

# City Council Meeting Notice & Agenda

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Tuesday, March 04, 2014  
City Council Chamber  
8401 West Monroe Street  
Peoria, AZ 85345

## Study Session

5:00 P.M. Convene

### Roll Call

### Study Session Agenda

#### Subject(s) for Discussion Only

1. Council Subcommittees
2. Draft Amendment Concept, Chapter 2 of the Peoria City Code, Procedures for City Council Special Meeting Requests

### Adjournment

## Regular Meeting

7:00 P.M. Convene

### Pledge of Allegiance

### Roll Call

### Final Call To Submit Speaker Request Forms

### Presentation

3. Certificates of Appointment to the following Board and Commission members who were appointed by Resolution at the February 18, 2014 City Council meeting:
  - Joan Evans to the Citizens Commission on Salaries for Elected City Officials, and
  - Russ Lachance to the Veterans Memorial Board.

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Mayor  
Bob Barrett

Palo Verde  
District  
Ron Aames,  
Vice Mayor

Acacia  
District  
Tony Rivero

Ironwood  
District  
Bill Patena

Mesquite  
District  
Cathy Carlat

Pine  
District  
Carlo Leone

Willow  
District  
Jon Edwards

## Consent Agenda

**CONSENT AGENDA:** All items listed with a “C” are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

### Consent

#### 4C. **Disposition of Absence**

Discussion and possible action to approve the absence of Councilmember Carlo Leone from the Special Study Session held at 5:00 p.m. on February 25, 2014.

#### 5C. **Minutes**

Discussion and possible action to approve the following minutes:

- January 7, 2014 Meeting Minutes
- January 21, 2014 Meeting Minutes
- January 28, 2014 Special Meeting and Study Session Minutes

#### 6C. **Appointments, Boards and Commissions**

Discussion and possible action to approve the recommendations from the Council Subcommittee on Policy and Appointments pertaining to the following appointments, and adopt the Resolution as presented:

Adopt **RES. 2014-22** appointing Bridget Binsbacher, as a regular member, and Jeff Nelson, as an alternate member, to the Planning and Zoning Commission.

#### 7C. **Right-of-Way Annexation, Pinnacle Peak Road, 103rd Avenue to City Limits**

Discussion and possible action for the City Council to adopt **ORD. 2014-11** approving the annexation of a drainage channel and right-of-way for a portion of Pinnacle Peak Road from 103rd Avenue east to existing City limits.

#### 8C. **Grant, State of Arizona, Department of Homeland Security, Night Vision Optical Equipment**

Discussion and possible action to: (a) authorize the Peoria Police Department to accept a grant award in the amount of \$7,000 from the Arizona Department of Homeland Security to be used to strengthen chemical, biological, radiological, nuclear or explosive weapon detection, response and decontamination capabilities; and (b) approve a budget amendment in the amount of \$7,000 from the Proposed Grants Contingency account to the Homeland Security Fund.

9C. **Intergovernmental Agreement, Arizona Department of Transportation, Pave Shoulders, Lake Pleasant Parkway**

Discussion and possible action to adopt **RES. 2014-23** approving an Intergovernmental Agreement with the Arizona Department of Transportation for the design and construction to pave the shoulders along Lake Pleasant Parkway from the Loop 303 to State Route 74.

10C. **Intergovernmental Agreement, City of Phoenix, Reimbursement of Operating Assistance, Dial-a-Ride Plus**

Discussion and possible action to approve an Intergovernmental Agreement with the City of Phoenix for reimbursement of operating assistance with Dial-a-Ride Plus from the Federal Transit Authority by way of a pass-through grant from the City of Phoenix (Grant Number AZ-57-X016-5317-New Freedom).

11C. **Intergovernmental Agreement, City of Phoenix, Reimbursement of Preventative Maintenance Costs**

Discussion and possible action to approve an Intergovernmental Agreement with the City of Phoenix, to provide \$133,607 in preventative maintenance funds from the Federal Transit Authority by way of a pass-through grant from the City of Phoenix (Grant Number AZ-90-X114).

12C. **Deeds and Easements, Various Locations**

Discussion and possible action to adopt **RES. 2014-24** accepting Deeds and Easements for various Real Property interests acquired by the City.

13C. **Map of Dedication, El Mirage Road, Ridgeline Road and Westward Skies Drive**

Discussion and possible action to approve the Map of Dedication of El Mirage Road, located at Ridgeline Road and Westward Skies Drive, subject to stipulations.

14C. **Final Plat, Community Park No. 2, 83rd Avenue and Butler Drive**

Discussion and possible action to approve the Final Plat of Community Park No. 2, located at 83rd Avenue and Butler Drive, subject to stipulations.

15C. **Final Plat, Vistancia Parcel A16, Lone Mountain Road and El Mirage Road**

Discussion and possible action to approve the Final Plat of Vistancia Parcel A16, located at Lone Mountain Road and El Mirage Road, subject to stipulations.

## Regular Agenda

### New Business

#### 16R. **PUBLIC HEARING - Liquor Licenses, Various Locations**

**PUBLIC HEARING:** RE: (a) A New Wine and Beer Liquor License (Series 10) for Shell Food Mart, located at 9102 West Peoria Avenue, Joseph Fradi, Applicant, LL#20009767; and (b) A New Restaurant Liquor License (Series 12) for Café Maria's, located at 13560 North 94th Drive Suite N, Maria D Andrade, Applicant, LL#20009768.

Staff Report:

Open Public Hearing:

Public Comment:

Close Public Hearing:

**COUNCIL ACTION:** Discussion and possible action to recommend approval to the State Liquor Board for (a) A New Wine and Beer Liquor License (Series 10) for Shell Food Mart, located at 9102 West Peoria Avenue, Joseph Fradi, Applicant, LL#20009767; and (b) A New Restaurant Liquor License (Series 12) for Café Maria's, located at 13560 North 94th Drive Suite N, Maria D Andrade, Applicant, LL#20009768.

#### 17R. **Appointments, City Council Subcommittees**

Discussion and possible action to adopt **RES. 2014-25**, **RES. 2014-26**, **RES. 2014-27** and **RES. 2014-28** consenting to the Mayor's appointments to the City Council Subcommittee on Community Culture and Public Safety, City Council Subcommittee on General Government, City Council Subcommittee on Policy and Appointments and City Council Subcommittee on Sustainable Development and Public Services.

#### 18R. **Development Agreement and Amended Ground Lease, The Avenue Shoppes at P83**

Discussion and possible action to authorize the City Manager to execute a Development Agreement and Amended Ground Lease with The Avenue Shoppes at P83.

### **Call To The Public (Non-Agenda Items)**

If you wish to address the City Council, please complete a Speaker Request Form and return it to the clerk before the call to order for this meeting. The City Council is not authorized by state law to discuss or take action on any issue raised by public comment until a later meeting.

## Reports from City Manager

19. **Council Calendar**
20. **Reports**
  - A. Council Subcommittee Update
  - B. Bravo Peoria

## Reports from City Council Reports from the Mayor

### Adjournment

**NOTE:** Documentation (if any) for items listed on the Agenda is available for public inspection, a minimum of 24 hours prior to the Council Meeting, at any time during regular business hours in the Office of the City Clerk, 8401 W. Monroe Street, Room 150, Peoria, AZ 85345.

***Accommodations for Individuals with Disabilities.*** Alternative format materials, sign language interpretation and assistive listening devices are available upon 72 hours advance notice through the Office of the City Clerk, 8401 West Monroe Street, Peoria, Arizona 85345 – Phone: (623) 773-7340 or FAX (623) 773-7304. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request. The City has a TDD line where accommodations may be requested at: (623) 773-7221.

### **PUBLIC NOTICE:**

In addition to the City Council members noted above, one or more members of the City of Peoria Boards and Commissions may be present to observe the City Council meeting as noticed on this agenda.

City Council Meetings can be viewed live on Channel 11 (Cox Cable) and are available for viewing on demand at <http://www.peoriaaz.gov/content2.aspx?id=2151>.

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 1

Date Prepared: February 24, 2014

Council Meeting Date: March 4, 2014

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**TO:** Carl Swenson, City Manager

**FROM:** Tamara Shreeve, Council Office and Grant Program Manager

**THROUGH:** John Schell, Director, Intergovernmental Affairs and Council Office

**SUBJECT:** Council Subcommittees

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**Purpose:**

This presentation is to provide an update on the Council Subcommittees and determine if the City Council has an interest in pursuing any process adjustments going forward.

**Background/Summary:**

The Council Policy on Council Subcommittees was adopted on September 20, 2011. There are currently four Council Subcommittees: Policy and Appointments, General Government, Community Culture and Public Safety, and Sustainable Development and Public Services. The subcommittees were developed to provide councilmembers a forum to review and evaluate policy issues in more detail.

**Previous Actions:**

- The City Council discussed potential subcommittees at a study session on July 14, 2011.
- Council further met in study sessions on August 23, 2011, September 6, 2011, and September 13, 2011 to discuss the policy and work through the issues.
- The City Council adopted Council Policy 1-10 on September 20, 2011, which authorized the formation of subcommittees.
- On March 6, 2012, the City Council consolidated the number of subcommittees from six to four.
- The City Council subcommittee appointments last took place on January 8, 2013.
- On October 29, 2013, an overview of the Council Subcommittees activities was presented. Council requested that after a staff evaluation, the item be brought back to Council Study Session for possible discussion on the process adjustments to the subcommittee policy.

**Staff's Recommendation:**

Staff intends to provide an update on subcommittee activities, offer some options for small process modifications, and determine if the City Council has an interest in process adjustments going forward.

