CITY COUNCIL AGENDA

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

WORK SESSION
January 19, 2016
6:00 PM

CALL TO ORDER BY MAYOR

1 ROLL CALL BY THE CITY CLERK

2. EL RIO DESIGN GUIDELINES AND PLANNING STANDARDS

City Council will review the El Rio Design Guidelines and Planning Standards and information presented by J2 Engineering and Environmental Design and provide feedback to the administrative committee for further refinement. For information and direction only.

3. OFF-PREMISE BILLBOARD SIGN GUIDELINES

City Council will review the draft design guidelines for off-premise billboard signs and provide feedback and direction to staff. For information, discussion and direction only.

4 ADJOURNMENT

Respectfully submitted,

Carmen Martinez

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 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.

Category Number:
Item Number: 2.

CITY COUNCIL AGENDA

SUBJECT:
El Rio Design Guidelines and Planning Standards

MEETING DATE:
1/19/2016

TO: Mayor and Council

FROM: Kirk Haines, Parks, Recreation and Libraries Director (623) 333-2411

THROUGH: David Fitzhugh, City Manager

PURPOSE:
City Council is requested to review the El Rio Design Guidelines and Planning Standards and information presented by J2 Engineering and Environmental Design and provide feedback to the administrative committee for further refinement.

BACKGROUND:
Created in 2006, the El Rio Watercourse Master Plan assessed a 17-mile segment of the Gila River and a small segment of the Agua Fria River between Avondale and Buckeye to identify the benefits, opportunities, and impact of future development versus flood control management and erosion hazards taking into consideration public safety, social, economic, and environmental factors. The Plan was endorsed by four local government agencies in 2007.

In July 2013, City Council approved an Intergovernmental Agreement with the City of Avondale, Maricopa County [Flood Control District], Town of Buckeye and the City of Goodyear for planning, analysis, and cost sharing to develop design guidelines and planning standards for the El Rio Watercourse Implementation and Management Plan. In August 2014, City Council approved a professional services agreement with J2 Engineering and Environmental Design (J2) to work with the partnering agencies to develop the design guidelines and planning standards.

For the past 18 months, J2 and representatives from the partnering agencies have been meeting routinely to accomplish the project outcomes. Several working committees were formed to accomplish specific tasks such as executive support, stakeholder input, technical support and a citizen advisory committee focomprised primarily of landowners in the project area. Jeff Engelmann, one of two partners from J2, will present the outcomes of the work on the design guidelines for the El Rio project.

DISCUSSION:
The final draft design guidelines are a collection of data divided into a grouping of eight chapters that include:

- Background
- Character and Vision
- Land Development Guidelines
- Open Spaces, Paths, Trails and Edge Treatments
- Landscape Guidelines

- Signage Guidelines
- Economic Development
- Pilot Projects

The draft guidelines were developed with input from various committee representatives, stakeholders, and comments provided from public meetings as well as online postings and comments. The elected officials from our partner agencies have also had an opportunity to comment and provide additional recommendations. City Council is requested to review the information presented and provide additional feedback to the administrative committee for further refinement.

The Administrative Committee will convene in February for final comments, and each agency will be requested to approve the design guidelines. Staff plans to return to Council in March 2016 and request approval of a Resolution that supports the El Rio Design Guidelines.

BUDGET IMPACT:
In 2013, each participating municipality shared the cost for consulting fees by one-quarter equal shares for the design contract not to exceed $200,000. The City of Avondale has invested $50,000 towards the completion of the El Rio Design Guidelines.

Future financial impacts will be based on open space and trail development along the Agua Fria corridor from Festival Fields to the Gila River confluence within the El Rio planning area in Avondale. Based on City Council feedback, staff will potentially bring forth a Resolution in support of the El Rio Design Guidelines and Planning Standards for consideration in the near future.

RECOMMENDATION:
This item is for information and direction only.

ATTACHMENTS:

Description

El Rio Design Guidelines and Planning Standards Report

Final El Rio Design Guidelines and Planning

DUE TO ITS SIZE, THIS DOCUMENT

HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

http://www.avondale.org/DocumentCenter/View/37939

Category Number:
Item Number: 3.

CITY COUNCIL AGENDA

SUBJECT:
Off-Premise Billboard Sign Guidelines

MEETING DATE:
1/19/2016

TO: Mayor and Council

FROM: Tracy Stevens, Development & Engineering Services Director, (623) 333-4012

THROUGH: David Fitzhugh, City Manager

PURPOSE:
Staff is requesting that the City Council provide feedback regarding the draft design guidelines for future development and placement of Off-Premise Billboard signs.

BACKGROUND:
Billboard signs are currently prohibited per the Zoning Ordinance. At its work session of July 6, 2015, City Council directed staff to evaluate the current prohibition of off-premise billboard signs, seek Planning Commission feedback, and draft guidelines that will set certain criteria should an opportunity arise within the City limits. The request came in large part, due to property owner inquiries, two recently erected Maricopa County billboards within the Avondale planning area, large tracts of vacant land along the I-10, and potential benefit to the City, such as branding and advertising.

DISCUSSION:

Ordinances allowing off-premise billboard signs, including digital billboards, exist in municipalities across the Valley as well as in other jurisdictions nationwide. These policies and ordinances vary widely among the municipalities. For those jurisdictions allowing billboard signs, regulatory standards are always included for height, width, setback, lighting levels, etc.

In developing the Off-Premise Billboard Sign Guidelines, primary consideration was given to separation of freeway billboards from residential uses to avoid or minimize adverse aesthetic impacts. Potential locations for off-premise billboards were identified between the Agua Fria River and the eastern boundary of 99th Avenue both north and south of the I-10. The criteria for selection of potential billboard locations included those parcels adjacent to the I-10 right-of-way zoned PAD or C-3 (Freeway Commercial). Distances from the I-10 both north and south of the freeway to the nearest residential uses were then mapped (Exhibit A).

Based on the results of the mapping, and the increased amount of planned and existing residential north of Van Buren Street it was determined that, if off-premise billboard signs are allowed through a Development Agreement, they should be located between 99th Avenue and 107th Avenue on the north side of I-10.

Given the geographic parameters contained in the guidelines, adoption of these guidelines may

accommodate at least three digital billboards along the I-10 frontage. The nearest single-family residential use in this geographic context is approximately 1,550 feet, or nearly 1/3 mile. As noted, any proposed off-premise billboard sign must be on a parcel subject to an approved Site Plan, which is subject to Development Review Committee approval. A Development Agreement and Site Plan would also be required. The design review process will ensure consistency of any off-premise billboard sign proposed under these guidelines with all applicable City ordinances, goals, objectives, and policies. Because of the existing commercial development and signage existing on McDowell Road between 107th and 99th Avenues, construction of any off-premise digital billboard sign would not represent a substantial visual intrusion and the visual effects would be less than significant.

Planning Commission:
At the meeting of the Planning Commission on November 19, 2015 a discussion was held regarding the limitation to only the north side, and Chair Scibienski indicated the guidelines might want to include the south side as well given future planned development in City Center. Questions were also asked regarding hours of operation and lighting levels. There was discussion as to who the responsible party would be to update the design of the base/billboard if the City rebrands in the future.

Findings:

1. That the City of Avondale Off-Premise Billboard Sign Guidelines ("Guidelines") are consistent with the land use designations set forth in the General Plan
2. That the Guidelines are consistent with other design documents adopted by the City.
3. That the Guidelines will further the City's goals and objectives for development of the Freeway Corridor as set forth in the General Plan.
4. That the Guidelines will ensure consistency with the desired character of the surrounding area.
5. That the Guidelines will ensure compatibility with other adjacent and nearby land uses and will not be detrimental to persons residing or working in the area, adjacent property, the neighborhood or the public welfare in general.
6. That the Guidelines include requirements to ensure no adverse environmental effect will occur.

BUDGET IMPACT:
There is a potential to increase revenue through the development agreements associated with approval of billboards within the City.

RECOMMENDATION:
This item is presented for information and discussion. No action is required.

ATTACHMENTS:

Description

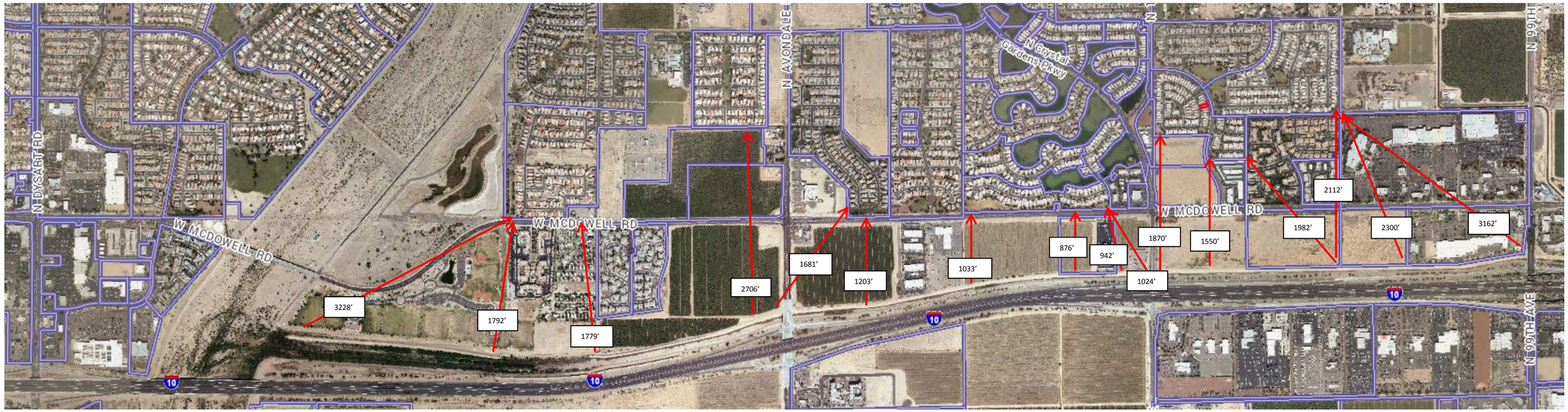
Exhibit A - Residential Distance Map

Exhibit C - PC Minutes

Billboard draft design guidelines

West Valley Health Billboard Guideline Comments

Exhibit A



Approximate distances from potential billboard location to Single-Family Residential – north of I-10

Exhibit C

Excerpt of the Minutes of the regular Planning Commission meeting held October 15, 2015 at 6:30 p.m. in the Council Chambers.

COMMISSIONERS PRESENT
Sean Scibienski, Chair
Michael Long, Commissioner
Grace Carrillo, Commissioner
Olivia Pineda, Commissioner
Gloria Solorio, Commissioner
Kevin Kugler, Commissioner
Russell Van Leuven, Commissioner

COMMISSIONERS ABSENT
None

CITY STAFF PRESENT
Robert Gubser, Planning Manager
Gary Verburg, Legal Counsel
Alison Rondone, Planner II
Rick Williams, Planner II
Linda Herring, Development Services Representative

DISCUSSION ITEM. Off-Premise Billboard Sign Guidelines

Staff will present and request feedback for a proposed off-premise Billboard Sign Guidelines to allow the potential for such a sign along the I-10 Freeway corridor within the City of Avondale, per the direction of City Council. The Guidelines outline location, separation distances, height, and design specifications. This item is for information and discussion only. Staff Contact: Alison Rondone

Alison Rondone, Planner II, presented the Off-Premise Billboard Sign Guidelines for discussion. She stated that billboards are currently prohibited along the freeway corridor within City limits. However, in July City Council directed staff to re-evaluate the prohibition. This was prompted by several factors, including recent property owner inquiries and the two County billboards recently constructed along I-10. Given the large tracts of vacant land along I-10, in some circumstances it was felt that a billboard could be beneficial to the City.

Ms. Rondone stated that the study area extends from the Aqua Fria River to 99th Avenue north and south of the I-10. The parameters for the study included giving primary consideration to separation from residential neighborhoods. Staff would restrict billboards to either C-3 or PAD zoned parcels with an approved site plan within 50 feet of the right-of-way of the I-10. Potential locations were identified, displayed on a map in the presentation. The shortest distance between any of the possible locations to a

single family residence is 1,550 feet east of 107th Avenue. Residential uses north of the freeway would be visually buffered by commercial development on McDowell Road, so the north side of the freeway would be the preferred location for a billboard. Staff feels that this would not be a major visual intrusion, given the development in the area. The design review requirements in the Guidelines will ensure consistency with the City's General Plan, design guidelines and zoning ordinance.

Ms. Rondone referred to Exhibit B in the packet, the draft guidelines. These contain development standards for size, height, landscaping, and distance separation. City branding is required and the hours of operation are limited. Signs could not be displayed between 11:00 p.m. and sunrise. The electronic billboard must display City-related content for at least eight seconds six times per hour.

Ms. Rondone summarized that benefits to the City could include branding, City-related content, the capability to display Amber and Silver Alerts and other emergency messages, and the potential to stimulate economic investment. A billboard would be considered on a case-by-case basis only through a development agreement. City Council requested that the Planning Commission review the guidelines and provide feedback for Council discussion.

Commissioner Pineda asked about the hours of operation proposed for the billboard, and why it would be off at night. Ms. Rondone said the billboard would not operate after 11:00 p.m. to avoid visual intrusion at night. Most municipalities that allow digital billboards require that they not operate overnight.

Chair Scibienski asked about lighting for the new County billboards. Mr. Gubser explained that the two County billboards are not digital, since County regulations do not permit them. He was unaware whether County billboard lighting is turned off overnight. Staff is aiming to mirror industry standards and local practices. Some billboards dim during mid-evening before shutting off later. A Commissioner inquired about the decision to locate the billboard on the north side of the freeway. Ms. Rondone said this would be less visually intrusive because of the activity along McDowell Road.

Chair Scibienski expressed some concerns about billboard locations. Ms. Rondone said these are just guidelines and there is no proposal to change the Zoning Ordinance. Applications would be considered on a case-by-case basis. Mr. Gubser displayed a map showing existing billboards and possible locations, noting that the correct zoning for the Gateway Village parcel is C-3 and a site plan has been approved. Ms. Rondone stressed that the locations shown on the slide are representative of possible sites that would conform to the proposed guidelines.

Chair Scibienski asked about the branding and whether the City would retain any kind of control should the City's branding evolve over time. Mr. Gubser said the development

agreement could contain a clause that the billboard owner would be responsible for updating the sign base should the City rebrand.

City of Avondale Off-Premise Billboard Sign Guidelines

Policy Statement: The City Council may, in its sole and absolute legislative discretion, consider requests for off-premise billboard signs (each a "billboard"). The City Council has determined that billboards represent a departure from previously-adopted policies, but that in certain circumstances a billboard may be beneficial to the City such that a development agreement would be appropriate. In order to consider such a request, the City Council desires to establish minimum thresholds that must be met in order for the City Council to consider a development agreement.

Submittal and Process

1. Each applicant must submit a request demonstrating that it meets the minimum standards set forth in these guidelines and including any other information it deems relevant to the City Council's consideration.

2. Billboard requests must include:
    a. A completed application form, available on the City's website.
    b. A proposal outlining benefits and revenues to the City.
    c. A deed, lease, and/or other agreement by which the applicant has the right to erect, use, and maintain the billboard at the proposed location.
    d. A narrative addressing how the proposed billboard meets the intent of these guidelines.
    e. A vicinity map showing the locations of and distances to any residential zoning districts and/or uses, existing billboards, and existing or planned freeway pylon signs.
    f. A site plan and landscape plan showing the location of the proposed billboard in relation to existing or planned development on the property.
    g. Color elevations and renderings, to scale, in accordance with these guidelines.
    h. A landscape plan, in accordance with these guidelines.
    i. A view analysis, in accordance with the procedures specified in Zoning Ordinance Section 904.D.
    j. Any additional materials determined by the Zoning Administrator to be necessary to evaluate the proposed billboard.

Location Requirements

1. The request may only be for property within a PAD or C-3 zoning district along the north side of the I-10 Freeway Corridor between 99th Avenue and 107th Avenue. A maximum of one billboard should be allowed in each district.

2. No portion of a billboard should be located over 50 feet from the adjacent I-10 right-of-way line.

3. A billboard request may only be considered for approval when located on property that has a City-approved Site Plan. The billboard sign may not be erected prior to the first phase of vertical development within that approved Site Plan.

4. No billboard sign should be located within 1,320 feet of any other approved or existing billboard on the same side of the freeway.

5. No billboard should be located within 1,500 feet from any single-family residential zone or use.

6. Billboards should be freestanding and not be located on buildings or other structures.

Design Requirements

1. All billboards should feature digital displays only.

2. All billboard support structures should be designed to include the Avondale Logo as shown below. Materials and finishes should not be reflective or create glare.

Avondale
Aspiring. Achieving. Accelerating.

Avondale

3. All four sides of a billboard structure should receive consistent architectural treatment.

4. The maximum height of a billboard structure should not exceed 60 feet, except for architectural embellishments, which may extend 5 feet above the top of the billboard sign area.

5. The maximum sign area of a single-sided billboard's advertising area, excluding the support structure, should not exceed 675 square feet. The sign area should not exceed 50 feet in width and shall be limited to a single frame.

6. The maximum area of a dual-sided billboard's advertising area, excluding the support structure, should be 675 square feet per side and shall be limited to a single frame per side. Dual-sided billboards should be "back to back" displays.

7. All billboards should be located within a landscaped area consistent with the approved Site Plan and be maintained in accordance with Zoning Ordinance Section 1208.

8. Trees located in the Arizona Department of Transportation (ADOT) right-of-way should not be removed to increase the visibility of the billboard.

Operational Requirements

1. Digital billboards should operate in conformance with the requirements for digital signs as specified in Zoning Ordinance Sections 907.D.1 through 907.D.5.

2. The billboard should display content pertaining to City of Avondale news and events for a minimum of eight seconds, no less than six times per hour.

3. Digital billboards should cease operation between the hours of 11:00 P.M. and sunrise, except that billboards may display Amber Alerts, Silver Alerts, and other emergency messages from local, state, and federal governments at any time.

4. The City branding imagery included on the support structure should be halo-illuminated reverse pan channel letters and logos, on a timer programmed to turn on at dusk and turn off at 11:00 P.M.

5. Billboard signs abandoned (i.e., not displaying a message or otherwise non-operational) for more than 60 days should be removed by the property owner within 10 days of written request by the City.

West Valley Health: A comment to proposed "City of Avondale Off-Premise Billboard Sign Guidelines

Upon review of the City of Avondale Off-Premise Billboard Design Guidelines, Rev. 11/9/2015, we would like to make the following comments and advisory remarks in an effort to expand and revise the guidelines drafted by Avondale City Staff. These comments and suggestions are submitted with guidance from representatives of the Outdoor Advertising Industry with experience in site identification, underwriting, entitlements and permitting with all municipalities and governmental jurisdictions within the Metropolitan Phoenix Complex.

In keeping with Avondale's vision to develop "The Avondale Health Tech Corridor" to provide valued services and high wage employment it is imperative to include the commercial properties between 107th Avenue and Avondale Boulevard. Further, "Location Requirements" guideline #4 should be revised to anticipate the Maricopa County island located in the center of the Health Tech Corridor, which may without the city's approval place multiple billboards. When this occurs, as Mr. Stead is already in conversation with a signage company, Avondale must be able to approve billboards closer than 1320 feet to establish their identity on the I/10. Therefore, we propose adhering to the minimum ADOT guidelines on properties adjacent to this county island.

Additionally, guideline #5 should be revised to 500 feet to be consistent with most Phoenix Metro municipalities. These standards understand that billboards placed immediately adjacent to a freeway will be appropriately hidden from view from any residential area by commercial building and their respective landscaping.

As to the "Design Requirements" guideline #8, "back to back" displays are no longer viable in the digital age. The reason for V-Type structures is so that the audience, freeway/roadway drivers, get a better, more direct view of the advertising copy. This especially goes for digital displays where the LED screens effectively work best at an angle to cast the light emissions, color values and graphics to an approaching audience. This need for V-Type is even more important to the "cross-read" audience, lanes of traffic on the opposite side of the freeway/roadway that may have a view distance in excess of 200 feet. The City of Avondale must consider the effectiveness and marketability of off-premise signage in any design requirement.

Lastly, while the "Operational Requirements" guideline #2, for City of Avondale use is amenable, the programming abilities do not allow for 8-second flips interjected as scattered copy to provide civic news and events. While it is common for digital displays to have PSA and emergency services messages override programmed ad copy, an agreement on ad space with the City of Avondale as part of the "Development Agreement" would have to be negotiated in order to fit in with the fixed programming methods of the outdoor advertising industry.

We respectfully submit these suggestions as a long-term stakeholder in the community and an active partner in the development effort of the Avondale Health Tech Corridor.

CITY COUNCIL AGENDA

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

REGULAR MEETING
January 19, 2016
7:00 PM

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. APPROVAL OF MINUTES

1. Work Session of January 4, 2016
2. Regular Meeting of January 4, 2016

b. COOPERATIVE PURCHASING AGREEMENT - POLYDYNE, INC.

City Council will consider a request to approve a Cooperative Purchasing Agreement with Polydyne, Inc. to purchase cationic emulsion polymers for a maximum aggregate amount not to exceed $750,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

c. FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT - DELL MARKETING LIMITED PARTNERSHIP

City Council will consider a request to approve the first amendment to the City's cooperative purchasing agreement with Dell Marketing LP for the purchase of computers, peripherals, maintenance, and support for City departments in an aggregate amount not exceed $1.486 million and authorize the Mayor or City Manager and City Clerk to execute the appropriate documents. The Council will take the appropriate action.

d. RESOLUTION 3287-116 - INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATED TO THE HOME INVESTMENT PARTNERSHIPS PROGRAM

City Council will consider a resolution authorizing an intergovernmental agreement with Maricopa County to allow the City to receive an allocation of Federal funding under the HOME Investment Partnership Program in the amount of $128,772 for the 2015-2016 fiscal year and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. RESOLUTION 3290-116 - INTERGOVERNMENTAL AGREEMENT - MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

City Council will consider a resolution approving an Intergovernmental Agreement with Maricopa County Community College District, for Play Group Facilitator Services in the amount of $6,000 for a six month period and the option to renew for eight additional six-month terms for a aggregate maximum amount not to exceed $54,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. ORDINANCE 1596-116 - APPROVING AN OFFICE LEASE AGREEMENT - EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS

City Council will consider an ordinance authorizing an agreement with EPS Groups, Inc. Engineers, Planners & Surveyors for the lease of real property located at 125 S. Avondale Boulevard and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

4 PUBLIC HEARING - CONDITIONAL USE PERMIT - JACK IN THE BOX DRIVE-THRU RESTAURANT (APPLICATION PL-15-0200)

City Council will hold a public hearing and consider a request by Mr. Jeff Looker, Looker & Cappello Architects, Inc., for approval of a Conditional Use Permit for a Jack in the Box drive-thru restaurant at the southwest corner of McDowell Road and 103rd Avenue. The Council will take appropriate action.

5 PROFESSIONAL SERVICES AGREEMENT - EXERPLAY, INC.

City Council will consider a request to approve a professional services agreement with Exerplay, Inc. in the amount of $250,000 for a new playground, safety surfacing and Americans with Disabilities Act access at Fred Campbell and Friendship Parks, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

6 PROFESSIONAL SERVICES AGREEMENT - PLAY IT SAFE PLAYGROUNDS AND PARK EQUIPMENT, INC.

City Council will consider a request to approve a professional services agreement with Play It Safe Playgrounds and Equipment Inc. in an amount not to exceed $350,000 for new playground equipment, safety surfacing and shade at Friendship Park and authorize the Mayor or City Manager and City Clerk execute the necessary documents. The Council will take the appropriate action.

7 EXECUTIVE SESSION

City Council may hold an executive session pursuant to (i) Ariz. Rev. Stat. § 38-431.03 (A) (1) for discussion regarding the City Manager's quarterly evaluation.

8 ADJOURNMENT

Respectfully submitted,

Carmen Martinez

Carmen Martinez
City Clerk

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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 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.

Category Number: 3
Item Number: b.

CITY COUNCIL AGENDA

SUBJECT:
Cooperative Purchasing Agreement - Polydyne, Inc.

MEETING DATE:
1/19/2016

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 Cooperative Purchasing Agreement with Polydyne, Inc. to purchase cationic emulsion polymers for a maximum aggregate amount not to exceed $750,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:
After a competitive procurement process, the City of Chandler entered into a contract with Polydyne, Inc. to purchase cationic emulsion polymers. The contract includes cooperative use language which allows the City of avondale to utilize the contract. The initial term of the contract is in effect until June 2016 and provides for (4) one-year renewal options.

DISCUSSION:
The City of Avondale's Public Works Department utilizes the cationic emulsion polymers to condition the wastewater sludge that is treated at the Charles M. Wolf Water Reclamation Facility. The cationic polymers are an essential chemical additive utilized in the wastewater treatment processes. The cationic polymers are introduced into the treatment process to initiate a chemical bond which results in a thickened sludge that can be easily treated, handled, and then transported for ultimate disposal. Failure to utilize the cationic polymers within the process will significantly increase the facility's operations and maintenance costs for the efficient treatment and ultimate disposal of the sludge.

BUDGET IMPACT:
Staff estimates a maximum of $150,000 in expenditures per fiscal year, for a cumulative total over the five year contract period not to exceed $750,000.

Expenditures are typically charged to 503-9230-00-7155, and are subject to budget authority.

RECOMMENDATION:
Staff recommends that the City Council approve a Cooperative Purchasing Agreement with Polydyne, Inc. in an amount not to exceed $750,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

CPA - Polydyne, Inc.

COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
POLYDYNE INC.

THIS COOPERATIVE PURCHASING AGREEMENT (this "Agreement") is entered into as of January 19, 2016, between the City of Avondale, an Arizona municipal corporation (the "City"), and Polydyne Inc., a Delaware corporation (the "Vendor").

RECITALS

A. After a competitive procurement process, the City of Chandler ("Chandler") entered into Contract No. MU5-885-3526, dated July 1, 2015 (the "Chandler Contract"), for the Vendor to provide polymer chemicals. A copy of the Chandler Contract is attached hereto as Exhibit A and incorporated herein by reference, to the extent not inconsistent with this Agreement.

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

C. The City and the Vendor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Chandler Contract and this Agreement, (ii) establishing the terms and conditions by which the Vendor may provide the City with polymer products, as more particularly set forth in Section 2 below on an "as-required" basis (the "Materials") and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Materials.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2016 (the "Initial Term"), unless terminated as otherwise provided in this Agreement or the Chandler Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Chandler Contract has not expired, (iii) at least 30 days prior to the end of the then-current term of this Agreement, the Vendor requests, in writing, to extend this Agreement for an additional one-year term and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the Chandler Contract, as evidenced by the City Manager's

signature thereon, which approval may be withheld by the City for any reason. The Vendor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Vendor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Purchase of Materials. This is an indefinite quantity and indefinite delivery Agreement for Materials under the terms and conditions of the Chandler Contract. The City does not guarantee any minimum or maximum number of purchases will be made pursuant to this Agreement. Purchases will only be made when the City identifies a need and proper authorization and documentation have been approved. For purchase(s) determined by the City to be appropriate for this Agreement, the Vendor shall provide the specific Materials to the City in such quantities and configurations as may be agreed upon between the parties, in the form of a written invoice, quote, materials order or other form of written agreement describing the materials to be delivered (each, a "Materials Order"). Each Materials Order shall (i) contain a reference to this Agreement and the Chandler Contract and (ii) be attached hereto as Exhibit B and incorporated herein by reference. A Materials Order submitted without referencing this Agreement and the Chandler Contract will be subject to rejection. Vendor acknowledges and agrees that a Materials Order containing unauthorized exceptions, conditions, limitations, or provisions in conflict with the terms of this Agreement, other than City's project-specific requirements, is hereby expressly declared void and shall be of no force and effect.

2.1 Inspection; Acceptance. Materials are subject to final inspection and acceptance by the City. Materials failing to conform to the requirements of this Agreement and/or the Chandler Contract will be held at the Vendor's risk and may be returned to the Vendor. If so returned, all costs are the responsibility of the Vendor. Upon discovery of non-conforming Materials, the City may elect to do any or either of the following by written notice to the Vendor: (i) waive the non-conformance or (ii) bring the Materials into compliance and withhold the cost of same from any payments due to the Vendor.

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

3. Compensation. For the Initial Term, the City shall pay the Vendor an aggregate amount not to exceed $75,000.00 for the Materials at the unit rates set forth in the Chandler Contract. Thereafter, for each subsequent Renewal Term, if any, the City shall pay the Vendor an annual aggregate amount not to exceed $150,000.00 for Materials at the unit rates set forth in the Chandler Contract. The maximum aggregate amount for this Agreement, including all Renewal Terms, shall not exceed $675,000.00.

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

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

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

7. Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City 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 City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Vendor informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Vendor hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

8. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, any City-approved Materials Order, the Chandler Contract and invoices, the documents shall govern in the order listed herein. Notwithstanding the foregoing, and in conformity with Section 2 above, unauthorized exceptions, conditions, limitations or provisions in conflict with the terms of this Agreement or the Chandler Contract (collectively, the "Unauthorized Conditions"), other than the City's project-specific requirements, are expressly declared void and shall be of no force and effect. Acceptance by the City of any Materials Order or invoice containing any such Unauthorized Conditions or failure to demand full compliance with the terms and conditions set forth in this Agreement or under the Chandler Contract or to exercise or delay the exercise of any right or remedy provided in this Agreement, the Chandler Contract shall not alter such terms and conditions or relieve the Vendor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

9. Rights and Privileges. To the extent provided under the Chandler Contract, the City shall be afforded all of the rights and privileges afforded to Chandler and shall be the "City" (as defined in the Chandler Contract) for the purposes of the portions of the Chandler Contract that are incorporated herein by reference.

10. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 9 above, the City shall be afforded all of the insurance coverage and indemnifications afforded to Chandler to the extent provided under the Chandler Contract, and such insurance coverage and indemnifications shall inure and apply with equal effect to the City under this Agreement including, but not limited to, the Vendor's obligation to provide the indemnification and insurance. In any event, the Vendor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Vendor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

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

If to the City:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Attn: David W. Fitzhugh, City Manager
With copy to:	GUST ROSENFELD P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attn: Andrew J. McGuire, Esq.
If to Vendor:	Polydyne Inc. P.O. Box 279 Riceboro, Georgia 31323 Attn: Rebecca Beasley

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all

required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

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

"**City**"

CITY OF AVONDALE,
an Arizona municipal corporation

_____
David W. Fitzhugh, City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2016, 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)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"**Vendor**"

POLYDYNE INC.,
a Delaware corporation

By:_____

Name:_____

Title:_____

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2016, before me personally appeared _____ _____, the _____ of POLYDYNE INC., 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)

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
POLYDYNE INC.

[Chandler Contract]

See following pages.

05-817

CITY OF CHANDLER PURCHASE CONTRACT
CONTRACT NO.: MU5-885-3526
CHEMICALS

THIS CONTRACT is made and entered into this 12 day of June, 2015, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Polydyne, Inc., hereinafter referred to as "CONTRACTOR".

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATION AND OPERATION:

1.1. Contract Administrator: CONTRACTOR shall act under the authority and approval of the Cost Center Superintendent/designee (Contract Administrator), to provide the goods and merchandise required by this Contract.

1.2. Ordering Instructions: Authorization for purchases under the terms and conditions of this contract will be made only upon issuance of a CITY Purchase Order, a Contract Release Order or use of a City Procurement Card.

2. GOODS AND MERCHANDISE TO BE PROVIDED: CONTRACTOR shall provide to CITY the goods and merchandise listed on Exhibit A, attached hereto and made a part hereof by reference, at the per unit prices listed on Exhibit B, all as more specifically set forth in the Specifications and details included therein.

2.1. Safety Standards: All items supplied pursuant to this contract must comply with the current applicable occupational safety and health standards of the State of Arizona Industrial Commission.

2.2. Non-Discrimination. The CONTRACTOR shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.

2.3. Product Discontinuance (Categories): In the event that a required product or model is discontinued by the manufacturer, CITY at its sole discretion may allow CONTRACTOR to provide a substitute for the discontinued item. CONTRACTOR shall request permission to substitute a new product or model and provide the following:

A formal announcement from the manufacturer that the product or model has been discontinued.

Documentation from the manufacturer that names the replacement product or model.

Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

Documentation confirming that the price for the replacement is the same as or less than the discontinued model.

If requested by CITY, CONTRACTOR shall provide a sample of the replacement product.

cc 6-11-15

2.4. **Licenses:** CONTRACTOR shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by CONTRACTOR as applicable to this contract.

2.5. **Orders:** CONTRACTOR shall, in accordance with all terms and conditions of this Contract, fully perform and shall be obligated to comply with all orders sent to CONTRACTOR, in accordance with Subsection 1.2, prior to the expiration or termination hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all orders sent prior to but not fully performed and/or satisfied at the expiration or termination of this Contract.

2.6. **Advertising, Publishing and Promotion of Contract:** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

2.7. **Compliance with Applicable Laws:** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.

2.8. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.

2.9. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.

2.10. **Estimated Quantities.** The quantities shown on Exhibit B (the Price List) are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by CITY. CITY reserves the right to increase or decrease the quantities actually required.

2.11. **New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Contract shall be new, or the latest model and of the most suitable grade for the purpose intended.

2.12. **Packing and Shipping.** The CONTRACTOR shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.

3. **WARRANTIES:**

3.1. **Liens:** CONTRACTOR warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

3.2. **Quality:** Unless otherwise modified elsewhere in these terms and conditions, CONTRACTOR warrants that, for one year after acceptance by CITY of the materials, they shall be:

3.2.1. Of a quality to pass without objection in the trade under the Contract description;

3.2.2. Fit for the intended purposes for which the materials are used;

3.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

3.2.4. Adequately contained, packaged and marked as the Contract may require; and

3.2.5. Conform to the written promises or affirmations of fact made by CONTRACTOR.

3.3. **Fitness:** CONTRACTOR warrants that any material supplied to CITY shall fully conform to all requirements of the Contract and all representations of CONTRACTOR, and shall be fit for all purposes and uses required by the Contract.

3.4. **Inspection/Testing:** The warranties set forth in Section 3 herein are not affected by inspection or testing of or payment for the materials by CITY and shall survive expiration or termination of this Contract.

4. **ACCEPTANCE AND DOCUMENTATION:** All goods are subject to final inspection and acceptance by CITY. Material failing to meet the requirements of this Contract will be held at CONTRACTOR's risk and may be returned to CONTRACTOR. If so returned, the cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses are the responsibility of CONTRACTOR. CITY may elect to do any or all of the following: Waive the non-conformance; stop the work immediately; or bring the material into compliance. Defective Products. All defective products shall be replaced and exchanged by CONTRACTOR. The cost of transportation, unpacking, inspection, repacking, reshipping or other like expenses shall be paid by the CONTRACTOR. All replacement products must be received by CITY within seven (7) days of initial notification

4.1. **Records.** The CONTRACTOR shall retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.

4.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, CONTRACTOR's books and records shall be subject to audit by CITY to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, CONTRACTOR shall produce a legible copy of any or all such records.

4.3. **Delivery.** Delivery shall be made within 7 Days after receipt of order.

5. **PRICE:** CITY shall pay to CONTRACTOR an amount the unit prices set forth in Exhibit B for the actual quantity of product delivered.

5.1. **Pricing:** Prices stated include all freight, insurance, warranty costs, and any other applicable costs.

5.2. **Payment:** A separate invoice shall be issued for each shipment of goods or merchandise, and no payment will be issued prior to receipt of material and a correct invoice. All billing invoices shall include delivery time, purchase order number, and contractual payment terms. Items are to be identified by the name, model number, contract number, line item number, and serial number if applicable. Payment. CONTRACTOR shall submit to the issuing department, after completion of the task or combination of tasks listed by the issuing departments task order, a statement of charges for the work completed under that task order, in conformance with the pricing schedule of this contract, the issuing department shall process the claim for prompt payment in accordance with the standard operating procedures of CITY.

5.3. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. CONTRACTOR shall retain title and control of all goods until they are delivered and accepted by CITY. All risk of transportation and all related charges shall be the responsibility of CONTRACTOR. All claims for visible or concealed damage shall be filed by CONTRACTOR. CITY will notify CONTRACTOR promptly of any damaged goods and shall assist CONTRACTOR in arranging for inspection.

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

5.5. **Taxes:** CONTRACTOR shall be solely legally responsible for any and all tax obligations, which may result out of CONTRACTOR'S performance of this Contract. CITY shall have no legal obligation to pay any amounts for taxes, of any type, incurred by CONTRACTOR. City agrees that Contractor may bill the City for applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

5.6. **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless said form is not required by law.

5.7. **Price Adjustment (Annual).** All prices offered herein shall be firm against any increase for one (1) year from the effective date of the Contract. Prior to commencement of subsequent renewal terms, CITY will entertain a fully documented request for price adjustment. The requested increase shall be based upon a cost increase to CONTRACTOR that was clearly unpredictable at the time the Contract was executed directly correlated to the price of the product concerned.

5.8. **Acceptance by CITY.** CITY reserves the right to accept or reject the request for a price increase. If CITY approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon a written Contract Amendment must be approved and executed by the Parties.

5.9. Price Reduction. CONTRACTOR shall offer CITY a price reduction for its products concurrent with a published price reduction made to other customers.

6. TERM: The term of the Contract is one year (s), commencing on July 1, 2015 and terminating on June 60, 2016, unless sooner terminated in accordance with the provisions herein. The contract may be extended by mutual agreement of the parties for up to four additional one year periods.

7. USE OF THIS CONTRACT:

7.1. The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like goods and materials from another source to secure significant cost savings or when timely delivery cannot be met by CONTRACTOR.

7.2. CONTRACTOR is aware that there may be more than one CONTRACTOR who has been awarded a Contract to provide this type of goods and materials. CITY reserves the right and will issue Purchase Orders for goods and materials based on ability of CONTRACTOR to meet CITY's schedule and/or price.

7.3. Cooperative Use of Contract. In addition to the City of Chandler and with approval of the contracted CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five (5) times during a month, CONTRACTOR shall submit a full set of fingerprints to the school district in accordance with A.R.S. 15-512 of each person or employee who may provide such service. The District shall conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all CONTRACTORS, sub-CONTRACTORS or vendors and their employees for which fingerprints are submitted to the District. Additionally, the CONTRACTOR shall comply with the governing body fingerprinting policies of each individual school district/public entity. CONTRACTOR, sub-contractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The CITY shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Contract.
Additional delivery charges, if necessary, for locations outside the City of Chandler, shall be negotiated separately by each agency after award of Contract.

8. CITY'S CONTRACTUAL REMEDIES:

8.1. Right to Assurance: If CITY in good faith has reason to believe that CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that CONTRACTOR give a written assurance of intent to perform. Failure by CONTRACTOR to provide written assurance

within the number of Days specified in the demand may, at CITY's option, be the basis for terminating the Contract under the terms and conditions of this Contract or other rights and remedies available by law.

8.2. **Non-exclusive Remedies:** The rights and the remedies of CITY under this Contract are not exclusive.

8.3. **Right of Offset:** CITY shall be entitled to offset against any sums due to CONTRACTOR, any expenses or costs incurred by CITY, or damages assessed by CITY concerning CONTRACTOR's non-conforming performance or failure to perform the Contract, including costs and damages incurred by CITY.

9. **TERMINATION:**

9.1 **Termination for Convenience:** CITY reserves the right to terminate this Contract or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director shall determine the percentage of work performed under each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.

9.2 **Termination for Cause:** City may terminate this Contract for Cause:

Upon the occurrence of any one or more of the following events:

1) If CONTRACTOR fails to perform pursuant to the terms of this Contract
2) If CONTRACTOR is adjudged a bankrupt or insolvent;
3) If CONTRACTOR makes a general assignment for the benefit of creditors;
4) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR 'S property;
5) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
6) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
7) Where Contract has been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue.

9.3. **Termination for Misrepresentation.** CITY may, upon written notice, terminate this Contract for any attempt by CONTRACTOR to represent any goods or materials not specifically awarded as being under contract with the CITY of Chandler. Any such action is subject to the legal and contractual remedies available to CITY inclusive of, but not limited to, contract cancellation, suspension and/or debarment of CONTRACTOR.

9.4. **Cancellation for Conflict of Interest:** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract

on behalf of CITY is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time.

9.5. **Gratuities:** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by the CONTRACTOR or a representative of the CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the CONTRACTOR.

9.6. **Suspension or Debarment:** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that the CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a Sub-CONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If the CONTRACTOR becomes suspended or debarred, the CONTRACTOR shall immediately notify CITY.

9.7. **No Waiver:** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

10. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

11. **DISPUTE RESOLUTION:**

11.1 **Arizona Law.** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

11.2 **Jurisdiction and Venue.** The parties agree that this Contract is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Contract shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

11.3 **Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Contract is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.

12. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by CONTRACTOR, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract, including but not limited to, any injury or damages claimed by any of CONTRACTOR's and subcontractor's employees.

The amount and type of insurance coverage requirements set forth in the Contract will in no way be construed as limiting the scope of indemnity in this paragraph.

13. Insurance

13.1 General.

A. At the same time as execution of this Agreement, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.

B. The Contractor and any of its subcontractors, subconsultants or sublicensees shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.

C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, sublicensees or subconsultants and the Contractor is free to purchase any additional insurance as may be determined necessary.

E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

13.2 Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than $2,000,000 for each occurrence, $4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability*: Contractor must maintain Business/Automobile Liability insurance with a limit of $1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

C. *Workers Compensation and Employers Liability Insurance*: Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than $1,000,000 for each accident and $1,000,000 disease for each employee.

D. Pollution Legal Liability Policy:

1. CONTRACTOR shall provide Pollution Legal Liability insurance which shall include coverage for:

   a. On and off-site cleanup of known and unknown pre-existing conditions arising from the CONTRACTOR's facility or from the performance of the Contract, or
   b. On and off-site cleanup of conditions arising from the CONTRACTOR's facility or from the performance of the Contract.
   c. Third-party claims for on and off-site bodily injury and property damage arising from the performance of the Contract.

d. Claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo if the Scope of Services in the Contract requires the transportation of any hazardous materials.

2. CONTRACTOR warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

Minimum Limits:
Per Loss $ 5,000,000
Products/Completed Operations Aggregate $ 5,000,000,

The policy shall be endorsed to include the following additional insured language: "The City of Chandler shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

If the Scope of Services in the Contract requires the transportation of any hazardous materials or regulated substances, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

CONTRACTOR warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years the transportation of any hazardous materials or regulated substances, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

CONTRACTOR warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

13.3 Additional Policy Provisions Required.

A. *Self-Insured Retentions Or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers. ,

B. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed

operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.

2. The Contractor's insurance must contain broad form contractual liability coverage and must not exclude liability arising out of explosion, collapse, or underground property damage hazards ("XCU") coverage.

3. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

4. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.

5. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.

7. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.

8. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

9. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the required policies expire during the life of this Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the necessary insurance provisions.

10. By submitting this bid, the Bidder certifies it is fully aware of Insurance Requirements contained in the Contract assures the City of Chandler that it is able to produce the Insurance coverage required should it be selected to be awarded the Contract.

Should it be awarded the Contract by City of Chandler, and then become unable to produce the Insurance coverage specified within ten working days, the Bidder is fully aware and understand that it may not be considered for further projects by City of Chandler.

14. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of CITY		In the case of the CONTRACTOR	
Department:	Purchasing	Firm Name:	Polydyne, Inc.
Contact:	Mike Mandt	Contact:	Boyd Stanley
Mailing Address:	PO Box 4008 MS 901	Address:	1 Chemical Plant Road
Physical Address:	175 South AZ Avenue	City, State, Zip	Riceboro, GA 31323
City, State, Zip	Chandler, AZ 85244	Phone:	912-880-2035
Phone:	480-782-2406		polybiddpt@snfhc.com

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

15. **GENERAL TERMS:**

15.1. **Entire Contract:** This Contract, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by authorized representatives or each party.

15.2. **Arizona Law:** This Contract shall be governed and interpreted according to the laws of the State of Arizona.

15.3. **Assignment:** Services covered by this Contract shall not be assigned in whole or in part without the prior written consent of CITY.

15.4. **Amendments:** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by CITY in writing or made unilaterally by the CONTRACTOR are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on those changes.

15.5. Conflict of Interest:

15.5.1 No Kickback: CONTRACTOR warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of City Council or any employee of CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in CONTRACTOR'S proposal to CITY.

15.5.2 Kickback Termination: CITY may cancel this Contract, 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 agencies is, at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a CONTRACTOR to any other party to the Contract with respect to the subject matter of the 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 (A.R.S. §38-511).

15.5.3 No Conflict: CONTRACTOR stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15.6. Independent CONTRACTOR: The CONTRACTOR under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

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

15.8. Authority: Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

15.9. Ownership. All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 12 day of June, 2015.

FOR THE CITY OF CHANDLER

Mayor

Approved as to form:

Cynthia Hoglin for

City Attorney

CH

ATTEST:

City Clerk

FOR THE CONTRACTOR

By: Signature

Boyd Stanley, Business Director

ATTEST: If Corporation

Secretary

James R. Carlson, Secretary

CITY OF CHANDLER CORPORATE SEAL ARIZONA

EXHIBIT A
REVISION 1
SPECIFICATIONS

BACKGROUND

The City has an ongoing need for the chemicals listed below to be delivered as requested at various city facilities. The purpose of this contract is to supplement the Cities existing chemical contract (MU4-885-3350). The Facilities served under this contract are dynamic and chemical needs can change over time due to equipment functionality, Process results, changes in standards and other circumstances. As a result, the City reserves the right to add, remove, and or substitute products under this contract as needs arrive via contract amendment.

Item 1 Polymer

Product: Polydyne WE-1071 or preapproved equivalent

Delivery Size: Tote, Bulk Full Load, Bulk Partial Load

Item 2 Polymer

Product: Polydyne A 210P

Delivery Quantity: Bulk up to 80,000 lbs.

Performance and or quality requirements: QA/QC report with every load.

Item 3 Polymer

Product: Polydyne C6267 or preapproved equivalent

Delivery Size: Tote

EXHIBIT B
PRICE

Bid Item	Chemical	UOM	Delivered Size	Unit Price
1a	Clarifloc WE-1071 Polymer (AWRF)	Gal	Tote	$ 9.03
1b	Clarifloc WE-1071 Polymer (AWRF)	Gal	Full Load	$ 9.12
1c	Clarifloc WE-1071 Polymer (AWRF)	Gal	Partial Load 3,000 gal and over	$ 9.55
1d	Clarifloc WE-1071 Polymer (AWRF)	Gal	Partial Load less then 3,000 gal	$ 10.15
2	Polymer Polydyne A 210P	Neat lb	bulk	$ 0.97
3	Polymer Polydyne C6267	gal	tote	$ 9.03

EXHIBIT B
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
POLYDYNE INC.

[Materials Order(s)]

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

SNF POLYDYNE

www.polydyneinc.com

November 16, 2015

Mr. Ajesh Prasad
Facility Operator III
City of Avondale
4800 South Dysart Road
Avondale, AZ 85323

Subject: Piggyback Contract Offer for the Purchase of Polymer
RE: City of Chandler Contract MU5-885-3526

Dear Mr. Prasad,

Polydyne Inc. is pleased to offer the City of Avondale the option to piggyback the purchase of cationic emulsion polymers CLARIFLOC® WE-1444 and WE-1445 from the referenced City of Chandler contract. While these products are not specifically included in this contract, it does include CLARIFLOC® C-6267 and WE-1071. CLARIFLOC® WE-1444 is very similar in composition to C-6267, as is WE-1445 to WE-1071. With this piggyback agreement, the unit price for both CLARIFLOC® WE-1444 and WE-1445 will be $1.05/Lb. ($9.03/Gal. at 8.6 Lbs/Gal.) in totes through June 30, 2016, with four additional one year renewal options available.

Attached for your reference, please find a copy of the City of Chandler contract. All terms and conditions stated therein will apply.

We look forward to the opportunity to continue to supply the City of Avondale. Should you have any questions regarding this offer, please feel free to contact Joe Conca, Technical Sales Representative, at (623) 640-1425.

Best regards,

Boyd Stanley
Business Director

Enclosures

1 Chemical Plant Road • P.O. Box 279 • Riceboro, GA 31323 USA • Tel 800.848.7659 • Fax 912.880.2078

Category Number: 3
Item Number: c.

CITY COUNCIL AGENDA

SUBJECT:
First Amendment to Cooperative Purchasing Agreement - Dell Marketing Limited Partnership

MEETING DATE:
1/19/2016

TO: Mayor and Council

FROM: Rob Lloyd, CIO/Director (623) 333-5011

THROUGH: David Fitzhugh, City Manager

PURPOSE:
Staff requests that City Council approve the amendment to cooperative purchase agreement 14225c with Dell Marketing LP for the purchase of computers, peripherals, maintenance, and support for City departments with new dates and not to exceed an aggregate total of $1,486,000, and authorizing the Mayor or City Manager and City Clerk to execute the agreements.

BACKGROUND:
The City's consolidated Technology Equipment Replacements program and Internal Services Fund accrues monies for replacement of computing equipment used by City staffs on defined lifecycles. Equipment rotations and funding are approved by City Council as part of the annual budget process. Fiscal Year 2016 technology replacements are published on page 279 of the City's 2015-2016 Annual Budget and Financial Plan.

The existing agreement allows the Finance and Budget and Information Technology departments to execute purchases of scheduled replacement computers, peripherals, maintenance, and related equipment as approved by City Council each fiscal year. The cooperative nature of the contract provides the City of Avondale with access to discounts resulting from the large, aggregated purchasing power of many states. The proposed purchase agreement amendment uses the cooperative awards and State of Arizona participating addenda to access that pricing—Dell on State of Arizona contract ADSPO16-098163.

This amendment would revise contract 14225c that was previously approved by City Council on November 16, 2015.

DISCUSSION:
The proposed amendment will be used to execute the Technology Equipment Replacements Schedule and related purchases as approved by the Mayor and City Council in the annual budget process and as permitted by the availability of funds. The agreement is written as an "up-to" contract, which allows for purchases that do not exceed the stated maximum value and only as requested by the City. No purchases are required under the contract, minimizing risk. Further, continuation of the City's agreement in future year requires extension by the respective contracting alliance, the State of Arizona, and the City of Avondale.

