



CITY COUNCIL AGENDA

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

REGULAR MEETING
August 8, 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 RECOGNITION ITEMS (MAYOR PRESENTATIONS)**
 - a. ALL AMERICA CITY FINALIST DESIGNATION BY THE NATIONAL CIVIC LEAGUE**
- 3 UNSCHEDULED PUBLIC APPEARANCES**

(Limit three minutes per person. Please state your name.)
- 4 CONSENT AGENDA**

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

- a. FIRST AMENDMENT TO CONTRACT - DNG CONSTRUCTION, LLC**

City Council will consider a request to approve the first amendment to the Contract with DNG Construction to increase the amount of the contract by \$195,494 to replace the tennis court at Friendship Park, to extend the term of the contract to October 14, 2016 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.
- b. SUBRECIPIENT AGREEMENT - TRELIS FOR FIRST-TIME HOMEBUYER ASSISTANCE PROGRAM ADMINISTRATION**

City Council will consider a request to approve an agreement with Trellis in the amount of \$300,000 to conduct a First-Time Homebuyer Assistance Program in Avondale, and authorize the Mayor or City Manager and City Clerk to execute the contract documents. The Council will take the appropriate action.
- c. COOPERATIVE PURCHASING AGREEMENT - BIBLIOTHECA, LLC FOR LIBRARY AUTOMATION**

City Council will consider a request to approve a Cooperative Purchasing Agreement with Bibliotheca, LLC for the purchase and servicing of the the city's libraries automation systems in the amount of \$35,838.79 for the first year and a maximum aggregate amount of \$95,304.42 over the five year term of the contract, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

d. COOPERATIVE PURCHASING AGREEMENT - CRAFTCO, INC.

City Council will consider a request to approve a Cooperative Purchasing Agreement with Craftco, Inc. to purchase asphalt crack sealing compound for a maximum aggregate amount not to exceed \$200,000, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. COOPERATIVE PURCHASING AGREEMENT - PFM ASSET MANAGEMENT LLC

City Council will consider a request to approve a Cooperative Purchasing Agreement with PFM Asset Management LLC to manage the City's portfolio of government securities in an amount of approximately \$54,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

f. RESOLUTION 3330-816 MEMORANDUM OF UNDERSTANDING WITH MARICOPA COUNTY RELATING TO SEXUAL ASSAULT KIT TESTING

City Council will consider a resolution approving a Memorandum of Understanding with the Maricopa County Attorney's Office for the inventory, selection, and shipping of untested sexual assault kits for DNA evidence and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. RESOLUTION 3331-816 INTERGOVERNMENTAL AGREEMENT WITH ADOT FOR THE DATA ACCESS AND EXCHANGE

City Council will consider a resolution authorizing an Intergovernmental Agreement with the Arizona Department of Transportation to execute a Data Access Agreement permitting the electronic transmission and retrieval of crash data, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. RESOLUTION 3332-816 - WRITTEN POLICIES AND PROCEDURES FOR TAX-ADVANTAGED OBLIGATIONS

City Council will consider a resolution adopting the Written Policies and Procedures for Tax-Advantaged Obligations. The Council will take the appropriate action.

i. RESOLUTION 3333-816 - PROCEDURES FOR COMPLIANCE WITH OBLIGATIONS UNDER CONTINUING DISCLOSURE UNDERTAKINGS

City Council will consider a resolution adopting the Procedures for Compliance with Obligations Under Continuing Disclosure Undertakings. The Council will take appropriate action.

j. ORDINANCE 1610-816 - LEASE AGREEMENT - DAMRI MUAY THAI LLC

City Council will consider an ordinance authorizing a lease agreement with Damri Muay Thai LLC for a property located at 735 N 114th Ave in Avondale and authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

5 PROFESSIONAL SERVICES AND EMPLOYMENT AGREEMENT PRESIDING JUDGE - CRAIG L. JENNINGS

City Council will consider a request to approve the employment agreement with Craig L. Jennings for an additional two-year appointment as Presiding Judge and authorization for the Mayor and the City Clerk to execute the agreement. The Council will take appropriate action.

6 PUBLIC HEARING - CONDITIONAL USE PERMIT - PARK 10 SHOPS A DRIVE-THRU COFFEE SHOP (APPLICATION PL-16-0048)

City Council will hold a public hearing and consider a request by Mr. Todd Lawrence, Butler Design Group, for approval of a Conditional Use Permit for a drive-thru coffee shop located within a multi-tenant building proposed to be built west of the southwest corner of McDowell Road and 103rd Avenue within the Park 10 master development. The Council will take appropriate action.

7 PUBLIC HEARING - CONDITIONAL USE PERMIT - VERIZON WIRELESS GLENARM (APPLICATION PL-15-0274)

City Council will hold a public hearing and consider a request by Michele Dahlke of Shaw & Associates on behalf of SBA Towers, Inc. (Verizon Wireless) for approval of a Conditional Use Permit to construct a 67' tall, stealth design personal wireless services facility on the Holy Cross Cemetery property at 10045 W. Thomas Road, Avondale to increase 4G LTE service capacity in the area. The Council will take appropriate action.

8 ORDINANCE 1611-816 - REFUNDING OF THREE BOND ISSUES TOTALING \$25,380,000

The City Council will consider an ordinance providing for the sale of pledged revenue refunding obligations evidencing proportionate interests in installment payments pursuant to a purchase agreement to refund bonds of the City of Avondale Municipal Facilities Corporation; authorizing with respect thereto necessary agreements; delegating certain authority; approving an official statement and declaring an emergency. The Council will take the appropriate action.

9 ORDINANCE 1612-816 - AUTHORIZING THE ISSUANCE OF \$9,150,000 IN WATER AND SEWER UTILITY BONDS

City Council will consider an ordinance providing for the sale and execution and delivery pursuant to a series 2016 Obligation Indenture of Water and Sewer System Revenue Obligations, Series 2016, Evidencing proportionate interests of the holders thereof in installment payments of the purchase price to be paid by the City of Avondale, Arizona, pursuant to a Series 2016 Purchase Agreement; (2) authorizing the completion, execution and delivery with respect thereto of agreements necessary or appropriate as part of financing part of the water and sewer system of the city and paying related financing costs; (3) delegating to the Mayor, the City Manager, the Assistant City Managers and the Finance and Budget Director certain authority with respect to the purposes hereof; (4) approving a form and authorizing the execution and delivery and distribution of an official statement with respect to such Series 2016 Obligations; (5) authorizing the execution and delivery of a continuing disclosure undertaking with respect to such Series 2016 Obligations; (6) authorizing the Finance and Budget Director to expend all necessary funds therefor and (7) declaring an emergency. The Council will take appropriate action.

10 CONSTRUCTION MANAGER AT RISK AGREEMENT - PCL CONSTRUCTION, INC

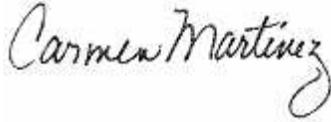
City Council will consider approving a Construction Manager at Risk Agreement with PCL Construction, Inc. to perform pre-construction services for the Water Reclamation Facility Upgrades in the amount of \$156,926, and authorize the Mayor or City Manager and City Clerk to execute the contract documents. The Council will take appropriate action.

11 ORDINANCE 1609-816 - GARDEN LAKES LICENSE AGREEMENT FOR IRRIGATION CONVERSION

City Council will consider an ordinance approving a License Agreement with Garden Lakes Community Association to use city property for the construction, installation, maintenance, operation and repair of a private non-potable irrigation system and authorize the Mayor, or City Manager and City Clerk, to execute the necessary documents. The Council will take appropriate action.

12 ADJOURNMENT

Respectfully submitted,



Carmen Martinez
City Clerk

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

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

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

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

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

De acuerdo con la ley A.R.S. 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad 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 pueden ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabacion de la junta. Si hay algun menor de edad presente durante la grabacion, la Ciudad dara por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. 1-602.A.9.



CITY COUNCIL AGENDA

SUBJECT:

All America City Finalist Designation by the National Civic League

MEETING DATE:

8/8/2016

TO: Mayor and Council

FROM: Stephanie Small, Neighborhood and Family Services Director - 623.333.2711

THROUGH: David Fitzhugh, City Manager

PURPOSE:

City Council will receive information regarding the City of Avondale's designation as an 2016 All-America City Finalist.

BACKGROUND:

The National Civic League was founded over 120 years ago by several leading municipal reformers including former President Theodore Roosevelt. The National Civic League's All-America City Award is now in its 67th year. In 2016, the All-America City Award recognized twenty communities for their projects, plans for the future, and community vision that demonstrate innovation, inclusiveness, impact, civic engagement, and cross-sector collaboration. The 2016 spotlight for the award focused on community-wide health and education strategies that enable all children to succeed in school and in life.

This year the organization encouraged the submission of projects that addressed any barrier to children's success in school and life, including but not limited to attendance, health (of children, parents and community), positive discipline interventions, transportation, poverty, healthy food access, job opportunities (for students, parents and community members), affordable and safe housing, and safe and healthy natural environments. NCLs goal is to recognize local examples of innovative and effective community problem-solving that recognizes all influences on the success of children and uses all sectors to address those influences.

Eight communities in Arizona have received awards from the NCL. Previous Arizona awardees include; the Chandler (2010), Flowing Wells (2007), Goodyear (2008), Hayden (1988), Maricopa County (1954), Mesa (1978-79), Phoenix (1950, 1958, 1979-1980, 1989, 2009), and Tempe (1984-85, 2003).

Each year the theme for the award changes to reflect the Leagues emphasis and area of concentration. This year's theme for the All-America City was "Ensuring all children are healthy and supported to succeed in school and life". With our strong emphasis in supporting children and families, the City believed it had projects that would support the criteria for this year's theme. The City of Avondale submitted its letter of intent to apply for this year's All-America City Award on November 4, 2015.

A team of city staff which included a cross section of employees across several departments was formed to analyze the numerous programs for consideration. The team (Yesenia Castaneda,

Cheryl Covert, Keisha Cyriaano, Dan Davis, Kirk Haines, Jennifer Griffin, Ava Gutwein, Christopher Lopez, Sandy Lopez, Pier Simeri, Janice Simpson, Stephanie Small, Sherie Steele and Christina Underhill) worked together over several months to compile statistical information and the necessary documentation to complete the 2016 application process.

Three projects were chosen for inclusion in Avondale's All-American City Award application - Kids at Hope, Care1st Avondale Resource Center and the Let's Move Initiative. The application for the 2016 All-America City Award was submitted on March 9, 2016.

DISCUSSION:

The City of Avondale was notified on March 23 that it was a Finalist for the 2016 All-American City Award by the National Civic League (NCL). On June 17th, a delegation consisting of representatives from the community, local youth, the non-profit community, school officials, the business community and city staff traveled to Denver Colorado to present Avondale's application to a panel of ten judges.

Over the course of four days, the team presented information on numerous Avondale programs and services, served on workshops and panels and gleaned best practice information from agencies and municipalities throughout the country. Avondale's youth nominee, Michelle Dirzo was selected from among six applicants to represent the City at the Conference.

Despite the teams best efforts and a well-received application and presentation, the City of Avondale was not selected as an All-american City for 2016. Ten communities were designated as an All-American City in 2016. They are as follows:

Hayward, California
Lakewood, Colorado
New Britain, Connecticut
Fall River, Massachusetts
Columbia Heights, Minnesota
Asheboro, North Carolina
Hartsville, South Carolina
San Antonio, Texas
Norfolk, Virginia
Brown Deer, Wisconsin

RECOMMENDATION:

This is for information and discussion.



CITY COUNCIL AGENDA

SUBJECT:

First Amendment to Contract - DNG
Construction, LLC

MEETING DATE:

8/8/2016

TO: Mayor and Council

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

THROUGH: David Fitzhugh, City Manager

PURPOSE:

Staff is requesting that City Council to approve Contract Amendment #1 to DNG Construction, LLC for tennis court replacement at Friendship Park in the amount of \$194,494, extend the term of the contract to October 14, 2016 and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

On April 4, 2016, City Council approved a contract with DNG Construction LLC (DNG) in the amount of \$3,004,427.07 to build several improvements at Friendship Park, including a splash pad, new restroom, additional parking, six new picnicking ramadas and various site improvements. Since that date, DNG has been working feverishly to complete those park improvements before the Labor Day weekend to maximize use of the improvements for the community benefit.

Within the DNG contract, there was a \$250,000 project contingency established for any unforeseen conditions that would occur throughout the duration of the project. Since the project start up, there have been a few unforeseen conditions. In addition, two bid alternates that were approved that have reduced the overall project contingency to less than \$100,000 at this time. Examples of uses of the project contingency includes:

- Replacement of pathway light poles (bid alternate #1)
- Re-routing sewer, electric and irrigation lines due to existing underground utilities
- Asbestos inspection requirement
- Entry road widening
- Entry monument signage (bid alternate #2)
- Additional irrigation valves
- Purple pipe not specified for non-potable water irrigation lines
- Fire line realignment due to sewer conflict

DISCUSSION:

At the time the project was awarded, City Council asked about the questionable condition of the tennis courts and whether staff was planning to fix or replace. Staff stated there was funding in the future CIP to repair the courts. Now that construction of the park improvements is nearly complete and there appears to be no need to use funds beyond the project contingency, funding is available in the current Fiscal Year CIP, Friendship Park project to fix the tennis courts.

Staff assessed whether it would be more appropriate to repair the existing tennis courts with new products versus totally replacing the existing asphalt courts with a post-tension concrete slab. Although the new technology to repair the existing courts was very intriguing and provided a three-year warranty on the surfacing and playability, it was still a \$95,000 investment that only yielded a three year guarantee.

Although a post-tension concrete slab only carries a one-year warranty, experience indicates that this type of application will last for more than 25 years with partial maintenance on the surface coating every 3 - 5 years depending on the amount of use. Furthermore, the tennis court fencing, posts and net will also be replaced as part of the overall project. Based on the longevity of the investment, and given the existing soil conditions at the park, the post tension concrete slab is the best alternative and investment.

The estimated duration of time to fully replace the tennis court is approximately 10 weeks from the notice to proceed. Because DNG is already mobilized and managing the Friendship Park project, there is an economy of price by awarding this project to DNG. Although the tennis court will extend the DNG contract, this change order will not impact the outcome of the portion of work that has already be awarded and the current project is still on schedule to be open by Labor Day weekend.

BUDGET IMPACT:

Funding in the amount of \$194,494 is available in the CIP Park Fund Line Item 310-1027-00-8210, Friendship Park for this expense.

RECOMMENDATION:

Staff recommends that City Council approve the first amendment to the Contract with DNG Construction to increase the amount of the contract by \$195,494 to replace the tennis court at Friendship Park, to extend the term of the contract to October 14, 2016 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

[First Amendment to Contract - DNG](#)

**FIRST AMENDMENT
TO
CONTRACT NO. 14287C
BETWEEN
THE CITY OF AVONDALE
AND
DNG CONSTRUCTION, LLC**

THIS FIRST AMENDMENT TO CONTRACT NO. 14287C (this “First Amendment”) is made as of August 8, 2016, between the City of Avondale, an Arizona municipal corporation (the “City”), and DNG Construction, LLC, an Arizona limited liability company (the “Contractor”).

RECITALS

A. The City issued Invitation for Bids PR 16-024 (the “IFB”) seeking bids from contractors to construct improvements at Friendship Park (the “Services”). The Contractor responded to the IFB and the City and Contractor entered into Contract No. 14287C, dated April 4, 2016, for the provision of the Services (the “Contract”), a true and correct copy of which is on file with the City Engineer. All of the capitalized terms not otherwise defined in this First Amendment have the same meanings as defined in the Contract.

B. The City has determined that it is necessary for the Contractor to replace the tennis courts at Friendship Park (the “Additional Services”).

C. The City and the Contractor desire to enter into this First Amendment to (i) extend the term of the Agreement, (ii) modify the scope of work to include the Additional Services and (iii) provide for the increase in compensation to the Contractor for the Additional Services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and 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 to amend the Contract as follows:

1. Term. The term of the Contract is hereby extended through October 14, 2016.
2. Scope of Work. Contractor shall provide the Additional Services as set forth in the Change Order, attached hereto as Exhibit 1 and incorporated herein by reference.
3. Compensation. The City shall increase the compensation to Contractor by not more than \$195,494, for the Additional Services as set forth in the Change Order, resulting in an increase of the aggregate not-to-exceed compensation from \$ 3,004,427.07 to \$3,199,921.07.

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

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

6. Conflict of Interest. This First Amendment and the Contract may be cancelled pursuant to ARIZ. REV. STAT. § 38-511.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year 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]

EXHIBIT 1
TO
FIRST AMENDMENT
TO
CONTRACT NO. 14287C
BETWEEN
THE CITY OF AVONDALE
AND
DNG CONSTRUCTION, LLC

[Change Order]

See following pages.

**CHANGE ORDER
 PROPOSAL SUMMARY**

OWNER NAME:	CITY OF AVONDALE	DNG PROJECT MANAGER:	RW
PROJECT NAME:	FRIENDSHIP PARK TENNIS COURT REPLACEMENT	DNG PROJECT DIRECTOR:	DG
PROJECT ADDRESS:	AVONDALE, AZ	ESTIMATED START DATE:	
PROJECT MGR:	KIRK HAINES		
DATE:	07/13/16		
PROPOSAL REV:	1		

COST CODE	DESCRIPTION	VALUE
	SURVEY, LAYOUT & CONSTRUCTION STAKING	\$ 3,200
	EARTHWORK, GRADING & DEMO	\$ 24,000
	SITE CONCRETE	\$ 117,250
	CAULKING & WATERPROOFING	\$ 1,300
	PERMITTING ALLOWANCE	\$ 4,700
		\$ 150,450
	GENERAL REQUIREMENTS	\$ 19,043
	PROJECT CONTINGENCY	\$ -
	BONDS AND INSURANCE	\$ 5,650
	CONTRACTOR FEE	\$ 9,775
	SUB TOTAL	\$ 184,917
	SALES TAX	\$ 10,577
	TOTAL PROJECT COST	\$ 195,494



JOB ORDER CONTRACT SCOPE CLARIFICATIONS

OWNER:	CITY OF AVONDALE
PROJECT:	FRIENDSHIP PARK TENNIS COURT REPLACEMENT
LOCATION:	AVONDALE
ARCHITECT:	NA
ENGINEER:	NA
PROPOSAL DATE:	06/30/16
DWGS DATED:	NA
SPEC DATED:	NA

ITEM DESCRIPTION:	INCLUDED	EXCLUDED	PROVIDED BY OWNER
ARCHITECTURAL DESIGN		X	
CIVIL ENGINEERING		X	
M / P / E ENGINEERING		X	
INTERIOR DESIGN		X	
SPECIAL STRUCTURAL INSPECTIONS	X		
CITY IMPACT FEES		X	
WATER & SEWER DEVELOPMENT FEES		X	
PLAN REVIEW FEES		X	
BUILDING PERMIT FEES		X	
FIRE DEPARTMENT ACCESS CONTROL PERMITTING		X	
WATER METER FEES		X	
DUST CONTROL PERMITS	X		
GEOTECHNICAL REPORT		X	
SOIL & MATERIALS TESTING	X		
SWPPP PERMITTING & CONTROLS		X	
HAZARDOUS MATERIALS TESTING		X	
HAZARDOUS MATERIALS ABATEMENT		X	
INSTALLATION OF OWNER PROVIDED EQUIPMENT		X	
CONSTRUCTION WATER	X		
CONSTRUCTION POWER	X		
REGULAR WORK HOURS (M-F 6:00AM - 4:00PM)	X		
PERMITTING		X	

GENERAL REQUIREMENTS ESTIMATE
PROJECT: FRIENDSHIP PARK TENNIS COURT REPLACEMENT
LOCATION: AVONDALE

PREP. BY:
CHK'D BY:
PROJECT SCHEDULE
MONTHS
WEEKS

10

DESCRIPTION	QTY.	UNITS	UNIT COST	TOTAL COST
PROJECT MANAGER	1	WKS	\$ 2,500.00	\$ 2,500.00
ASSISTANT PROJECT MANAGER	0	WKS	\$ 1,950.00	\$ -
PROJECT SUPERINTENDENT	5	WKS	\$ 2,250.00	\$ 11,250.00
ASSISTANT PROJECT SUPERINTENDENT	0	WKS	\$ -	\$ -
FIELD ENGINEER	0	WKS	\$ -	\$ -
SAFETY ENGINEER	0	WKS	\$ -	\$ -
ADMINISTRATIVE ASSISTANT	0	WKS	\$ -	\$ -
FIELD ADMINISTRATOR	0	WKS	\$ -	\$ -
BUILDING PERMIT	0	LS	\$ -	\$ -
DUST CONTROL / ENVIRONMENTAL PERMIT	1	LS	\$ 1,325.00	\$ 1,325.00
BLUEPRINTS, COPIES AND REPRODUCTION	0	SETS	\$ 45.00	\$ -
MATERIAL AND SOILS TESTING	0	LS	\$ -	\$ -
POSTAGE & DELIVERY SERVICE	0.5	EA	\$ 325.00	\$ 162.50
COMPUTER SERVICE	5	WKS	\$ 25.00	\$ 125.00
SITE COMPUTER - HARDWARE / SOFTWARE	0	LS	\$ 200.00	\$ -
PROJECT WEBSITE	0	MONTHS	\$ -	\$ -
DESIGN & ENGINEERING SERVICES	0	LS	\$ -	\$ -
PROJECT FIELD OFFICE	0	MONTHS	\$ -	\$ -
FIELD OFFICE SET-UP / REMOVAL	0	EA	\$ -	\$ -
DRINKING WATER	0	MONTHS	\$ 15.00	\$ -
TEMPORARY TOILETS / SANITARY FACILITIES	1.5	MONTHS	\$ 320.00	\$ 480.00
TEMPORARY POWER	0	MONTHS	\$ -	\$ -
TEMPORARY WATER - HYDRANT METER FEES	0	EA	\$ -	\$ -
WATER CONSUMED	0	MONTHS	\$ -	\$ -
POWER CONSUMED	0	MONTHS	\$ -	\$ -
PROJECT START UP POWER	0	MONTHS	\$ -	\$ -
MOBILE PHONE USAGE	1.5	MONTHS	\$ 125.00	\$ 187.50
FIELD OFFICE SUPPLIES AND EQUIPMENT	0	MONTHS	\$ -	\$ -
PROJECT SECURITY / WATCHMAN	0	WKS	\$ -	\$ -
TEMPORARY FENCING	0	LF	\$ 2.00	\$ -
TEMPORARY ROADS AND ENTRANCES	0	EA	\$ -	\$ -
DUST CONTROL MAINTENANCE	0.5	MONTHS	\$ 1,100.00	\$ 550.00
SWEEPING SERVICES	0	EA	\$ 125.00	\$ -
TEMPORARY HEAT	0	MONTHS	\$ -	\$ -
PROJECT SIGNAGE AND BARRICADES	0	LS	\$ 500.00	\$ -
FIRE PROTECTION AND SAFETY SUPPLIES	0	MONTHS	\$ 55.00	\$ -
PROGRESSIVE CLEAN UP	0	MHRS	\$ 15.00	\$ -
CLEAN UP MATERIALS AND SUPPLIES	0	LS	\$ -	\$ -
FINAL CLEANING	0	LS	\$ 1,000.00	\$ -
TRASH DISPOSAL	1	TRIPS	\$ 325.00	\$ 325.00
PROJECT PICKUP TRUCK	1.5	MONTHS	\$ 1,325.00	\$ 1,987.50
CLOSE OUTS, AS-BUILTS	0.5	EA	\$ 300.00	\$ 150.00
MISC. SMALL TOOLS AND SUPPLIES	0	LS	\$ -	\$ -
EQUIPMENT / TOOL RENTAL	0	LS	\$ -	\$ -
EQUIPMENT FUEL	0	MONTHS	\$ -	\$ -
PROJECT WARRANTY	0	LS	\$ 575.00	\$ -
TOTAL GENERAL REQUIREMENTS				\$ 19,042.50



GENERAL ESTIMATE

PROJECT: FRIENDSHIP PARK TENNIS COURT REPLACEMENT _____
TRADE: SURVEY _____
DATE: 06/30/16 _____

PAGE: _____
BY: RW _____

COST CODE	DESCRIPTION	QTY	UNITS	UNIT COST LABOR	TOTAL LABOR	UNIT COST MATERIAL	TOTAL MATERIAL	UNIT COST EQUIPMENT	TOTAL EQUIPMENT	UNIT COST SUB.	TOTAL SUB.	TOTAL COST
	TOTAL FROM PREVIOUS PAGE											
	SURVEY	1	LS		0.00		0.00		0.00	3,200.00	3,200.00	3,200.00
	TOTAL THIS SHEET											3,200.00

GENERAL ESTIMATE

PROJECT: FRIENDSHIP PARK TENNIS COURT REPLACEMENT
 TRADE: EARTHWORK
 DATE: 06/30/16

PAGE: _____
 BY: RW

COST CODE	DESCRIPTION	QTY	UNITS	UNIT COST LABOR	TOTAL LABOR	UNIT COST MATERIAL	TOTAL MATERIAL	UNIT COST EQUIPMENT	TOTAL EQUIPMENT	UNIT COST SUB.	TOTAL SUB.	TOTAL COST
	TOTAL FROM PREVIOUS PAGE											
	DEMOLISH EXISTING COURTS AND FENCING	16,000	SF		0.00		0.00		0.00	1.00	16,000.00	16,000.00
	SCARIFY AND RECOMPACT - NO IMPORT / EXPORT	16,000	SF							0.50	8,000.00	8,000.00
	TOTAL THIS SHEET											24,000.00

GENERAL ESTIMATE

PROJECT: FRIENDSHIP PARK TENNIS COURT REPLACEMENT _____
TRADE: CONCRETE _____
DATE: 06/30/16 _____

PAGE: _____
BY: RW _____

COST CODE	DESCRIPTION	QTY	UNITS	UNIT COST LABOR	TOTAL LABOR	UNIT COST MATERIAL	TOTAL MATERIAL	UNIT COST EQUIPMENT	TOTAL EQUIPMENT	UNIT COST SUB.	TOTAL SUB.	TOTAL COST
	TOTAL FROM PREVIOUS PAGE											
	POST TENSION COURTS	1	LS		0.00		0.00		0.00	117,250.00	117,250.00	117,250.00
	TENNIS EQUIPMENT											
	FENCING											
	SURFACING											
	SIDEWALK REPLACEMENT (ACCESS)											
	ENGINEERING											
	TESTING AND INSPECTIONS											
	TOTAL THIS SHEET											117,250.00



GENERAL ESTIMATE

PROJECT: FRIENDSHIP PARK TENNIS COURT REPLACEMENT
TRADE: CAULKING
DATE: 06/30/16

PAGE: _____
BY: RW

COST CODE	DESCRIPTION	QTY	UNITS	UNIT COST LABOR	TOTAL LABOR	UNIT COST MATERIAL	TOTAL MATERIAL	UNIT COST EQUIPMENT	TOTAL EQUIPMENT	UNIT COST SUB.	TOTAL SUB.	TOTAL COST
	TOTAL FROM PREVIOUS PAGE				0.00		0.00		0.00		1,300.00	1,300.00
	CAULKING	1	LS		0.00		0.00		0.00		1,300.00	1,300.00
	TOTAL THIS SHEET				0.00		0.00		0.00		1,300.00	1,300.00



CITY COUNCIL AGENDA

SUBJECT:

Subrecipient Agreement - Trellis for First-Time Homebuyer Assistance Program Administration

MEETING DATE:

8/8/2016

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

Staff request the City Council will approve an agreement with Trellis in the amount of \$300,000 to conduct a First-Time Homebuyer Assistance Program in Avondale, and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

BACKGROUND:

Each year, the City receives an annual allocation of HOME funds through our membership in the Maricopa HOME Consortium. The purpose of the HOME Program is to create affordable housing opportunities for low-income persons. Through the Annual Action Plan, the City assigns these funds to specific activities that are consistent with the goals of the 2015-2019 Consolidated Plan.

The primary goal of this Plan is to, “preserve and expand affordable housing inventory.” Within this goal, the Plan specifies that the City will operate a First-Time Homebuyer Program, as well as two home repair programs. The purpose of each of these programs is to improve the City’s housing stock, stabilize neighborhoods, and enhance quality of life for low and moderate income residents.

Through this contract, Trellis will operate a program to assist low and moderate income families with the purchase of their first home. The program will provide qualified homebuyers with homebuyer education, down payments and closing costs. The Neighborhood and Family Services Department (NFSD) in conjunction with the Finance and Budget Department conducted a Request for Proposals process in June and July.

One proposal was received from Trellis, a Phoenix nonprofit with forty years of experience in providing affordable housing in Greater Phoenix. Staff evaluation indicated that the Trellis proposal met all of the proposal criteria with respect to qualifications, experience, approach, agency availability and costs.

DISCUSSION:

All assisted homebuyers will be required to complete a comprehensive eight-hour homebuyer education curriculum and obtain standard 30-year fixed rate mortgages which do not exceed 33/41 lending ratios (33% of income for house payment and 41% of income for total debt). Buyers must also contribute the greater of 1% of the purchase price, or \$1,000, from non-gifted funds.

Trellis will provide extensive one-on-one counseling for each buyer to help ensure their long-term success. The program will provide up to \$30,000 for down payment and/or closing costs. The actual amount of assistance provided will vary based on each participant’s need, but will not exceed

this amount. The participant's need will be determined by examining the first lender's underwriting to calculate the applicant's maximum affordable loan. The City will provide gap assistance based on each homebuyer's maximum sustainable first mortgage. Based on this funding model, it is estimated that the Budget will allow funding for at least 10 homebuyers. Monetary assistance will be provided in the form of non-amortizing loans that must be repaid when the home is sold or is no longer the borrower's primary residence. Recaptured loan funds will be used to assist subsequent eligible buyers in the future.

Trellis will conduct extensive marketing for the program in conjunction with the City of Avondale.

BUDGET IMPACT:

There is currently \$300,000 allocated for this activity between HOME allocation (\$159,582.84), HOME match (\$39,895.71) and NSP3 program income (\$100,521.45). HOME funds and match are allocated in Fund 205, and NSP3 program income funds are allocated in Fund 209.

The City's HOME match funds (\$39,895.71 from above) are appropriated in fund 205 division 7575 line items 6180 (with appropriate fiscal year project codes) and the Homebuyers' Assistance funds (\$159,582.84 from above) are appropriated in fund 205 division 7566. The Homebuyers Assistance funds are located in fund 205 division 7566 line item 6197 (with appropriate fiscal year project codes). NSP3 Program Income expenditures (\$100,521.45 from above) are appropriated in line item 209-7599-99-6187. The line items have sufficient balances for the City to participate in this program.

Should additional program income become available during the term of the agreement, the City will spend these funds prior to regular program funds. Program income funds do not require a local match.

RECOMMENDATION:

Staff recommends that City Council approve a Subrecipient Agreement with Trellis in the amount of \$300,000 to conduct a First-Time Homebuyer Assistance Program in Avondale and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

[Subrecipient Agreement - Trellis](#)

SUBRECIPIENT AGREEMENT – TRELIS
FIRST TIME HOMEBUYER PROGRAM ADMINISTRATOR

DUE TO ITS SIZE, THIS DOCUMENT
HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/38785>



CITY COUNCIL AGENDA

SUBJECT:

Cooperative Purchasing Agreement - Bibliotheca, LLC for Library Automation

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Kirk Haines, Parks, Recreation and Libraries Director (623) 333-2411**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is requesting that the City Council approve an Agreement with Bibliotheca for the purchase and servicing of the City of Avondale libraries automation systems in the amount of \$35,838.79. City Council is also asked to approve a five-year service and licensing agreement for an aggregate not to exceed \$59,465.63. Staff requests that the City Council authorize the Mayor or the City Manager and City Clerk to execute the applicable contract documents.

BACKGROUND:

On November 6th, 2006 the City of Avondale purchased automation equipment from 3M Library Systems (now Bibliotheca) that is still being utilized. At this point, the hardware and software has become outdated and is approaching end of life support from the vendor. Therefore, it is necessary to replace the equipment with newer technology to allow for improved customer service and more efficient operations.

DISCUSSION:

The automation technology equipment provides library patrons with the capability to check out library materials at multiple self-checkout kiosks without staff intervention. This capability increases patron privacy and convenience and increases staff efficiency. This request is to replace only the self-checkout kiosk computers, monitors, and scanners; replace the kiosk troughs with flat surfaces; and add check out pads at the staff workstations for a consistent workflow. This new technology allows patrons to checkout multiple books with greatly improved accuracy and efficiency.

This is only a partial replacement of the automation equipment that is needed at this time. The remaining equipment is still functional and staff will continue to assess its productivity, efficiency and serviceability.

BUDGET IMPACT:

All funds for the initial hardware purchase from Bibliotheca are budgeted in the FY 2016 - 2017 operating budget:

101-8100-00-6283 - Sam Garcia Western Avenue Library \$10,177.90

101-8105-00-6283 - Avondale Civic Center Library \$25,660.89

Funds for the five-year service and licensing agreement have been budgeted into the library administration account.

RECOMMENDATION:

Staff recommends that the City Council approve a Cooperative Purchasing Agreement with Bibliotheca, LLC for the purchase and servicing of the the city's libraries automation systems in the amount of \$35,838.79 for the first year and a maximum aggregate amount of \$95,304.42 over the five year term of the contract, and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:**Description**

[CPA - Bibliotheca, LLC](#)

COOPERATIVE PURCHASING AGREEMENT – BIBLIOTHECA, LLC

DUE TO ITS SIZE, THIS DOCUMENT
HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/38765>



CITY COUNCIL AGENDA

SUBJECT: Cooperative Purchasing Agreement - Crafcoc, Inc. 8/8/2016
MEETING DATE:

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 Crafcoc, Inc. to purchase asphalt crack sealing compound for a maximum aggregate amount not to exceed \$200,000, 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 Tempe entered into a contract with Crafcoc, Inc. to supply asphalt crack sealing compound. The initial term of the contract is in effect until August 2017 and provides for (3) one-year renewal options. The City of Tempe contract contains cooperative use language which extends the use of the contracts to municipalities.

DISCUSSION:

In order to properly maintain City streets, staff must be able to purchase asphalt crack sealing compound. This compound prevents potholes, seals cracks, and prevents moisture from entering the sub-surface on the City roadways. Crack sealing helps to prolong pavement life and allows for a safe commute for residents and visitors. Crafcoc, Inc. is a current registered vendor with the City and has satisfactorily supplied the City with asphalt crack sealing compounds in the past.

BUDGET IMPACT:

Staff estimates \$50,000 in expenditures per fiscal year, for a cumulative total over the contract period not to exceed \$200,000, subject to annual budget authority.

Funding is available in the approved City budget. Expenditures are typically charged to 304-1020-00-8420 (Roadway Improvements).

RECOMMENDATION:

Staff recommends that the City Council approve a Cooperative Purchasing Agreement with Crafcoc, Inc. for the purchase of asphalt crack sealing compound in an amount not to exceed \$200,000 and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

[CPA - Crafcoc, Inc.](#)

COOPERATIVE PURCHASING AGREEMENT – CRAFCO, INC.