**Fiscal Analysis:**

**N/A**

**Exhibit 1:** Council Subcommittee Assignments

**Exhibit 2:** Council Subcommittee Items

**Exhibit 3:** Council Policy 1-10 "Council Committees to include Standing Policy Subcommittees, Ad Hoc committees and Regional Committees"

**Contact Name and Number:** Tamara Shreeve, Council Office and Grant Program Manager, x5143

## City of Peoria Council Subcommittee Assignments

Council Subcommittee Coordinator: Tammy Shreeve, x5143

Council Subcommittee	Members	Staff Liaison, Meeting Coordinator Deputy City Mgr	City Attorney Designee	Council Assistant	Meeting Date and Time
<p><b><u>Policy and Appointments</u></b> Relating to Public Policy concerning: Appointments to Boards and Commission, Ethics, Charter Officers, Council Policies, City Charter</p>	<p>Cathy Carlat, Chair Carlo Leone Bill Patena</p>	<p>Rhonda Geriminsky x7341  Natalie Gilstrap x5141  Susan Daluddung x5160</p>	<p>Steve Kemp</p>	<p>Brianna Decker x7328</p>	<p>2<sup>nd</sup> Tuesday of the Month at 5:30 pm</p>
<p><b><u>General Government</u></b> Relating to Public Policy concerning: Budget, Finance, Taxes, Any and All Rates, Any and All Fees, Intergov, Elections, General Government Activities, any topic not included in other Subcommittees</p>	<p>Tony Rivero, Chair Ron Aames Bill Patena</p>	<p>Brent Mattingly x7134  Michele Grieb x7113  Jeff Tyne x7114</p>	<p>Steve Kemp</p>	<p>Anthony Alejandro x7538</p>	<p>2<sup>nd</sup> Wednesday of the Month at 6 pm.</p>
<p><b><u>Community Culture and Public Safety</u></b> Relating to Public Policy concerning: Arts, Libraries, Education, Cultural Events &amp; Promotions, Parks, Recreation and Veteran's Affairs, Police &amp; Fire Services, Code Enforcement, Homeland Security, Terrorism, and Emergency Preparedness</p>	<p>Jon Edwards, Chair Cathy Carlat Carlo Leone</p>	<p>John Sefton x7135  Ellen Comella x7936  Jeff Tyne x7114</p>	<p>Steve Burg</p>	<p>Terri Smith x7328</p>	<p>4<sup>th</sup> Monday of the Month at 5:30 pm</p>
<p><b><u>Sustainable Development and Public Services</u></b> Relating to Public Policy concerning: Not-for-Profit &amp; Housing, Environment, Building Safety, Neighborhoods, Revitalization, Historic Preservation, Planning, Zoning, Economic Development and Business Retention, Traffic and Transportation, NTMP, Streets, Public Works, Utilities, Technology</p>	<p>Ron Aames, Chair Jon Edwards Tony Rivero</p>	<p>Chris Jacques x7609  Anthony Alejandro x7653  Susan Daluddung x5160</p>	<p>Steve Burg</p>	<p>Terri Smith x7328</p>	<p>1<sup>st</sup> Wednesday of the Month at 6 pm</p>

**Peoria Council Subcommittees  
Updated 18 February 2014**

**Community Culture  
and Public Safety  
Subcommittee**

<b>Submitter</b>	<b>Subject</b>	<b>Sub- committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
Jeff Tyne / Susan D	Trail System Lighting	1/30/2012	Forward item to study session. Completed	7/3/2012
Jeff Tyne / Susan D	Field Rental Policy	1/30/2012	Forward item to study session. Completed	7/3/2012
Jeff Tyne / Susan D	Recreation Fees Policy	11/14/2011	Forward item to study session. Completed	3/20/2012
Jeff Tyne / Susan D	Veterans Discount Program	2/27/2012	Discussed item. Taken directly to Regular Council meeting. Completed	Regular Council Meeting 5/15/12
Jeff Tyne / Susan D	Establish "Peoria Friends of the Arts"	2/27/2012	Forward item to study session. Completed	12/4/2012
Jeff Tyne / Susan D	Youth Master Plan	4/9/2012	Forward item to study session. Completed	9/4/2012
Jeff Tyne / Susan D	Veterans Memorial Board Sponsorship	1/30/2012	Discussed item. Taken directly to Regular Council meeting. Completed	Regular Council Meeting 5/15/12
Claudia Lujan	Structure of the Sister Cities Board	6/25/2012	Item was discussed. Forward item to Council Study Session (6/25/12). Completed	
Roy Minter	False Alarm Ordinance	11/7/2011	Forward to study session (11/7/2011). Completed	4/17/2012
Dave Pearson	Recreational Vehicle Ordinance	1/11/2012	Forward to study session with full recommendation (1/11/12). Completed	6/5/2012
Tony Rivero	Recreational Vehicles City Code Section 14-110	1/11/2012	Forward to study session with full recommendation (1/11/12). Completed	6/5/2012

**Peoria Council Subcommittees  
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Carlo Leone	Traffic calming agenda item	4/11/2012	Forward to study session. Completed	Regular Council Meeting 6/19/12
Carlo Leone	Traffic management agenda item	4/11/2012	Item discussed. Informational only.	NA
Roy Minter	Park Ranger Staffing Study	12/14/2011	Informational item.	NA
Carlo Leone	Feral Cat Control	9/10/2012	Discussion only. Completed	NA
Carlo Leone	Residential Parking	11/15/2012	Item discussed. Forward to Council Study Session.	
Carlo Leone	Dirt Ordinance	11/15/2012	Discussion only. Completed	NA
Jamal Rahimi/Andy Grainger	Neighborhood Traffic Management Program (NTMP) Policy Change	4/11/2012	Item discussed. Informational only. Completed	NA
Tamara Shreeve/Susan Thorpe	Community/Outside Agency Funding & Assistance Policy	6/25/2012	Item was discussed. Forward item to Council Study Session (6/25/12). Completed	11/13/2012
Ron Aames	Roadside Memorials	11/15/2012	Discussion only. Completed	NA
Carlo Leone	Feeding Nuisance Animals	9/10/2012	Item was discussed. Staff will draft ordinance to present at a Council Study Session. (9/10/12)	
Ron Aames	Permissible Number of Animals per Residence	9/10/2012	Discussion only. Completed	NA
Carlo Leone	Policy of Swine in Peoria	1/28/2014	Item was discussed. Forward item to Council Study Session. Completed.	

**Peoria Council Subcommittees  
Updated 18 February 2014**

**General Government  
Subcommittee**

<b>Submitter</b>	<b>Subject</b>	<b>Sub- committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
Brent Mattingly	Utility bill format	11/14/2011	Forward the item for full Council Study Session discussion of solid waste service options and rates. Completed	2/7/2012
Tony Rivero	Residential Development Impact Fees	11/14/2011	Consensus of the subcommittee members was to wait for the full Impact Fee Study to address policy issues identified by Council.	7/3/2012 10/23/2012
Dave Pearson	Itemizing Utility Bill	12/19/2011	Forward the item for full Council Study Session discussion of solid waste service options and rates. Completed	2/7/2012
Steve Kemp	Adoption of Resolution supporting designating certain areas of the City with Peoria addresses and zip codes	2/13/2012	Will be placed as a regular agenda item.	Regular Agenda 7/3/12
Katie Gregory	Development Service User Fees	2/13/2012	Forward to Council Study Session. Completed	7/3/2012
Ron Aames	Taxes	9/18/2013	Item was discussed. Forward to Council Study Session. Completed	12/6/2013
Ron Aames	City Financing Program	9/18/2013	Item was discussed. Forward to Council Study Session. Completed	12/6/2013

**Peoria Council Subcommittees  
Updated 18 February 2014**

<b>Policy and Appointments Subcommittee</b>		<b>Sub-committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
<b>Submitter</b>	<b>Subject</b>			
Dave Pearson	Volunteer Appreciation	11/7/2011 1/10/2012	No further Action. Completed (11/7/11). Revisited item on 1/10/12. No further action. Completed	NA
Dave Pearson	B&C Appointment Process	11/7/2011 12/13/2011 1/10/2012	Bring back to Subcommittee for further discussion (11/7/11). Administrative action - Use the new application form. Interviews and Resumes will be at the discretion of the SC. (12/13/11). Completed. Revisited item on 1/10/12. Completed	NA
Rhonda Geriminsky	Board and Commission Appointments & Reappointments	Ongoing	Appointments and reappointments reviewed and recommended by subcommittee. Ongoing topic.	NA
Dave Pearson	Charter Amendments	12/13/2011 1/10/12 1/24/2012	Bring back to Subcommittee for further discussion (12/13/11). Discussed seven proposed charter amendments. Forward 6 of those to Study Session. One proposed amendment was withdrawn ( 1/10/12). Reviewed remainder charter amendments. Forward charter amendments to study session. (1/24/2012) Completed	2/21/2012

**Peoria Council Subcommittees**

**Updated 18 February 2014**

Dave Pearson	Council Ethics Committee	11/7/2011 12/13/2011 1/10/2012	Bring back to Subcommittee for further discussion (11/7/11). Bring back to Subcommittee. Include a process flow chart (12/13/11). Forward to study session with consensus recommendation (1/10/12). Completed	2/7/2012
Dave Pearson	CP1-5 Appointments to Boards and Commission	11/7/2011 12/13/11	Bring back to Subcommittee for further discussion (11/7/11). Consensus recommendation to forward to study session (12/13/11). Completed	5/15/2012
Dave Pearson	CP 1-2 review. Edit Council Meeting Procedures to reflect Subcommittee Structure	12/13/2011	Bring back to subcommittee for further discussion (12/13/11). Subcommittee procedures are addressed in CP 1-6. Completed	NA
Dave Pearson	Council Role in review and approval of director appointments	12/13/2011	Consensus to move forward to regular council agenda/through a City Manager's report. Completed	Regular Council Meeting 1/3/2012

