amounts otherwise due, subject to available funding and the following:
  - a. The discount will be made available on a first-come basis according to the date a complete application for building permit is received for each property and all other applicable fees are paid in full. Requests for the 20% discount shall be denied if the Program funds for that fiscal year have been completely expended for Program activities; provided, however, an applicant denied a discount due solely to a lack of available funding may re-apply in the following fiscal year.

- b. The maximum funding available to the Program in each fiscal year shall be the amount set forth in the City's annual budget, unless otherwise modified by the City Council.
- 2. The 20% discount shall not apply to property already eligible for reduced DIF under the City's adopted Infill Incentive Program.

SECTION 5. The City Manager and the City Finance and Budget Director are hereby authorized and directed to (i) include for City Council consideration an expenditure of \$2,000,000 in the City Manager's recommended budgets for FY 2015-16, 2016-17, and 2017-18 to be used to fund the City's contribution to the Program, (ii) provide the City Council with an annual analysis of the Program impact for the prior fiscal year and a forecast for the upcoming fiscal year and (iii) ensure that any amounts allocated pursuant to the Program are transferred from the City's General Fund to the appropriate development impact fee fund.

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

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 1, 2015.

\_\_\_\_\_  
Kenneth N. Weise, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew J. McGuire, City Attorney

## Kevin Artz

---

**From:** David Fitzhugh  
**Sent:** Friday, May 01, 2015 11:25 AM  
**To:** Kevin Artz; Gina Montes; Andrew McGuire; Tracy Stevens  
**Subject:** Fwd: Avondale - Development Fee Reduction Consideration  
**Attachments:** david\_info[1][25].png

Sent from my iPhone

Begin forwarded message:

**From:** David Scholl <[david@vintagevp.com](mailto:david@vintagevp.com)>  
**Date:** May 1, 2015 at 11:03:20 AM MST  
**To:** "[dfitzhugh@avondale.org](mailto:dfitzhugh@avondale.org)" <[dfitzhugh@avondale.org](mailto:dfitzhugh@avondale.org)>  
**Subject:** Avondale - Development Fee Reduction Consideration

David,

Carolyn Oberholtzer, told me about the above referenced issue that the City Council is considering. I went to the online agenda to read your and Kevin's report, and was impressed by how concise and compelling it was. I am further impressed at the entrepreneurial creativity that you and the Council exhibited in even considering such idea. Very refreshing!!

I believe that such a reduction in impact fees would be a great help to commercial developers as we continue to chug our way out of the Great Recession. As you know, "retail follows rooftops." Until we see a sustained strengthening in our housing industry, we retail developers are somewhat handicapped.

Please pass my appreciation along to your staff and Council. No matter how this decision turns out, we are thankful for the commitment to study it and the consideration.

Thanks,

David



*Soli Deo Gloria*

## Kevin Artz

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**From:** David Fitzhugh  
**Sent:** Friday, May 01, 2015 11:26 AM  
**To:** Kenneth Weise; Stephanie Karlin; Jim McDonald; Bryan Kilgore; David Iwanski; Lorenzo Sierra; Sandi Nielson  
**Cc:** Kevin Artz; Gina Montes; Andrew McGuire; Tracy Stevens  
**Subject:** Fwd: Item #6 on the 5/4/15 City Council Meeting Agenda - Letter of Support

Sent from my iPhone

Begin forwarded message:

**From:** Steve La Terra <[Steve@paradigm-peh.com](mailto:Steve@paradigm-peh.com)>  
**Date:** April 30, 2015 at 5:46:46 PM MST  
**To:** Dave Fitzhugh <[dfitzhugh@avondale.org](mailto:dfitzhugh@avondale.org)>  
**Cc:** Bill Southworth <[Bill@paradigm-peh.com](mailto:Bill@paradigm-peh.com)>  
**Subject:** Item #6 on the 5/4/15 City Council Meeting Agenda - Letter of Support

Dave,

I am writing to express my support for Item #6 (Options to Reduce Development Impact Fees to Help Spur Development) on the May 4, 2015 City Council Meeting Agenda.

We have owned 47 finished lots within the Roosevelt Park Master Plan since 2013. Our business involves selling land to homebuilders and we have received consistent feedback from the homebuilding community that current impact fee level in Avondale is too high and not competitive with neighboring municipalities. Without some form of reduction, Avondale will remain at a competitive disadvantage and builders will choose to build in Goodyear and Phoenix, where impact fees are much less. If a reduction is possible, I am quite certain that homebuilding activity will begin again in Avondale.

Thank you for your consideration,

Steven La Terra  
Managing Director/Principal  
Paradigm Private Equity Holdings, LLC  
Mobile (480) 225-0580  
[www.paradigm-peh.com](http://www.paradigm-peh.com)

## Kevin Artz

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**From:** David Fitzhugh  
**Sent:** Monday, May 04, 2015 10:52 AM  
**To:** City Council  
**Cc:** Kevin Artz; Gina Montes; Andrew McGuire  
**Subject:** FW: Item 6, May 4, 2015, Avondale City Council Meeting

Mayor and Council: for your information. dave

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**From:** Cheryl Lombard [<mailto:clombard@valleypartnership.org>]  
**Sent:** Monday, May 04, 2015 10:33 AM  
**To:** David Fitzhugh  
**Subject:** Item 6, May 4, 2015, Avondale City Council Meeting

Dear Mr. Fitzhugh:

Thank you for your continued commitment to responsible development and with your recommendation to the Avondale City Council to create an "economic incentive fund" to assist with the development fees applicable to new Avondale projects. Valley Partnership supports this effort.

For more than 25 years, Valley Partnership has represented and promoted the interests of the commercial real estate industry and its municipal partners to present a balanced, pro-development perspective, but always from a responsible development perspective. Last year, we provided comments to the City as it adopted its development fee update and were concerned that the fee maximum supportable fees, if approved, would have a negative impact on development in Avondale. We are encouraged by the City's response to those comments in the manner proposed for the Council's consideration this evening and hope to be a valuable partner to you and your staff moving forward.

Please do not hesitate to contact me if we can be of direct assistance. Otherwise, thank you.

Sincerely,

Cheryl L. Lombard, Esq.  
President & CEO  
Valley Partnership

(602) 343-2951 Direct Work Line  
(602) 266-7844 Main Work Line  
(602) 541-6532 Cell  
[clombard@valleypartnership.org](mailto:clombard@valleypartnership.org)  
[www.valleypartnership.org](http://www.valleypartnership.org)





www.evgre.com

May 4, 2015

Via Electronic Mail

Mayor Weise  
Vice Mayor Karlin  
Councilwoman Nielson  
Councilman McDonald  
Councilman Kilgore  
Councilman Iwanski  
Councilman Sierra  
City of Avondale  
11465 W. Civic Center Drive  
Avondale, AZ 85323

Re: Development in Avondale

Dear Mayor and Council,

Evergreen has been a development partner with the City of Avondale for a number of years. Our next endeavor will be to develop our Hillcrest project, a new neighborhood at the southwest corner of Broadway and 107<sup>th</sup> Avenue. In discussions with builders, we hear a message that is consistent with what your staff has outlined in their Staff Report for Item 6 on the May 4, 2015 agenda - that the current development fee is an issue.