Dell Marketing LP received a new State of Arizona contract in July 2015 based on the WSCA/NASPO national cooperative agreement. City Council approved the City of Avondale's purchase agreement based on the State Award to allow the City to access the contract's advantageous pricing with set up-to values each year on November 16, 2015. In November 2015, Dell requested the City amend its contract to align with the State Award dates.

This amendment would change the termination date from June 30, 2016, to March 31, 2017, and reduce the number of renewal options from four to three. The vendor has requested the change to align the dates of the agreement with the State of Arizona cooperative award from which the City receives advantageous pricing. Total aggregate capacity would remain the same at up to $1,486,000 over the full multi-year agreement.

BUDGET IMPACT:
For Fiscal Year 2016 through Fiscal Year 2020, expenditure capacity totals up to $1,486,000. Actual expenditures will be less as they will be based on allocation of funds by the Mayor and City Council in the annual budget processes, departmental requirements, and on available revenues to make purchases. The amendment would not affect the overall value of the contract.

Expenditures will primarily be made through accounts 603-5120-00-7085, 530-5120-00-7085, 531-5120-00-7085, and 532-5120-00-7085.

RECOMMENDATION:
Staff recommends that City Council approve the amendment to cooperative purchase agreement 14225c with Dell Marketing LP for the purchase of computers, peripherals, maintenance, and support for City departments with new dates and not to exceed an aggregate total of $1,486,000, and authorizing the Mayor or City Manager and City Clerk to execute the agreements.

ATTACHMENTS:

Description

CPA - Dell Marketing

FIRST AMENDMENT
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
DELL MARKETING LIMITED PARTNERSHIP

THIS FIRST AMENDMENT TO COOPERATIVE PURCHASING AGREEMENT (this "First Amendment") is entered into as of January 18, 2016, between the City of Avondale, an Arizona municipal corporation (the "City"), and Dell Marketing Limited Partnership, a Texas limited partnership (the "Contractor").

RECITALS

A. After a competitive procurement process, WSCA-NASPO Cooperative Purchasing Organization ("WSCA-NASPO") through its lead state, the State of Minnesota, entered into Contract No. MNWNC-108, dated April 1, 2015, with the Contractor to provide computer equipment, including related peripherals and services (the "Master Agreement").

B. As a participating entity of WSCA-NASPO, the State of Arizona (the "State") entered into Participating Addendum Contract No. ADSPO15-093839, dated July 7, 2015, and amended by that certain Contract Amendment No. 1, dated July 31, 2015, changing the Contract No. to ADSPO16-098163, with the Contractor for the purchase of computer hardware including peripherals and associated services (collectively, the "State Addendum").

C. The City and the Contractor entered into a Cooperative Purchasing Agreement, No. 14225C, dated November 16, 2015 (the "Agreement"), based upon the Master Agreement and State Addendum, for the Contractor to provide the City with information technology equipment (the "Equipment"). All capitalized terms not otherwise defined in this First Amendment have the same meanings as contained in the Agreement.

D. The City and the Contractor desire to enter into this First Amendment to amend (i) the Term of Agreement and (ii) Compensation provisions, as more particularly set forth below.

AGREEMENT

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

1. Term of the Agreement. The text of Section 1 of the Agreement is deleted in its entirety and replaced with the following:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until March 31, 2017 (the "Initial Term"), unless terminated as otherwise provided in this Agreement, the Master Agreement or the State Addendum. After the expiration of the Initial Term, this Agreement may be renewed for up to three successive one-year terms (each, a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the terms of the Master Agreement or the State Addendum have not expired, (iii) at least 30 days prior to the end of the then-current term of this Agreement, the Contractor requests, in writing, to extend this Agreement for an additional one-year term and (iv) the City approves the additional one-year term in writing (including any price adjustments approved as part of the Master Agreement or the State Addendum), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Contractor, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Compensation. The text of Section 3 of the Agreement is deleted in its entirety and replaced with the following:

3. Compensation. The City shall pay Contractor the following amounts for the Equipment at the rates set forth in the Master Agreement and State Addendum:

A. For the Initial Term, an amount not to exceed $690,000.00.

B. For the First Renewal Term, an amount not to exceed $105,000.00.

C. For the Second Renewal Term, an amount not to exceed $290,000.00.

D. For the Third Renewal Term, an amount not to exceed $401,000.00.

The maximum aggregate amount for the Term of this Agreement shall not exceed $1,486,000.00.

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

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

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

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

"**City**"

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 _____, 2016, 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)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

"**Contractor**"

DELL MARKETING LIMITED PARTNERSHIP,
a Texas limited partnership

By:_____

Name:_____

Title:_____

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2016, before me personally appeared _____ _____, the _____of DELL MARKETING LIMITED PARTNERSHIP, a Texas limited partnership, 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 limited partnership.

_____
Notary Public

(Affix notary seal here)

Category Number: 3
Item Number: d.

CITY COUNCIL AGENDA

SUBJECT:
Resolution 3287-116 - Intergovernmental Agreement with Maricopa County related to the Home Investment Partnerships Program

MEETING DATE:
1/19/2016

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 City Council approve a resolution authorizing the City to enter into an Intergovermental Agreement with Maricopa County to allow the City to receive an allocation of federal funding under the HOME Investment Partnership Act in the amount of $128,772 for the 2015-2016 fiscal year and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

BACKGROUND:
In May, 2005 the City Council adopted Resolution 2485-05 which allowed the City to enter into the Maricopa HOME Consortium Intergovernmental Agreement with Maricopa County and other municipalities in the Valley. The agreement resulted in the City becoming a member of the Maricopa HOME Consortium, and entitles the City to a portion of the Consortium's annual allocation of HOME funds from the US Department of Housing and Urban Development (HUD). The original agreement, which secures the City's membership in the Consortium, has been renewed in subsequent years, and remains in effect.

DISCUSSION:
This second IGA identifies the total amount of HOME funding provided to the City during FY 2015-2016, as well as activities that the City will undertake with these funds. With City Council approval in April 2015, staff prepared and submitted the City's 2015-2016 Annual Action Plan to HUD, which designated the use and allocation amounts of these funds to specific HOME-eligible activities.

BUDGET IMPACT:
There is no budgetary impact at this time. This is not additional funding. It is the same funding that was included in the Annual Action Plan that was brought before Council and approved in April, 2015. At that time, Council approved providing the required 25% match funding which has already been appropriated in the budget in Fund 205.

RECOMMENDATION:
Staff recommends that the City Council adopt the Resolution authorizing an intergovernmental agreement with Maricopa County to allow the City to receive an allocation of federal funding under the HOME Investment Partnership Propram in the amount of $128,772 for the 2015-2016 fiscal year and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

Resolution 3287-116

RESOLUTION NO. 3287-116

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY RELATING TO THE HOME INVESTMENT PARTNERSHIPS PROGRAM.

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

SECTION 1. The Intergovernmental Agreement with Maricopa County, administered by its Human Services Department, relating to financial assistance provided to eligible first-time homebuyers in Avondale through the HOME Investment Partnerships Program, as subrecipient and member of the HOME Consortium (the "Agreement") is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

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

PASSED AND ADOPTED by the Council of the City of Avondale, January 19, 2016.

_____
Kenneth N. Weise, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3287-116

(Agreement)

See following pages.

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

Contract Amount: $128,772
Contract Start Date: July 1, 2015
Contract Termination Date: 24 months from date fully executed
Contract Number: _____
Program Number:
CFDA Number: 14.239, HOME Investment Partnerships Program
DUNS Number:00-248-6884

Maricopa County (County) shall provide financial reimbursement in an Agreement amount up to One Hundred Twenty-Eight Thousand Seven Hundred Seventy-Two dollars ($128,772) subject to the terms of this Agreement and availability of funds. This Agreement amount constitutes the County's entire participation and obligation in the performance and completion of all work to be performed under this Agreement.

This Agreement is entered into by and between the City of Avondale, a member of the HOME Consortium (hereinafter referred to as the "City and/or "Subrecipient"), and Maricopa County, administered by its Human Services Department, (hereinafter referred to as the "County" or "Lead Agency"). The Subrecipient and County are collectively referred to herein as the "Parties" and individually as a "Party."

The Subrecipient, for and in consideration of the covenants and conditions set forth in this Agreement, shall provide and perform the services set forth herein. All rights and obligations of the Parties shall be governed by the terms of this Agreement, its exhibits, attachments, and appendices, including any Subcontracts, Amendments, or Change Orders as set forth herein and in:

Section I – General Provisions – Contain uniform administrative requirements applicable to both Parties participating in the HOME Investment Partnerships (HOME) Program, which include, but are not limited to, definitions; non-discrimination and equal opportunity requirements; disclosure and retention requirements; and debarment, suspension, or ineligibility exclusions.

Section II – Special Provisions – Provides specific programmatic requirements upon the Subrecipient that are established by the HOME Program and applicable HUD regulations. This includes, but is not limited to, disposition of program income; financial record management; reporting requirements; and Subrecipient certifications.

Section III – Work Statement – The section contains, but is not limited to, a narrative of the project; a list of the tasks to be performed; established goals; performance measures; scheduling; budget; planned expenditures of income.

Section IV – Compensation – Contains provisions relating to compensation for Subrecipient, method of payment, terms of reimbursement, conditions-prior to the release of funds.

Section V – Forms – Contains the Request For Reimbursement Form; Maximum Subsidy Limits for Rental 221 (d) 3 Limits; Monthly Summary of Program Income and Recaptured Funds; HOME Funds Match Certification Form.

SUBRECIPIENT Representative:	David Fitzhugh	Phone:	623-333-1016
Title:	City Manager	Email:	dfitzhugh@avondale.org
		Address:	11465 W. Civic Center Drive Avondale, AZ 85323

MARICOPA COUNTY (LEAD AGENCY)			
Representative:	Amy Jacobson	Phone:	602-372-1528
Title:	Community Development Assistant Director	Email:	jacobsona@mail.maricopa.gov
		Address:	234 N. Central Avenue, 3rd Floor, Phoenix, AZ 85004

Notice under this Agreement shall be given by personal delivery or by registered or certified mail, postage prepaid and returned receipt requested, to the persons at the addresses set forth above and shall be effective three (3) days after being mailed unless otherwise indicated in the notice.

This Agreement contains all the terms and conditions agreed to by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any Party hereto. Nothing in this Agreement shall be construed as consent to any lawsuit or waiver of any defense in a lawsuit brought against the State of Arizona, County, or the Subrecipient in any State or federal court.

IN WITNESS THEREOF, the Parties have signed this Agreement:

Approved By: CITY OF AVONDALE, SUBRECIPIENT	Approved By: MARICOPA COUNTY (LEAD AGENCY)
_____ Authorized Signature	_____ Chairman Board of Supervisors
_____ Date	_____ Date
Attested to:	Attested to:
_____ City/Town Clerk	_____ Fran McCarroll, Clerk of the Board
_____ Date	_____ Date

IN ACCORDANCE WITH A.R.S. §§ 11-952, 11-201, AND 11-251, THIS AGREEMENT HAS BEEN REVIEWED BY THE UNDERSIGNED DEPUTY COUNTY ATTORNEY, AND, IN ACCORDANCE WITH A.R.S. § 11-952, THIS AGREEMENT HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY FOR SUBRECIPIENT ON BEHALF OF SUBRECIPIENT, AS TO THEIR RESPECTIVE CLIENTS ONLY, EACH ATTORNEY HAS DETERMINED THAT THIS AGREEMENT IS PROPER IN FORM AND WITHIN THE POWER AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA.

APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____ Attorney for the Subrecipient Date	_____ Deputy County Attorney Date

SECTION I

GENERAL PROVISIONS

MARICOPA COUNTY

HUMAN SERVICES DEPARTMENT

A. EFFECT

To the extent that the Special Provisions are in conflict with the General Provisions, the Special Provisions shall control. To the extent that the Work Statement and the Special or General Provisions are in conflict, the Work Statement shall control. To the extent that the Compensation Provisions are in conflict with the General Provisions, Special Provisions or Work Statement, the Compensation Provisions shall control. Nothing herein shall operate to increase the Operating Budget without a written amendment thereto.

B. DEFINITIONS

As used throughout this Agreement, the following terms shall have the following meanings:

1. **Agreement** means this Contract for Services, which includes the General Provision, Special Provisions, Work Statement, Forms, Compensation, and all applicable attachments, exhibits, appendix, and any laws, rules, or regulations incorporated by reference.
2. **Annual Action Plan** means the annual plan submitted by the County as the lead agency of the Maricopa HOME Consortium that describes the Consortium's annual program goals.
3. **Assistant Director** means the Director of the Community Development Division within the Human Services Department.
4. **Beneficiary** means a person or household that meets the income requirements of 24 CFR 92.203 subject to the restriction on assistance to students enrolled in an institution of higher education, as described in 24 CFR 5.612.
5. **Board of Supervisors (BOS)** means the Maricopa County Board of Supervisors.
6. **Commitment** means an executed legally binding written agreement with a Subrecipient or a contractor to use a specific amount of HOME funds to produce affordable housing, provide down-payment assistance or tenant based rental assistance. An agreement between the representative unit and a member unit of general local government of the Consortium does not constitute a commitment as described in 24 CFR Part 92.2(1) and (2).
7. **Contract Administrator** means the person administering this Agreement on behalf of the Department.
8. **County** means Maricopa County by and through its Human Services Department and the Lead Agency of the Maricopa HOME Consortium.
9. **Contractor/Subcontractor** means a non-profit or for-profit organization carrying out HOME related project activities as described in the written agreement between the City and the Developer.
10. **Director** means the Director of the Maricopa County Human Services Department.
11. **Division** means the Community Development Division of the Human Services Department.
12. **Fidelity Bond** means a bond to indemnify the Subrecipient against losses resulting from fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.
13. **Five Year Consolidated Plan** means the HUD required Consolidated Plan submitted by the County as the lead agency for the Maricopa HOME Consortium.
14. **HOME** means HOME Investment Partnerships Program.
15. **HUD** means U.S. Department of Housing and Urban Development.
16. **Juvenile** means any person under the age of eighteen (18).
17. **Lead Agency** means Maricopa County administered by the Human Services Department, community Development Division. The lead agency is designated per the Intergovernmental Agreement authorized and adopted by the HOME Consortium members' legislative bodies.
18. **Maricopa HOME Consortium** means jurisdictions that participate in the Three-Year Cooperative Consortium Agreement.
19. **Maricopa HOME Consortium Current Practices Manual,** also referred to as "Current Practices Manual", is the administrative manual adopted by the Maricopa HOME Consortium.
20. **Minority Business Enterprise (MBE)** means an entity which is majority owned or controlled by a socially and economically disadvantaged individual as described by Public Law 95-507.

21. **Women's Business Enterprise (WBE)** means an entity in which a woman has majority ownership and control.
22. **Payment Bond** means a bond executed to assure payment as required by law of all persons performing work or providing materials in the execution of work provided in this Agreement.
23. **Performance Bond** means a bond executed to secure fulfillment of all of the Subrecipient's obligations under this Agreement.
24. **Program** means HOME Subrecipient's receive funds to carry out programs (e.g., down payment assistance, homeowner rehabilitation, or tenant-based rental assistance programs, etc.), and not to undertake specific projects. (Entities that carry out projects are generally owners, developers, or sponsors.) The Work Statement included herein describes the Subrecipient programs to be administered.
25. **Project Coordinator** means the liaison between the Department and the Subrecipient that is responsible for contract monitoring and technical assistance.
26. **Projects** means rehabilitation or new construction (with or without acquisition) as described in a legally binding agreement between the HOME Subrecipient and the prospective owners or beneficiaries of the HOME funds for which all necessary financing has been secured and budgeted and for which an acquisition, construction and/or rehabilitation schedule has been established, and underwriting has been completed and otherwise complies with CFR Part 92.2(2) and 92.2 (A) and (B).
27. **Public Agency** has the meaning prescribed by A.R.S. § 11-951.
28. **Subcontract** means any contract entered into by a Subrecipient with a third party for performance of any of the work or provision of any of the services covered by this Agreement.
29. **Subrecipient** means a public agency administering all requirements of the HOME program and is the member unit of a general local government, person, firm or organization listed on the Cover Page of this Agreement.
30. **Vendor** means an entity funded through the Subrecipient to provide services required by the Work Statement.
31. **Work Statement** means the section of this Agreement that contains a description of services to be delivered pursuant to this Agreement.

C. GENERAL REQUIREMENTS

1. The terms of this Agreement shall be construed in accordance with Arizona law and the applicable regulations of the United States Department of Housing and Urban Development (HUD). Any lawsuit arising out of this Agreement shall be brought in the appropriate court in Maricopa County, Arizona.
2. The Subrecipient shall, without limitation, obtain and maintain all licenses, permits and authority necessary to do business, render services and perform work under this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance and worker's compensation.
3. The Subrecipient is independent in the performance of work and the provision of services under this Agreement and is not to be considered an officer, employee or agent of the County.
4. Subrecipient shall comply with the regulations prohibiting a conflict of interest, and not make any payments, either directly or indirectly, to any person, partnership, corporation, trust or other organization that has a substantial interest in Subrecipient's organization or with which Subrecipient (or one of its directors, officers, owners, trust certificate holders or a relative thereof) has a substantial interest, unless Subrecipient has made full written disclosure of the proposed payments to the County and has received written approval therefore.
5. For purposes of this provision, the terms "substantial interest" and "relative" shall have the meanings prescribed by A.R.S. § 38-502.

D. ACCEPTANCE OF FUNDS

Subrecipient hereby accepts the award of funds under the terms of this Agreement and agrees to execute and return this Agreement to the County within 30 days of receipt unless Subrecipient received a written waiver of this requirement by the County.

E. AMENDMENTS

All Amendments to this Agreement shall be in writing, signed by authorized signers for both Parties, and be requested to the County no later than ninety (90) days prior to Agreement expiration.

F. ASSIGNMENT AND SUBCONTRACTING

No right, liability, obligation or duty under this Agreement may be assigned, delegated or subcontracted, in whole or in part, without the prior written approval of the Contract Administrator. Subrecipient shall bear all liability under this Agreement, even if it is assigned, delegated or subcontracted, in whole or in part, unless the County agrees otherwise.

G. AVAILABILITY OF FUNDS

1. The provisions of this Agreement relating to the payment for services shall become effective when funds assigned for the purpose of compensating the Subrecipient, as provided herein, are actually available to the County for disbursement. The Director shall be the sole authority in determining the availability of funds under this Agreement and the County shall keep the Subrecipient fully informed as to the availability of funds.
2. If any action is taken by any State agency, federal department or any other agency or instrumentality to suspend, decrease or terminate its fiscal obligation under, or in connection with this Agreement, the Board of Supervisors may amend, suspend, decrease or terminate its obligations under or in connection with this Agreement. In the event of termination, the County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services performed are in accordance with the provisions of this Agreement. The County shall give written notice of the effective date of any suspension, amendment, or termination under this section at least ten (10) calendar days in advance.

H. BUDGET ADJUSTMENTS

Subrecipient must receive prior written approval from the County to move funds from one Budget Activity Line Item to another. Budget adjustments that do not change the Agreement Amount may be documented by an Amendment signed by the Director and the Subrecipient's Representative. If the County agrees to the budget adjustments that increase the Agreement Amount, the County shall follow section E of this Agreement to amend this Agreement. Any requests for reasonable budget adjustments must be submitted ninety (90) days prior to the expiration of this Agreement. Requests for adjustments to this Agreement must be supported by appropriate documentation. The Subrecipient shall not retain any funds drawn down in excess of immediate cash needs (to be used within 15 days of draw down) to cover subsequent requests for reimbursement, and must return them to the County within 30 days of receipt. The Subrecipient must also return to the County any interest that is earned on these funds that are drawn down and not expended for eligible costs within 15 days of draw down.

I. DISPUTES

1. Except as may otherwise be provided for in this agreement, any dispute arising out of this agreement that is not resolved between the Parties within a reasonable period of time, which shall not exceed one hundred twenty (120) days, shall be submitted in accordance with the following dispute resolution process.
2. Notice of the specific grounds of a dispute shall be in writing and filed with the Contract Administrator, if one has been appointed, or, if not, with the County Procurement Officer within ten (10) working days from the date Contractor knew or should have known of the basis of the dispute. The Contract Administrator or County Procurement Officer, as applicable, shall respond in writing to Contractor within fourteen (14) working days. The decision of the Contract

Administrator or County Procurement Officer shall be final and conclusive unless, within seven (7) working days from the date Contractor is served with the decision, Contractor files a written notice of appeal with the County's Chief Procurement Officer, who shall provide Contractor with a written response within fourteen (14) working days following receipt of Contractor's notice of appeal. The decision of the County's Chief Procurement Officer shall be final and not appealable.

3. Pending a final decision of the County's Chief Procurement Officer, the Contractor shall proceed diligently with its performance of this agreement in accordance with the Contract Administrator or County Procurement Officer's decision.

J. DEFAULT AND REMEDIES FOR NONCOMPLIANCE

1. Notwithstanding anything to contrary, this Section shall not be deleted or superseded by any other provision of this Agreement.
2. This Agreement may be immediately terminated by the County if the Subrecipient defaults by failing to perform any objective or breaches any obligation under this Agreement, or any event occurs that jeopardizes the Subrecipient's ability to perform any of its obligations under this Agreement. The County reserves the right to have service provided by persons other than the Subrecipient if the Subrecipient is unable or fails to provide required services with the specified time frame.
3. Failure to comply with the requirements of this Agreement and all the applicable federal, state, or local laws, rules, and regulations may result in suspension or termination of this Agreement, the return of unexpended funds (less just compensation for work satisfactorily completed that, to date, has not been paid), the reimbursement of funds improperly expended, or the recovery of funds improperly acquired. Noncompliance includes, but is not limited to:
   a. Nonperformance of any obligations required by this Agreement.
   b. Noncompliance with any applicable federal, state, or local laws, rules or regulations, including HUD guidelines, policies, or directives.
   c. Unauthorized expenditure of funds.
   d. Violation of the applicable affordability period.
   e. Improper disposition of resale or recapture proceeds.
   f. Improper disposition of program income.
   g. Noncompliance with applicable financial record requirements, accounting principles, or standards established by 2 CFR 200*et seq*.
   h. Noncompliance with recordkeeping, record retention, or reporting requirements.
4. Notwithstanding the suspension or termination of this Agreement, or the final determination of the proper disposition of funds, Subrecipient shall, without intent to limit or with restrictions, be subject to the following:
   a. All awards of funding shall be immediately revoked, and any approvals related to the project described in the Special Provision or Work Statement shall be deemed revoked and canceled. Thereby, any entitlements to compensation after suspension or termination of this Agreement are similarly revoked and unavailable.
   b. Not be relieved of any liability or responsibility associated with the Special Provision or Work Statement.
   c. Acknowledge that suspension or termination of this Agreement does not affect or terminate any rights against the Subrecipient at the time of suspension or termination, or that may accrue later. Nothing herein shall be construed to limit or terminate any right or remedy available under contract or rule.
   d. Wavier of a breach or default of any term, covenant, or condition of this Agreement or any federal, state, or local law, rule, or regulation shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, condition, law, rule, or regulation.
5. The Subrecipient shall, upon notice or with knowledge obtained by itself or others, take any and all proactive actions necessary, and provide any and all applicable remedies to address and

correct any act by itself, its employees, officials, successors, assigns, contractors, or subcontractors that resulted in any wrongdoing (intentional or unintentional); misuse or misappropriation of funds; the incorrect or improper disposition of funds; any violation of any federal, state, or local law, rule, or regulation; or the breach of any certification or warranty provided in this Agreement.

K. TERMINATION

1. Pursuant to A.R.S. §38-511, the County may cancel this Agreement without penalty or further obligation within three years after execution of the Agreement, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the County is at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the County from any other party to the Agreement arising as the result of the Agreement
2. Either Party may terminate this Agreement at any time by giving the other Party at least sixty (60) calendar days prior notice in writing (unless terminated by the Board of Supervisors under the Availability of Funds provision). The notice shall be given by personal delivery or by registered or certified mail, postage prepaid and returned receipt requested to the persons at the addresses set forth on Page Two of this Agreement.
3. This Agreement may be terminated by mutual written agreement of the Parties specifying the termination date therein.
4. The County has the right to terminate this Agreement upon twenty-four (24) hour notice when the County deems the health or welfare of the service recipients are endangered or Subrecipient's non-compliance jeopardizes funding source financial participation. If not terminated by one of the above methods, this Agreement will terminate upon the expiration of the term of this Agreement stated on the Page One of this Agreement.
5. In accordance with 2 CFR 200 *et seq*, County may suspend or terminate this Agreement if Subrecipient violates any term or condition of this Agreement or if Subrecipient fails to maintain a good faith effort to carry out the purpose of this Agreement.
6. County or Subrecipient may terminate this Agreement for convenience in accordance with 2 CFR § 200. Both Parties shall agree upon the termination conditions including the effective date of the termination. The party initiating the termination shall notify the other party in writing stating the reasons for such termination.

L. SEVERABILITY

Any provision of this Agreement that is determined to be invalid, void or illegal by a court shall in no way affect, impair or invalidate any other provision hereof, and the remaining provisions shall remain in full force and effect.

M. STRICT COMPLIANCE

The County's acceptance of Subrecipient's performance that is not in strict compliance with the terms hereof shall not be deemed to waive the requirements of strict compliance for all future performance. All changes in performance obligations under this Agreement shall be in writing and signed by both Parties.

N. NON-LIABILITY

The County, its officers, representatives, agents and employees shall not be liable for any act or omission by the Subrecipient or Vendor or any officer, representative, agent or employee of Subrecipient or Vendor occurring in the performance of this Agreement, nor shall these entities be liable for purchases or contracts made by the Subrecipient, Vendor or any officer, representative, agent and employee of Subrecipient or Vendor, in connection with this Agreement.

O. INDEMNIFICATION

A. Each Party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other Party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of the negligent performance of this Agreement, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

P. TECHNICAL ASSISTANCE

The County will provide reasonable technical assistance to the Subrecipient to assist in complying with State and federal laws, regulations and accountability for diligent performance and compliance with the terms and conditions of this Agreement and all applicable laws, regulations and standards. However, this assistance in no way relieves the Subrecipient of full responsibility and accountability for its actions and performance in compliance with the terms of this Agreement.

Q. SINGLE AUDIT ACT REQUIREMENTS

Subrecipient in receipt of federal funds through the County are subject to the federal audit requirements of the Single Audit Act of 1984, as amended (Pub. L. No. 98-502) (codified at 31 U.S.C. §§ 7501, *et seq.*). Subrecipient shall comply with 2 CFR 200 Subpart F. Upon completion, such audits shall be made available for public inspection. Audits shall be submitted to the County within the twelve (12) months following the close of the fiscal year. Subrecipient shall take corrective actions within six (6) months of the date of receipt of the reports. The County shall consider sanctions as described in 2 CFR 200.505 for Subrecipient's not in compliance with the audit requirements.

R. AUDIT DISALLOWANCES

1. The Subrecipient shall, upon written notice thereof, reimburse the County for any payments made under this Agreement that are disallowed by a federal, State or County audit in the amount of the disallowance, as well as court costs and attorney's fees the County spends to pursue legal action relating to a disallowance. Court costs and attorney's fees incurred will be specifically identified as applicable to the recovery of the disallowed costs in question.
2. If the County determines that a cost for which payment has been made is a disallowed cost, the County will notify the Subrecipient in writing of the disallowance and the required course of action, which shall be at the option of the County, either to adjust any future claim submitted by the Subrecipient by the amount of the disallowance or to require immediate repayment of the disallowed amount by the Subrecipient issuing a check payable to the County.

S. STAFF AND VOLUNTEER TRAINING

The Lead Agency may make available to the Subrecipient the opportunity to participate in any applicable training activities conducted by the County.

T. CLEAN AIR ACT

If the total face value of this Agreement exceeds $100,000, the Subrecipient agrees to comply with all regulations, standards and orders issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. §§ 7401, *et seq.*), to the extent any are applicable by reason of performance of this Agreement.

U. LOBBYING

1. No federal appropriated funds have been paid or will be paid by or on behalf of the Subrecipient to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal

grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any federal contract, grant, loan or cooperative agreement, the Subrecipient shall complete and submit OMB Form-LLL, titled "Disclosure of Lobbying Activities," in accordance with its instructions and 31 U.S.C. § 1352.

V. RELIGIOUS ACTIVITIES

The Subrecipient agrees that none of its costs and none of the costs incurred by any Vendor will include any expense for any religious activity.

W. POLITICAL ACTIVITY PROHIBITED

None of the funds, materials, property or services contributed by the County or the Subrecipient under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

X. COVENANT AGAINST CONTINGENT FEES

The Subrecipient warrants that no person or entity has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the County may immediately terminate this Agreement without liability.

Y. SAFEGUARDING OF PARTICIPANT INFORMATION

The use or disclosure by any Party of any information concerning an applicant for, or recipient of, services under this Agreement is directly limited to the conduct of this Agreement. Subrecipient and its agents shall safeguard the confidentiality of this information, just as Subrecipient would safeguard its own confidential information. Subrecipient shall include a clause to this effect in all Subcontracts.

Z. RIGHTS IN DATA

The Parties shall have the use of data and reports resulting from this Agreement without cost or other restriction, except as otherwise provided by law or applicable regulation. Each Party shall supply to the other Party, upon request, any available information that is relevant to this Agreement and to the performance hereunder.

AA. COPYRIGHTS

If this Agreement results in a book or other written material, the author is free to copyright the work, but the County reserves a royalty-free, nonexclusive, perpetual and irrevocable license to reproduce, publish, or otherwise use and to authorize other to use, all copyrighted material and all material which can be copyrighted resulting from this Agreement.

BB. PATENTS

Any discovery or invention arising out of, or developed in the course of, work aided by this Agreement shall be promptly and fully reported to the County for determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

CC. AGREEMENT COMPLIANCE MONITORING

The County will monitor the Subrecipient's compliance with, and performance under, the terms and conditions of this Agreement and the applicable federal regulations promulgated by HUD. On-site visits for compliance monitoring may be made by the County at any time during the Subrecipient's normal business hours, announced or unannounced. During an on-site visit, the Subrecipient shall make all of its records and accounts related to work performed or services provided under this Agreement available to the County for inspection and copying.

DD. CONTINGENCY RELATING TO OTHER CONTRACTS AND GRANTS

1. The Subrecipient shall, during the term of this Agreement, immediately inform the Contract Administrator in writing of the award of any other agreement or grant, including any other agreement or grant awarded by the County, where the award may affect either the direct or indirect costs being paid or reimbursed under this Agreement. Failure by the Subrecipient to notify the County of such award shall be considered a violation of this Agreement and the County may immediately terminate this Agreement without liability.
2. The Contract Administrator may request, and the Subrecipient shall provide within a reasonable time, which shall not exceed ten (10) working days, a copy of such other agreement or grant, when in the opinion of the Contract Administrator the award of the agreement or grant may affect the costs being paid or reimbursed under this Agreement.
3. If the Contract Administrator determines that the award to the Subrecipient of such other agreement or grant has affected the costs being paid or reimbursed under this Agreement, the Contract Administrator will prepare an amendment to this Agreement effecting a cost adjustment. If the Subrecipient disputes the proposed cost adjustment, the dispute shall be resolved pursuant to the "Disputes" section contained herein.

EE. MINIMUM WAGE REQUIREMENTS

The Subrecipient warrants that it shall pay all its employees who are performing work or providing services under this Agreement not less than the minimum wage specified under Section 206(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§ 201, *et seq.*) by law, regulation or Executive Order 13658.

FF. RECOGNITION OF COUNTY SUPPORT

The Subrecipient shall give recognition to the Maricopa County and the funding source for its support when the Subrecipient publishes materials or releases public information that is paid for in whole or in part with funds received by the Subrecipient under this Agreement.

GG. INSURANCE

1. Subrecipient, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies who are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.
2. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Agreement.
3. Subrecipient's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.
4. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect County.

5. The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Subrecipient shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Subrecipient to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
6. County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance certificates. County shall not be obligated to review policies and/or endorsements or to advise Subrecipient of any deficiencies in such policies and endorsements, and such receipt shall not relieve Subrecipient from, or be deemed a waiver of County's right to insist on strict fulfillment of Subrecipient's obligations under this Agreement.
7. The insurance policies required by this Agreement, except Workers' Compensation, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insured's.
8. The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Subrecipient's work or service.
9. The Subrecipient's policies shall stipulate that the insurance afforded the Subrecipient shall be primary insurance and that any insurance carried by the County, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).
10. Coverage provided by the Subrecipient shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
11. **Commercial General Liability:**
    a. Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than $2,000,000 for each occurrence, $2,000,000 Products/Completed Operations Aggregate, and $4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
12. **Workers' Compensation:**
    a. Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Subrecipient's employees engaged in the performance of the work or services under this Agreement; and Employer's Liability insurance of not less than $1,000,000 for each accident, $1,000,000 disease for each employee, and $1,000,000 disease policy limit.
    b. Subrecipient waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Subrecipient pursuant to this Agreement.
13. **Sexual Molestation And Physical Abuse:**
    a. When services involve working with these groups of individuals, the insurance requirements in the Agreement need to be revised to include coverage for "sexual molestation and physical abuse". Coverage for this type of claim, or allegation, is excluded from standard general liability policies. Therefore, Subrecipient whose services include working with and/or caring for children/elderly and disabled persons should have their policies specifically endorsed to include this coverage.
14. **Commercial General Liability – Occurrence Form:**
    Policy shall include bodily injury, property damage and broad form contractual liability coverage.

15. **The policy shall be endorsed to include coverage for physical/sexual abuse and molestation.**

16. The policy shall be endorsed to include the following additional insured language: "(Maricopa County), its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Subrecipient".

Minimum Limits:

General Aggregate	$4,000,000
Each Occurrence Limit	$2,000,000
Sexual Abuse/Molestation	$2,000,000

17. **Builder's Risk (Property) Insurance**.

Subrecipient shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance and, if necessary, Commercial Umbrella insurance in the amount of the initial Agreement amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made or until no person or entity other than County has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of County, Subrecipient and all of Subrecipient's subcontractors and sub-subcontractors in the work during the life of the Agreement and course of construction, and shall continue until the work is completed and accepted by County. For new construction projects, Subrecipient agrees to assume full responsibility for loss or damage to the work being performed and to the structures under construction. For renovation construction projects, Subrecipient agrees to assume responsibility for loss or damage to the work being performed at least up to the full Agreement amount, unless otherwise required by the Agreement documents or amendments thereto.

a. Builders' Risk insurance shall be on a special form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss and other "soft costs" as required by the Agreement.

b. Builders' Risk insurance must provide coverage from the time any covered property comes under the Subrecipient's control and/or responsibility, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' Risk insurance shall be primary and any insurance or self-insurance maintained by the County is not contributory.

c. If the Agreement requires testing of equipment or other similar operations, at the option of County, Subrecipient will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy or the Builders' Risk Insurance policy.

18. **Certificates of Insurance:**

a. Upon Agreement execution**,** Subrecipient shall furnish the County with valid and complete certificates of insurance or formal endorsements as required by the Agreement, issued by Subrecipient's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement number and title.

b. Prior to commencing work or services under this Agreement, Subrecipient shall have insurance in effect as required by the Agreement in the form provided by the County, issued by Subrecipient's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Agreement are in full force and effect. Such certificates shall be made available to the County upon ten (10) business days. BY SIGNING THE AGREEMENT PAGE THE SUBRECIPIENT AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF AGREEMENT.

c. In the event any insurance policy(ies) required by this Agreement is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Subrecipient's work or services and as evidenced by annual Certificates of Insurance.

d. If a policy does expire during the life of the Agreement, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

19. **Cancellation and Expiration Notice:**

a. Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

b. If the Subrecipient provides professional or semi-professional personal services under this agreement for which malpractice or professional liability coverage is available, such as medical, psychiatric, or legal services, Subrecipient shall carry minimum liability coverage of $2,000,000 each occurrence and provide the County with proof of coverage.

20. **Subcontractors**:

Subrecipient's certificate(s) shall include all subcontractors as insureds under its policies or Subrecipient shall furnish to the State of Arizona separate certificates for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

21. **Approval:**

Any modification or variation from the insurance requirements in any Agreement must have prior approval from the County whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

22. **Exceptions:**

In the event the Subrecipient or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance.

HH. BONDING

1. The Subrecipient shall not receive any initial reimbursements under this Agreement in an amount greater than the Subrecipient's bonding limit. Subrecipient shall provide the Assistant Director with documentation of required bonding.
2. Subrecipient shall have fidelity bonding of not less than the maximum amount of cash on hand or an amount equal to the initial reimbursement, whichever is greater.
3. Bonding requirements shall prevail throughout the term of this Agreement.

II. GRIEVANCE PROCEDURE

The Subrecipient shall establish a system through which applicants for, and recipients of, services may present grievances and may take appeals about eligibility and other aspects of the Subrecipient's work under this Agreement. The grievance procedure shall include provisions for notifying the applicants for, and recipients of, services of their eligibility or ineligibility for service and their right to appeal to the County if the grievance is not satisfied at the Subrecipient's level. This system shall include protest procedures for decisions related to contract awards and requests for reasonable accommodations for persons with disabilities.

JJ. NONDISCRIMINATION

The Subrecipient, in connection with any service or other activity under this Agreement, shall not in any way, discriminate against any person on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief. The Subrecipient shall include this clause in all of its Subcontracts.

KK. EQUAL EMPLOYMENT OPPORTUNITY

The Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, disability, color, religion, sex sexual identity, gender identity, or national origin. The Subrecipient shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, disability, color, religion, sex, sexual identity, gender identity or national origin. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient shall, to the extent such provisions apply, comply with Title VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000a, *et seq.*); the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 701, *et seq.*); the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. §§ 621, *et seq.*); the Americans With Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*); and Executive Orders 11375 amending Executive Order 11246 and implementing regulations at 41 CFR part 60, as well as, Arizona Executive Order 99-4, which mandates that all persons shall have equal access to employment opportunities.

LL. DISABILITY REQUIREMENTS

Subrecipient agrees that any electronic or information technology offered under this Agreement shall comply with A.R.S. §§41-2531 and 2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

MM. FINANCIAL MANAGEMENT

The Subrecipient shall establish and maintain a separate, interest-bearing bank account for money provided under this Agreement, or an accounting system that assures the safeguarding and accountability of all money and assets provided under this Agreement. No part of the money deposited in the bank account shall be commingled with other funds or money belonging to the Subrecipient. All interest earned on the account shall be disposed of in a manner specified by the County in accordance with applicable State and federal regulations. The Subrecipient shall provide a signed bank account agreement authorizing the County to obtain information about the account. If an accounting system is used, it shall be in accord with generally accepted accounting principles.

NN. RETENTION OF RECORDS

1. This provision applies to all financial and programmatic records, supporting document, statistical records and other records of the Subrecipient that are related to this Agreement.
2. The Subrecipient shall retain all records relevant to this Agreement for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is longer, and the County, federal and State auditors and any other persons duly authorized by the County shall have full access to, and the right to examine, copy and make use of any and all of the records.

OO. ADEQUACY OF RECORDS

If the Subrecipient's books, records and other documents related to this Agreement are not sufficient to support and document that allowable services were provided to eligible participants, the Subrecipient shall reimburse the County for the services not supported and documented.

PP. COMPETITIVE BID REQUIREMENTS

1. <u>Equipment</u>

If this Agreement is with other than a Public Agency, the Subrecipient shall obtain all equipment to be utilized under this Agreement and purchased with funds provided under this Agreement at the lowest practical cost pursuant to the following competitive bidding system:

a. Procurements in excess of $300, but less than $1,000, require oral price quotations from two or more vendors. The Subrecipient shall keep and maintain a record of the vendors' verbal quotations. The Subrecipient's award shall be made to the lowest bidder meeting specification requirements concerning price, conformity to specifications, and other purchasing factors.

b. Procurements exceeding an aggregate amount of $1,000 must be approved by the County. At least three (3) bidders shall be solicited to submit written quotations. The Subrecipient shall solicit written quotations by issuing a Request for Quotation to at least three (3) vendors. The award shall be made to the lowest bidder meeting specification requirements concerning price, conformity to specifications, and other purchasing factors.

2. Supplies

If this Agreement is with other than a Public Agency, the Subrecipient shall obtain all supplies to be utilized under this Agreement and purchased with funds provided under this Agreement at the lowest practical cost and pursuant to a system of written quotes whenever the price is expected to be greater than $300, unless the Subrecipient obtains the Contract Administrator's prior written approval to purchase supplies by an alternate method.

3. Minority, Women and Small Business Enterprises

The Subrecipient shall take affirmative steps to provide an opportunity for minorities, women, and small businesses to compete in the procurement of equipment and supplies under this Agreement.

4. Bidding Procedures

If the Subrecipient is a Public Agency, the Subrecipient's own bidding procedures shall govern.

5. Funding source requirements relating to competitive bid procedures may supersede any or all subparts of this clause and will be specified in the Special Provisions Section of this Agreement.

QQ. PROPERTY

Any property furnished or purchased pursuant to the terms of this Agreement shall be utilized, maintained, repaired and accounted for in accordance with instructions furnished by the County, and shall revert to the County upon termination of this Agreement, unless the County determines otherwise. The costs to repair such property are the responsibility of the Subrecipient within the limits budgeted herein. Repair costs beyond the budgeted amount shall be approved by the County.

RR. IMMIGRATION LAWS AND REGULATIONS

1. **Federal Immigration and Nationality Act**

a. The Parties understand and acknowledge the applicability of the Immigration Reform and Control Act of 1986 (IRCA). The Parties agree to comply with the IRCA in performing under this Agreement and to permit the other Party to inspect personnel records to verify such compliance.

b. By entering into this Agreement, both Parties warrant compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. Both Parties shall obtain statements from their subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Agreement. Both Parties and their subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work under the Agreement. I-9 forms are available for download at USCIS.GOV.

c. The Parties may request verification of compliance for any employee or subcontractor performing work under the Agreement. Should either Party suspect or find that the other Party or any of its subcontractors are not in compliance, then the Party may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Agreement for default, and suspension and/or debarment of the other Party. All costs necessary to verify compliance are the responsibility of the Subrecipient or its subcontractor.

2. **Arizona Law**: The Subrecipient warrants that it is in compliance with A.R.S. § 41-4401 (e-verify requirements) and further acknowledges:

a. That Subrecipient and its Vendors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214;

b. That a breach of a warranty under subsection 1 above, shall be deemed a material breach of this Agreement and the County may immediately terminate this Agreement without liability;

c. That the County and any contracting government entity retains the legal right to inspect the papers and employment records of any Subrecipient or Vendors employee who works on this Agreement to ensure that the Subrecipient or Vendors is complying with the warranty provided under subsection 1 above and that the Subrecipient agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection.

SS. DRUG FREE WORKPLACE ACT

The Subrecipient agrees to comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701, *et seq.*), which requires that the Subrecipient and grantees of federal funds must certify that they will provide drug-free workplaces that comply with federal law. This certification is a precondition to receiving a grant or entering into this Agreement.

TT. GOVERNOR'S EXECUTIVE ORDER NO. 88-26

The Subrecipient is required to use the Arizona Taxonomy of Human Services for reporting and contracting purposes.

UU. STATUTORY RIGHT OF CANCELLATION

Notice is given that pursuant to A.R.S. § 38-511, the County may cancel this Agreement without penalty or further obligation within three years after execution of this Agreement, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the County 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 this Agreement in any capacity or consultant to any other Party of this Agreement with respect to the subject matter of this Agreement. The County may also recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of this County from any other Party to this Agreement arising as the result of this Agreement.

VV. EMPLOYMENT DISCLAIMER

This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement, partnership or other formal business association or organization of any kind between the Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.

The Parties agree that no individual performing under this Agreement on behalf of the Subrecipient is to be considered a County employee, and that no rights of County civil service, County retirement, or County personnel rules shall accrue to such individual. The Subrecipient shall have total responsibility for all

salaries, wages, bonuses, retirement, withholdings, workman's compensation, occupational disease compensation, unemployment compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and shall save and hold the County harmless with respect thereto.

WW. CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY AND VOLUNTARY EXCLUSION

The undersigned by signing and submitting this Agreement has the authority to certify the Subrecipient to the terms, representations and/or warrants of this Certification. The Subrecipient, defined as the primary participant in accordance with 45 C.F.R. Part 76, certifies to the best of its knowledge and belief that it and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
2. have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.
5. shall immediately notify the County if, at any time during the term of this Agreement, it is debarred, suspended, declared ineligible, or voluntarily excluded from participation, The County may pursue available remedies in the event of such occurrence, including immediate termination of this Agreement.
6. shall not enter into a subcontract or subrecipient agreement with a person or organization that is debarred, suspended, declared ineligible, or voluntarily excluded from participation. The County may pursue available remedies in the event of such occurrence, including immediate termination of this Agreement.

The Subrecipient shall include without modification this Certification's language, entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions," with all subgrantees or other contractors; in all lower tier covered transactions and in all solicitations for lower tier covered transactions in accordance with 45 C.F.R. Part 76.

Should the Subrecipient not be able to provide this Certification, an explanation as to why shall be immediately provided to the County, Attention: Community Development Assistant Director, 234 N. Central Ave., Third Floor, Phoenix, AZ 85004.

XX. CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

1. The Parties agree that this Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on Subrecipient 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. Subrecipient 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 Subrecipient and copies provided to County upon request; and

3. Subrecipient 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).

YY. COMPLIANCE WITH REQUIREMENTS REGARDING ELIGIBILITY FOR PUBLIC BENEFITS

Subrecipient shall comply with State and other laws regarding eligibility for public benefits including ARS § 1-501 and § 1-502 which states that public benefits shall only be provided to eligible applicants who are citizens of the United States, or are Qualified Non-Citizens:

1. All applicants authorized to receive public benefits must provide documentation of their lawful presence in the United States through a verification process.
2. All eligible applicants must also execute a sworn affidavit stating that the documentation provided during the verification process to prove citizenship or qualified non-citizen is true.
3. The Affidavit Demonstrating Lawful Presence in the United States or similar form shall be used to document compliance with requirements 1 and 2, above.
4. Employees of Maricopa County and its subcontracted entities are required to report "discovered violations" of federal immigration law
5. Public benefits are defined in ARS 1-501 as any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.
6. Programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter which meet the following conditions are exempt from ARS 1-501 and 1-502.
   a. deliver in-kind services at the community level, including through public or private nonprofit agencies;
   b. do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
   c. are necessary for the protection of life or safety.

SECTION II

SPECIAL PROVISIONS

MARICOPA COUNTY

HUMAN SERVICES DEPARTMENT

A. EFFECT

To the extent that the Special Provisions are in conflict with the General Provisions, the Special Provisions shall control. To the extent that the Work Statement is in conflict with the General Provisions or the Special Provisions, then the Work Statement shall control. To the extent that the Compensation Provisions are in conflict with the General Provisions, Special Provisions or Work Statement then the Compensation Provisions shall control.

B. STANDARDS

The Subrecipient shall perform the work and provide the services as identified in the Work Statement and shall immediately notify the County whenever the Subrecipient is unable to, or anticipates an inability to, perform any of the work, or provide any of the services required by the terms of this Agreement. The Subrecipient acknowledges that any inability to perform the work and provide the services, or comply with the standards set forth in this Agreement may subject the Subrecipient to the remedies provided in the Default and Remedies for Noncompliance established by the General Provisions.

C. COMPLIANCE WITH LAWS, RULES & REGULATIONS

This Agreement and the Parties hereto, are subject to all applicable federal, state, or local laws, rules, and regulations. The Subrecipient shall comply with all applicable laws, rules and regulations, without limitation to those designated within this Agreement. Refer to the Default and Remedies for Noncompliance provided in the General Provisions.

D. AUDIT REQUIREMENTS

The Subrecipient shall, at its own expense, file with the County by March 31st of each Agreement year, either audited financial statements prepared in accordance with federal single audit requirements; or, Financial statements prepared in accordance with generally accepted accounting principles audited by an independent certified public accountant.

E. GENERAL PROGRAM PROVISIONS

In accordance with HOME Program regulations, the Subrecipient agrees to implement the Program fully as described in each Work Statement in accordance with the terms of the Five-Year Consolidated Plan and the Annual Action Plan submitted by the County to HUD for funds to carry out the Program and the Certifications which were submitted concurrently with the Annual Action Plan to HUD, and with any Cooperation Agreements with the Municipality (as applicable). The Annual Action Plan is hereby incorporated by reference into this Agreement. In summary, the Program is described in Work Statement, Section III. The Subrecipient shall be responsible to provide various reports of all activities related to the Work Statement. The Subrecipient agrees to submit to the County required reports:

1. **Program Income Reports** are due monthly with supporting documentation and with each Request for Reimbursement.
2. **Contract Performance Reports** due on the 15th of July, October, January and April of the preceding three months (i.e. July report cover the months of April, May and June). Report shall address all programs described in the Work Statement. Failure to submit timely Agreement Performance Reports will result in suspension of payment reimbursement requests until all reports are brought current. Agreement Progress Reports are continually due for rental projects to ensure that all beneficiary data is regularly updated with beneficiary information during lease-up along with vacant unit reports. Within six (6) months from the date of project completion, if a rental unit remains unoccupied, the Subrecipient must provide the County information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible. Within 18 months from the date of project completion, if efforts to market the unit are unsuccessful and the unit is not occupied by an eligible tenant, HUD will require repayment of all HOME funds invested in the unit. A unit that has not served a low- or very low-income household has not met the purposes of the HOME program. Therefore, the

costs associated with the unit are ineligible. This tracking provides the County with early notice of any units at risk of going unrented as described in §92.252.