DUE TO ITS SIZE, THIS DOCUMENT
HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/38764>



CITY COUNCIL AGENDA

SUBJECT:

Cooperative Purchasing Agreement - PFM Asset Management LLC

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Abbe Yacoben, Finance and Budget Director (623) 333-2011**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff requests that the City Council approve a Cooperative Purchasing Agreement with PFM Asset Management to manage the City's portfolio of government securities in an amount of approximately \$54,000 and to authorize the Mayor or City Manager and City Clerk to execute the appropriate documents.

BACKGROUND:

The Finance and Budget Department is requesting to change investment firms for the City's portfolio of government securities. The City's previous firm, Mutual Securities, informed staff that they will no longer have a presence in the State of Arizona so they will discontinue servicing the City. The Finance and Budget Department proposes to allow PFM Asset Management to manage the portfolio going forward. Staff proposes to utilize the Cooperative Purchasing Agreement with the existing contract between the City of Mesa (Contract #2015006) and PFM Asset Management for two consecutive one year periods where PFM's fee is nine basis points per year.

The Finance and Budget Department discussed this new service model with Council during the April budget work sessions. The Department proposed and received a supplemental appropriation request for \$45,000 (in the general fund) to be offset by the increase in investment income due to recognizing the full income from investments (vs the prior model where the broker fee was netted from the City's investment income).

DISCUSSION:

The City's current investment firm, Mutual Securities will no longer service clients in Arizona. The City must contract with another investment firm to manage its portfolio of governmental securities. PFM's fee for management is nine basis points up to \$100 million in holdings. Staff proposes to utilize an existing cooperative contract between the City of Mesa and PFM Asset Management. This contract extends for two consecutive one year periods. The City has \$60 million in government securities that require management at this time.

BUDGET IMPACT:

PFM Asset Management's fee is nine basis points per year for the first \$100 million of assets held. The City's total fee impact is predicted to be \$54,000; this will be split between 48% governmental funds at \$25,920 and 52% proprietary funds at \$28,080.

RECOMMENDATION:

Staff recommends that the City Council City Council approve a Cooperative Purchasing Agreement with PFM Asset Management LLC to manage the City's portfolio of government securities in an amount of approximately \$54,000 and to authorize the Mayor or City Manager and City Clerk to execute the appropriate documents.

ATTACHMENTS:**Description**

[CPA - PFM Asset Management LLC](#)

**COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PFM ASSET MANAGEMENT LLC**

THIS COOPERATIVE PURCHASING AGREEMENT (this “Agreement”) is entered into as of August 8, 2016, between the City of Avondale, an Arizona municipal corporation (the “City”), and PFM Asset Management LLC, a Delaware limited liability company (the “Contractor”).

RECITALS

A. After a competitive procurement process, the City of Mesa (“Mesa”) entered into Contract No. 2015006, dated August 1, 2015, as amended by Contract Amendment No. 1, dated November 1, 2015 (collectively, the “Mesa Contract”), for the Contractor to provide investment management services. A copy of the Mesa 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 services under the Mesa Contract, at its discretion and with the agreement of the awarded Contractor, and so long as the Mesa Contract permits its cooperative use by other public entities, including the City.

C. The City and the Contractor desire to enter into this Agreement for the purpose of (i) acknowledging their cooperative contractual relationship under the Mesa Contract and this Agreement, (ii) establishing the terms and conditions by which the Contractor may provide the City with investment management services, as more particularly set forth in Section 2 below (the “Services”) and (iii) setting the maximum aggregate amount to be expended pursuant to this Agreement related to the Services.

AGREEMENT

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

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until July 31, 2017 (the “Initial Term”), unless terminated as otherwise provided in this Agreement or the Mesa Contract. After the expiration of the Initial Term, this Agreement may be renewed for up to three successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) the term of the Mesa Contract has 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 Mesa Contract), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Contractor's failure to seek a renewal of this Agreement shall cause 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. Scope of Work. Contractor shall provide the Services under the terms and conditions of the Mesa Contract with the investment policies provided by the City.

3. Compensation. The City shall pay Contractor for the Initial Term and for each subsequent Renewal Term, if any, an annual aggregate amount not to exceed \$75,000.00 for Services at the unit rates set forth in the Mesa Contract:

A. Nine basis points (.09%) per year on the first \$100 million of assets under management.

B. Six basis points (.06%) per year on assets between \$100 million and \$200 million under management.

C. Four basis points (.04%) per year on assets between \$200 million and \$300 million under management.

D. Three basis points (.03%) per year on assets that exceed \$300 million under management.

The maximum aggregate amount for this Agreement, including all Renewal Terms, shall not exceed \$300,000.00.

4. Payments. The City shall pay the Contractor monthly, based upon Services performed and completed to date, and upon submission and approval of invoices. Each invoice shall contain a reference to this Agreement and the Mesa Contract. The invoice statement shall include a record of work performed in sufficient detail to justify payment. Additionally, invoices submitted without referencing this Agreement and the Mesa Contract will be subject to rejection and may be returned.

5. Records and Audit Rights. To ensure that the Contractor and its subcontractors are complying with the warranty under Section 6 below, Contractor's and its subcontractors' books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on the pricing schedule outlined in the Mesa contract and (ii) evaluation of the Contractor's and its

subcontractors' compliance with the Arizona employer sanctions laws referenced in Section 6 below. To the extent necessary for the City to audit Records as set forth in this Section, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this Section by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

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

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

8. 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.

9. 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 Contractor informed as to the availability of funds for this Agreement and shall provide prompt written notice to Contractor in the event of any non-appropriation. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Contractor 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 other than a failure to provide information of the availability of funds hereunder or to provide notice of an event of non-appropriation in accordance with the provisions hereof.

10. Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Mesa 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 Mesa 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 Work 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 Mesa Contract shall not alter such terms and conditions or relieve Contractor from, nor be construed or deemed a waiver of, its requirements and obligations in the performance of this Agreement.

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

12. Indemnification; Insurance. In addition to and in no way limiting the provisions set forth in Section 11 above, the City shall be afforded all of the insurance coverage and indemnifications afforded to Mesa to the extent provided under the Mesa 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 Contractor's obligation to provide the indemnification and insurance. In any event, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement.

13. 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 (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) 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

If to Contractor: PFM Asset Management LLC
1820 East Ray Road
Chandler, Arizona 85225
Attn: Luke Schneider

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 (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. 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.

[SIGNATURES ON FOLLOWING PAGES]

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

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

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]

EXHIBIT A
TO
COOPERATIVE PURCHASING AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
PFM ASSET MANAGEMENT LLC

[Mesa Contract]

See following pages.



CONTRACT AMENDMENT

Contract Number: 2015006 Contract Title: Investment Management Services

Amendment Number: 1

Description of Change: Please note the following revisions. PFM Asset Management, LLC. does not accept purchasing cards as payment.

Section 3.4 Availability of Funds. Add: The City will give Contractor prompt notification of any event of non-appropriation.

Section 6.6 Insurance. Contractor's professional liability insurance policy does not contain a waiver of subrogation provision. The City agrees to waive this requirement.

Section 6.8 c Insurance. Contractor does not have any company owned autos, therefore this does not apply.

S1. Independent Contractor. Revise as follows: It is expressly understood that the relationship of Contractor to the City is that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees, including but not limited to health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose (except with respect to the purchase and sale of portfolio securities), including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.

S24. Indemnification/Liability, paragraph (a). Revise as follows: To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witness' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the wrongful performance, whether negligent or intentional, of the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.

Current contract amount: \$201,000
Change Amount: [] Increase [] Decrease [X] No Change
New contract amount: \$201,000

Effective Date of Change: November 1, 2015

Acceptance: On behalf of the undersigned Contractor, I have given careful consideration to this Contract Amendment and hereby agree to the change(s) and that except as amended herein, all provisions of the Contract remain in full force and effect.

PFM Asset Management LLC:

[Signature]
Signature

Larven Brant
Printed Name 11/1/15
Date

(602) 377-9750
Phone Number

City of Mesa:

[Signature]
Digitally signed by Edward Quedens
DN: cn=Edward Quedens, o=City of Mesa, Arizona, ou=Business Services Department, email=ed.quedens@mesaaz.gov, c=US
Date: 2015.10.27 14:00:27 -07'00'

City Manager Designee Date

CONTRACT AMENDMENT – ATTACHMENT 1

Exhibit A - Scope of Work. Add:

Investment Advisor Provisions.

(a) Services of Consultant. The City hereby engages Consultant (also referred to in this Agreement as "Contractor") to serve as investment advisor under the terms of this Agreement with respect to the funds described in this Agreement and such other funds as the City may from time to time assign by written notice to Consultant (collectively the "Managed Funds"), and Consultant accepts such appointment. In connection therewith, Consultant will provide investment research and supervision of the Managed Funds investments and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the Managed Funds assets. Consultant shall continuously monitor investment opportunities and evaluate investments of the Managed Funds. Consultant shall furnish the City with statistical information and reports with respect to investments of the Managed Funds. Consultant shall place all orders for the purchase, sale, loan or exchange of portfolio securities for the City's account with brokers or dealers recommended by Consultant and/or the City, and to that end Consultant is authorized as agent of the City to give instructions to the custodian designated by the City (the "Custodian") as to deliveries of securities and payments of cash for the account of the City. In connection with the selection of such brokers and dealers and the placing of such orders, Consultant is directed to seek for the City the most favorable execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to Consultant by such brokers and dealers. The Custodian shall have custody of cash, assets and securities of the City. Consultant shall not take possession of or act as custodian for the cash, securities or other assets of the City and shall have no responsibility in connection therewith. Authorized investments shall include only those investments which are currently authorized by the state investment statutes and the applicable covenants and as supplemented by such other written instructions as may from time to time be provided by the City to Consultant. Consultant shall be entitled to rely upon the City's written advice with respect to anticipated drawdowns of Managed Funds. Consultant will observe the instructions of the City with respect to broker/dealers who are approved to execute transactions involving the Managed Funds and in the absence of such instructions will engage broker/dealers which Consultant reasonably believes to be reputable, qualified and financially sound.

(b) Pool Compensation. Assets invested by Consultant under the terms of this Agreement may from time to time be invested in (i) a money market mutual fund managed by Consultant or (ii) a local government investment pool managed by Consultant (either, a "Pool") or in individual securities. Average daily net assets subject to the fees described in this Agreement shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for Consultant and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

(c) Other Compensation. If and to the extent that the City shall request Consultant to render services other than those to be rendered by Consultant under this Agreement, such additional services shall be compensated separately on terms to be agreed upon between Consultant and the City.

(d) Expenses. Consultant shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel for managing the Managed Funds. Except as expressly provided otherwise herein, the City shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of the City's independent auditors and legal counsel, if any, brokerage and other expenses connected with the execution of portfolio security transactions, insurance premiums, and fees and expenses of the Custodian.

(e) Registered Advisor; Duty of Care. Consultant hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. Consultant shall immediately notify the City if at any time during the term of this Agreement it is not so registered or if its registration is suspended. Consultant agrees to perform its duties and responsibilities under this Agreement with reasonable care. The federal securities laws impose liabilities under certain circumstances on persons who act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which the City may have under any federal securities laws. The City hereby authorizes Consultant to sign I.R.S. Form W-9 on behalf of the City and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Agreement.

(f) Consultants' Other Clients. The City understands that Consultant performs investment advisory services for various other clients which may include investment companies, commingled trust funds and/or individual portfolios. The City agrees that Consultant, in the exercise of its professional judgment, may give advice or take action with respect to any of its other

CONTRACT AMENDMENT – ATTACHMENT 1

clients which may differ from advice given or the timing or nature of action taken with respect to the Managed Funds. Consultant shall not have any obligation to purchase, sell or exchange any security for the Managed Funds solely by reason of the fact that Consultant, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

(g) Disciplinary Actions. Consultant shall promptly give notice to the City if Consultant shall have been found to have violated any state or federal securities law or regulation in any final and un-appealable judgment in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission or any other agency or department of the United States, any registered securities exchange, FINRA, or any regulatory authority of any State based upon the performance of services as an investment advisor.

(h) Books. Consultant shall maintain records of all transactions in the Managed Funds. Consultant shall provide the City with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by Consultant and the City.

(i) Brochure and Brochure Supplement. Consultant warrants that it has delivered to the City prior to the execution of this Agreement Consultant's current Securities and Exchange Commission Form ADV, Part 2A (brochure) and Part 2B (brochure supplement). The City acknowledges receipt of such brochure and brochure supplement prior to the execution of this Agreement.



mesa·az

AGREEMENT PURSUANT TO SOLICITATION

City OF MESA CONTRACT NO. 2015006

City OF MESA, an Arizona municipal corporation ("City")

Department Name:	City of Mesa – Purchasing Department
USPS Address:	P.O. Box 1466 Mesa, AZ 85211-1466
Delivery Address:	20 E. Main St., Suite 400 Mesa, AZ 85201
Attention:	Sharon Brause, Senior Procurement Officer
Telephone:	(480) 644-2815
Facsimile:	(480) 644-2655
Email:	Sharon.Brause@MesaAZ.gov

AND

Company Name:	PFM ASSET MANAGEMENT LLC
USPS Address:	1820 E. Ray Road Chandler, AZ 85225
Delivery Address:	1820 E. Ray Road Chandler, AZ 85225
Attention:	Lauren Brant, Managing Director
Telephone:	(855) 885-9621
Facsimile:	(855) 885-9622
Email:	BrantL@pfm.com

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This Agreement ("Agreement") pursuant to a solicitation is made and entered into this 29th day of July, 2015, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and PFM Asset Management, a(n) LLC ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued **Solicitation Number 2015006** ("Solicitation") on **May 18, 2015** for **INVESTMENT MANAGEMENT SERVICES**, to which Contractor provided a response ("Response"); and
- B. The City selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/ materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. **Term.** This Agreement is for a term of **three (3) years** beginning on **August 1, 2015** and ending on **July 31, 2018**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions agreed upon by the Parties in accordance with this Section 1.
 - 1.1 **Renewal.** On the mutual written agreement of the Parties, the Term may be renewed up to a maximum extension period of **two (2) one (1) year terms**. Any renewal will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes.** Upon the expiration of the initial Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a Contractor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
2. **Scope of Work.** During the Term of the Agreement, Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.

3. Payment.

3.1 **General.** Subject to the provisions of the Agreement, the City will pay Contractor the sum(s) described in **Exhibit B ("Pricing / Fees")** in consideration of Contractor's performance of the Scope of Work during the Term. Contractor acknowledges the City may, at its option and where available: (i) use a MasterCard Procurement Card to place and make payment for orders under the Agreement; and (ii) use the Internet to communicate with Contractor and to place orders as permitted under this Agreement.

3.2 **Invoices.** Payment will be made to Contractor in the manner described in **Exhibit B** following the City's receipt of a properly completed invoice. Any issues regarding billing or invoicing must be directed to the City Department/Division requesting the service or material from the Contractor. A properly completed invoice must contain, at a minimum, all of the following:

- a. Contractor name, address, and contact information;
- b. City billing information;
- c. City contract number as listed on the first page of the Agreement;
- d. Invoice number and date;
- e. Payment terms;
- f. Date of service or deliver;
- g. Description of services provided;
- h. Total amount due.

3.3 **Payment of Funds.** Payment will be made to Contractor by either: (i) Purchase Order when Contract Amount will be paid to Contractor as a one-time payment; (ii) Direct Order off of a Master Agreement when multiple payments totaling the Contract Amount will be made to Contractor; (iii) a MasterCard Procurement Card; or (iv) as otherwise stated in **Exhibit B**.

3.4 **Availability of Funds.**

- a. The City's payment of any funds to Contractor under the Agreement is contingent upon the availability of funds by the City for disbursement as described in the Mesa Standard Terms and Conditions S.21 that is attached to the Agreement as **Exhibit C**. The City is the sole judge and authority as to the availability of funds under the Agreement.
- b. If any action is taken by any state or federal agency, or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations that in any way affect the Agreement, the City may amend, suspend, decrease, or terminate its obligations under the Agreement. The City will provide written notice of the effective date of any suspension, amendment, or termination based upon the availability of funds at least ten (10) days in advance; any payment to Contractor based on such suspension or termination will be paid in accordance with the Mesa Standard Terms and Conditions S.22 that is attached to the Agreement as **Exhibit C**.

3.5 **Disallowed Costs, Overpayment.** If at any time the City determines that a cost for which payment was made to Contractor is a disallowed cost, such as an overpayment or a charge for materials/service not in accordance with the Agreement, the City will notify Contractor in writing of the disallowance; such notice will state the means of correction

which may be, but is not limited to, adjustment of any future claim/invoice submitted by Contractor in the amount of the disallowance, or to require repayment of the disallowed amount by Contractor. Contractor will be provided with the opportunity to respond to the notice.

4. **Cooperative Purchasing.** The City participates in cooperative purchasing with other governmental entities as set forth in the Mesa Standard Terms and Conditions S.38 that is attached to the Agreement as **Exhibit C**. ***If Contractor does not wish to allow access to the Solicitation and the Agreement by other governmental entities for a cooperative purchase, Contractor must have stated so in its Response.*** In the absence of a statement to the contrary in the Response, the Parties agree that it is assumed that Contractor wishes to grant other governmental agencies access to the Solicitation and the Agreement for cooperative purchasing.

5. **Requirements Contract.** Contractor acknowledges and agrees that the Agreement is a requirements contract; the Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the City identifies a need and issues a purchase order or a written notice to proceed. The City reserves the right to cancel purchase orders or a notice to proceed within a reasonable period of time of issuance; any such cancellation will be in writing. Should a purchase order or notice to proceed be canceled, the City agrees to reimburse Contractor for any actual and documented costs incurred by Contractor. The City will not reimburse Contractor for any avoidable costs incurred after receipt of cancellation including, but not limited to, lost profits, shipment of product, or performance of services.

6. **Insurance.** Contractor must obtain and maintain at its expense throughout the Term of the Agreement, at a minimum, the types and amounts of insurance set forth in this Section from insurance companies authorized to do business in the State of Arizona; the insurance must cover all operations and services performed by Contractor under the Agreement. For any insurance required under the Agreement, Contractor will name the City of Mesa, its agents, representatives, officials, volunteers, officers, elected officials, and employees as additional insureds, as evidenced by providing an additional insured endorsement.

6.1 Nothing in this Section 6 limits Contractor's responsibility to the City. The insurance requirements herein are minimum requirements for the Agreement and in no way limit the indemnity promise(s) contained in the Agreement.

6.2 City does not warrant that the minimum limits contained herein are sufficient to protect Contractor and subcontractor(s) from liabilities that might arise out of the performance of the Scope of Work under the Agreement by Contractor, its agents, representatives, employees, or subcontractor(s). Contractor is encouraged to purchase additional insurance as Contractor determines may be necessary.

6.3 Each insurance policy required under the Agreement must be in effect at or prior to the execution of the Agreement and remain in effect for the Term of the Agreement including any warranty periods.

6.4 Prior to the execution of the Agreement, Contractor will provide City with a Certificate of Insurance (using an appropriate ACORD certificate) signed by the issuer with applicable endorsements. The City reserves the right to request additional copies of any or all of

the policies, endorsements, or notices relating thereto that are required under the Agreement.

6.5 When the City requires a Certificate of Insurance to be furnished, Contractor's insurance is primary of all other sources available. When the City is a certificate holder, Contractor agrees that no policy will expire, be canceled, or be materially changed to affect the coverage available without advance written notice to the City.

6.6 The policies required by the Agreement must contain a waiver of transfer rights of recovery (waiver of subrogation) against the City, its agents, representatives, officials, volunteers, officers, elected officials, and employees for any claims arising out of the work of Contractor.

6.7 All insurance certificates and applicable endorsements are subject to review and approval by the City's Risk Manager.

6.8 Types and Amounts of Insurance. Contractor must obtain and retain throughout the term of the Agreement, at a minimum, the following:

a. Worker's compensation insurance in accordance with the provisions of Arizona law. IF CONTRACTOR OPERATES WITH NO EMPLOYEES, CONTRACTOR MUST PROVIDE WRITTEN PROOF TO THE City HE/SHE HAS NO EMPLOYEES. IF EMPLOYEES ARE HIRED DURING THE COURSE OF THIS AGREEMENT, CONTRACTOR MUST PROCURE WORKER'S COMPENSATION IN ACCORDANCE WITH THE PROVISIONS OF ARIZONA LAW.

b. The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$3 million per occurrence/\$5 million aggregate Commercial General Liability insurance, including Contractual Liability. For General Liability insurance, the City of Mesa, their agents, officials, volunteers, officers, elected officials or employees shall be named as additional insured, as evidenced by providing an additional insured endorsement.

c. Automobile liability, bodily injury and property damage with a combined single limit of \$1 million including owned, hired and non-owned autos.

d. The Contractor shall maintain at all times during the term of this contract, a minimum amount of \$1 million per occurrence Professional Liability insurance and/or Errors and Omissions.

e. The Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statute.

7. **Notices.** All notices to be given pursuant to the Agreement will be delivered to the addresses listed on Page 1 of this Agreement. Notice will be delivered pursuant to the requirements set forth the Mesa Standard Terms and Conditions S.40 that is attached to the Agreement as **Exhibit C**.

8. **Representations of Contractor.** To the best of Contractor's knowledge, Contractor agrees that:
- a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of the Agreement or with Contractor's undertaking of the relationship with the City;
 - b. Performance of the services called for by the Agreement do not and will not violate any applicable law, rule, regulation, or any proprietary or other right of any third party;
 - c. Contractor will not use in the performance of Contractor's responsibilities under the Agreement any proprietary information or trade secret of a former employer of its employees (other than City, if applicable); and
 - d. Contractor has not entered into and will not enter into any agreement, whether oral or written, in conflict with the Agreement.
9. **Mesa Standard Terms and Conditions.** Exhibit C to the Agreement is the Mesa Standard Terms and Conditions as modified by the Parties, which are incorporated by reference into the Agreement as though fully set forth herein. In the event of any inconsistency between the terms of the Agreement and the Mesa Standard Terms and Conditions, the language of the Agreement will control. The Parties or a Party are referred to as a "party" or "parties" in the Mesa Standard Terms and Conditions. The Term is referred to as the "term" in the Mesa Standard Terms and Conditions.
10. **Counterparts and Facsimile or Electronic Signatures.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original and all of which, taken together, will constitute one agreement. A facsimile or other electronically delivered signature to the Agreement will be deemed an original and binding upon the Party against whom enforcement is sought.
11. **Incorporation of Recitals and Exhibits.** All Recitals and Exhibits to the Agreement are hereby incorporated by reference into the Agreement as if written out and included herein. In the event of any inconsistency between the terms of the body of the Agreement and the Exhibits, the language of the Agreement will control.
12. **Attorneys' Fees.** The prevailing Party in any litigation arising out of the Agreement will be entitled to the recovery of its reasonable attorney's fees, court costs, and other litigation related costs and fees from the other Party.
13. **Additional Acts.** The Parties agree to execute promptly such other documents and to perform such other acts as may be reasonably necessary to carry out the purpose and intent of the Agreement.

14. **Headings.** The headings of the Agreement are for reference only and will not limit or define the meaning of any provision of the Agreement.

By executing below, each Party acknowledges that it understands, approves, and accepts all of the terms of the Agreement and the attached exhibits.

PFM ASSET MANAGEMENT, LLC.

Signature: 
Title: Managing Director
Printed Name: Lauren L. Brant

City of Mesa, an Arizona municipal corporation

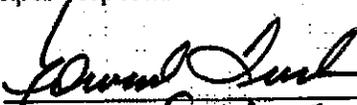
Signature: 
Title: Business Services Director
Printed Name: Edward Quendens

Exhibit List

- A. Scope of Work
- B. Pricing / Fees
- C. Mesa Standard Terms & Conditions

EXHIBIT A SCOPE OF WORK

1. **PROJECT MISSION.** The City of Mesa is dedicated to providing superior services to its customers in order to improve the quality of life for Mesa residents, businesses and visitors. The City is looking for Contractors who share that dedication and will help the City meet that goal.
2. **BACKGROUND.** The size of the City's investment portfolio is approximately \$336 million. A copy of the current investment policy is Appendix A attached.

The City expects its Investment Firm to be highly experienced, a leader and innovator in the management of investments, and be able to provide comprehensive investment advisory and portfolio accounting services.

3. **SCOPE OF WORK.** Specific responsibilities of the Investment Firm shall include, but not be limited to the following:

- a) The Firm, and its affiliates, are restricted from selling to City, or buying from the City, any securities to or from that Firm's own inventory or account. The Investment Advisor shall act solely in a fiduciary capacity and shall not receive any fee or compensation based upon the purchase or sale of securities but, rather, the Investment Advisor will be compensated pursuant to the provision of its contract with the City.
- b) Manage, on a daily basis, the City's separate investment portfolios pursuant to the specific, stated investment objectives. Place all orders for the purchase and sale of securities, communicate settlement information to City's staff and coordinate security settlement.
- c) Serve as a general resource to the City's staff for information, advice and training regarding investments.
- d) Work with City staff to understand cash flow projections to ensure that the investment strategy is consistent with City's liquidity requirements.
- e) Provide monthly statements with all the information required by Governmental Accounting Standards Board (GASB). These reports must include a mark-to-market valuation. The selected investment manager must maintain accurate reports of investments including the diversity of investments and compliance with applicable investment policies of City and Arizona Revised Statutes.
- f) Provide monthly and quarterly investment reports including a description of market conditions; investment strategies employed performance and suggested changes to investment strategy. The performance numbers shall be presented as required by the CFA Institute's "GIPS."
- g) The Investment Advisor WILL NOT provide custodial services or security safekeeping.

4. **MINIMUM QUALIFICATIONS.** To be considered by the City, Investment Firm must:
 - a) Currently manage at least \$10 billion of domestic fixed income assets for public entities. Assets for which periodic (daily, monthly or quarterly) advice is provided should be excluded from the calculation of funds under management. As of March 31, 2015, PFM Asset Management LLC ("PFMAM") had \$90.1 billion in total fixed-income assets, including \$51.6 billion in discretionary assets under management and \$38.5 billion in non-discretionary assets under advisement.¹

¹Includes assets for non-public entities; however, the vast majority are public entities.

EXHIBIT A
SCOPE OF WORK

- b) Manage a minimum of twenty (20) portfolios comprising local agency assets. As of March 31, 2015, PFMAM managed 980 portfolios for local agencies, including 22 portfolios comprising local agency assets in Arizona alone.
- c) Firm must be familiar with all applicable statutes with regard to qualified investments for public entities. As of March 31, 2015, PFMAM managed 980 portfolios for local agencies, including 22 portfolios comprising local agency assets in Arizona alone.
- d) Be registered with the Securities and Exchange Commission under the Investment Advisor's Act of 1940. PFMAM is an SEC-registered investment advisor under the Investment Advisers Act of 1940 (the "Act").
- e) Be financially solvent and appropriately capitalized to be able to provide service for the duration of the contract. As demonstrated in the audited financial statements of our holding company, PFMAM is financially solvent and appropriately capitalized to provide investment advisory services to the City of Mesa (the "City"). The PFM Group of companies has been consistently profitable during its history, and we expect all components to be profitable again this year.
- f) Provide verification of Errors & Omissions insurance coverage of at least \$1 million. PFMAM's certificates of insurance are included.
- g) Adhere to the Code of Professional and Ethical Standards as described by the CFA Institute. We adhere to national industry standards of professional and ethical codes of conduct, maintaining an internal Code of Ethics (the "Code") in accordance with SEC Rule 204A-1 promulgated under the Act. Those employees who hold the Chartered Financial Analyst ("CFA") designation are subject to the Professional and Ethical Standards of the CFA Institute.

5. ASSETS UNDER MANAGEMENT. Firm must:

- a) Provide the total dollar amount and percentage managed (exclude accounts for which FIRM's service is providing periodic oversight or advice) for each of the following categories: public agency (excluding retirement funds), corporations, and other.

**EXHIBIT A
SCOPE OF WORK**

<i>Type of Client</i>	<i>Amount Managed (\$ Billions) as of 3/31/15</i>	<i>Percent by Market Value</i>
Public Agencies*	\$49,097,643,985	87%
Retirement Funds (Pension/Other Post-Employment Benefits ("OPEB"))	\$3,169,674,166	6%
Non-Profit Organizations	\$3,108,529,780	6%
Corporations**	\$397,706,547	0%
High Net-Worth Individuals	N/A	
Other***	\$452,647,420	1%
Total	\$56,226,201,898	100%

*Includes pooled assets.

** Includes healthcare and self-insurance entities.

***Includes union, insurance, and education-related entities.

- b) For portfolios whose durations exceed one (1) year, provide the percentage of assets under management for FIRM's latest reporting period using the table below.

Security Type	Amount (%)
U.S. Treasury Securities	43.6%
Federal Obligations	30.3%
Corporate	
▪ AAA-AA	8.9%
▪ A	6.9%
▪ BBB*	0.1%
Other**	10.2%

* Allocations are based on ratings by Standard & Poor's. The securities comprising the "Corporate BBB or lower" category carry a rating of A- or higher by either Moody's Investor Services or Fitch Ratings.

** Includes commercial paper, negotiable certificates of deposit ("NCD"), asset-backed securities ("ABS"), CD's, municipal obligations, agency mortgage-backed securities ("MBS"), and supranationals. As of March 31, 2015.

- c) Has FIRM ever purchased a security for a client that was downgraded below BBB- during the period it was held? If yes, please list the security(ies), its lowest rating while held by a client, and FIRM's recommendation to the client for addressing the downgrade. No.
- d) Has FIRM ever purchased a security for a client that defaulted while it was held in their portfolio? If yes, please list the security(ies) and how the Firm addressed the default. No.

EXHIBIT A SCOPE OF WORK

With more than \$51.6 billion in fixed-income assets under management and a strong long-term management track record, PFMAM is a leading provider of independent investment advisory services to public entities, like the City, and other similar institutional investors such as counties, special districts, and higher education entities.

Sector and State-Focused Assets Under Management Experience As of March 31, 2015

Cities Across the Country	Arizona Public Entities
\$9.7 billion in investment management services	\$2.1 billion in investment management services

PFMAM specializes in managing the short- and intermediate-term, fixed-income assets of public agencies. We have consistently achieved our clients' objectives, and we attribute our success to the following:

- Our focus on the short/intermediate market and on public funds management;
- Communication with clients;
- Understanding of our clients' investment programs, including cash flows and risk tolerances;
- Our ability to assess and act quickly to market innovations;
- The breadth of our market research and competitive shopping;
- Our proprietary, customized analytic tools;
- Ability to restructure a portfolio when market opportunities arise or client cash needs change; and
- Experience of our professionals.

City of Mesa Specific Experience

Inherent in our investment management approach is the belief that each investment program should be built to meet the unique challenges facing an individual entity. A hallmark of our relationship with the City over the last five years has been constant communication with staff to ensure that the City's strategy is tailored to meet both its very specific cash flow requirements and to maximize investment opportunities. The market environment since 2010 has been particularly challenging, and we have been proactive in evaluating longer-term opportunities while being mindful of potentially higher rates. Below are some of the ways we have worked closely with the City to add value to its investment program:

EXHIBIT A
SCOPE OF WORK

- Performed extensive and ongoing cash flow analyses to identify "core" funds to extend the average maturity of the portfolio and seek to generate significantly higher returns on balances that are not needed for near-term liquidity.
- Consistent returns for the City through active portfolio management. Since 2010, the portfolio has generated approximately \$5,142,330² in earnings net-of-fees, while generating performance in-line with the established One- to Three-year Treasury Index total return benchmark.
- Developed a customized cash flow model, monthly Investment Committee report, and quarterly Council report.
- Worked with the City to update guidelines for the portfolio to mirror Arizona Revised Statutes.
- Facilitated the Request for Proposal ("RFP") process to rebid the City's banking relationship in 2014.

PFMAM has 196 professionals, as of March 31, 2015, who are dedicated to actively managing and supporting the management of \$56.2 billion in fixed-income operating funds, capital funds and reserves, and bond proceeds primarily for public agencies. The following table provides a breakdown of PFMAM's professionals by classification:

Group	Employees
Client Management	106
Trading/Portfolio Management/Investment Research	25
Compliance/Legal	7
Accounting	23
Communications/Research	8
Operations	22
Administration Staff	5
Total	196

PFMAM is an SEC-registered investment advisor under the Investment Advisers Act of 1940.

PFMAM does not act as a broker or primary securities dealer, nor do they receive any compensation for client transactions other than the direct management fee paid by clients. PFMAM does not accept soft dollar arrangements. PFMAM does have a subsidiary that is a limited-purpose broker/dealer. They do not trade for individual client accounts through this broker/dealer or receive any commissions through this subsidiary and the broker/dealer holds no securities in inventory. This subsidiary would have no role in their management of the City's portfolio.

They adhere to applicable national industry standards of professional and ethical codes of conduct, maintaining an internal Code in accordance with SEC Rule 204A-1 under the Act.

² Earnings represent accrual earnings net-of-fees billed to the City.

EXHIBIT A SCOPE OF WORK

Many of PFMAM's investment personnel currently hold or are pursuing the CFA designation. As such, they are subject to both the CFA Institute's Code of Professional and Ethical Standards as well as PFMAM's standards of ethical and professional conduct. PFMAM's formal internal Code embodies common principles of integrity, care, and professionalism and is applicable to all of our employees. Every employee is expected to maintain the highest ethical standards, to embody a business culture that supports actions based on what is right rather than on what is expedient, to deal fairly with customers and one another, to protect confidential information, and to seek guidance about ethical questions. More specifically, with respect to advisory activities, the Code requires that whenever our personnel act in a fiduciary capacity, we consistently put the client's interest ahead of the firm's. The Code requires that we disclose actual and potential meaningful conflicts of interest and will manage actual conflicts in accordance with applicable regulatory and legal standards. Their Compliance Group monitors and audits compliance with the requirements set forth in their Code of Ethics.

PFMAM will continue to offer services that meet and exceed all of the requirements listed in the City's Scope of Work. As a resource to the City on all investment-related matters, they will continue to provide investment policy guidance, proactive market analysis, active portfolio management, detailed reporting on investments and compliance, ongoing communications from senior strategists, and staff training. Key ways they have enhanced the City's portfolio include: 1) **safeguarding the City's assets** at all times, 2) **developing an investment strategy** to help the City optimize the investment of its liquid and core funds, 3) providing an **extensive cash flow analysis** on a monthly basis to optimize short- and long-term investments, 4) seeking to **enhance returns** for the City through active portfolio management, and 5) performing administrative and reporting functions for the portfolio to **free up staff time** to focus on other projects.

PFMAM will continue to work closely with the City to formulate and implement specific investment strategies to accommodate the City's diverse capital needs, such as the economic, community, and infrastructure initiatives outlined in the City's "This is My Mesa: Mesa 2040 General Plan" and provide liquidity to meet on-going obligations and debt service payments. Additionally, they will continue to manage the intricate and time-consuming trade execution process from competitively shopping broker inventories to arranging settlement of securities with the custody bank and generating the documentation for the City's recordkeeping so that City staff remains free to manage other responsibilities. There will be no lag time in implementing any changes to the investment strategy. PFMAM will continue to provide informational resources to the City's staff, hold monthly investment meetings, attend Council meetings as requested, and maintain frequent day-to-day communication.