**Peoria Council Subcommittees**

**Updated 18 February 2014**

Susan Thorpe	Council Code of Ethics	2/14/2012 3/15/2012 4/10/12 5/8/12 9/11/12	Discussed item - continue discussion at the next meeting (2/14/2012). Discussed Item - continue discussion at the next meeting (3/15/2012). Discussed item - will continue discussion at the next meeting (4/10/12). Discussed item-continue discussion at the next meeting (5/8/12). Consensus to forward draft policy to Study Session (9/11/2012). Completed.	
Dave Pearson	Code of Ethics for Elected Officials and Citizen Advisory Committees	2/14/2012 3/15/2012 4/10/12 5/8/12 9/11/12	Discussed item - continue discussion at the next meeting (2/14/2012). Discussed Item - continue discussion at the next meeting (3/15/2012). Discussed item - will continue discussion at the next meeting (4/10/12). Discussed item-continue discussion at the next meeting (5/8/12). Consensus to forward draft policy to Study Session (9/11/2012). Completed	
Rhonda Geriminsky	Youth Master Plan Initiative	3/20/2013 6/11/2013	Item was discussed. City Attorney will draft some ideas on how youth can be involved in committees (3/20/2013). Item was discussed and forward to study session (6/11/2013). Completed	
Rhonda Geriminsky	2013 Board and Commission Recognition Event	3/20/2013	Item was discussed. Staff will identify potential dates for the event (3/20/2013). Completed	NA

**Peoria Council Subcommittees**

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Rhonda Geriminsky	2013 and 2014 Board and Commission Recognition Events	8/13/2013	Item was discussed. Staff will continue to gather options for holding the next recognition event. (8/13/2013)	NA
John Sefton	Youth Advisory Board Council Liaison Interviews	9/10/2013	Interviews were conducted. Recommendations will be forwarded to the Council for the Council Youth Liaison and the Council Youth Liaison Alternate.	10/1/2013
Steve Kemp	Proposed Charter Amendment to allow council members to place agenda items on regular city council meetings and special meetings	2/11/2014	Item was discussed. Forward to Council Study Session. Completed	
Steve Kemp	Proposed Charter Amendment as to Council Assistants	2/11/2014	Item was discussed. Forward to Council Study Session. Completed	
Steve Kemp	Proposed City Charter Amendment as to a City Treasurer Position	2/11/2014	Item was discussed. Forward to Council Study Session. Completed	

**Peoria Council Subcommittees  
Updated 18 February 2014**

**Sustainable  
Development and  
Public Services  
Subcommittee**

<b>Submitter</b>	<b>Subject</b>	<b>Sub- committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
Chris Jacques	Political Signs Zoning Ordinance	11/2/2011	Forward item to Council Study Session. Completed	11/15/2011
Chris Jacques/ Susan D.	Open Space Preservation Program and Decision Support Model	2/1/2012	Start community outreach activities and forward item to Council Study Session. Completed	8/21/2012
Chris/Scott and Susan D.	Digital Billboards - Civic Engagement	11/7/2011	Forward Item to Study Session. Completed	11/15/2011
Dave Pearson	Council Not-For-Profit and Housing Subcommittee	11/8/2011 6/6/12	Bring back to subcommittee for further discussion upon completion of research and alternative identification (11/8/11). Item was discussed. Forward item to study session (6/6/12). Completed	
Cathy Carlat	Not for Profit Committee	11/8/2011 6/6/12	Bring back to subcommittee for further discussion upon completion of research and alternative identification (11/8/11). Item was discussed. Forward Item to study session (6/6/12). Completed	
Scott Whyte/ Chris Jacques/ Susan D.	Old Town Entertainment District Designation	12/7/2011 1/4/2012	Bring back to subcommittee for further discussion (12/7/11). Forward to Regular Council Meeting (1/14/2012). Completed	Regular Council Meeting 1/17/2012

**Peoria Council Subcommittees  
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Bill Mattingly	Dial-a-Ride rates	11/17/2011	Forward item to Council Study Session. Completed	4/17/2012
Ron Aames	Transit Jurisdictional Equity Position	11/17/2011	Informational item. Forward information, through a City Manager's report, to the Council on a Regular Council Agenda. Completed	Regular Council mtg. 1/3/2012
Susan Thorpe	Solid Waste Services	12/1/2011	Forward Item to Council Study Session. Completed	2/7/2012
Bill Mattingly/ Susan Thorpe	Commercial Solid Waste Services	12/15/2011	Forward Item to Council Study Session. Completed	2/7/2012
Dave Pearson	Change in City Ordinance regarding multi-family solid waste service	1/5/2012	Item was discussed, then withdrawn by Councilman Pearson. Completed	NA
Scott Whyte	Old Town Indicators	6/6/2012	Item was discussed. Forward item to Study Session (6/6/2012). Completed	8/21/2012
Chris Jacques	Senate Bill 1598-Aggregate Mining	6/6/2012	Item was discussed. Forward item to Study Session (6/6/2012). Completed	8/21/2012
Carlo Leone	Street Maintenance	11/7/2012	Item was discussed. No further action needed. Completed	NA
Ron Aames	Maintaining Traffic During Construction of Street Projects	5/8/2013	Item was discussed. No further action needed. Completed	NA
Carlo Leone	Code Amendment - Placement of Trash Receptacles	11/6/2013	Item was discussed. Forward item to Study Session. Completed	



## CITY COUNCIL POLICY

**CP 1-10**

Category: General

Department:  
City Manager's Office

**TITLE:**

Council Committees to include Standing Policy Subcommittees, Ad Hoc Committees and Regional Committees

Approved: March 6, 2012

**A. Purpose**

Pursuant to City Charter and City Code, this document institutes policy to establish, modify and terminate Council standing policy subcommittees, ad hoc committees and regional committees and describe their powers, duties, and responsibilities. This policy is being implemented for a trial period of one year. The Council shall review this policy within one year of adoption.

**B. General Provisions**

1. The Mayor shall file with the City Clerk a list of all subcommittees and ad hoc committees, together with the members, chairperson, and charge of each subcommittee and ad hoc committee. Any changes in subcommittee or ad hoc committee information shall also be filed with the City Clerk.
2. CP 1-6 *Public Body Meeting Procedures* shall govern all standing subcommittee and ad hoc committee meetings.
3. Pursuant to City Code 2-63 City Manager-City Council relations, a standing policy subcommittee, ad hoc committee and its individual members shall deal with the administrative services of the city only through the City Manager, except for the purpose of inquiry. Neither a subcommittee or ad hoc committee nor any member thereof shall give orders or instructions to any subordinates of the City Manager.
  - a. **Standing Policy Subcommittees**

The purpose of standing policy subcommittees is to address policy issues as defined in Section E. of this Council Policy. Subcommittees are intended to be a public forum for council members "to make inquiries, analyze information, and provide recommendations" - not for departmental oversight. The purpose is not to address administrative matters, procedures or practices or to give direction to city staff regarding either policy or administrative matters.

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Title: *Council Committees to include Standing Policy Subcommittees,  
Ad Hoc Committees and Regional Committees*

CP 1-10

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- 1) The Mayor with the consent of the Council shall establish various Council standing subcommittees to include but not limited to those in Section D of this document.
- 2) The Mayor with the consent of the Council shall appoint three Council Members to each Council standing policy subcommittee for a one-year term. The Mayor shall make a good faith effort to equalize membership on subcommittees among the six Council Members. The Mayor with the consent of the Council may remove a subcommittee member.
- 3) Subcommittees are subject to Open Meeting Laws, rules of procedure and other laws and regulations deemed applicable by the City Attorney.
- 4) The Mayor may be a non-voting ex-officio member of all subcommittees, if he/she chooses.
- 5) Approximately one month prior to the first regular Council meeting of the calendar year, the Mayor shall inquire of subcommittee members any requests for subcommittee appointments. The Mayor will make a good faith effort to accommodate those requests. Initial appointments and/or changes shall be reviewed by the Council for possible consent at the first regular Council meeting of the calendar year.
- 6) One month prior to the first regular Council meeting each year, the Mayor may reassign subcommittee memberships, based on councilmember interests. Changes shall be reviewed by the Council for possible consent at the first regular Council meeting of the calendar year.
- 7) Members of each subcommittee shall select a chairperson at the first subcommittee meeting of the calendar year. The chairperson shall determine the agenda for the subcommittee consistent with the subcommittee's charge. A specific date and time each month will be set for each subcommittee. However, meetings will be held only as needed based on agenda items.
- 8) The City Manager shall assign appropriate staff and resources to support subcommittee meetings.
- 9) The City Manager shall create an administrative procedure to ensure the proper and efficient functioning of the subcommittee process. The

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procedure shall be followed by all Council members and staff to ensure appropriate roles and responsibilities and relationships are adhered to by all parties.

- 10) The Mayor and individual Council Members may request an item be placed on a subcommittee agenda for the purpose of collecting information, providing analysis, and making recommendations to the City Council or the City Manager.
- 11) The City Manager or the Council acting as a body may refer matters to a subcommittee(s) for the purpose of collecting information, providing analysis, and making recommendations to the City Council.
- 12) Referrals and individual requests for discussion items to a subcommittee(s) must be in a format established by the City Manager. This format ensures that all Council members understand how to get an item on a subcommittee agenda.
- 13) The City Manager shall make the final decision about which subcommittee an item is assigned to, based on subject matter, in a timely manner, without undue delay.
- 14) The chairperson of a subcommittee shall place an item requested by the Mayor or individual Council Members for discussion on the subcommittee agenda in a timely manner without undue delay.
- 15) Subcommittees shall conduct public meetings on all matters referred to them in a timely manner without undue delay. Subcommittee agendas shall conform to Council rules. Citizen participation is encouraged.
- 16) When an item is referred to the Council as a whole from a subcommittee, it shall be referred in one of two ways: (1) with a unanimous recommendation or, (2) lacking a unanimous recommendation, it shall be referred without a recommendation. There may be a separate staff recommendation on subcommittee items forwarded to City Council. No subcommittee can "kill" an item.
- 17) All items referred from a subcommittee shall be reviewed by the Council sitting as a committee of the whole in study session in a timely manner without undue delay. However, if an item is considered routine, of a time-sensitive or emergency nature, it may go directly to the Council for formal action.

Category: General

Title: *Council Committees to include Standing Policy Subcommittees,  
Ad Hoc Committees and Regional Committees*

CP 1-10

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18) The Council sitting as a committee of the whole in study session shall discuss the item referred from a subcommittee and determine that (1) the item should go to the full Council for formal action at a regular meeting, (2) further discussion is needed at a future Study Session, (3) further study is needed at the subcommittee level or at the staff level, or (4) no further discussion or action is needed.