3. **Monthly Request for Reimbursements** Subrecipient must use the required Monthly Request for Reimbursement form and must include all supporting documentation, a Match Log, Monthly Summary of Program Income/Recaptured Funds Report, and supporting documentation;
4. **HOME Setup Reports** are due within one (1) year from the date this Agreement is fully executed. According to 92.250 (b): Before Setup Reports are submitted, the Subrecipient must evaluate the project in accordance with guidelines that it has adopted for determining a reasonable level of profit or return on owner's or developer's investment in a project and must not commit or invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for a reasonable period (at a minimum, the period of affordability in 24 CFR 92.252 and 254) and that will not provide a profit or return on the owner's or developer's investment that exceeds the Subrecipient's established standards for the size, type and complexity of the project.
5. **HOME Completion Reports** are due no later than sixty (60) days of final payment requests. HOME Completion Report must include all required documents as described in this Agreement.
6. **Request for Reimbursement** form with required documentation for each activity is due within 45 (forty-five) days of submitting a HOME Setup Report. and every 90 (ninety) days thereafter until the project is completed.
7. **Other HUD**-required reporting data as applicable, including Minority Business Enterprise / Women Business Enterprise (MBE/WBE).

F. PROGRAM INCOME

Means all gross income received by the Subrecipient directly generated from the use of funds provided by this Agreement or matching contributions. Program income must be used in accordance with the requirements of 24 CFR 92.503. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income may be retained and used by the Subrecipient under the following conditions: submit to the County with documentation supporting the amount of program income received and expended. Monthly Summary Program Income Reports are due to the County by the 15th day of the following month (i.e. due on August 15th for the month of July).

Program income derived from Maricopa HOME Consortium activities undertaken by a Subrecipient which thereafter terminates its participation in the consortium continues to be program income of the consortium and must be returned to the County.

Program Income includes, but is not limited to: [1] proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated or constructed with HOME funds or matching contributions, [2] gross income from the use or rental of real property, owned by the Subrecipient that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less cost incidental to generation of the income (program income does not include gross income from the use, rental or sale of real property received by the project owner, developer, or sponsor, unless the funds are paid by the project owner, developer, or sponsor to the participating jurisdiction, subrecipient or State recipient); [3] payments of principal and interest on loans made using HOME funds or match contributions; [4] Proceeds from the sale of loans made with HOME funds or matching contributions; [5] Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions; [6] Interest earned on program income pending its disposition; and [7] Any other interest or return on the investment permitted under 24 CFR 92.205(b) of HOME funds or matching contributions.

Program Income received by the Subrecipient shall be tracked by the Subrecipient and accounted for in a separate fund or account and reported monthly to the County in the required format. Program Income that is received after the end of this Agreement shall be shall be sent to the County in accordance with 24 CFR § 92.503 within 30 days after the expiration of this Agreement.

G. RECAPTURED FUNDS

Recaptured funds are HOME funds which are recouped by the Subrecipient when HOME assisted homeownership housing does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by 24 CFR 92.254(a) (4). The amount of the recapture is determined by the recapture requirements established by the Subrecipient in accordance with 24 CFR 92.254(a) (5) (ii). In accordance with 24 CFR 92.503(c), recaptured funds must be deposited in a separate account and have support back-up evidencing recaptured funds.

Recaptured funds must be used for eligible HOME activities in accordance with the requirements of the HOME statute and regulations, in the same manner as program income must be used. However, unlike program income, since recaptured funds represent a return of the original HOME investment, 10% of the recaptured funds may not be used for eligible administrative and planning costs. The Subrecipient must enforce the recapture agreements and account for the source and application of recaptured funds, in accordance with the record keeping requirements of 24 CFR 92.508. Recaptured funds may be retained and used by the Subrecipient under the following conditions: submit to the County documentation supporting the amount of recaptured funds received and expended. Monthly Summary of Recaptured Fund Reports which are due to the County by the 15th day of the following month (i.e. due on August 15th for the month of July).

Recaptured funds received from Maricopa HOME Consortium activities undertaken by the Subrecipient which thereafter terminates its participation in the consortium must be returned to the County.

H. REAL PROPERTY ACQUIRED or IMPROVED WITH HOME FUNDS

Upon expiration of this Agreement, any real property under the Subrecipient control that was acquired or improved in whole or in part with HOME funds must be occupied by low and/or very low income households and in compliance with HOME occupancy limits and must meet the requirements to qualify as affordable housing subject to encumbrances and obligations described in any applicable recorded covenants running with the land. The option to use deed restrictions or covenants running with the land must include period of affordability set forth in §92.252 and §92.254.

I. DEOBLIGATION

The County may reduce funds from the funding award evidenced by this Agreement, under the following circumstances:

1. The Subrecipient completes performance under the Work Statement without using all funds provided by the County under this Agreement;
2. This Agreement expires all funds are expended;
3. The County original allocation was a loan and the Subrecipient paid the loan;
4. Cancelled or changed an Program required under the Work Statement for reasons other than non-performance;
5. This Agreement has otherwise been terminated. The County may de-obligate funds under this Agreement under the foregoing circumstances upon written notice to the Subrecipient.

J. REDUCTION IN FUNDS

The County may reduce funds from the amount of the funding award evidenced by this Agreement, under the following circumstances: 1) The County determines that the Subrecipient failed to use the funds provided by the County under this Agreement in compliance with the terms and conditions

outlined herein; or 2) the Subrecipient fails to perform in accordance with the performance obligations set forth in the Statement of Work and Project Schedule or the terms of this Agreement. The County may reduce funds under this Agreement under the foregoing circumstance upon written notice to the Subrecipient.

K. REPAYMENT OF FUNDS

Subrecipient agrees to repay funds provided under this Agreement in compliance with the terms of this Agreement or the requirement of applicable laws and regulations. This repayment obligation extends to but is not limited to questioned costs identified in HUD monitoring or Single Audit and repayments required by HUD for failed projects during the period of affordability for projects financed under this agreement. The County may specify in writing, the terms of the repayment or alternative terms in lieu of repayment however in no case shall repayment or alternative terms be accomplished later than one hundred eight (180) days following the written determination of noncompliance by the County.

L. FUNDS REMAINING AT EXPIRATION

Upon expiration of the Agreement, the Subrecipient shall transfer to the County any unexpended funds advanced to the Subrecipient by the County under this Agreement.

M. ADMINISTRATIVE REQUIREMENTS

In accordance with federal regulations, including 24 CFR § 92 et seq., the County is responsible for ensuring the administration of HOME Program Funds in accordance with all program requirements.

1. FINANCIAL RECORDS: Subrecipient accounting system and financial records shall comply with the applicable requirements and standards of 2 CFR 200 *et seq*. Such systems shall be subject to monitoring from time to time by the County or by HUD.
   a. The Subrecipient agrees to adhere to accounting principles and procedures, to utilize adequate internal controls and maintain necessary source documentation for all costs incurred. The Subrecipient further agrees to maintain an adequate accounting system that provides for appropriate grant accounting (including calculation of program income).
   b. Subrecipient is to adhere to applicable audit requirements as described and in accordance with 2 CFR 200 *et seq*. In addition, all Subrecipients must provide annual single-audit reports or annual audited financial statements to the County.
   c. Subrecipient is to adhere to the repayment of investment requirements set forth in 24 CFR § 92.503. Any HOME Funds invested in housing that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid in accordance with 24 CFR § 92.503(b)(3).

2. DOCUMENTATION AND RECORD KEEPING:
   a. Records to be Maintained The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR § 92.508 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to records:
      i. Demonstrating that the Subrecipient is and remains a qualified Subrecipient;
      ii. Providing a full description of each projects undertaken and its impact;
      iii. Required to determine the eligibility of activities;
      iv. Demonstrating compliance with environmental review requirements;
      v. Required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME assistance (Properties retained shall continue to meet eligibility criteria);
      vi. Demonstrating citizen participation;
      vii. Demonstrating compliance regarding acquisitions, displacement, relocation and replacement housing;

viii. Demonstrating continued compliance for all activities and/or compliance with resale or recapture provisions of the affordability standards;

ix. Documenting compliance with the fair housing and equal opportunity components of the HOME program;

x. As required by 24 CFR Part 570.502, 2 CFR 200 *et seq.* and OMB Circulars;

xi. Necessary to document compliance with HOME requirements;

xii. Documenting compliance with Section 3 of the Housing Development Act of 1968;

xiii. Demonstrating compliance with deeds of trust, promissory notes, and forgivable loans associated with owner-occupied housing activities;

xiv. Supporting that the Subrecipient has maintained client data demonstrating clients served meet the income and other criteria required by federal law and that no unlawful discrimination occurs in the solicitation or selection process of low income persons or groups and that no conflict of interest exists.

xv. Demonstrating compliance with applicable Federal, State and local laws and regulations, including compliance with ARS § 1-501 and § 1-502.

b. Outcome Measures – The Subrecipient shall maintain data that supports the accomplishment of the desired outcomes as indicated in the Work Statement.

c. Disclosure – The Subrecipient understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the County's or Subrecipient's responsibilities with respect to services provided under this Agreement is prohibited unless written consent is obtained from such person receiving service.

d. Program Activity Reports – Such reports as required by the County including, but not limited to HOME Setup/Completion Report, Agreement Performance Reports, Program Income/Recaptured Funds Reports, Match Reports, MBE/WBE information, and other HUD-required reporting data as applicable shall be submitted in accordance with the Current Practices Manual at the completion of each Program which is described under the Work Statement.

e. Audits and Inspections – All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the County, their designees or the Federal Government, at any time during normal business hours, as often as the County deems necessary, to audit, examine and make excerpts or transcripts of all relevant data. Any relevant deficiencies noted in audit reports must be addressed by the Subrecipient within 45 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements shall constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an Annual Audit conducted in accordance with Current Practices Manual concerning Subrecipient audits. The Annual Audit requirement is applicable to all levels of funding received by Subrecipient via this Agreement, even if the level of funding is less than the current thresholds cited in 2 CFR 200.501.

f. Performance Monitoring – The County will monitor the Subrecipient to determine if HOME-funded activities are implemented and administered in accordance with all applicable federal requirements and gauge performance of the Subrecipient against goals and performance standards required herein. Subrecipient will prepare for monitoring and assure all required files and documentation are available at scheduled monitoring as set forth in the HOME Consortium Monitoring Current Practices. Failure of Subrecipient to administer, implement and perform as determined by federal regulations and County shall constitute non-compliance with this Agreement. Non-compliance is a violation of this Agreement and may result in the withholding of future payments.

g. Policy/Current Practices Manual Use - Subrecipient agrees to be familiar with and comply with the policies/procedures established in the most recent Current Practices Manual. Noncompliance with the Current Practices Manual shall constitute a breach of Agreement.

N. ENVIRONMENTAL REVIEW CONDITIONS

Completion of the Environmental Review Record (ERR) is mandatory before taking any physical action on a site or entering into choice limiting contracts. Only exempt activities such as administration may be taken and reimbursed by the County prior to receiving a written release of HOME funds to the Subrecipient. Exempt activities described in § 24 CFR 58.34(a)(1)-(11) are activities that generally have no physical impact on the environment. If federal funds are involved in an activity, neither federal nor non-federal funds may be expended or committed by contract (conditional or not) for property acquisition, rehabilitation, conversion, lease, repair or construction activities, until HUD and/or the County provides written authorization based on approval of an ERR.

An option agreement (to purchase land or a single family residence) on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is contingent upon a HUD authorization to use fund based on a completion ERR. The cost of the option must be a nominal portion of the purchase price.

1. The Subrecipient agrees to comply with: the National Environmental Policy Act of 1969 (P.L. 91-190) pursuant thereto 40 CFR Parts 1500 – 1508; Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities pursuant thereto Title 24 CFR Part 58, Subpart A; CPD Notice 01-11 HOME Environmental Review Requirements and with all conditions required in the process of the environmental assessment.
   a. Air and Water - The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement.
      i. Clean Air Act, 42 USC § 7401, *et seq*., as amended.
      ii. Federal Water Pollution Control Act, as amended, 33 USC § 1251, *et seq*., as amended, 1318 relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in said Section 114 and Section 308 and all regulations and guidelines issued thereunder.
      iii. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
      iv. Subrecipient agrees to comply with conditions set forth by the Air Quality Department or other County agency, as required.
   b. Flood Disaster Protection - In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 USC § 4001), the Subrecipient shall assure that for activities located in an area identified by FEMA as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes. The homeowner must obtain and maintain flood insurance as a condition of funding, or funds may not be utilized.
   c. Historic Preservation - The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 USC § 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Office for all rehabilitation and demolition of historic properties that are fifty (50) years old or older or that is listed or eligible for the National Register of Historic places, or included on any state or local historic property inventory or any archaeological findings.

d. Release Of Funds (ROF) - No funds may be encumbered prior to the completion of the Environmental Review. The Environmental Review Record (ERR) must be completed before any funds are obligated. Funding is also conditioned upon the completion of the ERR of every activity site by address. The responsibility for certifying the appropriate Environmental Review Record and ROF shall rest with the County. It is the responsibility of the Subrecipient to notify the County, and to refrain from making any commitments and expenditures on a site until a Release of Funds has been issued by the County. Failure to meet these conditions will mean that requested funds will not be disbursed.

O. THE SUBRECIPIENT CERTIFIES

1. That it is a municipality that meets the applicable requirements of the HOME Program.
2. That it possesses legal authority to execute this Agreement.
3. That its governing body has duly adopted or passed as an official act, a resolution, motion, or similar action authorizing the person identified as the official representative of the Subrecipient to execute this Agreement and to comply with the terms of this Agreement.
4. That the activity described shall be carried out and services administered in compliance with all federal laws and regulations as follows:
   a. Subrecipients that are governmental entities (including public agencies) shall comply with the requirements and standards of 2 CFR 200 *et seq*.

P. ADDITIONAL CERTIFICATIONS, WARRANTIES, AND AGREEMENTS

1. The Parties to this Agreement agree that they will utilize and make available the HOME funds in conformity with the non-discrimination and equal opportunity requirements set out in the HUD regulations in the National Housing Affordability Act. These regulations listed in 24 CFR §§ 92.350-92.454 include:
   a. The requirements of the Fair Housing Act, 42 CFR §§ 3601-20, and implementing regulations at 24 CFR Part 100: Executive Order 11063 (Equal Opportunity in Housing) as amended by Executive Order 12259 (3 CFR, 1958-1963 Come, p. 652 and 3 CFR 1980 Come. p. 307) and implementing regulations at 24 CFR §107: and Title VI of the Civil Rights Act of 1694, 42 U. S. C. § 2000d, and implementing regulations at 24 CFR Part 1 (Nondiscrimination in Federally Assisted Programs);
   b. Executive Order 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency" pursuant to Title VI of the Civil Rights Act;
   c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and the regulations at 24 CFR § 146;
   d. The prohibitions against discrimination on the basis of handicap under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at 24 CFR Part 8; and, Americans with Disabilities Act 1990;
   e. The requirements of the Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60 (3 CFR §§ 1964-65, Come, p. 339);
   f. The requirements of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1702u (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Activities); and
   g. The requirements of Executive Orders 11625 and 12432 regarding Minority Business Enterprise, and 12138 regarding Women's Business Enterprise, and Regulations S. 85.36 (e) and of Section 281 of the National Housing Affordability Act.
2. The Parties to this Agreement agree that they will prepare and adopt acceptable procedures and requirements for affirmatively marketing units in the HOME Activities, when HOME assisted housing contains 5 or more rental units, by providing information about the availability of HOME-assisted units that are vacant at the time of completion or that later become vacant. The

parties agree that they will make good faith efforts to provide information and to otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market to the available housing during the period of affordability. These procedures and requirements are not applicable when units are occupied by families referred from a Public Housing Authority's (PHA) waiting list, or to families receiving tenant-based rental assistance provided from HOME funds.

3. HOME funds may not be used for operations or modernization of public housing projects financed under the Housing Act of 1937.
4. County, as the participating jurisdiction, assumes all the responsibilities for environmental review, decision making, and action under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321) and the other provisions of the law that would apply to HUD were HUD to undertake such Activities as Federal Activities in accordance with 24 CFR Part 58. The County will assume the responsibilities for the Request for Release of Funds. The Subrecipient agrees not to commit or incur expenditures for HOME activities until this environmental review process has been completed. Should it be determined that the Subrecipient has incurred expenses in violation of the NEPA requirements, the Subrecipient will be responsible for the full costs for such expenditures and repayment of any related reimbursements. The Subrecipient agrees to provide all necessary assistance to the County in completing this environmental review process.
5. The Parties to this Agreement agree to abide with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §§ 4291-4655) and the governmental implementing regulations at 49 CFR Part 24 as they apply to this HOME Program.
6. The Parties to this Agreement agree to abide with the Davis-Bacon Act (40 U.S.C. § 276a-5) and the Agreement Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333).
7. The Parties to this Agreement agree to abide by the Flood Disaster Protection Act of 1973 (42 U.S.C. §§ 4001-4128) as they apply to this HOME Program.
8. The Parties to this Agreement agree to abide by the Drug-Free Workplace Act of 1988 as it applies to the HOME Program.
9. Housing assisted with HOME funds constitutes HUD-assisted housing for the purposes of the Lead-Based Paint Poisoning Prevention Act (42.U.S.C. § 4821. et seq.) and is therefore subject to 24 CFR Part 35.
10. No person who is an employee, agent, consultant, officer or elected official, or appointed official who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, either for themselves or those whom they have family or business ties, during their tenure or for one year thereafter.
11. The Subrecipient warrants that it is in compliance with A.R.S. § 41-4401 and further acknowledges
    a. That the Subrecipient and its subcontractors/vendors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214 (A);
    b. That a breach of a warranty under subsection a above, shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the contact;
    c. That the County retains the legal right to inspect the employment papers of any Subrecipient or vendors employee who works on the Agreement to ensure that the Subrecipient or vendor is complying with the warranty provided under subsection a above and that the Subrecipient agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection; and

d. That nothing herein shall make any Subrecipient, or vendor an agent or employee of the County;

12. That the Current Practices Manual shall be made accessible to all applicable Subrecipient staff.

Q. REGARDING SUBCONTRACTS AND VENDORS

1. Approvals – Unless expressly authorized in the written Agreement by the Subrecipient exempt activities such as architectural, engineering and administration may be undertaken and reimbursed by the County prior to receipt of HUD Request Release of Funds RROF. Exempt activities described in 24 CFR 58.34(1)(1)-(11) are activities that generally have no physical impact on the environment. Otherwise the Subrecipient shall not expend or commit federal or non-federal funds by contract (conditional or not) for property acquisition, rehabilitation, conversion, lease, repair or construction activities, until HUD has provided written authorization based on approved ERR. Any pre-Agreement costs enter into by a subcontract(s) with any agency or individual in the performance of this Program that are not exempt activities without the Release of Funds (ROF) from the County prior to the execution of such Agreement.
2. DUNS Number -- All subcontractors shall have a valid DUNS number and an active profile in the federal System for Award Management, or SAM.
3. Fees – Subrecipient and all subcontractors under this Agreement shall not charge servicing, origination, or other fees for the costs of administering the HOME program, except as permitted by 24 CFR 92.214(b)(1).
4. Selection Process – The Subrecipient shall ensure that all subcontracts let in the performance of this Agreement are awarded on a fair and open competitive basis. Executed copies of all subcontracts shall be forwarded to the County along with documentation, if requested concerning the selection process.
5. Section 3 of the Housing and Urban Development Act of 1968 – The Subrecipient shall include the Section 3 clause in every subcontract and shall take appropriate action pursuant to the subcontract upon a finding that the vendor is in violation of regulations issued by the grantor agency. The Subrecipient shall not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR § 135. The Subrecipient has the responsibility of determining Section 3 eligibility.
6. Monitoring – The Subrecipient shall monitor/review all subcontracted services on an annual basis to assure Agreement compliance. Results of monitoring efforts shall be summarized in Contract Performance Reports and supported with documented evidence, if requested, of follow-up actions taken to correct areas of noncompliance.

R. THE COUNTY CERTIFIES

1. That the public purpose is served by the financial participation of the County in the Statement of Work.
2. That the HOME Program funds designated for the Statement of Work constitutes reasonable and prudent assistance necessary for completion of the Program.

S. PROGRAM COMPLETION

Upon completion of the Work Statements, all unspent HOME resources shall be forfeited to the County for reallocation as defined by Maricopa HOME Consortium Policies and Procedures. The Subrecipient shall continue to be responsible for compliance activities until all HOME requirements and contractual obligations are met including affordability restrictions. The Subrecipient obligation shall not end until all close-out requirements are completed. The County will notify the Subrecipient in writing that a Completion Report is due to the County within sixty (60) days of one of the following occurrences:

1. Funds have been expended for the activity;
2. The Work Statement has been completed;

3. The Agreement period set forth in this Agreement has expired; or
4. The Agreement has otherwise been terminated.

Following the receipt and approval of the Completion Report for each activity, the County will notify the Subrecipient in writing that each activity is closed. In compliance with 24 CFR 92.502(d) all project completion data shall be entered in HUD's Integrated Disbursement Information System (IDIS) within 120 days of the final drawdown for all activity types. Project completion means projects have all necessary title transfer and construction work completed, projects comply with HOME requirements including property standards set forth at 24 CFR 92.251, the final draw has been disbursed; and the projection completion data entered into IDIS.

For the purposes of rental project, the project is complete when construction is complete and the units are ready for occupancy. The identification of a beneficiary is not required for project completion. Vacant rental units may be marked as vacant when completion data is entered.

T. FAILURE TO MAKE PROGRESS

1. Failure of the Subrecipient to make progress according to the Work Statement may result in Agreement termination, deobligation of funds or recapture of funds. Subrecipient agrees to meet with the County at the site in which the funded activity is taking place to discuss progress and allow the County to provide technical assistance if:
   a. The Subrecipient fails to complete its Environmental Review pursuant to section 9 within one hundred and eighty (180) calendar days from the date the County executes this Agreement;
   b. The Subrecipient fails to commit funds to a specific local project in performance of and in accordance with the terms of this Agreement within twelve (12) months from the execution date the County executes this Agreement. Commit for the purposes of this paragraph shall have the same meaning as 24 CFR 92.2(2)(i)-(iii);
   c. The Subrecipient fails to expend HOME funds in performance of and in accordance with the terms of this Agreement within twenty-four (24) months from the date the County executes this Agreement.
2. The County will terminate any Agreement and recapture funds from the same Agreement in which the Subrecipient does not timely perform the activities described above or in the milestones in the Work Statement of this Agreement. The County in its sole discretion may forgo providing technical assistance and recapture funds as outlined in this Agreement under Section I hereof and/or terminate the Agreement for cause pursuant to Section I of this Agreement.
3. In the event that a project is not completed within two years from the date that the County executes this agreement, the Subrecipient must repay the HOME funds unless the Subrecipient requests and the Consortium grants an amendment to the Agreement prior to ninety (90) days of Agreement expiration.

U. GENERAL CONDITIONS

1. It is expressly understood by the parties hereto that this Agreement has been negotiated and executed in anticipation of receipt of funds by the County from HUD pursuant to the HOME Program and that therefore, the terms, conditions and sums payable under this Agreement are subject to any changes or limitations which may be required by HUD and the HOME Program regulations. Notwithstanding any other provisions of this Agreement, any payment to Subrecipient by County under this Agreement is contingent upon the actual receipt of funds from HUD.
2. Both parties acknowledge that no member of the governing body, nor any employee of the County who exercises any functions or responsibilities in connection with the carrying out of

the activity to which this Agreement pertains, has any personal interest direct or indirect in this Agreement.

3. The County may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both organizations and in compliance with the procedures in the Current Practices Manual. Such amendments shall not invalidate this Agreement nor relieve or release the County or Subrecipient from its obligations under this Agreement. Amendments shall be filed with the original Agreement.
4. Changes – The County may, at any time, by written Amendment executed by the Director or designee, make changes within the general scope of this Agreement in any one or more of the following areas:
   a. Work Statement activities which do not :
      i. Increase or decrease the amount of total Agreement funding;
      ii. Modify the project timeline as long as the last day of the project timeline is within the end date of the Agreement; or
      iii. Modify terms consistent with any change to the Work Statement required by Federal, State, or County regulations ordinances or policies.
   b. Administrative requirements such as changes in reporting periods, frequency of reports, or report formats required by HUD or local regulations, policies or requirements. It is the responsibility of the Subrecipient to ensure the latest documents are consulted and followed.
   c. The County may increase or decrease funding resulting from a reallocation pursuant to a majority vote of the Consortium members with the agreement of both parties; provided the change in funding is approved by the Board of Supervisors.
   d. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
   e. Subrecipient agrees to be familiar with, update as necessary, and comply with the policies/procedures established in the most recent HOME Consortium Current Practices Manual. Non-compliance with the HOME Consortium Current Practices Manual shall constitute a breach of Agreement.
   f. Subrecipient agrees to give all notices and comply with all laws, ordinances, and rules, building codes, regulations and lawful orders of any public authority bearing on the performance of activities pursuant to this Agreement. If the Subrecipient observes that any of the Agreement documents are in conflict with any laws, statutes, building codes and/or regulations, it shall promptly notify the County, in writing, and any necessary changes shall be accomplished by appropriate written modification.
   g. Should the Subrecipient perform any work knowing it to be contrary to applicable laws, ordinances, rules, building codes and/or regulations, it shall assume full responsibility, therefore, and shall bear all cost incurred due to its negligence. Any dispute not disposed of by mutual agreement by the parties hereto shall be decided in accordance with the applicable Arizona laws, ordinances, and codes of the state and local governments.
   h. Acknowledge the contribution of the County HOME Program in all published literature, brochures, programs, flyers, etc., during the term of the Agreement.
   i. Execute and abide by Certifications mandated by HOME Program requirements as listed in HOME CERTIFICATIONS.

V. REVERSION OF ASSETS

Upon expiration of this Agreement, the Subrecipient must transfer to the County any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds. Unexpended funds must be deobligated and returned to the County for reallocation. At the expiration of this Agreement, the County, upon recommendation of the Maricopa HOME Consortium staff, may

reallocate any unencumbered funds per the Consortium reallocation policy, as stated in the Maricopa HOME Consortium Intergovernmental Agreement -Three Year Cooperative Agreement. A written letter to deobligate funds will be sent to the Subrecipient from the County a minimum of ninety (90) days prior to termination of Agreement.

SUBRECIPIENT HOME CERTIFICATION

In accordance with the provisions of the Home Investment Partnerships Act and with 24 CFR 92.150 of the Home Investment Partnership Program Rule, the Subrecipient certifies that:

(A) Before committing any funds to a activity, the Subrecipient will evaluate the activity in accordance with 24 CFR 92.504 and the guidelines that it adopts for this purpose and complete all assessments required by the rules, including, but not limited to:

1. Complete all income determinations, underwriting and subsidy layering guidelines, rehabilitation standards, refinancing guideline, homebuyer program policies and affordability requires;
2. Complete a timely environmental review;
3. Complete an underwriting review; assess developer capacity, fiscal soundness and neighborhood market conditions; and
4. The Subrecipient will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing.

(B) The Subrecipient will only utilize HOME funds to pay for eligible activities and costs of those activities permitted in 24 CFR 92.205 through 92.209 and not specifically prohibited under 92.214.

(C) The Subrecipient understands tenant-based rental assistance is an element of the Consolidated Plan. However, tenant-based rental assistance must be approved as part of an original application for project funding.

(D) The submission of the program description is authorized under State and local law (as applicable), and that the Subrecipient possesses the legal authority to carry out the Home Investment Partnership (HOME) Program, in accordance with the HOME regulations;

(E) The Subrecipient will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations and the requirements of 24 CFR 92.353;

(F) The Subrecipient will use HOME funds pursuant to its Consolidated Plan(s) approved by the U.S. Department of Housing and Urban Development HUD and all requirements of 24 CFR Part 92;

(G) The Subrecipient will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about:
   i. The dangers of drug abuse in the workplace;
   ii. The participating jurisdiction's policy of maintaining a drug-free workplace;
   iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
   iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will:
   i. Abide by the terms of the statement; and
   ii. Notify the employee in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

5. Notifying the County in writing, within ten (10) calendar days after receiving notice under paragraph 4 ii. from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4ii., with respect to any employee who is so convicted
   i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
   ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

(H) To the best of its knowledge and belief:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the County, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant, loan, or cooperative agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions; and
3. The Subrecipient will require that the language of paragraph (F) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and agreements under grants, loans, and cooperative agreements) and that all Vendors shall certify and disclose accordingly.

(I) The Subrecipient shall, upon proper notice or with knowledge obtained by itself or others, take any and all proactive actions necessary, and provide any and all applicable remedies to address and correct any act by itself, its employees, officials, successors, assigns, Subrecipients, or vendors that resulted in any wrongdoing (intentional or unintentional); misuse or misappropriation of funds; the incorrect or improper disposition of funds; any violation of any federal, state, or local law, rule, or regulation; or the breach of any certification or warranty provided in this Agreement.

_____	_____
Signature (Subrecipient Representative)	Date
_____	_____
Printed/Typed Name	Title

JURISDICTION CERTIFICATION

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction shall affirmatively further fair housing, which means it shall conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It shall comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Drug Free Workplace -- It shall or shall continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that shall be taken against employees for violation of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about -
   (a) The dangers of drug abuse in the workplace;
   (b) The grantee's policy of maintaining a drug-free workplace;
   (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
   (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee shall -
   (a) Abide by the terms of the statement; and
   (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted -
   (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
   (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

Affirmative Marketing -24 CFR 92.351

1. Subrecipient must adopt and follow affirmative marketing procedures and requirements for rental and homebuyer projects containing five or more HOME-assisted housing units. Affirmative marketing requirements and procedures also apply to all HOME- funded programs, including, but not limited to, tenant-based rental assistance and down payment assistance programs. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status, or disability. If the jurisdiction's written agreement with the project owner permits the rental housing project to limit tenant eligibility or to have a tenant preference in accordance with §92.253(d)(3), the jurisdiction must have affirmative marketing procedures and requirements that apply in the context of the limited/preferred tenant eligibility for the project.
2. The affirmative marketing requirements and procedures adopted must include:
   (i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
   (ii) Requirements and practices each subrecipient and owner must adhere to in order to carry out the jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
   (iii) Procedures to be used by subrecipients and owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing program or the housing without special outreach (e.g., through the use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
   (iv) Records that will be kept describing actions taken by the jurisdiction and by subrecipients and owners to affirmatively market the program and units and records to assess the results of these actions; and
   (v) A description of how the jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
3. A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

Minority outreach-24 CFR 92.351

The Subrecipient must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or shall be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an

officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It shall require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all sub awards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all Subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It shall comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

_____ _____
Signature/Authorized City Official Date

_____ _____
Printed/Typed Name Title

_____
City Name

APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.

2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings), or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

   a. Place of Performance: City of Avondale

   b. Check ___ if there are workplaces on file that are not identified here.

   c. The certification with regard to the drug free-workplace is required by 24 CFR Part 24, subpart F.

7. Definitions of terms in the Non-procurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

   a. "Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);
   b. "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

   c. "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

   d. "Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent Subrecipients not on the grantee's payroll; or employees of Subrecipients or vendors in covered workplaces).

SECTION III

WORK STATEMENTS

MARICOPA COUNTY

HUMAN SERVICES DEPARTMENT

MARICOPA COUNTY
HOME Investment Partnerships Program
FY 2015-2016

DUNS #: 00-248-6884

Consortium Member: City of Avondale, Arizona

Program Year: FY 2015-2016

Project: Homebuyer Assistance

FY 2015-2016 HOME Funds: $29,998

Type of Property: Single-Family

A. DETAILED SCOPE OF WORK:
Include the following-

1. Consolidated Plan goals as it relates to this activity, include the priority rating i.e. High, Low

   This activity supports the Consolidated Plan goal to expand affordable housing by providing direct financial assistance to income-qualified homebuyers. This is the #1 goal in the Plan.

2. Type of assistance/activity to be provided with HOME funds: Homebuyer Assistance

   The City will provide down payment, closing cost, principal reduction and other appropriate assistance to eligible first-time homebuyers who wish to purchase a single-family property in the City of Avondale.

3. Methods and instruments used for ensuring affordability:

   The City will secure HOME funds with a Deed of Trust and Promissory Note, or other appropriate lien document(s) approved by the City. These documents will include a recapture provision with loan funds payable to the City should the borrower sell, refinance with cash out or no longer occupy the property as their primary residence.

4. Anticipated use of program income/project proceeds:

   Program income/recaptured funds will be used for administration and additional HOME-eligible projects per 24 CFR 92.

B. OBJECTIVES AND OUTCOMES (Check appropriate box below.):

	OUTCOMES		
	AVAILABILITY/ ACCESSIBILITY	**AFFORDABILITY**	**SUSTAINABILITY**
DECENT HOUSING	☐ Single Family Housing Rehab and Emergency Rehab, Homebuyer Assistance	☑ Homebuyer Activities, Acquisition/Rehab of rental housing, Acquisition/New Construction of rental housing, Preservation of existing public housing units and TBRA, Expansion of assisted rental units in the private marketplace	☐ Housing Activities in a targeted revitalization area

C. LOGIC MODEL: PERFORMANCE INDICATORS:

INPUTS/ RESOURCES In order to accomplish proposed activities, the subrecipient will need the following:	**ACTIVITIES** In order to address the issue, the subrecipient will conduct the following activities:	**OUTPUTS** Once completed, these activities will produce the following:	**OUTCOMES** When completed, these activities will lead to the following changes:	**IMPACT** Long term changes:
HOME funding	A non-profit subrecipient will provide: eligibility qualification (including income), housing counseling/homebuyer education, environmental review, property inspections, purchase contract review, lien documentation preparation, coordination with lenders, title companies, buyers, realtors	Expand affordable housing opportunities	Low to moderate income families become first time homebuyers	Stable neighborhoods

D. PROPOSED BENEFICIARIES:

Targeted Population by Income Level	**Number of Households**	**Total Number of Units**	**Number of <u>HOME Assisted</u> Units in program (if rental)**
Households at or below **50%**	0	0	0
Households at or below **60%**	0	0	0
Households at or below **80%**	**2**	2	0
TOTAL	**2**	**2**	**0**

E. PRIORITY POPULATIONS:

Complete the table below only if the Activity will specifically set-aside units for a priority population. Set-asides will be enforced through contract provisions.

Priority Populations	No. of Units
Elderly	0
Physically Disabled	0
Other Priority Populations: Veterans	0

F. PERFORMANCE REPORTING GOALS-TIMELINE OF ACTIVITIES:

MILESTONES	START DATE	COMPLETION DATE
HOME Contract signed by City Council	10/19/15	10/19/15
Market Study	10/19/15	11/19/15
Underwriting	10/19/15	11/19/15
Secure Financing	1/15/16	7/1/16
Environmental Review	1/15/16	3/15/16
Obtain Site Control	NA	NA
RFQ Issued	NA	NA
Developer Selected and Signed Development Contract	NA	NA
Home Set up Report to County	1/15/16	3/15/16
Acquisition and/or Rehab and/or Construction to commence	3/15/16	7/1/16
Rehab complete or Certificate of Occupancy	NA	NA
Unit Occupied by Low/Moderate Income Person/Family	3/15/16	7/1/16
Completion Report submitted to City	8/1/16	8/1/16

Any change to the Timeline will need to be submitted to and approved by Maricopa County.

G. ACTIVITY BUDGET SUMMARY:

ACTIVITIES	HOME FUNDS FY 2015-2016	Additional Sources* (defined in Table H.)	TOTAL COST
ACQUISITION			
Land		$60,000	$60,000
Buildings		$340,000	$340,000
Closing Costs	$29,998		$29,998
Legal Fees			
TOTAL	$29,998	$400,000	$429,998
SITE & DEMOLITION			
Site Work			
Demolition			
TOTAL	$0	$0	$0
NEW CONSTRUCTION or REHAB			
Construction Costs-Materials			
Builder Overhead			
Builder Profit			
General Requirements			
Consultant/Specialist			
Permits & Fees			
Construction Contingency			
Sales Tax			
Other-Infrastructure			
TOTAL	$0	$0	$0
ARCHITECTURAL FEES			
Design			
Supervision			
Other			
TOTAL	$0	$0	$0
CONSTRUCTION INTEREST & FEES & LEGAL FEES			
Construction Interest			
Bond Premium			
Title & recording			
Insurance			
Legal Fees			
Other			
TOTAL	$0	$0	$0
ADMINISTRATION COSTS			
Program Delivery-			
Administration			
Volunteer Labor			
GRAND TOTAL	**$29,998**	**$400,000**	**$429,998**

H. SOURCE AND AMOUNT OF OTHER RESOURCES:

FUNDING AGENCY	CASH AMOUNT	VOLUNTEER/ IN-KIND AMOUNT
Private Lenders	$400,000.00	$0
TOTALS	**$400,000.00**	**$0**

I. MATCH:

IDENTIFY MATCH SOURCES AND AMOUNTS THAT HAVE BEEN COMMITTED TO THE PROJECT:
Match commitment must equal 25% of the HOME funds requested.
Documentation is due at the time of request for payment(s).
Match Logs must be submitted annually by June 30th of each year.

TYPE	SOURCE/FUNDING AGENCY	TOTAL
Cash or cash equivalents from a non-federal source	City of Avondale General Funds	$7,500
Value of waived taxes, fees or charges associated with HOME projects		
Value of donated land or real property		
Cost of infrastructure improvements associated with HOME projects		
Percentage of proceeds from single- or multi-family state housing bonds		
Value of donated materials, equipment, labor and professional services		
Sweat equity		
TOTAL		**$7,500**

MARICOPA COUNTY
HOME Investment Partnerships Program
FY 2015-2016

DUNS #: 00-248-6884

Consortium Member: City of Avondale, Arizona

Program Year: FY 2015-2016

Project: Housing Rehabilitation

FY 2015-2016 HOME Funds: $98,774.00

Type of Property: Single Family

A. DETAILED SCOPE OF WORK:
Include the following-

1. Consolidated Plan goals as it relates to this activity, include the priority rating i.e. High, Low

   This activity supports the Consolidated Plan goal of owner-occupied housing rehabilitation. This is the #2 goal in the Plan.

2. Type of assistance/activity to be provided with HOME funds: Single Family Housing

   Rehabilitation (owner-occupied)- Activities may include, but are not limited to: program delivery, hazard testing and mitigation, and construction to benefit HOME-qualified

   The City will provide forgivable, non-amortizing loans to eligible owners of single-family housing for substantial housing rehabilitation activities. Assistance will include, but is not limited to costs associated with construction, hazard testing/mitigation, title work, and program delivery.

3. Methods and instruments used for ensuring affordability: Recapture provision (insert description of how the funds will be recaptured ie paid in full, pro-rated etc.)

   The City will secure HOME funds with a Deed of Trust and Promissory Note, or other appropriate lien document(s) approved by the City. These documents will include a recapture provision with loan funds payable to the City should the borrower sell, refinance with cash out or no longer occupy the property as their primary residence.

4. Anticipated use of program income/project proceeds:

   Program income/recaptured funds will be used for administration and additional HOME-eligible projects per 24 CFR 92.

B. OBJECTIVES AND OUTCOMES (Check appropriate box below.):

	OUTCOMES		
	AVAILABILITY/ ACCESSIBILITY	**AFFORDABILITY**	**SUSTAINABILITY**
DECENT HOUSING	☑ Single Family Housing Rehab and Emergency Rehab, Homebuyer Assistance	☐ Homebuyer Activities, Acquisition/Rehab of rental housing, Acquisition/New Construction of rental housing, Preservation of existing public housing units and TBRA, Expansion of assisted rental units in the private marketplace	☐ Housing Activities in a targeted revitalization area

C. LOGIC MODEL: PERFORMANCE INDICATORS:

INPUTS/ RESOURCES In order to accomplish proposed activities, the subrecipient will need the following:	**ACTIVITIES** In order to address the issue, the subrecipient will conduct the following activities:	**OUTPUTS** Once completed, these activities will produce the following:	**OUTCOMES** When completed, these activities will lead to the following changes:	**IMPACT** Long term changes:
HOME funding	The City will provide eligibility qualification, environmental review, property inspections/hazard testing, project scoping/bidding/construction management, lien document preparation/recording, coordination, financial management, reporting and file retention.	Owner occupied rehabilitated housing	Low to moderate income families will have decent, safe and sanitary housing free of code violations and adverse health and safety conditions.	Stable neighborhoods; improved safety and quality of life of occupants

D. PROPOSED BENEFICIARIES:

Targeted Population by Income Level	**Number of Households**	**Total Number of Units**	**Number of <u>HOME Assisted</u> Units in program (if rental)**
Households at or below **50%**			
Households at or below **60%**			
Households at or below **80%**	2	2	0
TOTAL	**2**	**2**	**0**

E. PRIORITY POPULATIONS:

Complete the table below only if the Activity will specifically set-aside units for a priority population. Set-asides will be enforced through contract provisions.

Priority Populations	No. of Units
Elderly	0
Physically Disabled	0
Other Priority Populations: Veterans	0

F. PERFORMANCE REPORTING GOALS-TIMELINE OF ACTIVITIES:

MILESTONES	START DATE	COMPLETION DATE
HOME Contract signed by City Council	10/19/15	10/19/15
Market Study	10/19/15	11/19/15
Underwriting	10/19/15	11/19/15
Secure Financing	NA	NA
Environmental Review	1/15/16	3/15/16
Obtain Site Control	NA	NA
RFQ Issued	NA	NA
Developer Selected and Signed Development Contract	NA	NA
Home Set up Report to County	1/15/16	3/15/16
Acquisition and/or Rehab and/or Construction to commence	3/15/16	9/1/16
Rehab complete or Certificate of Occupancy	9/1/16	9/1/16
Unit Occupied by Low/Moderate Income Person/Family	3/15/16	9/1/16
Completion Report submitted to City	9/30/16	9/30/16

Any change to the Timeline will need to be submitted to and approved by Maricopa County.

G. ACTIVITY BUDGET SUMMARY:

ACTIVITIES	HOME FUNDS FY 2015-2016	Additional Sources* (defined in Table H.)	TOTAL COST
ACQUISITION			
Land			
Buildings			
Closing Costs			
Legal Fees			
TOTAL	$0	$0	$0
SITE & DEMOLITION			
Site Work			
Demolition			
TOTAL	$0	$0	$0
NEW CONSTRUCTION or REHAB			
Construction Costs-Materials	$72,576		$72,576
Builder Overhead	$7,500		$7,500
Builder Profit			
General Requirements			
Consultant/Specialist			
Permits & Fees			
Construction Contingency			
Sales Tax			
Other-Infrastructure			
TOTAL	$80,076		$80,076
ARCHITECTURAL FEES			
Design			
Supervision			
Other			
TOTAL	$0	$0	$0
CONSTRUCTION INTEREST & FEES & LEGAL FEES			
Construction Interest			
Bond Premium			
Title & recording	$650		$650
Insurance			
Legal Fees			
Other			
TOTAL	$650		
ADMINISTRATION COSTS		$0	$650
Program Delivery	$10,000		$10,000
Administration	$8,048		$8,048
Volunteer Labor			
GRAND TOTAL	**$98,774**	**$0**	**$98,774**

H. SOURCE AND AMOUNT OF OTHER RESOURCES:

FUNDING AGENCY	CASH AMOUNT	VOLUNTEER/ IN-KIND AMOUNT
City of Avondale General Funds	$22,682	
TOTAL	**$22,682**	

I. MATCH:

IDENTIFY MATCH SOURCES AND AMOUNTS THAT HAVE BEEN COMMITTED TO THE PROJECT:
Match commitment must equal 25% of the HOME funds requested.
Documentation is due at the time of request for payment(s).
Match Logs must be submitted annually by June 30th of each year.

TYPE	SOURCE/FUNDING AGENCY	TOTAL
Cash or cash equivalents from a non-federal source	City of Avondale General Funds	$22,682
Value of waived taxes, fees or charges associated with HOME projects		
Value of donated land or real property		
Cost of infrastructure improvements associated with HOME projects		
Percentage of proceeds from single- or multi-family state housing bonds		
Value of donated materials, equipment, labor and professional services		
Sweat equity		
TOTALS	**N/A**	**$22,682**

SECTION IV

COMPENSATION

MARICOPA COUNTY

HUMAN SERVICES DEPARTMENT

J. COMPENSATION

Subject to the availability and authorization of funds for the explicit purposes set forth below, County will pay the Subrecipient compensation for services rendered as indicated in the following subsections.

K. METHOD OF PAYMENT

Subrecipient agrees to submit monthly reimbursement requests utilizing the approved Reimbursement Request Form (Attachment A) to County. Subrecipient may request funds only after the Subrecipient has satisfied the funding contingencies and federal Environmental Review conditions and has a written agreement in place for project activities. Request for reimbursement must be made using the Request for Reimbursement form incorporated in this Agreement.

Subrecipient may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the Subrecipient requests funds from the County.

County agrees to reimburse Subrecipient for actual allowable costs incurred, upon certification of HUD Environmental Release of Funds and submittal by Subrecipient of an itemized statement of actual expenditures incurred, supported by appropriate documentation. Reimbursement by County is not to be construed as final in the event that HUD disallows reimbursement for the Program or any portion thereof.

Subrecipient must maintain proof of said expenditures including checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges as may be required by applicable federal rules and regulations, including requirements by the Federal Office of Management and Budget, and as may otherwise be reasonably required by the County to determine or confirm that any such expenditures are pursuant and within the scope of work.

L. TIMELINESS

Subrecipient will submit Requests for Reimbursements to the County at least monthly. Subrecipient must seek reimbursement of expenditures within the same fiscal year in which the expenditures are incurred. The fiscal year runs July 1 through June 30 and all Requests for Reimbursement shall be submitted no later than July 10th for the preceding fiscal year.

M. REIMBURSEMENT

The County shall provide financial assistance in an amount up to One Hundred Twenty-Eight Thousand Seven Hundred Seventy-Two dollars ($128,772) subject to the terms of this Agreement and availability of funds. This Agreement price constitutes the County's entire participation and obligation in the performance and completion of all work to be performed under this Agreement.

N. RELEASE OF FUNDS (ROF)

No funds may be encumbered prior to the completion of the Environmental Review except for exempt activities as described in 24 CFR 58.34(a)(1)-(11) that generally have no physical impact on the environment. The Environmental Review Record (ERR) must be completed before any funds are obligated. Funding is also conditioned upon the completion of the ERR of every activity site by address. The responsibility for certifying the appropriate Environmental Review Record and ROF shall rest with the County. It is the responsibility of the Subrecipient to notify the County, and to refrain from making any commitments and expenditures on a site until a Release of Funds has been issued by the County. Failure to meet these conditions will mean that requested funds will not be disbursed.

SECTION V

FORMS

MARICOPA COUNTY

HUMAN SERVICES DEPARTMENT

ATTACHMENT A
Request for Reimbursement Form- Page 1

Maricopa HOME Consortium Subrecipient Contract **REQUEST FOR REIMBURSEMENT**

FY: **Reimbursement #:**

MARICOPA COUNTY HUMAN SERVICES DEPT REQUEST FOR REIMBURSEMENT SUMMARY PAGE 1 OF 2									
Subrecipient Name								Date	
Contract No								Reporting Category	
Subrecipient Address								Contract Amount	$ -
Contact Person								Contract Balance	$ -
Phone				Email				Contract Start	
County Vendor#								Contract End	
Itemized Payment Statement (Page 2 of 2) must accompany this form. See Page 2 for Draw Types and Activity Codes. Actual receipts, invoices, bank statements or copies of such items MUST be included to process this request.									
a	b	c	d	e.	f	g	h	i	j
Draw Type (EN,CR	**Activity Code**	**IDIS Act No.**	**Address**	**PI Receipted in IDIS**	**IDIS Actvity Setup Amt. ($)**	**Amount Expended**	**Amount Requested**	**Remaining Balance**	**Final Draw for Activity Y/N**
					$ -	$ -		$ -	
					$ -	$ -		$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
								$ -	
Total				**$ -**	**$ -**	**$ -**	**$ -**		
Recipient Authorized Signature				Date	Title				
Recipient Authorized Signatory certifies that all activities undertaken by the contractor with funds provided under this contract have been carried out in accordance with the contract. Attach wiring information if not previously submitted. Attach alternate mailing address if necessary.									
Performance Reports			Current ☐	Not Current ☐	For MCHSD Use Only				
Match Report			Current ☐	Not Current ☐					
MCHSD Sr. Grants Acct Approval									
MCHSD Project Coordinator Approval				Date		MCHSD Assistant Director Approval			Date

Request for Reimbursement Form-Page 2

REQUEST FOR REIMBURSEMENT - ITEMIZED PAYMENT STATEMENT PAGE 2 OF 2								
Subrecipient	0					Date:	1/0/1900	
Subrecipient Contract #	0		Contract Period (Start/End)	1/0/1900	1/0/1900	Reimbursement #:		0
IDIS Activity Number	Allocation Year FY	Activity Type (NC, SFR). See below for codes.	Paid (or Payable) to Address Including ZIP + 4	Date Paid	Invoice PO	Check #	Amount of Request	Contract with Developer/Subrecipent Yes or No
Ex: #1111	FY14/15	NC	ABC Contracting	5/1/2015	#1	123	#########	Yes
Total							$ -	

DRAW TYPES:	CODES:
Entitlement	EN
CHDO Reserve Funds	CR
CHDO Operating Funds	CO

ACTIVITY DEFINITIONS:	CODES:
New Construction	NC
Owner Occupied Housing Rehabilitation	SFR
Homebuyer Financial Assistance	HFA
Acquistion Only	ACQ
Acquisition & Rehab- Homebuyer	AQR-HB
Acquisition & Rehab - Rental	AQR-R
Acquisition & New Construction - Homebuy	AQ-NC-H
Acquisition & New Construction - Rental	AQ-NC-R
Tenant Based Rental Assistance	TBRA
Administration	ADMIN

Attachment B
Maximum Subsidy Limits for Rental 221 (d) 3 Limits

US DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 221d3 AND 234 PER UNIT LIMITS EFFECTIVE DATE: MAY 8, 2012							
ARIZONA LOCALITIES							
AREA	BASE LIMITS	Yavapai and Coconino Counties	Douglas, Pima and Santa Cruz Counties	Cochise, Maricopa and Yuma Counties	Mohave and Navajo Counties	Greenlee, La Paz, and Pinal Counties	Apache, Gila and Graham Counties
		263	246	244	239	234	226
0 Bedroom	$52,586	$138,301	$129,361	$128,309	$125,680	$123,051	$118,844
1 Bedroom	$60,632	$159,462	$149,154	$147,942	$144,910	$141,878	$137,028
2 Bedroom	$73,124	$192,316	$179,885	$178,422	$174,766	$171,110	$165,260
3 Bedroom	$93,601	$246,170	$230,258	$228,386	$223,706	$219,026	$211,538
4 Bedroom	$104,275	$274,243	$256,516	$254,431	$249,217	$244,003	$235,661
ELEVATOR							
0 Bedroom	$55,339	$145,541	$136,133	$135,027	$132,260	$129,493	$125,066
1 Bedroom	$63,438	$166,841	$156,057	$154,788	$151,616	$148,444	$143,369
2 Bedroom	$77,140	$202,878	$189,764	$188,221	$184,364	$180,507	$174,336
3 Bedroom	$99,794	$262,458	$245,493	$243,497	$238,507	$233,517	$225,534
4 Bedroom	$109,543	$288,098	$269,475	$267,284	$261,807	$256,330	$247,567

ISSUED: 8-May-12

Note: *Starting in 2013, Section 221(d)(3) program limits will no longer be calculated and published by HUD due to the elimination of the 221(d)(3) Mortgage Program. The HOME statute and the HOME regulation at 24 CFR 92.250(a) limit the amount of HOME funds that a PJ may invest in a HOME-assisted unit. The maximum HOME per-unit subsidy limit is set at the basic Section 221(d)(3)(ii) mortgage limit for elevator-type projects, by bedroom size (with adjustments up to 240% for "high cost" geographic areas).*

Because HUD is no longer calculating 221(d)(3) limits, PJs must continue to use the ***2012 published Section 221(d)(3) limits for all HOME projects, until further notice from the Office of Community Planning and Development at HUD.*** *These limits were published in December 2011, and became effective January 1, 2012.*

Attachment C
Program Income and Recaptured Funds Received and Used Form

Monthly Summary of Program Income and Recaptured Funds Received and Used
Fiscal Year: 2014-2015
For the Month of:

Entity Name:
Preparer:
Date Prepared:

Program Income Earned					Program Income Used					
Date	Source	Amount	$ amount available for	Total to Date	Date	IDIS No.	Project Address	Amount	Total to Date	Remaining Balance
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
			-	$0.00					$0.00	$0.00
Total Available to reimburse administrative expe										
Recaptured Funds										
Date	Source	Amount	$ available for Admi	Total to Date						
			Recaptured funds are treated as program income, except that no portion of recaptured funds may be used to pay administrative expenses.				The total amount of funds used to reimburse administrative expenses may not exceed the total available to reimburse administrative expenses			

ATTACHMENT D
HOME Funds Match Certification Form

MARICOPA HOME MATCH
HOME FUNDS MATCH CERTIFICATION FORM

HOME Subrecipient:				Fiscal Year :					
MATCH CREDITS (From NON-FEDERAL SOURCES)				MATCH APPLICATION					
Date Received	Description and Source of Match credit	Amount of Match	YTD Amount of Match	Date of Expenditures	HOME IDIS No.	Amount of Expenditure	Applied Match 25%	YTD Amount of Applied Match	Available Match
			-				-	-	-
			-				-	-	-
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I certify that this representation of HOME Funds Match is accurate and that the Match is from non-federal sources.