PFMAM's investment advisory approach would continue to emphasize a close working relationship with the City, supported by PFMAM's breadth of resources, including experienced portfolio managers, dedicated fixed-income research analysts, and state-of-the-art trading and accounting systems. Outlined below is our approach to continue providing the City's Scope of Work.

**EXHIBIT B
PRICING / FEES**

In acknowledgement of the significant growth of the City's investment program from \$25 million to \$335 million over the last five years, PFMAM proposes the following fee schedule with additional breakpoints at the higher asset tiers.

- **9 basis points (0.09%)** per year on the first \$100 million of assets under management.
- **6 basis points (0.06%)** per year on assets between \$100 million and \$200 million under management.
- **4 basis points (0.04%)** per year on assets between \$200 million and \$300 million under management.
- **3 basis points (0.03%)** per year on assets that exceed \$300 million under management.

The program has advanced over the last five years both in size and complexity through the partnership between the City and PFMAM. PFMAM believes that the proposed fee schedule recognizes both the City's trust and commitment as well as the unique quantitative and qualitative resources that PFMAM brings to the relationship. PFMAM will consider any compensation structure that the City feel will provide fair value for both parties, including a performance-based fee.

PFMAM would bill the City monthly based on the average assets under management for the month.

This fee schedule covers all of normal costs, but does not include any additional services beyond our Scope of Work for this engagement (e.g., the procurement of structured investment products and arbitrage rebate compliance services). The fees listed above represent the only compensation PFMAM will receive for this engagement. PFMAM does not participate in any "soft-dollar" or third-party agreements that could compromise the objectivity of our advice.

The City will add any applicable sales tax or use tax. Sales/Use taxes should not be included in the proposal prices. Vendors who will be charging a Mesa Transaction Privilege Tax (TPT) will have 1.75% removed from the taxable item(s) for the purpose of award evaluation (i.25):

Payment terms (not less than net 30 days): 30 days

Prompt Payment Discount of 0 % if invoices are paid within 0 days of receipt.

Does Respondent agree to honor the prices, terms and conditions to other agencies as specified in section S.38?

Yes No (A "no" answer will not disqualify your bid.)

Will you allow payment of invoices using a Procurement Card? Yes No

Discount for Procurement Card Purchases? %

Respondent complies with S.9 "Compliance With Applicable Law"? Yes No

ADDENDA

Proposers are responsible for verifying receipt of any addenda issued by checking the City's website at www.mesaaz.gov/purchasing prior to the bid opening (see i.2). Failure to acknowledge any addenda issued may result in a response being deemed non-responsive.

Acknowledgement of Receipt of Addenda (initial for each addenda received, if applicable):

Addenda #1

EXHIBIT C
STANDARD TERMS AND CONDITIONS

- S.1 **INDEPENDENT CONTRACTOR.** It is expressly understood that the relationship of Contractor to the City will be that of an independent contractor. Contractor and all persons employed by Contractor, either directly or indirectly, are Contractor's employees, not City employees. Accordingly, Contractor and Contractor's employees are not entitled to any benefits provided to City employees including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded City employees. Contractor employees will not be regarded as City employees or agents for any purpose, including the payment of unemployment or workers' compensation. If any Contractor employees or subcontractors assert a claim for wages or other employment benefits against the City, Contractor will defend, indemnify and hold harmless the City from all such claims.
- S.2 **SUBCONTRACTING.** Contractor may not subcontract work under this Agreement without the express written permission of the City. If Contractor has received authorization to subcontract work, it is agreed that all subcontractors performing work under the Agreement must comply with its provisions. Further, all agreements between Contractor and its subcontractors must provide that the terms and conditions of this Agreement be incorporated therein.
- S.3 **ASSIGNMENT.** This Agreement may not be assigned either in whole or in part without first receiving the City's written consent. Any attempted assignment, either in whole or in part, without such consent will be null and void and in such event the City will have the right at its option to terminate the Agreement. No granting of consent to any assignment will relieve Contractor from any of its obligations and liabilities under the Agreement.
- S.4 **SUCCESSORS AND ASSIGNS, BINDING EFFECT.** This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.
- S.5 **NO THIRD PARTY BENEFICIARIES.** This Agreement is intended for the exclusive benefit of the parties. Nothing set forth in this Agreement is intended to create, or will create, any benefits, rights, or responsibilities in any third parties.
- S.6 **NON-EXCLUSIVITY.** The City, in its sole discretion, reserves the right to request the materials or services set forth herein from other sources when deemed necessary and appropriate. No exclusive rights are encompassed through this Agreement.
- S.7 **AMENDMENTS.** There will be no oral changes to this Agreement. This Agreement can only be modified in a writing signed by both parties. No charge for extra work or material will be allowed unless approved in writing, in advance, by the City and Contractor.
- S.8 **TIME OF THE ESSENCE.** Time is of the essence to the performance of the parties' obligations under this Agreement.
- S.9 **COMPLIANCE WITH APPLICABLE LAWS.**
- a. **General.** Contractor must procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of business. Contractor must stay fully informed of existing and future federal, state, and local laws, ordinances, and regulations that in any manner affect the fulfillment of this Agreement and must comply with the same at its own expense. Contractor bears full responsibility for training, safety, and providing necessary equipment for all Contractor personnel to achieve throughout the term of the Agreement. Upon request, Contractor will demonstrate to the City's satisfaction any programs, procedures, and other activities used to ensure compliance.
 - b. **Drug-Free Workplace.** Contractor is hereby advised that the City has adopted a policy establishing a drug-free workplace for itself and those doing business with the City to ensure the safety and health of all persons working on City contracts and projects. Contractor will require a drug-free workplace for all Contractor personnel working under this Agreement. Specifically, all Contractor personnel who are working under this Agreement must be notified in writing by Contractor that they are prohibited from the manufacture, distribution, dispensation, possession, or unlawful use of a controlled substance in the workplace. Contractor agrees to prohibit the use of intoxicating substances by all Contractor personnel.

EXHIBIT C
STANDARD TERMS AND CONDITIONS

and will ensure that Contractor personnel do not use or possess illegal drugs while in the course of performing their duties.

- c. **Federal and State Immigration Laws.** Contractor agrees to comply with the Immigration Reform and Control Act of 1986 (IRCA) in performance under this Agreement and to permit the City and its agents to inspect applicable personnel records to verify such compliance as permitted by law. Contractor will ensure and keep appropriate records to demonstrate that all Contractor personnel have a legal right to live and work in the United States.
- (i) As applicable to Contractor, under the provisions of A.R.S. § 41-4401, Contractor hereby warrants to the City that Contractor and each of its subcontractors will comply with, and are contractually obligated to comply with, all federal immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
 - (ii) A breach of the Contractor Immigration Warranty will constitute as a material breach of this Agreement and will subject Contractor to penalties up to and including termination of this Agreement at the sole discretion of the City.
 - (iii) The City retains the legal right to inspect the papers of all Contractor personnel who provide services under this Agreement to ensure that Contractor or its subcontractors are complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.
 - (iv) The City may, at its sole discretion, conduct random verification of the employment records of Contractor and any subcontractor to ensure compliance with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any random verification performed.
 - (v) Neither Contractor nor any subcontractor will be deemed to have materially breached the Contractor Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).
- d. **Nondiscrimination.** Contractor represents and warrants that it does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. Contractor and Contractor's personnel will comply with applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.
- e. **State Sponsors of Terrorism Prohibition.** Per A.R.S. § 35-392, Contractor must not be in violation of section 6(j) of the Federal Export Administration Act and subsequently prohibited by the State of Arizona from selling goods or services to the City.

S.10 **SALES/USE TAX, OTHER TAXES.**

- a. Contractor is responsible for the payment of all taxes including federal, state, and local taxes related to or arising out of Contractor's services under this Agreement, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or business license fees as required. If any taxing authority should deem Contractor or Contractor employees an employee of the City, or should otherwise claim the City is liable for the payment of taxes that are Contractor's responsibility under this Agreement, Contractor will indemnify the City for any tax liability, interest, and penalties imposed upon the City.

EXHIBIT C
STANDARD TERMS AND CONDITIONS

- b. The City is exempt from paying certain federal excise taxes and will furnish an exemption certificate upon request. The City is not exempt from state and local sales/use taxes.
- S.11 **AMOUNTS DUE THE CITY.** Contractor must be current and remain current in all obligations due to the City during the performance of services under the Agreement. Payments to Contractor may be offset by any delinquent amounts due the City or fees and charges owed to the City.
- S.12 **PUBLIC RECORDS.** Contractor acknowledges that the City is a public entity, subject to Arizona's public records laws (A.R.S. § 39-121 et. seq.) and that any documents related to this Agreement may be subject to disclosure pursuant to state law in response to a public records request or to subpoena or other judicial process.
- S.13 **AUDITS AND RECORDS.** Contractor must preserve the records related to this Agreement for six (6) years after completion of the Agreement. The City or its authorized agent reserves the right to inspect any records related to the performance of work specified herein. In addition, the City may inspect any and all payroll, billing or other relevant records kept by Contractor in relation to the Agreement. Contractor will permit such inspections and audits during normal business hours and upon reasonable notice by the City. The audit of records may occur at Contractor's place of business or at City offices, as determined by the City.
- S.14 **BACKGROUND CHECK.** The City may conduct criminal, driver history, and all other requested background checks of Contractor personnel who would perform services under the Agreement or who will have access to the City's information, data, or facilities in accordance with the City's current background check policies. Any officer, employee, or agent that fails the background check must be replaced immediately for any reasonable cause not prohibited by law.
- S.15 **SECURITY CLEARANCE AND REMOVAL OF CONTRACTOR PERSONNEL.** The City will have final authority, based on security reasons: (i) to determine when security clearance of Contractor personnel is required; (ii) to determine the nature of the security clearance, up to and including fingerprinting Contractor personnel; and (iii) to determine whether or not any individual or entity may provide services under this Agreement. If the City objects to any Contractor personnel for any reasonable cause not prohibited by law, then Contractor will, upon notice from the City, remove any such individual from performance of services under this Agreement.
- S.16 **DEFAULT.**
- a. A party will be in default if that party:
- (i) Is or becomes insolvent or is a party to any voluntary bankruptcy or receivership proceeding, makes an assignment for a creditor, or there is any similar action that affects Contractor's capability to perform under the Agreement;
 - (ii) Is the subject of a petition for involuntary bankruptcy not removed within sixty (60) calendar days;
 - (iii) Conducts business in an unethical manner as set forth in the City Procurement Rules Article 7 or in an illegal manner; or
 - (iv) Fails to carry out any term, promise, or condition of the Agreement.
- b. Contractor will be in default of this Agreement if Contractor is debarred from participating in City procurements and solicitations in accordance with Article 6 of the City's Procurement Rules.
- c. **Notice and Opportunity to Cure.** In the event a party is in default then the other party may, at its option and at any time, provide written notice to the defaulting party of the default. The defaulting party will have thirty (30) days from receipt of the notice to cure the default; the thirty (30) day cure period may be extended by mutual agreement of the parties, but no cure period may exceed ninety (90) days. A default notice will be deemed to be sufficient if it is reasonably calculated to provide notice of the nature and extent of such default. Failure of

EXHIBIT C
STANDARD TERMS AND CONDITIONS

the non-defaulting party to provide notice of the default does not waive any rights under the Agreement.

- d. **Anticipatory Repudiation.** Whenever the City in good faith has reason to question Contractor's intent or ability to perform, the City may demand that Contractor give a written assurance of its intent and ability to perform. In the event that the demand is made and no written assurance is given within five (5) calendar days, the City may treat this failure as an anticipatory repudiation of the Agreement.
- S.17 **REMEDIES.** The remedies set forth in this Agreement are not exclusive. Election of one remedy will not preclude the use of other remedies. In the event of default:
- a. The non-defaulting party may terminate the Agreement, and the termination will be effective immediately or at such other date as specified by the terminating party.
- b. The City may purchase the services required under the Agreement from the open market, complete required work itself, or have it completed at the expense of Contractor. If the cost of obtaining substitute services exceeds the contract price, the City may recover the excess cost by: (i) requiring immediate reimbursement to the City; (ii) deduction from an unpaid balance due to Contractor; (iii) collection against the proposal and/or performance security, if any; (iv) collection against liquidated damages (if applicable); or (v) a combination of the aforementioned remedies or other remedies as provided by law. Costs includes any and all, fees, and expenses incurred in obtaining substitute services and expended in obtaining reimbursement, including, but not limited to, administrative expenses, attorneys' fees, and costs.
- c. The non-defaulting party will have all other rights granted under this Agreement and all rights at law or in equity that may be available to it.
- d. Neither party will be liable for incidental, special, or consequential damages.
- S.18 **CONTINUATION DURING DISPUTES.** Contractor agrees that during any dispute between the parties, Contractor will continue to perform its obligations until the dispute is settled, instructed to cease performance by the City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.
- S.19 **TERMINATION FOR CONVENIENCE.** The City reserves the right to terminate this Agreement in part or in whole upon thirty (30) calendar days' written notice.
- S.20 **TERMINATION FOR CONFLICT OF INTEREST (A.R.S. § 38-511).** Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after its execution, without penalty or further obligation, if any person significantly involved in initiating, securing, drafting, or creating the Agreement for the City becomes an employee or agent of Contractor.
- S.21 **TERMINATION FOR NON-APPROPRIATION AND MODIFICATION FOR BUDGETARY CONSTRAINT.** The City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City reasonably determines that it does not have funds to meet its obligations under this Agreement, the City will have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide written notice of its intent to terminate thirty (30) calendar days prior to the stated termination date.
- S.22 **PAYMENT TO CONTRACTOR UPON TERMINATION.** Upon termination of this Agreement, Contractor will be entitled only to payment for those services performed up to the date of termination, and any authorized expenses already incurred up to such date of termination. The City will make final payment within thirty (30) calendar days after the City has both completed its appraisal of the materials and services provided and received Contractor's properly prepared final invoice.

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- S.23 **NON-WAIVER OF RIGHTS.** There will be no waiver of any provision of this agreement unless approved in writing and signed by the waiving party. Failure or delay to exercise any rights or remedies provided herein or by law or in equity, or the acceptance of, or payment for, any services hereunder, will not release the other party of any of the warranties or other obligations of the Agreement and will not be deemed a waiver of any such rights or remedies.
- S.24 **INDEMNIFICATION/LIABILITY.**
- a. To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City, its officers, agents, and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys', witnesses', and expert witnesses' fees, and expenses incident thereto, relating to, arising out of, or resulting from: (i) the services provided by Contractor personnel under this Agreement; (ii) any negligent acts, errors, mistakes or omissions by Contractor or Contractor personnel; and (iii) Contractor or Contractor personnel's failure to comply with or fulfill the obligations established by this Agreement.
 - b. Contractor will update the City during the course of the litigation to timely notify the City of any issues that may involve the independent negligence of the City that is not covered by this indemnification.
 - c. The City assumes no liability for actions of Contractor and will not indemnify or hold Contractor or any third party harmless for claims based on this Agreement or use of Contractor-provided supplies or services.
- S.25 **WARRANTY.** Contractor warrants that the services and materials will conform to the requirements of the Agreement. Additionally, Contractor warrants that all services will be performed in a good, workman-like and professional manner. The City's acceptance of service or materials provided by Contractor will not relieve Contractor from its obligations under this warranty. If any materials or services are of a substandard or unsatisfactory manner as determined by the City, Contractor, at no additional charge to the City, will provide materials or redo such services until in accordance with this Agreement and to the City's reasonable satisfaction.
- Unless otherwise agreed, Contractor warrants that materials will be new, unused, of most current manufacture and not discontinued, will be free of defects in materials and workmanship, will be provided in accordance with manufacturer's standard warranty for at least one (1) year unless otherwise specified, and will perform in accordance with manufacturer's published specifications.
- S.26 **THE City's RIGHT TO RECOVER AGAINST THIRD PARTIES.** Contractor will do nothing to prejudice the City's right to recover against third parties for any loss, destruction, or damage to City property, and will at the City's request and expense, furnish to the City reasonable assistance and cooperation, including assistance in the prosecution or defense of suit and the execution of instruments of assignment in favor of the City in obtaining recovery.
- S.27 **NO GUARANTEE OF WORK.** Contractor acknowledges and agrees that it is not entitled to deliver any specific amount of materials or services or any materials or services at all under this Agreement and acknowledges and agrees that the materials or services will be requested by the City on an as needed basis at the sole discretion of the City. Any document referencing quantities or performance frequencies represent the City's best estimate of current requirements, but will not bind the City to purchase, accept, or pay for materials or services which exceed its actual needs.
- S.28 **OWNERSHIP.** All deliverables, services, and information provided by Contractor or the City pursuant to this Agreement (whether electronically or manually generated) including without limitation, reports, test plans, and survey results, graphics, and technical tables, originally prepared in the performance of this Agreement, are the property of the City and will not be used or released by Contractor or any other person except with prior written permission by the City.

EXHIBIT C
STANDARD TERMS AND CONDITIONS

- S.29 **USE OF NAME.** Contractor will not use the name of the City of Mesa in any advertising or publicity without obtaining the prior written consent of the City.
- S.30 **PROHIBITED ACTS.** Pursuant to A.R.S. § 38-504, a current or former public officer or employee within the last twelve (12) months shall not represent another organization before the City on any matter for which the officer or employee was directly concerned and personally participated in during their service or employment or over which they had a substantial or material administrative discretion. Further, while employed by the City and for two (2) years thereafter, public officers or employees are prohibited from disclosing or using, without appropriate authorization, any confidential information acquired by such personnel in the course of his or her official duties at the City.
- S.31 **FOB DESTINATION FREIGHT PREPAID AND ALLOWED.** All deliveries will be FOB destination freight prepaid and allowed unless otherwise agreed.
- S.32 **RISK OF LOSS.** Contractor agrees to bear all risks of loss, injury, or destruction of goods or equipment incidental to providing these services and such loss, injury, or destruction will not release Contractor from any obligation hereunder.
- S.33 **SAFEGUARDING City PROPERTY.** Contractor will be responsible for any damage to City real property or damage or loss of City personal property when such property is the responsibility of or in the custody of Contractor or its employees.
- S.34 **WARRANTY OF RIGHTS.** Contractor warrants it has title to, or the right to allow the City to use, the materials and services being provided and that the City may use same without suit, trouble or hindrance from Contractor or third parties.
- S.35 **PROPRIETARY RIGHTS INDEMNIFICATION.** Without limiting the foregoing, Contractor will without limitation, at its expense defend the City against all claims asserted by any person that anything provided by Contractor infringes a patent, copyright, trade secret or other intellectual property right and must, without limitation, pay the costs, damages and attorneys' fees awarded against the City in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment is obtained against the City's use or operation of the items provided by Contractor hereunder or any part thereof by reason of any alleged infringement, Contractor will, at its expense and without limitation, either: (a) modify the item so that it becomes non-infringing; (b) procure for the City the right to continue to use the item; (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the City an amount equal to the price paid, less reasonable usage, from the time of installation acceptance through cessation of use, which amount will be calculated on a useful life not less than five (5) years, plus any additional costs the City may incur to acquire substitute supplies or services.
- S.36 **CONTRACT ADMINISTRATION.** The contract will be administered by the Purchasing Administrator and/or an authorized representative from the using department. All questions regarding the contract will be referred to the administrator for resolution. Supplements may be written to the contract for the addition or deletion of services. Payment will be negotiated and determined by the contract administrator(s).
- S.37 **FORCE MAJEURE.** Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, fire, explosion, legislation, and governmental regulation. The party whose performance is so affected will within five (5) calendar days of the unforeseeable circumstance notify the other party of all pertinent facts and identify the force majeure event. The party whose performance is so affected must also take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof. The delivery or performance date will be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay, provided however, under no circumstances will delays caused by a force majeure extend beyond

EXHIBIT C
STANDARD TERMS AND CONDITIONS

one hundred-twenty (120) calendar days from the scheduled delivery or completion date of a task unless agreed upon by the parties.

- S.38 **COOPERATIVE USE OF CONTRACT.** The City has entered into various cooperative purchasing agreements with other Arizona government agencies, including the Strategic Alliance for Volume Expenditures (SAVE) cooperative. Under the SAVE Cooperative Purchasing Agreement, any contract may be extended for use by other municipalities, school districts and government agencies in the State of Arizona with the approval of Contractor. Any such usage by other entities must be in accordance with the statutes, codes, ordinances, charter and/or procurement rules and regulations of the respective government agency.

The City currently holds Intergovernmental Governmental Agreements (IGA) with numerous governmental entities. These agreements allow the entities, with the approval of Contractor, to purchase their requirements under the terms and conditions of this Agreement.

A contractor, subcontractor or vendor or any employee of a contractor, subcontractor or vendor who is contracted to provide services on a regular basis at an individual school shall obtain a valid fingerprint clearance card pursuant to title 41, chapter 12, article 3.1. A school district governing board shall adopt policies to exempt a person from the requirements of this subsection if the person's normal job duties are not likely to result in independent access to or unsupervised contact with pupils. A school district, its governing board members, its school council members and its employees are exempt from civil liability for the consequences of adoption and implementation of policies and procedures pursuant to this subsection unless the school district, its governing board members, its school council members or its employees are guilty of gross negligence or intentional misconduct.

Additionally, Contractor will comply with the governing body's fingerprinting policy of each individual school district and public entity. Contractor, subcontractors, vendors and their employees will not provide services on school district properties until authorized by the school district.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City is not responsible for any disputes arising out of transactions made by others.

- S.39 **FUEL CHARGES AND PRICE INCREASES.** No fuel surcharges will be accepted. No price increases will be accepted without proper request by Contractor and response by the City's Purchasing Division.

- S.40 **NOTICES.** All notices to be given pursuant to this Agreement must be delivered to the parties at their respective addresses. Notices may be (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; (iii) sent via overnight courier; or (iv) sent via facsimile. If provided by personal delivery, receipt will be deemed effective upon delivery. If sent via certified or registered mail, receipt will be deemed effective three (3) calendar days after being deposited in the United States mail. If sent via overnight courier or facsimile, receipt will be deemed effective two (2) calendar days after the sending thereof.

- S.41 **GOVERNING LAW, FORUM.** This Agreement is governed by the laws of the State of Arizona. The exclusive forum selected for any proceeding or suit in law or equity arising from or incident to this Agreement will be Maricopa County, Arizona.

- S.42 **INTEGRATION CLAUSE.** This Agreement, including all attachments and exhibits hereto, supersede all prior oral or written agreements, if any, between the parties and constitutes the entire agreement between the parties with respect to the work to be performed.

- S.43 **PROVISIONS REQUIRED BY LAW.** Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.

EXHIBIT C
STANDARD TERMS AND CONDITIONS

- S.44 **SEVERABILITY.** If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, which will otherwise remain in full force and effect. The parties will negotiate diligently in good faith for such amendment(s) of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.
- S.45 **SURVIVING PROVISIONS.** Notwithstanding any completion, termination, or other expiration of this Agreement, all provisions which, by the terms of reasonable interpretation thereof, set forth rights and obligations that extend beyond completion, termination, or other expiration of this Agreement, will survive and remain in full force and effect. Except as specifically provided in this Agreement, completion, termination, or other expiration of this Agreement will not release any party from any liability or obligation arising prior to the date of termination.
- S.46 **A.R.S. SECTIONS 1-501 and 1-502.** Pursuant to Arizona Revised Statutes Sections 1-501 and 1-502, any person who applies to the City for a local public benefit (the definition of which includes a grant, contract or loan) must demonstrate his or her lawful presence in the United States. As the Agreement is deemed a local public benefit, if Contractor is an individual (natural) person or sole proprietorship, Contractor agrees to sign and submit the necessary documentation to prove compliance with the statutes as applicable.



CITY COUNCIL AGENDA

SUBJECT:

Resolution 3330-816 Memorandum of Understanding with Maricopa County Relating to Sexual Assault Kit Testing

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Dale Nannenga, Police Chief (623) 333-7207**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is requesting that the City Council adopt a resolution authorizing the Avondale Police Department's participation in a Memorandum of Understanding (MOU) with the Maricopa County Attorney's Office (MCAO) for the inventory, selection, and shipping of untested sexual assault kits (SAKs) for DNA evidence.

BACKGROUND:

Traditionally, law enforcement agencies have not sent all SAKs to crime labs to be examined based on victim cooperation or circumstances in the investigation. A review of SAKs impounded into our facility revealed the department has 85 SAKs stored in our inventory that have not been examined for DNA evidence.

DISCUSSION:

Recently, the ability to forensically examine all SAKs has changed which has necessitated the need to have a selection of SKAs sent out to the determined laboratory be examined. As the process continues, all SAKs will eventually be examined for DNA evidence.

The MCAO applied for, and was awarded, a grant from the District Attorney of New York County, State of New York under the "DANY" (District Attorney of New York) sexual assault backlog reduction program. This program assists in the reduction of untested SAKs in Maricopa County in order to look for DNA evidence.

Under the grant and the grant agreement executed by MCAO and DANY ("Grant Agreement"), the Avondale Police Department and MCAO desire to cooperate in submitting untested SAKs to an appropriate and accredited commercial laboratory (Bode Cellmark Laboratory and Sorenson Laboratory) in order to search for DNA evidence.

The MCAO and the Avondale Police Department intend for DNA profiles identified by the laboratory will be submitted to the State of Arizona Department of Public Safety (the "DPS Lab") for review and potential submission to the Federal Bureau of Investigation's Combined DNA Index System ("CODIS"), to enable the Avondale Police Department to develop potential investigative leads that could result in the identification of a suspect or suspects of alleged sexual assault, abuse, or other crimes.

BUDGET IMPACT:

The Avondale Police Department shall be responsible for payment of all shipping expenses incurred in the submittal of untested SAKs to the laboratory and for their return. The funds for the shipping of the SAKs will come from the current department budget which are anticipated to be approximately \$1,000.

RECOMMENDATION:

Staff recommends that the City Council approve a resolution authorizing the Avondale Police Department's participation in a Memorandum of Understanding with the Maricopa County Attorney's Office to submit untested SAKs to an appropriate and accredited commercial laboratory to be tested for certain biological substance containing DNA evidence.

ATTACHMENTS:**Description**

[Resolution 3330-816](#)

RESOLUTION NO. 3330-816

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING A MEMORANDUM OF UNDERSTANDING WITH MARICOPA COUNTY RELATING TO THE SEXUAL ASSAULT KIT TESTING.

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

SECTION 1. The Memorandum of Understanding between the City of Avondale acting by and through Avondale Police Department and Maricopa County, acting by and through the Maricopa County Attorney's Office relating to the testing and reporting of sexual assault kits (the "MOU") is hereby approved in substantially the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the MOU 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, Arizona, August 8, 2016.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3330-816

[MOU]

See following pages.

<http://www.avondale.org/DocumentCenter/View/38817>



CITY COUNCIL AGENDA

SUBJECT:

Resolution 3331-816 Intergovernmental
Agreement with ADOT for the Data Access and
Exchange

MEETING DATE:

8/8/2016

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 adopt a resolution authorizing an Intergovernmental Agreement (IGA) between the City of Avondale (City) and the Arizona Department of Transportation (ADOT) to execute a Data Access Agreement (Agreement) permitting the electronic transmission and retrieval of crash data, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

Prior to 2009, the City transmitted crash data to ADOT via facsimile. ADOT would then compile the data and make it available in text format files for use by the City's Engineering Department for traffic safety and improvement analysis.

On January 1, 2009, ADOT implemented an electronic data exchange system, Traffic Records System (TRS), which allowed authorized users to electronically submit crash data to the new Accident Location Identification Surveillance System (ALISS) database. On January 5, 2009 the new TRS query tool, Safety Data Mart, became available which allowed users to access, perform ad hoc queries and run various crash data reports on the traffic data stored in the Arizona Information Data Warehouse. As a result of these new electronic processes, the manual data exchange processes between ADOT and the City became obsolete and ADOT ceased forwarding the text format files containing crash data to the City.

To ensure City staff had access to the necessary crash data in ALISS and Safety Data Mart, staff needed to become authorized users of TRS via a formal Data Access/ Exchange Agreement between the City and ADOT. The first Data Access/Exchange Agreement between the City and ADOT was executed on August 10, 2009. That agreement had a 5-year term.

DISCUSSION:

The purpose of this IGA is to allow City staff to maintain access to ADOT's ALISS and Safety Data Mart systems so they can continue to perform traffic safety and improvement analysis.

The IGA states that it must be signed by the City's authorizing authority (i.e.: City Manager or their designee). The Agreement also identifies an agency contact person who will work with staff from ADOT's Intermodal Transportation Division (ITD) to complete and submit the required paperwork prior to access codes being issued to designated City users.

This Agreement has a 5-year term. Upon expiration of this five (5) year period, the parties may mutually agree to extend the term of the Agreement for another five (5) years, or fewer, by entering into an Amendment to this Agreement.

BUDGET IMPACT:

There is no budgetary impact associated with this Agreement.

RECOMMENDATION:

Staff is requesting that the City Council adopt a resolution authorizing an IGA between the City of Avondale and the Arizona Department of Transportation to execute a Data Access Agreement permitting the electronic transmission and retrieval of crash data, and authorize the Mayor, or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

[Resolution 3331-816](#)

RESOLUTION NO. 3331-816

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA RELATING TO THE DEPARTMENT OF TRANSPORTATION TRAFFIC ACCIDENT DATABASE AND INFORMATION EXCHANGE.

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

SECTION 1. The Intergovernmental Agreement with the Arizona Department of Transportation relating to the traffic accident database and information exchange (the "Agreement") is hereby approved substantially in 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 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, Arizona, August 8, 2016.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3331-816

[Agreement]

See following pages.



DATA ACCESS / EXCHANGE AGREEMENT

ADOT File No: JPA/IGA 15-0005600

Date:

Name of Department: City of Avondale

Doing Business As: Save As Above

Business Address: 11485 West Civic Center Drive
Avondale, Arizona 85323

Mailing Address: Same as Above

Telephone Number: (623) 333-7208

City of Avondale (AGENCY) hereby requests authorization for connectivity to the Arizona Department of Transportation's (ADOT) (check all that apply):

- ALISS Database to submit electronic crash records.
- ALISS Database to access and retrieve crash data.
- Safety Data Mart to query, analyze and retrieve crash data.

City of Avondale (AGENCY) is authorized to enter into this Agreement pursuant to **§ 48-572**

The AGENCY (as defined below) hereby requests authorization for connectivity to the ALISS Database and/or AIDW Safety Data Mart of the Arizona Department of Transportation, Intermodal Transportation Division (ITD). The AGENCY's specific access capabilities are set forth and further described in the attached Addendum, which shall be considered a part of this Agreement between the AGENCY and ADOT.

The AGENCY understands and agrees that it shall only access the ALISS Database and/or the AIDW Safety Data Mart in accordance with the terms and conditions set forth herein. If at any time ADOT believes the AGENCY is using such access in an unauthorized or unlawful manner, ADOT reserves the right, in its sole discretion, to immediately terminate this Agreement.

This Database Access Agreement complies with GITA Statewide Standard P740-S741, Standard 4.7.3.

Definitions

“ADOT” means the Arizona Department of Transportation.

“AGENCY” means **City of Avondale.**

“ALISS” means the Accident Location, Identification and Surveillance System.

“Authorized individuals” means those persons who are employed or contracted by AGENCY to perform the activities authorized hereunder.

“Connectivity” means to make and/or maintain a computer connection with ADOT for the purpose of performing the activities authorized under this agreement.

“Encrypt” means to scramble computerized information to secure data by using special algorithms for transmission or other purposes.

“Personal Information” means information that identifies an individual, including without limitation an individual's name, photograph, social security number, driver license number, physical description, race, ethnic origin, sexual orientation, income, blood type, DNA code, fingerprints, marital status, religion, home address, home telephone number, education, financial matters, and medical or employment history readily identifiable to a specific individual but does not include information on vehicular accidents, driving violations, and driver's status.

“RACF” means Resource Access Control Facility, which is a software security product that protects information by controlling access to it.

“Secure location” means an area designated specifically for authorized individuals to access ADOT’s database(s) and to which all unauthorized individuals shall be prohibited from entering.

“Sensitive Information” means any state information either in detail or aggregate that may be prejudicial or harmful to the state and its citizens.

Location of Activities

AGENCY may conduct authorized activities only at those locations which have been pre-approved by ADOT such as their place of business that adheres to the other guidelines outlined in this Agreement. ADOT reserves the right, in its sole discretion, to disapprove of location.

Equipment

AGENCY shall obtain computer equipment and software that is compatible with the information systems and connectivity requirements of ADOT, and which will allow access only to the specific database(s) listed in the Addendum to this Agreement.

Data Security

AGENCY shall provide a secure location for all computer equipment used to access ADOT’s database(s).

AGENCY shall provide access to ADOT’s ALISS Database and/or Safety Data Mart only to AGENCY personnel or contractors who are authorized individuals, and to no one else. If at any time ADOT believes that an authorized individual is using such access inappropriately, ADOT reserves the right to immediately terminate that individual’s database access and/or to terminate AGENCY authorization under this Agreement.

AGENCY shall comply with all ADOT policies, procedures and directives regarding security and database access, including any future amendments thereto. All subcontractors utilized to perform the activities authorized by this Agreement must abide by the same security and access requirements as AGENCY.

AGENCY must disclose and obtain ADOT approval of any existing and/or contemplated strategic alliances, partnerships, Intergovernmental Agreements or subcontracting arrangements that AGENCY has or will enter into which involve the processing and/or use of ADOT data acquired pursuant to this Agreement.

AGENCY, its officers, agents, employees, contractors and representatives shall not, without the prior written approval of ADOT, disclose, distribute, or utilize in any manner not expressly authorized under this Agreement, any personal or sensitive information which is connected or otherwise associated with or accessed pursuant to this Agreement, either during the term of this Agreement or subsequent to any termination of this Agreement.

AGENCY shall maintain all hard copy information and electronic data related to this Agreement in a secure location at all times.

Data Privacy

AGENCY shall not utilize its computer connections with ADOT for any purpose other than the purpose(s) specified in the Addendum to this Agreement.

Network Security

AGENCY understands and agrees that any and all personal or sensitive information that it stores or transmits over external or public computer networks, such as the Internet, must be encrypted.

AGENCY computers that are permanently or intermittently connected to internal computer networks must have an ADOT approved, password-based, access control system in order to access ADOT's database(s). This requirement applies to computers with direct connections to data centers, as well as AGENCY "wide area network." Regardless of the network connections, all AGENCY computers which are used to access ADOT information must employ approved, password-based, access control systems.

All in-bound connections to AGENCY computers from external networks must also be protected. All access control systems must utilize user-identifications (i.e. RACF ID's) and passwords unique to each user, as well as user-privilege restriction mechanisms. Password sharing is prohibited.

Non-exclusivity

This Agreement shall not preclude ADOT from entering into the same or similar Agreement with other public or private entities, including those performing identical or similar functions as AGENCY.