We have had the pleasure of working with your staff over the last year on a preliminary plat revision that we believe will help to bring the homebuilders back to Avondale, and the creation of the proposed incentive fund to offset development fees by 20% would be very helpful to that end. Thank you for bringing this issue forward, and we hope to see any concept implemented that reduces the fees. The creation of the incentive fund appears to be the fastest, and for that reason, we favor that among the options proposed.

We look forward to our continued partnership with the City.

Sincerely,

Heather Personne  
Evergreen Devco, Inc.

Phoenix, Arizona  
2390 E. Camelback Rd., #410  
Phoenix, AZ 85016

Glendale, California  
200 N. Maryland Ave., # 201  
Glendale, CA 91206

Denver, Colorado  
1873 S. Bellaire St., #1106  
Denver, CO 80222

Dallas, Texas  
190 Bee Caves Rd.  
Lucas, TX 75002

## Kevin Artz

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**From:** David Fitzhugh  
**Sent:** Monday, May 18, 2015 8:17 AM  
**To:** Tracy Stevens; Kevin Artz; Gina Montes; Abbe Yacoben  
**Subject:** FW: Our Support of the Proposed Impact Fee Schedule

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**From:** Jeff Klem [<mailto:j.klem@ELLIOTTHOMESAZ.COM>]  
**Sent:** Friday, May 15, 2015 8:23 AM  
**To:** Kenneth Weise  
**Cc:** David Fitzhugh  
**Subject:** Our Support of the Proposed Impact Fee Schedule

Mayor Weise,

I am writing to thank you for leading the effort to reduce residential impact fees in your city. Elliott Homes has built successful communities in Avondale since 1996. However we have not built a new community in Avondale since 2002 due mostly to the level of fees to develop with in the city. We understand that development should pay their fair share of fees, but at the same time the financial feasibility of each project needs to work. We support your efforts to reduce the impact fee schedule and feel that the proposal to do so will generate renewed interest of development in your city.

Thank you,

**Jeff Klem**

Assistant Vice President

**Elliott Homes, Inc.**

1400 E. Southern Ave., Suite 720, Tempe AZ 85282

p: (480) 831-9200 x2467 | f: (480) 831-9300

[j.klem@elliotthomesaz.com](mailto:j.klem@elliotthomesaz.com) | [www.elliotthomes.com](http://www.elliotthomes.com)

Find us on



## Kevin Artz

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**From:** David Fitzhugh  
**Sent:** Monday, May 18, 2015 2:43 PM  
**To:** Gina Montes; Kevin Artz; Abbe Yacoben; Tracy Stevens  
**Subject:** FW: Support for \$2M Economic Incentive Fund - Impact Fee Reduction

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**From:** Brian Mings [<mailto:bmings@courtlandcommunities.com>]  
**Sent:** Monday, May 18, 2015 2:43 PM  
**To:** Kenneth Weise; David Fitzhugh  
**Subject:** Support for \$2M Economic Incentive Fund - Impact Fee Reduction

Dear Messrs Weise and Fitzhugh –

I am writing on behalf of Courtland Communities in support of the recently approved \$2M Economic Incentive Fund designed to reduce building impact fees by 20%.

As the largest builder in Avondale we have made significant investments in the City and are pleased that Council and Staff are demonstrating their commitment to residential development as well. As you know, impact fees represent a dollar-for-dollar cost to homebuilders and are ultimately reflected in home prices for future residents. Reducing these fees allows us to more competitively underwrite new developments and also helps to reinvigorate stagnated communities, both of which enhance the City's aesthetic and increase overall economic activity. We see this reduction as a step in the right direction and are excited to be a part of building Avondale's future.

Thanks for listening and we look forward to working with you.

Sincerely,

Brian Mings



**BRIAN MINGS** | COURTLAND COMMUNITIES  
19820 N. 7<sup>th</sup> Ave, Suite 115 | Phoenix, AZ 85027  
602.296.3200 EXT 10 | F: 623.582.1318  
[bmings@courtlandcommunities.com](mailto:bmings@courtlandcommunities.com)



## CITY COUNCIL AGENDA

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**SUBJECT:**

Resolution 3257-615 - Second Amendment -  
Intergovernmental Agreement - Maricopa County 6/1/2015  
Human Services - Community Action Program

**MEETING DATE:**

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**TO:** Mayor and Council**FROM:** Stephanie Small, Neighborhood and Family Services Director 623-333-2711**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is requesting that the City Council approve a resolution authorizing an IGA with the Maricopa County Board of Supervisors for a grant in the amount of \$112,495.00 to provide Crisis Case Management and Financial Assistance services as part of the Community Action Program (CAP) during the fiscal year 2015-16 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The City Council will take the appropriate action.

**BACKGROUND:**

The Community Action Program began serving residents of Avondale in 1964. Services are provided to the residents of Avondale who, for a variety of reasons, find themselves in financial difficulty. Families who live below the poverty level are often not able to put money aside for a crisis and thus find themselves having to ask for assistance when the head of the household experiences a lay-off, when an accident causes a disability, or when an elderly parent or newborn joins the family.

**DISCUSSION:**

The service area stipulated under the contract in addition to Avondale includes Goodyear, Litchfield Park, unincorporated areas north to Glendale Avenue including Litchfield Park, and east/south to Laveen and the unincorporated areas surrounding but not including Tolleson. In March 2013, the Community Action Program relocated to the Care1st Avondale Housing and Resource Center.

Community Action Program services include: information and referral; advocacy; crisis intervention; emergency food box referral; employment search; energy education; and housing, rental, and energy assistance. Staff provides assistance to residents facing personal or economic emergencies, or crises such as loss of home, job, or household income. Each family applying for assistance is offered crisis case management services which provide a structure in which family members receive information and learn skills which assist them in reducing emotional and financial crisis in the future.

**BUDGET IMPACT:**

The total funding provided by Maricopa County for FY 2015-16 is \$112,495.00. There is no match requirement from the General Fund.