Signature: Date:

Category Number: 3
Item Number: e.

CITY COUNCIL AGENDA

SUBJECT:
Resolution 3290-116 - Intergovernmental Agreement - Maricopa County Community College District

MEETING DATE:
1/19/2016

TO: Mayor and Council

FROM: Stephanie Small, Neighborhood & Family Services Director, 623-333-2711

THROUGH: David Fitzhugh, City Manager

PURPOSE:
Staff is requesting that City Council approve the Intergovernmental Agreement with Maricopa County Community College District, for Play Group Facilitator Services in the amount of $6,000 (through June 2016) and the option of renewing for up to eight additional six-month terms ($12,000 per year) for an aggregate maximum amount not to exceed $54,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:
The First things First, Southwest Maricopa Regional Council requires that play group services be provided through the Care1st Avondale Resource Center, which is operated by the Neighborhood and Family Services Department. The Arizona Early Childhood Development and Health Board, known as First Things First, is a state agency established by a voter initiative to support a voluntary system of early care and education for children five and under. The Southwest Maricopa Regional Partnership Council (Regional Council) represents Avondale and the surrounding communities. The Regional Council is charged with making funding and strategy recommendations to the First Things First Board. The Neighborhood and Family Services Department received a grant of $175,000 from the Regional Council for FY16 to provide services in the Southwest Valley.

DISCUSSION:
The Regional Council has identified the need to prepare young children to succeed when they enter school in the Southwest Valley. Playgroups, which have been held at the Center since 2011, are intended to give children 0 to 5 years of age the opportunity to socialize with other children and develop school readiness skills in a fun, safe and caring environment. These playgroups also provide an opportunity for parents to meet with other parents and learn parenting information and community resources that are available in the community.

Estrella Mountain Community College (Maricopa County Community College District) faculty and enrolled early childhood or education students will faciliate Play Groups related to the City's First Things First grant. With the approval of this contract, this service will be provided at the Care1st Avondale Resource Center.

BUDGET IMPACT:
There is no impact on the General Fund. The grant received from the First Things First Southwest Maricopa Regional Council will fully fund the cost of this agreement.

RECOMMENDATION:

Staff recommends the City Council approve the Intergovernmental Agreement with Maricopa County Community College District, for Play Group Facilitator Services in the amount of $6,000 (through June 2016) and the option of renewing for up to eight additional six-month terms ($12,000 per year) at an aggregate maximum amount not to exceed $54,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

Resolution 3290-116

RESOLUTION NO. 3290-116

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT RELATING TO PLAYGROUP FACILITATOR SERVICES.

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

SECTION 1. The Intergovernmental Agreement with Maricopa County Community College District relating to Estrella Mountain Community College providing playgroup facilitators for the Care1st Avondale Resource and Housing Center (the "Agreement") is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

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

PASSED AND ADOPTED by the Council of the City of Avondale, January 19, 2016.

_____
Kenneth N. Weise, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3290-116

[Agreement]

See following pages.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made as of January 19, 2016, between the City of Avondale, an Arizona municipal corporation (the "City") and the Maricopa County Community College District (the "District"), a political subdivision of the State of Arizona, on behalf of Estrella Mountain Community College (the "College"). The City and the District are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The City, through a partnership with Care1st Health Plan of Arizona, Inc. and First Things First, operates the Care1st Avondale Resource and Housing Center, located at 328 West Western Avenue, Avondale, Arizona (the "Center") and desires to provide play and learn groups for families with children zero to five years of age.

B. The City desires to have the College provide facilitators to conduct play and learn playgroups at the Center for families with children zero to five years of age (the "Services").

C. The City is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 11-951 and 11-952 and Article I, Section 3 of the Avondale City Charter and the District is authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 15-1444(B)(4) and 11-952.

D. The City and the District desire to enter into this Agreement to establish each Party's rights and responsibilities with respect to the District providing the City with the Services.

AGREEMENT

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

1. Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2016 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to eight successive six-month terms (each, a "Renewal Term") if (i) each Party deems the Agreement to be in the best interests of such Party, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Agreement, either Party

requests, in writing, to extend the Agreement for an additional one-year term and (iii) each Party approves the additional one-year term in writing (including any cost adjustments approved as part of this Agreement), as evidenced by the signature thereon of each Party's authorized signatory, which approval may be withheld by either Party for any reason. Either Party's failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that either Party may, with the agreement of the other Party, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

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

3. Compensation. For the Initial Term and for each subsequent Renewal Term, if any, the City shall pay the College an amount not to exceed $6,000.00 for the Services. The maximum aggregate amount for the Services under this Agreement shall not exceed $54,000.00.

4. Payments. The City shall pay the College monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

5. Oversight; Acceptance. All Services shall be subject to oversight and acceptance by the City at reasonable times during the College's performance. The College shall provide and maintain a self-inspection system that is acceptable to the City.

6. Licenses; Materials. If applicable, the District shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the College. The City has no obligation to provide the District, the College, its employees or subcontractors any business registrations or licenses required to perform the specified services set forth in this Agreement. The City has no obligation to provide tools, equipment or materials to the College, except as otherwise provided in this Agreement.

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

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

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

10. Termination; Cancellation.

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

10.2 Conflict of Interest. This Agreement may be canceled by either Party for conflict of interest pursuant to ARIZ. REV. STAT. § 38-511.

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

11. Miscellaneous.

11.1 Independent Contractor. The District acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City, except as provided in Section 11.14 below. The District, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of the District, its employees or subcontractors. The District, and not the City, shall determine the time of its performance of the Services provided under this Agreement so long as the District meets the requirements of its agreed Scope of Work as set forth in Section 2 above and Exhibit A. The City and the District do not intend to nor will they combine business operations under this Agreement.

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

11.3 Laws and Regulations. Both Parties shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person

for whom the Parties are responsible for abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and county ordinances and regulations, (B) existing and future state and federal laws and (C) existing and future Occupational Safety and Health Administration standards.

11.4 Amendments. This Agreement may be modified only by a written amendment approved by the Parties' respective governing bodies and signed by persons duly authorized to enter into contracts on behalf of the City and the District. Any attempt at oral modification of this Agreement shall be void and of no effect.

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

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

11.7 Assignment; Delegation. No right or interest in this Agreement shall be assigned by a Party to this Agreement without prior, written permission of the other Party signed by persons duly authorized to enter into contracts on behalf of the City and the District, and no delegation of any duty of any Party shall be made without prior, written permission of the other Party signed by persons duly authorized to enter into contracts on behalf of the City and the District. Any attempted assignment or delegation by either Party in violation of this provision shall be a breach of this Agreement.

11.8 Subcontracts. The District shall not enter into any subcontract with any other party to furnish any of the Services specified herein without the prior written approval of the City.

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

responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

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

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

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

If to City:	City of Avondale 11465 West Civic Center Drive, Suite 220 Avondale, Arizona 85323 Attn: David W. Fitzhugh, City Manager
With copy to:	GUST ROSENFELD, P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attn: Andrew J. McGuire, Esq.
If to the District:	Estrella Mountain Community College 3000 North Dysart Road Avondale, AZ 85392 Attn: Landis Elliott
With copy to:	Maricopa County Community College District Office of General Counsel 2411 West 14th Street Tempe, Arizona 85281-6942 Attn: Margaret McConnell

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 (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being

given to a recognized overnight delivery service, with the Party giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

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

11.14 Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

> "All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

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

11.16 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing this Agreement.

11.17. E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either Party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of the other Party and the other Party's subcontractors who work under this Agreement to ensure that the other Party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other Party. The Parties and their respective subcontractors shall cooperate with the other Party's random inspections including granting the inspecting Party

entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

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

"**City**"

CITY OF AVONDALE, an Arizona municipal corporation

_____
David W. Fitzhugh, City Manager

ATTEST:

_____
Carmen Martinez, City Clerk

"**District**"

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT, a Arizona political subdivision

By: _____

Name:_____

Title:_____

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned City Attorneys acknowledge that (i) they have reviewed the above agreement on behalf of their respective clients and (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

_____
Andrew J. McGuire
Avondale City Attorney

_____
Margaret E. McConnell
General Counsel

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

[Scope of Work]

See following pages.

Estrella Mountain Community College
Playgroup Facilitator
Scope of Work

1. Introduction.

The Carelst Avondale Resource and Housing Center (the "Center") has been strengthening families in the Southwest Valley since April 2009. The Center is the result of a partnership between the City of Avondale (the "City"), Carelst Health Plan of Arizona, Inc. ("Carelst") and First Things First ("FTF"). The City provided the 6,000 plus square foot building, Carelst provided funding for the renovations and operations, and FTF provides the funding for programs and services for families with children zero to 5 years of age. Play and learn playgroups (the "Playgroups"), which have been held at the Center since 2011, are intended to give children 0 to 5 years of age the opportunity to socialize with other children and develop skills in a fun, safe and caring environment. The Playgroups also provide an opportunity for the parents to socialize with other parents and learn about available parenting information and community resources. Estrella Mountain Community College (the "College") will provide facilitators to promote and present the Playgroups at the Center as set forth below.

2. Scope of Work. The College shall:

2.1 Establish dates and times of classes in conjunction with the City.

2.2 Promote the Playgroups by various outreach strategies.

2.3 Provide instructor(s), interns, equipment and materials for all classes in accordance with FTF requirements.

2.4 Prepare class rosters for participants.

2.5 Document participant attendance for each class with sign-in sheets.

2.6 Provide evaluation forms to be completed by the adult participants quarterly (September, December, March, June).

2.7 Submit a monthly report by 5:00 p.m. on the third business day of the month, containing the following information:

A. Number of adults in attendance.

B. Number of children in attendance.

C. A brief story of an impact the Playgroup has had on a child in attendance. (This story will be shared in reports to the City's funding partners.)

D. A summary of the evaluation forms, which will be attached to the report.

2.8 Increase public awareness of the importance of early childhood development and community resources available to families in the Southwest Valley.

2.9 Encourage developmental activities through storytelling, songs, finger play, literacy activities, games and books.

3. Classes. Class will be held:

3.1 One class per week.

3.2 A minimum of 24 classes will be held during a six month term (four classes per month) or a minimum of 47 classes during a 12-month term.

3.3 In sessions of 45-60 minutes each and they may be held in the morning, afternoon, or evening depending on the needs of the community and the agreement between the City and facilitator.

4. Instructor(s). A College faculty member must be present at every class. Instructors provided by the College:

4.1 Must have a minimum of two years employment in an agency or organization that provides early childhood services.

4.2 Must have fingerprint clearance and CPR and First Aid Certification.

4.3 Must adhere to FTF Standards of Practice, which are attached to this Agreement as Exhibit B and incorporated herein by reference.

4.4 Although not required, bilingual in English and Spanish is preferred.

5. Interns. Interns provided by the College:

5.1 Must be enrolled in the College's early childhood or education program.

5.2 Must have at least one semester of prior field experience.

5.3 Must have fingerprint clearance.

EXHBIT B
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

[FTF Standards of Practice]

See following pages.

FIRST THINGS FIRST

Ready for School. Set for Life.

STANDARDS OF PRACTICE

Approved December 2014

Family Resource Center

I. INTENT OF STRATEGY

The intent of Family Resource Centers, a promising practice strategy, is to serve as a community hub for connecting families with children birth to age 5 to the information, resources, and services they need to support their child's optimal health and development. The expected results are improved parenting skills and social supports for families; increased knowledge of child development; and support for their child's school readiness.

II. DESCRIPTION OF SIGNIFICANCE

Arizona's parents and families with young children, regardless of background, can benefit from information about child development, support in developing parenting skills, and access to resources as shown by data collected by First Things First (FTF) in statewide and regional needs and assets reports, and by preliminary data collected in the 2012 Family and Community Survey. Family Resource Centers are an important prevention approach for addressing the need for child development and parenting information that families need (The California Family Resource Center Learning Circle, 2000). Access to information to build knowledge on various parenting and child development topics helps families overcome conditions associated with social and economic stress such as punitive parenting, abuse or neglect, parental psychological distress, parental substance abuse, and limited opportunity for learning at home, and can moderate a child's risk for poor outcomes (Benedetti, 2012).

Family Resource Centers increase protective factors and capitalize on family strengths. Family Resource Centers work toward creating milieus that help increase protective factors, such as developing community connections, improving access to resources, reducing social isolation, improving parenting skills, and stabilizing families (The California Family Resource Center Learning Circle, 2000). Knowledge of parenting practices and child development including "accurate information about raising young children and appropriate expectations for their behavior" has been cited by the Doris Duke Strengthening Families Initiative as one of six key protective factors that improve child outcomes and reduce the incidence of child abuse and neglect (Center for the Study of Social Policy, 2008). The strength based approach is essential to Family Resource Centers, and supports families' problem solving while simultaneously developing skills, abilities, and resources for themselves. Family Resource Centers bring together services and activities that educate, develop skills and promote a change of behavior for families. This increases the capacity of families to be healthy, involved members of dynamic communities.

Family Resource Centers are promising approaches for addressing issues such as: child abuse and neglect, substance abuse, family violence, family stability, family isolation, family health, and educational outcomes (The California Family Resource Center Learning Circle, 2000). While a Family Resource Center model is considered to be a promising practice, the programs and services provided at Family Resource Centers may indeed be evidence based or evidence informed. Family Resource Centers support families by providing access to information and education addressing a variety of child development and health topics, and by bringing together services and activities that educate, develop skills and promote stability within families. Family Resource Center services are designed with the flexibility to respond to the wide spectrum of needs of the community and reach diverse families, while working collaboratively with all community partners to bring together resources and activities into an integrated service system that is accessible and responsive.

Family Resource Centers offer a variety of services for families so they can access information and education. These include: 1) Community Referral Services; 2) Parenting Skills Development and Support Services; and 3) Linkages to Key Services. Family Resource Centers are required to offer Community Referral Services, a library of resources and information families can access on their own through an electronic database or print format. Family Resource Centers are staffed with paraprofessionals to provide resource and referrals, answer questions about resources available in the community, and direct families to services and programs upon their requests.

In addition, Family Resource Centers have the option of offering Parenting Skills Development and Support Services, which provide parenting education opportunities for families that include a series of evidence based parenting education classes; parenting support groups; one-time family workshops; and, parent and child interaction groups.

Family Resource Centers also have the option of offering Linkages to Key Services. This service provides a family navigator and allows families to receive individualized case management services including an assessment of their strengths and needs, a service plan, family goals, assistance connecting to the identified services, and follow up to ensure successful enrollment in key services.

III. IMPLEMENTATION STANDARDS

A. Program Standards

First Things First (FTF) is committed to funding programs that are evidence based or evidence informed. The emphasis on evidence-based programs is grounded in the idea that the maximum benefit for children and families is delivered by programs that base their practice in the most current, relevant, and reliable evidence about the effectiveness of the program. For some programs, an evidence-informed or best practice, or a promising practice model is appropriate. The following criteria are considered by FTF when determining to fund programs:

- ***Evidence based programs*** are programs that have been validated by documented and scientific research and the evidence has gone through a peer review process. Evidence is established through scientific research that has had a comparison between an intervention group and a control group where the intervention group has had a significant impact. Peer

review means that someone external to the program or research team has reviewed the methodology and the findings to determine if standards were met.

- ***Evidence informed*** is a program or service that has a clearly articulated theory of change (logic model) and has had some evaluation of the outcomes. This can be based on one program or service model that has been evaluated in multiple settings. An evidence informed program cannot be based on the evaluation of a program in only one setting, even if it has been done for many years in a community and everyone likes it.
- ***Promising practice*** is a program or service that has a clearly articulated theory of change (logic model) with specified implementation and operational processes (activities) and program outcomes. A promising practice program is *informed* by at least one of the following:
  - Evidence based practices of a similar program or service delivery system, but does not have complete fidelity to that model because of justifiable need to change factors such as staffing or written materials in order to adapt to geographic or cultural variation.
  - A similar program or service delivery model that is generally accepted as appropriate for use with the target population to achieve the program outcomes but has yet to be established as evidence based.
  - Culturally responsive practices that are known to contribute positively to program outcomes.

  A promising practice must have no evidence that the program or service will cause any harm to recipients. Additionally, a promising practice program is committed to building evidence of program or service effectiveness through ongoing continuous quality improvement activities.

1. All Family Resource Centers must implement evidence based, evidence informed and/or promising practice service models that meet s FTF's accepted definition of those program models:
   a. All Family Resource Centers must provide the (i) Community Referral Services which includes information and referrals for families. In addition, a Family Resource Center may provide (ii) Parenting Skills Development and Support Services and/or (iii) Linkage to Key Services using Family Navigators. The following standards are required when implementing the Family Resource Center services:
      i. **Community Referral Services** provides accessible information and referrals for families. Family Resource Centers must:
         - Have resource and referral staff readily available to direct families to and answer questions about resources and referral information maintained in the center.
         - Maintain a library of printed resource and referral materials that families can access as needed. Printed materials must be extensive and address comprehensive child development and health topics.
         - Maintain a current event calendar that lists the activities at/sponsored by the Family Resource Center.

- Provide computer and internet access to information on topics that families can access as needed. Maintain an electronic library of information covering topics such as parenting skills, early childhood development including social and emotional, language and literacy, cognitive, physical and motor development, and child health.
- Promote integration of community service providers located in Family Resource Centers so that families can easily access all of the services available.

ii. **Parenting Skills Development and Support Services** provide opportunities for parents to enhance their competency and confidence by learning skills that help them understand and guide their child's development. If Family Resource Centers choose to implement this service, they must offer one or both of the following additional strategies:

- Parenting Education programs that align with the FTF Parenting Education Standards of Practices (see attached).
    - Parenting education – learning activities offered in a series intended to increase the knowledge and skills of parents and families to promote positive parenting practices that result in enhanced child health and development when utilized by parents and caregivers.
    - Select evidence based models from the list of FTF accepted Parenting Education program models listed in an attachment to the Parenting Education Standards of Practice.
- Parenting Outreach and Awareness workshops and resource distribution within the Family Resource Center that aligns with the FTF Parent Outreach and Awareness Standards of Practice (see attached).
    - Parent workshops – Structured, stand-alone sessions or short classes that provide information on a variety of topics promoting parental competencies.
    - Offer parents and caregivers opportunities to support each other and share information, advice, or problem-solving strategies related to parenting experiences. Support groups can be effective for parenting teens or parents of children with developmental concerns.
    - Offer families opportunities to enhance parent and child relationships through participation in developmentally appropriate activities that encourage parent-child bonding, early literacy, school readiness and community building.

iii. **Linkage to Key Services using Family Navigators** assists parents or caregivers to develop and utilize available supports and material resources to promote family self-sufficiency. Using a case management model and face to face interactions, it is expected that family navigators will educate parents about services that are available and help them gain access to assistance. If Family Resource Centers choose to implement this service, they must:

- Assess a family's needs and strengths; assist the family with goal setting, and develop a written plan to work toward a greater level of competence and confidence.
- Connect families to available community resources consistent with the established goals; connect families to both informal and formal supports that address their needs; communicate with service providers to learn about the process and eligibility for obtaining the needed resources; assist families in completing documents needed for enrollment into services.
- Monitor families' progress towards obtaining needed resources and provide needed assistance when families experience difficulties enrolling in services.
- Evaluate the completion of goals and readiness for completion of case management services.
- Ensure the caseload of a full time equivalent does not exceed 75 families.
- Document in a confidential family file what services were accessed by the family and when the case was closed.

b. Services must be responsive and adapt to family needs; embedded in local communities; integrated as part of a continuum of services offered by the community; and, respond to unique community needs. All services must be designed and implemented for families with children birth to age 5 and address the core areas of family support::

- **Expand the family's knowledge of child development and behavior**
  - Provide learning opportunities for families in all domains of child development (i.e., social, emotional, language, and physical and motor development); understanding typical and atypical child development; recognizing age appropriate child expectations; and identifying developmental milestones and developmental red flags.
- **Support positive parenting practices**
  - Provide learning opportunities for families on appropriate parent and child interactions, development of parenting skills, positive guidance practices, and warm, sensitive and responsive caregiving.
- **Improve child safety**
  - Provide learning opportunities for families to increase their awareness of prevention of injuries in the child's environment (e.g., safe sleep, choking hazards, and use of car seats).
- **Improve child health**
  - Provide learning opportunities for families on nutrition, obesity prevention, breastfeeding, physical activity, immunizations, oral health, insurance enrollment, participation in consistent medical/dental homes, participation in prenatal care, and preventative services such as well child visits, and developmental, vision and hearing screening.
- **Contribute to family stability**
  - Support families to improve their stability (e.g. meet basic needs), functioning, and mental health (e.g., warmth, emotional availability, and stimulation), and

promote stable relationships among caregivers, positive parenting, and family cohesion.

- **Promote strong family relationships**
  - Support families to increase their support network and community involvement. Provide community specific resources at all class sessions that are relevant to the session topic. For example, during a session covering oral health topics, parents should be provided with a list of dental providers in the community that serve children 5 and under.

c. Incorporate family-centered practice into service delivery. Components of family-centered practice:
   - Involve families in the planning, development and implementation of the services. Activities and services are developed in response to the needs and interest of the family.
   - Structure activities compatible with the family's availability and accessibility. Family Resource Centers will offer non-traditional hours of operation including extended evening, weekend, and holiday hours.
   - Family Resource Centers will be located in areas where families routinely congregate (e.g. churches, public schools, health clinics, libraries, community centers).
   - Locations and environments within centers are safe and welcoming for families with young children. Family Resource Centers will be accessible for persons with disabilities and will be compliant with the Americans with Disabilities Act.
   - Support the growth and development of all family members; encourage families to be resources for themselves and others.
   - Strengthen family's capacity to advocate for themselves within institutions and agencies.

d. Incorporate strength based approaches to service delivery. Strength based practice focuses on the family's abilities, assets, needs and interests. Indicators of strength-based practice:
   - Staff members work with family members in relationships based on equality and respect to identify their strengths, resilience and resources.
   - Family members are encouraged to build upon their strengths by enhancing their capacity to understand and promote their own optimal cognitive, social, emotional, and physical development.
   - Assistance is provided for families to identify and acknowledge informal networks of support and community resources.

e. Parenting education programs that offer on-site child care must adhere to the First Things First (FTF) Requirements for On-Site Child Care (attached).

2. Literacy learning in early childhood provides the foundation for future literacy success and is rooted in exposure to rich language experiences and engaging activities that build knowledge, understanding and speaking, expands vocabulary, and supports a child's ability to become a successful independent reader.

a. Promote and support meaningful early literacy experiences and opportunities for young children in the appropriate context of program implementation.
    - Provide opportunities for parents to learn about early language and emergent literacy development.
    - Inform parents about pre-literacy skills needed for literacy: print concepts, phonological awareness, vocabulary development, comprehension, analysis of the content and structure of text, and making meaning through drawing and writing.
    - Provide information to increase parents' awareness of the use of languages to communicate, respond to and elaborate on child's vocalizations (e.g., daily storytelling, talking, singing to infant and child).
b. Support families and caregivers with parenting and child-rearing skills that help increase understanding of early language and emergent literacy development.
c. Engage families in meaningful, day to day two-way communication about how a child develops language and early literacy skills.
d. Encourage families to use the language in which they are most confident and competent.
e. Encourage parents and families to learn how to observe, guide, promote, and participate in everyday language and literacy development of their children at home, early care, and in their communities.
f. Encourage parents and families to advance their own learning interests in language and literacy development through education, training, and other experiences that support their parenting, careers, and life goals.
g. Encourage parents and families to support and advocate for their child's learning and development as they transition to new learning environments.

3. Follow the FTF Child Welfare Policy (attached) when working with children and families enrolled in services provided by the Arizona Department of Child Safety to promote non-duplication and coordination of child welfare services.

4. FTF recognizes the importance of collaborative partnerships among community partners that utilize a variety of formal and informal mechanisms to facilitate coordination of services in the community. The Coordination and Collaboration standard requires a grantee to:
    a. Develop and implement a plan to understand and make connections with other initiatives, strategies and efforts in the region or state that support the early childhood system.
    b. Develop processes that ensure staff implementing FTF funded strategies understand the connections between this strategy and the early childhood system to avoid duplication of services and promote collaboration between other services and supports offered to children and families in the regions.
    c. Establish partnerships with child care referral networks, quality early care and education programs, local school districts, social services agencies, Supplemental Nutrition Program for Women, Infants and Children (WIC), faith-based organizations, early intervention programs, family literacy programs, and adult education programs.

5. Continuous Quality Improvement
    a. Adopt a process of continuous self-monitoring and reflection to improve program practices that is articulated in a written policy.
    b. In the written policy, the following should be addressed:
        - How data is used to assess the progress and outcomes of program implementation; and
        - How data collection is used to improve staff performance.

6. FTF embraces cultural responsivity as an intentional life long journey that holistically explores, honors, and values the diversity of the human experience.
    a. Offer programs and services congruent with the needs of diverse children and families.
    b. Offer programs and services that are responsive to the impact of cultural factors such as histories, traditions, values, family systems and structures, social class, and religion and spiritual beliefs.
    c. Create a learning environment conducive to and includes all children and families no matter their ethnic, cultural, or linguistic backgrounds.
    d. Use the cultural knowledge, prior experiences, frames of reference, and performance styles of diverse children and families to make learning more appropriate and effective for them.

B. Staffing Standards

1. Direct Service Staff
    a. Hire staff who reflect the cultural and ethnic experiences and language of the targeted population with whom they work with and integrate their expertise into the entire program.
    b. Ensure that staff at all levels receives initial and ongoing professional development in culturally and linguistically responsive service delivery.
    c. Employ well-trained and competent staff and provides continual relevant professional development opportunities.
    d. The length of employment and experience/education are reflective of high quality staff. Staff providing resource and referral information for families attending Family Resource Centers are required to have a minimum of a high school diploma with knowledge of the surrounding community and the available resources.
    e. Staff serving as family navigators who provide the strengths and needs assessment, service plan goals, linkages to key services, and case management services are required to have a minimum of a bachelor's degree in early childhood development, education, family services, social work, nursing or a closely related degree.
    f. Establish caseload size for staff serving as family navigators based upon:
        - Number of hours per week the staff member works; and,
        - Family needs and intensity of services provided (e.g., families with several risk factors or significant barriers to service coordination may require more frequent and intense programming to allow for more time to build relationships, modify

maladaptive behaviors or attitudes, practice newly learned skills, and address barriers).

g. All staff must be well versed and knowledgeable about resources families need to support children's health and development. Areas of knowledge include: all domains of child development; health services; food/clothing or supplies; developmental screening and referrals; early literacy; early intervention; quality child care; respite and crisis care; transportation; housing; child protection; and adult education.
h. All staff must be knowledgeable about other FTF supported programs such Home Visitation and Quality First.
i. Demonstrate genuine interest in and concern for families. This can be gauged by observations of staff interactions with families, responsiveness to family needs, and reports made by families. Information and insight about the staff members' genuine interest in and concern for families can also be gathered during the hiring and interviewing process (e.g., specific questions regarding motivation for working with families).
j. Build a staff team that is consistent with program goals and whose top priority is the well-being of families and children. This staff team must work together and model respectful relationships.
k. Assess staff skills and abilities. Staff must be able to engage families while keeping a professional rapport.
l. Provide ongoing staff development/training on the FTF Family Resource Centers Standards of Practice principles and other required Standards of Practice as appropriate. Staff includes supervisors, direct service staff, volunteers and sub-grantee or partner personnel implementing the strategy.
m. Supervisors and staff (including direct service staff, volunteers and sub-grantee or partner personnel implementing the strategy) must receive training through the Arizona Department of Education on the utilization of the Arizona Infant and Toddler Developmental Guidelines, the Early Learning Standards and the Program Guidelines for High Quality Early Education: Birth through Kindergarten as a regular part of practice. All staff will have ongoing access to standards and guideline materials.
n. Provide ongoing staff development/training to ensure program quality and give staff an opportunity to develop professionally.

2. Supervisory Staff
   a. Meet or exceed the educational and knowledge requirements above and, in addition, must also have at least two years of program management experience.
   b. Establish an effective, consistent supervisory system that provides support for all staff members and ensures accountability to participants, funders, and the community.
   c. Establish supervision as a collaborative process with mechanisms that support staff in difficult situations and provides ongoing opportunities for discussion between staff members and supervisors to reflect and debrief. Supervision includes staff observation of service delivery with families. It is imperative that supervisors are aware of how all staff engage with families so that all performance concerns are addressed with the staff

member. Supervisors must use staff observations as an opportunity to identify coaching and mentoring needs of staff.

d. Work with staff to prepare and implement the professional development plans. The staff's professional development plans should be reviewed at least annually.

3. The Arizona Early Childhood Workforce Registry (Registry)

   The Registry is a component of the newly developed Arizona Early Childhood Career and Professional Network (Network). The Network is a comprehensive system designed to meet the professional development needs of Arizona's early childhood professionals working with or on behalf of children birth-8 years of age.

   a. Staff employed at the administrative home and any sub-grantee who are working directly with or on behalf of children birth – age 8 as a part of the implementation of this strategy must enroll in the Registry by June 30, 2016.
   b. All participants of this strategy are expected to enroll in the Registry by June 30, 2016.

C. Additional Standards

1. Arizona law (ARS §13-3620.A) requires early childhood program staff who suspect that a child has received non-accidental injury or has been neglected, to report their concerns to the Arizona Department of Child Safety or local law enforcement. All staff, grant partners, consultants and participants of this strategy must receive training and adhere to these requirements (see attached FTF Suspected Child Maltreatment Mandated Reporting Policy).

IV. REFERENCES AND RESOURCES

A. Building Bright Futures. 2013. FTF Statewide Needs and Assets Report. Retrieved from: http://www.azftf.gov/publications/Documents/Building%20Bright%20Futures%20-%20Statewide%20Needs%20and%20Assets%20Report%202013.pdf

B. The California Family Resource Center Learning Circle (2000). Family Resource Centers: Vehicles for Change. Retrieved from: http://www.shcowell.org/docs/Vehicles_for_Change_English.pdf

C. Benedetti, G. (2012). *Innovations in the Field of Child Abuse and Neglect Prevention: A Review of the Literature.* Chicago, IL: Chapin Hall at the University of Chicago

D. Strengthening Families: A Guidebook for Early Childhood Programs, Revised Second Edition. Center for the Study of Social Policy.

E. Read On Arizona. (2014) Developing a Thriving Reader from the Early Years: A Continuum of Effective Literacy Practices. http://readonarizona.org/wp-content/themes/read-on/PDF/continuum-project-web.pdf

F. Read On Arizona. (2014) Building Blocks to Becoming a Reader. http://readonarizona.org/wp-content/themes/read-on/PDF/continuum-bb-chart.pdf

G. FTF Child Welfare Policy (attached)

H. FTF Suspected Child Maltreatment Mandated Reporting Policy (attached)

I. FTF Requirements for On-Site Child Care (attached)

J. Arizona Early Childhood Career and Professional Development Network Website: http://azearlychildhood.org (available Fall 2015)

K. http://www.cssp.org/publications/neighborhood-investment/strengthening-families/top-five/protective-factors-self-assessment.pdf
L. Family Strengths and Needs Assessment: http://www.torfaen.gov.uk/en/Related-Documents/Families-First-Torfaen/JAFF-Torfaen-Family-Strengths-and-Needs-Assessment.pdf
M. Arizona Department of Education
Trainings http://www.ade.az.gov/onlineregistration/SelectEvent.asp?viewall=%22yes%22&GroupID=31

Category Number: 3
Item Number: f.

CITY COUNCIL AGENDA

SUBJECT:
Ordinance 1596-116 - Approving an Office Lease Agreement - EPS Group, Inc. Engineers, Planners & Surveyors

MEETING DATE:
1/19/2016

TO: Mayor and Council

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

THROUGH: David Fitzhugh, City Manager

PURPOSE:
Staff requests the City Council adopt an ordinance authorizing the lease of real property located at 125 S. Avondale Boulevard and authorizes the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:
The city owns the property, located at 125 S. Avondale Blvd. that includes a 31,000 SF office building. Presently, three (3) tenants occupy the building, including the corporate headquarters for Phoenix International Raceway, University Medical Sciences Arizona, and Phoenix West Commercial.

DISCUSSION:
EPS Group, Inc. is a local Engineering, Planning, and Surveyor firm that proposes to lease approximately 6,060 SF of space. The initial term for the lease is three (3) years and will commence on March 1, 2016.

The initial term includes a three (3) month rent abatement. The tenant will have the ability to renew the lease for an additional two (2) years. The tenant plans to utilize the existing office area with minimal improvements that include a new exterior access entry for survey crew, painting, carpet, and the conversion of two existing offices into one small conference room. The full cost of these improvements will be provided by EPS Group, Inc.

BUDGET IMPACT:
The initial lease rate will start at $16.50 per sf, and has a 3% annual escalation for the subsequent years. The Common Area Maintenance (CAM) fees are included in the lease rate.

The lease agreement provides that the city will compensate CRESA Phoenix in the amount of $14,203. EPS Group was represented by CRESA Phoenix, a local commercial real estate brokerage and site selection firm.

The agreement requires EPS Group to provide a $25,000 security deposit prior to the lease commencement, which is equivalent to three (3) months of lease revenue. During the three (3) year term of the lease, the net effective cash flow for the lease will be approximately $145,000.

RECOMMENDATION:

Staff recommends City Council adopt an ordinance authorizing the lease of real property located at 125 S. Avondale Boulevard and authorizes the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

Ordinance 1596-116

ORDINANCE NO. 1596-116

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING THE OFFICE LEASE AGREEMENT BETWEEN THE CITY OF AVONDALE AND EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS.

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

SECTION 1. The Office Lease Agreement between the City of Avondale and EPS Group, Inc. Engineers, Planners & Surveyors is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, January 19, 2016.

_____
Kenneth N. Weise, Mayor

ATTEST:

_____
Carmen Martinez, City Clerk

APPROVED AS TO FORM:

_____
Andrew J. McGuire, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 1596-116

[Office Lease Agreement]

See following pages.

January __, 2016

OFFICE LEASE AGREEMENT
By and Between

THE CITY OF AVONDALE,
an Arizona municipal corporation, as Landlord

and

EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS
an Arizona corporation, as Tenant

LEASE AGREEMENT

This Cover Sheet (this "**Cover Sheet**") is hereby incorporated by reference into and made a part of the attached Lease. Each reference in the Lease to any term of this Cover Sheet shall have the meaning as set forth in this Cover Sheet for such term. In the event of a conflict between the terms of this Cover Sheet and the Lease, the terms of the Lease shall prevail. Any initially capitalized terms used herein and not otherwise defined herein shall have the meaning as set forth in the Lease.

COVER SHEET

LANDLORD NAME: THE CITY OF AVONDALE
an Arizona municipal corporation

TENANT NAME: EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS
an Arizona corporation
Federal Tax I.D. number is 432017157

TENANT ADDRESS: 125 S Avondale Boulevard, Suite 115
Avondale, Arizona 85323

TRADE NAME: EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS

ITEM 1. **PREMISES:** Those certain premises contemplated to contain approximately 6,060 square feet, as more particularly depicted and described in **Exhibit A** to the Lease the ("**Premises**") and located at Suite 115 on the first floor of 125 South Avondale Boulevard, Avondale, Arizona (hereafter referred to as the "**Building**"). The square footage of the Premises is subject to remeasurement as provided in **Section 1.1** of the Lease. Landlord may, from time to time, designate additions, deletions and other changes, in Landlord's sole discretion, to the Building.

ITEM 2. [**INTENTIONALLY OMITTED**]

ITEM 3. **PERMITTED USE:** Subject to the other provisions of this Lease, Tenant shall use the Premises for general office ("**Permitted Use**"), and for no other use or purpose, without Landlord's prior written consent.

ITEM 4. [**INTENTIONALLY OMITTED**]

ITEM 5. **INITIAL TERM:** The term of this Lease (the "**Initial Term**") shall commence on the Commencement Date (as defined in **ITEM 7** below) and shall end on the date that is three years from the Commencement Date. The term "**Lease Years**" is defined in **Article 2**, which also sets forth the calculation thereof.

OPTION TERM: The tenant has 1 option(s) to extend the lease for 2 years (the "**Option Term**").

The Initial Term of this Lease, and any Option Term exercised by Tenant, are sometimes herein referred to as the "**Term.**"

ITEM 6. **DELIVERY DATE:** The "**Delivery Date**" shall be the date on which Landlord delivers possession of the Premises to Tenant in the condition required by the Lease.

ITEM 7. **COMMENCEMENT DATE:** Subject to the provisions of this Lease, the Initial Term of this Lease and Tenant's obligation to pay "**Rent**" (as defined in **Article 3**) shall commence on that date that is the earlier of (i) March 1, 2016 or (ii) that date that is one day after a Certificate of Occupancy has been issued by the City of Avondale, Arizona (the "**Commencement Date**"); provided, however, that the Commencement Date may be extended in the event the Delivery Date is delayed as described in Item 11 below. Within 30 days after the Commencement Date has been determined, Landlord and Tenant shall execute and deliver to each other a commencement date memorandum in the form attached hereto as **Exhibit D** and incorporated herein by this reference ("**Form of Commencement Date Memorandum**"). After the Effective Date and in accordance with provisions under this Lease, Tenant shall have access to commence and complete Tenant's Work.

ITEM 8. **RENT:** The Rent payable by Tenant pursuant to this Lease shall include all of the following:

A. During the Initial Term and the Option Terms (as applicable), an amount, per month, as set forth below, provided Tenant shall receive three months of abated rent beginning with the Commencement Date:

Months 1-12	$16.50 SF	$8,332.50
Months 13-24	$17.00 SF	$8,585,00
Months 25-36	$17.50 SF	$8,837.50
Months 37-60	$18.00 SF	$9,090.00

B. [**INTENTIONALLY OMITTED**]

ITEM 9. [**INTENTIONALLY OMITTED**]

ITEM 10. [**INTENTIONALLY OMITTED**]

ITEM 11. **IMPROVEMENTS BY LANDLORD AND TENANT:**

A. **Landlord's Work**. "Landlord's Work" shall mean the following: None. Except for Landlord's Work, Landlord is not required to perform any additional improvements to the Premises prior to the Commencement of the Lease. Tenant agrees to accept the Premises in its "AS IS" condition.

B. **Tenant's Work.** Tenant shall, at its sole cost and expense, design, prepare, plan and obtain the approval of, construct and install tenant improvements, signage and perform all work designated as "Tenant's Work" in Exhibit B-2 in the manner set forth in this Lease. Tenant shall, at its sole cost and expense, cause an architect licensed in the state to prepare interior plans and specifications for Tenant's Work.

C. **Performance of Tenant's Work and Other Alterations.** Tenant shall not perform Tenant's Work or make or cause to be made any other alterations, repairs, additions or improvements in or to the Premises (other than painting), including the installation of floor covering (other than carpeting), interior or exterior lighting,

plumbing fixtures, shades, canopies or awnings, or make any changes to the counter or soffit face or the mechanical, electrical, plumbing or sprinkler systems without providing to Landlord, according to the time requirements set forth in the Construction Guidelines, any drawings or specifications required by Landlord, and without Landlord's prior written consent, which Landlord may grant or deny in its sole and absolute discretion. In the event Landlord grants such consent, such repairs, alterations, additions or improvements shall be performed in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements and all drawings or specifications approved by Landlord. Any work performed by Tenant shall be subject to Landlord's inspection and approval after completion.

D. **Removal by Tenant**. All repairs, alterations, decorations, additions and improvements made by Tenant shall at once when made become part of the leasehold and become property of Landlord. Upon the expiration or sooner termination of this Lease, Tenant shall not remove any of such alterations, decorations, additions and improvements, except that trade fixtures, furniture and equipment installed by Tenant may be removed if: **(1)** such trade fixtures, furniture and equipment are not integral to the operation of the Building or the Premises as an office building (by way of example only and not a limitation, HVAC and plumbing systems may not be removed); **(2)** all Rents hereunder are paid in full; and **(3)** Tenant has performed all of its other obligations hereunder. Notwithstanding the foregoing, prior to the expiration of the Term, Landlord may designate by written notice to Tenant those alterations, decorations, additions and improvements which shall be removed by Tenant at the expiration or termination of this Lease and Tenant shall promptly remove same and repair any damage to the Premises caused by such removal. Tenant hereby acknowledges and agrees that any property remaining in the Premises after the expiration or earlier termination of this Lease, shall be deemed abandoned by Tenant and Landlord may dispose of such personal property as it deems appropriate, at Tenant's cost, and Tenant shall reimburse Landlord for such costs within fifteen (15) days after being billed for the same**.**

ITEM 12. [**INTENTIONALLY OMITTED**]

ITEM 13. **SECURITY DEPOSIT:** An amount equal to $25,000 to be paid on the Effective Date ("**Security Deposit**"). See **Article 33**.

LEASE AGREEMENT

This Lease Agreement (this "**Lease**") is made and entered into as of the Effective Date by and between the City of Avondale, an Arizona municipal corporation ("**Landlord**") and EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS, an Arizona corporation ("**Tenant**"). The "Effective Date" shall be the date upon which the last of Landlord and Tenant executed this Lease, as indicated on the signature pages of this Lease.

ARTICLE 1
Lease of Premises; Right to Remeasure; Use of Common Areas; Reservation of Rights

1.1 **Lease of Premises; Right to Remeasure**. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises.

1.2 **Use of Common Areas**. Except as otherwise specifically set forth by the Landlord in subsequent documents governing the use of the Building Common Areas, Landlord grants to Tenants and its agents, employees and invitees, the non-exclusive right, together with all of the occupants of the Building and their agents, employees and invitees, to use the Common Areas.

1.3 **Landlord's Reservation of Rights**. Landlord reserves "as-is": **(A)** the exclusive use of the exterior walls, the roof, the airspace above the roof and the space below the floor slab; and **(B)** the right to install, maintain, use, repair and/or replace pipes, ducts, conduits, utility lines and wires in the space above the interior surfaces of the ceilings, below the finished floor, within the demising walls of the Premises and in all of the "**Common Areas**" (as defined in **Article 4**) of the Building. Landlord reserves the right to affect such other tenants in the Building as Landlord may elect in its sole business judgment.

ARTICLE 2
Lease Year; Option Term; Obligation to Open and Continuously Operate

2.1 **Lease Year**. For purposes of this Lease, the term "**Lease Year**" shall mean a period of 12 full, consecutive calendar months. The first Lease Year shall commence on the Commencement Date and end on the last day of the twelfth full calendar month following the Commencement Date. If the Commencement Date occurs on a date other than the first day of the month, then the first Lease Year shall include the partial month between the Commencement Date and the last day of the month during which the Commencement Date occurs, and the Rent and other charges payable during such partial month shall be appropriately prorated based on the number of days in such month. Notwithstanding anything in this Lease to the contrary, in the event the last day of the final Lease Year of the Initial Term would otherwise occur on a date other than December 31st, then such final Lease Year shall automatically be extended to include the period between the date on which the Initial Term would otherwise expire and the next succeeding December 31 (such period being herein referred to as the "**Extended Period**") and the Rent and other charges payable during the Extended Period shall be the same as the Rent and other charges payable during such final Lease Year. Any Lease Year which is for any reason shorter than a full 12-month calendar year is sometimes herein referred to as a "**partial**" Lease Year. For purposes of calculating and paying the Rent and all recurring "**Additional Rent**" (as defined in **Article 3**) payable under this Lease during any partial Lease Year, such charges shall be appropriately prorated based on the number of days in such partial Lease Year.

2.2 **Option Term**. Provided, **(A)** Tenant is fully operating its business for the Permitted Use in all portions of the Premises; and **(B)** no "**Event of Default**" (as defined in **Article 21**) exists on the date Tenant exercises its right or on the date that the Option Term would otherwise commence, Tenant shall have the right to extend the Initial Term for the Option Term by delivering written notice (the "**Option Notice**") to Landlord not less than 120 days prior to expiration of the Initial Term (the "**Exercise Window**"). The right to exercise the Option Term is personal to the named Tenant herein and may not be exercised by any person or entity other than Tenant or a permitted assignee. Provided Tenant has properly and timely exercised the applicable Option Term, prior to the expiration of the Exercise Window, the Term shall be extended for the period of the Option Term, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect, except that Rent payable by Tenant during the Option Term shall be as set forth in **ITEM 8** of the Cover Sheet.

ARTICLE 3
Rent; Payment of Rent; Late Charge

3.1 **Rent.** The term "**Rent**" shall mean all amounts required to be paid by Tenant to Landlord under this Lease. Commencing as of the Commencement Date and continuing throughout the Term, Tenant shall pay to Landlord Rent in equal monthly installments (as set forth in **ITEM 8** of the Cover Sheet), in advance, on the first day of each month, without prior notice or demand, setoff or deduction. Rent shall be prorated for any partial calendar month. If the Commencement Date is a date other than the first day of a calendar month: **(1)** Rent for the month containing the Commencement Date shall be prorated based upon the ratio that the number of days in the Term within such month bears to the total number of days in such month; and **(2)** the initial monthly rental period shall include the month in which the Commencement Date occurs and the following full calendar month (unless the Commencement Date is the first day of a calendar month, in which event the initial monthly rental period shall include only the month containing the Commencement Date). Notwithstanding the aforementioned, Landlord shall provide three (3) months of abated rent to Tenant beginning at the Commencement Date. The term "**Additional Rent**" means all amounts required to be paid by Tenant to Landlord hereunder, other than Rent, whether or not such amount is specifically designated as Additional Rent.

3.2 **Payment of Rent**. Tenant shall pay all sums required to be paid to Landlord, without prior notice, demand, setoff or deduction, at the City of Avondale, c/o Kennedy Wilson Properties LTD, 7375 E. 6th Avenue, #11, Scottsdale, Arizona 85251, Attention: Mary Jacobs, or at such other place or places as Landlord may designate from time to time. The obligation of Tenant to pay any amount due to Landlord hereunder shall be independent of any obligation of Landlord under this Lease.

3.3 **Late Charge**. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent shall cause Landlord to incur various expenses not contemplated by this Lease, the exact amount of which is presently difficult to ascertain. Accordingly, if any payment of Rent due from Tenant under this Lease is not received by Landlord when due, then, in addition to the required payment, Tenant shall also pay to Landlord a "**Late Charge**" equal to $100.00 per day after a seven calendar day grace period, plus interest from the end of the grace period to the date of payment at the rate of 12% per annum unless prohibited by law, in which event the rate shall be the maximum rate permitted by law (the "**Interest Rate**"). Tenant agrees that the Late Charge represents a fair and reasonable estimate of the expenses that Landlord shall incur by reason of a late payment by Tenant. Acceptance of the Late Charge by Landlord shall not constitute a waiver of Tenant's default with respect to any past due amounts, nor prevent Landlord from exercising

any other rights and remedies granted to Landlord under this Lease or at law or in equity. The Late Charge and the interest on past due amounts shall be considered Additional Rent.