Notification

AGENCY shall assign a contact person for problem resolution and notification of procedural changes. AGENCY shall advise ADOT within two business days of any change in its designated contact person. All notices or demands upon either party shall be in writing and an original shall be delivered in person, or sent by mail addressed as follows:

To ADOT at:

Intermodal Transportation Division
Traffic Records Section
ATTN: Rick Turner

To AGENCY at:

City of Avondale
Attn: Tom Peterson

206 S. 17th Ave, Mail Drop 064R
Phoenix, AZ 85007-3233

11485 West Civic Center Drive
Avondale, Arizona 85323
(623) 333-7208

Records

The AGENCY shall maintain a log or register of all ADOT records it requests and all ADOT records it obtains by virtue of the access provided herein. The AGENCY shall retain this log or register either manually or electronically for a period of five years after the date of request and receipt of the records. All other books, papers, records, data, and accounting records relating to this Agreement ("Records") shall be maintained by AGENCY for a period of five (5) years, or such greater or lesser time as may be required by federal or state law, rule, or the ADOT Records Retention Schedule. The Records shall be subject to inspection and audit by ADOT for five years after termination or completion of this Agreement. The Records shall be produced at the offices designated by ADOT.

It is further agreed that ownership of all records relating to this Agreement resides exclusively with ADOT, except for data retrieved pursuant to this Agreement.

Compliance

AGENCY shall comply with all of the terms set forth in this Agreement, together with all applicable state statutes, rules, and regulations. AGENCY shall also comply with all relevant ADOT policies, procedures and directives that ADOT provides to AGENCY throughout the course of this Agreement. All AGENCY subcontractors are held to the same compliance standards, and any failure to comply on the part of the subcontractor will be deemed a failure on the part of AGENCY.

Non-compliance

If AGENCY fails to comply with the terms of this Agreement, or with any applicable law, rule or regulation, ADOT reserves the right to take any remedial action that it deems necessary and appropriate, including without limitation the suspension, cancellation, revocation, or termination of this Agreement. In case of a violation of law, the Agreement shall immediately terminate.

Amendment and Modification of Agreement

AGENCY shall review and approve in writing any modification of the Agreement. Upon the amendment of any applicable law, rule or regulation, the Agreement shall automatically be modified to reflect such amendment. Any modification of the Agreement shall be incorporated herein and shall be subject to all other provisions of this Agreement. AGENCY may submit a written request to ADOT if there are any changes it desires be made to the Agreement, and such a request shall be approved or denied at ADOT's sole discretion.

Termination

Either party may terminate this Agreement for convenience or cause upon thirty (30) days prior written notice to the other party. Upon any termination of this Agreement, AGENCY shall, at ADOT's request, remove and deliver to ITD all electronic data stored on any electronic storage devices and shall immediately return all other data and information received in connection herewith to ADOT.

This Agreement is subject to cancellation by the Governor pursuant to A.R.S. §38-511. The state, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation under this section by any department or agency of the state or

its political subdivisions shall be effective when written notice from such party is received by all other parties to the contract unless the notice specifies a later time.

Waiver/Severability

AGENCY agrees that a waiver of any provision of this Agreement shall not act as a waiver of any other provision of this Agreement. If a provision of this Agreement is for any reason declared invalid, illegal, or unenforceable, that declaration shall not affect the remainder of the provisions of the Agreement.

Duration

This Agreement shall commence upon approval by the Assistant Division Director, Executive Services Group and execution by both parties, and shall thereafter continue in effect for a term of five (5) years, unless previously terminated or canceled as provided herein. Upon expiration of this five (5) year period, the parties may mutually agree to extend the term of the Agreement for another five (5) (or fewer) years by entering into an Amendment to this Agreement.

Liability

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, but not limited to, reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage and any other claims, (including, but not limited to, claims of derivative or vicarious liability), which are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

Limitation of Liability

The Arizona Department of Transportation (a) makes no warranty, express or implied, with respect to information provided under this agreement, including but not limited to, implied warranties of merchantability and fitness for any particular use; (b) assumes no liability for any direct, indirect, or consequential damages arising from any use of any part of the Data Access Exchange Agreement; and (c) assumes no liability for any errors or omissions within the Data Access Exchange. Parties hereby waive, relinquish, and release the State of Arizona and the Arizona Department of Transportation from any claim for damage or injury arising from any use of the Data Access Exchange or any information derived from it.

Certification

On behalf of AGENCY identified below, I hereby request approval of this Agreement. I certify that all of the information set forth herein by AGENCY is true and accurate, and that any records or information obtained from ADOT's database(s) and system(s) pursuant to this Agreement will be used solely for the purpose(s) specified in the Addendum to this Agreement, and for no other purposes. I further certify that I have the authority to execute this Agreement on behalf of AGENCY. I understand that AGENCY must abide by the provisions of this Agreement if approved by the Assistant Division Director, Executive Services Group and executed by both parties.

Mandatory Provisions for Arizona State Agencies

None of the provisions of the Agreement may be waived, changed or altered except in writing signed by both parties.

Notwithstanding any provision of the Agreement to the contrary, ADOT is not authorized to indemnify the AGENCY.

Every payment obligation of the ADOT under this Agreement is conditioned upon the availability of funds allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by ADOT or any other agency of the State of Arizona at the end of the period for which funds are available. No liability shall accrue to ADOT or any other agency of the State of Arizona in the event this provision is exercised, and neither ADOT nor any other agency of the State of Arizona shall be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

AGENCY shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the American with Disabilities Act. AGENCY shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

Compliance requirement for A.R.S. 41-4401 – immigration laws and E-Verify requirement.

- The AGENCY warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. 23-214, Subsection A. (That subsection reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.)
- A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the contract and the AGENCY may be subject to penalties up to and including termination of the Agreement.
- ADOT retains the legal right to inspect the papers of any employee who works on the Agreement to ensure that the AGENCY or subcontractor is complying with the above-mentioned warranty.

Joint Venturer – Except as otherwise provided by law, in the performance of duties and activities under this Agreement, the parties hereto will be acting in their individual governmental capacities and not as agents, employees, partners, joint ventures, or associates of each other. The officers, employees, agents, or subcontractors of one party shall not be deemed or construed to be the employees or agents of the other party. Each party shall remain responsible for the supervision of their respective staff and students and shall maintain adequate insurance coverage as required by law.

AGENCY assigns to ADOT any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to AGENCY toward fulfillment of this Agreement.

This Agreement shall be construed in accordance to the laws of the State of Arizona.

The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. 12-1518 except as may be required by other applicable statutes.

The parties may execute this Agreement in two or more counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

City of Avondale

Signature

David W. Fitzhugh

Name Printed

City Manager

Title

Date

For ADOT USE ONLY

Received this date _____. Signed _____

AUTHORIZATION

On behalf of the Arizona Department of Transportation, the authorization requested by **City of Avondale** pursuant to this Agreement (including the attached Addendum) is hereby approved.

DATED THIS _____ DAY OF _____, 20_____.

Intermodal Transportation Division / Traffic Engineering

STEVE BOSCHEN, P.E.

ITD Director

Arizona Department of Transportation

AGREEMENT ADDENDUM

THIS ADDENDUM is made and entered into pursuant to A.R.S. §§28-401 et seq. and with GITA Statewide Standard P740-S741, Standard 4.7.3, as part of the foregoing Data Access / Exchange Agreement between the Arizona Department of Transportation (ADOT) and the **City of Avondale_** (AGENCY).

Subject to ADOT's right to terminate as set forth in this Agreement:

- I. ADOT ~~<grants/does not grant>~~ AGENCY authorization to access its ALISS Database via approved direct program-to-program interactions over an approved persistent connection and to thereby submit electronic crash records information contained in such databases according to the terms and conditions stated in this Agreement. Electronic crash records shall be submitted no more than once per day.
- II. ADOT ~~<grants/does not grant>~~ AGENCY authorization to access its ALISS Database via an approved secure gateway and with two-factor authentication to retrieve pertinent crash records data including vehicle information according to the terms and conditions stated in this agreement.
- III. ADOT ~~<grants/does not grant>~~ AGENCY authorization to access its Safety Data Mart via an approved secure gateway and with user identifications and passwords unique to each user to run queries and retrieve crash data strictly for the purposes of safety analysis and in accordance with the terms and conditions stated in this agreement. Data query and retrieval may be done on an as-needed basis.

The foregoing Agreement and Addendum are mutually agreed to:

Intermodal Transportation Division/Traffic Engineering **City of Avondale**

Signature

STEVE BOSCHEN, P.E.

Name Printed

ITD Director

Title

Date

Signature

David W. Fitzhugh

Name Printed

City Manager

Title

Date



CITY COUNCIL AGENDA

SUBJECT:

Resolution 3332-816 - Written Policies and Procedures for Tax-Advantaged Obligations

MEETING DATE:

8/8/2016

TO: Mayor and Council

FROM: Abbe Yacoben, Finance and Budget Director (623) 333-2011

THROUGH: David Fitzhugh, City Manager

PURPOSE:

Staff requests that the City Council adopt policy and procedures governing the oversight of its tax-exempt financing.

BACKGROUND:

The Internal Revenue Service (IRS) allows municipal bond issuers to issue bonds on a tax-exempt basis when they are to be used for public purposes. These bonds are called "tax advantaged" as their interest income is tax-exempt to the bond holder from federal and in most cases, state income tax. As a result, tax exempt bonds offer lower yields to investors and a lower cost of issuance to the City.

DISCUSSION:

As the City began discussions to issue its current sewer and water bonds, in addition to refunding the excise tax bonds to gain savings from the current lower interest rate environment, bond counsel strongly encouraged the City to adopt a policy on how and when to issue and how to administer tax exempt bonds. This policy and procedures document assigns the finance director the task of ensuring the public purpose nature of the bonds before issuance, ensuring that the bonds projects achieved with bond proceeds continue to be used for public purposes after issuance, and ensure that staff receives training to understand IRS regulations regarding tax exempt financing in addition to following IRS regulations regarding required periodic arbitrage rebate calculations.

BUDGET IMPACT:

There is no budgetary impact from implementing policy and procedures regarding tax exempt financings.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution adopting the Written Policies and Procedures for Tax-Advantaged Obligations.

ATTACHMENTS:

Description

[Resolution 3332-816](#)

RESOLUTION NO. 3332-816

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ADOPTING WRITTEN POLICIES AND PROCEDURES FOR TAX-ADVANTAGED OBLIGATIONS.

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

SECTION 1. The “Written Policies and Procedures for Tax-Advantaged Obligations” is hereby adopted in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of the “Written Policies and Procedures for Tax-Advantaged Obligations” adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 8, 2016.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3332-816

(Written Policies and Procedures for Tax-Advantaged Obligations)

See following pages.

WRITTEN POLICIES AND PROCEDURES FOR TAX-ADVANTAGED OBLIGATIONS

City of Avondale, Arizona (the “Issuer”), has issued and may in the future issue tax-exempt obligations (including, without limitation, bonds, notes, loans, leases and certificates) (together, “tax-advantaged obligations”) that are subject to certain requirements under the Internal Revenue Code of 1986, as amended (the “Code”).

The Issuer has established the policies and procedures contained herein (the “Procedures”) as of July 26, 2016, in order to ensure that the Issuer complies with the requirements of the Code that are applicable to its tax-advantaged obligations. The Procedures, coupled with requirements contained in the arbitrage and tax certificate or other operative documents (the “Tax Certificate”) executed at the time of issuance of the tax-advantaged obligations, are intended to constitute written procedures for ongoing compliance with the federal tax requirements applicable to the tax-advantaged obligations and for timely identification and remediation of violations of such requirements.

A. GENERAL MATTERS.

1. Responsible Officer. The Finance Director or designee of the Issuer will have overall responsibility for ensuring that the ongoing requirements described in the Procedures are met with respect to tax-advantaged obligations (the “Responsible Officer”).
2. Establishment of Procedures. The Procedures will be included with other written procedures of the Issuer.
3. Identify Additional Responsible Employees. The Responsible Officer shall identify any additional persons who will be responsible for each section of the Procedures, notify the current holder of that office of the responsibilities, and provide that person a copy of the Procedures. (For each section of the Procedures, this may be the Responsible Officer or another person who is assigned the particular responsibility.)
 - a. Upon employee or officer transitions, new personnel should be advised of responsibilities under the Procedures and ensure they understand the importance of the Procedures.
 - b. If employee or officer positions are restructured or eliminated, responsibilities should be reassigned as necessary to ensure that all Procedures have been appropriately assigned.

4. Training Required. The Responsible Officer and other responsible persons shall receive appropriate training that includes the review of and familiarity with the contents of the Procedures, review of the requirements contained in the Code applicable to each tax-advantaged obligation, identification of all tax-advantaged obligations that must be monitored, identification of all facilities (or portions thereof) financed with proceeds of tax-advantaged obligations, familiarity with the requirements contained in the Tax Certificate or other operative documents contained in the transcript, and familiarity with the procedures that must be taken in order to correct noncompliance with the requirements of the Code in a timely manner.
5. Periodic Review. The Responsible Officer or other responsible person shall periodically review compliance with the Procedures and with the terms of the Tax Certificate to determine whether any violations have occurred so that such violations can be timely remedied through the “remedial action” regulations or the Voluntary Closing Agreement Program available through the Internal Revenue Service (“IRS”) (or successor guidance). Such periodic review shall occur at least annually.
6. Change in Terms. If any changes to the terms of the tax-advantaged obligations are contemplated, bond counsel should be consulted. Such modifications could jeopardize the status of tax-advantaged obligations.

B. IRS INFORMATION RETURN FILING. The Responsible Officer will confirm that bond counsel has filed the applicable information reports (such as Form 8038-G) for such issue with the IRS on a timely basis, and maintain copies of such form including evidence of timely filing as part of the transcript of the issue. The Responsible Officer shall file the IRS Form 8038-T relating to the payment of rebate or yield reduction payments in a timely manner as discussed in Section F.12. below. The Responsible Officer shall also monitor the extent to which the Issuer is eligible to receive a refund of prior rebate payments and provide for the timely filing for such refunds using an IRS Form 8038-R.

C. USE OF PROCEEDS. The Responsible Officer or other responsible person shall:

1. Consistent Accounting Procedures. Maintain or confirm maintenance of clear and consistent accounting procedures for tracking the investment and expenditures of proceeds, including investment earnings on proceeds.
2. Reimbursement Allocations at Closing. At or shortly after closing of an issue, ensure that any allocations for reimbursement expenditures comply with the Tax Certificate.
3. Timely Expenditure of Proceeds. Monitor that sale proceeds and investment earnings on sale proceeds of tax-advantaged obligations are spent in a timely fashion consistent with the requirements of the Tax Certificate.

4. Requisitions. Utilize or confirm the utilization of requisitions to draw down proceeds, and ensure that each requisition contains (or has attached to it) detailed information in order to establish when and how proceeds were spent; review requisitions carefully before submission to ensure proper use of proceeds to minimize the need for reallocations.
5. Final Allocation. Ensure that a final allocation of proceeds (including investment earnings) to qualifying expenditures is made if proceeds are to be allocated to project expenditures on a basis other than “direct tracing” (direct tracing means treating the proceeds as spent as shown in the accounting records for draws and project expenditures). An allocation other than on the basis of “direct tracing” is often made to reduce the private business use of bond proceeds that would otherwise result from “direct tracing” of proceeds to project expenditures. *This allocation must be made within 18 months after the later of the date the expenditure was made or the date the project was placed in service, but not later than 5 years and 60 days after the date the tax-advantaged obligations are issued (or 60 days after the issue is retired, if earlier).* Bond counsel can assist with the final allocation of proceeds to project costs. Maintain a copy of the final allocation in the records for the tax-advantaged obligation.
6. Maintenance and Retention of Records Relating to Proceeds. Maintain or confirm the maintenance of careful records of all project and other costs (e.g., costs of issuance, credit enhancement and capitalized interest) and uses (e.g., deposits to a reserve fund) for which proceeds were spent or used. These records should be maintained separately for each issue of tax-advantaged obligations for the period indicated under Section G. below.

D. MONITORING PRIVATE BUSINESS USE. The Responsible Officer or other responsible person shall:

1. Identify Financed Facilities. Identify or “map” which outstanding issues financed which facilities and in what amounts.
2. Review of Contracts with Private Persons. Review all of the following contracts or arrangements with non-governmental persons or organizations or the federal government (collectively referred to as “private persons”) with respect to the financed facilities which could result in private business use of the facilities:
 - a. Sales of financed facilities;
 - b. Leases of financed facilities;
 - c. Management or service contracts relating to financed facilities;
 - d. Research contracts under which a private person sponsors research in financed facilities; and

- e. Any other contracts involving “special legal entitlements” (such as naming rights or exclusive provider arrangements) granted to a private person with respect to financed facilities.
 3. Bond Counsel Review of New Contracts or Amendments. Before amending an existing agreement with a private person or entering into any new lease, management, service, or research agreement with a private person, consult bond counsel to review such amendment or agreement to determine whether it results in private business use.
 4. Establish Procedures to Ensure Proper Use and Ownership. Establish procedures to ensure that financed facilities are not used for private use without written approval of the Responsible Officer or other responsible person.
 5. Analyze Use. Analyze any private business use of financed facilities and, for each issue of tax-advantaged obligations, determine whether the 10 percent limit on private business use (5 percent in the case of “unrelated or disproportionate” private business use) is exceeded, and contact bond counsel or other tax advisors if either of these limits appears to be exceeded.
 6. Remediation if Limits Exceeded. If it appears that private business use limits are exceeded, immediately consult with bond counsel to determine if a remedial action is required with respect to nonqualified tax-advantaged obligations of the issue or if the IRS should be contacted under its Voluntary Closing Agreement Program. If tax-advantaged obligations are required to be redeemed or defeased in order to comply with remedial action rules, such redemption or defeasance must occur within 90 days of the date a deliberate action is taken that results in a violation of the private business use limits.
 7. Maintenance and Retention of Records Relating to Private Use. Retain copies of all of the above contracts or arrangements (or, if no written contract exists, detailed records of the contracts or arrangements) with private persons for the period indicated under Section G. below.
- E. LOAN OF BOND PROCEEDS.** Consult bond counsel if a loan of proceeds of tax-advantaged obligations is contemplated. If proceeds of tax-advantaged obligations are permitted under the Code to be loaned to other entities and are in fact so loaned, require that the entities receiving a loan of proceeds institute policies and procedures similar to the Procedures to ensure that the proceeds of the loan and the facilities financed with proceeds of the loan comply with the limitations provided in the Code. Require the recipients of such loans to annually report to the Issuer ongoing compliance with the Procedures and the requirements of the Code.

F. ARBITRAGE AND REBATE COMPLIANCE. The Responsible Officer or other responsible person shall:

1. Review Tax Certificate. Review each Tax Certificate to understand the specific requirements that are applicable to each tax-advantaged obligation issue.
2. Arbitrage Yield. Record the arbitrage yield of the issue, as shown on IRS Form 8038-G or other applicable form. If the tax-advantaged obligations are variable rate, yield must be determined on an ongoing basis over the life of the tax-advantaged obligations as described in the Tax Certificate.
3. Temporary Periods. Review the Tax Certificate to determine the “temporary periods” for each issue, which are the periods during which proceeds of tax-advantaged obligations may be invested without yield restriction.
4. Post-Temporary Period Investments. Ensure that any investment of proceeds after applicable temporary periods is at a yield that does not exceed the applicable yield, unless yield reduction payments can be made pursuant to the Tax Certificate.
5. Monitor Temporary Period Compliance. Monitor that proceeds (including investment earnings) are expended promptly after the tax-advantaged obligations are issued in accordance with the expectations for satisfaction of three-year or five-year temporary periods for investment of proceeds and to avoid “hedge bond” status.
6. Monitor Yield Restriction Limitations. Identify situations in which compliance with applicable yield restrictions depends upon later investments (e.g., the purchase of 0 percent State and Local Government Securities from the U.S. Treasury for an advance refunding escrow). Monitor and verify that these purchases are made as contemplated.
7. Establish Fair Market Value of Investments. Ensure that investments acquired with proceeds satisfy IRS regulatory safe harbors for establishing fair market value (e.g., through the use of bidding procedures), and maintaining records to demonstrate satisfaction of such safe harbors. Consult the Tax Certificate for a description of applicable rules.
8. Credit Enhancement, Hedging and Sinking Funds. Consult with bond counsel before engaging in credit enhancement or hedging transactions relating to an issue, and before creating separate funds that are reasonably expected to be used to pay debt service. Maintain copies of all contracts and certificates relating to credit enhancement and hedging transactions that are entered into relating to an issue.

9. Grants/Donations to Governmental Entities. Before beginning a capital campaign or grant application that may result in gifts that are restricted to financed projects (or, in the absence of such a campaign, upon the receipt of such restricted gifts), consult bond counsel to determine whether replacement proceeds may result that are required to be yield restricted.
10. Bona Fide Debt Service Fund. Even after all proceeds of a given issue have been spent, ensure that debt service funds, if any, meet the requirements of a “bona fide debt service fund,” i.e., one used primarily to achieve a proper matching of revenues with debt service that is depleted at least once each bond year, except for a reasonable carryover amount not to exceed the greater of: (i) the earnings on the fund for the immediately preceding bond year; or (ii) one-twelfth of the debt service on the issue for the immediately preceding bond year. To the extent that a debt service fund qualifies as a bona fide debt service fund for a given bond year, the investment of amounts held in that fund is not subject to yield restriction for that year.
11. Debt Service Reserve Funds. Ensure that amounts invested in reasonably required debt service reserve funds, if any, do not exceed the least of: (i) 10 percent of the stated principal amount of the tax-advantaged obligations (or the sale proceeds of the issue if the issue has original issue discount or original issue premium that exceeds 2 percent of the stated principal amount of the issue plus, in the case of premium, reasonable underwriter’s compensation); (ii) maximum annual debt service on the issue; or (iii) 125% of average annual debt service on the issue.
12. Rebate and Yield Reduction Payment Compliance. Review the arbitrage rebate covenants contained in the Tax Certificate. Subject to certain rebate exceptions described below, investment earnings on proceeds at a yield in excess of the yield (i.e., positive arbitrage) generally must be rebated to the U.S. Treasury, even if a temporary period exception from yield restriction allowed the earning of positive arbitrage.
 - a. Ensure that rebate and yield reduction payment calculations will be timely performed and payment of such amounts, if any, will be timely made. Such payments are generally due 60 days after the fifth anniversary of the date of issue, then in succeeding installments every five years. The final rebate payment for an issue is due 60 days after retirement of the last obligation of the issue. The Issuer should hire a rebate consultant if necessary.
 - b. Review the rebate section of the Tax Certificate to determine whether the “small issuer” rebate exception applies to the issue.
 - c. If the 6-month, 18-month, or 24-month spending exceptions from the rebate requirement (as described in the Tax Certificate) may apply to the

tax-advantaged obligations, ensure that the spending of proceeds is monitored prior to semiannual spending dates for the applicable exception.

- d. Make rebate and yield reduction payments and file Form 8038-T in a timely manner.
- e. Even after all other proceeds of a given issue have been spent, ensure compliance with rebate requirements for any debt service reserve fund and any debt service fund that is not exempt from the rebate requirement (see the Arbitrage Rebate covenants contained in the Tax Certificate).

13. Maintenance and Retention of Arbitrage and Rebate Records. Maintain records of investments and expenditures of proceeds, rebate exception analyses, rebate calculations, Forms 8038-T, and rebate and yield reduction payments, and any other records relevant to compliance with the arbitrage restrictions for the period indicated in Section G. below.

G. RECORD RETENTION. The Responsible Officer or other responsible person shall ensure that for each issue of obligations, the transcript and all records and documents described in these Procedures will be maintained while any of the obligations are outstanding and during the three-year period following the final maturity or redemption of that issue, or if the obligations are refunded (or re-refunded), while any of the refunding obligations are outstanding and during the three-year period following the final maturity or redemption of the refunding obligations.

**ATTACHMENT I TO
WRITTEN PROCEDURES**

REMEDIAL ACTION PROCEDURES

Capitalized terms used herein but not defined have the meaning assigned thereto in Section 5 below and in the Written Policies and Procedures for Tax-Advantaged Obligations to which these Remedial Action Procedures are attached. This attachment describes written procedures that may be required to be taken by, or on behalf of, an issuer of Obligations.

1. **Background.** The maintenance of the tax status of the Obligations (*e.g.*, as tax-exempt obligations under federal tax law) depends on the compliance with the requirements set forth in the Internal Revenue Code of 1986, as amended (the “Code”). *The purpose of this attachment is to set forth written procedures to be used in the event that any deliberate actions are taken that are not in compliance with the tax requirements of the Code (each, a “Deliberate Action”) with respect to the Obligations, the proceeds thereof, or the property financed or refinanced by the Obligations (the “Financed Property”).*

2. **Consultation with bond counsel.** If a Deliberate Action is taken with respect to the Obligations and the Financed Property subsequent to the issuance or execution and delivery of the Obligations, then the City must consult with Greenberg Traurig, LLP or other nationally recognized bond counsel (“bond counsel”) regarding permissible Remedial Actions that may be taken to remediate the effect of any such Deliberate Action upon the federal tax status of the Obligations. Note that remedial actions or corrective actions other than those described in this attachment may be available with respect to the Obligations and the Financed Property, including remedial actions or corrective actions that may be permitted by the Commissioner through the voluntary closing agreement programs (VCAP) provided by the Internal Revenue Service from time to time.

3. **Conditions to Availability of Remedial Actions.** None of the Remedial Actions described in this attachment are available to remediate the effect of any Deliberate Action with respect to the Obligations and the Financed Property unless the following conditions have been satisfied and unless bond counsel advises otherwise:

(a) The issuer of the Obligations reasonably expected on the date the Obligations were originally issued or executed and delivered that the Obligations would meet neither the Private Business Tests nor the Private Loan Financing Test of Section 141 of the Code and the Treasury Regulations thereunder for the entire term of the Obligations (such expectations may be based on the representations and expectations of the applicable conduit borrower, if there is one);

(b) The weighted average maturity of the Obligations did not, as of such date, exceed 120 percent of the Average Economic Life of the Financed Property;

(c) Unless otherwise excepted under the Treasury Regulations, the City delivers a certificate, instrument, or other written records satisfactory to bond counsel demonstrating that the terms of the arrangement pursuant to which the Deliberate Action is taken is *bona fide* and arm's-length, and that the non-exempt Person using either the Financed Property or the proceeds of the Obligations as a result of the relevant Deliberate Action will pay fair market value for the use thereof;

(d) Any disposition must be made at fair market value and any Disposition Proceeds actually or constructively received by the City as a result of the Deliberate Action must be treated as gross proceeds of the Obligations and may not be invested in obligations bearing a yield in excess of the yield on the Obligations subsequent to the date of the Deliberate Action; and

(e) Proceeds of the Obligations affected by the Remedial Action must have been allocated to expenditures for the Financed Property or other allowable governmental purposes before the date on which the Deliberate Action occurs (except to the extent that redemption or defeasance, if permitted, is undertaken, as further described in Section 4(a) below).

4. **Types of Remedial Action.** Subject to the conditions described above, and only if the City obtains an opinion of bond counsel prior to taking any of the actions below to the effect that such actions will not affect the federal tax status of the Obligations, the following types of Remedial Actions may be available to remediate a Deliberate Action subsequent to the issuance of the Obligations:

(a) Redemption or Defeasance of Obligations.

(i) If the Deliberate Action causing either the Private Business Use Test or the Private Loan Financing Test to be satisfied consists of a fair market value disposition of any portion of the Financed Property exclusively for cash, then the City may allocate the Disposition Proceeds to the redemption of Nonqualified Obligations pro rata across all of the then-outstanding maturities of the Obligations at the earliest call date of such maturities of the Obligations after the taking of the Deliberate Action. If any of the maturities of the Obligations outstanding at the time of the taking of the Deliberate Action are not callable within 90 days of the date of the Deliberate Action, the City may (subject generally to the limitations described in (iii) below) allocate the Disposition Proceeds to the establishment of a Defeasance Escrow for any such maturities of the Obligations within 90 days of the taking of such Deliberate Action.

(ii) If the Deliberate Action consists of a fair market value disposition of any portion of the Financed Property for other than exclusively cash, then the City may use any funds (other than proceeds of the Obligations or proceeds of any obligation the interest on which is excludable from the gross income of the registered owners thereof for federal income tax purposes) for the redemption of all Nonqualified Obligations within 90 days of the date that such Deliberate

Action was taken. In the event that insufficient maturities of the Obligations are callable by the date which is within 90 days after the date of the Deliberate Action, then such funds may be used for the establishment of a Defeasance Escrow within 90 days of the date of the Deliberate Action for all of the maturities of the Nonqualified Obligations not callable within 90 days of the date of the Deliberate Action.

(iii) If a Defeasance Escrow is established for any maturities of Nonqualified Obligations that are not callable within 90 days of the date of the Deliberate Action, written notice must be provided to the Commissioner of Internal Revenue Service at the times and places as may be specified by applicable regulations, rulings, or other guidance issued by the Department of the Treasury or the Internal Revenue Service. Note that the ability to create a Defeasance Escrow applies only if the Obligations to be defeased and redeemed all mature or are callable within ten and one-half years of the date the Obligations are originally issued or executed and delivered. If the Obligations are not callable within ten and one-half years, and none of the other remedial actions described below are applicable, the remainder of this attachment is for general information only, and bond counsel must be contacted to discuss other available options.

(b) Alternative Use of Disposition Proceeds. Use of any Disposition Proceeds in accordance with the following requirements may be treated as a Remedial Action with respect to the Obligations:

(i) the Deliberate Action consists of a disposition of all or any portion of the Financed Property for not less than the fair market value thereof for cash;

(ii) the City reasonably expects to expend the Disposition Proceeds resulting from the Deliberate Action within two years of the date of the Deliberate Action;

(iii) the Disposition Proceeds are treated as Proceeds of the Obligations for purposes of Section 141 of the Code and the Regulations thereunder, and the use of the Disposition Proceeds in the manner in which such Disposition Proceeds are in fact so used would not cause the Disposition Proceeds to satisfy the Private Activity Bond Tests;

(iv) no action is taken after the date of the Deliberate Action to cause the Private Activity Bond Tests to be satisfied with respect to the Obligations, the Financed Property, or the Disposition Proceeds (other than any such use that may be permitted in accordance with the Treasury Regulations);

(v) Disposition Proceeds used in a manner that satisfies the Private Activity Bond Tests or that are not expended within two years of the date of the Deliberate Action must be used to redeem or defease Nonqualified Obligations in accordance with the requirements set forth in Section 4(a) hereof; and

(c) Alternative Use of Financed Property. The City may be considered to have taken sufficient Remedial Actions to cause the Obligations to continue their applicable treatment under federal tax law if, subsequent to taking any Deliberate Action with respect to all or any portion of the Financed Property:

(i) the portion of the Financed Property subject to the Deliberate Action is used for a purpose that would be permitted for qualified tax-exempt obligations;

(ii) the disposition of the portion of the Financed Property subject to the Deliberate Action is not financed by a person acquiring the Financed Property with proceeds of any obligation the interest on which is exempt from the gross income of the registered owners thereof under Section 103 of the Code for purposes of federal income taxation or an obligation described in Sections 54A-54F, 54AA, or 6431 of the Code; and

(iii) any Disposition Proceeds other than those arising from an agreement to provide services (including Disposition Proceeds arising from an installment sale) resulting from the Deliberate Action are used to pay the debt service on the Obligations on the next available payment date or, within 90 days of receipt thereof, are deposited into an escrow that is restricted as to the investment thereof to the yield on the Obligations to pay debt service on the Obligations on the next available payment date.

Absent an opinion of bond counsel, no Remedial Actions are available to remediate the satisfaction of the Private Security or Payment Test regarding the same with respect to the Obligations. Nothing herein is intended to prohibit Remedial Actions not described herein that may become available subsequent to the date the Obligations are originally issued or executed and delivered to remediate the effect of a Deliberate Action taken with respect to the Obligations, the proceeds thereof or the Financed Property.

5. **Additional Defined Terms.** For purposes of this attachment, the following terms have the following meanings:

“*Commissioner*” means the Commissioner of Internal Revenue, including any successor person or body.

“*Defeasance Escrow*” means an irrevocable escrow established to redeem obligations on their earliest call date in an amount that, together with investment earnings thereon, is sufficient to pay the entire principal of, and interest and call premium on, obligations from the date the escrow is established to the earliest call date. A Defeasance Escrow may not be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the obligations.

“*Deliberate Action*” means any action, occurrence, or omission by the City (or, if applicable, by a conduit borrower) that is within the control of the City (or, if applicable, by such

conduit borrower) that causes either (1) the Private Business Use Test to be satisfied with respect to the Obligations or the Financed Property (without regard to the Private Security or Payment Test), or (2) the Private Loan Financing Test to be satisfied with respect to the Obligations or the proceeds thereof. An action, occurrence, or omission is not a Deliberate Action if (1) the action, occurrence, or omission would be treated as an involuntary or compulsory conversion under Section 1033 of the Code, or (2) the action, occurrence, or omission is in response to a regulatory directive made by the government of the United States.

“*Disposition Proceeds*” means any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition of property (other than Investments) financed with the proceeds of the Obligations.

“*Nonqualified Obligations*” means that portion of the Obligations outstanding at the time of a Deliberate Action in an amount that, if the outstanding Obligations were issued or executed and delivered on the date on which the Deliberate Action occurs, the outstanding Obligations would not satisfy the Private Business Use Test or the Private Loan Financing Test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the Deliberate Action.

“*Private Activity Bond Tests*” means, collectively, the Private Business Use Test, the Private Security or Payment Test, and the Private Loan Financing Test.

“*Private Business Tests*” means the Private Business Use Test and the Private Security or Payment Test.

“*Private Business Use Test*” has the meaning set forth in Section 141(b)(1) of the Code.

“*Private Loan Financing Test*” has the meaning set forth in Section 141(c) of the Code.

“*Private Security or Payment Test*” has the meaning set forth in Section 141(b)(2) of the Code.

“*Remedial Action*” means any of the applicable actions described in Section 4 hereof, or such other actions as may be prescribed from time to time by the Department of the Treasury or the Internal Revenue Service, which generally have the effect of rectifying noncompliance by the City with certain provisions of Section 141 of the Code and the Regulations thereunder and are undertaken by the City to maintain the federal tax status of the Obligations.

6. **Change in Law.** This attachment is based on law in effect as of this date. Statutory or regulatory changes, including but not limited to clarifying Treasury Regulations, may affect the matters set forth in this attachment.



CITY COUNCIL AGENDA

SUBJECT:

Resolution 3333-816 - Procedures for
Compliance with Obligations Under Continuing
Disclosure Undertakings

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Abbe Yacoben, Finance and Budget Director (623) 333-2011**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff requests that the City Council adopt a resolution adopting the Procedures for Compliance with Obligations Under Continuing Disclosure Undertakings.

BACKGROUND:

Whenever the City completes a public bond offering, this includes a promise to provide investors with certain financial and other information so long as the bonds remain outstanding. It is important to have adopted procedures guiding the annual continuing disclosure undertaking.