**RECOMMENDATION:**

Staff recommends that City Council adopt a resolution authorizing an IGA with the Maricopa County Board of Supervisors for a grant in the amount of \$112,495.00 to provide Crisis Case Management and Financial Assistance Services as part of the Community Action Program (CAP) during FY 2015-16

**ATTACHMENTS:****Description**

[Amendment - Intergovernmental Agreement - Maricopa County Human Services - Community Action Program](#)

**RESOLUTION NO. 3257-615**

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY, ARIZONA, TO EXTEND THE TERM OF THE AGREEMENT AND ESTABLISH FY 2015-2016 FUNDING FOR THE COMMUNITY ACTION PROGRAM.

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

SECTION 1. Amendment 2 to the Intergovernmental Agreement between the City of Avondale (the “City”) and Maricopa County, Arizona, administered by its Human Services Department, extending the term of the Agreement and establishing the funding for the City’s Community Action Program for FY 2015-2016 (the “Amendment”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Amendment and to take all steps necessary to carry out the purpose and intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Avondale, June 1, 2015.

---

Kenneth N. Weise, Mayor

ATTEST:

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Carmen Martinez, City Clerk

APPROVED AS TO FORM:

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Andrew J. McGuire, City Attorney

EXHIBIT A  
TO  
RESOLUTION NO. 3257-615

[Amendment]

See following pages.

AMENDMENT  
TO THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
MARICOPA COUNTY  
ADMINISTERED BY ITS  
HUMAN SERVICES DEPARTMENT  
AND  
CITY OF AVONDALE

- I. The Parties entered into Intergovernmental Agreement (C-22-13-071-3-00) (Agreement) on July 17, 2013, as amended and the Parties mutually desire to enter into this FY 2015-2016 contract Amendment 2 to extend the term of the Agreement, establish funding for the extended term and amend the terms and conditions of the Agreement.
- II. Therefore, the Agreement is hereby amended as follows:
- A. The term of the Agreement is hereby extended for FY 2015-2016 commencing on July 1, 2015 and expiring on June 30, 2016.
- B. The funding for FY 2015-2016 is hereby established at the amount of \$112,495, as set forth in the Operating Budget, attached hereto as Attachment A and incorporated herein by reference.
- C. A new Paragraph WW is hereby added to Section I General Provisions to read as follows:
- WW. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND  
REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS**
1. The Parties agree that this Contract and employees working on this Contract will be subject to the whistleblower rights and remedies in the pilot program on contractor employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and section 3.908 of the Federal Acquisition Regulation;
2. Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described in section 3.908 of the Federal Acquisition Regulation. Documentation of such employee notification must be kept on file by Contractor and copies provided to County upon request; and
3. Contractor shall insert the substance of this clause, including this paragraph (3), in all subcontracts over the simplified acquisition threshold (\$150,000 as of September 2013).
- D. A new subparagraph J(1)(a)(iii) is hereby added to Section II Special Provisions Paragraph J Insurance Requirements to read as follows:
- iii. The policy shall be endorsed to include coverage for sexual abuse and molestation.

III. The foregoing paragraphs contain all the changes to the Agreement. All other terms of the Agreement not amended hereby, remain in full force and effect.

IN WITNESS THEREOF, the Parties have signed this Amendment:

Approved By:  
CITY OF AVONDALE

Approved By:  
MARICOPA COUNTY

\_\_\_\_\_  
Kenneth N. Weise, Mayor

\_\_\_\_\_  
Steve Chucri, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attested to:

Attested to:

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

\_\_\_\_\_  
Fran McCarroll, Clerk of the Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

In accordance with A.R.S. §§ 11-952, 11-201, and 11-251, this Amendment has been reviewed by the undersigned Deputy County Attorney, and, in accordance with A.R.S. § 11-952, this Amendment has been reviewed by the City Attorney on behalf of the City of Avondale, and, as to their respective clients only, each attorney has determined that this Amendment is in proper form and within the power and authority granted under the laws of the State of Arizona.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney for the City of Avondale

\_\_\_\_\_  
Deputy County Attorney for Maricopa County

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTACHMENT A

**ITEMIZED SERVICE BUDGET**

**CONTRACT SERVICE:** Crisis Case Management / Financial Assistant Assistance      **Agency: City of Avondale -Central West Area :**  
**Contract Period: 07/01/2015 - 06/30/2016**

**1. PERSONNEL**

Number of Positions	FTE Level	Position Title	Total Salary for the Contract Period	TOTAL SERVICE COST	MCHSD COST
	1.00	Social Services Coordinator	\$35,817	\$35,817	\$35,817
	1.00	Social Services Coordinator	\$43,598	\$43,598	\$43,598
	0.03	Communnity Outreach Coordinator	\$60,501.00	\$15,125	
	0.50	Family Services Manager	\$70,000.00	\$35,000	
	1.00				
	1.00				
<b>TOTAL PERSONNEL</b>				<b>\$129,540</b>	<b>\$79,415</b>

**2. EMPLOYEE RELATED EXPENSES**

ITEM	BASIS	TOTAL COST	MCHSD COST
FICA	32.50% of Total Personnel Service Cost	\$25,810	\$25,810
Unemployment Insurance			
Worker's Compensation			
Health Benefits			
Life Insurance			
Retirement			
etc...			
<i>Only include those items that apply</i>			
<b>TOTAL EMPLOYEE RELATED EXPENSES</b>		<b>\$25,810</b>	<b>\$25,810</b>

**3. PROFESSIONAL AND OUTSIDE SERVICES**

ITEM	BASIS	TOTAL COST	MCHSD COST
Angel Call System	FY15 Expenditures	\$11,750	\$5,270
<b>TOTAL PROFESSIONAL AND OUTSIDE SERVICES</b>		<b>\$11,750</b>	<b>\$5,270</b>

4. TRAVEL		TOTAL COST	MCHSD COST
ITEM	BASIS		
<b>TOTAL TRAVEL</b>		<b>\$0</b>	<b>\$0</b>

5. SPACE		TOTAL COST	MCHSD COST
ITEM	BASIS		
Plumbing/Bathroom - Partial Renovation	FY15 Expenditures	\$5,000	
Telephone Service	FY15 Expenditures	\$ 3,310.93	
Long Distance/Cell Phone Charges	FY15 Expenditures	150.00	
Electricity	FY15 Expenditures	18,587.30	
Gas	FY15 Expenditures	366.84	
Water	FY15 Expenditures	3,227.16	
Internal Copying/Printing Charges	FY15 Expenditures	7,574.90	
Risk Management Charges	FY15 Expenditures	500.00	
Contractual Maint/Bldg & Grounds*	FY15 Expenditures	3,163.77	
Other Professional Services	FY15 Expenditures	13,150.00	
Janitorial Supplies	FY15 Expenditures	834.06	
<b>TOTAL SPACE</b>		<b>\$55,865</b>	<b>\$0</b>