19) Subcommittee meetings shall not be televised. No subcommittee shall be authorized to hold executive session except for the subcommittee charged with Council ethics investigations and only for that purpose.

20) The attached flow charts are intended to illustrate how items are processed.

b. Ad Hoc Committees

The purpose of ad hoc committees is to study, review, and make recommendations to the City Council regarding specific issues designated by the Mayor and Council.

1. The Mayor with the consent of the Council may establish, modify, and terminate ad hoc committees of the Council and charge them with their powers, duties, and responsibilities.
2. The Mayor with the consent of Council shall appoint and remove the members and chairperson for each ad hoc committee.
3. Membership of an ad hoc committee may include citizens and up to three Council Members.
4. Ad hoc committees shall be established only for a limited, clearly defined, time and at the end of the designated time shall automatically be abolished unless the time is extended by the Mayor with the consent of the Council.

c. Regional Committees

Pursuant to Article 2 Section 7 of the City Charter, the Mayor is the sole representative of the city on regional committees. The Mayor may appoint one or more Council Members to represent the Mayor on a regional committee either temporarily or for an extended time. Examples of regional committees include the Maricopa Association of Governments, Regional Public Transportation Authority and Westmarc.

Category: General

Title: *Council Committees to include Standing Policy Subcommittees,  
Ad Hoc Committees and Regional Committees*

CP 1-10

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C. Intent of this Policy

1. It is the intent of this document to modify and affirm the standing policy subcommittee, ad hoc committee and regional committee process, pursuant to City Charter and City Code.
2. It is the intent of this document to allow Mayor and Council Members through the subcommittee process to make inquiries, analyze information, and provide recommendations to the City Council. This process is intended to engage Council members and the public more thoroughly in city-related policy discussions in an informal public setting, encouraging greater citizen and Council input on policy creation at inception.
3. The option of rotating standing policy subcommittee membership on an annual basis is intended to provide Council members with broad knowledge of the city in order to enhance Council policymaking.
4. It is the intent of this document that discussion of issues with potential city policy implications be discussed at the subcommittee level. All issues will be referred with or without a recommendation to the Council as a whole in a study session.
5. It is the intent of this document that the City Manager and Mayor, in the course of their duties, shall refer items they believe may impact city policy or require study, analysis or recommendation to a standing policy subcommittee(s).
6. It is NOT the intent of this document that the City Manager and Mayor refer items to a subcommittee(s) that they deem routine in nature or that do not impact city policy.
7. It is the intent of this document to acknowledge that from time to time issues which impact city policy may be of an emergency or time sensitive nature which require immediate Council review and will bypass the subcommittee procedure at the recommendation of the City Manager and Mayor. These occurrences, however, will be the exception and not the rule.

D. Subcommittee Titles and Descriptions

The list below is illustrative of the types of policy issues each subcommittee will discuss. The full Council will determine the specific charge of each subcommittee, and shall confirm or amend that charge on an annual basis.

**1. Policy and Appointments**

Relating to Public Policy concerning:

Category: General

Title: *Council Committees to include Standing Policy Subcommittees,  
Ad Hoc Committees and Regional Committees*

CP 1-10

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Appointments to Boards and Commission, Ethics, Charter Officers, Council Policies, City Charter

**2. Community Culture and Public Safety**

Relating to Public Policy concerning:

Arts, Libraries, Education, Cultural Events & Promotions, Parks, Recreation and Veteran's Affairs, Police & Fire Services, Code Enforcement, Homeland Security, Terrorism, and Emergency Preparedness

**3. Sustainable Development and Public Services**

Relating to Public Policy concerning:

Not-for-Profit & Housing, Environment, Building Safety, Neighborhoods, Revitalization, Historic Preservation, Planning, Zoning, Economic Development and Business Retention, Transportation, Streets, Public Works, Utilities, Technology, Traffic and NTMP Program

**4. General Government**

Relating to Public Policy concerning:

Budget, Finance, Taxes, Any and All Rates, Any and All Fees, Intergov, Elections, General Government Activities, any topic not included in other Subcommittees

E. Definitions

1. **Policy:** Public policies are the particular goals and directions of a local government. Common examples include community growth, land use development, strategic planning, and capital improvement and financing. City Council policy decisions focus on the purpose, services, and programs necessary to achieve the council's goals and objectives. Policy provides a high-level overall plan to achieve adopted goals and objectives. A policy will often contain the 'what' and 'why'.

Administrative decisions provide for the effective, efficient and equitable implementation of the policies approved by Council. They align the local government's administrative systems with the values, mission, and policy goals defined by the community and elected officials. Administrative tasks include establishing practices and procedures to implement adopted policy as well as the oversight of daily operations. Implementation will often contain the 'what', 'how', 'where', and 'when'.

2. **Consent:** Majority vote of the Peoria City Council in a regular or special meeting.

Category: General

Title: *Council Committees to include Standing Policy Subcommittees,  
Ad Hoc Committees and Regional Committees*

CP 1-10

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3. **Regular Meetings:** Regular Meetings are held for the purpose of discussion or action of the Council on various issues deemed necessary to further the business of the City. Regular Meetings may include Consent Agenda items.
4. **Study Sessions:** Study Sessions are held for the purpose of presentations and discussions on such issues that require more in-depth consideration of the City Council. No formal action of the City Council may be taken at such meetings, other than general consensus or conveying direction to staff for further action.

**ATTACHMENTS:**

1. Council Subcommittee Flow Chart for Staff Submitted Items
2. Council Subcommittee Flow Chart for Council Submitted Items
3. Council Subcommittee Flow Chart for Boards and Commissions

APPROVED:

/S/

Bob Barrett, Mayor

APPROVED AS TO FORM:

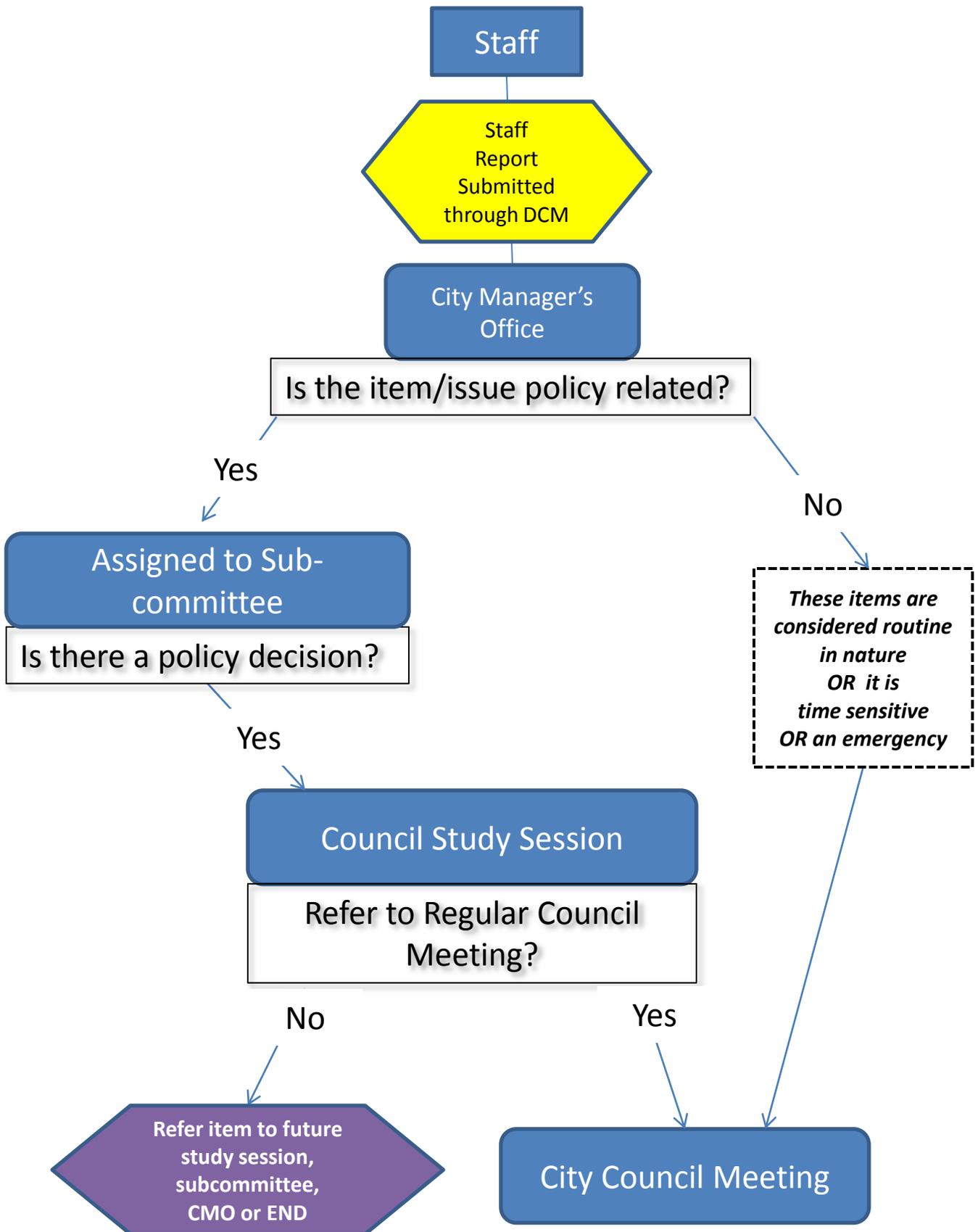
/S/

Stephen M. Kemp, City Attorney

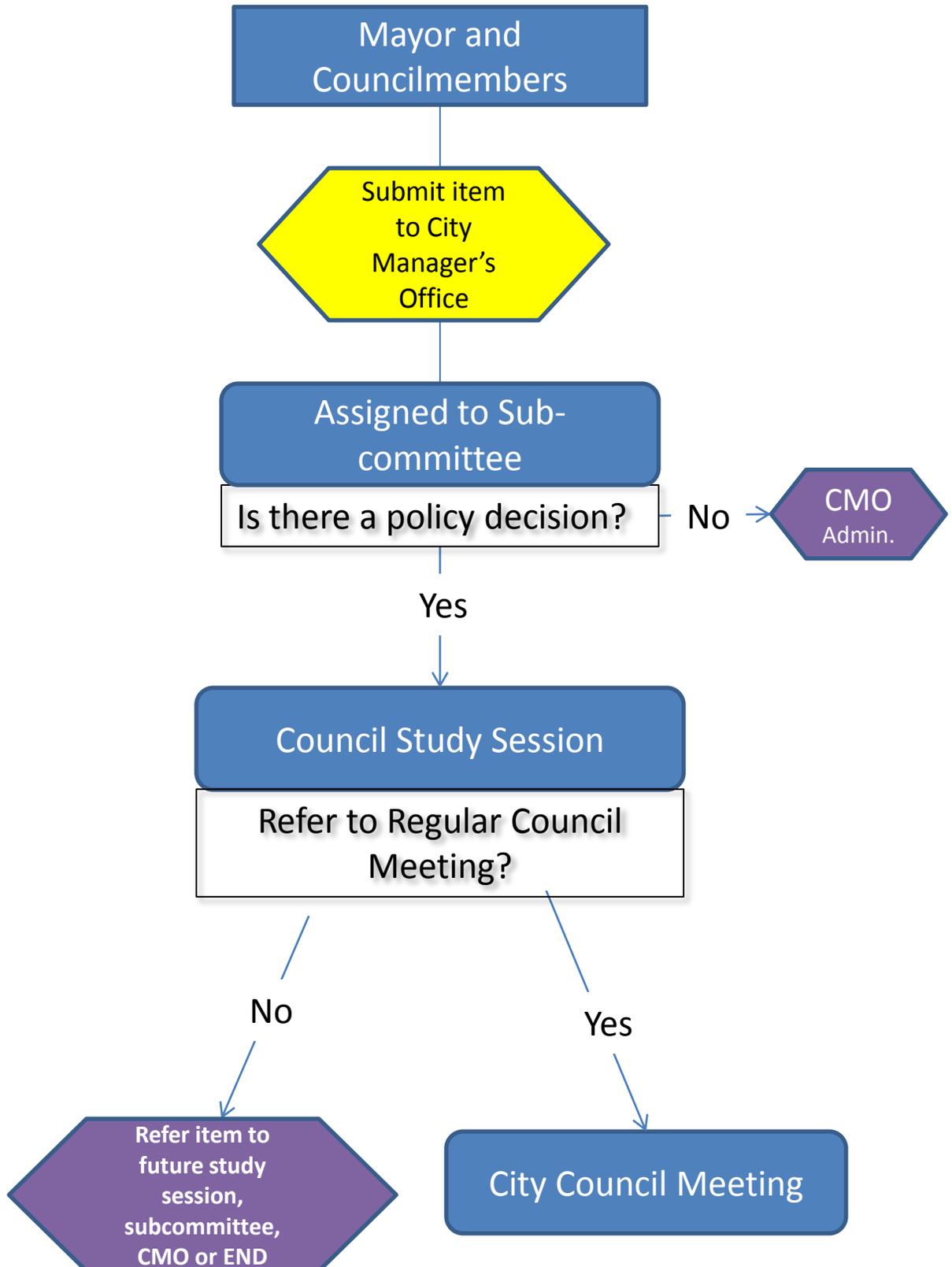
Adopted: 9/20/11, CC #18R

Amended: 03/06/12, CC #11R

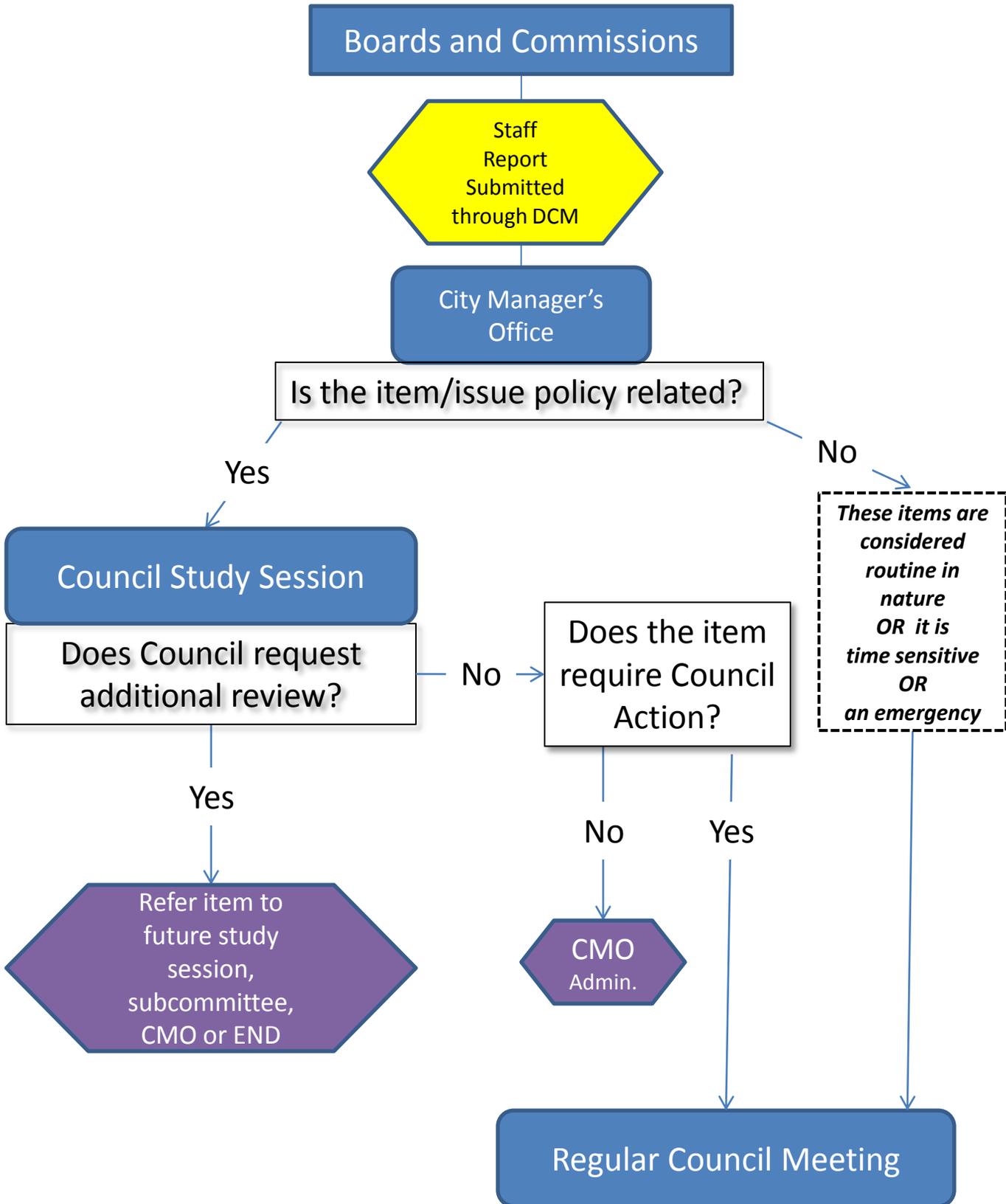
# Council Subcommittee Flow Chart For Staff Submitted items



# Council Subcommittee Flow Chart For Council Submitted items



# Council Subcommittee Flow Chart For Boards and Commissions



**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 2

**Date Prepared: February 25, 2014**

**Council Meeting Date: March 4, 2014**

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TO: Honorable Mayor and City Council

FROM: Stephen M. Kemp, City Attorney

SUBJECT: Draft amendment concept for Chapter 2 of the Peoria City Code regarding procedures for City Council Special meeting requests

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**Purpose:**

This is to discuss an alternative to address the Arizona Open Meeting Law issues arising under Article II, Section 15 of the Peoria City Charter establishing the process for council members to request Special meetings of the City Council, when the assent of the Mayor can not be obtained. This matter is being brought to the Council at this time, as there is a previously set date for a council study session on City Charter Amendments on March 25, 2014. If Council were to provide direction on this issue, it would address the legal issues arising out of one of the charter amendments.

**Background/Summary:**

Under Article II, Section 15 of the Peoria City Charter, procedures are provided for calling Special meetings of the Council. The Charter provides:

Sec. 15. Special meetings.

- A. ....Special meetings of the council may also be held at any time by the common consent of four (4) members of the council, provided notice is given and posted as in special meetings called by the mayor.

This provision has been infrequently used since adoption of the City Charter in 1983; (less than 10 times since 1990) however, it has raised the issue of possible violations of the Arizona Open Meetings Act, since four members of the council have to affirmatively act and give their consent to a meeting. Such action could constitute a meeting in itself violating the Open Meeting Act. The Open Meetings Act issue is a legal concern, while the issue of amending the charter and its substantive content is a policy concern.

In 2012, a proposed charter amendment was submitted to and rejected by the qualified electors of the City proposing to change this provision. On February 11, 2014, the City Council Subcommittee on Policy and Appointments met to discuss a proposed charter amendment submitted by Vice Mayor Aames on this issue. Subsequently, the Mayor inquired as to whether

the Open Meetings Act issues could be addressed without submission of a charter amendment to the voters.

The draft concept ordinance will address the open meetings law concerns without requiring amendment to the City Charter. While the City Charter is the organic (constitutional) law of the City, the City Council retains the ability to define the meaning and to establish processes to implement the provisions of the Charter.

Attached is a draft concept amendment to Chapter 2 of the Peoria City Code which would add a new Section 2-28 to the City Code. Under this proposed section, if a council member desired to request placement on an agenda item on the agenda after rejection of the request by the Mayor, the council member could file a letter with the City Clerk requesting placement of the item on the agenda. The City Clerk would notify all members of the Council of the filing of the request. If other council members desired placement of the item on the agenda, they could sign the proposed agenda item at the City Clerk's Office. Council members would have eight city business days to sign such proposal. If the proposal received four signatures at the City Clerk's Office, notice would be transmitted to the Mayor and the item placed on an agenda within a reasonable time. If four signatures were not received by the Clerk, then the item would not be placed on the agenda.