ARTICLE 4
Common Areas; Control of Common Areas; Operating Costs; Trash

4.1 **Common Areas**. The Common Areas shall be operated and maintained by the Landlord. The term "**Common Areas**" means all areas, space, equipment and services in or serving the Building and the Premises provided for the common or joint use and benefit of Landlord, Tenant and the occupants of the Building and their employees, agents, servants, customers and other invitees, including, without limitation, storage areas not within the Premises, public restrooms other than those within the Premises, offices not within the Premises, utility rooms other than those within the Premises, the parking areas serving the Building (the use of which is subject to the fees, rules and regulations established by the Landlord), access roads, corridors, balconies, stairs, elevators, escalators, driveways, retaining walls, exterior boundary walls and fences, water, sanitary and storm sewers (including, without limitation, any on or off-site sewer lines), on or off-site water retention and drainage facilities serving the Building and which Landlord is required to maintain (however, Landlord shall only maintain as part of the Operating Costs, sanitary sewers up to the Premises), gas, electric, telephone and other utilities lines, systems, conduits and facilities to the perimeter walls of the Building (even though intended for the use of only one or a limited number of tenants) and those serving more than one premises within the Building, and any of the foregoing which serve the Common Areas, plantings, landscaped areas, truck service ways, loading dock areas and facilities, courts, ramps, sidewalks, any drinking fountains, and the facilities appurtenant to the foregoing.

4.2 **Control of Common Areas**. Subject to the Landlord's subsequent documents relating to use of the Common Areas, it is agreed that: **(A)** all Common Areas shall be subject to the exclusive control and management by Landlord, and Landlord shall have the right at any time (either before, during or after the initial arrangement of the entrances, access roads, parking areas and other Common Areas), to construct buildings and other improvements thereon and therein, and to permit the tenants of the Building and Premises and their invitees to use the Common Areas; **(B)** Landlord shall have the right to demolish and make alterations and additions to the Building, to add and exclude areas from the Building, and to relocate improvements; and **(C)** Landlord shall have the right to do and perform such other acts in and to the Common Areas as Landlord shall determine to be advisable, in its sole and absolute discretion. The rights of Landlord as reserved in this Lease shall be subject to the condition that no exercise of such rights by Landlord shall alter the physical dimensions of the Premises or otherwise materially or unreasonably interfere with the conduct of Tenant's business in the Premises.

4.3 **Tenant's Obligations**. In addition to the Rent provided hereinabove, for each Expense Year during the Term, Tenant shall pay to Landlord Tenant's Share of Operating Expenses allocated to the tenants of the Building (pursuant to Section 4.4.2.7 below) which are incurred by Landlord on account of operation and maintenance of the Building during such Expense Year. For purposes hereof, "**Tenant's Share**" shall mean the percentage determined by dividing the Floor Area of the Premises set forth in Item 1 of the Summary, by the total Floor Area within the Building. Landlord reserves the right, in its sole discretion, to increase or decrease from time to time the total Floor Area of the Building based upon Landlord's standard Floor Area measurement standards used for the Building. In the event either the Floor Area of the Premises and/or the total Floor Area of the Building is changed, Tenant's Share shall be

appropriately adjusted, and, as to the Expense Year in which such change occurs, Tenant's Share for such years shall be determined on the basis of the number of days during such Expense Year that each such Tenant's Share was in effect. It is estimated that Tenant's Share will be approximately 19.5%. Notwithstanding the aforementioned, Landlord shall provide three (3) months of abated Tenant's Share of Operating Expenses to Tenant beginning at the Commencement Date.

4.4 Definitions.

4.4.1 "**Expense Year**" shall mean each calendar year during the Term (or partial calendar year if the Term commences or ends on other than the provided first (1st) or last day of a calendar year); provided, however, that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Operating Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.4.2 "**Operating Expenses**" or "**Operating Costs**" for purposes hereof, are intended to be inclusive of all costs of operating and maintaining the Building, except franchise, estate, inheritance, net income, gift, corporate and excess profit taxes of Landlord, interest on and capital retirement of Landlord's mortgage loans, if any, and costs charged by Landlord directly to specific tenants (including any utilities separately metered and charged to specific tenants). Landlord agrees to make reasonable efforts to minimize operating costs insofar as such efforts are not inconsistent with Landlord's intent to operate and maintain the Building in the first-class manner. Operating Expenses may include, but shall not be limited to, the following:

4.4.2.1 "**Tax Expenses**," which, for purposes hereof, shall mean, collectively, any and all general and special taxes and impositions of every kind and nature whatsoever levied, assessed, or imposed upon, or with respect to the Building, any leasehold improvements, fixtures, installations, additions, and equipment, whether owned by Landlord or Tenant, or either because of or in connection with Landlord's ownership, leasing and operation of the Building, including, without limitation, real estate taxes, personal property taxes, sewer rents, water rents, general or special assessments, duties or levies charged or levied upon or assessed against the Building and related personal property, transit taxes, all costs and expenses (including legal fees and court costs) charged for the protest or reduction of property taxes or assessments in connection with the Building, or any tax or excise on rent or any other tax (however described) on account of rental received for use and occupancy of any or all of the Building (except Landlord's net income taxes), whether any such taxes are imposed by the United States, the State of Arizona, the County of Maricopa, or any local governmental municipality, authority, or agency or any political subdivision of any thereof;

4.4.2.2 All costs and expenses to Landlord in maintaining fire and extended coverage insurance, property damage, liability and rent loss insurance and any other insurance maintained by Landlord covering the

use and operation of the Building which is customary in comparable projects in the area or which is reasonably deemed prudent by Landlord;

4.4.2.3 All costs and expenses of repairing, operating and maintaining the heating, ventilating and air conditioning system for the Building, including the cost of all utilities required in the operation thereof, except those paid directly by tenants of the Building and including the cost of replacements of equipment used in connection with such repair and maintenance work and all costs and expenses incurred in making alterations or additions to the heating, ventilating and air conditioning system in order to comply with governmental rules, regulations and statutes;

4.4.2.4. The costs of any capital improvements and structural repairs and replacements designed primarily to reduce Operating Expenses or to reduce the rate of increase in Operating Expenses (herein "**Cost Savings Improvements**"). The expenditures for Cost Savings Improvements shall be reimbursed to Landlord in equal installments over the useful life of such capital improvement or structural repair or replacement (as reasonably determined by Landlord) together with interest on the balance of the unreimbursed expenditure at a rate equal to the floating commercial loan rate announced from time to time by Wells Fargo & Company, or its successor, as its prime rate plus two percent (2%) per annum (the "**Prime Rate**") which is in effect on the date the expenditure was incurred by Landlord; provided, however, the amount to be reimbursed for any Cost Savings Improvements shall be limited in any year to the estimated reduction or estimated savings in Operating Expenses as a result thereof;

4.4.2.5. All costs and expenses incurred by Landlord in providing standard services and utilities to tenants of the Building, including office janitorial services, window washing and utilities not separately metered and not charged by Landlord directly to specific tenants; together with the cost of replacement of non-building standard electric light bulbs and fluorescent tubes and ballasts, which Landlord shall have the exclusive right to provide and install;

4.4.2.6. Professional building management fees not to exceed five percent (5%) of Operating Expenses; and

4.4.2.7. All costs and expenses incurred by Landlord in operating, managing, repairing and maintaining the Building, including all sums expended in connection with the Common Areas for general maintenance and repairs, resurfacing, painting, restriping, cleaning, sweeping and janitorial services, window washing, maintenance and repair of elevators, stairways, sidewalks, curbs and Building signs, sprinkler systems planting and landscaping, lighting and other utilities, maintenance and repair of any fire protection systems, automatic sprinkler systems, lighting systems, emergency back-up utility systems, storm drainage systems and any other utility systems, personnel to implement such services and to police the Common Areas, rental of machinery and equipment used in such maintenance and services, police and fire protection services, trash removal services, all costs and expenses pertaining to security systems,

utilities, premiums and other costs for workers' compensation insurance, wages, withholding taxes, social security taxes, personal property taxes, fees for required licenses and permits, supplies, and charges for management of the Building. Costs and expenses incurred by Landlord in operating, managing, repairing and maintaining the Building which are incurred exclusively for the benefit of specific tenants of the Building will be billed accordingly and will not be included within the general Operating Expenses. The Operating Expenses which vary with occupancy and which are attributable to any part of the Term in which less than 95 % of the Floor Area of the Building is occupied by tenants, will be adjusted by Landlord to the amount which Landlord reasonably believes that they would have been if 95% of the Floor Area of the Building has been so occupied.

4.4.2.8. Notwithstanding the foregoing, for purposes of this Lease, Operating Expenses shall not include the following:

(i) costs of items considered capital improvements, capital repairs, capital replacements, and/or capital equipment, all as determined in accordance with Landlord's standard real estate accounting practices, except as permitted in Sections 4.4.2.3 and 4.4.2.4 above and 4.4.2.7 above;

(ii) depreciation and amortization, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation and amortization would otherwise have been included in the charge for such third party's services, all as determined in accordance with standard real estate accounting practices, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life as determined by Landlord in the manner described in Section 4.4.2.4 above, together with interest on the unamortized costs at the Prime Rate;

(iii) interest, points, fees and principal payments on any mortgages encumbering the Building, and other debt costs, if any, except as specifically included in Sections 4.4.2.4 and 4.4.2.7 above;

(iv) costs of any items (including, but not limited to, costs incurred by Landlord for the repair of damage to the Building) to the extent Landlord receives reimbursement from insurance proceeds or from a third party (except that any deductible amount under any insurance policy shall be included within Operating Expenses);

(v) brokerage commissions, space planning costs, finders' fees and attorneys' fees incurred by Landlord in connection with leasing or attempting to lease space within the Building (including all such fees and costs incurred in connection with the negotiation and execution of this Lease);

(vi) costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for any tenants in the Building or incurred in renovating or otherwise improving, preparing, decorating, painting or redecorating vacant space for tenants or other occupants of the Building;

(vii) interest, penalties or other costs arising out of Landlord's failure to make timely payment of any of its obligations under this Lease, including, without limitation, Landlord's failure to make timely payment of any item that is included in Operating Expenses or Tax Expenses;

(viii) attorneys' fees and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of the Building (including costs incurred due to violations by tenants of the terms and conditions of their leases), or any other attorneys' fees incurred in connection with the Building (including, without limitation, any financing, sale or syndication of the Building), except (A) as specifically enumerated as an Operating Expense in this Lease, or (B) to the extent the expenditure of such attorneys' fees generally benefits the tenants of the Building;

(ix) costs and overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Building to the extent the same exceeds typical costs and overhead and profit increment of such goods and/or services rendered by qualified unaffiliated third parties on a competitive basis; and

(x) Costs of acquisition of sculptures, painting and other objects of art.

4.5 Calculation and Payment of Operating Expenses.

4.5.1 Statement of Estimated Operating Expenses. Prior to that date which is thirty (30) days prior to the first day of a new Expense Year, Landlord shall endeavor to give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate (the "**Estimate**") of what the total amount of Operating Expenses for the new Expense Year shall be. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights under this Article 4. Tenant shall pay Tenant's Share of the Estimated Expenses (defined below) with installments of Rent in monthly installments of one-twelfth (1/12th) thereof on the first day of each calendar month during such year, except that the monthly installment of Tenant's Share of the Estimated Expenses for the first (1st) full calendar month of the initial Term shall be paid at the time of Tenant's execution of this Lease. Tenant hereby acknowledges that prior to the execution of this Lease by Landlord and Tenant, Landlord provided to Tenant the Estimate Statement for calendar year 2015. As shown on the Estimate Statement for calendar year 2015, Tenant's Share of the Estimated Expenses (as defined below

in this Section 4.5.1) for calendar year 2015 if Tenant was a Tenant for the full calendar year 2016 would be $48,904.20 ($8.07 per square foot times 6,060 square feet of Floor Area within the Premises), and the monthly Estimate installment due herein (assuming a March 1, 2016 Commencement Date) shall be $4,075.35 ($48,904.20/12). "**Estimated Expenses**" for any particular year shall mean Landlord's estimate of Operating Expenses for a calendar year. If at any time Landlord determines that Operating Expenses are projected to vary from the then Estimated Expenses, Landlord may, by notice to Tenant, revise such Estimated Expenses, and Tenants monthly installments for the remainder of such year shall be adjusted so that by the end of such calendar year Tenant has paid to Landlord Tenant's Share of the revised Estimated Expenses for such year. Until a new Estimate Statement is furnished, Tenant shall pay monthly, with the monthly Rent installments, an amount equal to one-twelfth (1/12) of Tenant's Share of the Estimated Expenses set forth in the previous Estimate Statement delivered by Landlord to Tenant.

4.5.2 Payment. Landlord shall endeavor to give to Tenant on or before the first day of February following the end of each Expense Year, a statement (the "**Statement**") which shall state the Operating Expenses incurred or accrued for such preceding Expense Year ("**Actual Expenses**"), and the amount of the Estimated Expenses paid by Tenant for such preceding Expense Year and shall indicate the amount, if any, of the difference between the Actual Expenses and the Estimated Expenses (the "**Excess**") for such Expense Year. If an Excess is present, Tenant shall pay, within thirty (30) days after receipt of said Statement, the full amount of the Excess for such Expense Year. If any Statement reflects that Tenant has overpaid Tenant's Share of Operating Expenses for such Expense Year, Landlord shall refund the amount of the overpayment to Tenant. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord from enforcing its rights under this Article 4. Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of the Operating Expenses for the Expense Year in which this Lease terminates, if an Excess is present, Tenant shall immediately pay to Landlord an amount as calculated pursuant to the provisions of Section 4.5.1 of this Lease. The provisions of this Section 4.3.2 shall survive the expiration or earlier termination of the Term.

4.6 **Audit Rights**. Within thirty (30) days after receipt of the Statement by Tenant ("Review Period"), if Tenant disputes the amount set forth in such statement, an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm), designated by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records (pertaining to Landlord's calculation of Operating Expenses) at Landlord's offices, provided that Tenant and such accountant or representative shall, and each of them shall cause their respective agents and employees to, maintain all information contained in Landlord's records in strict confidence. Landlord shall cooperate in good faith with Tenant and the accountant to provide Tenant and the accountant with the information upon which the certification is to be based. Promptly following the parties receipt of such certification, the parties shall make such appropriate payments or reimbursements, as the case may be, to each other, as are determined to be owing pursuant to such certification.

4.7 **Security Services**. Landlord shall not be liable in any manner whatsoever to Tenant or any third party by reason of any act or omission of Landlord in providing or maintaining Security Services (or electing not to provide or maintain Security Services) in the Common Areas.

ARTICLE 5
Real Estate Taxes

5.1 **Real Estate Taxes**. Pursuant to ARIZ. REV. STAT. §§ 42-6201 et seq. (the "**Excise Tax Statutes**"), because the City is the fee owner of the Building, the Building will not be assessed property taxes. Pursuant to the Excise Tax Statutes, the Building is instead subject to the assessment or levy of an excise tax (the "**Excise Tax**"). The Excise Tax is calculated in accordance with the provisions of ARIZ. REV. STAT. § 42- 6203. This Excise Tax, as well as general real and personal property taxes and assessments, shall be treated as Operating Costs as detailed Article 4. However, assessments (both special and general) imposed in connection with any financing district, transportation development district, special assessment district, special benefit district, sanitary improvement district, local improvement district or any similar district of which the Building (or any portion thereof) is a part are not covered under Operating Costs and are instead treated as "**Real Estate Taxes**" according to the terms of this section and **Section 5.2** below. Tenant covenants and agrees to pay to Landlord as Additional Rent any costs for these Real Estate Taxes and in no event shall Tenant contest or appeal or have any right to contest or appeal these Real Estate Taxes levied or assessed against the Premises or the Building. In addition to paying its Proportionate Share of Real Estate Taxes a part of the Operating Costs, Tenant shall pay all taxes applicable to all other property in the Premises that is not taxed as real property and included in Real Estate Taxes, as set forth in **Section 20.1** (captioned "**Tenant's Property**").

5.2 **Tenant's Proportionate Share of Real Estate Taxes**. Tenant's "**Proportionate Share of Real Estate Taxes**" shall be an amount equal to the Real Estate Taxes on the "**Building Tax Parcel**" (as defined in this Section) multiplied by a fraction, the numerator of which is the Floor Area of the Premises and the denominator of which is the total Floor Area of the buildings within the Building Tax Parcel, including the Premises. The term "**Building Tax Parcel**" shall be defined as land owned by Landlord improved for use as part of the Building (which may be comprised of one or more individual tax parcels), but excluding any portions thereof which are separately assessed and taxed or are the subject of records maintained by the taxing authority from which the amount of tax allocable to such portions may be separately determined and billed to the following: **(A)** to any entity other than Landlord or paid directly by that entity; or **(B)** to Landlord but paid by another entity. Landlord shall be entitled, at any time and from time to time during the Term, to change or modify the Building Tax Parcel in the exercise of its reasonable discretion.

ARTICLE 6
Liens

In no event shall any material or equipment that is incorporated in or affixed to the Premises be subject to any notice of lien, lien, encumbrance or security interest; PROVIDED, HOWEVER, the foregoing shall not preclude Tenant from granting a security interest in Tenant's Property. Notice is hereby given that Landlord shall not be liable for any work or materials furnished to Tenant on credit and that no notice of lien or mechanic's or other lien for any such work or materials shall attach to or affect Landlord's interest in the Premises based on any work or material supplied to

Tenant or anybody claiming through Tenant. Tenant shall not permit any notice of lien or lien to be filed against the Premises or any portion of the Building for labor, services or materials claimed to have been performed for or furnished to Tenant, its contractors and subcontractors. If such a notice of lien or lien is filed, Tenant shall discharge the notice of lien or lien within ten days after the filing thereof (the "**Lien Cure Period**"). In the event Tenant fails to discharge such notice of lien or lien prior to the expiration of the Lien Cure Period, then such failure shall constitute an Event of Default to which no further cure period applies. Tenant hereby acknowledges its failure to discharge or "bond over" such a notice of lien or lien prior to the expiration of the Lien Cure Period shall cause Landlord to incur expenses not contemplated by this Lease, the exact amount of which is difficult to ascertain. Accordingly, if Tenant fails to "bond over" or discharge any such notice of lien or lien within the Lien Cure Period, then in addition to Landlord's other rights and remedies under this Lease, at law or in equity, Tenant shall pay to Landlord liquidated damages in the amount of $250.00 for each day between the expiration of the Lien Cure Period and the date such notice of lien or lien is removed or "bonded over." In addition, should Tenant fail to pay or "bond over" any liens within the Lien Cure Period, Landlord may (but shall not be obligated to) "bond over" such lien or pay the lien claimant and obtain a release of the lien without inquiring into the validity thereof and without liability to Landlord for any such payment, and offset any reasonable costs so incurred against any amount owed Tenant, and Tenant shall, upon demand and as Additional Rent, reimburse Landlord for the amount so paid together with all reasonable attorneys' fees incurred by Landlord. In addition to Landlord's rights and remedies under this Lease and at law or in equity, Tenant shall indemnify, defend, and hold Landlord harmless, utilizing legal counsel acceptable to Landlord, for, from and against any and all claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord, arising from or connected in any way with any notice of lien or lien. Nothing in this Lease shall be construed as a consent or request by Landlord, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor at or the furnishing of any materials to the Premises.

ARTICLE 7
Parking

Tenant and its employees, customers and invitees may have the non-exclusive right, together with Landlord and all other tenants and occupants of the Building and subject to payment of the fees to use the publicly designed parking lot serving the Building. Neither Tenant, nor its employees shall use any parking spaces marked or designated as reserved parking spaces. Tenant shall, within five days after request from Landlord, furnish to Landlord the automobile license numbers of all automobiles owned or used by Tenant or its employees. If there is a violation of the foregoing requirement by any employee of Tenant, Landlord shall give Tenant notice thereof, and if such violation continues following notice to Tenant, Landlord shall have the right, at Landlord's option, to tow any vehicle parked in violation of the terms hereof, or to charge Tenant the sum of $35.00 per day for each violation. Landlord may designate certain portions of the parking areas as reserved for use by certain tenants or customers of certain tenants. Landlord will provide six (6) covered, reserved parking spaces designated for Tenant's exclusive use at no cost to Tenant for the term of the Lease, as depicted on Exhibit F, attached hereto, plus 4 parking spaces for each 1,000 rentable square feet within the Premises.

ARTICLE 8
Construction of the Premises

Landlord and Tenant agree that the Premises shall be constructed in a good and workmanlike manner in accordance with the terms and provisions of **ITEM 11** and **Exhibit B-2** hereto.

Landlord agrees to use reasonable efforts to complete Landlord's Work and to deliver possession of the Premises to Tenant with all such work substantially completed by Landlord's designated delivery date, which may be adjusted by Landlord from time to time, or as soon thereafter as reasonably possible. Tenant agrees that Landlord has made no representations or warranties regarding the condition of the Premises or the Building, except as expressly set forth in this Lease.

ARTICLE 9
Alterations; Roof Penetration; Signs; Indemnification

9.1 **Interior Non-Structural Alterations**. Tenant shall have the right to make interior, non-structural alterations or additions to the Premises without Landlord's consent. Tenant shall provide 30 days' prior notice to Landlord before the commencement of any interior, non-structural alterations or additions to the Premises.

9.2 **Structural and Exterior Alterations**. Tenant shall not make any structural or exterior modifications, improvements, alterations, additions or installations in or to the Premises (the "**Alterations**") without Landlord's prior, written consent. Along with any request for Landlord's consent and before commencement of any Alterations or delivery of any materials to be used in any Alterations, Tenant shall furnish Landlord with a complete set of plans and specifications, names and addresses of contractors, copies of permits and licenses, and an indemnification in such form and amount as may be reasonably satisfactory to Landlord and, if required by Landlord, a performance bond executed by a commercial surety reasonably satisfactory to Landlord, and in an amount equal to the cost of the Alterations and the payment of all liens for labor and material arising therefrom. All Alterations shall be done only by licensed, bondable contractors or subcontractors reasonably approved by Landlord, and at such time and in such manner as Landlord may from time to time reasonably designate. Tenant shall pay the cost of all Alterations (including a reasonable charge for Landlord's services and for Landlord's inspection, architectural and engineering time), and also the cost of painting, restoring or repairing any portion of the Premises and the Building required because of Tenant's Alterations. Upon completion of the Alterations, Tenant shall furnish Landlord with contractor's affidavits and full final, unconditional waivers of liens and a reasonably detailed breakdown of the costs of all labor and materials employed in such Alterations. All Alterations shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities (including, without limitation, the Americans With Disabilities Act) and shall be constructed in a good and workmanlike and lien free manner. Tenant shall permit Landlord to inspect construction operations in connection with any Alterations. Tenant shall not be allowed to make any modifications, improvements, Alterations, additions or installations if such action results or would result in a labor dispute or otherwise would materially interfere with Landlord's operation of the Building. Subject to applicable federal and state law, in the event any Alterations result in a labor dispute, Tenant shall cause work to be halted immediately, remove the workers, contractors or mechanics responsible for such dispute and replace them with workers, contractors and mechanics acceptable to Landlord and whose work shall not (in the sole and absolute discretion of Landlord) result in a labor dispute.

9.3 **Roof Penetration**. Tenant must obtain prior, written approval from Landlord before accessing the roof of the Building for any type of roof puncture/penetration or for attaching any items to the roof, and such work must be performed by Landlord's roofing contractor at a competitive market price or by a contractor approved by Landlord. No such work will be permitted if it would void or reduce the warranty on the roof. Tenant shall be responsible for any damage to the Premises, the roof or the building containing the Premises or the Building

caused by Tenant, its agents or contractors, including, but not limited to, any roof puncture/penetration. Tenant shall be responsible for the roof above the Premises in the event it makes an alteration, with or without Landlord permission, and any damage to the Premises occurs.

9.4 **Tenant's Signs**. All of Tenant's signs shall comply with all Legal Requirements for the Building. Tenant shall be responsible for the costs of designing, manufacturing, installing, illuminating, operating and maintaining its signs. Upon the termination of this Lease, Tenant shall remove its signs and restore and repair all parts of the Premises and the Building affected by the installation or removal of its signs, to the condition existing prior to installation or to a condition reasonably acceptable to Landlord. If Tenant fails or refuses to remove its sign as herein required, Landlord may, but shall not be obligated to, remove such signs and repair and restore all damage caused by their removal, and Tenant shall pay to Landlord the costs of all such removal, repair and restoration, together with an amount equal to 25% of such costs, within ten days after receipt of an invoice therefor. Landlord reserves the right to place signage on the exterior of the Premises, including, without limitation, building identification signage, directional signage and signage for other tenants and occupants of the Building.

9.5 **Indemnification**. Tenant agrees to indemnify, defend and hold Landlord harmless, utilizing legal counsel acceptable to Landlord, for, from and against any and all claims, demands, actions, causes of action, losses, damages, costs, and expenses, including court costs and reasonable attorneys' fees of Landlord arising from or connected in any way with Tenant's interior non-structural alterations, Alterations, roof puncture/penetrations, Tenant's signs, or any other work performed by or on behalf of Tenant on the Premises regardless of whether or not such claim, demand, action, cause of action, loss, damage, cost or expense is caused in part by a party indemnified hereunder, unless caused by Landlord's gross negligence or willful misconduct in which event Landlord shall be solely liable. The provisions of this Section shall survive the expiration or termination of this Lease.

ARTICLE 10
Repair and Maintenance

10.1 **Landlord Repairs**. Landlord agrees to make or cause to be made the following repairs (which shall include replacements, if necessary) (collectively, "**Landlord Repairs**") within a reasonable period of time after receipt of notice from Tenant of the need therefor:

A. **Structural Repairs**. Structural portions of the Premises ("**structural portions**" consisting only of the foundation, roof, floor slab and members supporting the roof), the cost of which shall be included in Operating Costs; PROVIDED, HOWEVER, notwithstanding the foregoing, in no event shall Landlord be responsible for the repair or replacement of the floor covering in the Premises.

B. **Utility Repairs**. All repairs to and replacements of utility systems and sewer lines up to the point of the meters located in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises, the cost of which shall be included in Building Operating Costs. PROVIDED, HOWEVER, in the event any damage is caused by one or more acts or omissions of Tenant, its agents, employees, customers or invitees (or any other person other than Landlord), or if a damaged utility line exclusively serves the Premises, Tenant shall pay the cost of such repairs within 30 days after receipt of an invoice therefor. Additionally, Landlord shall include in Operating Costs the costs of repair(s) to plumbing and utility lines from the entrance points of the utility lines into the Building to the

mechanical room(s) or, if there is no mechanical room, to the point at which they are stubbed to the Premises.

10.2 **Tenant Repairs**. Except as is Landlord's obligation under this Article, Tenant agrees, at its own cost and expense, to take good care of the Premises and Tenant's trash area and to keep them in good and first-class order, condition and state of repair (which shall include replacements, if necessary) including, without limitation, the following:

A. **Interior Repairs**. Any and all interior repairs, including but not limited to all repairs to its trade fixtures and electrical equipment and fixtures, plumbing fixtures, lines and equipment and other utility lines (including sewer and utility lines within and exclusively serving the Premises), from the point of the meters in the mechanical room or, if there is no mechanical room, to the point at which they are stubbed to the Premises), elevators, if any, and wiring (including that within walls or ceilings, or under flooring or floor covering, or in or under the slab).

B. **Storefront Repairs**. All storefront repairs, including glass and doors, door frames, locks, lifts, openers and hardware.

C. **Window Repairs**. All repairs to windows (including sashes, frames, locks and hardware) and all Tenant's signs (including replacement of signs).

D. [**INTENTIONALLY OMITTED**]

ARTICLE 11
Inspections; Self Help; Construction in the Building

11.1 **Inspections**. Landlord shall have the right, upon reasonable prior notice, except in the event of an emergency (in which case only such notice as is practicable shall be required), to enter upon the Premises for any purpose, including to determine Tenant's compliance with this Lease or to maintain and repair any pipes, conduits or ducts, whether used in the supply of services to Tenant or to other occupants of the Building. Landlord shall further have the right, on at least 48 hours prior notice, to enter the Premises in connection with the following: **(A)** construction on the Premises; or **(B)** completing any work, repairs, alterations, or improvements in and about the Premises.

11.2 **Landlord's Right to Self Help**. If Tenant neglects or refuses to make repairs to or to maintain the Premises as required under this Lease, or to fulfill any other obligation (or any part thereof) as required under this Lease, then in addition to all other rights and remedies of Landlord as a result of such failure, Landlord and/or its agents shall have the right, upon giving Tenant reasonable notice of its election to do so, except in the event of an emergency (in which case only such notice as is practical shall be required), to make the repairs or perform the maintenance or other obligations on behalf of and for the account of Tenant. The cost of the work so done or obligations performed by Landlord or its agents, together with an amount equal to 25% of such costs, shall be paid for by Tenant within ten days after Tenant's receipt of a bill therefor. If Tenant fails to pay such amount within such 10-day period, the amount shall accrue interest at the Interest Rate upon the expiration of such 10-day period until paid. Nothing herein shall imply any duty on the part of Landlord to do any work which Landlord is not specifically and expressly required to perform under this Lease or which, under any provisions of this Lease, Tenant is required to perform, and the performance of such work by Landlord shall not constitute a waiver of Tenant's default. Landlord shall have no liability to Tenant for any loss or

damage which may result to its stock or business by reason of such repairs, replacements or action.

11.3 **Construction in the Building**. In connection with any construction, excavation or other building operations related to changes to the Building, Landlord, its agents, employees and contractors shall have the right of access to enter the Premises on reasonable prior notice to Tenant and to strengthen, add to or shore the foundations, walls, columns or supporting members thereof, and to erect scaffolding and/or protective barricades around and about the Premises (but not so as to preclude entry thereto) and to do any act or thing necessary for the safety or preservation of the Premises, in Landlord's sole discretion, and Landlord shall use reasonable efforts to complete all construction in the Premises as promptly as possible (considering the nature and extent of the construction and subject to prudent construction practices). Tenant's obligations under this Lease shall not be affected by any such changes, construction, excavation or other building operations, and so long as Landlord acts reasonably, Landlord shall not be liable for any inconvenience, disturbance, loss of business or any other annoyance arising therefrom.

ARTICLE 12
Utilities/Meters; Interruption of Service

12.1 **Utilities/Meters**. Landlord shall provide utility lines to the Premises, including **(A)** one sewer stub directly into the Premises, **(B)** [INTENTIONALLY OMITTED], **(C)** HVAC System controls and all required wiring from panel to HVAC System units for Tenant, and **(D)** one water line of a size sufficient for the Premises. Other than for air conditioning, heating, water, sanitary sewer, Tenant agrees to obtain directly from the provider thereof and pay all charges for utility bills relating to the Premises from and after the Delivery Date. Other than for air conditioning, heating, water, sanitary sewer, all utilities (if separately metered) shall be transferred into Tenant's name on or before the Delivery Date (or such earlier date as Tenant may enter the Premises to perform Tenant's Work) and if Tenant fails to do so Landlord shall have the right to have the utility service to the Premises terminated. If Tenant installs any electrical equipment that overloads the lines in the Premises, Tenant shall, at its own expense, make whatever changes are necessary to comply with the requirements of codes and ordinances of the City or any governing body having jurisdiction.

12.2 **Interruption of Service**. No unreasonable interruption in, or temporary stoppage of (not to exceed three business days), any of the services or utilities furnished to the Premises is to be deemed an eviction or disturbance of Tenant's use and possession of the Premises, nor does any such interruption or stoppage relieve Tenant from any obligation under this Lease, render Landlord liable for damages or entitle Tenant to any Rent abatement.

ARTICLE 13
Tenant's Insurance; Landlord's Insurance; Mutual Release and Waiver of Subrogation

13.1 **Tenant's Insurance**. Tenant, at its sole cost and expense, shall obtain and keep in force commencing as of the Commencement Date, the following insurance with an insurance company authorized to do business in Arizona and which has a general policy rating of A or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a similar rating from a similar or successor service):

A. [INTENTIONALLY OMITTED]

B. [INTENTIONALLY OMITTED]

C. **Commercial General Liability Insurance**. Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, and including specific coverage for Tenant's security guards, with policy limits of not less than $1,000,000.00 per occurrence, exclusive of defense costs, unless Landlord agrees to a lesser amount. The foregoing policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. [INTENTIONALLY OMITTED]

E. **Employer's Liability Insurance and Workers Compensation**. Employer's Liability insurance, with minimum limits of not less than $500,000.00, bodily injury each accident, $500,000.00 bodily injury by disease policy limit, and $500,000.00 bodily injury by disease each employee, and Worker's Compensation in form and amount as required by applicable law. The policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

F. **Umbrella Liability Insurance**. Umbrella liability insurance over such primary general liability, employer's liability insurance policies and/or commercial automobile liability insurance (as applicable) in limits of not less than $2,000,000.00, inclusive, per occurrence, and $2,000,000.00 annual aggregate, per location, or such higher limits as Landlord may require from time to time during the Term. The policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

G. **Builder's Risk Insurance**. In the event Tenant performs any repairs or alterations in, on or about the Premises, Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non reporting) form for full replacement cost covering all work which Tenant contracts for or performs in the Building and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: **(1)** interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and **(2)** a mutual release and waiver of subrogation for all parties.

H. **Commercial Automobile Liability Insurance**. Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than $1,000,000.00 combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. The policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord and its members, shareholders, employees and property manager.

I. **Insurance Changes**. Landlord may, from time to time, require changes or endorsements to Tenant's insurance required herein.

13.2 **Policies of Insurance**. Tenant shall have the right to satisfy the insurance required by this Article by means of blanket insurance policy(ies), provided that no other loss

which may also be insured by the blanket insurance shall affect the insurance coverages required hereby and further provided that Tenant delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the Building. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear. Any and all deductibles or co-insurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Tenant agrees to further provide Landlord evidence of renewals of policies not later than 30 days prior to the end of the expiring term. All policies of insurance carried by Tenant shall be primary and non-contributing in the event of any loss or damage with any insurance required to be maintained by Tenant under this Lease. All policies and certificates shall require the insurer to notify Landlord, Landlord's property manager, and all mortgagees of Landlord, in writing, not less than 30 days before any lapse, non-renewal or cancellation, including cancellation for nonpayment of premium, or other termination thereof, and shall include a clause or endorsement denying the insurer any rights of subrogation against Landlord, Landlord's property manager, and all mortgagees of Landlord. Landlord reserves the right to request or receive for review certified copies of any and all insurance policies to which this Lease is applicable. The required coverage and/or limits referred to herein shall in no way affect or limit Tenant's liability with respect to its duties and obligations under this Lease.

13.3 **Uses Which Affect Insurance**. Tenant shall not knowingly conduct or permit to be conducted in the Premises any activity, or place any equipment in or about the Premises or the Building, which shall invalidate the insurance coverage in effect or increase the rate of insurance on the Premises or the Building, and Tenant shall comply with all requirements and regulations of Landlord's property and liability insurers. If any invalidation of coverage or increase in the rate of insurance occurs or is threatened by any insurance company due to any act or omission by Tenant, or its agents, employees, representatives, or contractors, such statement or threat shall be conclusive evidence that the increase in such rate is due to the act of Tenant, and Tenant shall be liable for the increase and such amount shall be considered Additional Rent payable with the next monthly installment of Rent due under this Lease.

13.4 **Landlord's Insurance**. Landlord shall, at all times during the Term, carry a policy or policies of commercial general liability insurance covering the Common Areas in the Building and special form causes of loss insurance covering Landlord's improvements in the Building, all in such forms and amounts and with such deductibles and self-insured retentions as Landlord reasonably deems appropriate. Landlord shall not be required to carry insurance of any kind on Tenant's Property, and Tenant hereby acknowledges and agrees that Tenant shall have no right to receive any proceeds from any insurance policies carried by Landlord. If insurance coverages generally maintained by landlords of similar space in similar buildings in the area in

which the Building is located increase or otherwise change, Landlord may similarly change the insurance coverages Landlord maintains under this Lease.

ARTICLE 14
Non-Liability of Landlord; Tenant Indemnification; Landlord Indemnification; Third Party Claims; Tenant's Risk

14.1 **Non-Liability of Landlord**. Except as provided in **Section 14.3** (captioned "**Landlord Indemnification**"), neither Landlord, nor its affiliates, owners, members, managers, partners, directors, officers, agents and employees shall be liable to Tenant and Tenant hereby waives all claims for any loss, injury, or damage, to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss. Further, except as provided in **Section 14.3**, neither Landlord, nor its affiliates, owners, members, managers, partners, directors, officers, agents and employees shall be liable to Tenant and Tenant hereby waives all claims: **(A)** against Landlord for damage to any property or injury to, or death of, any person in, upon, or about the Building, including the Premises, arising at any time and from any cause, except to the extent caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors; **(B)** for any damage caused by other tenants or persons in the Building or by occupants of property adjacent thereto, or by the public, or caused by construction (except to the extent solely caused by the negligence or willful misconduct of Landlord, its agents, employees, or contractors), or by any private, public or quasi-public work; **(C)** for any injury or damage to persons or property resulting from the condition or design of, or any defect in, the Building or its mechanical systems or equipment which may exist or occur, or matters arising out of the provision or lack of provision of security, or the action or inaction of any third party security contractor; **(D)** with respect to matters for which Landlord is or may be liable for consequential, punitive or indirect damages purportedly arising out of any loss of use of the Premises or the Common Areas or any loss of use of equipment or facilities therein by Tenant or any person claiming through or under Tenant; **(E)** related to any defect in the Premises or the Building; and/or **(F)** related to any injury or damage to person or property caused by fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow, or leaks from any part of the Premises or from the pipes, appliances, plumbing works, roof, or subsurface of any floor or ceiling, or from the street or any other place, or by dampness or by any other similar cause.

14.2 **Tenant Indemnification**. Tenant hereby agrees to indemnify, defend, and hold Landlord and its affiliates, owners, members, managers, partners, directors, officers, agents and employees (collectively, the "**Landlord Indemnified Parties**") harmless for, from and against any and all "**Losses**" (as defined in this Section), which arise from or are connected in any way with any or all of the following (collectively, "**Tenant's Indemnified Matters**"): **(A)** the conduct or management by Tenant or Tenant's officers, directors, members, partners, subtenants, invitees, agents, employees, contractors or representatives ("**Tenant Parties**") of the Premises or any business therein, or any work or Alterations done, or any condition created by Tenant or any Tenant Parties in or about the Premises during the Term or during the period of time, if any, prior to the Commencement Date that Tenant is given access to the Premises; **(B)** any act, omission or negligence of any or all of Tenant and Tenant Parties; **(C)** any accident, injury or damage whatsoever occurring in, at or upon either or both of the Building and the Premises and caused wholly or in part by Tenant and/or Tenant Parties; **(D)** any breach by Tenant of any of its warranties and representations under this Lease; **(E)** any actions necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding or other proceeding under the Bankruptcy Code; **(F)** any violation or alleged violation by any or all of Tenant and/or any Tenant Parties of any law, code, ordinance or other governmental regulation; **(G)** any breach or

default on the part of Tenant in the performance of any covenant or obligation contained in this Lease; **(H)** claims for work or labor performed for or materials supplied or furnished to Tenant and/or any Tenant Parties; and **(I)** the violation of any "**Environmental Law**" (as defined in **Article 30**) or any permit, application or consent required in connection with any Environmental Law by any or all of Tenant and Tenant Parties with respect to the Premises during the Term; excluding, however, any violation of any Environmental Law resulting directly from the acts or omissions of Landlord and Landlord's employees, agents and contractors. In case any action or proceeding is brought against any or all of Landlord and Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from Landlord shall defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. For purposes of this Article, the term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages, penalties, fines, liabilities, losses of every kind and nature, suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing obligations. The provisions of this Section shall survive the expiration or termination of this Lease.

14.3 **Landlord Indemnification**. To the extent permitted by law and subject to Section 33.21, Landlord hereby agrees to indemnify and save harmless Tenant, its officers, agents and servants, for, from and against any and all claims, actions, suits, judgments, decrees, orders, liability and expense in connection with loss of life, bodily injury and/or damage to property **(A)** arising from or out of any occurrence in or upon any of the Common Areas, except to the extent the same is caused by the willful misconduct or negligent act or omission of Tenant and/or Tenant Parties; and **(B)** occasioned wholly or in part by any willful misconduct or negligent act of Landlord, its agents, employees or servants. The provisions of this Section shall survive the expiration or earlier termination of this Lease with respect to any damage, injury or death occurring before such expiration or earlier termination.

14.4 **Third Party Claims**. Landlord shall have no liability to Tenant, Tenant Parties, or other third parties in the event of damage to or loss of personal property (including Tenant's Property) within the Premises or any other injury or damage arising from any act or omission of co-tenants or other occupants of the Building, or of their employees, or of other third parties, not including Landlord, its agents, contractors or employees.

14.5 **Tenant's Risk**. All personal property in the Premises shall be at Tenant's sole risk, and Landlord shall not be liable for any damage done to, or loss of, such personal property, or for damage or loss suffered by the business income or occupation of Tenant arising from any act of neglect of third parties, or from bursting, overflowing, or leaking of water, sewer or steam pipes, rain, wind, tornadoes, floor or other surface or subsurface water, from overflow of drainage facilities or backup or stoppage of any drain, sewer or other water runoff facility or device or from the heating or plumbing fixtures, noise, dust, or from electric wires, or from gas, odors, natural disaster, riot or act of violence, leaking roofs or caused in any other manner. Tenant shall give Landlord prompt notice of any accident to, defect in or problem in the Premises or Building of which Tenant has knowledge or notice. Tenant, for itself and its agents, employees, representatives, contractors, successors, assigns, invitees and licensees, expressly assumes all risks of injury or damage to person or property, whether proximate or remote, resulting from the condition of the Building or any part thereof.

ARTICLE 15
Assignment and Subletting

15.1 **Consent of Landlord**. Tenant shall not assign this Lease or sublet the Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Premises or sublease any operating department therein, whether by sale, assignment, death, incompetency, mortgage, deed of trust, trust, operation of law or otherwise, and whether voluntary or involuntary, without the prior written consent of Landlord (which Landlord shall not unreasonably withhold, condition or delay) which consent shall be evidenced by the signature of the City Manager thereon. Any attempt to do any of the foregoing, without the prior written consent of Landlord, shall be void and of no force or effect. This prohibition shall be construed to include a prohibition against an assignment or subletting by operation of law.

15.2 **Corporate, Partnership or Limited Liability Company Transfer**. Any transfer of Tenant's interest in this Lease by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the "**voting stock**" (as defined in this Section) or majority in interest in Tenant, if Tenant is a corporation or limited liability company, or any transfer of this Lease by transfer of any other ownership interest of Tenant during the Term shall constitute an assignment for the purpose of this Lease, and shall not be permitted unless Tenant obtains the express consent of Landlord. For purposes of this Section, the term "**voting stock**" means shares of stock or interest of any kind, regularly entitled to vote for the election of directors, managing partners, or managers or their equivalent of the corporation, limited liability company, partnership or other entity involved.

15.3 **Assignment; Pledging**. If this Lease is assigned or if the Premises are subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or grant of any concession or license within the Premises or if the Premises are occupied in whole or in part by anyone other than Tenant in violation of the terms of this Article, Landlord shall have the right to do the following: **(A)** collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the Rent payable hereunder without being deemed to have approved or consented to such action by Tenant; and/or **(B)** reenter the Premises, assume and take possession of the whole or any part thereof, and remove all persons or personal property therefrom, by direct or summary action, or in a different type of suit or proceeding, by force, or otherwise, without being deemed guilty of trespass or other actionable wrong by reason thereof, and without being liable for damages therefor or in connection therewith, and after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary or other action as may be provided by law.

15.4 **Event of Assignment or Subletting**. If Tenant wishes to assign this Lease or sublet all or any part of the Premises, it shall first give written notice of such intention to Landlord, furnishing Landlord with a copy of the final proposed assignment or sublease document and with full information as to the identity and financial status of the proposed assignee or subtenant. Any proposed assignment document shall provide, without limitation, the following: **(A)** that the assignee thereunder shall be liable for all of the obligations of Tenant under this Lease (including, without limitation, the payment of any and all amounts paid or to be paid by Tenant under this Lease on an estimated basis and reconciled on an annual basis, regardless of whether such reconciliation occurs subsequent to such assignment); and **(B)** that any security deposit paid to Landlord under this Lease is transferred to such assignee. Within

60 days after receipt of such notice and documentation from Tenant, Landlord shall have the right, by notice to Tenant, to either: **(1)** terminate this Lease, in which case Tenant shall be relieved of further liability hereunder and under the proposed assignment or sublease; **(2)** approve or reject such assignment or subletting; or **(3)** convert the assignment or sublease into a direct lease between Landlord and such proposed assignee or sublessee and receive all of the rents. If no such response is given, Landlord shall be deemed to have elected to disapprove the assignment or subletting. Notwithstanding the foregoing, Tenant may not attempt to assign or sublease this Lease until 12 months after the commencement of this Lease.

15.5 **Permitted Transfer**. Notwithstanding anything contained in this Lease to the contrary, Tenant, without Landlord's prior consent but with 20 days prior written notice, may assign this Lease or sublet the whole of the Premises (a "**Permitted Transfer**") to a legal entity (a "**Permitted Transferee**") which is either: **(A)** the successor, by merger or otherwise, to all or substantially all of Tenant's assets and liabilities; or **(B)** controls or is controlled by or is under common control with Tenant. For purposes of this Section, the term "**control**" (including the terms "controls," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. Any such assignment or subletting shall be otherwise subject to and upon all of the terms, provisions and covenants of this Lease. However, any assignment, including a Permitted Transfer, shall not in any way relieve Tenant of liability as to any term or condition of this Lease without the express approval of Landlord.

15.6 **Miscellaneous Provisions**. Landlord agrees to give an estoppel letter to any assignee or sublessee to which Landlord consents or in the event of a Permitted Transfer, upon request from such assignee or sublessee. Any sale, assignment, mortgage, transfer or subletting of this Lease which is not in compliance with the provisions of this Article shall be void and of no further force or effect. All rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord and forwarded immediately to Landlord without offset or reduction, or, at Landlord's election, such rentals shall be paid directly to Landlord (to be applied as a credit and offset to Tenant's Rent obligations). All consideration paid to Tenant for an assignment, sublease or other right to use the Premises which is in excess of the amount required to be paid over to Landlord for the use of the Premises (or pro rata portion of the amount required to be paid to Landlord in the case of a sublease of a portion of the Premises) shall be paid to Landlord by Tenant upon receipt. Tenant shall pay all costs incurred by Landlord in connection with any proposed assignment or sublease, including reasonable attorneys' fees, and shall pay any brokerage commission incurred by reason of any such proposed assignment or sublease.

15.7 **No Release or Waiver**. Notwithstanding anything contained in this Lease to the contrary, no consent or action by Landlord, and no assignment or subletting permitted by Landlord, shall be deemed a waiver or a release of Tenant from the performance by Tenant of its covenants, duties and obligations hereunder. All obligations and duties shall continue notwithstanding any such consent, assignment or subletting.

ARTICLE 16
Landlord Transfer

16.1 **Landlord Transfer**. Landlord reserves the right to sell or otherwise assign its interest in this Lease or the Premises and the acquisition of title or of Landlord's interest in this Lease by a subsequent owner shall not affect or impair this Lease. However, Landlord may not

sell, assign, or otherwise transfer this Lease with Tenant without also selling, assigning, or otherwise transferring any and all of Landlord's liabilities and/or responsibilities under this Lease. If Landlord conveys or transfers its entire interest in the Premises, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be released from all liability with respect to the performance of any obligations on the part of Landlord to be performed hereunder from and after the date of such conveyance or transfer. Upon notice of such transfer, Tenant shall attorn to the new owner as landlord.

16.2 [INTENTIONALLY OMITTED]

ARTICLE 17
Permitted Use; Prohibited Uses; Future Restriction; Rules and Regulations; Legal Requirements

17.1 **Permitted Use**. It is understood and agreed between the parties hereto that during the Term of this Lease, the Premises shall be used and occupied only for the Permitted Use as defined in **ITEM 3** of the Cover Sheet and for no other purpose or purposes without the prior written consent of Landlord (which may be withheld in Landlord's sole and absolute discretion). In the event Landlord elects (in the exercise of its sole and absolute discretion) to permit Tenant to use all or any portion of the Premises for a use other than the Permitted Use described in **ITEM 3** of the Cover Sheet, then such approved use shall constitute a "**Permitted Use**" for purposes of this Lease.

17.2 **Prohibited Uses; Future Restrictions**. In addition to Tenant's agreement to operate only for the Permitted Use as provided above, Tenant expressly covenants and agrees that it shall not operate or permit any operation in the Premises so as to violate or permit the violation of, or cause Landlord to violate any future provision for exclusive use or other restriction negotiated by Landlord and applicable to the Premises or the Building after the Effective Date ("**Future Restriction**"); PROVIDED, HOWEVER, Landlord agrees that any Future Restriction which would in any way limit or restrict Tenant's right to use the Premises for the Permitted Use (or such other use as Landlord may have expressly approved in writing prior to the date of such Future Restriction) shall have no application whatsoever to Tenant's conduct of said Permitted Use or approved use in the Premises, so long as this Lease is in full force and effect. Additionally, Tenant shall promptly comply with all encumbrances of record affecting the Premises from time to time, all laws, ordinances and lawful orders, the rules adopted by the Declarant, or, if applicable, any rules and regulations of the Building, as may be amended or promulgated in the future, affecting the Premises and the cleanliness, safety, occupation and use of the same. In addition to other restrictions on the use of the Premises, Tenant shall not use or permit the Premises to be used for, and the Premises are subject to, and Tenant shall abide by, the "**Building Rules and Regulations**" (as defined in this Article). In the event that Tenant's use violates or causes Landlord to violate the provisions of any of the Exclusives or any Prohibited Use or Future Restriction, then and in any of such events, Landlord shall give Tenant written notice of such violation and Tenant shall immediately cease such violation within two days thereafter. In the event Tenant fails to remedy such violation, then in addition to Landlord's rights and remedies under this Lease and at law or in equity, Tenant shall indemnify, defend, and hold harmless Landlord for, from and against any and all claims, demands, actions, causes of action, losses (including, but not limited to, loss or abatements of rents resulting from the exercise of abatement or termination rights by another tenant pursuant to its lease), damages, costs, and expenses, including court costs and reasonable attorneys' fees, and

including any cost or legal expenses of Landlord in enforcing the restriction as and against Tenant and otherwise arising from or related to wholly or in part, the use of the Premises in violation of any Exclusive, Prohibited Use or Future Restriction. In the event Tenant violates any of the provisions of this Section, Landlord shall have all rights and remedies provided in this Lease, in addition to all rights and remedies available to Landlord at law or in equity, including, but not limited to, injunctive relief.