6. EQUIPMENT		TOTAL COST	MCHSD COST
ITEM	BASIS	TOTAL:	
<b>TOTAL EQUIPMENT</b>		<b>\$0</b>	<b>\$0</b>

7. MATERIALS AND SUPPLIES		TOTAL COST	MCHSD COST
ITEM	BASIS		
Office supplies		\$2,000	\$2,000
<b>TOTAL MATERIALS AND SUPPLIES</b>		<b>\$2,000</b>	<b>\$2,000</b>

8. OPERATING SERVICES		TOTAL COST	MCHSD COST
ITEM	BASIS		
<b>TOTAL OPERATING EXPENSES</b>		<b>\$0</b>	<b>\$0</b>

9 <u>INDIRECT COSTS</u>				
	ITEM	BASIS	TOTAL COST	MCHSD COST
<b>TOTAL INDIRECT COSTS</b>			<b>\$0</b>	<b>\$0</b>

<b>10</b>	<b>SUBTOTAL ADMIN COST</b>		<b>\$224,965</b>	<b>\$112,495</b>
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11. <u>VOUCHERS</u>				
	ITEM		TOTAL COST	MCHSD COST
<b>TOTAL VOUCHERS</b>			<b>\$0</b>	<b>\$0</b>

<b>12.</b>	<b>TOTAL SERVICE COST/MCHSD TOTAL COST:</b>		<b>\$224,965</b>	<b>\$112,495</b>
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<u>REVENUE SOURCES:</u>			
	Goodyear IGA	\$25,000	\$112,495

<b>TOTAL REVENUE:</b>	<b>\$25,000</b>	<b>\$112,495</b>
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## CITY COUNCIL AGENDA

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**SUBJECT:**

Garden Patch Lease Agreement

**MEETING DATE:**

6/1/2015

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**TO:** Mayor and Council

**FROM:** Vice Mayor Stephanie Karlin

**THROUGH:** David Fitzhugh, City Manager

**PURPOSE:**

Vice Mayor Karlin would like to discuss the lease agreement with the Garden Patch, an Arizona non-profit corporation for the use of city-owned land located at the northeast corner of the civic center campus.

**BACKGROUND:**

The City has been leasing a small parcel of land to the Garden Patch, an Arizona non-profit corporation since September 20, 2010.

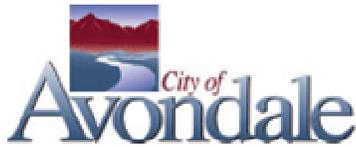
Attached is the council report from the council meeting when the agreement was approved as well as the lease agreement.

**RECOMMENDATION:**

For information, discussion and direction only.

**ATTACHMENTS:****Description**

[Council report and lease agreement](#)



# CITY COUNCIL REPORT

**SUBJECT:**

Lease Agreement – The Garden Patch

**MEETING DATE:**

September 20, 2010

**TO:** Mayor and Council

**FROM:** Christopher Reams, Director of Parks, Recreation & Libraries (623)333-212

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff is requesting that the City Council approve a Memorandum of Understanding (MOU) between the City of Avondale (property owner) and the Garden Patch, an Arizona Non-Profit Corporation to use a specific piece of City owned property for a community garden.

**BACKGROUND:**

The Garden Patch, an Arizona Non-Profit Corporation that was developed to coordinate, manage, and facilitate a community garden in the City of Avondale. The Garden Patch would like to use the following City owned property for a community garden: Lot 1: APN 101-01-009 (Map attached).

**DISCUSSION:**

In conjunction with City Attorney, Staff developed the MOU which stipulates the terms and conditions of this relationship. The term of the agreement is for one year with an annual review by a designated representative of both parties. The agreement also stipulates the option of five additional one year extensions. Either party can dissolve the agreement for cause after a 60 day notification. The Garden Patch will have exclusivity for community garden programs and activities at this site.

City staff also met with representatives from the Garden Patch to discuss specific aspects of the program. Some of the key provisions of the MOU are: - The Garden Path shall pay the City for these premises the sum of \$10.00 per year during the term of the MOU.

The Garden Patch agrees to the following:

- Keep the property free of weeds, debris, or odors to the satisfaction of the City or pay the City for any costs associated with maintaining the property.
- Pay for water used by the Community Garden to the City of Avondale
- Create garden operating rules for the garden and its members
- Require all gardeners to sign a waiver of liability and an agreement to abide by the garden rules and regulations as a part of the plot rental application.
- Hold an active general liability insurance plan for the property during the duration of this Memorandum of Understanding.

City of Avondale agrees to the following:

- Ensure a water source is available for the garden
- Provide a link to Community Garden website on the City of Avondale website Ensure the Garden Patch garden will be accessible daily from daylight until dark.
- The City will not incur any additional costs associated with the Garden Patch Community Garden.

If the City terminates this Memorandum of Understanding after one (1) year, the City will reimburse The Garden Patch eighty percent (80%) of the cost of the improvements, after two (2) years sixty percent (60%), after three (3) years forty percent (40%), and if the agreement lasts five (5) years or longer no repayment is required.

The City retains the right to enter onto the property at all reasonable times to inspect the use being made of the property by The Garden Patch.

**BUDGETARY IMPACT:**

The City of Avondale will not incur any additional costs for establishing and ongoing maintenance of a Community Garden.

**RECOMMENDATION:**

Staff recommends that the City Council approve the Lease Agreement between the City of Avondale (property owner) and the Garden Patch, an Arizona Non-Profit Corporation to use the City of Avondale owned property for a community garden.

**ATTACHMENTS:**

Click to download

 [Parcel Map](#)

 [Lease Agreement](#)

**LEASE  
BETWEEN  
THE CITY OF AVONDALE  
AND  
THE GARDEN PATCH**

THIS LEASE (this "Lease") is made and entered into as of September 20, 2010, by and between the City of Avondale, an Arizona municipal corporation (the "Landlord" or the "City"), and The Garden Patch, an Arizona non-profit corporation (the "Tenant").

RECITALS

A. The Landlord owns that certain undeveloped parcel of real property (the "Real Property") located on the northeast corner of Coldwater Springs Boulevard and Civic Center Drive, Avondale, Arizona 85323 and described as Maricopa County Assessor Parcel Number 101-01-009. The Real Property is depicted in the Map attached hereto as Exhibit A and incorporated herein by reference.

B. The Landlord desires to provide to its residents a community garden in which the residents may garden small plats of land (the "Community Garden").

C. Because the Tenant is a nonprofit corporation incorporated specifically to operate community gardens, the Landlord has determined that leasing the Real Property to the Tenant will lower the Landlord's administrative burden in connection with operating the Community Garden.

D. The Landlord desires to enter into this Lease with the Tenant in order for the Tenant to administer a program to provide City residents with the opportunity to participate in the Community Garden (the "Community Service").