This concept eliminates the concerns pertaining to the Arizona Open Meetings Law. First, council members are no longer circulating a letter among each other seeking to obtain their common consent to a meeting. Second, council members are not discussing among themselves the action of having a meeting, with such discussions never having been noticed or posted under the Arizona Open Meetings Act. The proposed ordinance would resolve the legal concerns with the City Charter provision. Finally, some text changes are made to Section 2-27 to have it conform with actual city procedure in that the City Clerk, rather than council actually physically prepares the agenda.

**Previous Actions:**

Proposed City Charter amendment on Article II, Section 15, submitted to voters in 2012 and rejected in August, 2012.

**Option:**

That the Mayor and the City Council provide direction to the City Attorney with regard to a proposed ordinance pertaining to agenda placement under the City Code.

**Staff's Recommendation:**

Providing additional definition to this process would address the concerns that the City Charter provision may result in a violation of the Arizona Open Meetings Act.

**Fiscal Analysis:**

Not Applicable

**Narrative:**

If Council provides direction to proceed, complete draft and submit proposed ordinance for Council approval.

**Exhibit:**

Draft City ordinance as to City Council agenda and placement of items on the agenda

**Contact Name and Number:**

Stephen M. Kemp, City Attorney (623) 773-7321

**DRAFT**

ORDINANCE NO. 2014-

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA, AMENDING CHAPTER 2 OF THE PEORIA CITY CODE (1992) BY AMENDING SECTION 2-27 PERTAINING TO CITY COUNCIL; AGENDA AND BY ENACTING SECTION 2-28 PERTAINING TO CITY COUNCIL; PLACEMENT OF ITEMS ON THE AGENDA AND PROVIDING FOR SEVERABILITY AND PROVIDING FOR EFFECTIVE DATE.

THEREFORE, it is ordained by the Mayor and Council of the City of Peoria, Arizona as follows:

SECTION 1. Chapter 2 of the Peoria City Code (1992) is amended by amending Section 2-27 pertaining to City Council; Agenda which shall read as follows:

Sec. 2-27. City Council; Agenda.

Prior to each council meeting, or on or before a time fixed by the council ~~City Clerk~~ City Clerk for preparation and distribution of an agenda, whichever is earlier, the City Clerk shall collect all written reports, communications, ordinances, resolutions, contracts, and other documents to be submitted to the council, and prepare an agenda according to the order of business and shall furnish a copy to each councilmember, the mayor, the city manager and the city attorney.

SECTION 2. Chapter 2 of the Peoria City Code (1992) is amended by enacting Section 2-28 pertaining to City Council: placement of items on the agenda which shall read as follows:

Sec. 2-28. City Council: placement of items on the agenda.

In accordance with Article II, Section 15 of the Peoria City Charter:

(a) The Mayor may place an item on the agenda. The City Manager with the concurrence of the Mayor may place an item on the agenda.

(b) Any councilmember may submit a proposed agenda item by e-mail or in writing to the Mayor. If the Mayor approves the proposed agenda item, the Mayor shall submit the item to the City Attorney for a legal determination on whether the item can lawfully be placed on a city council agenda and to the City Manager for preparation of a staff report.

(c) If the Mayor rejects a proposed agenda item, the Mayor shall notify the Council Member by email or in writing. If the Council Member desires to obtain the item's placement on a regular or special meeting agenda, the following procedure shall be followed:

1. The Council Member shall submit in writing the proposed agenda item to the City Clerk.
2. Upon receipt of the proposed agenda item, the City Clerk shall notify all members of Council that it has been filed and that any member of Council shall have eight business days to sign the proposed agenda item.
3. The City Clerk shall also notify the City Manager and City Attorney of the proposed agenda item.
4. Any member of Council who desires the proposed agenda item to be discussed by the Council may sign the proposal at the City Clerk's Office.

If the proposed agenda item has obtained four signatures from Council Members in the time frame designated in this section, the item shall be transmitted to the Mayor and City Manager for placement on the agenda within a reasonable time and to the City Attorney for review for legal sufficiency in the same manner as any other agenda item.

5. If the proposed agenda item fails to obtain four signatures from Council Members in the time frame designated in this section, the request for placement on the agenda shall be dismissed. The City Clerk shall notify the Mayor and City Manager of the dismissal.

SECTION 3. This Ordinance shall become effective in the manner provided by law.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona this \_\_\_\_ day of \_\_\_\_\_, 2014.

ORD. 2014-  
City Council Agenda  
March 4, 2014  
Page 3 of 3

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Bob Barrett, Mayor

ATTEST:

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Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

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Stephen M. Kemp, City Attorney

Published in: Peoria Times

Pub. Dates: \_\_\_\_\_.

Effective Date:

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 3

Date Prepared: February 4, 2014

Council Meeting Date: March 4, 2014

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**TO:** Carl Swenson, City Manager  
**FROM:** Rhonda Geriminsky, CMC, City Clerk  
**THROUGH:** Susan Daluddung, Deputy City Manager  
**SUBJECT:** Board and Commission Appointments Presentation

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**Purpose:**

This is a request for City Council to present *Certificates of Appointment* to the newly appointed board/commission members as follows:

Member Name	Board/Commission
Joan Evans	Citizens Commission on Salaries for Elected City Officials
Russ Lachance	Veterans Memorial Board

**Background/Summary:**

Newly appointed board and commission members are invited to attend a Regular City Council meeting to personally accept *Certificates of Appointment* from the Mayor and City Council.

**Previous Actions:**

On January 22, 2014, the Council Subcommittee on Policy and Appointments recommended appointments for various boards and commissions.

On January 23, 2014, a memorandum was submitted to Mayor and Council, outlining the recommended appointments from the January 22, 2014 Subcommittee meeting, asking for concerns to be submitted in writing to the Mayor. No comments were received.

On February 18, 2014, City Council adopted Resolutions making the following new board/commission appointments:

Resolution No.	Member Name	Board/Commission	Member Status	Term Expiration
2014-17	Joan Evans	Citizens Commission on Salaries for Elected City Officials	Regular	12/2014
2014-18	Russ Lachance	Veterans Memorial Board	Regular	12/2016

**Options:**

This is a presentation item only.

**Staff's Recommendation:**

That the Mayor and City Council present *Certificates of Appointment* to newly appointed board/commission members who were appointed by Resolution at the February 18, 2014 City Council meeting.

**Fiscal Analysis:**

There is no fiscal impact regarding this item.

**Narrative:**

The newly appointed board/commission members have been invited to attend the March 4, 2014 City Council meeting to receive *Certificates of Appointment*.

**Exhibit(s):** There are no exhibits.

**Contact Name and Number:** Rhonda Geriminsky, City Clerk, 623-773-7340

**MINUTES OF THE PEORIA CITY COUNCIL**  
CITY OF PEORIA, ARIZONA  
CITY COUNCIL CHAMBER  
January 7, 2014

A **Special Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 5:00 p.m.

**Members Present:** Mayor Bob Barrett; Vice Mayor Tony Rivero; Councilmembers Ron Ames, Cathy Carlat, Jon Edwards, Carlo Leone and Bill Patena.

**Council Youth Liaisons:** Jacob Jelinek and Thomas Prior.

**Members Absent:** None

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; Julie Ayers, Human Resources Director; Bo Larsen, Public Information Director; Bill Mattingly, Public Works Director; and John Sefton, Community Services Director.

**Audience:** Approximately seven members of the public were present.

**Note:** The order in which items appear in the minutes is not necessarily the order in which they were discussed in the meeting.

## **CONSENT AGENDA**

**CONSENT AGENDA:** All items listed with a "C" are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

Motion was made by Councilmember Leone, seconded by Councilmember Ames, to approve the Consent Agenda. Upon vote, the motion carried unanimously 7 to 0.

### **1C. Authorization to Hold an Executive Session**

Authorized the holding of an Executive Session for the purpose of discussion with legal counsel of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding settlement discussions conducted in order to avoid litigation in an Equal Employment Opportunity Commission matter pursuant to A.R.S. Section 38-431.03.A.4.

### **ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 5:01 p.m.

A **Study Session Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 5:40 p.m.

**Members Present:** Mayor Bob Barrett; Vice Mayor Tony Rivero; Councilmembers Ron Aames, Cathy Carlat, Jon Edwards, Carlo Leone and Bill Patena.

**Council Youth Liaisons:** Jacob Jelinek and Thomas Prior.

**Members Absent:** None

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; Chris Jacques, Planning and Community Development Director; Bo Larsen, Public Information Director; John Schell, Intergovernmental Affairs Director; John Sefton, Community Services Director; and Corina Russo, Assistant to the City Manager.

**Audience:** Approximately ten members of the public were present.

## **STUDY SESSION AGENDA**

### **Subject(s) for Discussion Only**

#### 2. Youth Master Plan - Young Ambassador Program

Carl Swenson, City Manager, introduced the Youth Master Plan.

John Sefton, Community Services Director, discussed the following as they relate to the Youth Master Plan:

- Youth Advisory Board
- Goals, vision and mission
- Implementation actions

Discussion ensued regarding Youth Advisory Board Partner Network efforts to commence in 2014.

Corina Russo, Assistant to the City Manager, discussed the following:

- History of the Young Ambassador Program
- Recommendations for funding

Discussion ensued regarding:

- Whether youth will be going to Ireland as the Young Ambassador Program transitions

- Sister Cities Program
- Reasons for moving the Young Ambassador Program to the Community Services Department
- Results of the youth survey conducted by the Youth Advisory Board
- Elimination of the trip to Northern Ireland with the Sister Cities Program
- Need to reevaluate the Young Ambassador Program
- Selection process for students going to Northern Ireland
- Alternates who were informed they would go to Northern Ireland
- Timing of when to evaluate the Sister Cities Program and the Northern Ireland trip

It was the consensus of Council to suspend the trip to Ireland and reassess the Sister Cities Program.