DISCUSSION:

These Procedures designate the Finance and Budget Director or designee to ensure compliance with the continuing disclosure undertakings.

BUDGET IMPACT:

There is no budgetary impact from these Procedures.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution adopting the Procedures for Compliance with Obligations Under Continuing Disclosure Undertakings.

ATTACHMENTS:

Description

[Resolution 3333-816](#)

RESOLUTION NO. 3333-816

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, ADOPTING PROCEDURES FOR COMPLIANCE WITH OBLIGATIONS UNDER CONTINUING DISCLOSURE UNDERTAKINGS.

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

SECTION 1. The “Procedures for Compliance with Obligations under Continuing Disclosure Undertakings” is hereby adopted in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of the “Procedures for Compliance with Obligations under Continuing Disclosure Undertakings” adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

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

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, August 8, 2016.

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk

APPROVED AS TO FORM:

Andrew J. McGuire, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 3333-816

(Procedures for Compliance with Obligations under Continuing Disclosure Undertakings)

See following pages.

PROCEDURES FOR COMPLIANCE WITH OBLIGATIONS UNDER CONTINUING DISCLOSURE UNDERTAKINGS

These Procedures for Compliance with Obligations under Continuing Disclosure Undertakings (these “Procedures”) are established as of July 26, 2016, and set forth specific procedures of the City of Avondale, Arizona (the “Issuer”), designed to assist in compliance with applicable requirements set forth in undertakings (“Continuing Disclosure Undertakings”) providing for ongoing disclosure in connection with the offering of obligations to investors for obligations (whether or not tax-exempt/tax-advantaged) subject to the continuing disclosure requirements of Rule 15c2-12 (the “Rule”) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

These Procedures document practices and describe various procedures for preparing and disseminating related reports and information and reporting “listed events” for the benefit of the holders of the Issuer’s obligations and to assist the Participating Underwriters (within the meaning of the Rule) in complying with the Rule and the Continuing Disclosure Undertaking.

The Issuer recognizes that compliance with pertinent law is an ongoing process; necessary during the entire term of any obligations issued by the Issuer, and is an integral component of the Issuer’s debt management. Accordingly, implementation of these Procedures will require ongoing monitoring and consultation with bond counsel and the Issuer’s accountants and advisors.

General Policies and Procedures

The following policies relate to procedures and systems for monitoring post-issuance compliance generally.

1. The City’s Finance Director or designee (the “Compliance Officer”) shall be responsible for monitoring post-issuance compliance issues.
2. The Compliance Officer will coordinate procedures for record retention and review of such records.
3. All documents and other records relating to obligations issued by the Issuer shall be maintained by or at the direction of the Compliance Officer.
4. The Compliance Officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.
5. The Compliance Officer will review the annual information required to be filed pursuant to each Continuing Disclosure Undertaking.

Continuing Disclosure

Under the provisions of the Rule, Participating Underwriters are required to reasonably determine that issuers (such as the Issuer) have entered into written Continuing Disclosure Undertakings to make ongoing disclosure in connection with offerings of obligations to investors subject to the Rule. Unless the Issuer is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, a Continuing Disclosure Undertaking executed by the Issuer will be required.

In order to monitor compliance by the Issuer with its Continuing Disclosure Undertakings, the Compliance Officer will take the actions listed below, if and as required by such Continuing Disclosure Undertakings. The Compliance Officer may coordinate with staff, and may engage a dissemination agent, counsel, and/or other professionals to assist in discharging the Compliance Officer's duties under these Procedures as the Compliance Officer deems necessary.

A. Compilation of Currently Effective Continuing Disclosure Undertakings

The Compliance Officer shall compile and maintain a set of all currently effective Continuing Disclosure Undertakings of the Issuer. Such agreements are included in the transcript of proceedings for the Issuer's respective obligation issue. Continuing Disclosure Undertakings are "Currently Effective" for purposes of these Procedures (and hence shall be included in the set of Currently Effective Continuing Disclosure Undertakings) for so long as the obligations to which they relate are outstanding. As obligations are completely repaid or redeemed, the Compliance Officer shall remove the related Continuing Disclosure Undertakings from the set of Currently Effective Continuing Disclosure Undertakings.

B. Annual Review and Annual Reporting Requirements

The Compliance Officer shall ensure that all necessary financial statements, financial information and operating data is filed in the manner and by the filing dates set forth in the Currently Effective Continuing Disclosure Undertakings. The Compliance Officer shall review the set of Currently Effective Continuing Disclosure Undertakings annually, prior to each annual filing, keeping in mind:

- The financial information and operating data required to be reported under a particular Continuing Disclosure Undertaking may differ from the financial information and operating data required to be reported under another Continuing Disclosure Undertaking; and
- The timing requirements for reporting under a particular Continuing Disclosure Undertaking may differ from the timing requirements for filing under another Continuing Disclosure Undertaking.

C. Calendar; EMMA Notification System

The Compliance Officer shall keep a calendar of all pertinent filing dates required under the Issuer's Currently Effective Continuing Disclosure Undertakings. The Compliance Officer shall also subscribe to notification services made available through the Electronic Municipal Market Access system of the Municipal Securities Rulemaking Board.

D. Annual Review of Prior Filings

As part of the annual review process, the Compliance Officer shall also review prior filings made within the past five years subsequent to the last such review of prior filings. If the Compliance Officer discovers any late or missing filings, the Compliance Officer (after discussing the circumstances with the Issuer's dissemination agent, counsel or other agents as necessary) shall file the missing information.

E. Monitoring of Listed events

The Compliance Officer shall monitor the occurrence of any of the following events and/or other events set forth in the Currently Effective Continuing Disclosure Undertakings and shall provide notice of the same in the required manner and by the relevant reporting deadline (generally within 10 days of the occurrence):

- Principal and interest payment delinquencies;
- Non-payment related defaults, if material;
- Unscheduled draws on debt service reserves reflecting financial difficulties;
- Unscheduled draws on credit enhancements reflecting financial difficulties;
- Substitution of credit or liquidity providers, or their failure to perform;
- Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Issuer's obligations, or other material events affecting the tax status of the Issuer's obligations;
- Modification to rights of holders of the Issuer's obligations, if material;
- Calls of the Issuer's obligations, if material, and tender offers;
- Defeasances of the Issuer's obligations;
- Release, substitution or sale of property securing repayment of the Issuer's obligations, if material;
- Rating changes;

- Bankruptcy, insolvency, receivership or similar event of the Issuer;
- The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- Appointment of a successor or additional trustee or the change of name of a trustee, if material.

F. Review of Official Statements

The Compliance Officer shall review drafts of any offering document for a new offering of obligations, with assistance from its dissemination agent, counsel or other agents of the Issuer as necessary, and shall determine that the offering document accurately and completely describes the Issuer’s continuing disclosure compliance history within the five years prior to the date of the respective Official Statement. This compliance review is not meant to limit the Issuer’s other reviews of or diligence procedures relating to its offering documents.

G. Record Retention

The Compliance Officer shall retain documentation evidencing the Issuer’s annual reviews and its reviews of offering documents in connection with new offerings as set forth above. This Issuer shall retain this documentation, for each Continuing Disclosure Undertaking, for the period that the related obligations are outstanding.

H. Annual Review Checklist

The Compliance Officer may (or may not) choose to use and retain the attached Annual Review Checklist to assist in implementing these Procedures.

CONTINUING DISCLOSURE ANNUAL REVIEW CHECKLIST

- 1. Fiscal Year Ending:** _____
- 2. Compliance Officer:** _____
- 3. Checklist Completion Date:** _____

4. Obligations for which there are Currently Effective Continuing Disclosure Undertakings - Attach Agreements:

\$ _____, _____, dated _____, 20__

5. Have any new Obligations subject to Continuing Disclosure Been Issued this Year?

_____ No

_____ Yes (Add Agreement to Currently Effective Continuing Disclosure Undertakings). If Yes, did the Compliance Officer review the Offering Document's Description of the Issuer's Continuing Disclosure Compliance History within the prior five years?

Circle: Y/ N (If No, review and discuss any issues with counsel.)

6. Have any Obligations subject to Continuing Disclosure Been Completely Paid or Redeemed this Year?

_____ No

_____ Yes (Remove Agreement from Currently Effective Continuing Disclosure Undertakings.)

7. (a) Has the Compliance Officer Reviewed the Annual Continuing Disclosure Filing to Ensure that all Necessary Financial Statements, Financial Information and Operating Data is Included?

_____ Yes

_____ No (Compliance Officer must review the Annual Continuing Disclosure Filing.)

(b) For purposes of this review, please keep in mind:

	Checked?
Different Continuing Disclosure Undertakings may require different information to be filed (so check each one).	Y / N
Different Continuing Disclosure Undertakings may have different filing timing requirements (so check each one).	Y / N

Have any of the Following Events Occurred this Year?

Event	Circle
1. Principal and interest payment delinquencies	Y / N
2. Non-payment related defaults, if material	Y / N
3. Unscheduled draws on debt service reserves reflecting financial difficulties	Y / N
4. Unscheduled draws on credit enhancements reflecting financial difficulties	Y / N
5. Substitution of credit or liquidity providers, or their failure to perform	Y / N
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Issuer's obligations, or other material events affecting the tax status of the Issuer's obligations	Y / N
7. Modification to rights of holders of the Issuer's obligations, if material	Y / N
8. Calls of the Issuer's obligations, if material, and tender offers	Y / N
9. Defeasances of the Issuer's obligations	Y / N
10. Release, substitution or sale of property securing repayment of the Issuer's obligations, if material	Y / N
11. Rating changes	Y / N
12. Bankruptcy, insolvency, receivership or similar event of the Issuer	Y / N
13. The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material	Y / N
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material	Y / N

If any such Event Occurred, was Proper Notice Provided?

_____ Yes

_____ No (Call your dissemination agent or counsel immediately to discuss.)

_____ N/A

Has the Issuer Retained a Dissemination Agent? (i.e., a Paid Third Party that Assists with Filings)

_____ Yes: Name/Contact: _____

_____ No



CITY COUNCIL AGENDA

SUBJECT:

Ordinance 1610-816 - Lease Agreement - Damri Muay Thai LLC

MEETING DATE:

8/8/2016

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

Staff requests that the City Council adopt an ordinance authorizing the lease of real property located at 735 N 114th Ave and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

BACKGROUND:

Avondale City Center, which is located at 114th and Corporate Drive, includes a 24,500 SF retail liner that is anchored by the American Sports Center recreational facility. Currently, Carlos O'Brien's occupies 23% of the rentable space with 5,609 SF. The city has marketed the vacant suites to other potential tenants through direct marketing outreach by staff and DPR Realty, a commercial real estate firm that provides brokerage services on behalf of the City.

DISCUSSION:

Damri Muay Thai is new mixed martial arts facility that proposes to lease approximately 4,032 SF of space at the City Center Complex. The initial term for the lease is seven (7) years and will commence on October 1, 2016. The lease provides for two (2) months of abated rent.

Mixed martial arts (MMA) is a full-contact sport that allows the use of both striking and grappling techniques from a variety of sports and martial arts traditions. Damri Muay Thai will offer a range of classes that include kickboxing, ju-jitsu, karate, and judo. The proposed lease space is "gray shell" condition, with unfinished floors, block walls, and no electrical and plumbing. The tenant plans to finish the floor with concrete, add interior walls, and complete electrical, plumbing and HVAC improvements in an open space configuration. The estimated total cost of tenant improvements is \$150,000. The lease stipulates that the city will provide \$40,320 for tenant improvement assistance for these facility upgrades. The lease specifies that the city will reimburse Damri Muay Thai after the improvements are completed.

BUDGET IMPACT:

The initial gross lease rate will commence at \$15.00 per SF (\$10.50 net of CAMs), and includes a 3% annual escalation for the subsequent years. The Common Area Maintenance (CAM) fees are included in the lease rate. Broker commission fees for DPR Realty, the City's broker, and 101 West Commercial, the tenant's broker, total \$27,200. The net effective cash flow for the lease will be approximately \$275,441 over the seven (7) year term.

RECOMMENDATION:

Staff recommends City Council adopt an ordinance approving a lease agreement with Damri Muay Thai LLC for the lease of real property located at 735 N 114th Ave and authorize the Mayor or City Manager and City Clerk to execute the necessary documents.

ATTACHMENTS:

Description

[Ordinance 1610-816](#)

ORDINANCE 1610-816 – LEASE AGREEMENT – DAMRI MUAY THAI LLC

DUE TO ITS SIZE, THIS DOCUMENT
HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/38792>



CITY COUNCIL AGENDA

SUBJECT:

Professional Services and Employment Agreement
Presiding Judge - Craig L. Jennings

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Andrew McGuire, City Attorney (602) 257-7664**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is recommending Council approval of the attached employment agreement with Craig L. Jennings for an additional two-year appointment as Presiding Judge and authorization for the Mayor and the City Clerk to execute the agreement. Council initially appointed Judge Jennings on July 7, 2014.

DISCUSSION:

The employment agreement with Judge Jennings covers the period from August 15, 2016 through August 14, 2018, providing for the two-year term required by the City Charter. Previously, the Judge's compensation consisted of a base salary of \$145,000, with a City-funded \$5,000 contribution to his existing ICMA-RC 457 deferred compensation plan. Because the City is not allowed to modify the Judge's compensation during his term, particularly any form of "merit" increase, he was not allowed to receive the roughly 3.5% - 4% merit increases provided to City staff during the past two fiscal years. Accordingly, the Judge's salary remained flat while high-performing employees were given increases of approximately 7-8% over that time period.

Judge Jennings has requested that, in lieu of the City contributing to his existing ICMA-RC 457 deferred compensation plan, the City instead add the contribution amount to his base salary. If added to his base salary, the Judge's current compensation is \$150,000. When multiplied by 8%, the new base salary is \$162,000, which will be paid annually for the period from August 15, 2016 to August 14, 2018. As with the current agreement, if the City's FY 2017-2018 annual budget includes a cost-of-living increase for all non-exempt employees, Judge Jennings' base salary may be increased by an equivalent percentage. No adjustments to his base salary are allowed to be made as a result of any merit increases provided to City employees. The only other modification to the agreement is to add a cell phone stipend commensurate with department-head-level employees.

BUDGET IMPACT:

Funding for this agreement is in the Courts Budget in Fund 010-6200-00-5000 Personnel Services.

RECOMMENDATION:

Approval of the attached employment agreement with Craig L. Jennings for a two-year appointment as Presiding Judge and authorize the Mayor and City Clerk to execute the agreement documents.

ATTACHMENTS:**Description**

[PSA - Judge Jennings](#)

**PROFESSIONAL SERVICES AND EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
CRAIG L. JENNINGS
(Amended and Restated August 8, 2016)**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is entered into on August 8, 2016, by and between the City of Avondale, an Arizona municipal corporation (the “City”) and Mr. Craig L. Jennings (“Employee”).

RECITALS

A. Pursuant to ARIZ. REV. STAT. § 22-402, the City is required to have a municipal court (the “City Court”), which shall be presided over by a magistrate judge (the “Presiding Judge”).

B. Employee was selected by the Mayor and Council of the City (the “City Council”) in accordance with Article XI, Section 3 of the Avondale City Charter and Sections 5-17 through 5-19 of the Avondale City Code.

C. The City and Employee desire to enter into this Agreement for employment by the City of Employee for the position of Presiding Judge of the City Court.

D. This Agreement is based on the Arizona Constitution’s requirement of separation of powers and the necessity of judicial independence to preserve and protect that separation. This Agreement shall set forth the parameters, guidelines, duties, rules of conduct and compensation during the term of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and 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 Employee hereby agree as follows:

1. Term. This Agreement shall be effective on August 15, 2016, and shall remain in full force and effect through August 14, 2018, unless sooner terminated for cause as set forth in Section 5 below. After commencing his official duties, and thereafter during the term of this Agreement, Employee shall be in the exclusive employ of the City and shall not accept other employment or carry out any other business other than the position of Presiding Judge unless authorized to do so by the City Council, in writing, prior to Employee engaging in such other activity; provided, however, that any such additional duties shall be conducted outside of regular work hours or on Employee’s vacation time and without the use of City resources or equipment.

2. Compensation.

2.1 Base Salary. Employee shall be paid \$162,000.00 annually (in 26 equal installments, paid every two weeks) for each 12-month period between August 15, 2016 and August 14, 2018, unless increased pursuant to this Subsection. In the event that the City's FY 2017-2018 annual budget includes a cost-of-living increase for all unrepresented employees (a "COLA"), the Employee shall be entitled to an increase in base salary equal to the percentage of the COLA, beginning with the first pay period of FY 2017-2018. Employee expressly agrees and understands that no adjustment to his base salary shall occur relative to any merit increases provided to City employees as part of the FY 2017-2018 annual budget.

2.2 Employee Benefits. Employee shall accrue and exercise benefits at the rate of a department head under Chapter 6 of the City of Avondale Personnel Policies and Procedures Manual (the "Policy Manual").

2.3 Cellular Telephone Stipend. The City shall pay Employee a monthly cell phone stipend consistent with other management employees of the City and according to the current Policy Manual and/or Administrative Policies.

2.4 No Reduction of Benefits. The City shall not, at any time during the term of this Agreement, reduce Employee's salary, compensation or other financial benefits. Employee agrees and understands that changes to employee benefits affecting all City department heads shall not be deemed a reduction in benefits.

3. Duties. Employee shall perform the duties of Presiding Judge pursuant to all laws, ordinances, and rules of the State of Arizona, the City of Avondale and the Arizona Supreme Court. Without limiting the generality of the foregoing sentence, Employee shall be responsible for carrying out the duties and obligations set forth in Chapter 5 of the City Code and Article XI of the City Charter.

3.1 Work Hours. Employee shall maintain reasonable work hours Monday through Thursday except for legal holidays, and shall be available as necessary on Fridays, weekends and legal holidays to conduct initial appearances as required by law; provided, all time worked during a calendar week shall not be less than 40 hours, including any leave taken or holidays occurring during such time period. In the event the City changes its current days of operation from Monday – Thursday to any other schedule, Employee shall adjust his work hours accordingly to ensure he is available on all days when the City Court is open for business.

3.2 Case Adjudication. Employee shall preside as Judge over all assigned court calendar dockets in a timely fashion and shall, if necessary secure the services of Judges Pro Tem or hearing officers to facilitate the timely adjudication of cases in the City Court.

3.3 Judicial Conduct. Employee shall, at all times during the term of this Agreement, ensure that his conduct as Presiding Judge does not violate Arizona Supreme Court Administrative Order No. 93-30 (as amended by Order No. 96-25) and any other applicable

order, the Code of Judicial Conduct, Rule 45 of Rules of the Arizona Supreme Court and any other rule or law governing the conduct of judges.

3.4 Court Administration. Employee shall, through the Court Administrator, act as the Chief Administrative Officer over the City Court and shall abide by the rules and regulations of the City, including the City's adopted Personnel Policies and Procedures Manual and any administrative policy or procedure required by the City Manager. Employee shall, through the Court Administrator, be responsible for administering the budget of the City Court and for preparing and submitting for approval an annual budget in accordance with established City procedures.

3.5 Community Interaction. In addition to his duties as set forth above, Employee (A) shall participate in the Court component of the City's Citizens Academy, (B) should conduct outreach to high schools in the corporate limits of the City to assist with criminal law and justice studies courses and (C) may participate in such local charitable or civic organizations as Employee determines appropriate.

4. Performance Evaluation. The City Council may review and evaluate Employee's performance annually, and shall review and evaluate Employee's performance as far in advance of the expiration of this Agreement as practicable following review by the City's Judicial Advisory Board as set forth in Chapter 5, Article II of the City Code. Employee's review and evaluation by the City Council shall be based upon (i) success at fulfilling the reasonably achievable goals and performance objectives for City Court efficiency set forth by the City Council in its annual goal-setting retreat, (ii) personnel management, including overall management style and ability to lead, supervise and direct City Court staff, (iii) professionalism, including manner of addressing members of the public who appear in the City Court and (iv) the Judicial Advisory Board's recommendation.

5. Termination. During the term of this Agreement, Employee may be removed from office by the City Council for cause, including violation of this Agreement. Notice of removal of office shall be delivered in writing to Employee, and Employee shall have the right to request a hearing before the City Council. Employee may terminate this Agreement and resign his appointment as Presiding Judge upon 30 days' written notice to the City Mayor and the City Manager.

6. Professional Development.

6.1 Professional Associations. The City agrees to budget for and to pay for Employee's expenses of professional and official travel, meetings, and occasions as necessary to continue his professional development and to adequately pursue necessary official functions for the City Court.

6.2 Continuing Education. The City also agrees to budget for and to pay for Employee's expenses for continuing education courses, institutes and seminars necessary for his professional development as a judge and for the good of the City Court.

7. General Expenses. The City recognizes that certain expenses of a non-personal and generally job-affiliated nature may be periodically incurred by Employee. The City (i) agrees to reimburse or to pay said general expenses and (ii) authorizes the City Manager or authorized designee to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

8. Bonding. The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

9. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) 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

If to Employee: Craig L. Jennings



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

10. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or Employee of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

11. Attorneys' Fees. In the event either party finds it necessary to bring any action at law or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party and, in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

12. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

13. Time of the Essence. Time is of the essence in this Agreement.

14. Assignment. This Agreement may not be assigned, in whole or in part.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

16. Amendment. No amendment or waiver of any provision in this Agreement will be binding (i) on the City unless and until it has been approved by the City Council and has become effective or (ii) on Employee unless and until it has been executed by Employee or his authorized representative.

17. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

18. Severability. Every provision of this Agreement is and will be construed to be a separate and independent covenant. If any provision in this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability. Each provision in this Agreement will be valid and will be enforced to the extent permitted by law and the parties will negotiate in good faith for such amendments of this Agreement as may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

19. Covenant of Good Faith. In exercising their rights and in performing their obligations pursuant to this Agreement, the parties will cooperate with one another in good faith to ensure the intent of this Agreement can be attained. The City and its City Council shall not unreasonably withhold appropriation authority to fund the salary, benefits and other provisions of this Agreement.

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

21. Counsel Assistance; Fair Interpretation.

21.1 Counsel for Employee. Employee has either been assisted by counsel in connection with the preparation and execution of this Agreement or has chosen to forego such legal representation.

21.2 Counsel for City. The City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

21.3 Fair Interpretation. This Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.

22. Records and Audit Rights. To ensure that Employee is complying with the warranty under Section 23 below, Employee's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (i) evaluation and verification of any invoices, payments or claims based on Employee's actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (ii) evaluation of the Employee's compliance with the Arizona employer sanctions laws referenced in Section 23 below. To the extent necessary for the City to audit Records as set forth in this Section, Employee hereby waives any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Employee pursuant to this Agreement. Employee shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Section. The City shall give Employee reasonable advance notice of intended audits.

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

EMPLOYEE:

CITY:

CITY OF AVONDALE, an Arizona
municipal corporation

Craig L. Jennings

Kenneth N. Weise, Mayor

ATTEST:

Carmen Martinez, City Clerk



CITY COUNCIL AGENDA

SUBJECT:

Public Hearing - Conditional Use Permit - Park
10 Shops A Drive-Thru Coffee Shop (Application PL-16-0048)

MEETING DATE:

8/8/2016

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 coffee shop in a proposed multi-tenant building in the West-10 Planned Area Development (PAD).

PARCEL SIZE:

2.1 net acres

LOCATION:

Approximately 235 feet west of the southwest corner of McDowell Road and 103rd Avenue (Exhibits A, B, and C)

APPLICANT:

Mr. Todd Lawrence, Butler Design Group (602) 957-1800

OWNER:

Ms. Su Moran, Park 10 ME, LLC (503) 208-3072

BACKGROUND:

The developers of Park 10 are proposing a new drive-thru coffee shop, specific tenant currently unidentified, as part of a multi-tenant retail/restaurant building on 2.1 acres located west of the southwest corner of McDowell Road and 103rd Avenue. The 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 contains language limiting 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). A Conditional Use Permit for a Jack in the Box drive-thru restaurant was approved by the City Council on January 19, 2016. The proposed drive-thru coffee shop, if approved, would be the second approved drive-thru use in the master development. If approved, no additional drive-thru uses would be permitted within the development unless a PAD Amendment revisiting the restriction on the number of drive-thru uses was submitted and approved by the City Council at a later date.

A Master Site Plan for the Mixed Use Commercial sub-area of the PAD was approved subject to conditions on March 12, 2015 (Exhibit I). 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 that includes components such as bowling, laser tag, a video arcade, and restaurants/bars. Phase I also includes three additional pads to be developed with retail or restaurant uses. A Jack in the Box drive-thru restaurant was approved for development at the northeast corner of the site on the pad labeled "P1". Construction on the Jack in the Box is anticipated to begin this summer.*

The proposed 8,694 square foot Shops A building (8,504 leasable SF) will be located on the pad labeled on the Master Site Plan as "P2". The Master Site Plan originally anticipated two additional retail/restaurant buildings as part of Phase I - a 7,000 square foot building on "P2" and a 4,000 square foot building on "P3". To accommodate the parking needs of the proposed drive-thru coffee shop and three other restaurant tenants anticipated to operate in the Shops A building, the pad labeled as "P3" on the Master Site Plan will no longer be developed with a building but instead be developed with additional parking facilities. If approved, construction of the Shops A building will complete Phase I of the Park 10 development.

All private on-site improvements within the Phase I boundary were completed prior to the February 2016 opening of Main Event. These improvements include 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 in McDowell Road, and construction of deceleration/turn lanes on McDowell Road, have also been completed.

A Final Plat for Phase I was approved by the City Council on April 6, 2015. The Final Plat divided the property into five lots, formally creating the two parcels that will be developed with Shops A and associated parking (Lots 2 and 3 of Park 10 Phase I Commercial Subdivision).

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, as well as all associated on-site improvements, such as parking, lighting, landscaping, etc. An extension of the landscaped median in McDowell Road and construction of an additional McDowell Road deceleration 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:** The east portion of the proposed Shops A site is across the street from Gateway Office Park, a fully-developed 6-acre site consisting of 47 individually-owned office condominiums. Businesses within Gateway Office Park, which is zoned C-O (Commercial Office) include a mix of medical offices and general offices. The westernmost portion of the proposed development site is across McDowell Road from Aventura Apartments, a three-story 418-unit apartment complex on 18.4 acres, completed in 2003. That property is zoned PAD (Planned Area Development).

- **EAST:** A currently undeveloped pad site (Lot 4 of the Park 10 Phase I subdivision) for which a Jack in the Box drive-thru restaurant has been approved. Construction is anticipated to commence this summer.
- **SOUTH:** Main Event Entertainment, a family oriented entertainment venue featuring a video arcade, bowling, laser tag, and restaurant/bar, which opened in February 2016.
- **WEST:** Across the Park 10 Drive entry aisle, 11.6 acres of undeveloped land anticipated to be developed in the future with retail, restaurant, office, entertainment, hospitality, or other commercial uses as part of Phase II of the Park 10 master development.

In addition to approval of this Conditional Use Permit request, administrative approval of a Site Plan/Design Review application is required to evaluate building architecture and site engineering in greater detail prior to construction. The Site Plan/Design Review application for Shops A is currently in review.

SUMMARY OF REQUEST:

The applicant, on behalf of the master developer, Park 10 ME, LLC, is requesting approval of a Conditional Use Permit to locate a drive-thru coffee shop within a new multi-tenant building located approximately 235 feet west of 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 2.1-acre development site has been submitted (Exhibit F). The conceptual plan includes an approximately 26-foot tall, 8,694 square foot (8,504 leasable) 4-tenant building located near the northwest corner of the development site. The coffee shop will occupy the westernmost 2,400 square feet of the proposed building, which is setback from the McDowell Road right-of-way by approximately 50 feet, exceeding minimum setback requirements established by the PAD. The building will also feature two private patio areas, to be utilized for outdoor dining. These areas are provided just south of the westernmost tenant, for use by the anticipated coffee-shop user, and east of the easternmost tenant, for use by the anticipated user of that space, a restaurant. In addition to the private patio areas, a 500 square foot pedestrian plaza featuring landscaping, pedestrian seating, pedestrian scaled lighting, decorative pavement, and shading, is provided along the frontage of the Shops A building.

A drive-thru lane wraps the north and west sides of the building, with drive-thru customers entering the queue and placing orders north of the building, paying for and picking up food/beverages from a single window on the west side of the building, and exiting onto a drive-aisle on the south side of the building. The drive-thru lane is buffered and screened by an existing 30' to 40' wide landscape area containing a variety of trees, shrubs, and groundcover, completed as part of the initial Phase of the Park 10 development. The development's "living wall" concept, a metal fence upon which climbing vines are designed to grow, will be extended west to provide additional screening of the drive-thru lane.

Vehicular access to the proposed Shops A building will be provided by existing driveways into the Park 10 development with no new points of access proposed. These existing points of access include a signalized entrance immediately west of the proposed building, and a right-in/right-out driveway located just east of the east parking lot.

In addition to the proposed coffee shop, the applicant anticipates the remainder of the proposed building may be occupied by three separate restaurant uses. To meet the intense parking demand of restaurant uses, a total of 92 parking spaces, including 4 ADA accessible spaces, are provided to the east and south of the proposed building, in compliance with minimum City parking requirements and Federal ADA guidelines. Should demand eclipse the City's minimum requirement, additional

parking is available throughout the master development, of which common use is allowed through a recorded parking easement. Additionally, all aisle widths meet City minimum requirements and will allow for fire department access to the building in the event of an emergency.

Pedestrian access into the site is provided via an existing pedestrian sidewalk west of the proposed building, connecting to the McDowell Road sidewalk. A new decorative crossing will connect this existing private sidewalk to the Shops A building across the terminus of the drive-thru lane. Additionally, a decorative crosswalk will be provided to connect the south parking field to the front of the Shops A building. Bicycle parking is provided in accordance with City requirements.

In order to produce the most attractive building possible from the perspective of McDowell Road, the proposed building foregoes the wide, unsightly, vehicle-accessible service area typical of many commercial buildings, instead opting to provide a narrow service area which allows for employee/service access on foot. To implement this design, delivery staging was relocated to the east portion of the Shops A parking field, in an area that will be used primarily for customer parking. To reduce any conflicts between customer vehicles and delivery vehicles, deliveries will be required to occur during off-peak hours when parking demand is low.

Dual dumpster enclosures are provided east of the proposed building and angled such that views into the enclosures from the perspective of McDowell Road will be eliminated. Additional landscaping will be provided in the vicinity of the decorative block enclosures to further enhance site aesthetics.

The applicant has submitted a conceptual landscape plan (Exhibit G). A minimum 30' deep landscape setback adjacent to McDowell Road has already been completed by the master developer and will not be impacted by the Shops A proposal. The setback area features an abundance of trees, shrubs, and a "living wall" that enhances the appearance of the development from the adjacent streets. This existing setback landscaping is proposed to be supplemented by additional trees designed to further screen the trash enclosures from McDowell Road. Furthermore, new trees are provided immediately north of the service area combo wall to provide further variation in this area. Internal to the site, additional landscaping is provided to complement the perimeter landscaping, include a blend of Mesquite, Desert Museum, Chitalpa, and Live Oak trees within parking areas and in planter beds and pots near the front of the building, designed to work in unison with the building architecture to create an aesthetically pleasing development.

The final architecture of the building will be determined during the Site Plan/Design Review stage of the project, however, preliminary elevations submitted by the architect (Exhibit H) show a clean, contemporary design that complements the existing Main Event, approved Jack in the Box, and the currently under construction Gateway Village, east of 103rd Avenue. The proposed building will feature significant movement in the roofline through use of decorative towers on the east and west ends, as well as significant movement in wall plane, particularly along the building's south elevation. Proposed colors and materials fit the contemporary style, with a mix of three contrasting shades of earth toned stucco accented by two varieties of "groundface" exposed aggregate block, decorative "rusted" metal accents on the west tower, and modern corrugated metal accents on the east tower. The building also features decorative awnings over building entrances, as well as a full canopy over the drive-thru window. Additionally, a 6' freestanding "combo-wall" comprised of segments of decorative block and vine-covered "living wall" is proposed along the rear (north) of the building, screening employee/service doors from street view.

The quantity and location of drive-thru menu boards/speaker boxes has not been determined. Per the Zoning Ordinance, a maximum of two menu board signs can be permitted, which will be evaluated by staff for location and design prior to issuance of a permit for the coffee shop tenant improvement plan. To ensure the speaker boxes do not negatively impact surrounding uses, the applicant's narrative (Exhibit E) specifies that speakers will feature adjustable technology designed to prevent sound generated by the speakers from exceeding ambient noise levels at property lines.

Because the specific coffee shop tenant has not been identified, specific operating characteristics of the business, including number of employees, hours of operation, etc. are unknown at this time, though it can be largely assumed those characteristics will be similar to other existing drive-thru coffee shops within the region. The applicant has suggested that the drive-thru may open any time after 5:00 A.M. and close as late as 2:00 A.M.

Because the West 10 PAD limits the total number of drive-thru uses to a maximum of two, approval of this request will constitute the final drive-thru use within the development unless the PAD is amended by the City Council at a later date.

PARTICIPATION:

The applicant conducted a neighborhood meeting to discuss the proposed Conditional Use Permit at 6:00 P.M. on Tuesday, June 14th at Avondale City Hall. The meeting was advertised in the May 25, 2016 edition of the West Valley View. A notification sign, containing date, time, and location for the neighborhood meeting, was erected on the subject property on May 23, 2016. Additionally, 20 property owners within 500 feet of the subject property were notified of the meeting by letters sent by the applicant on May 25, 2016. With the exception of staff and the applicant's team, no persons attended the neighborhood meeting.

Letters notifying nearby property owners of the July 21, 2016 Planning Commission meeting were mailed on June 27, 2016. The public hearing notice sign was updated on June 28, 2016 to reflect the date, time, and location of the Planning Commission meeting. A notice of the Planning Commission public hearing was published in the West Valley View on June 27, 2016. With the exception of the applicant, no persons spoke on the request during the Planning Commission public hearing.

Letters notifying nearby property owners of this City Council meeting were mailed on July 11, 2016. The sign was updated to include the date, time, and location of the City Council meeting on July 12, 2016. Additionally, a notice of the City Council hearing was published in the West Valley View on July 20, 2016. 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 July 21, 2016 (Exhibit J).