AGREEMENT

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

1. Leased Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Real Property (the "Leased Premises"), to have and to hold during the Term, as defined in Section 2, below.

2. Rent. The City hereby leases the Leased Premises to the Tenant in exchange for the Tenant paying to the City an annual rental of Ten Dollars (\$10.00) (the "Rent") and providing the Community Service at the Leased Premises at no cost to the City. The Tenant agrees and understands that the reduced rent under this Lease is contingent upon the Tenant

providing the Community Service at the Leased Premises during the entire term of this Lease. The Rent shall be due on or before October 1, 2010 and shall constitute payment in full by the Tenant for the use of the Leased Premises from October 1, 2010 through September 30, 2011.

3. Term; Extension.

3.1 Term. The original term of this Lease shall be for a period of one year commencing on October 1, 2010 and expiring on September 30, 2011 (the "Initial Term"), unless terminated sooner in accordance with Subsection 18.2 of this Lease, and subject to availability and appropriation of funds in each subsequent year of the Initial Term.

3.2 Extension. Provided that no Default (as set forth below in Section 18) shall have occurred during the Initial Term and be continuing at the anniversary of this Lease, Landlord shall have the option to extend the Lease Term of this Lease for additional, successive one-year terms (each an "Extension Term") if deemed in the best interests of the Landlord. The Initial Term and the Extension Term (if any) are hereafter referred to as the "Lease Term." Each such extension shall occur upon the Landlord's written notice to the Tenant given not later than 30 days prior to the end of the then-current Lease Term, unless either party terminates this Lease earlier in accordance with Subsection 18.2. Upon extension or renewal as set forth herein, the terms and conditions of this Lease shall remain in full force and effect.

4. Utilities; Additional Charges.

4.1 Utilities and Waste Disposal. Tenant agrees to pay for all water and other utilities, if any, used by the Tenant or by the Tenant's agents, employees, volunteers, beneficiaries, contractors, subtenants and licensees upon the Leased Premises from and after the commencement of this Lease. Tenant shall provide for the regular removal of all trash, rubbish and garbage from the Leased Premises resulting from Tenant's activities on the Leased Premises from and after the commencement of this Lease.

4.2 Additional Charges. Tenant also shall pay from time to time during the Term of this Lease as additional charges ("Additional Charges") all amounts and obligations other than Rent which Tenant herein assumes or agrees to pay.

5. Use of Leased Premises. Tenant shall use the Leased Premises solely to provide the Community Service thereon. Landlord makes no representation or warranty with respect to the condition of the Leased Premises or its fitness or availability for any particular use. Tenant will not commit, omit or permit any act, condition or event which is contrary to any Legal Requirement or Insurance Requirement, as defined below.

6. Existing Conditions; Maintenance and Repairs.

6.1 As-is Condition. Tenant has inspected and is fully familiar with the physical condition of the Leased Premises and accepts the Leased Premises in an "as-is, where-is" condition.

6.2 Care of Premises. Tenant, at Tenant's sole cost and expense, agrees to keep the Leased Premises in a neat and clean condition, shall refrain from permitting any nuisance or fire hazard therein, shall permit no unlawful or immoral practice to be carried on within the Leased Premises within its knowledge or consent by it or any person and shall at all times comply in its occupancy and use of the Leased Premises with all city and county ordinances and with all State and Federal laws and regulations relating thereto.

7. Tenant's Equipment. All of Tenant's personal property and equipment hereafter in or about the Leased Premises or any part thereof, which are the property of the Tenant or any permitted sublessee or assignee of Tenant (the "Tenant's Equipment") shall remain the property of Tenant, provided that:

7.1 Removal; Repair. Tenant shall have the right at any time during the Lease Term to remove from the Leased Premises all or any part of Tenant's Equipment in or on the Leased Premises without regard to the manner placed on or affixed to the Leased Premises, provided that Tenant, at its sole expense, immediately will repair or be obligated for all costs and expenses in connection with all damage to the Leased Premises caused by the removal of Tenant's Equipment therefrom.

7.2 Abandoned Equipment. Any of Tenant's Equipment not removed by Tenant at its expense within 30 days after the expiration or earlier termination of this Lease or the Lease Term shall be considered abandoned by Tenant and may be appropriated, sold, destroyed or otherwise disposed of by Landlord without any further notice to Tenant, and without obligation to account therefor; provided, however, that after such 30th day, Tenant will pay Landlord, upon demand, all reasonable costs and expenses incurred by Landlord in removing, storing, or disposing of any of Tenant's Equipment. Tenant at its expense will immediately repair or be obligated for all costs and expenses in connection with all damage to the Leased Premises caused by any removal of Tenant's Equipment therefrom. Landlord shall not be responsible for any loss of or damage to Tenant's Equipment.

8. Alterations and Additions. Tenant shall have the right at any time during the Lease Term, at Tenant's sole cost and expense, to make changes, alterations, additions or improvements (collectively, "Alterations", or singularly, an "Alteration") in or to the Leased Premises, subject to the following:

8.1 Consistency with Lease Purpose. All Alterations shall be consistent with the Community Service and the operation of a Community Garden.

8.2 Prior Consent. No Alteration shall be made without the prior, written consent of Landlord, which consent shall not be unreasonably withheld or delayed if the Alteration would not materially and adversely affect the Leased Premises.

8.3 Requirements. The provisions and conditions of Section 9 hereof shall apply to any work performed by Tenant under this Section 8.

8.4 No Reimbursement. Tenant hereby expressly agrees and understands that it shall not be entitled to any reimbursement from the Landlord for the cost of any portion of such Alterations.

9. Compliance with Requirements. Tenant, during the Lease Term, will promptly and diligently:

9.1 Legal and Insurance. Comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to all or any part of the Leased Premises or any use or condition thereof (the "Legal Requirements"), and all terms of an insurance policy covering or applicable to the Leased Premises or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting all or any part of the Leased Premises or any use or condition thereof (the "Insurance Requirements").

9.2 Permits and Licenses. Procure, maintain and comply with all permits, licenses, franchises and other authorizations required for the use of the Leased Premises or any part thereof then being made by Tenant, and for the proper erection, installation, operation and maintenance of the Alterations and Tenant's Equipment or any part thereof.

9.3 Recorded Instruments. Comply with any instruments of record at the time in force affecting the Leased Premises or any part thereof.

10. Liens. If the Leased Premises, or any part thereof, shall at any time become subject to a claim for any vendor's, mechanic's, laborer's or materialmen's lien based upon any Alteration or the furnishing of material, labor or professional services to Tenant or the Leased Premises and contracted for by Tenant or its contractors or subcontractors, Tenant shall cause the same, at Tenant's expense, to be discharged or bonded over (pursuant to ARIZ. REV. STAT. § 33-1003 or § 33-1004) within 20 days after notice thereof, and Tenant shall indemnify and hold Landlord harmless from all liability, loss, costs and expenses arising from such a lien.