17.3 **Building Rules and Regulations**. In addition to the restrictions contained in this Lease, Landlord may from time to time promulgate reasonable and non-discriminatory rules and regulations which further govern the operation of Tenant's business in the Premises and in and about the Building ("**Building Rules and Regulations**"). Tenant agrees to abide by and comply with all such reasonable and non-discriminatory rules and regulations.

17.4 **Legal Requirements**. Tenant shall be obligated (and shall be responsible) to comply with any Legal Requirements, which pertain to Tenant's use and occupancy of the Premises, whether such Legal Requirements are structural or nonstructural in nature. The term "**Legal Requirements**" means all applicable current or future statutes, ordinances, orders, rules, regulations, judgments and requirements of public authorities with jurisdiction over the Building and/or the Premises, and all other matters of record affecting the Premises from time to time. Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein which is not within the Permitted Use of the Premises which shall in any way increase the existing rate of or affect any fire or other insurance upon the Premises or the Building or any of its contents, or cause a cancellation of any insurance policy covering said Premises or the Building or any part thereof or any of its contents. Further, Tenant shall furnish and maintain an adequate number of fire extinguishers in good operating condition as may be reasonably required by Landlord or any governmental authority, and in any event, not less than one such extinguisher for each floor or level of the Premises.

17.5 [INTENTIONALLY OMITTED]

ARTICLE 18
Bankruptcy and Other Actions

Any Event of Default of the type described in **Subsection 21(D)** (captioned "**Bankruptcy**") under the Default provisions of this Lease (a "**Bankruptcy Event**") shall be deemed in material breach of Tenant's obligations hereunder and this Lease shall thereupon automatically terminate. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in the law in connection with any Bankruptcy Event.

A. No default of this Lease by Tenant, either prior to or subsequent to the happening of any Bankruptcy Event, shall be deemed to have been waived unless expressly done so in writing by Landlord.

B. It is understood and agreed that this is a lease of real property as such a lease is described in Section 365(b)(3) of the Bankruptcy Code, that Landlord is entitled to all rights and benefits of a landlord thereunder, and that nothing contained herein shall be deemed a waiver of any such right or benefit.

C. Subject to applicable federal and state law, included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of

assumption and/or assignment of this Lease in connection with any Bankruptcy Event are the following: **(1)** the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than 30 days of assumption and/or assignment; **(2)** the deposit of an additional sum equal to three months of Minimum Rent and Additional Rent to be held as security; **(3)** the use of the Premises as set forth in this Lease with the quality and quantity of any goods or services required to be offered for sale unchanged with a covenant of continuous operation by Tenant or its successor; **(4)** the reorganized debtor or assignee of such debtor in possession or Tenant's trustee demonstrates in writing that it has experience and financial ability to operate out of the Premises in the manner contemplated in this Lease and meets all other reasonable criteria of Landlord as did Tenant upon execution of this Lease; **(5)** the prior written consent of any mortgagee to which this Lease has been assigned as collateral security; and **(6)** the Premises, at all times, remains the same with no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

ARTICLE 19
Tenant's Property; Personal Property Taxes; Leasehold Improvements

19.1 **Tenant's Property**. Upon the expiration or earlier termination of this Lease, Tenant shall remove from the Premises all of Tenant's furniture, trade fixtures, signage (including both interior and exterior signage, but excluding signage required by law [e.g., "EXIT" signage]), merchandise, inventory, displays and other personal property paid for by Tenant (i.e., excluding any property or improvements paid for by Landlord either directly or with the Construction Allowance) located in the Premises (collectively, "**Tenant's Property**"). Tenant shall use reasonable efforts to avoid or minimize any damage to the Premises or Building resulting from such removal and shall repair any damage to the Premises or Building caused by the removal of Tenant's Property, and all utility lines shall be professionally capped or plugged and Tenant shall leave the Premises in broom clean condition. Tenant hereby agrees that, in addition to any other work required to comply with the provisions of this Section, the foregoing shall require Tenant to repair all damage to the exterior of the Premises resulting from the removal of Tenant's signage and other improvements therefrom, and to repaint all areas beneath such signage and improvements to the extent required for such areas to match the color and materials of the remainder of the exterior of the Premises. If Tenant shall fail to remove any of Tenant's Property, such Property shall become the property of Landlord and Landlord shall have the right to dispose of such Property as it deems appropriate, and Tenant shall reimburse Landlord for any costs thereby incurred on demand. This requirement shall survive the Term of this Lease to the extent necessary to give effect hereto. Notwithstanding anything contained in this Lease to the contrary, in addition to Tenant's obligation to pay its Proportionate Share of Real Estate Taxes as set forth in **Article 7** above, during the Term of this Lease Tenant acknowledges and agrees that it shall pay all taxes, impositions, assessments and similar charges levied or imposed by any governmental or taxing authority against Tenant's Property or any other property or fixtures located in the Premises and used in connection with the operation of Tenant's business therein that are not taxed as real property, whether owned by Landlord or Tenant (collectively, "**Personal Property Taxes**"). Tenant shall pay all Personal Property Taxes directly to the applicable governmental authority (or, if Landlord receives the bill with respect to any Personal Property Taxes, Tenant shall pay to Landlord within 20 days after receipt of an invoice therefor from time to time, in which event Landlord shall remit such Personal Property Taxes to the applicable governmental authority).

19.2 **Leasehold Improvements Remain**. Notwithstanding anything to the contrary set forth in this Lease, all alterations, decorations, installations, additions or improvements upon or to the Premises attached or affixed to the real estate by either party, including, but not limited to,

all panel ing, millwork, decorations, partition s, air condit ioning unit s, heating equ ipment, hot water heaters, light f ixtures, railing s, mezzani ne floor, g alleries, e levators, stair ways, vault doors, kit chen equipment and the like (co llectively, the " **Leasehold Improvements** "), shall immediately become the property of Landlord u pon installa tion and shall remain upon, and be surrendered with the Premises, as a part thereof, at the termination of this Lease. The value or cost of the Leasehold Impro vements constr ucted by T enant shall in no way constitute a substitute f or or a credit against any obligation of Tenant under this Lease to pay Rent. Notwithstanding the foregoing, Landlord may, at its option , require, by giving notice to Tenant within a reasonable time after the expiration of the Term, earlier termination or ca ncellation of the Lease, default or otherwise, that any or all of the Leasehold Improvements made by Tenant upon or to the Premises be removed by Tena nt, in which case such L easehold Improvements shall be removed, and the Premises and Building sha ll be restored, to the co ndition in which it was delivered by Land lord. Tenant shall use reasonable efforts to avoid or mi nimize any damage to the Premises or Buildin g resulting from such removal, and shall repair any damage to the Premises or Building caused by the re moval of such Leasehold Improvements. If Tenant shall fail to either **(A)** properly remove any of Tenant's Property as required under this Lease; or **(B)** repair a ny damage caused by the removal of any alterations or property (including, without limitation, Tenant's Property) which Tenant is r equired or entitled to re move from the Premises pursuant to this Lea se, and such fa ilure sha ll continue for more than five days after Tenant's receipt of written notice of such failure, then and in either of such events, Landlo rd may (but shall not be obligated t o) remove any such alterations or property a nd dispose of the same and/or repair such damage and restore the Premises to the condition required under this Lease, and Tenant shall reimb urse Landlo rd for all co sts and expenses in curred in conn ection with such dispo sal and/or repairs, toget her with an additional amount equ al to 25% of such costs and expenses, within ten days after receipt of an invoice therefor from Landlord. In the even t Tenant fails to pay Lan dlord all or any portion of the amou nt requested in such invoice within such ten-day period, the amount sha ll accrue interest at the Interest Rate from the e xpiration of such ten-day period.

ARTICLE 20
Eminent Domain

20.1 **Definition/General**. In the event o f a taking of all or any p art or of any interest in the Premises, the Building, the Common Areas or any other part of the Property by reason of any e xercise of the po wer of e minent domain, or if there is a transfer thereof or of any interest therein, made in avoidance of an e xercise of th e power of eminent domain (all of the foregoin g being hereinafter collectively referred to as a "**Taking**"), the following provisions shall apply. Landlord shall notify Tenant of any pending or threatened Taking and of all related proceedings including the settling of any award.

A. **Total Taking**. In the event of a Taking of all of t he Premises, the Building, this Lease shall termin ate as of t he date of such Taking and all of Tenant's obligation s hereunder, including its obligation to pay Rent accruing fro m and after the date of the Taking shall terminate as of the date of such Taking.

B. **Partial Taking**. In the event of a Taking of th e following: **(1)** more th an 20% of the Premises; **(2)** more than 40% of the Building o r the Building buildings; **(3)** more than 35% of the Common Areas (including the parking areas); or **(4)** more than two of th e accessways serving the Building without replacement thereof, then Tenant or Landlord may terminate this Lease by notice to the other within 60 days after possession is ta ken by the

condemning authority; PROVIDED, HOWEVER, in the event Tenant elects to terminate this Lease pursuant to Clause (3) above, Landlord shall have the right to nullify such election by giving Tenant notice of its election to promptly restore the Common Areas so taken or furnish substitute facilities which are functionally equivalent to or better than the Common Areas so taken and within a reasonable distance from those portions taken.

20.2 **Restoration**. In the event this Lease is not canceled as herein provided, then Landlord shall: **(A)** restore, if the condemnation award proceeds are available and sufficient to do so, the affected portion and, if applicable, so much of the remainder of the Premises to a complete architectural unit to the extent that they existed on the date physical delivery thereof was initially delivered to Tenant prior to the Commencement Date (in any event subject to then existing code); and **(B)** turn over to Tenant (for restoration purposes by Tenant) that portion of Landlord's award applicable to Tenant's Work initially installed by Tenant and additional Tenant Improvements that was awarded to Landlord (rather than to Tenant) and not otherwise received by Tenant from the condemning authority or pursuant to **Section 20.3** (captioned "**Award**") for such element of damage; PROVIDED, HOWEVER, Landlord may terminate this Lease, if no condemnation award proceeds are available or the condemnation award proceeds are insufficient to restore such affected portion or remainder of the Premises as provided above, by written notice to Tenant within 60 days after the date the condemning authority notifies Landlord of the amount of the condemnation award proceeds (if any). Following the physical delivery of the Premises to Tenant, Tenant shall commence and complete restoration of the Premises to at least the extent of Tenant's Work initially installed by Tenant and additional Tenant Improvements. During the period of restoration in the Premises only, the Rent shall be equitably abated in accordance with the nature and extent that Tenant's use and enjoyment of the Premises has been affected.

20.3 **Award**. All damages awarded for any Taking shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord its interest, if any, in said award. Notwithstanding the foregoing, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; PROVIDED, HOWEVER, Tenant shall in no event have any right to receive any award for its interest in this Lease or for loss of leasehold, and any such award shall not reduce amounts that would otherwise be available to Landlord. Notwithstanding the foregoing provisions of this Article, Landlord may terminate this Lease with no further liability to Tenant in the event that following any Taking of any part of the Building, or any conveyance in lieu thereof, any party holding a mortgage, trust deed or similar lien on Landlord's interest in the Building elects to require the application of an award or payment for the taking or conveyance in lieu thereof to reduce the indebtedness secured by such mortgage, trust deed or similar lien.

ARTICLE 21
Default

21.1 **Default Definition**. The occurrence of all or any of the following shall constitute an "**Event of Default**" by Tenant:

A. **Non-payment of Rent or other sums**. Any installment of Rent, Additional Rent or any other sum(s) required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid following the due date thereof as herein provided.

B. **Vacation or Abandonment of Premises**. Tenant has "**vacated or abandoned**" (as defined in this Subsection) the Premises, and such conditions continues for a period of more than five days after Tenant's receipt of written notice thereof. For purposes of this subsection, the term "**vacated or abandoned**" shall mean that Tenant has: **(1)** ceased operating for business in the Premises, and **(2)** has either: **(a)** verbally or in writing expressed to Landlord or its agent its intention to cease performing all or any of its obligations under this Lease; or **(b)** removed such items of Tenant's Property from the Premises so as to render the Premises unsuitable for the operation of Tenant's business therein; or **(c)** tendered the keys to the Premises to Landlord or its agent; PROVIDED, HOWEVER, Tenant hereby agrees that no acceptance of notice or of the keys to the Premises by Landlord or any agent of Landlord shall constitute an acceptance of surrender of the Premises or terminate this Lease or Tenant's liability hereunder.

C. **Non-performance**. There is any default or breach on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default or breach shall continue for a period of 30 days after notice thereof from Landlord to Tenant (or, if such default cannot reasonably be cured within 30 days, if Tenant shall fail to commence to cure the default within such 30-day period or thereafter fails to diligently pursue such cure to completion, but in no event shall cure period exceed 90 days).

D. **Bankruptcy**. If: **(1)** Tenant shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors; **(2)** Tenant shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or an order for relief relating to Tenant is granted in proceedings filed against Tenant; or **(3)** a receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of Tenant.

E. **Attachment**. This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not discharged or disposed of within 15 days after its levy.

F. **Failure to Take Possession**. Tenant fails to take possession of the Premises on the Commencement Date as required hereunder.

21.2 **Remedies**. Upon an Event of Default of Tenant hereunder Landlord, at its option, may exercise any or all of the following remedies, which shall be in addition to the exercise of all rights and remedies of Landlord under this Lease, at law or in equity, with respect to such Event of Default:

A. **Terminate**. Cancel and terminate this Lease and all rights of Tenant hereunder and enter the Premises and take possession thereof.

B. **Take Possession**. Without terminating the Lease, re-enter and take possession of the Premises and remove all persons and property therefrom. Tenant hereby grants to Landlord a lien and security interest as security for payment of all Rent, Additional Rent, or any other charges now or hereafter payable by Tenant hereunder, upon all equipment, fixtures, and inventory (and the proceeds thereof within the Premises, including all improvements, equipment, fixtures, inventory, merchandise, and other personal property now or

hereafter placed on or in the Premises, to the full extent of Tenant's and any assignee's, or subtenant's interest herein, and such lien shall include the right to prevent removal of the property from the Premises and may be enforced, upon nonpayment of rent or other charges as aforesaid, or any other default by Tenant hereunder, without any type of notice to Tenant, unless notice is required by some other provision of this Lease by the re-entry, taking and sale, lease or other disposition of such property. Landlord shall also have all other rights and remedies upon default provided by law, including those set forth in the Uniform Commercial Code. The sale, lease, or other disposition of the property shall be either public or private after at least ten days' notice to Tenant at his last known address, and Landlord shall have the right and privilege to be a purchaser at any such sale. Landlord and Tenant agree that ten days' notice of such sale, lease, or other disposition of the property is reasonable under the circumstances. Landlord shall not be deemed guilty of trespass or liable for any loss or damage occasioned thereby. Should Landlord elect to re-enter, as herein provided, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided for by law or by this Lease, Landlord may either cancel this Lease pursuant to the rights reserved elsewhere in this Lease, or Landlord may, from time to time, without canceling this Lease, make such alterations and repairs as may be necessary in order to relet the Premises; and relet said Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable; upon each such relettin g all rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, second, to the payment of any costs and expenses of such reletting, including brokerage fees and reasonable attorneys' fees, third, to the payment of costs of any alterations and repairs necessary to relet the Premises, fourth, to the payment of Rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future Rent or damage as such amounts may become due and payable hereunder during the entire term of the Lease. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. No such re-entry or taking possession of said Premises by Landlord shall be construed as an election on its part to cancel this Lease unless a notice of such intention is given to Tenant or unless the cancellation thereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to cancel this Lease for such previous Event of Default.

C. **Locks/Security Devices**. Alter locks and other security devices at the Premises in accordance with applicable law.

D. **Tenant Improvement Allowance**. Withhold payment of any unpaid portion of the Tenant Improvement Allowance, if any, regardless of whether Tenant has already paid for all or any portion of the cost of the work, materials or labor to be paid for with the Tenant Improvement Allowance.

E. **Injunctive Relief**. Without limitation, exercise any other right at law or in equity, including specifically, but not by way of limitation, the pursuit of temporary or permanent injunctive relief.

21.3 **Additional Provisions**. If Tenant shall after default voluntarily give up or tender possession of the Premises to Landlord, by delivering the keys to the Premises to Landlord or its agent or property manager, or both, such actions shall be deemed to be in compliance with Landlord's rights and the acceptance thereof by Landlord shall not be deemed to constitute a

surrender of the Premises or otherwise affect Landlord's rights in connection with such default; it being understood and agreed that such surrender may be effected only by the written agreement of Landlord and Tenant. Tenant hereby waives (to the extent legally permissible) any and all notices otherwise required under common law, as same presently exist or may be hereafter amended (or any subsequent similar statute relating to notice prior to instituting such action or proceeding). In the event of termination of this Lease or of Tenant's right to possession of the Premises or repossession of the Premises for an Event of Default, Landlord shall not have any obligation to relet or attempt to relet the Premises, or any portion thereof, or to collect rental after reletting (if any); but Landlord shall have the option to relet or attempt to relet and in the event of reletting Landlord may relet the whole or any portion of the Premises for any period, to any tenant, and for any use and purpose. In the event that Landlord shall have taken possession of the Premises, Landlord shall have the right to use all the furniture, fixtures and equipment at the Premises, including that which is owned by or leased to Tenant, prior to any foreclosure thereon by Landlord or repossession thereof by a Landlord thereof or third party having a lien thereon. Landlord shall also have the right to remove from the Premises (without legal process) all or any portion of such furniture, fixtures, equipment and other property located thereon and place same in storage at any premises elected by Landlord, and in such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal and storage, together with interest thereon at the Interest Rate. Landlord shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any person ("**Claimant**") claiming to be entitled to possession thereof, without the necessity of making any investigation or inquiry as to the basis upon which Claimant purports to act, and Tenant agrees to indemnify, defend and hold Landlord harmless from all cost, expense, loss, damage and liability incident to Landlord's relinquishment of possession of all or any portion of such furniture, fixtures, equipment or other property. Tenant stipulates and agrees that the rights set forth in this Section are commercially reasonable.

ARTICLE 22
Subordination; Estoppels

22.1 **Subordination**. Tenant covenants and agrees that **(A)** this Lease is and shall automatically and without further act or deed by Tenant be and remain subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or any portion of the Building (each a "**Mortgage**") and to any and all advances to be made thereunder, and to any interest accrued thereon, and to all renewals, replacements, modifications, consolidations and extensions thereof or participation thereof, **(B)** any mortgagee, grantee, master lessor, beneficiary or trustee (each a "**Mortgagee**") may elect to have this Lease made a prior lien to its Mortgage, and in the event of such election and upon notification by Landlord or such Mortgagee to Tenant to that effect, this Lease shall without further act or deed by Tenant be deemed prior in lien to said Mortgage, whether this Lease is dated prior to or subsequent to the date of any such Mortgage, and **(C)** Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee to acknowledge such subordination or priority (as applicable) in recordable form. Tenant's failure to execute such instrument within 20 days after Tenant's receipt of same shall constitute a separate Event of Default for which no cure period applies. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises (each a "**Foreclosure**") and if requested by Landlord's successor, Tenant shall attorn to such successor and shall recognize that successor as Landlord under this Lease. Tenant agrees that such successor shall not be **(1)** liable for any act or omission of Landlord under this Lease

occurring prior to such Foreclosure, **(2)** subject to any offset accruing to Tenant against Landlord prior to such Foreclosure, or **(3)** bound by any previous prepayment of Rent or Security Deposit which have not been expressly delivered by Landlord to such successor. If so requested, Tenant shall enter into a new lease with such successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

22.2 **Estoppel**. The parties agree that they shall rely solely upon the terms of this Lease to govern their relationship. They further agree that reliance upon any representation, act, or omission outside the terms of this Lease shall be deemed unreasonable, and shall not establish any rights or obligations on the part of either party. Within 20 days after the request of the other party at any time and from time to time, each of Landlord and Tenant agree to execute, acknowledge and deliver to the other party a written instrument in form reasonably acceptable to Landlord and Tenant, duly executed, acknowledged: **(A)** certifying that this Lease has not been modified except as set forth in such certificate and is in full force and effect as modified; **(B)** specifying the dates to which the Minimum Rent, Additional Rent and other charges hereunder have been paid; **(C)** stating whether or not, to the knowledge of the party executing such instrument, the other party is in default and, if so, stating the nature of such default; **(D)** stating the Commencement Date; **(E)** stating whether the option to extend the Term has been exercised; and **(F)** affirming such other factually accurate matters pertaining to the provisions or subject matter of this Lease as may be required by the other party.

ARTICLE 23
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 **(A)** delivered to the party at the address set forth below, **(B)** deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or **(C)** given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Tenant: EPS Group, Inc. Engineers, Planners & Surveryors
2045 S. Vineyard Ave., Suite 101
Mesa, Arizona 85210
Attn: Elijah Williams

If to the City: City of Avondale
c/o Kennedy Wilson Properties LTD
7375 E. 6th Ave, #11
Scottsdale, Arizona 85251
Attn: Mary Jacobs

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

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received **(1)** when delivered to the party, **(2)** three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or **(3)** the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all

required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

ARTICLE 24
Surrender of Premises

Tenant shall surrender the Premises in broom clean condition and in good order, condition and repair, reasonable wear and tear and insured casualty damage excepted, and shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises. Tenant's obligation to observe or perform this covenant shall survive the expiration or earlier termination of this Lease.

ARTICLE 25
Holding Over

If Tenant remains in possession of the Premises after the expiration of the Term or earlier termination of this Lease, without the execution of a new Lease, then, at Landlord's option, Tenant shall be deemed to be occupying the Premises as a month-to-month holdover Tenant, subject to all the provisions of this Lease insofar as they are applicable to a month-to-month tenancy, but at a daily rental of 150% times the per day Rent provided under this Lease, computed on the basis of a 30 day month.

ARTICLE 26
Casualty

26.1 **Removal of Debris**. In the event of a casualty, Tenant shall be responsible for the prompt removal of all debris resulting from Tenant Improvements installed in the Premises by Tenant, including Tenant's furniture and fixtures.

26.2 **Termination**. If at any time during the Term, the Premises or any material portion of the Building should be destroyed or damaged by fire or other casualty, Landlord shall have the election to repair and reconstruct the damaged portion of the Premises and/or the Building to substantially the condition which existed at the time of Landlord's tender of possession of the Premises to Tenant or alternatively, to terminate this Lease. Landlord shall notify Tenant of its election within 90 days after receipt of notice from Tenant of such damage or destruction. In the event Landlord elects to terminate this Lease pursuant to this Section, Rent shall be apportioned on a per diem basis and be paid to the date of termination, such termination to be effective 30 days following the date of Landlord's notice and upon expiration of such 30-day period neither party shall have any further rights or obligations hereunder.

26.3 **Repair**. If Landlord elects to repair and restore the Premises: **(A)** this Lease shall continue in full force and effect; **(B)** such repairs shall be made by Landlord within a reasonable period of time; and **(C)** Rent shall abate proportionately only during the period and to the extent that the Premises are unfit for use, and are not otherwise used, by Tenant for any purpose. Notwithstanding the foregoing, if the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of Rent. If Landlord elects to repair and restore the Premises, Tenant hereby covenants and agrees to restore the interior of the Premises, pursuant

to Landlord's standard construction procedures, and reopen fully stocked and staffed in the Premises promptly thereafter.

26.4 **Notice**. Tenant shall give notice to Landlord within two days after Tenant learns of any accident, damage or destruction at the Premises.

ARTICLE 27
Waiver

One or more waivers of any covenant or condition of this Lease by Landlord shall not be construed as a waiver of a further breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to any subsequent similar act by Tenant. No receipt of money by Landlord after a Tenant default has been declared shall, without the consent of Landlord, in any way reinstate, continue or extend the Term of this Lease. Receipt by Landlord of Tenant's keys to the Premises shall not constitute an acceptance of surrender of the Premises without Landlord's acknowledgment thereof.

ARTICLE 28
Quiet Possession

Landlord agrees that, so long as Tenant fully complies with all of the terms, covenants and conditions herein contained on Tenant's part to be kept and performed, Tenant shall peaceably and quietly have, hold and enjoy the Premises free from molestation by Landlord or any party claiming by, through or under Landlord.

ARTICLE 29
Broker's Commission

Landlord shall be responsible for the payment of the brokerage fee or commission, payable (a) within ten (10) days after the Effective Date, to Cresa Phoenix, attention Ryan Orton ("Tenant's Broker") in the amount of $7,101.50 and (b) within ten (10) days after the Commencement Date, to Tenant's Broker in the amount of $7,101.50. Tenant represents and warrants that no other broker is involved in the consummation of this Lease. Tenant will indemnify the Landlord against, and hold it harmless from all liabilities and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone with whom Tenant has dealt with regarding the Premises or this Lease.

ARTICLE 30
Asbestos and Other Hazardous Materials

30.1 **Definitions**. For purposes of this Lease:

A. "**Environmental Laws**" means any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and

amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Material Transportation Act, 42 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Noise Control Act (42 U.S.C. § 4901 et seq.); the Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201 and § 300f et seq.); and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.).

B. "**Hazardous Materials**" means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law.

C. "**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaking, dumping, discarding, burying, abandoning, using, generating, permitting, producing, introducing, maintaining, disposing or releasing into the Premises, the Building or the environment.

D. "**Environmental Authorities**" means the United States, the State and any political subdivision thereof, the United States Environmental Protection Agency and any and all governmental authorities and the agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence having jurisdiction under any Environmental Law.

E. "**Notice**" means any communication, written or oral, actual or threatened, from any governmental authority or any other public or private entity or individual, concerning any violation of any Environmental Law, or any act or omission resulting or which may result in the Release of Hazardous Material, and shall include the imposition of any liens on the Building or revenues or assets of Landlord.

30.2 **Tenant Requirements**. Neither Tenant, nor its agents, employees, contractors, servants, subtenants, concessionaires or invitees, shall Release any Hazardous Materials in or about any portion of the Premises or the Building, or transport any Hazardous Materials to or from the Premises or the Building, except construction materials (other than asbestos or polychlorinated biphenyls), office equipment, cleaning solutions, other maintenance materials and oil and other petroleum products that are or contain Hazardous Materials may be used, handled or stored on the Premises, provided such materials, equipment, solutions and products are used is in de minimis amounts and are used only incidental to and as reasonably necessary for the operation and maintenance of the Premises for the Permitted Use hereunder and in compliance with all applicable Environmental Laws. In addition, neither Tenant, nor its agents, employees, contractors, servants or subtenants, shall install, use or permit the installation or use of storage tanks or other subterranean structures, on, under or adjacent to the Premises. Tenant shall, at Tenant's sole cost and expense, comply with all Environmental Laws applicable to Tenant's operations in the Premises and the Building, and make all submissions to, provide all information required by, and comply with all requirements of all Environmental Authorities. If

there is any Release or transportation by Tenant of Hazardous Materials at or from the Premises or the Building, or which arises at any time from Tenant's use or occupancy of the Premises or the Building, and Landlord, any Environmental Authority or any third party demands that a remediation be undertaken, then Tenant, at Tenant's sole cost and expense, shall prepare and submit remediation plans for the demanding party's approval, and Tenant shall carry out all such remediation in accordance with such approved plans. In addition, Tenant shall promptly provide all information regarding the Release or transportation of Hazardous Materials that is requested by Landlord. If remediation is required by Tenant pursuant to the provisions of this Article, then Tenant shall continue to pay any and all Rent that comes due during such remediation and no abatement of Rent shall apply. If Tenant fails to fulfill or begin to fulfill any obligation imposed under this Section within 30 days after receipt of written notice from Landlord, Landlord may, in its sole discretion, undertake the remediation of such Hazardous Materials from the Premises and/or the Building, in which event Tenant shall cooperate with Landlord in order to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the Environmental Laws to the Premises and the Building, and Tenant's use thereof and for compliance therewith. In addition, Tenant shall execute all documents promptly upon Landlord's request, and reimburse Landlord for all reasonable expenses incurred by Landlord in fulfilling Tenant's obligations set forth in this Section, together with an additional amount equal to 25% of such expenses, within ten days after receipt of an invoice therefor. Notwithstanding the foregoing, Tenant shall have no obligation to undertake any remediation or incur any costs or expenses (as required in this Section) as a result of Hazardous Materials **(A)** existing in the Premises on or before the Delivery Date and not Released by Tenant, or its agents, employees, contractors, servants, subtenants, concessionaires or invitees; or **(B)** Released in the Premises or the Building by Landlord, its agents, contractors, employees or other tenants of the Premises.

30.3 **Tenant Indemnification**. Tenant shall indemnify, protect and save Landlord, its officers, members, managers, agents and servants, and management company (collectively, "**Landlord's Indemnitees** "), harmless for, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings or expenses of any kind or of any nature whatsoever (including reasonable attorneys' and experts' fees and disbursements), which may at any time be imposed upon, incurred by or asserted or awarded against Landlord or any of the Landlord Indemnitees, arising out of, or in any way connected with, any breach or violation of the requirements set forth in this Article by Tenant or any of its agents, employees, contractors, servants, subtenants, concessionaires or invitees. In connection with Tenant's indemnification hereunder: **(A)** upon receipt of written notice from Landlord, Tenant agrees to defend any claim or demand brought, or any action, petition, or order filed, against Landlord or the Landlord Indemnitees by counsel reasonably satisfactory to Landlord, whether any such claim or action is rightfully or wrongfully brought or filed; and Tenant shall pay all reasonable expenses incurred in connection with defending against such action or proceeding; and **(B)** Tenant shall pay, satisfy and discharge any judgments, liens, orders or decrees which may be recovered or filed against Landlord, or any of the Landlord Indemnitees, arising out of any such claim, demand, action, petition or order.

30.4 **Survival**. The provisions of this Article shall extend to and be enforceable by Landlord's liability, health, disability and worker's compensation insurers, and shall survive the expiration or sooner termination of the Term.

ARTICLE 31
Security Deposit; Conflicts; Access; Relationship; Headings & Miscellaneous

31.1 **Security Deposit**. On or before the Effective Date, Tenant shall deposit with Landlord the sum specified in **ITEM 13** of the Cover Sheet (the "**Security Deposit**"). The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord and any such act on the part of Tenant shall be without force and effect and shall not be binding upon Landlord. If any of the Rent or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid or paid by Landlord on behalf of Tenant, or if Tenant shall fail to perform any of its obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply said entire Security Deposit, or so much thereof as may be necessary to compensate Landlord for Minimum Rent, Additional Rent, loss or damage sustained by Landlord as a result thereof, and Tenant shall forthwith upon demand restore the Security Deposit to the original sum deposited. Should Tenant comply with all of said obligations and promptly pay all the rentals when due and all other sums payable by Tenant to Landlord, said Security Deposit shall be refunded in full to Tenant at the expiration or earlier termination of this Lease. In the event of bankruptcy or other debtor-creditor proceedings against Tenant, as specified in **Article 18**, the Security Deposit shall be deemed to be applied first to the payment of rental and other charges due Landlord for the earliest periods prior to the filing of such proceedings. Landlord may deliver the Security Deposit to the purchaser or assignee of Landlord's interest in the Premises in the event that such interest is transferred and thereupon Landlord shall be discharged from any further liability with respect to the Security Deposit. This Section shall also apply to any subsequent transfer of Landlord's interest in the Premises.

31.2 **Governing Item**. Notwithstanding anything contained in the Lease to the contrary, in the event of a conflict between Tenant's approved Construction Documents, as set forth in **Exhibit B-2**, and the terms and conditions of this Lease, including, but not limited to, **Exhibit B-2**, Tenant's approved Construction Documents, as approved by Landlord in accordance with **Exhibit B-2**, shall govern.

31.3 **Landlord Access to Rent**. Landlord may, at any time during the last 120 days of the Term, upon reasonable notice to Tenant, enter the Premises at all reasonable hours for the purpose of offering them for rent and may place and keep on the windows and doors of the Premises signs advertising the Premises for rent.

31.4 **Relationship**. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship between the parties hereto other than the relationship of landlord and tenant.

31.5 **Submission**. The submission of this Lease for examination does not constitute a reservation or any option for the Premises and this Lease becomes effective only upon its execution and delivery by both parties hereto.

31.6 **Headings**. The Article headings used throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

31.7 **Construction**. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. The captions, section numbers, article numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

31.8 **Independent Covenants**. The doctrine of independent covenants shall apply in all matters relating to this Lease including, without limitation, all obligations of Landlord and Tenant to perform their respective obligations under this Lease. All obligations of Tenant which by their nature involve performance after the end of the Term, or which cannot be ascertained to have been performed until after the end of the Term of this Lease, shall survive the expiration or earlier termination of this Lease.

31.9 [INTENTIONALLY OMITTED]

31.10 [INTENTIONALLY OMITTED]

31.11 **Time of Essence & Binding Nature**. Time is of the essence of all of the terms and provisions of this Lease, and the terms and conditions hereof shall extend to and be binding upon the heirs, executors, successors and assigns of the parties hereto and mention of the singular shall include the plural and the plural shall include the singular.

31.12 **Memorandum of Lease**. In accordance with ARIZ. REV. STAT. § 42.6202(C), the City shall record a memorandum of this Lease in the Maricopa County Recorder's Office.

31.13 **Trial Waiver**.

THE PARTIES HERETO IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.

31.14 **Governing Law**. This Lease shall be subject to the laws of the State of Arizona.

31.15 **Attorneys' Fees**. In the event either party to this Lease brings any legal action to enforce the provisions hereof, the prevailing party in any such action shall be entitled to recover from the non-prevailing party all attorneys' fees and other fees and costs incurred by such prevailing party in connection with any such action.

31.16 **Force Majeure**. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, acts of God, inclement weather, including periods of rain, inability to procure materials, failure of power, restrictive governmental law or regulations, riots, insurrections, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease ("**Force Majeure**"), then performance of such act shall be excused for the number of calendar days of such delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. No delay under this Section shall be effective unless Landlord or Tenant shall have notified the other of the delay within 20 days after cessation of the event giving rise to such delay setting forth the nature of such Force Majeure and the duration of such delay. The

provisions of this Section shall not: **(A)** operate to excuse Tenant from prompt payment of Minimum Rent, Additional Rent or any other payment required by the terms of this Lease; nor **(B)** be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Lease because of a lack of funds.

31.17 [INTENTIONALLY OMITTED]

31.18 [INTENTIONALLY OMITTED]

31.19 **Tenant Liability; Authority**. If this Lease is executed by more than one person or entity as "**Tenant**", each such person or entity shall be jointly and severally liable hereunder. It is expressly understood that any one of the parties who have executed this Lease as "**Tenant**" (herein individually referred to as "**Signatory**") shall be empowered to execute any modification, amendment, exhibit, floor plan, or other document ("**Future Instrument**") and bind each such Signatory who has executed this Lease regardless of whether each Signatory, in fact, executes such Future Instrument. If Tenant is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of such entity represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of said entity, in accordance with the organizational documents of said entity, and that this Lease is binding upon said entity.

31.20 **Homeland Security**. Tenant represents, certifies and warrants to Landlord as follows: **(A)** Tenant is not named by, and is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by, any Executive Order, including without limitation Executive Order 13224, or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enacted, enforced or administered by the Office of Foreign Assets Control; **(B)** Tenant is not engaged in this transaction, directly or indirectly, for or on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation; and **(C)** none of the proceeds used to pay Minimum Rent and Additional Rent have been or will be derived from a "specified unlawful activity" as defined in, and Tenant is not otherwise in violation of, the Money Laundering Control Act of 1986, as amended, or any other applicable laws regarding money laundering activities. Furthermore, Tenant agrees to immediately notify Landlord if Tenant was, is, or in the future becomes a "senior foreign political figure," or an immediate family member or close associate of a "senior foreign political figure," within the meaning of Section 312 of the USA PATRIOT Act of 2001. Notwithstanding anything in this Lease to the contrary, Tenant acknowledges and agrees that this Lease is a continuing transaction and that the foregoing representations, certifications and warranties are ongoing and shall be and remain true and in full force and effect on the date hereof and throughout the Term and that any breach thereof shall constitute an automatic Event of Default giving rise to Landlord's remedies and Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's management agent from and against all losses, damages, costs and expenses resulting from or relating to any breach of the foregoing representations, certification and warranties.

31.21 **Limitation of Landlord's Liability**. Notwithstanding any other provision of this Lease, Tenant agrees that neither Landlord nor any of Landlord's officers, directors, partners, shareholders, members or employees shall have any personal liability hereunder. Additionally, notwithstanding anything in this Lease to the contrary, in no event shall Landlord ever be liable to Tenant for consequential damages or special damages. Landlord is obligated only to pay its obligations set forth in this Lease as may lawfully be made from funds appropriated and budgeted for that purpose during Landlord's then current fiscal year. The Landlord's obligations

under this Lease are current expenses subject to the "budget law" and the unfettered legislative decision of the Landlord concerning budgeted purposes and appropriation of funds. Should Landlord elect not to appropriate and budget funds to pay its Lease obligations, this Lease 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 Landlord shall be relieved of any subsequent obligation under this Lease. The parties agree that the Landlord has no obligation or duty of good faith to budget or appropriate the payment of Landlord's obligations set forth in this Lease in any budget in any fiscal year other than the fiscal year in which this Lease is executed and delivered. Landlord shall be the sole judge and authority in determining the availability of funds for its obligations under this Lease. Landlord shall keep the Tenant informed as to the availability of funds for this Lease. The obligation of Landlord to make any payment pursuant to this Lease is not a general obligation or indebtedness of Landlord. The Tenant hereby waives any and all rights to bring any claim against the Landlord from or relating in any way to Landlord's termination of this Lease pursuant to this Section 31.21.

31.22 **Legal Representation of the Parties**. This Lease was negotiated by the Parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Lease to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

31.23 **Agreement; Amendment**. This Lease (including all Riders, Exhibits and Addenda, if any) is the complete agreement between Landlord and Tenant concerning the Premises and the Building. There are no oral agreements, understandings, promises or representations between Landlord and Tenant affecting this Lease. All prior negotiations and understandings, if any, between the parties hereto with respect to the Premises and the Building, shall be of no force or effect and shall not be used to interpret this Lease. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. This Lease shall be considered to have been executed by a person if there exists a photocopy, facsimile copy, or a photocopy of a facsimile copy of an original hereof or of a counterpart hereof which has been signed by such person. Any photocopy, facsimile copy, or photocopy of facsimile copy of this Lease or a counterpart hereof shall be admissible into evidence in any proceeding as though it were an original.

31.24 **Subsequent Commencement**. This Lease shall be effective as of the day and year first above written notwithstanding that the Term shall commence at a date subsequent thereto and Landlord and Tenant intend that each shall have vested rights immediately upon the full execution signing of this Lease and that this Lease shall be fully binding and in full force and effect from and after execution hereof by the last to sign of Landlord and Tenant.

31.25 **Severability**. If any provision of this Lease or the application of it to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law, and the remaining provisions of this Lease shall be interpreted so as to nearly as possible conform to the intent of the parties as indicated in this Lease.

31.26 **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.

33.27 [INTENTIONALLY OMITTED]

33.28 **Incorporation of Exhibits**. All Exhibits identified in this Lease, including, but not limited to the following listed Exhibits, shall be and are hereby incorporated into this Lease by this reference:

EXHIBIT A	SITE PLAN
EXHIBIT B-1	DELIVERY DATE CERTIFICATE
EXHIBIT B-2	CONSTRUCTION GUIDELINES
EXHIBIT C	[INTENTIONALLY OMITTED]
EXHIBIT D	FORM OF COMMENCEMENT DATE MEMORANDUM
EXHIBIT E	[INTENTIONALLY OMITTED]
EXHIBIT F	PARKING SPACES

[SIGNATURES ON FOLLOWING PAGE]

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

LANDLORD: **TENANT:**

CITY OF AVONDALE,
an Arizona municipal corporation
an

By: _____

Name: _____

Title: _____

Date Executed: _____

EPS GROUP, INC. ENGINEERS,
PLANNERS & SURVEYORS,
Arizona corporation

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

_____
Carmen Martinez, City Clerk

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____ of CITY OF AVONDALE, an Arizona municipal corporation.

My Commission expires: _____
Notary Public

_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016 by _____ of EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS, an Arizona corporation.

My Commission expires: _____
Notary Public

_____

EXHIBIT A

SITE PLAN

Tenant hereby acknowledges that the attached Site Plan is intended to show the approximate layout of the Building and location of the Premises, and Landlord has the right at any time to expand, reduce, remove, demolish, renovate or construct any existing or new improvements in the Building, including, without limitation, the right to change the shape, size, configuration, number, design or extent of such improvements, provided the approximate location, size and configuration of the Premises shall not be materially changed.

EXHIBIT B-1

DELIVERY DATE CERTIFICATE

[To Be Attached]

EXHIBIT B-2

CONSTRUCTION GUIDELINES

THIS **EXHIBIT B-2** (the "**Construction Guidelines**") supplements the Lease to which it is attached and is incorporated therein as if set out in full. In the event of a conflict between the terms of this **Exhibit B-2** and the Lease, this **Exhibit B-2** shall control. Capitalized terms not defined in this **Exhibit B-2** shall have the meanings given to such terms in the Lease.

1. **Landlord's Work.** Landlord shall, at its own cost and expense, perform only the work described as "**Landlord's Work**" in **ITEM 11** of the Lease. Landlord has made no representations or warranties regarding the condition of the Premises or the Building, except as expressly set forth in this Lease.

2. **Tenant's Work.** Tenant shall, at its own cost and expense, perform all work described as "Tenant's Work" in **ITEM 11** of the Lease in addition to all work not described as "**Landlord's Work**" in the Lease necessary to complete the Premises and to prepare them for the operation of Tenant's business therein (collectively, "**Tenant's Work**"). Tenant agrees that all Leasehold Improvements to the Premises shall, upon installation, become the property of Landlord and shall remain upon the Premises upon the expiration or earlier termination of this Lease. Tenant shall not do anything upon or in connection with the Premises or the construction of any part thereof which interferes in any way with, or results in a work stoppage in connection with, construction of any part of the Building or any other tenant's space.

3. **Plans and Specifications.**

3.1 **Tenant's Drawings.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of store finish drawings ("**Tenant's Drawings**") by _____.

3.2 **Approval of Tenant's Drawings**. Landlord shall have 30 days after receipt to approve or disapprove Tenant's Drawings, specifying in detail any reasons for disapproval. If Tenant's Drawings are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Drawings to Landlord within 15 days. Landlord shall have 15 days after receipt of the resubmitted Drawings to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Drawings. Landlord will not unreasonably withhold its approval.

3.3 **Construction Documents.** Tenant shall prepare and furnish to Landlord, at Tenant's sole cost and expense, and in compliance with applicable laws, statutes, ordinances and codes, a complete set of construction plans and specifications ("**Construction Documents**") by _____. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.4 **Approval of Construction Documents**. Landlord shall have 30 days after receipt to approve or disapprove Tenant's Construction Documents, specifying in detail any reasons for disapproval. If Tenant's Construction Documents are disapproved, Tenant shall incorporate Landlord's comments and resubmit Tenant's Construction Documents to Landlord within 15 days. Landlord shall have 15 days after receipt of the resubmitted Construction Documents to approve or disapprove them, and, in the event of disapproval, the procedures set forth herein shall be repeated until Landlord has approved Tenant's Construction Documents.

Landlord will not unreasonably withhold its approval. A complete set of Construction Documents shall be kept on the Premises at all times until Tenant opens for business therein.

3.5 **Tenant's Architect/Engineer.** Tenant shall cause all architects and engineers engaged by Tenant (each a "**Professional**") to obtain and keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), a policy of professional liability insurance covering all liability arising out of any negligent acts or errors and omissions committed by such Professional with limits of not less than $1,000,000.00 per claim and annual aggregate, with a retroactive date prior to the contract date. Each Professional shall maintain such policy for a minimum of two years after completion of work or shall obtain a two-year extended reporting period if the policy is canceled or non-renewed.

4. **Tenant's Contractor.** All contractors engaged by Tenant shall be bondable, licensed contractors, having good labor relations, and capable of performing quality workmanship and working in harmony with Landlord's contractors and other contractors on the job. The term "contractors" as used in this Section shall be deemed to include subcontractors. The City shall have the absolute right to review contractor plans, bids, and estimated costs.

4.1 **Insurance.** On or before entry into the Premises, Tenant shall cause its contractor to obtain and to keep in force, with an insurance company authorized to do business in Arizona which has a general policy rating of A- or better and a financial class of VII or better by A.M. Best Company, Inc. (or if a rating of A.M. Best Company is no longer available, a comparable rating from a similar or successor service), until Tenant's Work is completed, all of the following insurance:

A. **Commercial General Liability Insurance.** Commercial general liability insurance to protect against claims for bodily injury and property damage arising out of premises operations, products, and completed operations, and advertising and personal injury liability, written on an occurrence basis using ISO Form CG0001 (or its equivalent) with no amendments to the definition of an insured contract, in limits of not less than $2,000,000.00 inclusive, per occurrence, and $2,000,000.00 annual aggregate per project, or such higher limits as Landlord may require from time to time during the Term. Completed Operations to remain in force for at least two years following project completion. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

B. **Commercial Automobile Liability Insurance.** Commercial automobile liability insurance to include contractual liability insurance for the indemnities set forth in this contract covering all owned, non-owned and hired automobiles, in limits of not less than $1,000,000.00 combined single limit (each accident), or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

C. **Employer's Liability Insurance and Workers Compensation.** Employer's Liability insurance, with minimum limits of not less than $500,000 bodily injury each accident, $500,000.00 bodily injury by disease policy limit and $500,000.00 bodily

injury by disease each employee, and Worker's Compensation, in form and amount as required by applicable state law. To the extent permitted by applicable law, such policy shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

D. **Umbrella Liability Insurance.** Umbrella liability insurance over the primary general liability, automobile liability and employer's liability insurance policies in limits of not less than $2,000,000.00 inclusive per occurrence, and $2,000,000.00 annual aggregate, per project, or such higher limits as Landlord may require from time to time during the Term. To the extent permitted by applicable law, such policy(ies) shall include a waiver of any right of subrogation of the insurers thereunder against Landlord, Landlord's property manager, and all mortgagees of Landlord.

E. **Builder's Risk Insurance.** Builder's Risk insurance on a "Special Form" basis (including collapse) using a completed value (non-reporting) form for full replacement cost covering all work which Tenant contracts for or performs in the Building and all materials and equipment used or installed by Tenant in or about the Premises, off site and in transit. This insurance shall include: (1) interests of Tenant, Landlord, Landlord's property manager, all mortgagees of Landlord, Tenant's contractor, subcontractors and sub-subcontractors; and (2) a mutual release and waiver of subrogation for all parties.

F. **Insurance Changes.** Landlord may require, from time to time, changes or endorsements to Tenant's contractor insurance required herein.

4.2 **Policies of Insurance.** Tenant's contractor shall have right to satisfy the insurance required by this Section by means of blanket insurance policy(ies), provided that no other loss which may also be insured by the blanket insurance shall affect the insurance coverages required hereunder and further provided that Tenant's contractor delivers to Landlord a certificate specifically stating that such coverages apply to Landlord, Landlord's property manager, all mortgagees of Landlord, the Premises and the Building. All policies of insurance or certificates thereof, except with respect to workers compensation or professional liability, shall name Tenant, Landlord, Landlord's property manager, and all mortgagees of Landlord, as additional insureds, as their respective interests may appear, including products and completed operations. All self-insured retentions and deductible amounts shall be subject to Landlord's prior written approval. Any and all deductibles or coinsurance in the above-described policies or inadequacy of limits for coverage shall be assumed by, for the account of, and at Tenant's contractor sole risk. Prior to commencing any work under this Agreement, Tenant will provide Landlord with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Tenant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Landlord shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Tenant agrees to further provide Landlord evidence of renewals of policies not later than 30 days prior to the end of the expiring term. All policies of insurance carried by Tenant's contractor shall be primary and non-contributing in the event of any loss or damage with any insurance required to be

maintained by Tenant's contractor under the terms of this Lease. All policies and certificates shall notify Tenant, Landlord and any mortgagee of Landlord, in writing, not less than 30 days before any lapse, non-renewal or cancellation, including cancellation for non payment of premium, or other termination thereof and shall include a clause or endorsement denying the insurer any rights or subrogation against Tenant and Landlord, Landlord's property manager, and all mortgagees of Landlord. Landlord reserves the right to request and receive for review certified copies of any and all insurance policies to which the Lease is applicable. The required coverage and or limits referred to and set forth herein shall in no way affect or limit Tenant's contractor's liability with respect to its performance.

4.3 **Conditions to Commencement of Tenant's Work.** On or before entry into the Premises, Tenant shall cause its contractor to: **(A)** review the plans and specifications (including all exhibits, addendums or riders thereto); **(B)** review other related data including "**technical data**"; **(C)** inspect the Premises; and **(D)** obtain all governmental permits and approvals and pay any associated tax (including, but not limited to, excise tax) to complete Tenant's Work and forward copies to Landlord.

4.4 **Construction of Tenant's Work.** Tenant shall cause its contractor: **(A)** to construct Tenant's Work strictly in accordance with Landlord approved plans and specifications and changes thereto which are stamped approved by Landlord's architect; **(B)** to advise Landlord immediately of any requested change from the plans and specifications; **(C)** to keep a Landlord approved original set of plans and specifications at the job site at all times; and **(D)** not to leave the job site until Landlord's and Tenant's punchlist items are complete, all damage is repaired and the site is free of debris and all unused materials are removed. Daily site clean up is required.

4.5 [INTENTIONALLY OMITTED]

4.6 **Damage to Equipment.** Tenant agrees that Landlord shall not be liable and Tenant shall indemnify Landlord against any damage to Tenant's contractor or contractor's employee's property, or any equipment entrusted to Tenant's contractor by others, and for the loss of or damage to any of Tenant's contractor's property or equipment by theft or otherwise, unless caused by Landlord's gross negligence or willful misconduct.