The Commission inquired into the following topics (*staff comments in italics*):

- **Were the number of ADA parking spaces proposed sufficient?** *Staff responded that the 4 spaces provided met minimum ADA requirements. The architect added that the amount provided, in his experience, would be sufficient to serve the development.*
- **How will the requirement that deliveries occur during off-peak hours be conveyed to building tenants?** *Staff responded that it will be the responsibility of the developer to ensure this stipulation is met in order to avoid Code Enforcement action. The applicant stated that language notifying tenants of the allowed delivery times will be included in each lease for the development.*
- **Why has there been no public participation in relation to the proposal?** *Staff explained that all notification requirements had been met, including site sign posting, mailings, and legal advertisements in the West Valley View. There were also no attendees at the required neighborhood meeting. Typically, staff receives feedback from citizens when they are opposed to a project.*

- **Does staff know anything further in regards to the coffee shop business model? Would alcoholic beverages be served?** *Staff responded that because the specific tenant has not yet been identified, the details are not known, though it is very likely to operate similarly to other drive-thru coffee shops of similar size. A liquor license application for the proposed use has not been received to date, though that could occur at a later date if the sale of alcohol was part of the tenant's business model.*
- **Why are the number of drive-thrus in the center limited to two? Will the City stick to that number or will there be flexibility to expand upon that number?** *Staff responded that drive-thrus were restricted at two by stipulation of the 2006 rezoning of the property to PAD. At that time, City Council was limiting drive-thrus on virtually all newly zoned commercial sites. To exceed two drive-thrus would require a future major PAD Amendment, which would require hearings before the Planning Commission and City Council.*
- **Will parking be convenient for customers of the development?** *Staff stated that because the entire 4-suite building may potentially be occupied by 4 restaurants, a significant quantity of parking spaces have been planned to accommodate future users.*
- **Will drive-thru lane stacking interfere with on-site pedestrian or vehicle circulation?** *Staff responded that the proposed plan allows for upwards of 10 cars to queue in the dedicated drive-thru lane north of the building. Because of this long queuing lane, the City's Traffic Engineer does not foresee cars overflowing the stacking lane into the parking lot.*
- **Can the City get a family restaurant at these types of locations rather than additional drive-thrus?** *Staff responded that the drive-thru coffee shop is just one component of a larger 4-suite building. It is possible that a sit down restaurant will occupy at least one of the remaining 3 suites, particularly the east endcap with large outdoor patio area.*

Upon conclusion of the public hearing, the Commission voted 4-0 to recommend approval of the requested Conditional Use Permit subject to four staff recommended conditions of approval, as listed in the proposed motion below.

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 coffee shop use will serve both local residents and regional visitors to the Park 10/Main Event site and other nearby regional power centers, 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, safe pedestrian 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,

shaded pedestrian connection from the McDowell Road sidewalk into the proposed site as well as both public and private outdoor plazas, for outdoor dining as well as casual seating 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 premier regional commercial corridor, with existing power centers such as Gateway Pavilions and Gateway Crossing soon to be supplemented by new developments, such as Park 10, anchored by Main Event, and the adjacent Gateway Village, currently under construction, anchored by Sportsman's Warehouse. Amongst the most common uses for perimeter pad sites within regional power centers are drive-thru restaurants and coffee shops, as they provide a convenient service to people working, shopping, or living in the area. The proposed Shops A building featuring a drive-thru endcap will be the seventh drive-thru restaurant/coffee-shop in the McDowell Road corridor between 99th Avenue and 107th Avenue, joining existing McDonald's, Chick-Fil-A, Kneaders, Taco Bell, and Raising Cane's, and the soon to be under construction Jack in the Box within the Park 10 center.

Additionally, the proposed drive-thru will feature speaker technology designed to limit noise levels at property lines to ambient levels as well as systems designed to minimize cooking smoke/odor impact. Considering these measures, 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 and Landscape Plan meet or exceed all development standards imposed by the Zoning Ordinance and/or West 10 PAD, including:

- Minimum building setback requirements of 30' adjacent to McDowell Road are met by the conceptual plan (50' is provided).
- The parking spaces provided within the overall Park 10 development exceed City minimum requirements.
- All screening requirements are met or exceeded by the proposal. Living walls 3' in height will screen 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 canopy integrated into the architecture of the Shops A building. Lastly, proposed trash enclosures and the rear service area have been sited and designed to minimize any impact on aesthetics, with additional landscaping provided in those areas for further screening.
- Proposed landscaping meets or exceeds all City requirements, including, but not limited to, landscaping within parking areas, foundation landscaping adjacent to all four sides of the building, and landscaping on the perimeter of the site to enhance streetscape aesthetics.

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 existing driveways into the Park 10 development, including a signalized full access driveway immediately west of the proposed Shops A, and a right-in/right-out driveway just east of the Shops A east parking lot. In regards to pedestrian traffic, safe, shaded connections are provided between the public sidewalk and bus shelter adjacent to McDowell Road to the front of the proposed Shops A building.

A Traffic Impact Analysis (TIA) was prepared by the applicant and reviewed by the City's Traffic Engineer. The City agrees with the findings of the TIA that the proposed use and site design will function adequately and 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.

Staff is recommending four conditions of approval as listed in the Proposed Motion section of the report, below. Stipulations 1 and 2 are standard for all Conditional Use Permit requests. Stipulations 3 and 4 are intended to ensure that all potential adverse impacts of the drive-thru use will be mitigated.

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 July 21, 2016, the Planning Commission **RECOMMENDED APPROVAL** of application PL-16-0048, a request for Conditional Use Permit approval for a drive-thru coffee shop within the west endcap of the Park 10 Shops A multi-tenant building proposed to be constructed west of the southwest corner of McDowell Road and 103rd Avenue, subject to four staff recommended stipulations.

PROPOSED MOTION:

I move that the City Council accept the findings and **APPROVE** application PL-16-0048, a request for Conditional Use Permit approval for a drive-thru coffee shop within the west endcap of the proposed Park 10 Shops A multi-tenant building, subject to four stipulations, as follows:

1. The use and development of the site shall conform to the Conditional Use Permit narrative, Conceptual Site Plan, Conceptual Landscape Plan, and Conceptual Building Elevations, attached as staff report Exhibits E, F, G, and H.
2. In accordance with Section 109 of the Zoning Ordinance, the Conditional Use Permit shall expire within two years from the date of approval if the use has not commenced.
3. All deliveries shall occur during off-peak hours.
4. The City shall reserve the right to require additional screening of any future drive-thru menu board/speaker box, the specifics of which shall be determined prior to issuance of a tenant improvement permit for a drive-thru use in Shops A.

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 Landscape Plan](#)

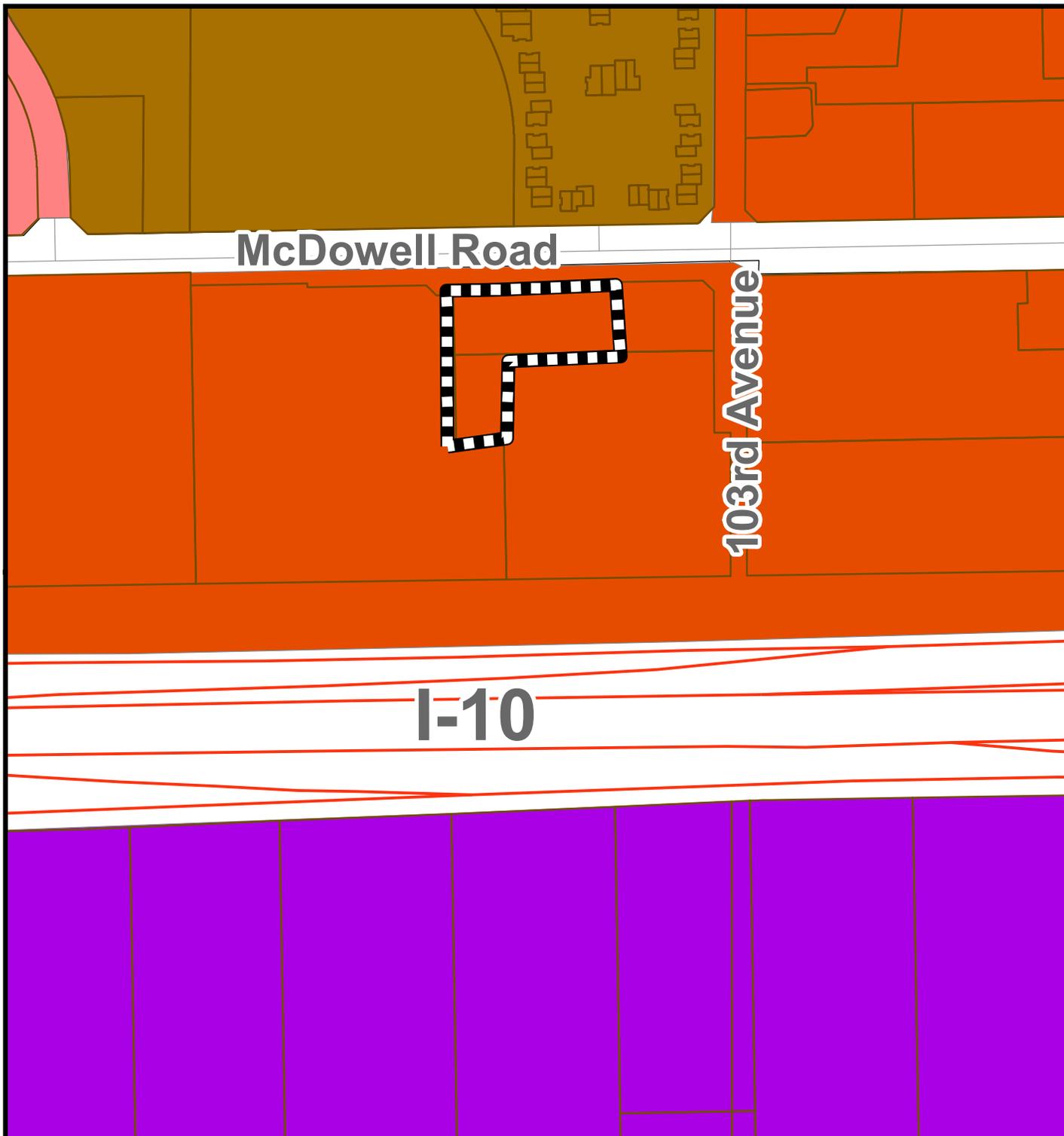
[Exhibit H - Proposed Conceptual Building Elevations](#)

[Exhibit I - Approved Park 10 Phase I and II Master Site Plan](#)

[Exhibit J - Planning Commission Minutes Excerpt](#)

PROJECT MANAGER

Ken Galica, Senior Planner (623) 333-4019



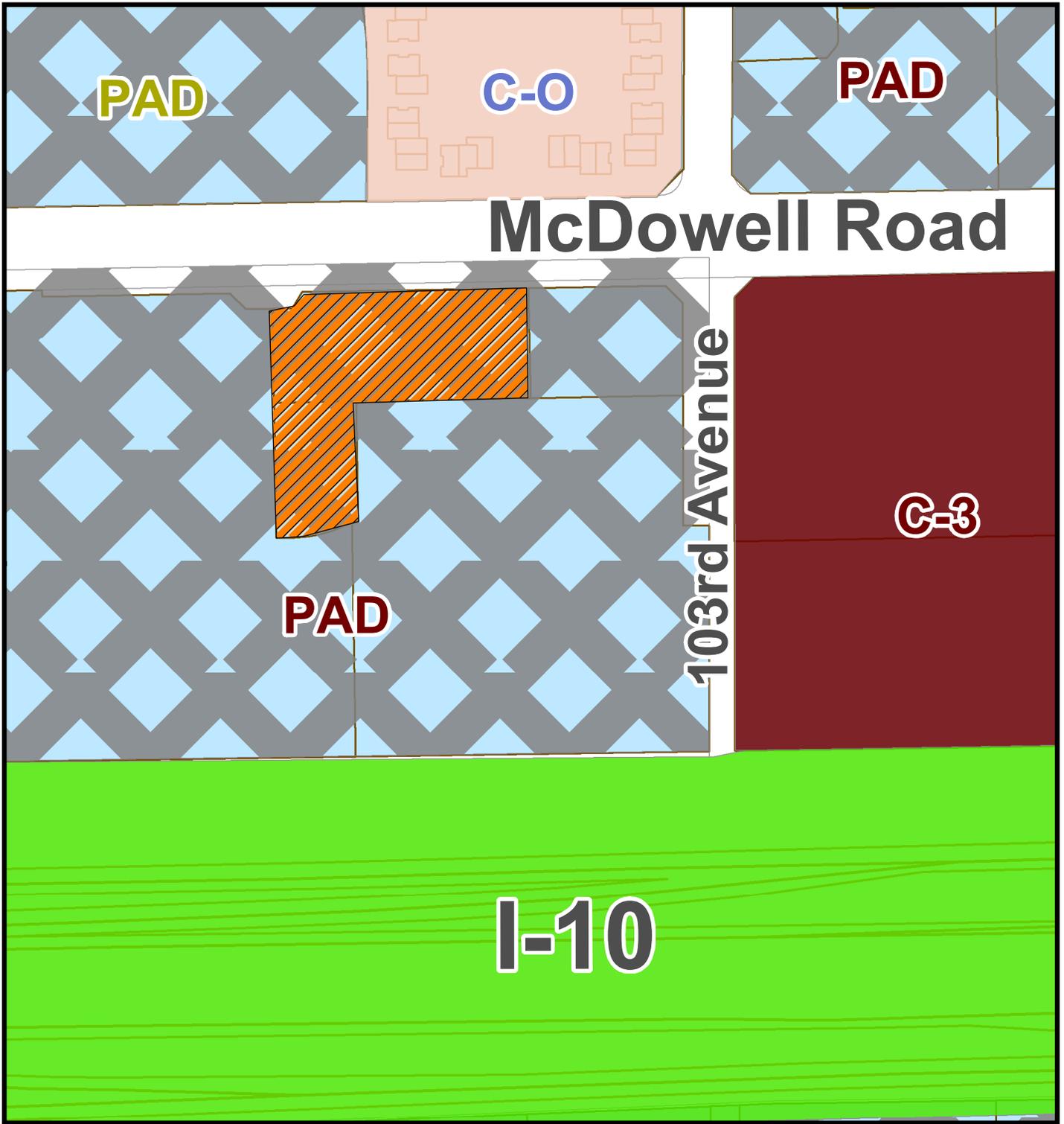
General Plan Land Use Map

-  Freeway Commercial
-  Business Park
-  Local Commercial

-  High Density Residential

 **Subject Property**





Zoning Vicinity Map



Subject Property





Aerial Photograph



 Subject Property



*SUMMARY OF RELATED FACTS
APPLICATION PL-16-0048*

<i>THE PROPERTY</i>	
PARCEL SIZE	Phase I of the Park 10 master development is approximately 21.4 net acres; Lots 2 and 3, upon which the proposed Shops A building and associated parking are planned, total approximately 2.1 net acres.
LOCATION	Approx. 235 feet west of the SWC McDowell Road and 103 rd Avenue
PHYSICAL CHARACTERISTICS	Phase I of the Park 10 master development was completed in January 2016. Lots 2 and 3, upon which Park 10 Shops A and associated parking are proposed, are finished pads within the Phase I site. Lot 2 is currently covered in decomposed granite; Lot 3 is partially developed with parking spaces that will be relocated to Lot 2 as part of this Shops A 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 southeast of the proposed Shops A building and has no impact on development of the remaining lots, including Lots 2 and 3.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	Across McDowell Road from the east portion of the proposed Shops A site is 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). The westernmost portion of the proposed development is across McDowell Road from Aventura Apartments, a three-story, 418-unit apartment complex on 18.4 acres, completed in 2003. That property is zoned PAD.

EAST	A currently undeveloped pad site (Lot 4 of the Park 10 Phase I master development) for which a Jack in the Box drive-thru restaurant has been approved. Construction is anticipated to commence this summer.
SOUTH	Main Event Entertainment, a family oriented entertainment center featuring video arcade, bowling, laser tag, and restaurant/bar, which opened in February 2016.
WEST	Across the Park 10 Drive entry aisle, 11.6 acres of undeveloped land anticipated to be developed with retail, restaurant, office, hospitality, or other commercial uses as part of Phase II of the Park 10 master center.

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

May 06, 2016

Mr. Ken Galica
City of Avondale
Development and Engineering Services Department
11465 W. Civic Center Drive, Suite #110
Avondale, Arizona 85323-6804



**RE: Park 10/Shops A Conditional Use Permit Application
SWC McDowell Road and 103rd Avenue
Application PL-16-0033**

Dear Mr. Galica:

Below is our Revised Project Narrative for the Conditional Use Permit Application for the proposed drive through at Shops A (Pad 2).

PROJECT NARRATIVE

1. Consistency with the General Plan and any applicable Specific Plan.

Park 10 is a 43 acre site at southeast corner of 107th Avenue and McDowell Road. This Mixed-Use development will include a variety of commercial and employment uses including Medical Office, Family Entertainment, Hotel, Restaurant and Retail.

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-through restaurant use located within a master-planned commercial center is an appropriate use within the Freeway Commercial designation.

Shops A is proposed along the McDowell Road frontage just west of the 103rd Avenue intersection (at Pad 2). Shops A will be a multi-tenant retail shops building with a drive-through lane for the west endcap tenant.

2. Compliance with the Zoning Ordinance and other city codes and regulations.

This project will be developed in conformance with the approved Planned Area of Development and Amendments (PAD) for Park 10. Those elements that are not covered under the PAD, will adhere to the current Avondale Zoning Ordinance. Building and Site construction will also comply with current city codes and regulations.

3. General compatibility of proposed use with adjacent property.

The adjacent property to the east, west and south are portions of Park 10. Currently *Main Event* has just opened to the south of the Shops A area. A *Jack in the Box* is proposed to the east, and future restaurants or retail are planned for the west. 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.

On the approved Phase I plan for Park 10, Pad 2 was designated as a 7,000 sf building schematically planned as a restaurant. Now proposed as a multi-tenant shops building, there will be at least two restaurant tenants. This new shops building will provide a variety of dining and shopping options to complement the family entertainment and dining uses already existing, or proposed on this portion of the development, as well as for the surrounding businesses and residents.

4. Site and building design.

As part of the first phase of construction for Park 10, the infrastructure around the Pad 2 area has already been built. The proposed Shops A and its drive through lane will take up a larger area than the original Pad 2 footprint however, so modifications to the existing parking field to the east will be required. All new sitework will match existing.

The proposed building is approximately 8,694 sf and is oriented east/west with the storefront entrances on the south side. The east endcap will have a large patio area, and the west endcap will have a drive through, as well as a large patio area on the south side. The suites between will have shaded walkways and seating elements to tie everything together. The architecture of the building is contemporary and expands on the original palette of colors and materials established by *Main Event*.

5. Address ingress and egress to the property and proximity to driveways and street intersections in the vicinity of the subject property.

Shops A will be adjacent to the main entrance drive into the phase I portion of Park 10. This is the signalized intersection across from Aventura Apartments. Other access points include the right/in, right/out access drive along McDowell Rd to the east, and from within the rest of the development from the south – including access from 103rd Avenue. From the main entrance drive, an internal circulation drive is existing at the south side Shops A. The parking field for Shops A is existing, but will be modified to accommodate the new layout.

To better control vehicular traffic at the south side of Shops A, stop signs / stop bars will be located at the end of the drive through lane, and the adjacent drive aisle to the south.

6. Internal vehicular circulation including emergency and delivery vehicles.

From the main entrance drive, an internal circulation drive runs east/west at the south side Shops A. The parking field for Shops A is existing, but will be modified to accommodate the new layout. Deliveries will be coordinated to occur at off-peak hours. Emergency and refuse truck access is accommodated within the parking field with turning radii per the City's standards. The

drive through lane is situated to avoid vehicle stacking in the primary drives, with the exit occurring at the southwest corner of Shops A.

7. Pedestrian and alternative vehicle considerations for the proposed use.

This building will be linked via sidewalks for pedestrian circulation to the rest of the development. Pedestrian refuge will be possible along the shaded walkways with seating areas in front of the Shops as well as at each patio area. Bicycle parking will also be provided at Shops A.

8. Volume and character of traffic.

The following trip data is from the Queue Analysis by Southwest Traffic Engineering, dated 5 May 2016. Trip Generation for a 2,400 sf coffee shop tenant with drive-through:

Average Daily, Inbound (vtpd)	983		
Average Daily, Outbound (vtpd)	983	Total Daily	1,966
AM Peak Hour, Inbound (vtph)	123		
AM Peak Hour, Outbound (vtph)	118	Total AM Peak	241
PM Peak Hour, Inbound (vtph)	52		
PM Peak Hour, Outbound (vtph)	51	Total PM Peak	103

vtpd - vehicle trips per day, vtph - vehicle trips per hour

9. Off-street parking and loading.

Off-street parking is provided within Park 10. For the Shops A portion of the site, the existing parking field will be modified as previously mentioned. Additional parking will be provided at the Pad 3 area. All new parking areas will match the existing. Although the tenant uses are not known at this time, the 'worst case' scenario is for the entire building to be restaurant use. For 8,694 sf of restaurants, the required parking is 94 spaces. Patio areas require an additional 5 spaces, for a total of 99 required parking spaces.

$8,694 \text{ sf} \times 60\% = 5,217 \text{ sf}$. $5,217 \text{ sf} \times 90\% = 4,696 \text{ sf}$. $4,696 \text{ sf} / 50 = 94 \text{ spaces}$.

Note: This is assuming 60% of the space is Public Area. Many restaurant tenants are closer to 50% or less Public Area, but at this point the true percentage cannot be accurately calculated.

There are 92 parking spaces proposed for Shops A. This equates to a parking ratio of 11/1000 sf. The balance of the required parking shall be shared with the other portions of this Phase: Jack in the Box provides one space over the required amount based on their use, and Main Event provides 21 spaces over the required amount based on their use. Total provided parking exceeds required parking by 16 spaces.

Deliveries and loading will be accommodated only during early morning / late night times to avoid conflict with the proposed uses. An area is indicated on the site plan within the parking field for delivery vehicles to use. This will avoid conflicts at the drive through lane if delivery times do overlap with early business hours.

10. Impact on public services, including utilities, schools, and recreation.

This project will have little to no impact on Public services such as utilities, schools and recreation. As part of the first phase construction of Park 10, the infrastructure adjacent to the Public way has been completed.

11. Screening and buffering of uses.

There will two levels of screening provided for Shops A: Outside of the drive through lane, the existing 'Living Wall' will be extended to wrap the drive through lane itself. At this point the menu board location has not been determined. Specific screening for the menu board will be addressed as part of the drive through user's Tenant Improvements. At the building, to screen the rear (north) service walkway and doors, a 6' high decorative screen wall composed of masonry/tile, stucco, and 'Living Wall' sections will occur. Refuse areas will be screened by the site standard refuse enclosures and additional trees will be planted along the street frontage.

12. Proposed outdoor activities or storage.

There are no outdoor activities (aside from dining patios) or storage planned for Shops A.

13. Hours of operation.

As a multi-tenant building with tenants to be determined, only an estimate of hours of operation can be provided at this time. Assuming a coffee shop (drive through) is in operation, their hours would likely be 5am – 10pm. Sit-down type restaurants may be open from 10am to 2am.

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, 350 feet away to the east, and over 250 feet away to the south. 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 speakers will be required to be ambient adjustable technology so that sound level at the property line will not exceed ambient noise levels. Restaurants will be required to utilize equipment and systems to minimize cooking smoke and odor impact. There will be no uses that generate dust or vibration. Exterior lighting will also be specified and positioned to avoid over illumination that would affect the adjacent public.

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.

With regards,

A handwritten signature in blue ink, appearing to read "Todd Lawrence", with a long horizontal flourish extending to the right.

Todd Lawrence
Butler Design Group

Exhibit F

Conceptual Site Plan

<http://www.avondale.org/DocumentCenter/View/38819>

Exhibit G

Conceptual Landscape Plan

<http://www.avondale.org/DocumentCenter/View/38816>

Exhibit H

Conceptual Building Elevations

<http://www.avondale.org/DocumentCenter/View/38815>

Exhibit I

Approved Park 10 Phase I Master Site Plan

<http://www.avondale.org/DocumentCenter/View/38818>

Exhibit J

Excerpt of Draft Planning Commission
Meeting Minutes
July 21, 2016

Excerpt of the Minutes of the regular Planning Commission meeting held July 21, 2016 at 6:00 p.m. in the Council Chambers.

COMMISSIONERS PRESENT

Olivia Pineda, Chair
Gloria Solorio, Vice Chair
Pearlette Ramos, Commissioner
Kristopher Ortega, Commissioner

COMMISSIONERS EXCUSED

Christopher Reams, Commissioner
Kevin Kugler, Commissioner
Russell Van Leuven, Commissioner

CITY STAFF PRESENT

David Janover, City Engineer
Ken Galica, Senior Planner
Alison Rondone, Planner II
Nicholle Harris, Legal Counsel
Stephanie Long, Administrative Assistant

APPLICATION NO. PL-16-0048

APPLICANT: Mr. Todd Lawrence
Butler Design Group
(602) 957-1800

PROPERTY OWNER: Ms. Su Moran
Park 10 ME, LLC
(503) 208-3072

REQUEST: This is a public hearing before the Planning Commission to review and solicit public input on a request by Mr. Todd Lawrence, Butler Design Group, on behalf of the property owner, Parkland Development, for a Conditional Use Permit (CUP) to allow a drive-thru coffee shop in a proposed 8,694 square foot multi-tenant building (Shops A) and associated parking on Lots 2 and 3 of the Park 10 Phase 1 commercial subdivision. The approximately 2.1-acre development site is located west of 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 use.

Ken Galica, Senior Planner, stated the General Plan designation for the is Freeway Commercial, a designation that encourages a variety of retail, restaurant, and hospitality uses for both the local population and regional visitors. The property is zoned Planned Area Development (PAD) as part of the West 10 PAD. This particular portion of the PAD allows for a range of commercial uses.

Surrounding zoning includes C-3 Commercial to the east, a mix of PAD and Commercial Office to the north. Interstate 10 is located to the south. The property was annexed in 1986 and rezoned to PAD in 2006. In March 2015, the master site plan for Park 10 was approved with Main Event as the anchor tenant. The original site plan shows one smaller 4,000 square foot building and one larger 7,000-square foot building to the north and east of Main Event. As part of this proposal, the site plan would be amended, replacing the two smaller buildings with a larger one near McDowell Road. Additional parking would go where the smaller building was initially planned to be.

Mr. Galica said the tenant for the drive-thru coffee shop has not been publicly identified yet. The PAD requires a CUP for any drive-thru use, and limits the total number of drive-thru uses to two. With the previously approved Jack In The Box, this use would be the second and final drive-thru allowed in the current PAD. The proposed coffee shop would occupy 2,400 square feet on the western end of the new building. The architect is proposing two outdoor private patios associated with the coffee shop and the adjacent restaurant. There would also be a public outdoor open seating area.

Mr. Galica said the drive-thru starts to the northeast, circles around the north side, and exits to the southwest of the building. A three-foot tall metal fence covered with vines will screen car headlights viewed from the perspective of McDowell Road. A canopy will cover the full width of the drive-thru lane at the pickup and payment windows. Access into and out of the proposed new building will be from existing driveways. Ample convenient parking has been provided with this project. The plan meets all Americans with Disabilities Act (ADA) requirements. Because the building has been pushed up to McDowell Road, all deliveries will occur during off-peak hours. During the day, the loading area will be used for parking spaces.

Mr. Galica noted that the pedestrian network is well developed and additional connections will be provided during this project. The proposed hardscape plan should create an inviting retail environment. Extensive landscaping was installed as part of the overall development when Main Event was built, and new landscaping will be installed as part of this new project. This will include a multitude of new trees designed to complement the existing palette. Trees will be used to further screen the decorative trash enclosures and service entrance. The building elevations feature a contemporary design, sharing elements with the Main Event building and Gateway Village.

Mr. Galica said the future steps consist of a site plan design review, construction drawings and permits. There are five required findings for a CUP, and staff believes that all five have been met. Staff recommends four stipulations. The first two are standard: That the design conforms to what was presented to the Planning Commission, and that the CUP would expire within two years if the use is not operating within that time. The last two stipulations are specific to this proposal: That all deliveries must occur during off-peak hours, and that additional screening of the menu board may be required when the location of that sign(s) is determined.

Mr. Galica stated that a neighborhood meeting was held at City Hall June 14th. All notification requirements were followed. No attendees were present apart from the Applicant and staff. No

comments have been received on this project. Staff recommends approval of the application subject to the four conditions of approval.

Chair Pineda inquired about the required amount of ADA parking. Mr. Galica responded that the four provided spaces meet the requirements for this building.

Commissioner Ramos asked how tenants would be made aware of the requirement to limit deliveries to off-peak hours. Mr. Galica said the developer would be responsible for communicating the conditions of approval to their tenants. The City would be able to void the CUP should violations occur. At the request of Commissioner Ramos, Mr. Galica explained the standard notification requirements for public hearings. He noted that only the owner of the nearby apartment complex would have been notified, not the individual renters. Each office condominium owner was notified, as were Main Event, and some property owners Gateway Pavilions. A total of 20 property owners were within 500 feet of the subject property. He clarified that this project came in under the requirements of the previous Ordinance. The new Ordinance increased the notification radius to 1,000 feet.

Commissioner Ortega asked whether people who visit Main Event were notified. Mr. Galica explained that the main purpose of posting a sign on the property is to notify people who visit the site. In addition to the official requirements, staff also posted information on the City's website.

Commissioner Ramos asked about the business model for the coffee shop. Mr. Galica said that since the exact tenant has not been identified yet, it is hard to say. It is assumed to be similar to the major brands in the Valley that feature drive-thrus. Commissioner Ramos asked whether alcoholic beverages would be sold on the premises. Mr. Galica said there are no indications whether or not this will be the case. Liquor licenses would have to be processed by the City before going to the State of Arizona.

Commissioner Ortega inquired about future requests for drive-thrus. Mr. Galica said that when the zoning was approved for this property in 2006, City Council was restricting virtually every development in terms of the number of drive-thrus. Zoning in this regard has not changed. If the Applicant wants to add more drive-thrus, a major amendment would be required, including approval from the Planning Commission and City Council.

Commissioner Ortega felt that the drive-thru traffic pattern could potentially conflict with the parking area. He suggested having drive-thru traffic enter via a right-hand turn from McDowell Road instead. Mr. Galica explained that the queuing length of this drive-thru lane is much longer than typical and is designed to accommodate a large number of cars. The Traffic Engineer has conducted a queuing analysis and determined that there is enough distance available to avoid conflicts in the parking lot.

Chair Pineda said this corner is a prime location and felt that it could be used for something better than a drive-thru coffee shop, such as a family restaurant. Mr. Galica said the east end of the building features a space with a large patio that will likely attract a conventional restaurant. As the property develops further, there are likely more opportunities for stand-alone restaurants.

Vice Chair Solorio asked whether the Planning Commission would have further opportunities to review this plan. Mr. Galica said specific users will not need to get formal approval. Vice Chair Solorio expressed her concern about the safety of the screened off area. Mr. Galica said the 3 ft

screening wall is designed to block headlights only, but would otherwise still be open to the street and offer good visibility. The lane will use a menu board instead of employees taking orders in that space.

Chair Pineda invited the Applicant to address the Commission. Todd Lawrence, Butler Design Group, 5017 E. Washington, Phoenix, said the number of ADA spaces is determined by the proposed use and density. Four spaces for 8,000 square feet is rather generous, especially for retail uses. Regarding service hours, the property owner is very cognizant of the off-peak requirement and will stipulate that in the leases.

Commissioner Ortega reiterated his concern about the drive-thru traffic pattern conflicting with pedestrian and parking access. Mr. Lawrence responded that the circulation established for Main Event provides a good amount of relief for the overall center. There are numerous ways to access and transit across the facility. The drive-thru lane has capacity for 11 cars, which is quite a bit even for busy shops.

Chair Pineda opened the public hearing. Upon acknowledging no requests to speak, she closed the public hearing.

Chair Pineda invited a motion. Vice Chair Solorio **MOVED** to recommend approval of Application PL-16-0048, subject to the staff recommended conditions of approval. Commissioner Ramos **SECONDED** the motion.

ROLL CALL VOTE

Olivia Pineda, Chair	Aye
Gloria Solorio, Vice Chair	Aye
Kevin Kugler, Commissioner	Absent
Russell Van Leuven, Commissioner	Absent
Pearlette Ramos, Commissioner	Aye
Kristopher Ortega, Commissioner	Aye
Christopher Reams, Commissioner	Absent

The motion carried by a 4-0 vote.



CITY COUNCIL AGENDA

SUBJECT: Public Hearing - Conditional Use Permit - Verizon Wireless Glenarm (Application PL-15-0274)
MEETING DATE: 8/8/2016

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 personal wireless services facility (PWSF) on the Holy Cross Cemetery property.

PARCEL SIZE: 487 square foot lease area

LOCATION: Holy Cross Cemetery is located at 10045 W. Thomas Road. The proposed PWSF would be located near the southern boundary of the cemetery property, approximately midway between 99th Avenue and 103rd Avenue, in the cemetery's maintenance area.

APPLICANT: Michele Dahlke of Shaw & Associates on behalf of SBA Towers, Inc. (Verizon), (480) 228-2150

OWNER: Diocese of Phoenix Catholic Cemeteries, (602) 267-1329

BACKGROUND:

SBA Towers, Inc./Verizon Wireless is seeking approval of a Conditional Use Permit to construct a new PWSF on a 487 square foot portion of the 68-acre Holy Cross Cemetery at the southwest corner of Thomas Road and 99th Avenue. The cemetery was established between 1959 and 1964 while the property was under Maricopa County jurisdiction, and was annexed into the City on October 2, 1989. Upon annexation, the property was zoned Agricultural. It was rezoned to Special Use Overlay District (SUD) on January 3, 2011. Holy Cross Cemetery is a full-service cemetery, including a mortuary, chapel, crematorium, and mausoleums.

The subject property is designated by the General Plan Land Use Map as Open Space and Parks. The Open Space and Parks designation is primarily used for City parks, the Estrella Mountains, and rivers and corridors designated for public enjoyment in the Parks and Recreation Master Plan. Open space is planned to set aside areas of active and passive recreation for Avondale residents and to preserve areas of critical natural habitat. The property is not located within a Specific Plan area.

Surrounding land uses are as follows:

- **NORTH:** Thomas Road. The property on the north side of Thomas Road is zoned C-2, in agricultural production.
- **SOUTH:** Virginia Avenue. South of the cemetery is a County Island (un-annexed areas of Maricopa County); some of this is in agricultural production and the remainder, to the southwest, is residential. Further south along 99th Street is in agricultural production, zoned PAD (Avondale Live).
- **EAST:** 99th Avenue. Vacant land, some of which is in agricultural production, in the City of Phoenix.
- **WEST:** 103rd Avenue. Residential, the Los Arbolitos single-family residential PAD.

SUMMARY OF REQUEST:

The Applicant, on behalf of SBA Towers, Inc./Verizon Wireless, is requesting approval of a Conditional Use Permit to locate a new PWSF on the Holy Cross Cemetery property at 10045 W. Thomas Road. A PWSF is allowed in all zoning districts; approval of a Conditional Use Permit is required for any PWSF greater than 35' in height. The Applicant is proposing to construct a stealth monopine PWSF within a roughly 487 square foot lease area on the southeastern portion of the cemetery property, within an area used for maintenance activities. The PWSF will reach an overall height of 67', with the antenna array mounted at a height of 40' above ground level. The monopine has been designed to allow additional carriers to utilize the PWSF – up to five wireless carriers may be accommodated, including Verizon, making the monopine co-locatable. Additional small-cell installations may also be accommodated. Exhibit E to this report is the Applicant's Narrative in support of the Conditional Use Permit.