11. No Claims Against Landlord. Nothing contained in this Lease shall constitute any consent (except where consent is expressly required and given under this Lease) or request by Landlord, express or implied, for the performance of any labor or services or the furnishings of any materials or other property in respect of the Leased Premises or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against Landlord, except as any such claim is expressly provided for by statute despite the provisions of this Section. Any labor, services or material furnished to the Leased Premises in connection with the fulfillment of Tenant's obligations hereunder shall be the sole responsibility of Tenant.

12. Indemnification by Tenant. Tenant will protect, indemnify and hold Landlord harmless for, from and against all liabilities, obligations, claims, damages, penalties, causes of action, and proceedings, and all costs, expenses and fees of every kind and nature, including, without limitation, reasonable attorneys' fees, construction cost and all other expenses arising from or incurred in connection with or imposed upon or incurred by or asserted against Landlord or the Leased Premises by reason of the occurrence or existence of any matter or thing relating to this Lease or the Leased Premises during the Lease Term, unless resulting from the negligent or willful acts or omissions of Landlord, including but not limited to: (i) any accident, injury to or death of persons (including workers) or loss of or damage to property occurring on or about the Leased Premises or any part thereof; (ii) any condition or use of the Leased Premises or any part thereof; (iii) any failure on the part of Tenant to perform or comply with any of the terms of this Lease; (iv) performance of any labor or services or the furnishing of any materials or other property in respect of the Leased Premises or any part thereof; and (v) all claims for loss or damage to the Leased Premises uncompensated by Tenant's insurance.

13. Insurance.

13.1 Landlord's Risks to be Insured. Landlord shall, during the Lease Term, maintain in full force and effect, primary coverage with respect to the Leased Premises against loss or damage by fire or other risks.

13.2 Tenant's Risks to be Insured. Tenant at its expense during the Lease Term will maintain the following insurance for the Leased Premises with reputable insurers authorized to do business in Arizona and rated at least A- by A.M. Best Company:

A. General commercial public liability and property damage insurance, and together with excess liability insurance coverage, each in the minimum amount of \$1,000,000.00 combined single limit on a per occurrence basis.

B. Appropriate workers' compensation or other insurance against liability arising from claims of workmen in respect of and during the period of any work on or about the Leased Premises.

13.3 Policy Provisions. All insurance maintained by Tenant pursuant to this Section shall:

A. Except for workers' compensation insurance, name Landlord and Tenant as additional insureds, as their respective interests may appear.

B. Provide that all insurance proceeds, if any, from losses shall be adjusted with Landlord and Tenant.

C. Pay any losses notwithstanding any act or failure to act or negligence of Landlord or Tenant or any other person or entity relating to any act, omission or other event causing such losses, if reasonably available.

D. Provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by Landlord and Tenant of written notice thereof.

13.4 Deductibles; Delivery of Evidence of Insurance. Except in the case of workers' compensation insurance, any insurance maintained by any Tenant pursuant to this Section 13 may provide coverage that contains deductible amounts. Such deductibles shall not be applicable with respect to the policy limits provided to the Landlord. Tenant shall be solely responsible for any such deductible amount. After written request by Landlord, upon the commencement of the Lease Term and thereafter not less than 30 days prior to the expiration date of any policy to be obtained by Tenant pursuant to this Section, Tenant will deliver to Landlord a certificate of the insurer and a copy of the declaration page(s) of the insurance policies as required by this Lease, as to the issuance and effectiveness of such policy and the amount of coverage afforded thereby.

14. Storage and Use of Regulated Products. The Tenant shall not, and shall not permit any of Tenant's agents, employees, volunteers, beneficiaries, contractors, subtenants, and licensees to, store or use any hazardous materials, fuels or other petroleum products, chemicals, herbicides, pesticides, fertilizers, paint or other such regulated projects on the Leased Premises without the prior written approval of the Landlord. In the event of any contamination of property or loss or damage to persons arising from any hazardous or toxic materials introduced by Tenant onto the Leased Premises, whether with or without Landlord's consent, Tenant shall (i) notify Landlord immediately of any contamination, claim of contamination, loss or damage, (ii) after consultation and approval by Landlord, clean up the contamination in a full compliance with all applicable statutes, rules and regulations and (iii) indemnify, defend and hold Landlord harmless from and against any liabilities, claims, suits, causes of action, costs and expenses, including reasonable attorneys' fees, arising from or connected with any such contamination, claim of contamination, loss or damage. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

15. Damage To or Destruction of Leased Premises.

15.1 Tenant to Give Notice. In case of any material damage to or destruction of the Leased Premises or any part thereof, Tenant will promptly (and in no event later than the fifth day after such occurrence) give written notice thereof to Landlord generally describing the nature, extent and cause of such damage or destruction.

15.2 Restoration. In case of any damage to or destruction of the Leased Premises or any part thereof at any time during the Lease Term, Tenant shall, at its cost and expense, promptly commence and complete (subject to unavoidable delays) the restoration of the Lease Improvement as nearly as possible to its value, condition and character immediately prior to such damage or destruction (such restoration together with any temporary repairs and property protection pending completion of the work, being herein called "Restoration").

15.3 Application of Insurance Proceeds. All insurance proceeds received by Landlord or Tenant on account of any damage to or destruction of the Leased Premises or any

part thereof (less the costs and expenses incurred by the Landlord and Tenant in the collection thereof, including, without limitation, adjusters fees and expenses) shall be paid only for the Restoration.

16. Performance on Behalf of Tenant. If Tenant shall fail to make any payment or perform any act required hereunder to be made or performed by Tenant, and provided Landlord has given Tenant 30 days written notice of its intent to do so and Tenant has failed during said period to make such payment or perform the act required to be performed by Tenant, then Landlord may, but shall be under no obligation, to make such payment or perform such act with the same effect as if made or performed by Tenant. Notwithstanding the immediately preceding sentence, Landlord may proceed immediately in the event of an emergency without any notice to Tenant other than bona fide attempts to contact by telephone as soon as reasonably possible under the circumstances Tenant's representative (whom Tenant may change from time to time) whose name and telephone number Tenant has furnished in writing to Landlord prior to such emergency. Entry by Landlord upon the Leased Premises for such purpose shall not waive or release Tenant from any obligation hereunder. Tenant shall reimburse Landlord for all sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with Landlord's payment or performance under this Section, and no such payment or performance by Landlord pursuant hereto, shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due or payable, nor limit any right of Landlord or relieve Tenant from any Default hereunder.