3. Community Services Master Plan Update

**Clerk's Note: The Community Services Master Plan Update was not presented.**

4. Sonoran Preservation Program (Open Space)

Chris Jacques, Planning and Community Development Director, outlined an overview of the Sonoran Preservation Open Space Plan.

Jeremy Call, representing environmental planning consultant Logan Simpson Design Inc., outlined:

- Policy guidance regarding open space preservation
- Community engagement summary
- Open Space Program
- Open Space prioritization process
- Resource areas
- Natural resources
- Key areas of interest
- Regulatory Code changes
- Bureau of Land Management (BLM) opportunities
- Expanded planning area
- Expanding the City's influence area
- Current funding for the program
- Traditional funding source options

Discussion ensued regarding:

- General Plan amendments regarding protecting historic lands
- Privately-owned land on historic ruins
- State law regarding archeological finds
- Rights of land owners
- BLM land

Mr. Jacques continued regarding:

- Other local preservation efforts
- Next steps

Discussion ensued regarding:

- Prioritization of lands for Open Space
- Prioritizing funding for Open Space
- Possible tax increases to fund the Open Space Program
- Other opportunities for funding the Open Space Program

### **ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 6:52 p.m.

## **EXECUTIVE SESSION AGENDA**

5. An Executive Session was convened immediately following the Special City Council Meeting pursuant to A.R.S. 38-431.03 for the purpose of discussion with legal counsel of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding settlement discussions conducted in order to avoid litigation in an Equal Employment Opportunity Commission matter pursuant to A.R.S. Section 38-431.03.A.4.

**Clerk's Note: In accordance with A.R.S. § 38-431.03(B), minutes of executive sessions must be kept confidential except as outlined in statute.**

A **Regular Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 7:02 p.m.

Following a moment of silent reflection, Council Youth Liaison Jelinek led the Pledge of Allegiance.

**Members Present:** Mayor Bob Barrett; Vice Mayor Tony Rivero; Councilmembers Ron Aames, Cathy Carlat, Jon Edwards, Carlo Leone and Bill Patena.

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; Andy Granger, Engineering Director; Katie Gregory, Deputy Finance and Budget Director; Doug Hildebrandt, Acting Deputy Police Chief; John Imig, Information Technology Director; Stacy Irvine, Deputy Fire Chief; Chris Jacques, Planning and Community Development Director; Bo Larsen, Public Information Director; Bill Mattingly, Public Works Director; John Schell, Intergovernmental Affairs Director; John Sefton, Community Services Director; Corina Russo, Assistant to the City Manager; and Linda Blas, Deputy City Clerk.

**Council Youth Liaisons:** Jacob Jelinek and Thomas Prior.

**Audience:** Approximately 20 members of the public were present.

**Note: The order in which items appear in the minutes is not necessarily the order in which they were discussed in the meeting.**

**CONSENT AGENDA:** All items listed with a “C” are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

Mayor Barrett asked if any Councilmember wished to have an item removed from the Consent Agenda. Having no requests from Council, motion was made by Councilmember Carlat, seconded by Councilmember Leone, to approve the Consent Agenda. Upon vote, the motion carried unanimously 7 to 0.

6C. **Disposition of Absence**

Approved the absence of Vice Mayor Tony Rivero from the Special City Council meeting held at 5:00 p.m. on December 10, 2013.

7C. **Minutes**

Approved the following minutes:

- October 15, 2013 Meeting Minutes
- October 29, 2013 Meeting Minutes
- November 5, 2013 Meeting Minutes
- November 19, 2013 Meeting Minutes

8C. **Appointments, Boards and Commissions**

RESOLUTION 2014-10

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, REAPPOINTING MIKE FUSCO AND APPOINTING MIKE HEATH AND LAUREN ALLSOPP TO THE HISTORIC PRESERVATION COMMISSION AND ESTABLISHING TERMS OF OFFICE.

RESOLUTION 2014-11

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, REAPPOINTING WILLIAM LOUIS TO THE PLANNING AND ZONING COMMISSION AND ESTABLISHING THE TERM OF OFFICE.

Approved the recommendations from the Council Subcommittee on Policy and Appointments pertaining to the following appointments and reappointments, and adopt the Resolutions as presented:

- Adopted **RES. 2014-10** reappointing Mike Fusco, as a regular member, and appointing Mike Heath and Lauren Allsopp, as regular members, to the Historic Preservation Commission, and
- Adopted **RES. 2014-11** reappointing William Louis, as a regular member, to the Planning and Zoning Commission.

9C. **Annexation, Maricopa County Right-of-Way, 83rd Avenue and Pinnacle Peak Road Retention Basin**

ORDINANCE NO. 2014-01

AN ORDINANCE OF THE MAYOR AND COUNCIL OF CITY OF PEORIA, ARIZONA, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE CITY OF PEORIA, ARIZONA, MARICOPA COUNTY, STATE OF ARIZONA PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARTICLE 7, ARIZONA REVISED STATUTES AND AMENDMENTS THERETO, BY ANNEXING THERETO CERTAIN TERRITORY CONTIGUOUS TO THE EXISTING CITY LIMITS OF THE CITY OF PEORIA, AND PROVIDING FOR THE RECORDING OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE FOR THE ANNEXATION.

Adopted **ORD. 2014-01** annexing Maricopa County right-of-way regarding the 83rd Avenue and Pinnacle Peak Road retention basin.

10C. **Grant, Arizona Department of Homeland Security, Fiscal Year 2011 Reallocated Funds, Fire Department**

- (a) Accepted a grant award in the amount of \$8,557 from the Arizona Department of Homeland Security for reallocated Fiscal Year 2011 funds for chemical, biological, radiological, nuclear, explosive weapon detection, response and decontamination capabilities; and

- (b) Approved a budget amendment in the amount of \$8,557 from the Proposed Grants Contingency account to the Homeland Security Grant Fund.

11C. **Job Order Contracts, Jokake Construction, Peoria Sports Complex Improvements**

- (a) Approved two individual job orders to Jokake Construction in amounts not to exceed \$2,265,704 and \$1,188,361 for design and construction services for a portion of the stadium improvements at the Peoria Sports Complex;
- (b) Approved a budget amendment in the amount of \$317,000 from the General Fund Contingency to the Sports Complex Improvements Reserve Fund Buildings & Improvements account; and
- (c) Authorized the City Manager to execute any applicable agreement documents related thereto.

12C. **Agreements, Healthy Planet Partners, Seattle Mariners, Arizona Public Service, 83rd Avenue and Mariners Way**

- (a) Approved four solar energy Power Purchase Agreements with Healthy Planet Partners, Seattle Mariners and Arizona Public Service for a photovoltaic solar panel system at the Peoria Sports Complex; and
- (b) Authorized the City Manager to execute the applicable agreement documents related thereto.

13C. **Contract Amendment, Presiding Municipal Judge**

Approved an amendment to the Terms and Conditions of Employment Agreement with the Presiding Municipal Judge.

14C. **Contract Amendment, City Attorney**

Approved an amendment to the Terms and Conditions of Employment Agreement with the City Attorney.

15C. **Amendment, Peoria Bus Stop Improvements, Peoria Avenue and Thunderbird Road**

Approved an amendment to the project scope for the Peoria Avenue Bus Stop Improvements as described in the Fiscal Year 2014 Capital Improvement Program to include both Peoria Avenue and Thunderbird Road.

16C. **Budget Amendment, Facilities Division**

- (a) Authorized the use of reserves and cash transfers; and

- (b) Approved a budget amendment in the amounts of \$43,000 from the General Fund Contingency account, \$22,500 from the Wastewater Fund Contingency account and \$7,500 from the Water Fund Contingency account to the Facilities Fund Building Repair and Maintenance account.

17C. **City Council 2014 Meeting Schedule**

RESOLUTION 2014-01

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, ADOPTING THE PROPOSED CITY COUNCIL MEETING SCHEDULE FOR THE CALENDAR YEAR 2014 AS ESTABLISHED AND REQUIRED BY ARTICLE II, SECTION 14 OF THE CHARTER OF THE CITY OF PEORIA, ARIZONA AND BY SECTION 2-16 OF THE PEORIA CITY CODE.

Adopted **RES. 2014-01** approving a City Council meeting schedule for the 2014 calendar year.

18C. **Deeds and Easements, Various Locations**

RESOLUTION NO. 2014-12

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA ADOPTING A RESOLUTION FORMALLY ACCEPTING DEEDS AND EASEMENTS FOR PROPERTY RIGHTS CONVEYED TO THE CITY OF PEORIA.

Adopted **RES. 2014-12** accepting Deeds and Easements for various Real Property interests acquired by the City.

**REGULAR AGENDA**

19R. **Election of Vice Mayor**

Motion was made by Councilmember Carlat, seconded by Councilmember Aames, to establish a one-year term length for Vice Mayor.

Upon vote, the motion carried unanimously 7 to 0.

Councilmember Leone nominated Councilmember Aames to the position of Vice Mayor.

Councilmember Carlat nominated Councilmember Patena to the position of Vice Mayor.

The Council voted for Vice Mayor by secret ballot. Steve Kemp, City Attorney, and Rhonda Geriminsky, City Clerk, recessed to count the votes.

Mayor Barrett announced that Councilmember Aames had been selected to serve as Vice Mayor for a term of one year.

20R. **Election of Mayor Pro Tem**

Motion was made by Councilmember Rivero, seconded by Councilmember Carlat, to establish a one-year term length for Mayor Pro Tem.

Upon vote, the motion carried unanimously 7 to 0.

Councilmember Rivero nominated Councilmember Leone to the position of Mayor Pro Tem to serve during the absence of both the Mayor and Vice Mayor.

Councilmember Carlat nominated Councilmember Edwards to the position of Mayor Pro Tem to serve during the absence of both the Mayor and Vice Mayor.

The Council voted by secret ballot. Steve Kemp, City Attorney, and Rhonda Geriminsky, City Clerk, recessed to count the votes.

Mayor Barrett announced that Councilmember Edwards had been selected to serve as Mayor Pro Tem for the City of Peoria for a term of one year.