Verizon, the first wireless carrier to locate its equipment on the proposed monopine, will conceal its wireless panel antennas within the faux pine tree limbs. The ground equipment and backup diesel-powered generator (for emergency use only) will be located within a prefabricated wireless equipment shelter. The facility will be unmanned once construction is completed, except for monthly maintenance that will be done by a Verizon representative. The facility will comply with structural and building requirements of all applicable local, state and federal building regulations for telecommunication sites and, as noted, will be able to accommodate multiple wireless communication carriers.

Exhibit F is the Conceptual Site Plan for the PWSF (Case No. PL-15-0273), under concurrent administrative review by staff. The facility is planned for the southeastern corner of the existing maintenance area for the cemetery in an area where there is an existing dumpster. The dumpster will be relocated approximately 50 feet to the north and placed inside a separate new enclosure facing 99th Avenue. A dedicated paved access road will serve the new trash collection area. The chain-link gates will be screened so that the dumpster is not visible to pedestrians, bicycles, and motorists on 99th Avenue. Inside of the lease area, Verizon will install the monopine and an equipment shelter housing the ground equipment, radio cabinets, and a backup diesel generator, enclosed by a 10' tall CMU wall. New landscaping will be provided around all sides of the enclosure as well as along the proposed access road to service the PWSF on the southern boundary of the property. The access road will be paved and connect to an existing cemetery access road. Maintenance personnel will access the site from Thomas Road via an existing interior road on the western boundary of the site that is utilized by cemetery employees. Access gates will be installed on the western and northern sides of the lease area. Exhibit G shows the new south elevation of the proposed PWSF.

As part of its lease agreement with the Diocese of Phoenix Catholic Cemeteries, SBA will lease all access and utility easements necessary to access and operate the facility. The PWSF will be unmanned and operate 24 hours a day, 7 days a week, 365 days a year. The PWSF will not make any noise other than the air conditioning unit that cools the equipment inside the shelter and the diesel generator once a week for approximately 30 to 45 minutes when it cycles on for a test run.

The equipment will reside within an acoustic enclosure, which will dampen the already low (approximately 70 dBA) noise level of the generator. There will be no lighting associated with the project.

The PWSF is designed to be co-locatable and can accommodate up to five wireless carriers. The lease area as proposed is anticipated to be sufficient to accommodate the additional carriers.

As required by the Zoning Ordinance, two live pines at least 35' in height will be planted adjacent to the monopine to form a cluster. No signs will be installed other than those required under Federal Communications Commission Regulations. No storage or outdoor activities with the exception of routine maintenance will occur outside the facility.

PARTICIPATION:

The Applicant conducted a neighborhood meeting to discuss the proposed Conditional Use Permit on Monday, June 13, 2016 in the Mesquite Room at Avondale City Hall. The meeting was advertised in the May 25, 2016 edition of the West Valley View and notification postcards were sent to property owners within a 1,000-foot radius on May 23, 2016. Two notification signs containing dates, times and location for the Neighborhood Meeting, Planning Commission hearing, and City Council hearing were erected on the cemetery property, one on Thomas Road and one on 99th Avenue, on May 27, 2016. The public notice signs were updated with the new meeting time of the Planning Commission. With the exception of staff and the Applicant's team, no persons attended the Neighborhood Meeting.

Postcards notifying property owners within a 1,000-foot radius of the Planning Commission and City Council meetings were sent on June 29, 2016. The Planning Commission and City Council meetings were advertised in the July 6, 2016 edition of the West Valley View.

No emails, letters, or phone calls have been received concerning this project to date.

PLANNING COMMISSION ACTION:

The Planning Commission conducted a public hearing on the Conditional Use Permit request on July 21, 2016 (Exhibit I). The Commission had the following comments and/or concerns:

Commissioner Ortega inquired as to the overall composition and safety of the structure. Staff responded that the facility would be in conformance with all federal, state, and local regulations. The Applicant confirmed that Verizon is fully cognizant of safety concerns and that these facilities are designed to hold substantial weight and withstand significant stressors and remain intact. Ms. Dahlke further stated that there have been no incidents of which Verizon is aware with regard to safety risk in any other installation in the Valley.

Commissioner Ramos inquired as to the adequacy of the screening landscaping, in particular the two live pines to be incorporated, stating that she would not consider what is shown on the visual simulation as "densely landscaped". Staff indicated that the proposed landscape plan is reviewed during the Site Plan/Design Review process concurrent with the Conditional Use Permit application to ensure that it meets the criteria in the Zoning Ordinance. Further, site inspection is done before issuance of a Certificate of Occupancy to ensure that the landscape planted conforms to the approved landscape plan.

There was some discussion concerning the condition of approval for changes to the PWSF. Commission Ramos inquired whether future modifications would come back before the Commission and City Council for consideration. Staff responded that the condition of approval provides for administrative approval as long as the modifications do not increase the height or width of the monopine and the footprint of the facility, including the equipment enclosure, is not increased by more than 10%. If the future modifications do not meet these two criteria, Planning Commission and City Council hearings would be required to amend the Conditional Use Permit. All conditions of

approval are contained in the Planning Commission staff report.

Commissioner Ramos also asked whether there are any contracts pending from additional wireless carriers to co-locate on the PWSF. The Applicant responded that there is none at this time, but when carriers are looking to expand coverage they will be required to document all co-location opportunities as required by the City's Zoning Ordinance. The lease area has been designed to accommodate future carriers.

Chair Pineda asked whether the monopine would be moveable if the cemetery wishes to expand in the future. Staff responded that Holy Cross Cemetery has an approved master site plan and future expansion areas have been identified. These do not include the area of the proposed facility in an area dedicated for cemetery maintenance. The Applicant informed the Commissioners that the church was very involved in the site plan process and agreed that the proposed location will be the best location on the property.

Commissioner Ortega asked the Applicant who will be in charge of maintenance of the landscaping. The Applicant responded that Verizon will be responsible for the landscaping it installs. Staff indicated that landscaping will be inspected to ensure conformance with the approved landscape plan.

Commissioner Ortega asked if the 70 dBA noise level from the generator is loud. The Applicant responded that an example of that level is a vacuum cleaner. Further, it is a backup source only in the instance of a power outage. It is designed to be very quiet.

Upon conclusion of the public hearing, the Commission voted 4-0 to recommend approval of the requested Conditional Use Permit.

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 (a) is consistent with the land use designation set forth in the general plan, (b) will further the City's general guidelines and objectives for development of the area, as set forth in the general plan and (c) will be consistent with the desired character for the surrounding area.

(a) The proposed PWSF site is within the Holy Cross Cemetery property, which was zoned Agricultural until January 2011, when the zoning was changed to SUD. The General Plan Land Use Designation for the site is Open Space and Parks. The Open Space and Parks designation is primarily used for City parks, the Estrella Mountains, and rivers and corridors designated for public enjoyment in the Parks and Recreation Master Plan. Open space is planned to set aside areas of active and passive recreation for Avondale residents and to preserve areas of critical natural habitat. Holy Cross Cemetery has been in operation at this location for approximately 50 years and has an adopted master site plan for future expansion. Given the nature of a cemetery and the expectation that it will continue in perpetuity as such, even when it is fully built out, an Open Space and Parks designation matches the use more closely than any other land use designation in the General Plan.

(b) The construction of a PWSF in this location would not conflict with the City's general guidelines and objectives for development of the area. Land uses to the northwest, west, and southwest consist of built-out residential. The existing land use designation for the area to the north across Thomas Road is Community Commercial and for the property south of the project site Urban and Freeway Commercial. Thus, the proposed project would be consistent with the City's general guidelines and objectives for development of the area. The City of Phoenix identifies the property to

the east, across 99th Avenue, as Commercial and potentially appropriate for Transit-Oriented Development.

Goal 4 of the Land Use Element of the General Plan is to ensure that all land use decisions meet the long-term social and economic goals of the community. Goal 8 in the Economic element encourages the City to invest in neighborhood infrastructure, public spaces, and amenities to increase the quality of life for its residents. The proposed PWSF will not obstruct long-range views of the Estrella Mountains, a valued visual resource for the City identified in the Open Space element. While the PWSF is not a public building, Goal 2 of the Public Buildings, Services and Facilities element is to provide equitable and well-planned community value services and facilities throughout Avondale, including continuing to look for ways to partner with other entities in order to bring valued services to Avondale. The proposed PWSF offers future opportunities for co-location to accommodate other carriers and telecommunications expansion and provide services for the anticipated population growth in the City, and thus would be consistent with these goals.

(c) The SUD zoning does not prohibit placement of telecommunications facilities on the site. The master development plan for the cemetery identifies permitted uses as including burials, mausoleums, columbariums, mortuary, chapel, accessory buildings, and a crematorium without prohibiting any other specific use. PWSFs are allowed in any zoning district subject to the design requirements of Section 708 of the Zoning Ordinance. The placement of a PWSF within the cemetery property would result in inconsistency with the land use designation of the site if traffic, noise, and other activities associated with the PWSF would be incongruous with the existing peaceful ambiance of the cemetery, or if the proposed use will result in a significant visual intrusion that would affect sensitive views, block scenic vistas, or otherwise adversely affect the experience of visitors to the cemetery. The proposed PWSF will be unmanned, and the only human activity (after completion of construction) will consist of a few hours of maintenance activity by one or two workers once a month. This human activity will be negligible and not visible to visitors to the cemetery; therefore, it will not represent an intrusion on the cemetery operations or visitor experience. While the PWSF will be taller than the tallest structure existing on the property, which is 45', the PWSF will be of stealth design, a monopine, and constructed in an area of existing structures and vegetation. Additional landscaping, including two live pines at least 35' in height, will be planted adjacent to the facility to provide further integration of the PWSF into its surroundings. The PWSF is designed to accommodate up to five wireless carriers (including Verizon), thus helping limit the number of new freestanding wireless facilities that will be required to provide adequate service. Because of its location at the back of the cemetery, in a maintenance area, the monopine will not be readily visible to visitors to the cemetery and will not obstruct any scenic vistas. The proposed PWSF will be consistent with the desired character for the surrounding area.

2. That the use will be (a) compatible with other adjacent and nearby land uses and (b) will not be detrimental to persons residing or working in the area, adjacent property, the neighborhood or the public welfare in general.

(a) As noted, development to the northwest, west, and southwest is built-out residential. The vacant land to the south of the property is currently in agricultural production. The parcels across 99th Avenue are part of the Maryvale Village of the City of Phoenix and have a land use designation of Commercial. These parcels along the freeway may also develop as Transit-Oriented Development. The PWSF is proposed at the southern boundary of the cemetery property, separated by a distance of approximately 635' to the nearest residential use at the northeastern corner of County property and approximately 1,820' to the residential neighborhood directly to the west. As noted, the PWSF will be able to accommodate up to five wireless carriers (including Verizon), helping limit the number of new freestanding wireless facilities that will be required to provide adequate service to a growing population. The PWSF will be compatible with both existing residential adjacent land uses and potential future commercial land uses in the area.

(b) The PWSF will not represent a source of substantial increased noise or present a safety hazard and will not be detrimental to persons residing or working in the area, adjacent property, the neighborhood, or the public welfare in general. SBA and Verizon, as well as all future carriers who co-locate on the PWSF, will be required to obtain all federal approvals prior to constructing the facility and will register the PWSF in accordance with federal requirements. Signs warning against trespassing and climbing support structures will be posted and the facility would be located in a secure area surrounded by fencing and locked gates. Step pegs will not be placed lower than 15' above grade. Construction of the PWSF must conform to all federal and state requirements. Upon submittal of civil plans, prior to obtaining construction permits, staff will carefully review the plans to ensure that the proposed facility meets all Code requirements, including sway strength and wind loads. Therefore, the PWSF will not be detrimental to persons residing or working in the area, adjacent property, the neighborhood, or the public welfare in general.

3. That the site is adequate in size and shape to accommodate the proposed use, allow safe on-site circulation, and meet all required development standards including, but not limited to, setbacks, parking, screening, and landscaping.

Verizon will lease an area of approximately 487 square feet from the Diocese. The PWSF will be located within an area currently designated for cemetery maintenance activities, which is adequate in size and shape to accommodate the proposed use. The facility will be accessed by gates and parking for one maintenance vehicle will be provided. Access to the PWSF will be via an employee road from Thomas Road south to the project area. Paved access will also be provided from the east-west road bisecting the cemetery property off 99th Avenue south to the relocated trash enclosure and eastern access to the PWSF. All components of the PWSF will be finished or painted so as to minimize the visual obtrusiveness of the structure. Material samples will be submitted to the City as part of the Site Plan application and are subject to design review and approval. The structure will be a stealth design and additional landscaping will be planted to integrate the facility into the site and provide visual screening. The PWSF will be supplemented by two 35' tall live pine trees on either side of the CMU wall. The PWSF meets all applicable setback requirements (1' for every 1' of vertical height). Site Plan/Design Review will ensure that the proposed PWSF conforms to Sections 708 and 1204 of the Zoning Ordinance related to development standards.

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 PWSF will be accessed by a paved access road and a technician parking space will be provided directly in front of the access gate to the equipment shelter. Access to the cemetery property will be from Thomas Road via an interior access road utilized by cemetery employees. The only traffic that will be generated by the proposed project, following completion of construction, is one vehicle accessing the site once a month for routine maintenance. This will not create additional traffic on area roadways that would affect roadway capacity.

5. That adequate conditions have been incorporated into the approval to ensure that any potential adverse effects will be mitigated.

The Applicant has demonstrated the rationale for not co-locating on an existing vertical element pursuant to the requirements of Section 708(B) of the Zoning Ordinance and has provided a comprehensive list of all existing vertical elements with a ½-mile radius of the site, a coverage map, and a written narrative explaining why co-location was not pursued and is not viable.

The proposed PWSF meets all applicable development standards in the Zoning Ordinance. The Applicant has acknowledged in its application that if the PWSF ceases operation, the PWSF and all related equipment will be removed by the provider within 6 months of the shutdown date. Adverse effects will be negligible and will result primarily from the additional visual element taller than

existing structures on the site. However, given the facility's setback from residential uses and adjacent streets, this change will not represent a significant adverse condition. Exhibit H provides visual simulations from various vantage points to demonstrate the visual impact of the proposed cell tower. As required, the Applicant will plant two live pine trees at least 35' in height adjacent to the monopine as well as substantial additional landscaping to improve the appearance of the facility. These features have been reviewed in concert with Site Plan/Design Review. Conditions of approval have been included that the PWSF must conform to the Narrative, Conceptual Site Plan and Conceptual Elevation, attached as staff report Exhibits E, F, and G; that the Conditional Use Permit shall expire within two years from the date of approval if the use has not commenced; and that an application for an amended Conditional Use Permit must be submitted if any subsequent modifications of significance are proposed, as determined by the Zoning Administrator or designee. No additional conditions of approval are necessary to further mitigate any potential adverse effects.

FINDINGS:

1. The proposed land use meets the five required findings for a Conditional Use Permit as outlined in Section 109 of the Zoning Ordinance.
2. Approval of the Conditional Use Permit will result in development compatible with the General Plan and existing development in the area.
3. Approval of the Conditional Use Permit 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.
4. Approval of the Conditional Use Permit will provide greater cellular coverage to the area.
5. The proposed Personal Wireless Services Facility is a stealth design and will be constructed in a manner that will allow up to five carriers to co-locate on one tower, thereby potentially reducing the need for additional towers in the area.

RECOMMENDATION:

On July 21, 2016, the Planning Commission **RECOMMENDED APPROVAL** of application PL-15-0274, a request for Conditional Use Permit approval to construct a Personal Wireless Services Facility at 10045 W. Thomas Road.

PROPOSED MOTION:

I move that the Planning Commission accept the findings and **APPROVE** application PL-15-0274, a request for a Conditional Use Permit to allow construction of a Personal Wireless Services Facility on the property occupied by Holy Cross Cemetery at 10045 W. Thomas Road as proposed, subject to four conditions of approval, as follows:

1. The use and development of the site shall conform to the Conditional Use Permit Narrative, Conceptual Site Plan, and Conceptual Elevation, attached as staff report Exhibits E, F, and G.
2. In accordance with Section 109 of the Zoning Ordinance, the Conditional Use Permit shall expire within two years from the date of approval if the use has not commenced.
3. Future modifications to the PWSF, including ground equipment or antenna modifications, shall be subject to approval by the Development and Engineering Services Department. This approval may be granted administratively via an application for a Design Review Waiver and payment of the required fee only under the following conditions:
 1. The proposed modifications do not increase the overall height or width of the monopine.
 2. The footprint of the PWSF (including equipment enclosure) is not proposed to be expanded by more than 10 percent.
4. If proposed future modifications to the PWSF do not meet the conditions set forth in stipulation (3), above, the Applicant will be required to file applications for an Amended Conditional Use Permit and Amended Site Plan/Design Review and will be subject to the public participation process, including a neighborhood meeting and public hearings.

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 - Conditional Use Permit Narrative](#)

[Exhibit F - Conceptual Site Plan](#)

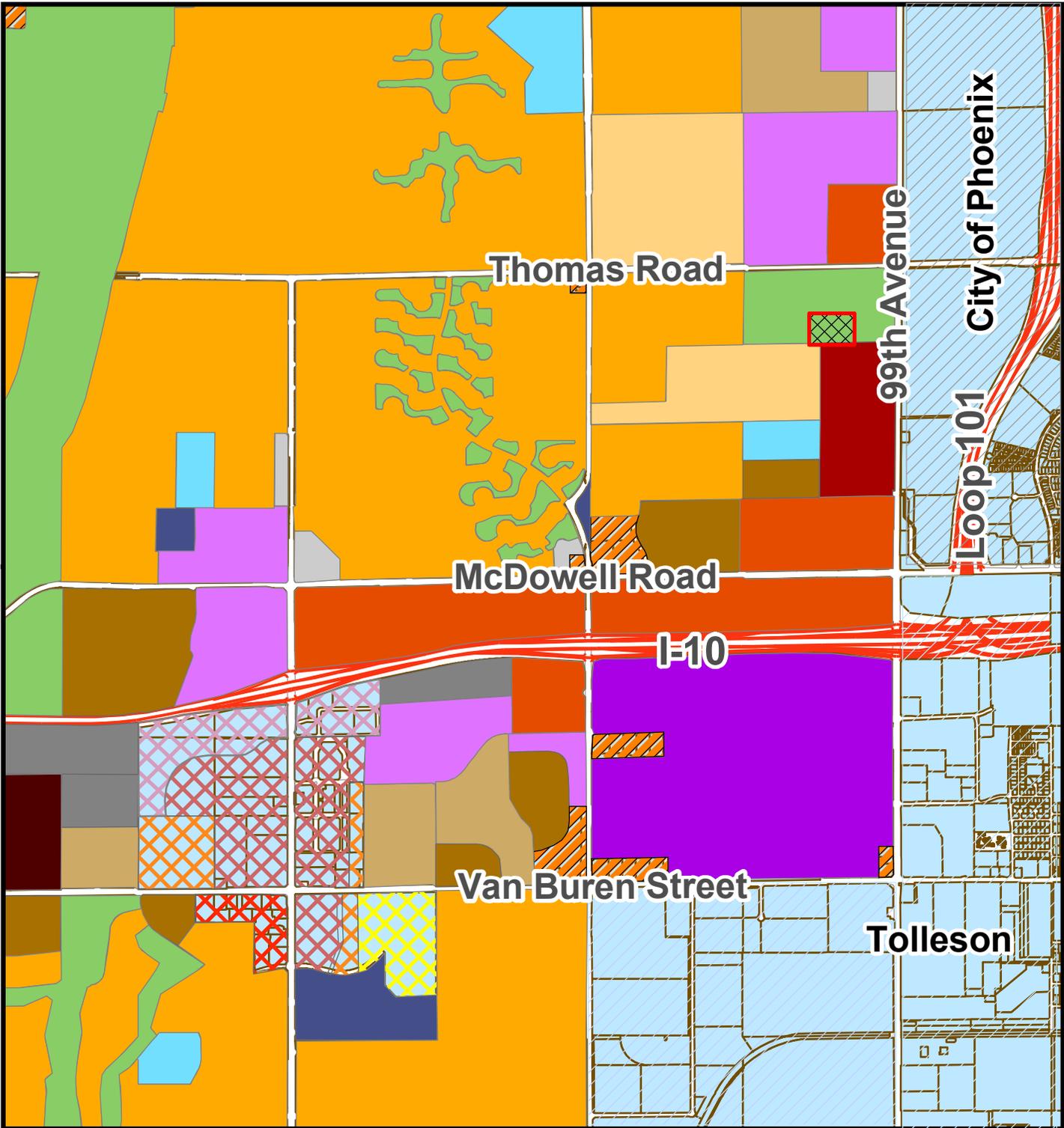
[Exhibit G - Conceptual Elevation](#)

[Exhibit H - Photosimulations](#)

[Exhibit I - PC Meeting Minutes Abstract](#)

PROJECT MANAGER

Alison Rondone, Planner II



General Plan Land Use Map

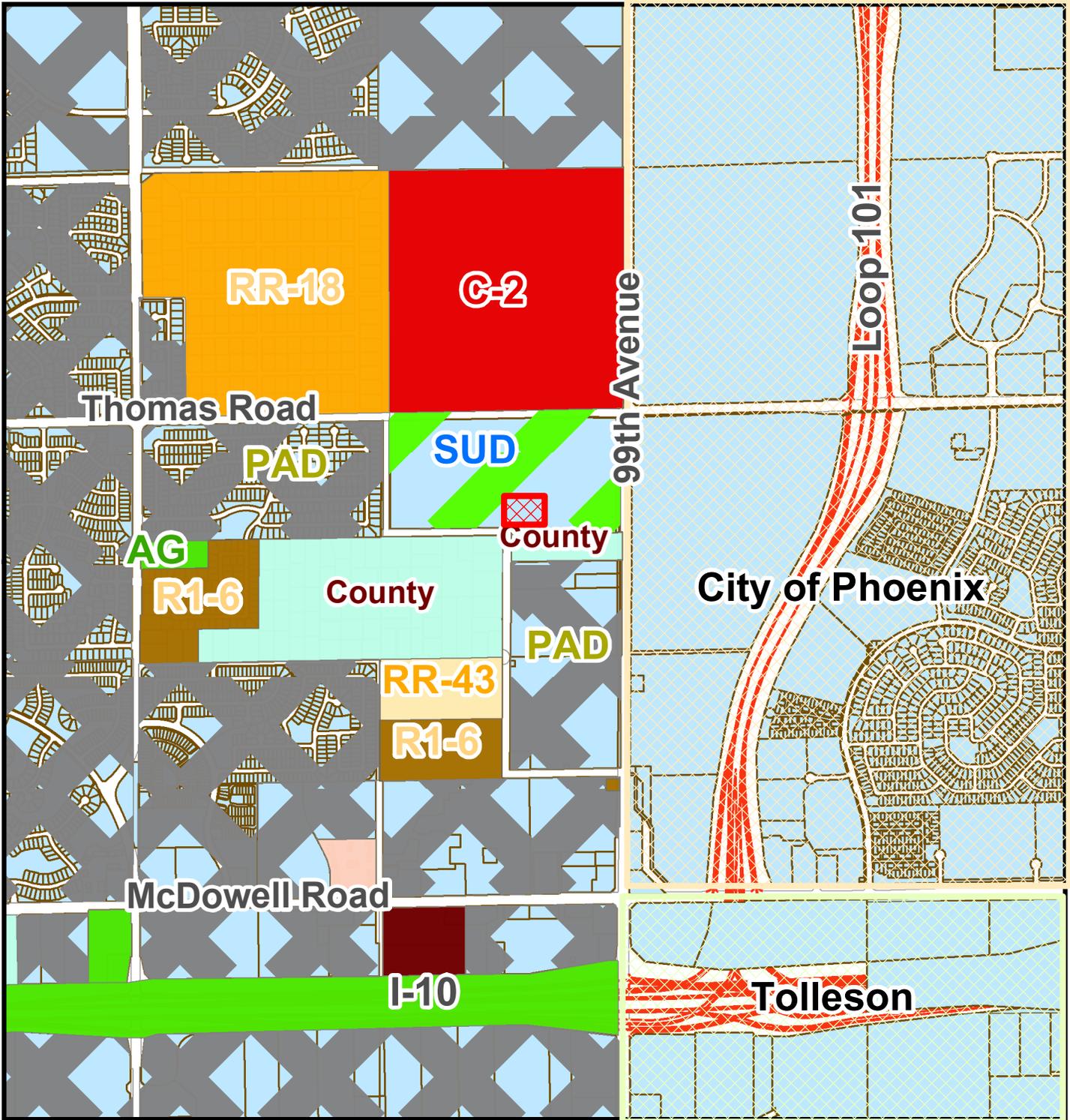


-  Estate/Low Density Residential
-  Medium Density Residential
-  Mixed Use
-  Open Space and Parks

-  Local Commercial
-  Education
-  Urban Commercial

-  Property Location





Zoning Vicinity Map



Project Location





Aerial Photograph



Project Location



*SUMMARY OF RELATED FACTS
APPLICATION PL-15-0274*

Exhibit D

<i>THE PROPERTY</i>	
PARCEL SIZE	Approximately 68 acres
LEASE AREA	487 SF
LOCATION	10045 W Thomas Road (Holy Cross Cemetery)
PHYSICAL CHARACTERISTICS	The site is flat, dirt and some landscaping, with paved access roads and chain-link fencing
EXISTING LAND USE	Full-service cemetery
GENERAL PLAN LAND USE	Open Space and Parks
EXISTING ZONING	SUD
ZONING HISTORY	The property was originally zoned AG. approved for a Special Use District Overlay in January 2011.
DEVELOPMENT HISTORY	The site was originally used for agriculture and has been developed by Holy Cross Cemetery (Diocese of Phoenix Catholic Cemeteries) since 1969.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	The cemetery is bounded on the north by Thomas Road. The property on the north side of Thomas Road is zoned C-2, in agricultural production.
SOUTH	Virginia Avenue. South of the cemetery is a County Island (unannexed areas of Maricopa County); some of this is in agricultural production and the remainder, to the southwest, is residential. South of County-owned land along 99 th Street is in agricultural production, zoned PAD (Avondale Live).
EAST	The City of Phoenix lies immediately to the east across 99 th Avenue and is in agricultural production.
WEST	103 rd Avenue. Residential, the Los Arbolitos single-family residential PAD.

<i>GENERAL PLAN</i>	
The Avondale General Plan 2030 designates the subject property as “Open Space and Parks.”	

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Tolleson Union High School District; Pendergast District
ELEMENTARY SCHOOLS	Rio Vista Elementary
HIGH SCHOOL	Westview High School

<i>UTILITIES</i>	
As part of its lease agreement with the Property Owner, SBA will lease all access and utility easements necessary to access and operate the facility. A new, 5’ wide utility easement will be constructed on the Parent Parcel to provide electricity to the proposed PSWF. Aside from this, there is no other expected impact on public services.	

PHO – GLENARM WIRELESS COMMUNICATION FACILITY

CONDITIONAL USE PERMIT AND SITE PLAN REVIEW

PROJECT NARRATIVE

10045 W. Thomas Road, Avondale, AZ 85392

MARICOPA COUNTY ASSESSOR PARCEL NO. 102-31-006Y



Prepared by Shaw and Associates, PLC

Michelle L. Dahlke, Zoning Specialist

November 22, 2015

Purpose of Request

SBA Towers, Inc. (“SBA”) is requesting a Conditional Use Permit (“CUP”) and Site Plan Review approval for a new Wireless Communication Facility (“WCF”) to be located on a portion of the property located at 10045 West Thomas Road (the “Parent Parcel”) in the City of Avondale (the “City”). The purpose of the WCF is to increase 4G LTE capacity for customers and residents living in or traveling through the immediate area.

Description of Proposal

Construction and Co-Location

SBA is proposing to construct a 67’ tall stealth WCF disguised as a pine tree (“monopine”) within a roughly 487 square foot lease area on the southeastern portion of the Parent Parcel. While the overall height of the structure would be 67’, that total height is to the top of the faux pine tree limbs. The actual monopine structure will be 62’ tall with the antenna array mounted at a height of 40’.

Verizon, the first wireless carrier to locate its equipment on the proposed monopine, will conceal its wireless panel antennas within the faux pine tree limbs and the ground equipment will be located within a prefabricated wireless equipment shelter, along with an interior backup diesel powered generator that will only be used for emergency purposes. The facility will be unmanned once construction is completed, except for monthly maintenance that will occur by a Verizon representative, generally lasting a few hours. When complete, the facility will comply with the structural and building requirements of all applicable local, state and federal building regulations for telecommunication sites. Upon construction, the WCF will be structurally able to accommodate multiple wireless communication carriers.

Ground Space and Equipment Shelter and Screening

The Parent Parcel, which is currently owned by the Diocese of Phoenix Catholic Cemeteries, is approximately 68 acres in size. Verizon will lease a 487 square foot (0.01 acres) area on the southeastern portion of the Parent Parcel which is currently vacant. Inside of the lease area, Verizon will install the monopine, an equipment shelter which will house the ground equipment radio cabinets, and a backup diesel generator, all enclosed by a 10’ tall CMU wall.

Hours of Operation and Emissions

The WCF will be an unmanned facility and will operate 24/7 throughout the year. The site will not make any noise other than the air conditioning unit which cools the equipment inside the shelter and the generator once a week for approximately thirty to forty-five minutes when it cycles on for a test run. The site will include a level 2 acoustic enclosure, which will dampen the already low (approx. 70-decibel) noise level. A technician will visit the site once a month to perform routine maintenance and system checks. The visits will be approximately a few hours in duration and will be conducted during business hours unless there is an emergency.

Signs

There will not be any signs or advertising posted at this site other than the site identification signs required under Federal Communications Commission Regulations.

Landscaping

There is currently no existing landscaping located within or adjacent to the lease area. Two, 35' tall live pine trees will be installed on either side of the lease area in accordance with City Zoning Ordinance Section 1204.C.10.

Ingress/Egress/Volume or Character of Traffic

As part of its lease agreement with the Property Owner, Verizon will lease all access and utility easements necessary to access and operate the facility. Specifically, an access easement will be in place to provide legal access from 99th Avenue, along the eastern boundary of the Parent Parcel, to an existing paved driveway located just north of the lease area. The WCF will not generate any traffic other than the routine maintenance by the Verizon maintenance technician.

Off-Street Parking and Loading

The Verizon technician will park directly in front of the equipment shelter which is accessed by the above-referenced access easement. No existing parking spaces on the Parent Parcel will be utilized by the technician.

Impact on Public Services

A new, 5' wide utility easement will be constructed on the Parent Parcel to provide electricity to the proposed WCF. Aside from this, there is no other expected impact on public services.

Proposed Outdoor Activities or Storage

There are no outdoor activities or storage associated with the request. The only activity will be routine maintenance and all equipment will be enclosed by the proposed CMU screen wall.

Exterior Lighting

There will be no outdoor lighting associated with the request. Routine maintenance will be conducted during daytime hours.

CONDITIONAL USE PERMIT

Consistency with the General Plan

In a review of the City's General Plan, approval of the WCF will not violate any objectives, goals or policies established by the City generally or the immediate area specifically.

Compliance with the Zoning Ordinance

Pursuant to Sections 708 and 1204 of the City Zoning Ordinance, there are several requirements related to towers and antennae which are generally listed below, along with conformance statement related to each.

- The site of a Personal Wireless Service Facility ("PWSF") or a Transmitting Tower must provide paved access and at least 1 parking space. ***The WCF will be accessed by an existing paved access road and a technician parking space will be provided directly in front of the access gate to the equipment shelter.***
- Applicants shall be responsible for registering all PWSFs with the Federal Aviation Administration ("FAA") and FCC. ***SBA and Verizon are required to obtain all Federal approvals prior to constructing any WCF and will register the WCF in accordance with Federal requirements.***
- Signs warning against trespassing and climbing support structures shall be posted near all scalable PWSFs located outside of secure areas. Step pages shall not be placed lower than 15' from grade. ***The applicant is aware of these requirements and have informed SBA and Verizon regarding same.***
- In a PWSF ceases operation, the PWSF and all related equipment shall be removed by the provider within 6 months of the shutdown date. ***The applicant is aware of these requirements as well and has informed SBA and Verizon.***
- Associated ground equipment shall be entirely screened by dense landscaping and either a masonry enclosure or a decorative cabinet. ***The WCF will be***

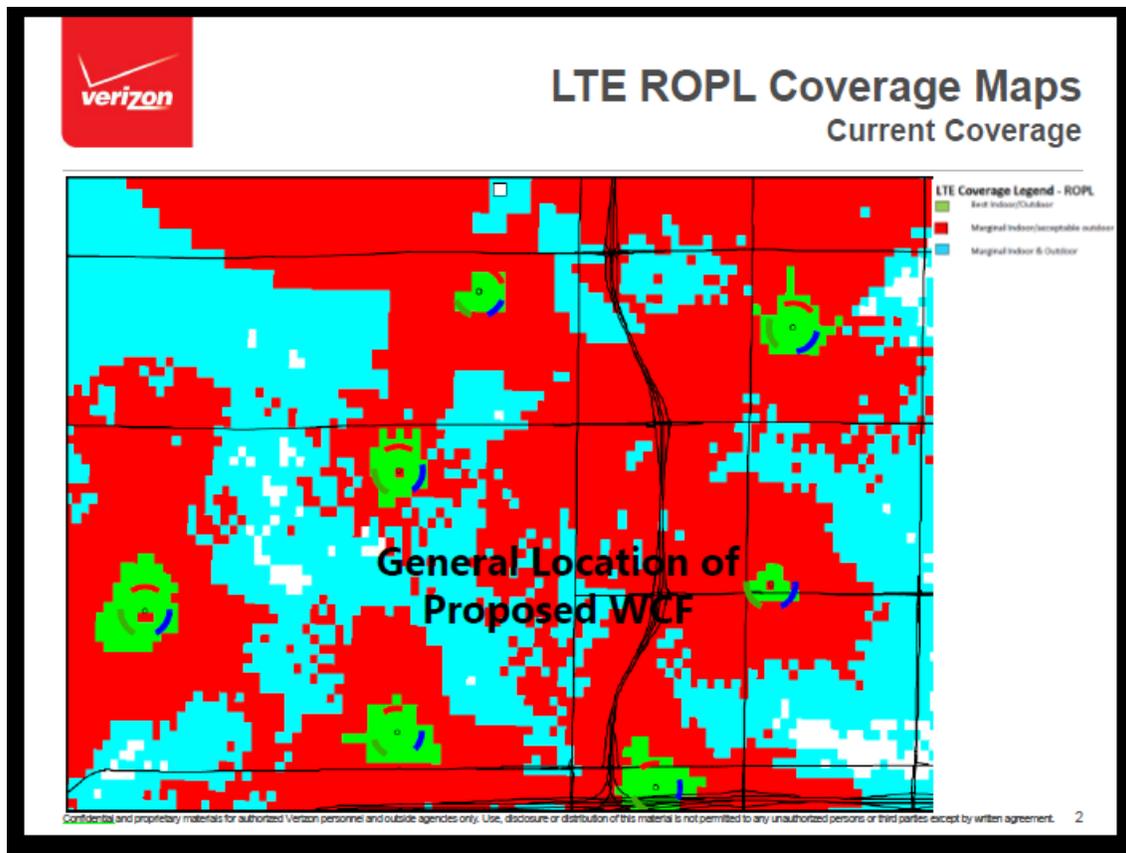
enclosed by a 10' high CMU wall and will be screened by 2, 35' tall live pine trees on either side of the CMU wall.