17. Assignments and Subleases. Tenant may sublet the Leased Premises, or any part thereof, without the prior written consent of Landlord if such subletting furthers the operation of the Community Garden. However, Tenant shall not assign this Lease without the prior written consent of Landlord. Landlord's consent shall not be unreasonably withheld if (i) Tenant is not in Default of this Lease; and (ii) the financial status, business experience and reputation of the proposed assignee or sublessee is as good or better than that of the original Tenant. Any such assignment for which Landlord has given its consent shall not release Tenant hereunder, and any assignee or sublessee shall expressly be bound by all of the Tenant's obligations hereunder.

18. Events of Default; Termination.

18.1 Events of Default. Any one or more of the following specified events shall be a "Default":

A. If Tenant shall fail to perform or comply with any obligation of Tenant under this Lease, and such failure shall continue for more than 30 days after notice thereof has been given by Landlord to Tenant, and Tenant shall not, subject to unavoidable delays, within such period commence with due diligence the curing of such default, or, having so commenced, shall thereafter fail or neglect, for reasons other than unavoidable delays, to prosecute or complete with diligence the curing of such default.

B. If Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall

file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation due to its bankrupt or insolvent financial status.

C. If, as a result of any proceeding against Tenant, a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Tenant or of or relating to all or substantially all of its property, or for the winding-up or liquidation of its affairs or for the supervision of the business or affairs of Tenant, shall have been entered, and such decree or order shall have remained in force undischarged or unstayed for a period of more than 60 days.

18.2 Termination. Should a Default occur, Landlord may resort to any or all of the following remedies:

A. Retain or take possession of any property on the Leased Premises pursuant to Landlord's statutory lien, with or without legal process.

B. Enter or re-enter the Leased Premises and remove all persons and property therefrom, with or without legal process.

C. Declare this Lease at an end and terminated.

D. Sue for and receive any and all damages sustained by Landlord, with or without terminating this Lease. Continue this Lease in effect and lease or relet the Leased Premises or any part thereof, from time to time, for such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its reasonable discretion may deem advisable, with the right reserved to Landlord to make reasonable alterations and repairs to said Leased Premises at Tenant's expense. No such re-entry or taking possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

E. Any and all remedies available to Landlord at law or in equity.

18.3 Cumulative Remedies. Each right, power and remedy of Landlord and Tenant provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be, cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies.

18.4 Recovery of Costs and Expenses. If any action, whether at law or equity, is instituted by either party for default by the other under this Lease, the prevailing party shall be awarded all costs and expenses incident thereto.

19. Subordination and Attornment. Landlord may convey or otherwise dispose of the Leased Premises and Landlord shall have the absolute right to mortgage or encumber by deed of trust the Leased Premises. This Lease, at Landlord's option, shall be subordinate to any mortgage or deed of trust which may be placed on the Leased Premises and to any and all advances made or to be made pursuant to any such mortgage or deed of trust, and to all renewals, replacements and extensions of any such mortgage or deed of trust; provided that each such subordination shall be on the condition that the mortgagee or deed of trust beneficiary and trustee shall execute and deliver to Tenant an agreement ("Nondisturbance Agreement") to the effect that, so long as a Default caused by Tenant is not occurring hereunder, such mortgagee, beneficiary or trustee will recognize this Lease and not disturb or otherwise interfere with Tenant's leasehold and other rights under this Lease. Subject to the Nondisturbance Agreement, Tenant shall execute and deliver such further instrument evidencing this subordination as Landlord may reasonably request.

20. Right of Entry. Landlord may, at all reasonable times and during usual business hours, enter upon the Leased Premises for the purpose of inspecting, repairing or preserving the same, or to show the Leased Premises to prospective purchasers, and in addition may, at any time within the last 6 months of the then-running Lease Term show the Leased Premises to prospective purchasers.

21. Notices. 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 (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below or (iv) delivered by facsimile transmission to the number set forth below:

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

If to Tenant:                            The Garden Patch  
   12705 West Virginia Avenue  
   Avondale, Arizona 85392  
   ~~Facsimile: (480) 517-8119~~  
   Attn: Peter Conden

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed

received (i) when delivered to the party, (ii) five business days after being placed in the U.S. Mail, registered or certified, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

22. Surrender. Upon the expiration of the Lease Term, or upon the earlier termination of this Lease, Tenant shall surrender up peaceable possession of the Leased Premises including all Alterations in good condition and repair, reasonable wear and tear excepted.

23. No Broker. Landlord and Tenant each represents to the other that there are no broker's commissions due in connection with this Lease.

24. Waiver. Any waiver by Landlord of any Default, breach or failure by Tenant shall not constitute a waiver of any other Default, breach or failure by Tenant hereunder. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing by Landlord.

25. No Partnership. The relationship of the parties hereto as solely that of Landlord and Tenant and under no circumstances shall the parties hereto be considered as partners or joint venturers.

26. Severability. Should any provision of this Lease be declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, provided that elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

27. Landlord's Conveyance. Landlord may sell, transfer, assign or otherwise dispose of the Leased Premises or this Lease or any part thereof or interest therein, at any time without the consent of Tenant, and upon a sale or disposal of all of its interest in the Leased Premises, Landlord shall be relieved of all obligations hereunder arising after such sale or disposal.

28. Holding Over. No holding over by Tenant of the Leased Premises after the expiration of the Lease Term shall operate to extend the Lease Term or this Lease, and Tenant shall indemnify, defend and hold Landlord harmless from all costs and expenses and claims for damages by any other tenant to whom Landlord may have leased to Leased Premises effective upon the expiration of the Lease Term or termination of this Lease.

29. Limitation of Landlord's Liability. If Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the Leased Premises or other income from such real property

receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of the Leased Premises. Landlord shall not be personally liable for any deficiency.

30. Quiet Title. Provided that Tenant is not in Default under this Lease, Landlord covenants that, from and after the commencement of the Lease Term, Tenant shall not be disturbed or hindered in Tenant's enjoyment of the Leased Premises, and that Landlord shall not interfere with Tenant's business activities involving the Leased Premises.

31. Benefits and Burdens. The covenants, terms and conditions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

32. Attorney's Fees. In the event of any litigation or arbitration arising out of this Lease, the substantially prevailing party in such litigation or arbitration shall be entitled to recover its attorneys' fees, expert witness fees and other costs of litigation.

33. Entire Agreement. This Lease constitutes the entire agreement of the parties with respect to the subject matter hereof and may be amended, waived or discharged only by an instrument in writing signed by the party against which enforcement of such amendment, waiver or discharge is sought.

34. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

35. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Lease.

36. Headings. The headings in this Lease are for purposes of reference only and shall not control, limit or define the meaning or construction of any provision hereof.

37. Time of the Essence. Time is of the essence with respect to the performance of each and every term, condition and obligation of this Lease.

38. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Arizona.