4.7 **Violations by Tenant's Contractors**. In addition to application of the Contractor Deposit, and any and all remedies at law or equity, in the event Tenant's contractor violates the requirements of this Exhibit, Landlord, upon five days' notice, may order Tenant's contractors to remove themselves, their equipment and their employees from Landlord's property. Notwithstanding the foregoing, in the event Tenant's contractor violates the requirements of this Exhibit on two occasions, as to the third such occasion, Landlord shall not be required to give notice to Tenant and may order Tenant's contractors to remove themselves, their equipment and their employees from the Building.

5. [INTENTIONALLY OMITTED]

EXHIBIT C

[INTENTIONALLY OMITTED]

EXHIBIT D

FORM OF COMMENCEMENT DATE MEMORANDUM

THIS COMMENCEMENT DATE MEMORANDUM ("**Memorandum**") dated as of _____, 20__, by and between, **CITY OF AVONDALE, an Arizona municipal corporation** ("**Landlord**"), and, **EPS GROUP, INC. ENGINEERS, PLANNERS & SURVEYORS, an Arizona corporation** ("**Tenant**").

RECITALS:

A. By that certain Building Lease dated as of _____ between Landlord and Tenant (the "**Lease**"), Landlord leased to Tenant and Tenant leased from Landlord the Premises, subject to the conditions and limitations therein contained.

B. **ITEM 7** of the Cover Sheet of the Lease provides that, upon determination of the Commencement Date, Landlord and Tenant shall execute a memorandum which shall set forth, among other things, the Commencement Date, the date when Tenant may exercise its Option Term pursuant to **ITEM 5** of the Cover Sheet of the Lease, and the date on which the initial term of the Lease shall expire (subject to Tenant's right, if any, to extend the Term of the Lease as provided therein), and shall evidence Tenant's acceptance of the Premises and agreement that Landlord has fully complied with Landlord's covenants and obligations.

C. The Commencement Date and such other dates have been determined and , accordingly, the parties desire to enter into this Memorandum.

D. Unless otherwise provided herein, all capitalized words and terms in this Memorandum shall have the same meanings ascribed to such words and terms in the Lease.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Delivery Date was _____.

2. The Commencement Date is ____ _____. Tenant's obligation to pay Minimum Rent and other charges payable by Tenant under the Lease shall commence as of the Commencement Date set forth above.

3. The Floor Area of the Premises is _____ square feet.

4. Tenant shall exercise its right to the Option Term, if at all, before _____, subject to the conditions and limitations set forth in _____ of the Lease.

5. The date on which the initial Term of the Lease shall expire, unless such Term is extended by Tenant as provided in the Lease, is _____.

6. Tenant hereby acknowledges Tenant's acceptance of possession of the Premises and agrees that Landlord has fully complied with Landlord's covenants and obligations under the Lease.

7. Tenant acknowledges that all Rent is payable to Landlord at the following address, unless further notified:

City of Avondale
c/o Kennedy Wilson Properties LTD
7375 E. 6th Ave, #11
Scottsdale, Arizona 85251
Attn: Mary Jacobs

8. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the day and year first above written.

LANDLORD: **TENANT:**

CITY OF AVONDALE,
an Arizona municipal corporation
an

By: _____

Name: _____

Title: _____

Date Executed: _____

ATTEST:

_____
Carmen Martinez, City Clerk

EPS GROUP, INC. ENGINEERS,
PLANNERS & SURVEYORS,
Arizona corporation

By: _____

Name: _____

Title: _____

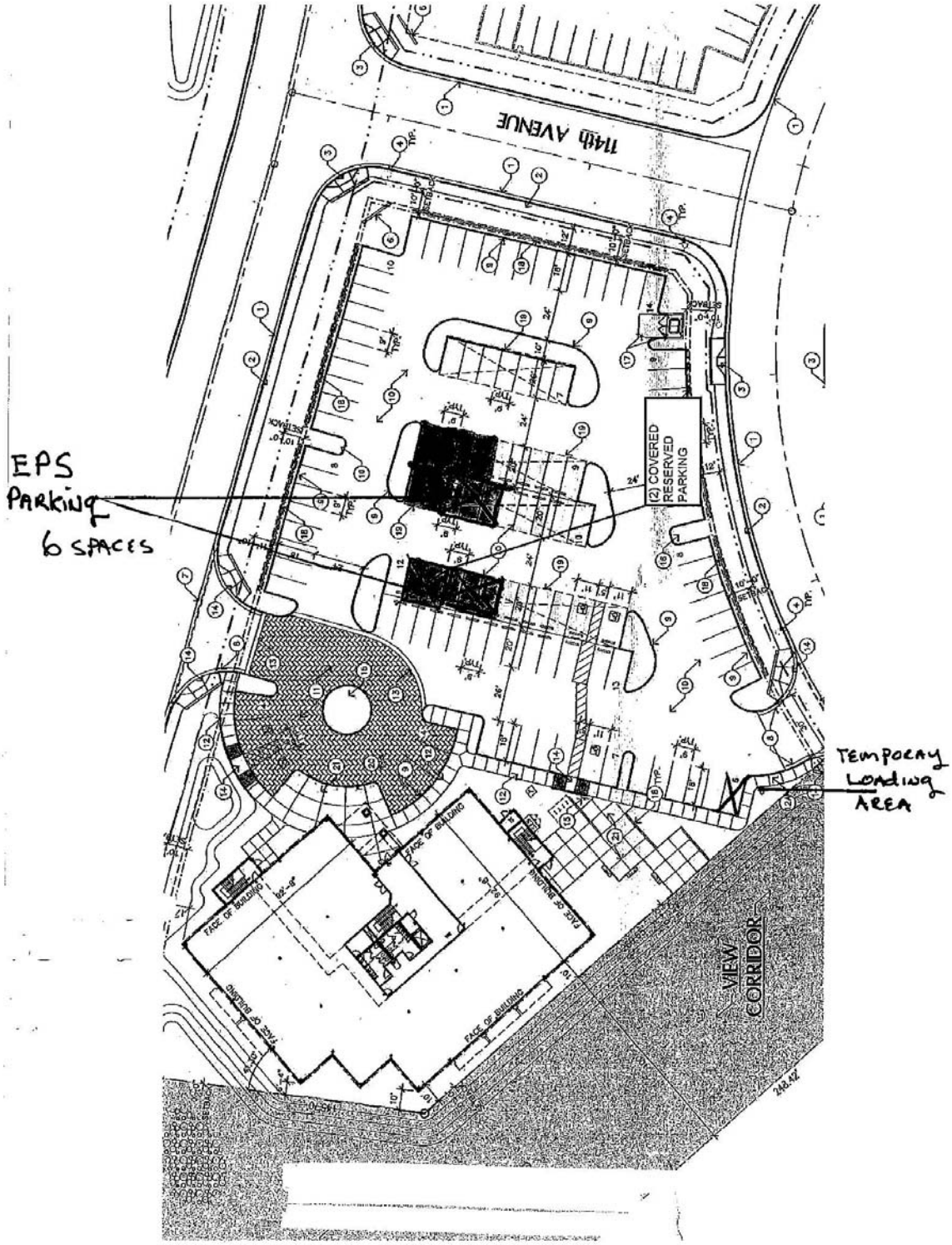
Date Executed: _____

EXHIBIT E

[INTENTIONALLY OMITTED]

EXHIBIT F

PARKING SPACES



Category Number:
Item Number: 4

CITY COUNCIL AGENDA

SUBJECT:
Public Hearing - Conditional Use Permit - Jack in the Box Drive-Thru Restaurant (Application PL-15-0200)

MEETING DATE:
1/19/2016

TO: Mayor and Council

FROM: Tracy Stevens, Development & Engineering Services Director (623) 333-4012

THROUGH: David Fitzhugh, City Manager (623) 333-1014

REQUEST: Approval of a Conditional Use Permit for a drive-thru restaurant within the West-10 Planned Area Development

PARCEL SIZE: 0.9 net acres

LOCATION: Southwest corner of McDowell Road and 103rd Avenue (Exhibits A, B, and C)

APPLICANT: Mr. Jeff Looker, Looker & Cappello Architects, Inc. (480) 730-1776

OWNER: Mr. Steve Stine, Stine Investments (602) 843-0530

BACKGROUND:

Jack in the Box is seeking to locate a new drive-thru fast food restaurant on a 0.9 acre parcel located at the southwest corner of McDowell Road and 103rd Avenue. This subject property was annexed into the City of Avondale on March 17, 1986 and initially zoned R-1 (One Family Residence). Upon adoption of the City's new zoning map in 1990, the property was zoned AG (Agricultural). It was rezoned to PAD (Planned Area Development) as part of the 43 acre West-10 PAD on February 21, 2006. The subject property is part of the Mixed Use Commercial sub-area of the PAD, which encourages a mix of commercial, office, hospitality, and restaurant uses.

The PAD limits the number of drive-thru uses (e.g. restaurants, banks, etc.) within the overall development to a maximum of two, subject to City Council approval of a Conditional Use Permit (CUP). The proposed Jack in the Box drive-thru restaurant, if approved, would be the first drive-thru use in the master development. If approved, the PAD would allow one additional drive-thru use within the master development subject to CUP approval.

A Master Site Plan for the Mixed Use Commercial sub-area of the PAD was approved subject to conditions on March 12, 2015 (Exhibit H). The approved Site Plan, called Park 10, divides the property into two phases, as follows:

Phase I: The first phase includes the easternmost portion of the PAD's Mixed Use Commercial sub-area and is anchored by Main Event Entertainment, a 58,229 square foot family entertainment center. Phase I also includes three future development pads ranging in size from 4,000 square feet to 7,000 square feet, anticipated to be developed with retail or restaurant uses. The proposed Jack in the Box is located within this phase, at the northeast corner of the site on the pad labeled "P1". Specific users for pads labeled "P2" and "P3" have not yet been identified.

All private on-site improvements within the Phase I boundary are currently under construction and will be completed in the initial phase, including paving, retention, landscaping, dustproofing, and site lighting. Additionally, all perimeter off-site improvements adjacent to the site, including provision of a new traffic signal at the McDowell Road main entrance, construction of 103rd Avenue, construction of a landscaped median within McDowell Road, and construction of deceleration/turn lanes on McDowell Road, are also currently under construction and will be completed in the initial phase. Completion is anticipated by February 2016.

A Final Plat for Phase I was approved by the City Council on April 6, 2015.

Phase II: The second phase includes the western portion of the PAD's Mixed Use Commercial sub-area. This future phase of development is planned to include a hotel, retail shops, and two future retail/restaurant pad sites, and all associated on-site improvements, such as parking, lighting, landscaping, etc. An extension of the landscaped median within McDowell Road and construction of an additional McDowell Road deceleration/turn lane will also be completed with Phase II. Specific users have not been identified for any of the Phase II development sites.

The subject property is designated by the General Plan Land Use Map as Freeway Commercial. The Freeway Commercial designation is intended to accommodate a broad range of non-residential uses, including, but not limited to, retail, restaurant, medical/office, higher education, hospitality, entertainment, and service uses. Additionally, the property is located within the Freeway Corridor Specific Plan (FCSP) area, which includes design standards intended to foster high quality development and encourage walkability within the corridor

Surrounding land uses are as follows:

- **NORTH OF MCDOWELL ROAD:** Gateway Office Park, a fully developed 6 acre site consisting of 47 individually owned office condominiums. Businesses within the development include medical and general offices. The property is zoned C-O (Commercial Office).

- **EAST OF 103rd AVENUE:** A currently undeveloped 15 acre site zoned C-3 (Freeway Commercial). A Site Plan for a regional shopping center, Gateway Village, was approved for this site on November 3, 2015 with construction anticipated during the first quarter of 2016. The center is proposed to be anchored by Sportsman's Warehouse, a big box retailer specializing in equipment and apparel for hunting, fishing, camping and other outdoor activities.

- **SOUTH:** Main Event Entertainment, a family-oriented center featuring a video arcade, bowling lanes, laser tag, and restaurant/bar, currently under construction. The parcel upon which Main Event is being constructed (Lot 1 of the Park 10 Phase I subdivision) is part of the same master development as the proposed Jack-in-the-Box and is included within the West-10 PAD.

- **WEST:** An undeveloped pad site (Lot 3 of the Park 10 Phase I master development) that is currently being primed for development but for which no tenant(s) have currently been identified. Future uses will adhere to the West-10 PAD, which allows for a range of commercial uses, including retail, restaurant, office, and hospitality.

In addition to approval of this Conditional Use Permit request, approval of a Site Plan/Design Review application will be required to evaluate building architecture and site engineering in greater detail prior to construction.

SUMMARY OF REQUEST:

The applicant, on behalf of Jack in the Box, is requesting approval of a Conditional Use Permit to locate a new drive-thru fast food restaurant at the southwest corner of McDowell Road and 103rd Avenue within the Park 10 master development. Approval of a Conditional Use Permit is required for any use featuring a drive-thru by the West-10 PAD, which also limits the total number of drive-thru uses allowed within the 43 acre master development to a maximum of two.

A conceptual site plan for the 0.9 acre parcel has been submitted (Exhibit F). The conceptual plan includes an approximately 22 foot tall, 3,044 square foot restaurant building located on the eastern half of the parcel. The proposed building is setback from the McDowell Road right-of-way by approximately 51 feet and from the 103rd Avenue right-of-way by approximately 23 feet, exceeding minimum setback requirements established by the PAD.

A drive-thru lane wraps three sides of the building, with drive-thru customers entering the queue and placing orders south of the building, paying for and picking up food from a single window on the east side of the building, and exiting into the parking lot on the north side of the building. Two menu boards will be provided near the entrance to the drive-thru lane, the second of which will feature a two-way speaker where customers will place orders. The applicant's narrative (Exhibit E) specifies that speakers will feature adjustable technology designed to ensure sound levels at the property lines will not exceed ambient noise levels.

A 28-space parking lot for use by dine-in customers is provided west of the proposed building, in compliance with minimum City parking requirements. Two ADA accessible spaces are provided, in conformance with Federal requirements. Additionally, all aisle widths meet City minimum requirements and will allow for fire department access to the building in the event of an emergency. A dumpster enclosure is provided south of the parking area in a location that will not be visible from McDowell Road, accessible to employees by a sidewalk connection from the restaurant building. Delivery vehicles will utilize the parking area, however, large deliveries will not be permitted during the restaurant's peak hours of operation to reduce conflicts between customer vehicles and delivery vehicles.

Direct vehicular access to the proposed restaurant is provided by two right-in/right-out driveways, one from McDowell Road along the parcel's western boundary, and one from 103rd Avenue along the parcel's southern boundary. In addition, customers will be able to access the proposed Jack in the Box via Park 10's primary, signalized entrance approximately 400 west of the proposed Jack in the Box parcel, located directly across from the entrance to the Aventura Apartment complex.

Pedestrian access into the proposed site is provided via a pedestrian path connecting to the McDowell Road sidewalk. Decorative pavement will be provided in all instances where this pedestrian path crosses drive aisles to increase pedestrian safety within the site. In addition, a 500 square foot pedestrian plaza is provided along the internal pathway network on the west side of the property.

The architecture of the building will be determined during the Site Plan/Design Review stage of the project. The architecture will be required to meet all City design requirements established by the Zoning Ordinance, Design Manual, and Freeway Corridor Specific Plan. Additionally, as part of the Park 10 master development, the building will be required to feature colors, materials, and forms utilized on the approved Main Event building to create continuity within the shopping center. In addition to the restaurant building itself, an 18'x18' attached canopy, fully integrated into the design

of the restaurant building, will be provided over the drive-thru window to screen the pickup area from street view.

The applicant has submitted a conceptual landscape plan (Exhibit G). A 30' landscape setback adjacent to McDowell Road and a 20' landscape setback adjacent to 103rd Avenue are being provided by the master developer and will be completed prior to construction of the Jack in the Box facility. These areas feature an abundance of trees, shrubs, and a "living wall" that will enhance the appearance of the overall development from the perspective of adjacent streets. The "living wall", a 3' metal fence upon which pyracantha vines will grow, in time creating an opaque surface, will also serve the purpose of screening the parking spaces and drive-thru lanes adjacent to McDowell Road and 103rd Avenue. Directly adjacent to the drive-thru window, the height of the "living wall" will be extended to 7' to fully screen the drive-thru window from 103rd Avenue.

Additional landscaping is provided internal to the site to complement the perimeter landscaping, including parking lot landscaping that includes Mesquite, Desert Willow, and Acacia trees, and foundation landscaping planted in proximity to the proposed building that will work in unison with the building architecture to create an aesthetically pleasing development.

PARTICIPATION:

The applicant conducted a neighborhood meeting to discuss the proposed Conditional Use Permit at 6:00 P.M. on Wednesday, October 14, 2015 in the Ocotillo Room at Avondale City Hall. The meeting was advertised in the September 29, 2015 edition of the West Valley View. A notification sign, containing dates, times, and locations for the neighborhood meeting, Planning Commission hearing, and City Council hearing was erected on the subject property on September 23, 2015. Additionally, 40 property owners within 500 feet of the subject property were notified of the meeting by letters sent by the applicant on September 22, 2015. With the exception of staff and the applicant's team, no persons attended the neighborhood meeting.

Letters notifying nearby property owners of the December 17, 2015 Planning Commission meeting were mailed on November 19, 2015. The public hearing notice sign was updated to reflect the date, time, and location of this Planning Commission meeting on November 18, 2015. A notice of the Planning Commission hearing was published in the West Valley View on December 1, 2015. No members of the public spoke on the proposed rezoning at the Planning Commission meeting.

Letters notifying nearby property owners of this City Council meeting were mailed on December 9, 2015. The sign was updated to include the date, time, and location of the City Council meeting on December 10, 2015. Additionally, a notice of the City Council hearing was published in the West Valley View on December 30, 2015. No additional comments on this proposal have been received to date.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on the Conditional Use Permit request on December 17, 2015 (Exhibit I).

Commissioner Kugler expressed concern with the proposed drive-thru restaurant, stating that a sit-down restaurant would be a higher and better use at this location than the proposed Jack in the Box. Commissioner Kugler noted that, of the six existing drive-thru restaurants located along McDowell Road from 99th Avenue to 107th Avenue, none were located on corners as prominent as the proposed Jack in the Box site.

No other Commissioners had any questions or comments on the proposal.

Upon conclusion of the public hearing, Vice Chair Long moved to recommend approval of the request and Commissioner Pineda seconded the motion. Following a roll call vote, the motion for approval was denied by a 3-4 vote.

ANALYSIS:

In order to grant a Conditional Use Permit, five findings must be met as outlined in Zoning Ordinance Section 109.B. The burden of proof is upon the applicant. Each finding is presented below along with staff's analysis.

1. **That the proposed use (i) is consistent with the land-use designation set forth in the General Plan, (ii) will further the City's general guidelines and objectives for development of the area, as set forth in the General Plan and (iii) will be consistent with the desired character for the surrounding area.**

The subject parcel is designated by the General Plan 2030 Land Use Map as "Freeway Commercial". This land use designation is intended to accommodate intense retail, hospitality, and related commercial uses that serve both the Avondale community and greater region. The proposed drive-thru restaurant use will serve both local residents and regional visitors to the Park 10/Main Event site, and is consistent with the Freeway Commercial designation.

Furthermore, the Freeway Commercial land use designation and Freeway Corridor Specific Plan place an importance on ensuring development provides attractive streetscapes, pedestrian activity connections, and efficient circulation. The proposed plan provides for ample landscape setbacks with a significant number of trees that will provide sidewalk shading. The plan also provides a safe, dedicated pedestrian connection from McDowell Road into the proposed restaurant site as well as a large, amenitized outdoor plaza for the benefit of pedestrians and cyclists. The proposed use as well as the proposed development plan are consistent with the desired character for the surrounding area and further the City's objectives for development in the Freeway Corridor.

2. **That the use will be (i) compatible with other adjacent and nearby land uses and (ii) will not be detrimental to (1) persons residing or working in the area, (2) adjacent property, (3) the neighborhood or (4) the public welfare in general.**

McDowell Road continues to develop into the City's regional commercial corridor, with existing power centers such as Gateway Pavilions and Gateway Crossing soon to be supplemented by new developments, such as the Park 10 center, anchored by Main Event, and the adjacent Gateway Village, anchored by the proposed Sportsman's Warehouse. Amongst the most common uses for perimeter pad sites within regional power centers are drive-thru restaurants, as they provide a convenient service to people working, shopping, or living in the area. The proposed Jack in the Box restaurant will be the sixth drive-thru restaurant in the McDowell Road corridor between 99th Avenue and 107th Avenue, joining existing restaurants McDonald's, Chick-Fil-A, Kneaders, Taco Bell, and Raising Cane's.

Additionally, the proposed Jack in the Box will feature drive-thru speaker technology designed to limit noise levels at property lines to ambient levels as well as advanced cooking filters and a rigorous filter cleaning regimen designed to limit escaping odor. Considering these measures and the lack of any widespread concern regarding the operations of the area's five existing drive-thru restaurants, there is no evidence that the proposed use will be detrimental to persons living or working in the area, adjacent properties, the Freeway Corridor, or the general public welfare.

3. **That the site is adequate in size and shape to accommodate the proposed use, allow safe onsite circulation, and meet all required development standards including, but not limited to setbacks, parking, screening and landscaping.**

The proposed conceptual Site Plan meets or exceeds all development standards imposed by the Zoning Ordinance and/or West 10 PAD, including:

- Minimum building setbacks of 30' adjacent to McDowell Road (51 feet is provided) and 20' adjacent to 103rd Avenue (23' is provided) are met by the conceptual plan.
- The minimum parking requirement of 27 parking spaces is exceeded by one space through the provision of 28 spaces.
- All screening requirements are met or exceeded by the proposed development plans. Living walls 3' in height will screen the parking spaces directly adjacent to McDowell Road, as well as the drive-thru lane that circles the proposed building. Until the pyracantha vines mature, a canvas backing will be attached to the back of the living wall structure to provide screening in the interim condition. Additionally, the drive-thru window will be screened by a substantial canopy integrated into the architecture of the restaurant building, supplemented with a 7' high portion of the living wall to completely screen the pickup window from the perspective of 103rd Avenue. Lastly, the proposed dumpster will be located in an enclosure that meets all City requirements for design, ensuring it will not detract from the aesthetics of the site.
- The proposed conceptual landscape plan also meets or exceeds all City requirements, including, but not limited to, landscaping within the parking area, foundation landscaping adjacent to the four sides of the proposed building, and landscaping on the perimeter of the site.

4. **That the site has appropriate access to public streets with adequate capacity to carry the type and quantity of traffic generated by the proposed use.**

The proposed development is located directly adjacent to McDowell Road, an arterial street with adequate capacity to carry the traffic generated by the proposed use. Direct ingress/egress to the site will be provided by right-in/right-out driveways from McDowell Road and 103rd Avenue, while indirect access will be provided by a full access driveway into the Park 10 master development, approximately 400 feet west of the western edge of the subject parcel.

A Traffic Impact Analysis (TIA) was prepared by the applicant and reviewed by the City's traffic engineering consultant. The City agrees that the use will not have any noticeable impact on the operation of McDowell Road.

5. **That adequate conditions have been incorporated into the approval to insure that any potential adverse effects will be mitigated.**

Two conditions of approval are recommended, as listed in the proposed motion. Recommended stipulation #1 is a standard stipulation requiring development and use of the site conform to the materials submitted by the applicant and attached as exhibits to this report. Recommended stipulation #2 is a standard stipulation noting that, in accordance with Zoning Ordinance protocol, the Conditional Use Permit will expire in two years from the date of approval if the use has not commenced operations.

FINDINGS:

1. The proposed land use meets the five required findings for a CUP as outlined in Section 108 of the Zoning Ordinance.
2. Approval of the CUP will result in a development compatible with the General Plan, the Freeway Corridor Specific Plan, and existing development in the area.
3. Approval of the CUP will not be detrimental to persons residing or working in the area, on adjacent properties in the neighborhood, or to the public welfare in general.

RECOMMENDATION:
On December 17, 2015, the Planning Commision denied the motion for approval of application PL-15-0200.

Staff recommends that the City Council **APPROVE** application PL-15-0200, a request for Conditional Use Permit approval to develop and operate a drive-thru restaurant at the southwest corner of McDowell Road and 103rd Avenue.

PROPOSED MOTION:

I move that the City Council accept the findings and **APPROVE** Application PL-15-0200, a request for a Conditional Use Permit for a drive-thru restaurant at the southwest corner of McDowell Road and 103rd Avenue, within the West-10 Planned Area Development, subject to the following two conditions of approval:

1. Development and operation of a drive-thru restaurant on the site shall conform to the Conditional Use Permit Narrative, Conceptual Site Plan, and Conceptual Landscape Plan attached as staff report Exhibits E, F, and G.
2. The Conditional Use Permit shall expire within two years from the date of approval if the use has not commenced.

Additionally a second alternate motion is included should the City Council deny the requested CUP, in keeping with the position of the Planning Commission.

Motion to DENY as forwarded by the Planning Commission:

I move that the City Council reject the findings and **DENY** Application PL-15-0200, a request for a Conditional Use Permit for a drive-thru restaurant at the southwest corner of McDowell Road and 103rd Avenue, within the West-10 Planned Area Development.

ATTACHMENTS:

Description

Exhibit A - General Plan Land Use Map

Exhibit B - Zoning Vicinity Map

Exhibit C - Aerial Photograph

Exhibit D - Summary of Related Facts

Exhibit E - Applicant's Conditional Use Permit Narrative

Exhibit F - Proposed Conceptual Site Plan

Exhibit G - Proposed Conceptual Landsacpe Plan

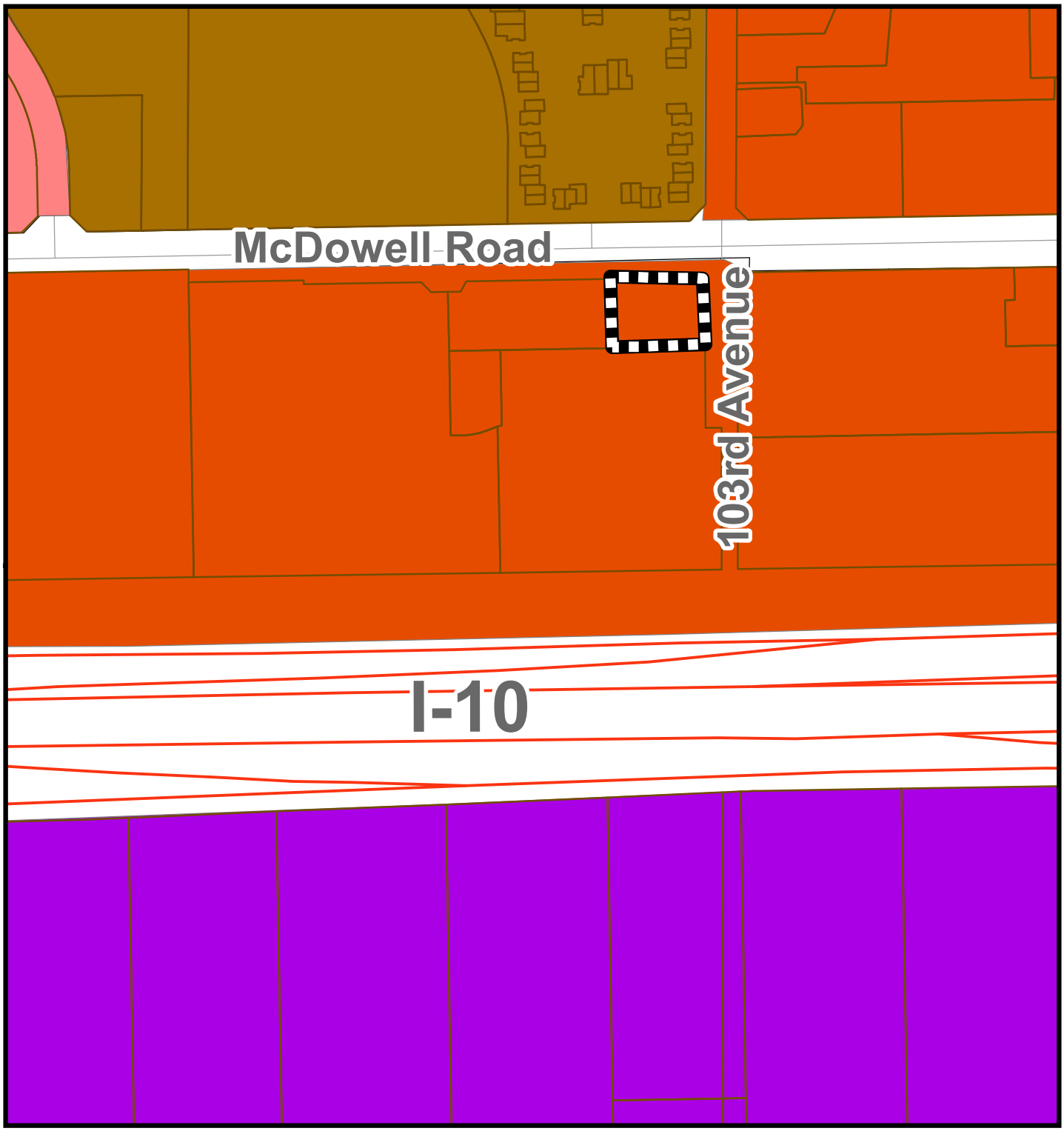
Exhibit H - Approved Park 10 Master Site Plan

Exhibit I - Excerpt of Draft Planning Commission Meeting Minutes from December 17, 2015

Exhibit J - Email from B. Lynch

PROJECT MANAGER
Ken Galica, Senior Planner (623) 333-4019

Exhibit A

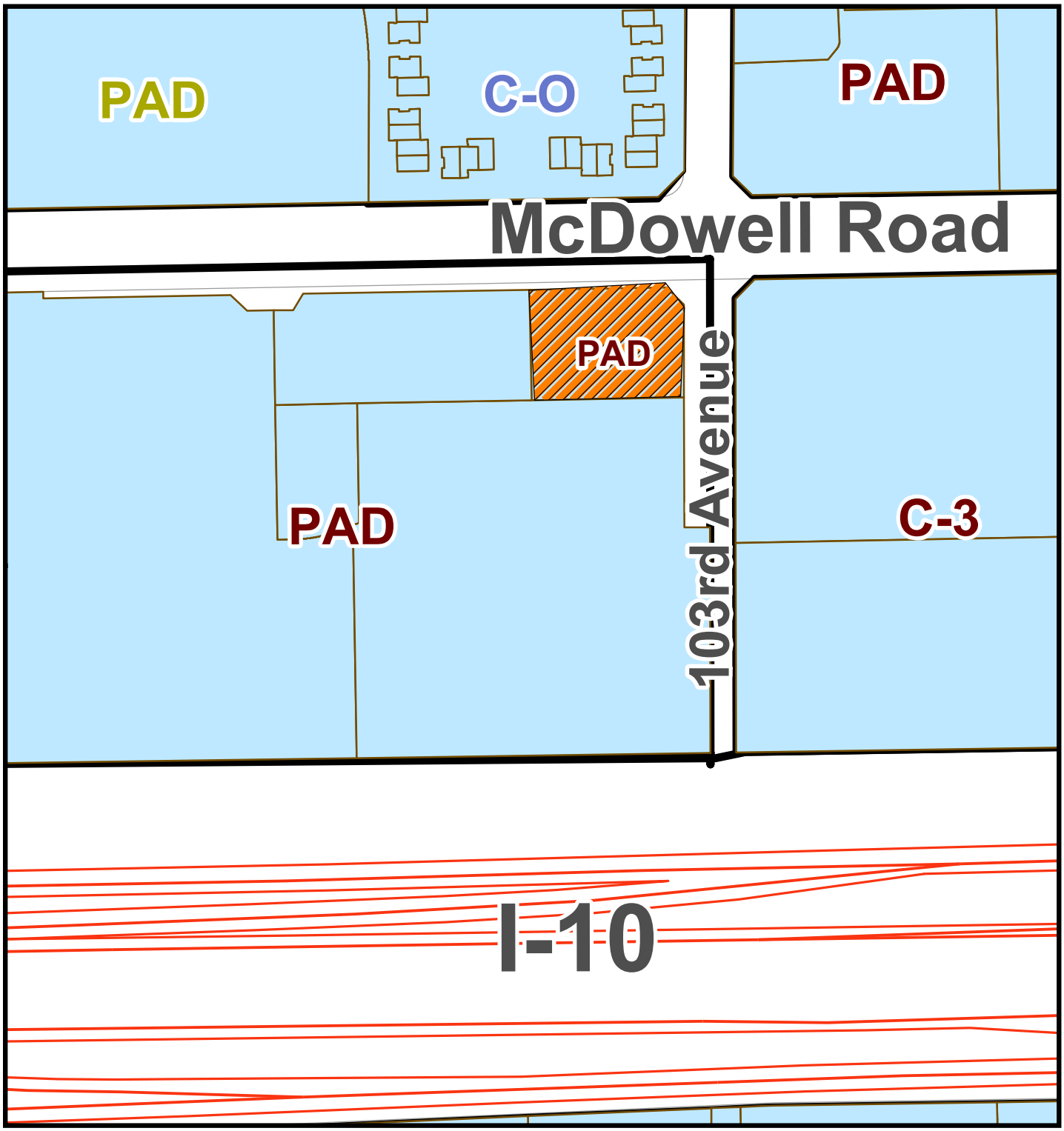


General Plan Land Use Map

- Freeway Commercial
- Business Park
- Local Commercial
- High Density Residential
- Subject Property

Avondale

Exhibit B



Zoning Vicinity Map

Avondale

Subject Property

Aerial Photograph

Avondale

Subject Property

Exhibit D

SUMMARY OF RELATED FACTS

APPLICATION PL-15-0200

THE PROPERTY	
PARCEL SIZE	Phase I of the Park 10 master development is approximately 21.4 net acres; Lot 4, upon which the proposed Jack-in-the-Box is planned, is approximately 0.9 net acres.
LOCATION	Southwest corner of McDowell Road and 103rd Avenue
PHYSICAL CHARACTERISTICS	Phase I of the Park 10 master development is under construction with anticipated completion in January 2016. Upon completion, Lot 4, upon which the Jack-in-the-Box is proposed, will be a relatively flat, finished pad ready for development.
GENERAL PLAN LAND USE	Freeway Commercial
EXISTING ZONING	West-10 Planned Area Development (PAD). Park 10 Phase I falls within the "Mixed Use Commercial" portion of the PAD, which allows for a range of retail, restaurant, office, and hospitality uses.
ZONING HISTORY	The property was annexed into the City of Avondale on March 17, 1986 and zoned R-1 (One Family Residence). Upon adoption of the City's new zoning map in 1990, the property was zoned AG (Agricultural). It was rezoned to Planned Area Development (PAD), part of the West-10 PAD, on February 21, 2006.
DEVELOPMENT AGREEMENT	An amended and restated Economic Development Agreement with Gunbo LLC/Parkland Development, master developer for the Park 10 site, was approved on December 15, 2014. That agreement is specific to the development of the Main Event facility on Lot 1 south of the proposed Jack-in-the-Box and has no impact on development of the remaining lots, including Lot 4.

SURROUNDING ZONING AND LAND USE	
NORTH	Across McDowell Road, Gateway Office Park, a fully developed 6 acre site consisting of 47 individually owned office condominiums. Businesses within the development include a mix of medical offices and general offices. The property is zoned C-O (Commercial Office).
EAST	Across 103rd Avenue, a vacant, currently undeveloped 15 acre site zoned C-3 (Freeway Commercial). A Site Plan for a regional shopping center (Gateway Village) was approved for this site on November 3, 2015 with construction anticipated for 1Q of 2016.
SOUTH	Main Event Entertainment, a family oriented entertainment center featuring video arcade, bowling, laser tag, and restaurant/bar, is currently under construction directly south of the subject parcel. The parcel upon

	which Main Event is being constructed (Lot 1 of the Park 10 Phase I subdivision) is part of the same master development as the proposed Jack-in-the-Box and is included within the West-10 PAD.
WEST	An undeveloped pad site (Lot 3 of the Park 10 Phase I master development) that is currently being primed for development but for which no tenant(s) have currently been identified. Future uses will adhere to the West-10 PAD, which allows for a range of commercial uses, including retail, restaurant, office, and hospitality.

PUBLIC SCHOOLS	
SCHOOL DISTRICT(S)	Pendergast Elementary School District Tolleson Union High School District
ELEMENTARY SCHOOL	Desert Mirage K-8
HIGH SCHOOL	Tolleson Union High School

STREETS	
McDowell Road	
Classification	Arterial
Existing half street ROW	65 feet with additional ROW width at turn/deceleration lane locations
Standard half street ROW	65 feet
Existing half street improvements (upon completion of current construction)	3 paved through lanes, deceleration/turn lanes (as needed), center median with left turn lanes, curb, gutter, sidewalk, street lights, landscaping, and a bus shelter.
Standard half street improvements	3 paved travel lanes, center median with turn lanes, curb, gutter, sidewalk, street lights, landscaping, and a bus shelter.
103rd Avenue	
Classification	Minor Collector
Existing half street ROW	40 feet
Standard half street ROW	40 feet
Existing half street improvements (upon completion of current construction)	2 paved through lanes with ½ center turn lane, curb, gutter, sidewalk, streetlights, and landscaping.
Standard half street improvements	2 paved through lanes with ½ center turn lane, bike lane, curb, gutter, sidewalk, street lights and landscaping.

UTILITIES
The project will utilize a recently completed 12” water line in 103rd Avenue and an existing 15” sewer line in McDowell Road.

Exhibit E

Applicant's Conditional Use Permit Narrative

Project Narrative for:
Proposed Drive-Thru Restaurant at Park 10
Conditional Use Permit PL-15-0200

1. **Consistency with the General Plan**
   The General Plan designates the site as being Freeway Commercial. The Freeway Commercial designation allows for a broad range of non-residential uses, including commercial centers, designed to serve a large trade area. A drive-thru restaurant located within a master planned commercial center is an appropriate use within the Freeway Commercial designation.

2. **Compliance with Zoning Ordinance and other city codes and regulations**
   The site is currently zoned Planned Area Development (PAD). The purpose of this district is to promote the development of mixed use developments and/or residential subdivisions that include residential, commercial or business park development according to an overall plan. The restaurant with drive-thru lane complies with the Zoning Ordinance pending approval of the conditional use permit.

3. **General compatibility of proposed use with surrounding properties**
   The property is located at 10307 W. McDowell Road (SWC of McDowell Road & 103rd Avenue) Northwest of the site and on the opposite side of McDowell Road is Aventura Apartments. North of the site is Gateway Park Office Condominiums, a mixed use business park with dental, and business offices, etc. To the northeast is a restaurant. Directly east on the opposite side of 103rd Avenue, currently in design, is the Gateway Village development. To the south and the west, is parking for "The Main Event". The proposed restaurant is compatible with the surrounding uses, and shall serve the existing and future residents and businesses.

4. **Site and Building Design**
   The site plan has been designed to complement the "Main Event". The primary entry is located on McDowell Road, just west of 103rd Avenue. A proposed second right/in – right/out drive to be located at the SE corner of the site along 103rd Avenue melds seamlessly in with the currently designed drive without altering any parking to the approved Master Site Plan. Generous landscaped setbacks with berms are provided along the street frontage and additional ample landscaping via "Living Walls" are along 103rd Avenue, utilizing the approved landscape palette from Park 10 and the City of Avondale, and providing screening of the entire drive-thru lane. Also, the drive-thru window area is under a porte-cochere, designed to match the restaurant. The materials and colors incorporate those of the Park 10 palette, while still providing a touch of

corporate identity. We believe that the attention to the site design and architectural design of the building ensure that the Park 10 development will be an attractive addition to the City of Avondale.

5. **Ingress and Egress to the property and proximity to driveways and street intersections in the vicinity of the subject property**
   The site has one access point from McDowell Road, and one proposed right/in – right/out access point on 103rd Avenue. McDowell Road is designed for moderately heavy traffic, and 103rd Avenue is designed for local traffic. As shown on the site plan, circulation on the site is safe and easy to navigate, designed to promote flow with adjacent uses. The site includes 28 spaces and a loading/delivery space.

6. **Internal vehicular circulation including emergency and delivery vehicles**
   The site contains 26'-0" wide, two-way drive aisles, as does the entire Park 10 – Phase I development, making vehicular circulation non-"combative" with the largest of vehicles. Delivery/service vehicles range in size from small trucks to semi-trailers. A delivery/loading area has been provided to accommodate average-size delivery vehicles during any time period. Larger delivery vehicles will have to back-in/straight out. Note, that larger deliveries are coordinated per store, i.e. larger deliveries cannot occur during "peak" hours of operation. Emergency vehicles are able to maneuver throughout, based upon COA/Fire Department provided 90 degree turning radii requirements. The larger emergency vehicles will need to either back-in/straight-out, or straight-in/back-out.

7. **Pedestrian and alternative vehicle considerations for the proposed use.**
   Pedestrian access occurs either from McDowell Road via walkways, or walkways from within the Park 10 – Phase I site. There is a pedestrian refuge area and outdoor plaza area on-site, accessible from both McDowell Road and the remaining Park 10 – Phase I development. The pedestrian areas contain concrete pavers, bench seating, trash receptacles, light bollards and landscaping consisting of groundcover with color, and trees to provide shade. Bicycle racks to support six bicycles, per City of Avondale standard detail A1265, and have been provided to promote alternative vehicle considerations.

8. Volume and character of traffic

The volume and character of traffic are represented through Weekday Site Generated Trips developed utilizing nationally agreed upon data contained in the Institute of Transportation Engineers (ITE) publication Trip Generation, 9th Edition, 2012 for a fast food restaurant with drive-thru window. The results are as follows:

Average Daily, Inbound (vtpd)	755
Average Daily, Outbound (vtpd)	755
AM Peak Hour, Inbound (vtph)	71
AM Peak Hour, Outbound (vtph)	68
PM Peak Hour, Inbound (vtph)	52
PM Peak Hour, Outbound (vtph)	48

Vtpd = vehicle trips per day
Vtph = vehicle trips per hour

9. Off-street parking and loading

Off-street parking conforms to the parking stall size approved for the Park 10 – Phase I development, and accessible parking conforms to ANSI/ADA/COA requirements. The number of spaces provided exceeds that of the quantity required. A loading/delivery area has been provided and specifically designated for the intended use only.

10. Impact on public services, including utilities, schools, and recreation

This site will have little to no impact on Public services (such as utilities, schools, and recreation). The site will utilize existing public and private infrastructure and services.

11. Screening and buffering of uses

Screening is accomplished with landscaping, per the approved Park 10/COA palette, including a 3'-0" high "living wall" along the frontage of McDowell Road and 103rd Avenue and a solid roof porte-cochere at the pick-up window. The "living wall" along 103rd Avenue extends the entire length of the drive-thru lane, and at the porte-cochere the height is increased to 7'-0", which screens the vehicle and drive-thru pick-up window entirely. Also, there are numerous new trees being planted and existing trees being relocated along 103rd Avenue further screening and buffering the drive-thru

12. Proposed outdoor activities or storage

There are no outdoor activities or storage planned for this site.

13. **Hours of operation**
    This location shall operate 24-hours a day, year-round with exception on holidays to be determined at a later time. Security will be maintained at high levels consistent with a major national brand.

14. **Exterior lighting with reference to adjacent properties**
    Exterior lighting, both building and site shall be in conformance with the approved Park 10 and City of Avondale standards of type, height, color, etc. The adjacent properties are 150 feet away on the north, 80 feet away to the east, and over 150 feet away to both the south and west. Exterior lighting shall have little to no impact on adjacent properties.

15. **Noise, smoke, odor, dust, vibration, or illumination created by the proposed use**
    The Drive-thru menu boards and order speaker are of an ambient adjustable technology so that sound level at the property line will not exceed ambient noise levels. The order speaker has been located at the most remote distance to the residential apartments across McDowell Road to the North further mitigating any impact. Also the positioning of the building location itself sits between the order station and the residential zoning to the North. Jack in the Box utilizes high technology filters on all cooking equipment as well as maintaining a rigorous filter cleaning regimen further reducing potential cooking odor impact.

16. **Additional information as needed**
    We believe this use and design are consistent, compatible and in compliance with the approved Park 10 – Phase I Master Site Plan, the West 10 Planned Area Development, the City of Avondale Zoning Ordinance and will be a welcome addition to this area.