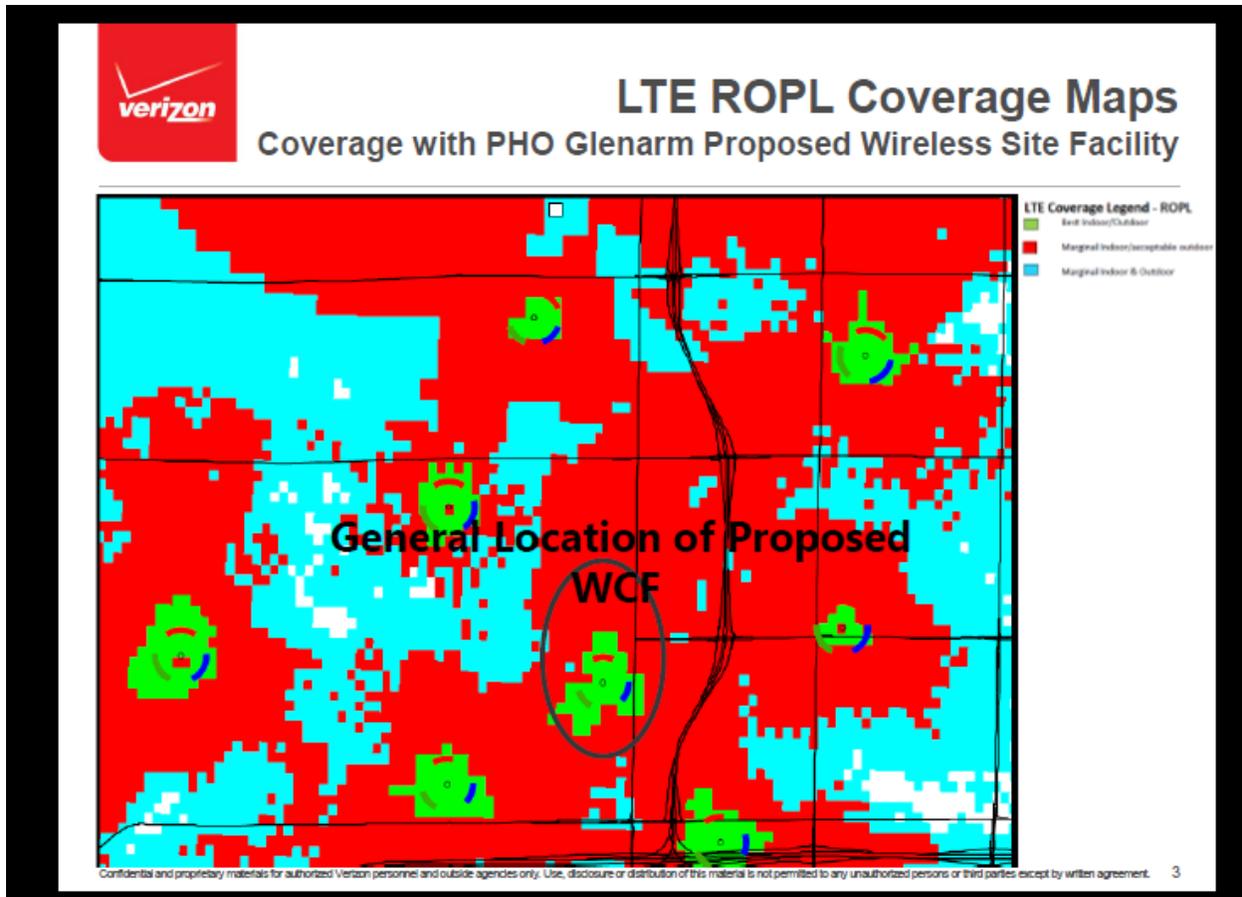
- All components of a PWSF shall be finished or painted so as to minimize the visual obtrusiveness of the structure. **All components will meet these requirements. The monopine stealth design is of high quality and has been successful across the country in minimizing any negative aesthetic effects of WCFs.**
- Freestanding PWSFs 30' or greater in height are permitted in all zoning districts subject to approval of a CUP. **The subject CUP has been requested due to the 67' height of the monopine.**
- The applicant must demonstrate an inability, or technical rationale, for not co-locating on an existing vertical element. **Please see section below on Coverage and Co-Location.**
- Comprehensive list of all existing vertical elements with a ½ mile radius of the site. **Please see section below on Coverage and Co-Location.**
- Written narrative explaining why co-location was not pursued or not viable. **Please see section below on Coverage and Co-Location.**
- Provide a coverage map. **Please see section below on Coverage and Co-Location.**
- Freestanding PWSFs shall be set back a distance of 1' for each 1' of height above finished grade. **The WCF meets all applicable setback requirements.**
- Freestanding PWSFs must be stealth in design. **The WCF will be disguised as a monopine to meet this requirement.**
- Plant material shall be utilized to aid the screening of PWSFs. **Due to the location on the Parent Parcel, the lack of existing vegetation and the planting of two, 35' tall pine trees, no other landscaping is currently being proposed with this request. If additional landscaping is required, the applicant respectfully requests the City provide details on the quantity, size and species of additional landscaping required.**
- PWSFs shall provide a minimum of 2, 35' tall trees at locations where stealth structures are proposed and a minimum of 5 gallon plants to screen the equipment enclosure. **Two, 35' tall pine trees will be constructed on either side of the WCF in accordance with this requirement.**

Coverage and Co-Location

The review process in place for finding areas suitable for locating a WCF are extremely comprehensive and it often takes years. Once a search ring is established, extensive research is conducted to find co-location opportunities. In some cases, there are no opportunities to co-locate, as is the case here.

As per the coverage maps below, existing towers are indicated via the green areas on the map with the general location of the proposed WCF noted. The green areas indicate the best indoor and outdoor coverage with red depicting marginal indoor coverage and acceptable outdoor coverage and blue indicating both marginal indoor and outdoor coverage. While there are other towers shown on these maps, there are no towers within a ½ mile of the proposed WCF in which to co-locate. Additionally, there are no structures or other verticality within a ½ mile available for a co-location opportunity. A positive impact of obtaining approval for the subject WCF is the fact that two additional carriers looking to increase coverage in the immediate area will have a co-location opportunity on the proposed monopine which will reduce the amount of towers within this immediate area.

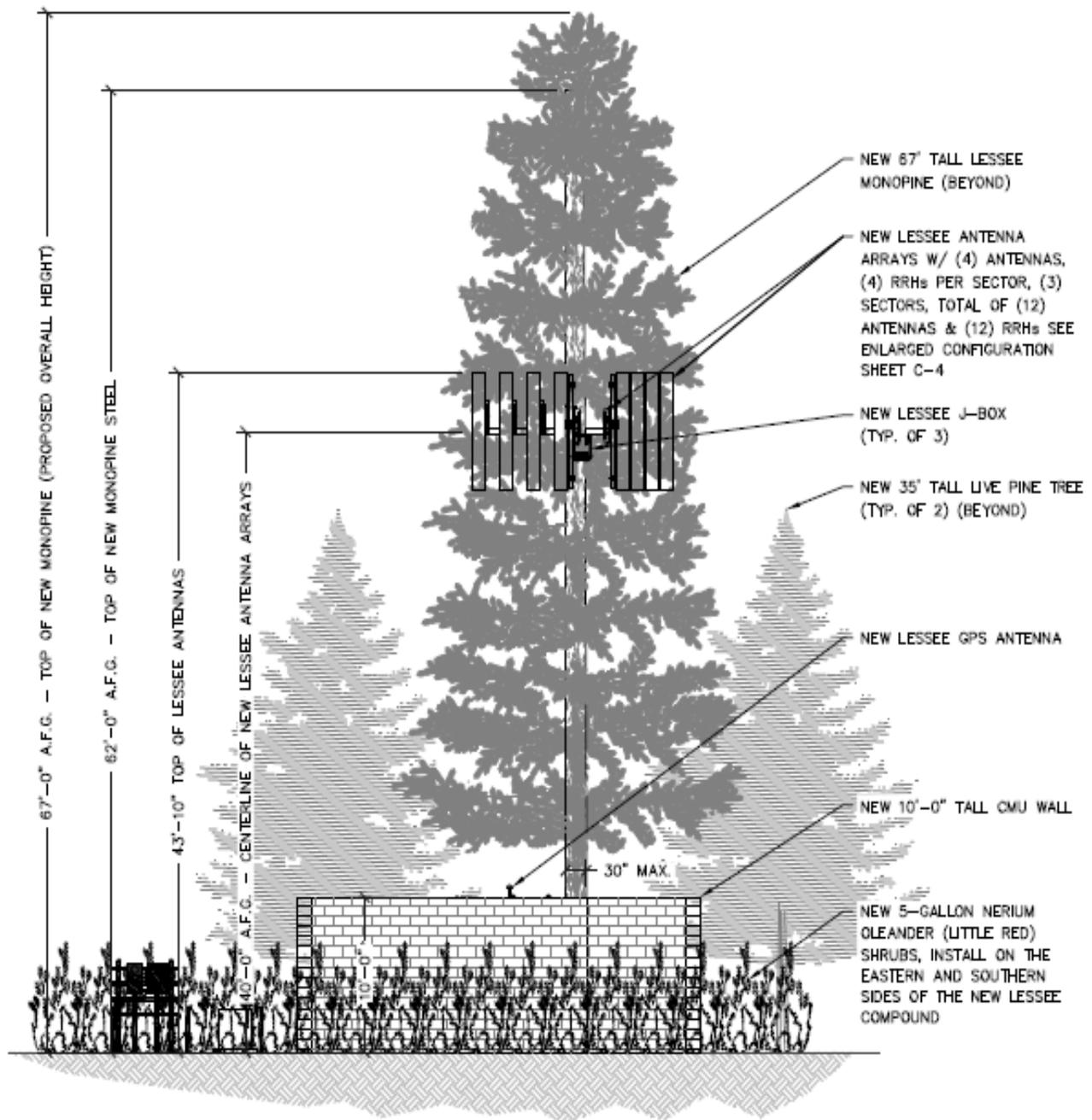




According to the coverage maps, there is a significant gap in 4G LTE capacity in the area of the proposed WCF, with coverage being mostly marginal both indoors and outdoors. Please note after installation of the proposed WCF, capacity in this area will significantly increase to provide the best indoor and outdoor coverage.

CONCLUSION

The proposed WCF is in compliance with all applicable City policies and regulations and due to its stealth design, co-location opportunities for additional carriers, and the increased coverage it will provide, it is an ideal candidate for a CUP. Additionally, the site plan set provided in conjunction with the CUP request meets all City requirements. On behalf of SBA and Verizon, the applicant respectfully requests approval of the CUP and Site Plan and looks forward to working with the City on this request.



1 NEW SOUTH ELEVATION

22"x34" SCALE: 3/16" = 1'-0"
 11"x17" SCALE: 3/32" = 1'-0"



View from Northeast



View from West



Existing Conditions

Photosimulation

Exhibit I

Excerpt of Draft Planning Commission Meeting Minutes July 21, 2016

Excerpt of the Minutes of the regular Planning Commission meeting held July 21, 2016 at 6:00 p.m. in the Council Chambers.

COMMISSIONERS PRESENT

Olivia Pineda, Chair
Gloria Solorio, Vice Chair
Pearlette Ramos, Commissioner
Kristopher Ortega, Commissioner

COMMISSIONERS EXCUSED

Christopher Reams, Commissioner
Kevin Kugler, Commissioner
Russell Van Leuven, Commissioner

CITY STAFF PRESENT

David Janover, City Engineer
Ken Galica, Senior Planner
Alison Rondone, Planner II
Nicholle Harris, Legal Counsel
Stephanie Long, Administrative Assistant

APPLICATION NO. PL-15-0274

APPLICANT: Ms. Michele Dahlke
 Shaw & Associates
 On behalf of SBA Towers, Inc.
 (480) 228-2150

PROPERTY OWNER: Diocese of Phoenix Catholic Cemeteries
 (602) 267-1329

REQUEST: This is a public hearing before the Planning Commission to review and solicit public input on a request by Michelle Dahlke, Shaw and Associates, P.L.C., for a Conditional Use Permit (CUP) to allow Verizon Wireless/SBA Towers to construct a 67' Personal Wireless Service Facility (PWSF) on property occupied by Holy Cross Cemetery and owned by the Diocese of Phoenix Catholic Cemeteries. The tower would be a mono-pine stealth design enclosed within a 10' CMU wall with associated live pine trees and landscaping.

Alison Rondone, Planner II, stated the request is for a Conditional Use Permit (CUP) for a free-standing personal wireless service facility. These types of facilities are permitted in all zoning districts, subject to a CUP. This new tower is proposed to increase 4G LTE coverage in the area. The cell tower would be located at the southwest corner of 99th Avenue and Thomas Road in a maintenance area used by Holy Cross Cemetery. The public does not have access to this area. The

setbacks are 70 feet from the southern property line and almost 800 feet from the eastern property line.

Ms. Rondone explained that the tower would be 67 feet tall. Towers greater than 35 feet require a CUP. The design is a mono-pine, which is considered a stealth design. A total of five carriers will be able to be accommodated on the tower. Verizon, as the Applicant, will be the first. The tower area will be landscaped, fully gated and secured. Equipment will be enclosed by a 10-foot high masonry wall. Only one vehicular trip per month will be required for maintenance. The dumpster that currently occupies the space will be moved and enclosed in its own area. Two live pines will be planted alongside the tower to create a cluster.

Ms. Rondone stated that the proposed use is consistent with the land use designation in the General Plan. It is compatible with adjacent land uses and not detrimental to public welfare. The site is adequate in size to accommodate the use. There is adequate access and capacity on public streets. Staff has incorporated some conditions of approval: It must conform to the Site Plan, Narrative, and Conceptual Elevation; the CUP expires within two years if there is no activity; and future modifications require City approval.

Ms. Rondone said all legal requirements for public participation were fulfilled. Legal ads were published, the site posted, public notices were mailed. A neighborhood meeting was held on June 13, 2016, but no members of the public attended. Staff has received no inquiries about the project from the public. The project will be compliant with the Zoning Ordinance and all federal approvals will be obtained. Staff recommends approval of the application.

Commissioner Ortega inquired whether the material used to build the tower would stand up to monsoon winds. Ms. Rondone explained that Verizon and others carriers have installed this design all over the Valley and there have been no issues.

Commissioner Ramos questioned whether the two live trees meet the coverage density requirements. Ms. Rondone said the project meets the requirements of Section 708, in that a minimum of 35-foot tall similar live trees must be planted adjacent to the tower. Additionally, there will be ground landscaping. The trees will look relatively small at first, but will grow. Commissioner Ramos asked whether any other companies are contracted to co-locate to the tower, and whether the Commission would have an opportunity to review them. Ms. Rondone said she knows of no other companies at this time. The Commission would review subsequent projects if the height of the antenna arrays increases or the facility footprint increases by more than 10%.

Chair Pineda asked whether the tower could be moved in the event of cemetery expansion. Ms. Rondone responded that Holy Cross Cemetery has a master site plan and future expansion has already been identified for another area.

Chair Pineda invited the Applicant to address the Commission. Michelle Dahlke, Shaw and Associates, 1222 W. Cavedale Drive, Phoenix, clarified that the towers are very sturdy and are designed to hold large, heavy arrays. Verizon has never had a problem with them. The federal government also has safety requirements that must be adhered to. She said once the two live trees mature, it will look more like a cluster than it will initially. This project has more landscaping than average. Regarding other carriers using the tower, Ms. Dahlke said Verizon contracts with SBA, which will seek out other carriers. The lease area has been designed to expand to accommodate

equipment from different carriers. Carriers are required to look for co-location opportunities. Ms. Dahlke stated that the church that owns the cemetery was very involved in choosing the location for the tower, and they felt this was the best place for it.

Commissioner Ramos asked about landscape maintenance. Ms. Dahlke responded that Verizon will be responsible, since it's their lease area. Irrigation is already in place. Ms. Rondone added that the City would also inspect the site to ensure that landscaping is installed and maintained according to specifications. Commissioner Ramos inquired about the anticipated noise levels. Ms. Dahlke explained that the generator is as loud as a vacuum cleaner. It only will kick on periodically when power is lost.

Chair Pineda opened the public hearing. Hearing no requests to speak, she closed the public hearing.

Chair Pineda invited a motion. Commissioner Ramos **MOVED** to recommend approval of Application PL-15-0274, subject to the staff recommended conditions of approval. Commissioner Ortega **SECONDED** the motion.

ROLL CALL VOTE

Olivia Pineda, Chair	Aye
Gloria Solorio, Vice Chair	Aye
Kevin Kugler, Commissioner	Absent
Russell Van Leuven, Commissioner	Absent
Pearlette Ramos, Commissioner	Aye
Kristopher Ortega, Commissioner	Aye
Christopher Reams, Commissioner	Absent

The motion carried by a 4-0 vote.



CITY COUNCIL AGENDA

SUBJECT:

Ordinance 1611-816 - Refunding of Three Bond
Issues Totaling \$25,380,000

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Abbe Yacoben**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff requests that the City Council adopt an ordinance allowing the refunding of the 2005, 2006, and 2008 excise tax bonds, allow the proceeds from the three bond issues' reserves to be placed into the new bond issuance process, and allow the Mayor or City Manager, City Clerk and appropriate staff to execute documents as necessary to complete the refunding.

BACKGROUND:

The City currently has three excise tax bond issues outstanding that are eligible for refunding. One was issued in 2005, one in 2006, and the third in 2008. The 2005 issue will naturally retire in FY 2021, the 2006 issue naturally retires in FY 2027, and the 2008 naturally retires in FY 2029. Two of the issues are current refundings, which means that they are callable (refundable) as of July 1, 2016 and one issue which is an advance refunding which is not callable (refundable) until July 1, 2017). In an advance refunding situation, the proceeds to pay off the old bonds are held in escrow to pay off the bonds which are not callable until the call date.

DISCUSSION:

The interest rates that the City is currently paying average 4.79%; current market conditions dictate that the refunded bonds will be issued at an estimated average of 1.67%. The City is likely to realize \$4.1 million of net present savings through these three refundings.

In addition, the original debt service issues bond covenants required that the City place \$3.9 million in reserves in the case of default or that excise taxes were not sufficient to pay the debt. These three reserves will be released and staff proposes to utilize them to reduce the amount of the refunding. The combination of lower interest rates and the release of the \$3.9 million in formerly required debt service reserves is estimated to reduce the City's future debt service by approximately \$9 million.

The City's Financial Advisor worked with staff on two debt service refunding models; one included level savings, or utilizing the reserves to lessen each annual payment and the other included paying off the City's debt earlier. Due to the fact that short term interest rates are so low, the City will save more money by continuing to make the larger payments at the beginning of the debt service term and paying the debt off early. The original final maturity was FY 2029, and the new issue will be paid off in FY 2025. Staff recommends front-loading the payments in order to take advantage of the savings due to lower interest rates on shorter term borrowing.

As a matter of reference, the City has been rated by Standard and Poor's and Moody's Rating Agencies. Standard and Poor's affirmed the City's AA rating on excise tax transactions (rating report attached) and Moody's assigned the City's excise tax transactions a Aa3 rating. Both ratings are very strong, and show the Council's ability and willingness to practice fiscal discipline in order to ensure proper debt coverage ratios.

BUDGET IMPACT:

This refunding will not have an immediate impact on City finances, but these three debt service issues will be paid in full during FY 2025 versus the original retirement date of FY 2029. Staff has attached a savings summary for Council review. (The document was unable to be copied into this report.)

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance providing for the sale of pledged revenue refunding obligations evidencing proportionate interests in installment payments pursuant to a purchase agreement to refund bonds of the City of Avondale Municipal Facilities Corporation; authorizing with respect thereto necessary agreements; delegating certain authority; approving an official statement and declaring an emergency.

ATTACHMENTS:

Description

[Savings Summary Worksheet Excise Tax Bonds 2016](#)

[Ordinance 1611-816 and Related Documents](#)

SAVINGS

City of Avondale, Arizona
 Pledged Revenue Refunding Obligations, Series 2016 (RBC)

Date	Prior Debt Service	Refunding Debt Service	Savings
07/01/2017	5,091,826.16	5,084,833.33	6,992.83
07/01/2018	5,089,126.12	5,088,000.00	1,126.12
07/01/2019	5,114,551.08	5,113,250.00	1,301.08
07/01/2020	4,143,651.04	4,142,000.00	1,651.04
07/01/2021	2,645,875.00	2,643,500.00	2,375.00
07/01/2022	2,644,650.00	2,641,000.00	3,650.00
07/01/2023	2,644,100.00	2,643,000.00	1,100.00
07/01/2024	2,644,000.00	819,000.00	1,825,000.00
07/01/2025	2,644,500.00		2,644,500.00
07/01/2026	2,644,500.00		2,644,500.00
07/01/2027	1,168,750.00		1,168,750.00
07/01/2028	1,170,750.00		1,170,750.00
	37,646,279.40	28,174,583.33	9,471,696.07

Savings Summary

Savings PV date	09/01/2016
Savings PV rate	0.979310%
PV of savings from cash flow	8,639,191.21
Less: Prior funds on hand	-3,934,287.56
Plus: Refunding funds on hand	1,049.74
Net PV Savings	4,705,953.39

ORDINANCE 1611-816 - AUTHORIZING THE REFUNDING
OF THREE BOND ISSUES TOTALING \$25,380,000

DUE TO THEIR SIZE, THE FOLLOWING DOCUMENTS HAVE BEEN
UPLOADED SEPARATELY

PLEASE CLICK ON THE LINKS BELOW TO VIEW:

ORDINANCE 1611-816

<http://www.avondale.org/DocumentCenter/View/38796>

SECOND PURCHASE AGREEMENT

<http://www.avondale.org/DocumentCenter/View/38803>

SECOND TRUST AGREEMENT

<http://www.avondale.org/DocumentCenter/View/38804>

ESCROW TRUST AGREEMENT

<http://www.avondale.org/DocumentCenter/View/38811>

OBLIGATION PURCHASE CONTRACT

<http://www.avondale.org/DocumentCenter/View/38801>

PLEDGED REVENUE REFUNDING OBLIGATIONS, SERIES 2016

<http://www.avondale.org/DocumentCenter/View/38802>

S&P RATING

<http://www.avondale.org/DocumentCenter/View/38812>

MOODY'S RATING

<http://www.avondale.org/DocumentCenter/View/38799>



CITY COUNCIL AGENDA

SUBJECT:

Ordinance 1612-816 - Authorizing the Issuance of \$9,150,000 in Water and Sewer Utility Bonds

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Abbe Yacoben, Finance and Budget Director (623) 333-2011**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff requests that the City Council adopt an ordinance to issue \$9.15 million in sewer and water bonds for the purpose of wastewater facility treatment plant upgrades.

BACKGROUND:

During the FY 2017 capital improvement planning process and budget work sessions, staff and Council discussed the need for improvements at the water reclamation facility. The improvements will assist in upgrading the equipment and facilities at the treatment plant so it may process its intended nine million gallons-per-day capacity. The funding source for the upgrades is \$9 million of tax-exempt bonds.

DISCUSSION:

As mentioned above, the FY 2017 capital plan includes upgrades to the water reclamation facility which are to be funded by sewer and water bonds. The description of the system and items to be financed is listed below:

The Avondale Water system consists of 15 wells and 3 water treatment sites that supply 5 reservoir /booster stations. The distribution system consists of 331 mile of waterlines.

The Avondale sewer system consists of 290 miles of wastewater collection lines and 10 lift stations. The wastewater flows are conveyed to the city's water reclamation facility (WRF) for treatment. The reclaimed water from the WRF is sent to the city's recharge facility, which allows the water to percolate into the ground and recharge the groundwater aquifer.

The proceeds for this bond sale will be used to fund improvements at the city's WRF. In January 2015, the city completed a facility assessment and updated Master Plan for the WRF. The WRF was originally constructed in early 1990 and has been through two major expansions to increase the treatment capacity. The Master Plan identified several process improvements required to ensure the plant could continue to operate reliably. Specifically the bond process will be used to fund the design and the construction of the following components.

- A second Primary Clarifier.
- Aeration Basins Improvements.
- Return Activate Sludge (RAS) pump upgrades.
- SCADA and electrical upgrades, including automated sensors and controls to improve

treatment efficiency.

- Operations Building Improvements to renovate the building and bring the various components up to code and ensure the building meets current and future staff needs.

BUDGET IMPACT:

This will be a 20-year financing, and the interest rate is likely to be 2.5%. The City will have to repay the principal annually with a semi-annual coupon (interest payment). The cost of the interest is likely to be \$3.5 million over the 20-year term. The actual bond issue will total approximately \$9.15 million in order to accommodate closing, rating, and underwriter's costs which are normally paid through the bond proceeds. The first interest payment will be paid on January 1, 2017, and staff has budgeted for this as expense of the sewer fund. The annual debt service requirement will be approximately \$550,000 per year.

As a matter of reference, the City has been rated by Standard and Poor's and Moody's Rating Agencies. Standard and Poor's affirmed the City's AA rating on water and sewer revenue transactions (rating report attached) and Moody's assigned the City's water and sewer system transactions a Aa2 rating. Both ratings are very strong, and show the Council's ability and willingness to practice fiscal discipline in order to ensure proper debt coverage ratios.

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance allowing the issuance of \$9.15 million in sewer and water bonds.

ATTACHMENTS:

Description

[Ordinance 1612 and Related Documents](#)

ORDINANCE 1612-816 - AUTHORIZING THE ISSUANCE OF \$9,150,000 IN
WATER AND SEWER UTILITY BONDS

DUE TO THEIR SIZE, THE FOLLOWING DOCUMENTS HAVE BEEN
UPLOADED SEPARATELY

PLEASE CLICK ON THE LINKS BELOW TO VIEW:

ORDINANCE 1612-816

<http://www.avondale.org/DocumentCenter/View/38805>

OBLIGATION PURCHASE CONTRACT

<http://www.avondale.org/DocumentCenter/View/38806>

SERIES 2016 OBLIGATION INDENTURE

<http://www.avondale.org/DocumentCenter/View/38808>

SERIES 2016 PURCHASE AGREEMENT

<http://www.avondale.org/DocumentCenter/View/38809>

WATER AND SEWER SYSTEM REVENUE OBLIGATIONS, SERIES 2016

<http://www.avondale.org/DocumentCenter/View/38807>

S&P RATING

<http://www.avondale.org/DocumentCenter/View/38800>

MOODY'S RATING

<http://www.avondale.org/DocumentCenter/View/38799>



CITY COUNCIL AGENDA

SUBJECT:

Construction Manager at Risk Agreement - PCL
Construction, Inc

MEETING DATE:

8/8/2016

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 consider a request to approve a Construction Manager at Risk contract with PCL Construction Inc. to perform pre-construction services for the Water Reclamation Facility Upgrades in the amount of \$156,926, and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

BACKGROUND:

On March 21, 2016, the City Council approved a Professional Services Agreement with CDM Smith to provide the design services for the Water Reclamation Facility (WRF) Upgrades. This project is in response to the 2015 WRF Master Plan, which identified upgrades required to ensure the facility can continue to reliably meet its permit standards and operate efficiently. Design for the project is underway with the 30% design report and plans scheduled to be completed by the end of July 2016.

Staff is recommending using a Construction Manager at Risk (CMAR) contract method to complete the physical improvements. Pre-selecting the contractor prior to the design being completed has a number of benefits for the city. Staff can utilize the contractor's experience and expertise to ensure the design can be efficiently constructed while minimizing any potential impacts to the plant operations. Staff will also obtain detailed costs models to ensure the city funding for the project is best utilized.

DISCUSSION:

A Request for Qualifications was released on March 23, 2016. Final submittals were due April 28, 2016 and Oral Interviews were held on June 2, 2016. The CMAR selection process took into account the contractor's prior performance, understanding of the scope of work and their ability to add value to the project. A total of eight (8) firms submitted proposals for evaluation. The three highest scoring firms were short listed for interviews. Through this process, PCL Construction Inc. was selected to provide the construction manager services for the WRF upgrades.

At this time, staff is seeking to award the pre-construction service scope of work with PCL. This work will include the following:

- Provide constructability and bidability reviews at each stage of plan development.
- Prepare Maintenance of Plant Operations (MOPOs) plans to minimize interruptions to the existing WRF operations while under construction.

- Provide detailed cost models at each stage of the plan development.
- Provide long-lead studies and initiate procurement of long-lead items.
- Track increases and decreases in project costs due to design or scope changes.
- Prepare a Subcontractor Selection Plan for use in the bidding phase of the work.
- Prepare final Guaranteed Maximum Price (GMP) cost estimates for each phase of the work.
- Set up a temporary trailer to be used by WRF staff while the plant Operations building is under construction. This trailer is intended to be used by PCL when they start construction.

It is currently anticipated that PCL Construction Inc. will come back to City Council with two (2) Guaranteed Maximum Price contracts (GMPs) for the physical improvements. The first GMP will cover the purchase of long lead items and construction of the shells for the two clarifiers (grading and concrete work). The second GMP will be for the remainder of construction work.

BUDGET IMPACT:

Funding for this project was approved by Council in the current Capital Improvement Plan and is available in line item 513-1339-00-8620, WRF Facility Upgrades.

RECOMMENDATION:

Staff is requesting that the City Council approve a Construction Manager at Risk Pre-construction Agreement with PCL Construction Inc. to preform pre-construction services for the Wastewater Reclamation Facility Upgrades in the amount of \$156,926, and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

ATTACHMENTS:

Description

[CMAR - PCL Construction, Inc.](#)

CONSTRUCTION MANAGER AT RISK

PLC CONSTRUCTION, INC.

DUE TO ITS SIZE, THIS DOCUMENT

HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

<http://www.avondale.org/DocumentCenter/View/38788>



CITY COUNCIL AGENDA

SUBJECT:

Ordinance 1609-816 - Garden Lakes License Agreement for Irrigation Conversion

MEETING DATE:

8/8/2016

TO: Mayor and Council**FROM:** Tracy Stevens, Development and Engineering Services Director, 623-333-4012**THROUGH:** David Fitzhugh, City Manager**PURPOSE:**

Staff is requesting that the City Council adopt an ordinance approving a License Agreement with Garden Lakes Community Association (GLCA) to allow conversion of their irrigation system to a private non-potable system and authorize the Mayor, or City Manager and City Clerk, to execute the necessary documents.

BACKGROUND:

Garden Lakes is a residential lake community within the City of Avondale comprised of 69 acres of common space landscaping, 43 acres of which are turf. In addition to the aesthetics, the lakes provide a habitat for aquatic life and a light recreational boating opportunity for residents. The current irrigation system for the Garden Lakes community is supplied from the City's potable system, through approximately 28 individual water meters, prior to passing through a backflow prevention device into the private irrigation system.

Garden Lakes consists of a north and south lake, separated by the RID/SRP irrigation canal, which supplies the lake water. This supply is a surface water source which is not regulated by Maricopa County Environmental Services (MCES) or by Arizona Department of Environmental Quality (ADEQ). Over the last several years the southern lake has been experiencing golden algae blooms. According to the GLCA consultant, it is due to a high concentration of Total Suspended Solids (TSS), exposure to sunlight, and an ample residence time. While Algae growth can be common place in lakes, golden algae is a particular troubling concern because it releases toxins which are known to kill aquatic life.

DISCUSSION:

The existing golden algae condition together with the monetary rate increases over the years for potable water, have made it feasible for the GLCA to consider converting their common space irrigation system to a non-potable source. In addition to reducing annual expenditures for the purchase of irrigation water, the GLCA consultant feels the proposed non-potable system will increase lake water turnover and could potentially improve management of the golden algae in the south lake. GLCA has requested the City of Avondale permit the construction of a non-potable private transmission system for the purposes of irrigating landscaped common areas in the Garden Lakes Subdivision. This includes all landscaped tracts as well as public rights-of-way internal and adjacent to the subdivision boundaries. Over the last 2 years, staff has been working with GLCA, as well as their consultants, Aquatic Water Testing, L.L.C., Coates Irrigation Consultants, Inc., and

Hess-Rountree, Inc., to address all concerns. The following summarizes some of the requirements of the License Agreement:

- GLCA must indemnify the City from any liability caused by the distribution of non-potable water both in the public right of way and in the landscaped tracts within the subdivision.
- GLCA must post signage around the subdivision notifying the general public that the water supply being distributed is non-potable.
- GLCA must maintain minimum insurance coverage per the City minimum requirements.
- GLCA understands that converting to a non-potable source renders the private system useless in the event they would like to convert back to a potable water source. To clarify, an entirely new system would need to be installed to convert back to potable.
- GLCA must apply for a civil construction permit for any significant change to the plans included in the License.

Multiple Lake Communities in the valley have successfully utilized a non-potable water supply for irrigation distribution, not limited to:

Community	Municipality	Water Source Type
Val Visa Lakes	Town of Gilbert	Reclaimed
Arrowhead Lakes	City of Glendale	Reclaimed/Blend
Sun Lakes	City of Chandler	Reclaimed

What makes the GLCA proposal unique is that the supply is not a reclaimed water source, but rather a surface water source. Due to the limited regulation for surface water, staff has worked closely with the City Attorney to develop a License Agreement to accommodate the request. The GLCA is agreeable to the License Agreement and has provided two original signed copies for Council consideration.

Approving the License Agreement will allow the City to recognize a drop in the quantity of potable water used, which in turn will assist in increasing the assured water supply for the City. Approving the License Agreement will assist the GLCA with mitigating the golden algae concerns while assisting the GLCA to reduce their water supply costs.

BUDGET IMPACT:

It is anticipated that the City will see a loss of approximately \$218,198 in annual revenue due to the elimination of potable water use for irrigation purposes in Garden Lakes. However, the Finance Department anticipated this potential reduction and built the revenue decrease into the FY17 budget.

RECOMMENDATION:

Staff recommends that the City Council adopt an ordinance approving a License Agreement with Garden Lakes Community Association to allow conversion of their irrigation system to a private non-potable system and authorize the Mayor, or City Manager and City Clerk, to execute the necessary documents.

ATTACHMENTS:

Description

[Ordinance 1609-816 and License Agreement](#)

[Project Overview Map](#)

ORDINANCE AND LICENSE AGREEMENT
GARDEN LAKES IRRIGATION CONVERSION

DUE TO ITS SIZE, THIS DOCUMENT
HAS BEEN POSTED SEPARATELY

PLEASE CLICK ON THE LINK BELOW TO VIEW

ORDINANCE 1609-816

<http://www.avondale.org/DocumentCenter/View/38783>

LICENSE AGREEMENT

<http://www.avondale.org/DocumentCenter/View/38784>