39. Conflict of Interest. The Landlord may cancel this Lease pursuant to ARIZ. REV. STAT. § 38-511 without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Lease on behalf of the Landlord is, at any time while the Lease or any extension of the Lease is in effect, an employee of the Tenant in any capacity or a consultant to the Tenant with respect to the subject matter of the Lease. The cancellation shall be effective when written notice from the Landlord is received by the Tenant, unless the notice specifies a later time.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first written above.

**“Landlord”**

CITY OF AVONDALE, an Arizona  
municipal corporation

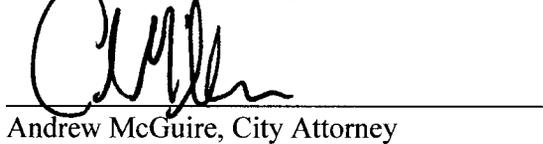


Charles P. McClendon, City Manager

ATTEST:

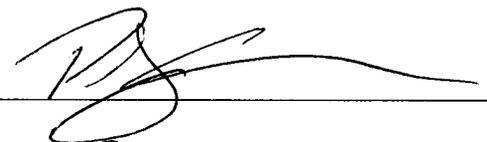
  
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

  
Andrew McGuire, City Attorney

**“Tenant”**

The Garden Patch,  
an Arizona non-profit corporation

By: 

Name: Peter Conden

Title: President

(ACKNOWLEDGEMENTS)

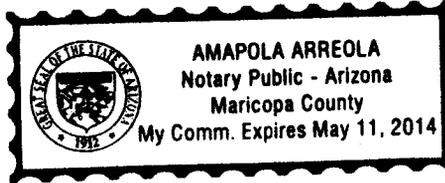
STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on September 22, 2010,  
by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona  
municipal corporation, on behalf of the City of Avondale.

  
Notary Public in and for the State of Arizona

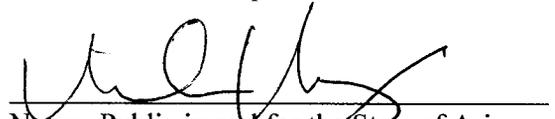
My Commission Expires:

May 11, 2014



STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on October 4, 2010,  
by Peter Conden as President  
of THE GARDEN PATCH, an Arizona corporation, on behalf of the corporation.

  
Notary Public in and for the State of Arizona

My Commission Expires:

September 14, 2012

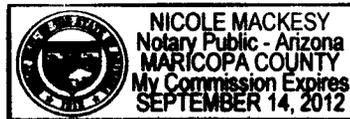
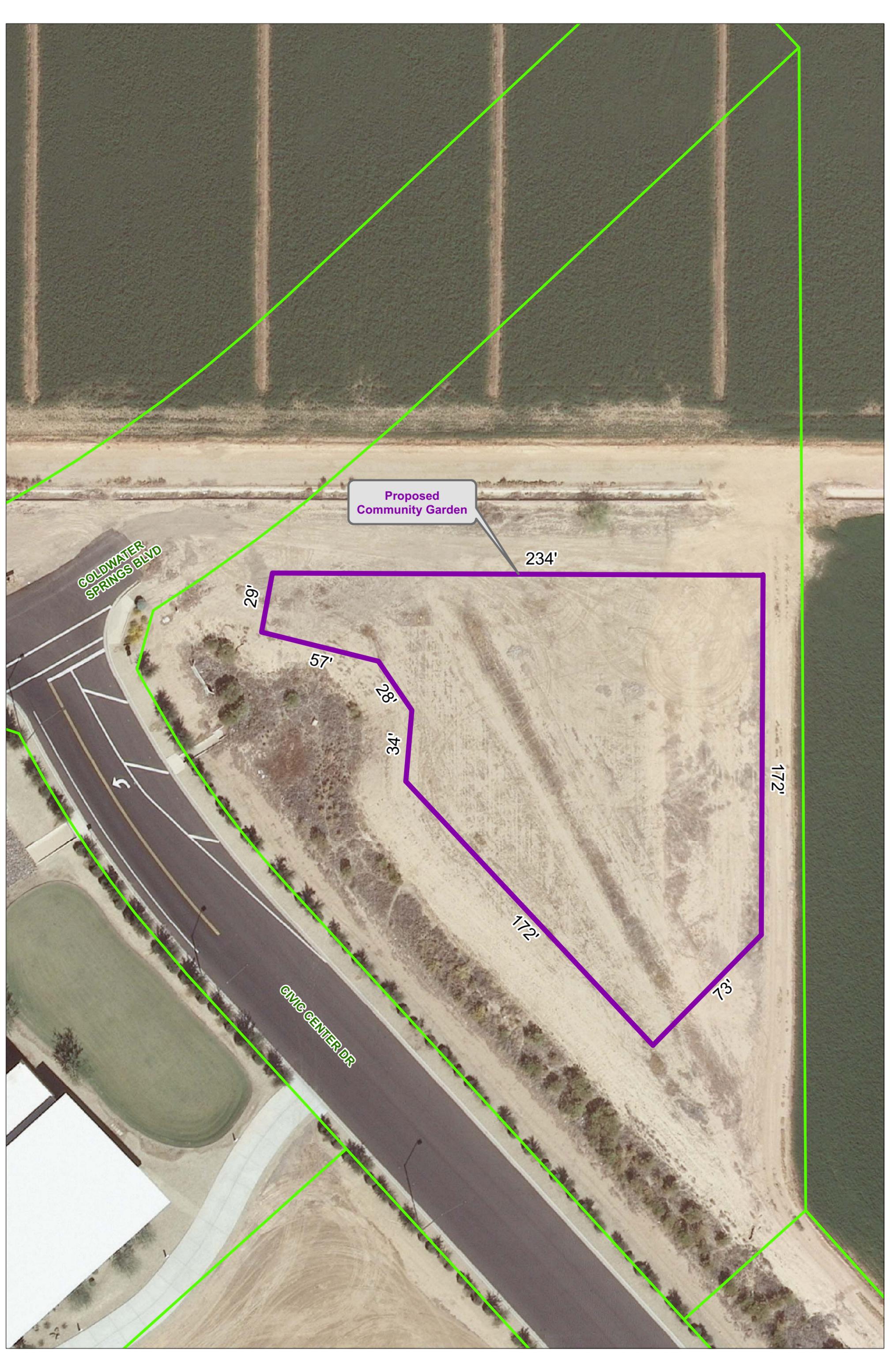


EXHIBIT A  
TO  
LEASE  
BETWEEN  
THE CITY OF AVONDALE  
AND  
THE GARDEN PATCH

[Map]

See following page.



Proposed  
Community Garden

GOLDWATER  
SPRINGS BLVD

29'

234'

57'

28'

34'

172'

172'

73'

GME CENTER DR