Sincerely,

Jeff Looker, AIA
President

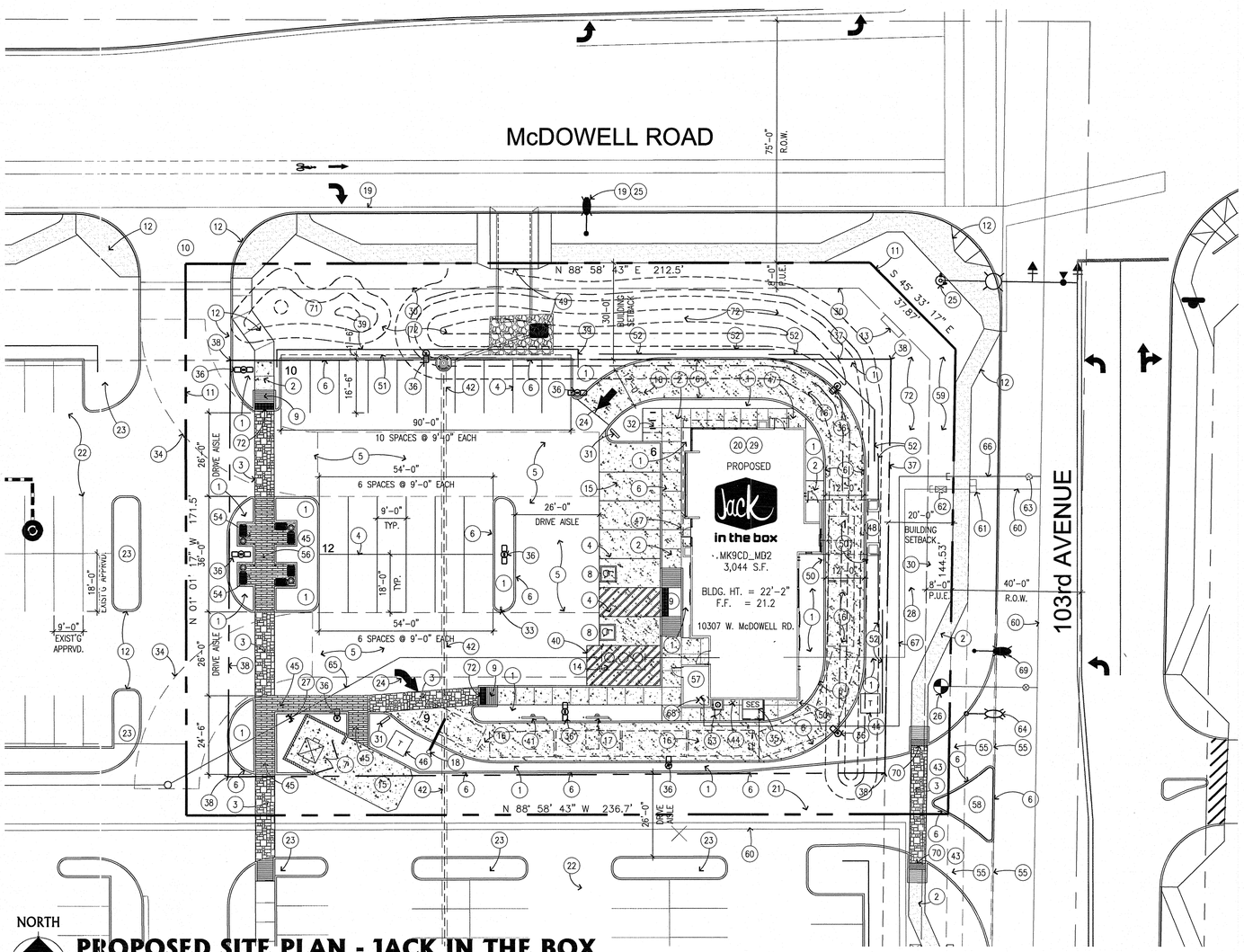
2070 East Southern Avenue - Tempe, AZ 85282 - Fax: 480.968.6571 - Telephone: 480.730.1776

Exhibit F

Conceptual Site Plan

SITE PLAN KEYED NOTES

1. PROVIDE NEW LANDSCAPE AREA. REFER TO LANDSCAPE DOCUMENTS.
2. PROVIDE NEW CONCRETE SIDEWALK. REFER TO CIVIL DOCUMENTS.
3. PROVIDE ADA ACCESSIBLE DECORATIVE CONCRETE PAVERS PATH OF TRAVEL LEVEL WITH ADJACENT ASPHALTIC CONCRETE PAVING PER CITY OF AVONDALE, PARK 10 AND ADAAG STANDARDS. FINISH AND COLOR SHALL MATCH THAT USED THROUGHOUT PARK 10 – PHASE I CROSSWALKS. MFG.: ACKER-STONE, PATTERN: MEGA APPIAN RANDOM, COLOR: CATINA BLEND
4. PROVIDE NEW PAINTED PARKING STRIPING PER CITY OF AVONDALE STANDARDS.
5. PROVIDE NEW ASPHALTIC CONCRETE PAVING. REFER TO CIVIL DOCUMENTS AND SOILS REPORT.
6. PROVIDE NEW CONCRETE CURB. REFER TO CIVIL DOCUMENTS
7. PROVIDE NEW GATED CMU REFUSE ENCLOSURE PER PARK 10 CENTER STANDARDS. REFER TO SHEET SP1.2.
8. PROVIDE NEW ACCESSIBLE PARKING AND SIGNAGE PER CITY OF AVONDALE STANDARDS.
9. PROVIDE NEW ACCESSIBLE CONCRETE RAMP. REFER TO SHEET SP1.1.
10. EXISTING DRIVEWAY TO REMAIN.
11. EXISTING PROPERTY LINE TO REMAIN.
12. EXISTING CURB AND SIDEWALK TO REMAIN.
13. EXISTING CENTER MONUMENT SIGN TO REMAIN.
14. PROVIDE NEW GREASE INTERCEPTOR WITH TRAFFIC GRATES – REFERENCE PLUMBING/CIVIL DOCUMENTS.
15. PROVIDE NEW BLACK CONCRETE AT REFUSE ENCLOSURE SLAB/APRON AND PARKING ADJACENT TO BUILDING. BLACK OXIDE ((4) BAGS PER YARD).
16. PROVIDE NEW 12' WIDE BLACK CONCRETE DRIVE-THRU LANE. BLACK OXIDE ((4) BAGS PER YARD) – REFERENCE CIVIL DOCUMENTS AND SOILS REPORT FOR ADDITIONAL INFORMATION.
17. PROVIDE NEW SPEAKER BOARD AND MAGNETIC DETECTOR LOOP – UNDER SEPARATE PERMIT.
18. PROVIDE NEW CLEARANCE HEIGHT BARS SIGNAGE – UNDER SEPARATE PERMIT.
19. EXISTING STREET IMPROVEMENTS TO REMAIN.
20. NEW JACK IN THE BOX RESTAURANT BUILDING (3,026 S.F.), SEE PLANS.
21. PROPOSED EXISTING EXTRUDED CURB TO BE REMOVED.
22. EXISTING ASPHALTIC CONCRETE PAVING AND PARKING STRIPING TO REMAIN.
23. EXISTING LANDSCAPING TO REMAIN.
24. PROVIDE NEW DIRECTIONAL STRIPING ON PAVEMENT FOR DRIVE-THRU. REFER TO SHEET SP1.2
25. EXISTING STREETLIGHT TO REMAIN.
26. EXISTING FIRE HYDRANT TO BE REMAIN.
27. EXISTING SEWER LINE TO REMAIN. REFER TO CIVIL DOCUMENTS.
28. EXISTING RETENTION AREA TO REMAIN.
29. ALL ROOFTOP EQUIPMENT SHALL BE FULLY SCREENED BY PARAPET.
30. EXISTING EASEMENT LINE TO REMAIN.
31. PROVIDE NEW DIRECTIONAL DRIVE-THRU SIGNAGE – UNDER SEPARATE PERMIT BY OTHERS.
32. PROVIDE BICYCLE RACK FOR (6) BICYCLES. REFER TO DETAIL ON SHEET SP1.2
33. FIRE DEPARTMENT CONNECTION PER CITY OF AVONDALE FIRE DEPARTMENT
34. FIRE TRUCK TURNING RADII (55'-0" OUTSIDE RADIUS X 35'-0" INSIDE RADIUS)
35. SERVICE ENTRY SECTION (SES) WITH STEEL TUBE AND PERFORATED METAL SCREEN SURROUND REFER TO SHEET SP1.2 AND ELECTRICAL DOCUMENTS
36. NEW 25'-0" HIGH POLE MOUNTED PARKING LOT LIGHTS ON CONCRETE BASE PER CITY OF AVONDALE/PARK 10 STANDARDS. REFER TO ELECTRICAL DOCUMENTS
37. LINE OF EXISTING BUILDING SETBACK.
38. LINE OF LIMITS OF CONSTRUCTION/SCOPE OF WORK.
39. EXISTING "LIVING WALLS" LANDSCAPE SCREEN WALLS TO REMAIN.
40. NEW LOADING/SERVICE VEHICLE AREA.
41. PROVIDE NEW PREVIEW BOARD – UNDER SEPARATE REVIEW AND PERMIT BY OTHERS
42. EXISTING UNDERGROUND STORM DRAIN TO REMAIN.
43. NEW RIGHT-IN/RIGHT-OUT ENTRY/EXIT BY OTHERS. UNDER SEPARATE REVIEW/PERMIT
44. PROPOSED GAS METER LOCATION.
45. PROVIDE 6'-0" WIDE CONCRETE PAVER WALK LEVEL WITH ADJACENT ASPHALTIC CONCRETE PAVING. MFG.: ACKER-STONE, TYPE: LINEAR 4"X20", PATTERN: RUNNING BOND, COLOR: CATINA BLEND
46. PROPOSED TRANSFORMER LOCATION.
47. APPLY INTERNATIONAL SYMBOL OF ACCESSIBILITY ON DOOR.
48. DRIVE-THRU PORTE COCHERE. REFER TO BUILDING PLANS
49. EXISTING STORMWATER STRUCTURE.
50. 6" PIPE BOLLARD. REFER TO SHEET SP1.1
51. LINE OF 1'-6" VEHICLE OVERHANG
52. NEW "LIVING WALL" SCREEN WALL. PLANT TYPE TO MATCH EXISTING. STANDARD SHALL BE 3'-0" HIGH. ADJACENT TO PORTE-COCHERE SHALL BE 7'-0" HIGH
53. NEW CO2 TANK AND ENCLOSURE
54. PEDESTRIAN REFUGE AREA. MINIMUM 50 SF, CONTAINING AT LEAST ONE BENCH, TWO TREES AND SIX SHRUBS. REFER TO LANDSCAPE DOCUMENTS.
55. EXISTING CURB, GUTTER AND SIDEWALK TO BE REMOVED
56. NEW OUTDOOR PLAZA (500 SF) SHALL INCLUDE LANDSCAPING, PLANTERS, DECORATIVE PAVEMENT, PEDESTRIAN SEATING, PEDESTRIAN LIGHTING, SITE FURNITURE AND SHADE COVERAGE. REFER TO SHEET SP1.4 FOR ENLARGED OUTDOOR PLAZA PLAN AND LANDSCAPE DOCUMENTS.
57. FIRE CONTROL ROOM PER CITY OF AVONDALE FIRE DEPARTMENT STANDARDS. ROOM SHALL BE 96 SF WITH 8'-0" MINIMUM DIMENSION IN ONE DIRECTION. REFER TO FLOOR PLAN FOR ADDITIONAL FIRE CONTROL ROOM REQUIREMENTS.
58. PROVIDE LANDSCAPING IN DRIVEWAY PORK CHOP. REFER TO LANDSCAPE DOCUMENTS.
59. EXISTING TREES IN P.U.E. TO BE RELOCATED WITHIN R.O.W. TREES SHALL BE CENTERED BETWEEN BOC AND SIDEWALK. REFER TO LANDSCAPE DOCUMENTS.
60. EXISTING WATER LINE TO REMAIN. REFER TO CIVIL DOCUMENTS
61. EXISTING WATER METER BOX TO REMAIN. REFER TO CIVIL DOCUMENTS.
62. EXISTING BACK-FLOW PREVENTER TO REMAIN. REFER TO CIVIL DOCUMENTS
63. EXISTING GATE VALVE TO REMAIN. REFER TO CIVIL DOCUMENTS.
64. EXISTING STREET LIGHT TO BE RELOCATED. REFER TO CIVIL DOCUMENTS.
65. NEW SEWER SERVICE LINE. REFER TO CIVIL DOCUMENTS
66. EXISTING FIRE LINE STUB TO SITE. REFER TO CIVIL DOCUMENTS.
67. NEW FIRE LINE. REFER TO CIVIL DOCUMENTS
68. NEW FIRE RISER. REFER TO CIVIL AND FIRE PROTECTION DOCUMENTS.
69. RELOCATED STREET LIGHT. REFER TO CIVIL DOCUMENTS.
70. PROVIDE DETECTABLE WARNING SURFACE. REFER TO SHEET SP1.1
71. EXISTING BERM. REFER TO CIVIL DOCUMENTS.
72. EXISTING RETENTION AREA. REFER TO CIVIL DOCUMENTS.



PROPOSED SITE PLAN - JACK IN THE BOX

SCALE: 1" = 20'-0"

SITE DATA

PAD OWNER:
PARKLAND DEVELOPMENT, LLC
16083 SW UPPER BOONES FERRY ROAD, STE 120
TIGARD, OR 97224
PHONE: (503) 639-0108
CONTACT: SU MORAN

DEVELOPER:
STINE ENTERPRISES, INC.
10621 N. 35TH AVENUE
PHOENIX, AZ. 85029
PHONE: (602) 942-2347
CONTACT: STEVE STINE

ARCHITECT:
LOOKER & CAPPELLO ARCHITECTS
2070 E. SOUTHERN AVE.
TEMPE, AZ. 85282
PHONE: (480) 730-1776
CONTACT: JEFF LOOKER

ASSESSORS PARCEL NUMBER:
102-54-087

PROJECT ADDRESS:
10307 WEST McDOWELL ROAD, AVONDALE AZ

LEGAL DESCRIPTION:
LOT 4, OF PARK 10, PHASE 1, ACCORDING TO BOOK 1224 OF MAPS, PAGE 38, RECORDS OF MARICOPA COUNTY, ARIZONA

PROJECT DESCRIPTION:
NEW JACK IN THE BOX RESTAURANT WITH DRIVE-THRU AND PORTE COCHERE

ZONING:
P.A.D.

SITE AREA:
GROSS SITE AREA = 68,761 S.F. ± OR 1.58 ACRES ±
NET SITE AREA = 40,470 S.F. ± OR 0.93 ACRES ±
(LIMITS OF CONSTRUCTION) = 26,450 S.F. ± OR 0.60 ACRES ±

BUILDING OCCUPANCY TYPE:
A-2 OCCUPANCY

BUILDING AREA:
3,044 SF BUILDING
240 SF PORTE COCHERE

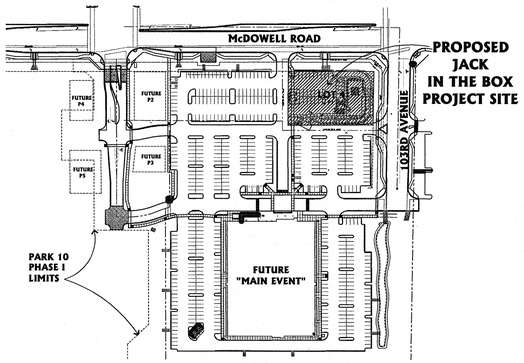
PARKING REQUIRED:
VEHICLE:
27 SPACES REQUIRED
(1/50 S.F. INDOOR PUBLIC AREA) + (1/200 S.F. OF OUTDOOR AREA)
(1,350 S.F/50) + (0) = 27 SPACES
BICYCLE:
NO SPACES REQUIRED (1/50 VEHICLE SPACES PROVIDED)

PARKING PROVIDED:
VEHICLE:
28 SPACES PROVIDED
INCLUDES (1) STANDARD ACCESSIBLE + (1) VAN ACCESSIBLE)
BICYCLE:
6 SPACES PROVIDED
INVERTED "U" RACK BICYCLE PARKING PER CITY OF AVONDALE DETAIL A1265)

PARKING AREA LANDSCAPE:
REQUIRED:
15% OF PARKING AREA
PARKING AREA = 11,122 SF X 15% = 1,669 SF
PROVIDED:
≈15.25% OF PARKING AREA
1,693 SF > 1,668 SF

CITY OF AVONDALE SITE PLAN NOTES

1. ALL UTILITY LINES LESS THAN 69KV SHALL BE UNDERGROUND WITH THE FIRST PHASE OF DEVELOPMENT.
2. ALL GROUND MOUNTED EQUIPMENT SHALL BE SCREENED/CONCEALED FROM STREET VIEW.
3. PLANTS LOCATED WITHIN REQUIRED AASHTO SIGHT VISIBILITY TRIANGLES SHALL BE PRUNED REGULARLY TO PERMIT UNOBSTRUCTED VISION. PLANT MATERIALS SHALL BE MAINTAINED TO BE LOWER THAN 2' (SHRUBS) OR TALLER THAN 7' (BOTTOM OF TREE CANOPY).
4. FUTURE DEVELOPMENT PADS WITHIN MASTER PLANNED DEVELOPMENTS SHALL BE COVERED WITH A MINIMUM OF 2" THICK DECOMPOSED GRANITE FOR DUST CONTROL AT TIME OF DEVELOPMENT.
5. ALL DEVELOPMENTS SHALL BE MAINTAINED IN CONFORMANCE WITH THE APPROVED SITE PLAN AND LANDSCAPE PLAN. ANY CHANGES THERETO SHALL REQUIRE APPROVAL OF THE CITY OF AVONDALE.
6. THIS PROJECT IS SUBJECT TO THE CURRENT AVONDALE GENERAL ENGINEERING REQUIREMENTS (AND MAG SUPPLEMENTAL REGULATIONS). COMMERCIAL/INDUSTRIAL/MULTI-FAMILY DESIGN MANUAL, ZONING ORDINANCE, GENERAL PLAN, AND ANY APPLICABLE SPECIFIC PLANS.



NORTH

PARK 10 - PHASE I OVERALL SITE PLAN

SCALE: N.T.S.

Jack in the box
9330 BALBOA AVENUE
SAN DIEGO, CA 92123

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These designs, drawings and specifications are the property of Jack in the Box Inc and shall not be copied or reproduced without its previous written consent.

These drawings attached are intended to assist the architect in preparing site-adapt construction documents provided that such use does not conflict with rules governing architects in the state where the work is to be performed. They will need to be modified to comply with all applicable codes and site-specific conditions.

DATES

RELEASE: AUG. 24, 2015
P.M. UPDATES: N/A
SUBMITTAL DATE:
1:
2:
3:
BID:
CONSTRUCTION:

REVISIONS

Looker & Cappello ARCHITECTS INC

2070 E. SOUTHERN AVE.
TEMPE, ARIZONA 85282
480-730-1776
FAX: 480-968-6571

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REGISTERED ARCHITECT CERTIFICATE NO. 20134 JEFF A. LOOKER Date Signed ARIZONA U.S.A.

EXP. 6/30/2018

SITE INFORMATION

MK TYPE: MK9CD_MD2
JIB #: 9C PROTOTYPE
ADDRESS:
10307 W. McDOWELL RD.
AVONDALE, AZ 85323

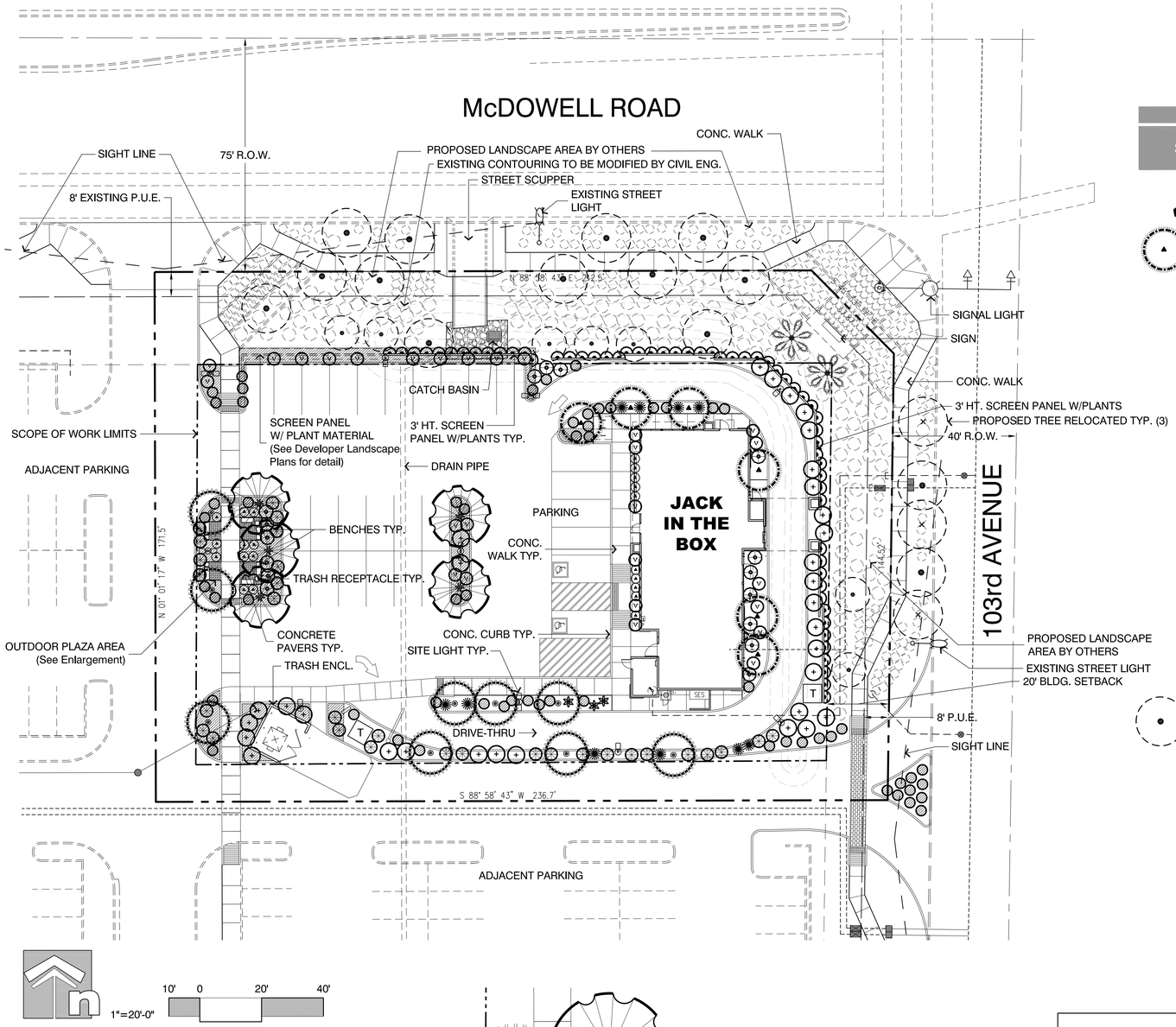
DRAWN BY: JLD
PROJECT #: LC-992
SCALE: AS NOTED

PROPOSED SITE PLAN

SP1.0

Exhibit G

Conceptual Landscape Plan



PLANT LIST

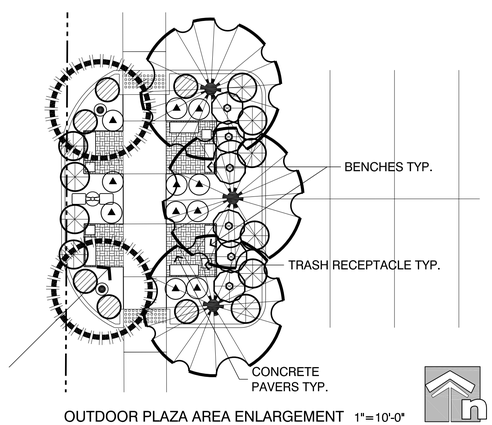
SYMBOL	BOTANICAL NAME / COMMON NAME	SIZE / QUAN.	REMARKS
	PROSOPIS ALBA 'CROWN JEWEL' / CROWN JEWEL THORNLESS MESQUITE	24" BOX / 5	10' Ht., 6' Sp., 2" Cal.
	CHILOPSIS LINEARIS / DESERT WILLOW	24" BOX / 6	8' Ht., 3' Sp., 1 1/2" Cal.
	ACACIA SALICINA / WILLOW ACACIA	24" BOX / 6	10' Ht., 5' Sp., 1 1/2" Cal.
	PYRACANTHA CRENULATA / NAPALESE FIRETHORN	5 GAL. / 58	Staked as Vine 4' O.C.
	NERIUM OLEANDER 'PETITE PINK' / PETITE PINK OLEANDER	5 GAL. / 32	
	EREMOPHILA GLABRA 'MINGENEW GOLD' / OUTBACK SUNRISE	1 GAL. / 57	
	EREMOPHILA MACULATA 'VALENTINE' / VALENTINE BUSH	5 GAL. / 23	
	TECOMA STANS 'ORANGE JUBILEE' / ORANGE BELLS	5 GAL. / 16	
	HESPERALOE PARVIFLORA / RED YUCCA	5 GAL. / 10	
	LEUCOPHYLLUM ZYGOPHYLLUM 'CIMARRON' / CIMARRON SAGE	5 GAL. / 30	
	AGAVE WEBERI / BLUE AGAVE	5 GAL. / 3	
	RUELLIA BRITONIANA 'ROSA' / DWARF PINK RUELLIA	5 GAL. / 21	

DECOMPOSED GRANITE - 1"-3" Dia., 2" DEPTH IN ALL AREAS OF PLANTING. 'EXPRESS BROWN' COLOR. (Match Center Development)

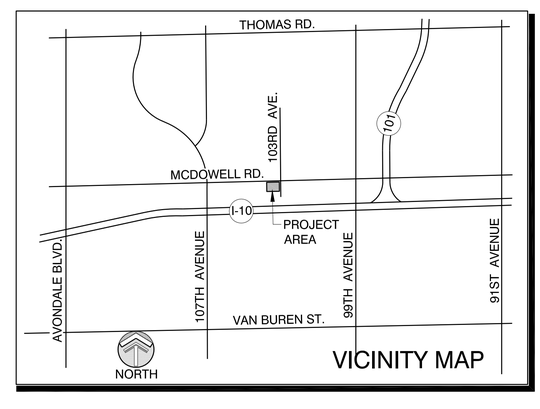
EXISTING/PROPOSED TREES & SHRUBS BY OTHERS TO REMAIN IN PLACE

NOTE:
THE PROPOSED SCREEN PANELS ARE METAL POST AND RAIL ELEMENTS WITH WIRE MESH AND SHADE CLOTH PANELS AS DESIGNED BY THE SITE DEVELOPER. SEE ARCHITECT'S PLANS FOR DETAILS.

LANDSCAPE AREA USED TO CALCULATE REQUIRED PARKING LOT LANDSCAPE
Parking Lot Landscape Required 1,669 s.f.
Parking Lot Landscape Provided 1,693 s.f.



OUTDOOR PLAZA AREA ENLARGEMENT 1"=10'-0"



REGISTERED LANDSCAPE ARCHITECT CERTIFICATE NO. 16698 PATRICK C. MORSE Date Signed 09-29-15 ARIZONA U.S.A.
Expires 09/2015

MLA
MLA ASSOCIATES
LANDSCAPE•ARCHITECTS
500 E. Mary Lane Gilbert, Arizona 85295
480-226-4278 pat@mlalandscape.com

Jack in the box
10307 W. McDowell Road
Avondale, AZ

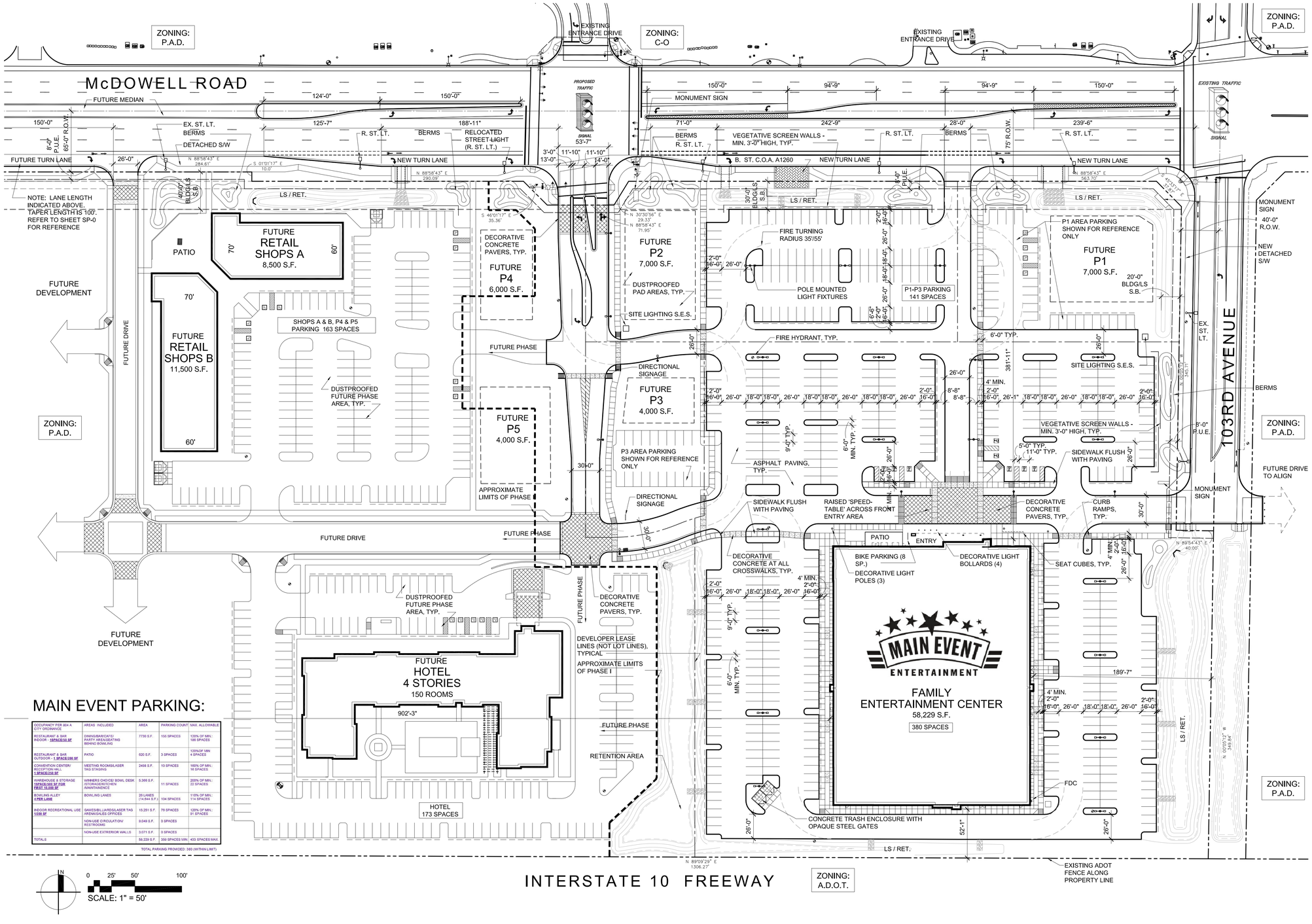
PROJECT 2015-12
DATE OCTOBER.13.2015
REVISION

Preliminary Landscape Plan

L1 of 1

Exhibit H

Approved Park 10 Master Site Plan



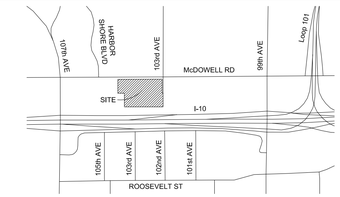
MAIN EVENT PARKING:

OCCUPANCY PER 304 A CITY ORDINANCE	AREAS INCLUDED	AREA	PARKING COUNT	MAX. ALLOWABLE
RESTAURANT & BAR INDOOR - **10PACE/50 SF**	DINING/BAR/CAFE/ PARTY AREA/SEATING BEHIND BOWLING	7730 S.F.	155 SPACES	120% OF MIN.: 186 SPACES
RESTAURANT & BAR OUTDOOR - **1 SPACE/200 SF**	PATIO	820 S.F.	3 SPACES	120%OF MIN 4 SPACES
CONVENTION CENTER/ RECEPTION HALL **1 SPACE/250 SF**	MEETING ROOMS/LASER TAG STAGING	2486 S.F.	10 SPACES	160% OF MIN.: 16 SPACES
WAREHOUSE & STORAGE **1SPACE/500 SF FOR FIRST 10,000 SF**	WINNER'S CHOICE/ BOWL DESK /STORAGE/KITCHEN /MAINTAINENCE	5,366 S.F.	11 SPACES	200% OF MIN.: 22 SPACES
BOWLING ALLEY **4 PER LANE**	BOWLING LANES	26 LANES (14,664 S.F.)	104 SPACES	110% OF MIN.: 114 SPACES
INDOOR RECREATIONAL USE **1/200 SF**	GAMES/BILLIARDS/LASER TAG ARENA/SALES OFFICES	15,251 S.F.	76 SPACES	120% OF MIN.: 91 SPACES
	NON-USE CIRCULATION/ RESTROOMS	9,049 S.F.	0 SPACES	
	NON-USE EXTERERIOR WALLS	3,071 S.F.	0 SPACES	
TOTALS		58,229 S.F.	350 SPACES MIN.	433 SPACES MAX.

TOTAL PARKING PROVIDED: 380 (WITHIN LIMIT)

PARK 10 Phase I

VICINITY MAP



PROJECT TEAM

OWNER

GUN BO, LLC
16083 SW UPPER BOONES FERRY RD,
SUITE 120
TIGARD, OREGON 97224
T (503) 639-0108
CONTACT: SU MORAN, JAMES KYUNG
EMAIL: james@ncbdev.com

MASTERPLAN ARCHITECTS

BUTLER DESIGN GROUP
5017 E WASHINGTON
SUITE 107
PHOENIX, ARIZONA 85034
T (602) 957-1800
CONTACT: TODD LAWRENCE
EMAIL: toddl@butlerdesigngroup.com

MAIN EVENT ARCHITECTS

HODGES & ASSOCIATES
13642 OMEGA
DALLAS, TX 75244
T (972) 387-1000
CONTACT: STEVE MATTSON
E-MAIL: smattson@hodgesusa.com

ELECTRICAL ENGINEER

BASHARKHAN ENGINEERING INC.
921 N RIVERFRONT BLVD
SUITE 100
DALLAS, TX 75207
T (214) 659-9000
CONTACT: TONY BACKMAN
E-MAIL: tbackman@beltexas.com

CIVIL ENGINEER

HUNTER ENGINEERING
10450 N 74TH ST
SUITE 200
SCOTTSDALE, ARIZONA 85258
T (480) 991-3985
CONTACT: JOE BURKE
E-MAIL: jburke@hunterengineeringpc.com

LANDSCAPE ARCHITECT

LASKIN AND ASSOCIATES
67 EAST WELDON AVE.
SUITE 230
PHOENIX, ARIZONA 85012
T (602) 840-7771
CONTACT: HANS STOLL
E-MAIL: hans@laskindesign.com

SITE DATA

ZONING: P.A.D. Z-05-15
A.P.N.: 102-54-003A
NET SITE AREA: 811,291 S.F. (18.62 AC)

BUILDING AREA:		PKG REQUIRED:	PKG MAXIMUM:	PKG PROVIDED:
MAIN EVENT:	58,229 S.F.	SEE TABLE=359	SEE TABLE=433	SEE TABLE =380
P1:	7,000 S.F.	7,000x.65/50=91	120%=109	
P2:	7,000 S.F.	7,000/300=24	110%=26	141 SPACES
P3:	4,000 S.F.	4,000/300=14	110%=16	(7.8 / 1,000 SF)
P4:	6,000 S.F.	6,000x.65/50=78	120%=94	
P5:	4,000 S.F.	4,000/300=14	110%=16	163 SPACES
SHOPS A:	8,500 S.F.	8,500/300=29	110%=32	(5.1 / 1,000 SF)
SHOPS B:	11,500 S.F.	11,500/300=38	110%=42	
HOTEL (150 RMS):	92,000 S.F.	1:3 = 195	110%= 215	199 SPACES
TOTAL:	198,229 S.F.	842 SPACES	983 SPACES	883 SPACES

BICYCLE PARKING (MAIN EVENT) 1:50 SPACES 380 / 50 = 8 SPACES REQ'D, 8 PROV'D

F.A.R.:
198,229 S.F. / 811,291 S.F.: 0.24

COVERAGE:
129,229 S.F. / 811,291 S.F.: 15.9%

PHASE I NET SITE AREA: 450,700 S.F.

PHASE I FRONTAGE LS AREA PROVIDED:
29,683 S.F. / 450,700 S.F.: 6.6%

PHASE I PARKING LS AREA PROVIDED:
66,825 S.F. / 450,700 S.F.: 15%

PHASE I TOTAL LS AREA PROVIDED:
102,423 S.F. / 450,700 S.F. 22.7%

LEGAL DESCRIPTION

LOTS 3 AND 4, SECTION 5, TOWNSHIP 1 NORTH RANGE 1 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, EXCEPT THAT PORTION DESCRIBED IN DOCKET 16135, PAGE 766, OFFICIAL RECORDS OF MARICOPA COUNTY.

SITE PLAN NOTES

A. ALL UTILITY LINES LESS THAN 69 KV SHALL BE UNDERGROUNDED WITH THE FIRST PHASE OF DEVELOPMENT.
B. ALL GROUND-MOUNTED AND ROOF TOP EQUIPMENT SHALL BE SCREENED/CONCEALED FROM STREET VIEW.
C. PLANTS LOCATED WITHIN REQUIRED AASHTO SIGHT VISIBILITY TRIANGLES SHALL BE PRUNED REGULARLY TO PERMIT UNOBSTRUCTED VISION. PLANT MATERIALS SHALL BE MAINTAINED TO BE LOWER THAN 2' (SHRUBS) OR TALLER THAN 7' (BOTTOM OF TREE CANOPY).
D. FUTURE DEVELOPMENT PADS WITHIN MASTER PLANNED DEVELOPMENTS SHALL BE COVERED WITH A MINIMUM OF 2" THICK DECOMPOSED GRANITE FOR DUST CONTROL AT TIME OF DEVELOPMENT.
E. ALL DEVELOPMENTS SHALL BE MAINTAINED IN CONFORMANCE WITH THE APPROVED SITE PLAN AND LANDSCAPE PLAN. ANY CHANGES THERETO SHALL REQUIRE APPROVAL OF THE CITY OF AVONDALE.
F. THIS PROJECT IS SUBJECT TO THE CURRENT AVONDALE GENERAL ENGINEERING REQUIREMENTS (AND MAG SUPPLEMENTAL REGULATIONS), COMMERCIAL/INDUSTRIAL/MULTI-FAMILY DESIGN MANUAL, ZONING ORDINANCE, GENERAL PLAN, AND ANY APPLICABLE SPECIFIC PLANS
G. PER THE APPROVED P.A.D., A MAXIMUM OF (2) TWO DRIVE-THRU USES ARE ALLOWED ON THIS SITE.

05-19-15
13052-ST19

PARKLANDDEVELOPMENT, LLC

LASKIN & ASSOCIATES, INC
LANDSCAPE ARCHITECTS

HUNTER ENGINEERING

PARK 10 Phase I

Proposed Family Entertainment Center & Mixed use Development
Avondale, Arizona

22417 RICHARD R. BUTLER 02-24-15
EXPIRES: 3/31/2017

HODGES & ASSOCIATES Architecture PLLC
Architecture + Planning + Interiors

Butler Design Group, Inc
architects & planners

SP-1

Exhibit I

Excerpt of Draft Planning Commission Meeting Minutes

Meeting of December 17, 2015

Excerpt of the Minutes of the regular Planning Commission meeting held December 17, 2015 at 6:30 p.m. in the Council Chambers.

COMMISSIONERS PRESENT
Sean Scibienski, Chair
Michael Long, Vice Chair
Olivia Pineda, Commissioner
Russell Van Leuven, Commissioner
Grace Carrillo, Commissioner
Kevin Kugler, Commissioner
Gloria Solorio, Commissioner

CITY STAFF PRESENT
Robert Gubser, Planning Manager
Nicholle Harris, Legal Counsel
Ken Galica, Senior Planner
Alison Rondone, Planner II
Linda Herring, Development Services Representative

APPLICATION NO. PL-15-0200: Jack in the Box @ Park 10 Conditional Use Permit

This is a public hearing before the Planning Commission to review and solicit public input on application PL-15-0200, a request by Mr. Jeff Looker, Looker & Cappello Architects, Inc., for approval of a Conditional Use Permit (CUP) to allow for a Jack-in-the-Box drive-thru restaurant on Lot 4 of the Park 10 commercial subdivision. The 1.6 acre subject property is located at the southwest corner of McDowell Road and 103rd Avenue and is zoned Planned Area Development (PAD). The approved West 10 PAD requires approval of a Conditional Use Permit for any drive-thru restaurant. Staff Contact: Ken Galica

Ken Galica, Senior Planner, said the property in question is designated Freeway Commercial in the General Plan. This land use category is used to accommodate the most intense commercial uses, and the biggest traffic generators that serve both a regional population as well as the local community. Surrounding properties include the Aventura Apartments, the Gateway Office Park, and Gateway Village.

Mr. Galica explained that this property was annexed in 1986, and was rezoned to PAD in 2006. The PAD covers all the property on the south side of McDowell Road from 103rd Avenue to 107th Avenue. The property was divided into two sub areas, one of which is a mixed use commercial subarea that allows for a drive-thru restaurant subject to a Conditional Use Permit (CUP). In March of 2015, the Master Site Plan for Park 10 was approved with Main Event being the anchor tenant. The parcel in question for this application covers approximately 0.9 acres on the northeast corner of the property.

Mr. Galica stated that the total number of drive-thru uses on the entire property is limited to two, and if approved, this would be the first leaving one additional opening. The Jack in the Box building would be approximately 3,000 square feet in size. Drivers would enter the drive-thru lane to the south of the building and circle around it counterclockwise, exiting to the north where they could access McDowell Road. Twenty-nine parking spaces are included, which meets the requirements of the building size. The trash enclosure is not visible from McDowell Road and is concealed from view on 103rd Avenue by landscaping. Primary access to the site will be right in/right out driveways, one each on McDowell Road and 103rd Avenue. Full turning movements are provided at the Park 10 main entry, which will be 400 feet to the west.

Mr. Galica reported that a significant amount of landscaping is involved with the project. It includes a range of trees to provide sidewalk shading and enhance the streetscape. Additional landscaping will be provided in the interior of the site. Pedestrian amenities will include benches, lighting, and trash receptacles.

Mr. Galica explained that if the CUP is approved by City Council, a Site Plan application will be required. Staff will evaluate more specific design details, including elevations, to determine if they conform to City of Avondale requirements and compatibility with the remainder of the site. From there, the project would proceed to construction drawings and eventually permit and construction.

Mr. Galica noted that there are five required findings that staff feels are met. The first is that the use be consistent with the General Plan and help further the City's objectives. The use must be compatible with adjacent land uses. The site must be adequate in size to accommodate the proposed use. The site must have sufficient circulation and accessibility and minimal traffic impact to surrounding streets. No adverse effects are anticipated. Staff recommends two standard stipulations: conformance with the provided plans, and that the CUP would expire in two years if the use is not commenced.

Mr. Galica said a neighborhood meeting was held on October 14 at City Hall. No citizens attended. The Planning Commission meeting was posted at the property, in mailings, and in a legal advertisement. No comments have been received. Staff recommends approval of the CUP, subject to the two conditions.

Commissioner Kugler inquired about the intended use for Gateway Village Master Site Plan Pad A, located east of the proposed Jack in the Box. Mr. Galica responded that Pad A is a one-story, multi-tenant building with a drive-thru.

Commissioner Kugler inquired where the second of two drive-thru's would be located. Mr. Galica clarified that it could be on any of the future Pads on the Park 10 site, however, there is no requirement that a second one be built at all. Commissioner Kugler noted that this Master Plan was approved, it contemplated a 7,000 square foot facility that would be appropriate for a sit-down restaurant. Mr. Galica responded that the only tenant that was known at that time was

Main Event. The remainder of the Pads were available for any of the allowed uses, including potential drive-thrus, and were not identified at that time with specific users.

Commissioner Kugler expressed his disappointment that a fast food use would be built on such an important corner. Six other drive-thru's are located in the vicinity, all on lower profile sites. He expressed concern that Avondale is foregoing an opportunity to have a higher quality establishment on that corner.

Applicant Jeff Looker, of Looker & Cappello Architects, 2070 East Southern Avenue, Tempe, made himself available for questions, but none were submitted.

Chair Scibienski opened the public hearing. After confirming there were no requests to speak, he closed the public hearing.

Chair Scibienski invited a motion. Vice Chair Long **MOVED** to recommend approval of Application PL-15-0200, a request by Mr. Jeff Looker, Looker & Cappello Architects, Inc., for approval of a Conditional Use Permit (CUP) to allow for a Jack-in-the-Box drive-thru restaurant on Lot 4 of the Park 10 commercial subdivision. Commissioner Pineda **SECONDED** the motion.

ROLL CALL VOTE

Sean Scibienski Chair	Nay
Michael Long, Vice Chair	Aye
Kevin Kugler, Commissioner	Nay
Grace Carrillo, Commissioner	Nay
Olivia Pineda, Commissioner	Aye
Gloria Solorio, Commissioner	Nay
Russell Van Leuven, Commissioner	Aye

The motion was denied by a 3-4 vote.

Exhibit J

Carmen Martinez

From: Tracy Stevens
Sent: Thursday, January 14, 2016 1:51 PM
To: Carmen Martinez
Cc: Gina Montes; David Fitzhugh
Subject: FW: Jack in the Box Application

Hi Carmen, please include in the packet to Council.

From: Betty S Lynch [mailto:cats01@cox.net]
Sent: Thursday, January 14, 2016 12:34 PM
To: Robert Gubser
Cc: Tracy Stevens
Subject: Jack in the Box Application

Good morning,

Please see that this email is included in the City Council Packets for Tuesday, January 19th Meeting. I am unable to attend as we have a special HOA meeting that evening.

At the time, City Council was planning the McDowell Road corridor. One of the stipulations was to insure NO fast food restaurants were located on the outside perimeters of the development sites. Driving along McDowell you can see where we have always held to this stipulation. Fast Food Restaurants are all located with the centers, but not along the road.
There are still sites available, particularly at Gateway Pavilions, for additional Fast Food restaurants. Jack in the Box can choose one of them, or, if they insist on being near the Family Play site, they should be located to the rear and not visible along McDowell.

It is my hope City Council will honor this stipulation as they review this application on Tuesday evening. P&Z has already turned it down. I respect that decision and hope you will as well.

Respectfully,

Betty S Lynch
Chair, West Valley Human Services Alliance
Chair, A New Leaf West Valley Advisory Council
Member, A New Leaf Board of Directors
VOS UW Financial Stability Task Force Oversight
Volunteer, Hospice of Arizona,
Treasurer, SWF Friends of Advocacy Center
cats01@cox.net
www.wvhsa..org
623-935-3781

Community Advocate - Helping Build Community Capacity
Never doubt that a small group of thoughtful, committed citizens can change the world; indeed it is the only thing that ever has. - Margaret Meade

Category Number:
Item Number: 5

CITY COUNCIL AGENDA

SUBJECT: Professional Services Agreement - Exerplay, Inc.

MEETING DATE: 1/19/2016

TO: Mayor and Council

FROM: Kirk Haines, Parks, Recreation & Libraries Director (623) 333-2411

THROUGH: David Fitzhugh, City Manager

PURPOSE:
Staff requests the City Council approve a contract in the amount of $250,000 to Exerplay, Inc. (Exerplay) for a new playground, safety surfacing and Americans with Disabilities Act (ADA) access and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents.

BACKGROUND:
At the September 21, 2015 City Council Work Session, Council recommended that staff proceed with renovations to the Friendship Park plan, which included renovation of two playgrounds totaling $500,000. City Council also approved a budget supplemental in the FY 16 budget in the amount of $100,000 to renovate the playground at Fred Campbell Park.

The rennovations will include new playground equipment and safety surfacing at the north end of Friendship park in the amount of $150,000. They also include new playground equipment, safety surfacing and American with Disabilities Act (ADA) access at Fred Campbell Park in an amount not to exceed $100,000.

In order to provide a fair process to the numerous companies capable of providing playground equipment and services to Avondale, a Request for Statement of Qualifications for city parks playground design and equipment installation (PR 16-013) was released on November 10 and advertised per procurement requirements. A non-mandatory pre-submittal conference was held on November 12 and there were six playground companies represented at this meeting. A bid addendum was issued on November 19, 2015 and bids were due November 25, 2015 at 3:00 p.m. local time. Seven proposals were received and after a preliminary review by the Procurement Officer, three proposals were deemed non-responsive and four proposals were forwarded on to the review panel for technical evaluation.

A selection committee comprised of five members assessed the proposals based on the following criteria:

- General Information/Requirements
- Experience and Qualifications of the Vendor and Key Staff Assigned to the Project
- Project Approach
- Project Schedule

Each committee member assessed all the proposals on their merits and ranked each company. The total scores and points were tallied and although Play It Safe Playgrounds and

Equipment ranked the highest, Exerplay also had a very strong proposal and was only two points less than Play It Safe. The other two companies that were assessed were several points away from the threshold for further consideration.

A unanimous decision by the review team was made to offer contracts to both companies based on their merits from their responses to the Statement of Qualifications.

DISCUSSION:

There were three primary reasons staff decided to recruit playground companies via the Statement of Qualifications process.

1. To contract with a company that is familiar with garnering public input into the playground design and development process.
2. To hire a quality company with a great reputation in the playground industry who stands behind their products and provides exceptional customer service.
3. To work with a playground company that had an existing cooperative contract awarded through a competitive process, and a company who had similar experience working with a client.

While most of the playground companies are able to achieve the quality reputation with their products and service, only a few demonstrated a level of commitment to connect with the community to gather input into building the design and interest from our Avondale citizens. In an effort to achieve one of City Council's Strategic Goals, a primary emphasis in the project approach is to provide public outreach and seek feedback about the type of play elements our community would like to see at their playgrounds. Exerplay was able to demonstrate previous experience and a working knowledge on how to accomplish this outcome.

Examples of citizen engagement included building community support through development of a website and providing opportunities for citizens to vote for their preferred playground alternative; conducting face-to-face surveys and collecting input about the type of play equipment that is important to children; and coverage through the City's A-Voice program which is a citizen engagement tool used online.

Once the contracts are completed, the goal is to seek citizen input swiftly and thoroughly and prepare some playground schematics and designs. Additional feedback from our community on the playground designs will be given and Exerplay will expedite their processes to manufacture, ship, and install the equipment, surfacing and shade as quickly as possible. We anticipate the playgrounds to be completed by no later than the end of June.

BUDGET IMPACT:

Funding in the amount of $500,000 is available in the FY 2016 Capital Improvement Plan, Project No. PK1027 Friendship Park Enhancements, Fund #310 Park Development. Of that amount, 150,000 would be allocated to Exerplay, Inc.

Funds in the amount of $100,000 is available in the FY 2016 operating budget General Fund, Account No. 101-5220-00-6731, Park Repair and Maintenance for the playground expense at Fred Campbell Park.

There are no additional operating cost impacts to this project since these are replacement items.

RECOMMENDATION:
Staff recommends that the City Council approve a contract in the amount of $250,000 to Exerplay, Inc. (Exerplay) for a new playground, safety surfacing and Americans with Disabilities Act (ADA)

access and authorize the Mayor or City Manager and the City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

PSA - Exerplay

PROFESSIONAL SERVICES AGREEMENT – EXERPLAY

DUE TO ITS SIZE, THIS DOCUMENT

HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

http://www.avondale.org/DocumentCenter/View/37961

Category Number:
Item Number: 6

CITY COUNCIL AGENDA

SUBJECT:
Professional Services Agreement - Play It Safe Playgrounds and Park Equipment, Inc.

MEETING DATE:
1/19/2016

TO: Mayor and Council

FROM: Kirk Haines, Parks, Recreation & Libraries Director (623) 333-2411

THROUGH: David Fitzhugh, City Manager

PURPOSE:
Staff requests City Council approve a professional services agreement with Play It Safe Playgrounds and Equipment Inc. (Play it Safe) in an amount not to exceed $350,000 for new playground equipment, safety surfacing and shade at Friendship Park and authorize the Mayor or City Manager and City Clerk execute the necessary documents.

BACKGROUND:
At the September 21, 2015 City Council Work Session, Council recommended that staff proceed with renovations to the Friendship Park plan, which included renovation of two playgrounds totaling $500,000.

In order to provide a fair process to the numerous companies capable of providing playground equipment and services to Avondale, a Statement of Qualifications for city parks playground design and equipment installation (PR 16-013) was released on November 10 and advertised per procurement requirements. A non-mandatory pre-submittal conference was held on November 12 and there were six playground companies represented at this meeting. A bid addendum was issued on November 19, 2015 and bids were due November 25, 2015 at 3:00 p.m. local time. Seven proposals were received and after a preliminary review by the Procurement Officer, three proposals did not meet the minimum qualifications and four proposals were forwarded on to the review panel for further consideration.

A review panel comprised of five members assessed the proposals based on the following criteria:

- General Information/Requirements
- Experience and Qualifications of the Vendor and Key Staff Assigned to the Project
- Project Approach
- Project Schedule

Each panel member assessed all the proposals on their merits and ranked each company. The total scores and points were tallied and Play It Safe ranked the highest.

A unanimous decision by the review team was made to offer Play it Safe the Friendship Park (east) playground renovation based on their merits from their responses to the Statement of Qualifications.

DISCUSSION:

There were two primary reasons staff decided to recruit playground companies via the Statement of Qualifications process.

1. To contract with a company that is familiar with garnering public input into the playground design and development process.
2. To hire a quality company with a great reputation in the playground industry who stands behind their products and provides exceptional customer service.
3. To work with a playground company that had an existing cooperative contract awarded through a competitive process and a company who had similar experience working with a client.

While most of the playground companies are able to achieve the quality reputation with their products and service, only a few demonstrated a level of commitment to connect with the community to gather input into building the design and interest from our Avondale citizens. In an effort to achieve one of City Council's Strategic Goals, a primary emphasis in the project approach is to provide public outreach and seek feedback about the type of play elements our community would like to see at their playgrounds. Play It Safe was able to demonstrate previous experience and a working knowledge on how to accomplish this outcome.

Examples of citizen engagement included building community support through development of a website and providing opportunities for citizens to vote for their preferred playground alternative; conducting face-to-face surveys and collecting input about the type of play equipment that is important to children; creating park signs with QR codes that people can scan and download, and then vote for their preferred playgrounds; and coverage through the City's A-Voice program which is a citizen engagement tool used online.

Once the contracts are completed, the goal is to seek citizen input swiftly and thoroughly and prepare some playground schematics and designs. Additional feedback from our community on the playground designs will be given and Play it Safe will expedite their processes to manufacture, ship, and install the equipment, surfacing and shade as quickly as possible. We anticipate the first playground to be completed by April.

BUDGET IMPACT:

Funding in the amount of $500,000 is available in the FY 2016 Capital Improvement Plan, Project No. PK1027 Friendship Park Enhancements, Fund #310 Park Development. Of that amount, $350,000 would be allocated to Play It Safe for the Friendship Park east playground renovation.

There are no additional operating cost impacts to this project since these are replacement items.

RECOMMENDATION:

Approve a professional services agreement with Play It Safe Playgrounds and Equipment, Inc. in the amount of $350,000 to renovate the large playground space at Friendship Park and charge this expense to the appropriate Capital Improvement Plan account.

ATTACHMENTS:

Description

PSA - Play It Safe

PROFESSIONAL SERVICES AGREEMENT – PLAY IT SAFE PLAYGROUNDS

DUE TO ITS SIZE, THIS DOCUMENT

HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

http://www.avondale.org/DocumentCenter/View/37963