21R. **PUBLIC HEARING - Liquor License, Quiktrip #490, Thunderbird Road and Rio Vista Boulevard**

**Clerk's Note: At the request of staff, the public hearing for a New Wine and Beer Liquor License (Series 10) for Quiktrip #490 was postponed until February 4, 2014.**

**Council Action:**

Motion was made by Councilmember Leone, seconded by Councilmember Carlat, to postpone until February 4, 2014, the Public Hearing on a New Wine and Beer Liquor License (Series 10) for Quiktrip #490, located at the northeast corner of West Thunderbird Road and North Rio Vista Boulevard, Troy C. DeVos, Applicant, LL#20009381.

Upon vote, the motion carried unanimously 7 to 0.

22R. **PUBLIC HEARING - Off-Track Wagering License Renewal, American Greyhound at Gallagher's of Peoria**

**Staff Report:**

Katie Gregory, Deputy Finance and Budget Director, reported that all fees were paid and staff recommends approval to the Arizona Racing Commission for an Off-Track Wagering License Renewal for Gallagher's of Peoria, located at 6750 West Peoria Avenue.

**Public Hearing:**

Mayor Barrett opened the Public Hearing and asked if any Councilmember or citizen wished to comment on the request for an Off-Track Wagering License Renewal for Gallagher's of Peoria, located at 6750 West Peoria Avenue.

Having no requests from those present to address this item, Mayor Barrett declared the Public Hearing closed.

**Council Action:**

Motion was made by Councilmember Carlat, seconded by Councilmember Patena, to recommend approval to the Arizona Racing Commission for an Off-Track Wagering License Renewal for Gallagher's of Peoria, located at 6750 West Peoria Avenue.

Upon vote, the motion carried unanimously 7 to 0.

23R. **PUBLIC HEARING - Minor General Plan Amendment, Land Use Map, Lizard Trails, Pinnacle Peak Road and 99th Avenue**

**Clerk's Note: Agenda Items 23R and 24R were presented together.**

RESOLUTION NO. 2014-13

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA AMENDING THE LAND USE MAP OF THE PEORIA GENERAL PLAN FOR THE CITY OF PEORIA, ARIZONA; AND PROVIDING FOR SEPARABILITY AND AN EFFECTIVE DATE.

**Staff Report:**

Chris Jacques, Planning and Community Development Director, provided an overview of the request for a minor amendment to the General Plan Land Use Map to re-designate approximately 7.58 acres from Estate Residential (0-2 du/ac, target: 1 du/ac) to Low Density Residential (2-5 du/ac, target: 3 du/ac.) and the request to rezone the site from General Agricultural (AG) to Single-Family Residential (R1-10).

**Public Hearing:**

Mayor Barrett opened the Public Hearing and asked if any Councilmember or citizen wished to comment on a request for a minor amendment to the General Plan Land Use Map for approximately 7.58 acres located east of Lake Pleasant Parkway and accessed from 99th Avenue via Williams Road, which is ½ mile between Deer Valley and Pinnacle Peak Roads from Residential Estate (0-2 du/ac, target: 1 du/ac) to Residential Low (2-5 du/ac, target: 3 du/ac).

Having no requests from those present to address this item, Mayor Barrett declared the Public Hearing closed.

**Council Action:**

Motion was made by Councilmember Edwards, seconded by Councilmember Leone, to concur with the Planning and Zoning Commission's recommendation and adopt **RES. 2014-13** approving an amendment to the General Plan Land Use Map for approximately 7.58 acres located east of Lake Pleasant Parkway and accessed from 99th Avenue via Williams Road, which is ½ mile between Deer Valley and Pinnacle Peak Roads from Residential Estate (0-2 du/ac, target: 1 du/ac) to Residential Low (2-5 du/ac, target: 3 du/ac) (GPA13-0002).

Upon vote, the motion carried unanimously 7 to 0.

24R. **PUBLIC HEARING - Rezoning, Lizard Trails, Pinnacle Peak Road and 99th Avenue**

ORDINANCE NO 2014-02

AN ORDINANCE OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA REZONING CERTAIN PROPERTY FROM GENERAL AGRICULTURAL (AG) ZONING DISTRICT TO R1-10 SINGLE-FAMILY RESIDENTIAL; AMENDING THE ZONING MAP AND PROVIDING FOR AN EFFECTIVE DATE.

**Public Hearing:**

Mayor Barrett opened the Public Hearing and asked if any Councilmember or citizen wished to comment on a request to rezone approximately 7.58 gross acres located east of Lake Pleasant Parkway and accessed from 99th Avenue via Williams Road, which is ½ mile between Deer Valley and Pinnacle Peak Roads from General Agriculture (AG), to Single-Family Residential District (R1-10).

Having no requests from those present to address this item, Mayor Barrett declared the Public Hearing closed.

**Council Action:**

Motion was made by Councilmember Edwards, seconded by Vice Mayor Aames, to concur with the Planning and Zoning Commission's recommendation and adopt **ORD. 2014-02** rezoning approximately 7.58 gross acres located east of Lake Pleasant Parkway and accessed from 99th Avenue via Williams Road, which is ½ mile between Deer Valley and Pinnacle Peak Roads from General Agriculture (AG), to Single-Family Residential District (R1-10) (Z13-0004).

Upon vote, the motion carried unanimously 7 to 0.

25R. **PUBLIC HEARING - Updated Land Use Assumptions and Infrastructure Improvement Plans**

**Staff Report:**

Katie Gregory, Deputy Finance and Budget Director, presented an overview of development impact fees. Ms. Gregory defined impact fees and explained how impact fees are calculated.

Ms. Gregory discussed:

- The definitions of Land Use Assumptions, Service Areas and Infrastructure Improvement Plans
- Impact fee categories
- Land use categories
- Growth projections
- Service area recommendations
  - Transportation
  - Water and Wastewater
  - Parks
  - Public Safety
- Implementation timeline

Mayor Barrett opened the Public Hearing and asked if any Councilmember or citizen wished to comment on updated Land Use Assumptions and Infrastructure Improvement Plans required to calculate new development impact fees.

Discussion ensued regarding fees for water service related to future Community Facilities Districts.

Having no additional requests from those present to address this item, Mayor Barrett declared the Public Hearing closed.

**Council Action:** No Council action required.

26R. **Contract, Nesbitt Construction Incorporated, Street and Drainage Improvements, 91st Avenue**

**Clerk's Note:** Agenda Items 26R and 27R were presented together.

Dan Nissen, Assistant City Engineer, provided an overview of the Street and Drainage Improvements Project that will increase the capacity and safety along 91<sup>st</sup> Avenue between Butler Drive and Mountain View Road.

Discussion ensued regarding the contract bid process.

Motion was made by Councilmember Leone, seconded by Vice Mayor Aames to:

- (a) Approve a contract with Nesbitt Construction Incorporated in the amount not to exceed \$4,496,398.50 for the construction of the 91st Avenue, Street and Drainage Improvements project;
- (b) Approve a 10% contingency to cover possible contract amendments related to unforeseen conditions or owner requested changes; and
- (c) Approve budget amendments to cover existing waterline infrastructure upgrades within the limits of the project in the amount of \$570,000 from the Water Fund Contingency account to the Water Operating Capital Projects Water System account, \$351,630 from the Streets Development Zone 1 Land account to the Streets Development Zone 1 Construction account and \$341,630 from the Transportation Sales Tax Fund Land account to the Transportation Sales Tax Fund Construction account.

Upon vote, the motion carried unanimously 7 to 0.

**27R. Contract Amendment No. 5, Dibble Engineering, Street and Drainage Improvements, 91st Avenue**

Motion was made by Councilmember Carlat, seconded by Councilmember Patena, to approve contract amendment No. 5 with Dibble Engineering in the amount of \$341,275.00 for the post design and construction administration services which will be needed during construction of the 91st Avenue, Street and Drainage Improvements located from Las Palmaritas Drive alignment to Mountain View Road.

Upon vote, the motion carried unanimously 7 to 0.

**28R. City Council Policy 1-2; City Council Meeting Procedures, Texting During City Council Meetings**

Steve Kemp, City Attorney, presented proposed amendments to City Council Policy 1-2 pertaining to texting during City Council meetings.

Motion was made by Vice Mayor Aames, seconded by Councilmember Edwards, to adopt proposed amendments to City Council Policy 1-2; City Council Meeting Procedures as to texting during City Council meetings.

Upon vote, the motion carried unanimously 7 to 0.

**29R. Public Art, Pioneer Community Park**

Kirk Haines, Parks Manager, introduced the following members of the Arts Commission: Liz Gordon, Chair; Commission Members Marleejean Johnson; Robert Panzer; Pamela Potter; and Arts Coordinator, Andre Licardi.

Mr. Haines summarized the process for public input regarding the four artwork proposals for Pioneer Community Park. Mr. Haines reported that the Arts Commission unanimously voted to recommend the Thomas Sayre art for Pioneer Community Park based on public comment.

Discussion ensued regarding the number of responses received from citizens.

Motion was made by Councilmember Carlat, seconded by Councilmember Edwards, to accept the Arts Commission's recommendation and award a contract in the amount of \$100,000 to Thomas Sayre.

Upon vote, the motion carried unanimously 7 to 0.

### **Call To The Public (Non-Agenda Items)**

None.

### **Reports from City Manager**

30. **Council Calendar**

31. **Reports with Presentation**

None.

32. **Informational (The following items are included for informational purposes only. There will be no separate discussion of these items unless a Councilmember so requests.)**

Carl Swenson, City Manager, provided information to Council related to the following item:

A. Council Subcommittee Update

### **Reports from City Council:**

Councilmember Leone reported on the various City of Peoria activities he attended. Councilmember Leone reminded residents that FreshStart Church, located at 14185 North 83<sup>rd</sup> Avenue, distributes produce on the first Thursday of each month beginning at 8:00 a.m. Councilmember Leone encouraged citizens to attend the Organic Market held each Saturday from 9:00 a.m. to 2:00 p.m. at Park West.

Councilmember Carlat shared her memories of Joe McCord, Veterans Memorial Board Member and Community Leader, who passed away on January 1, 2014. Councilmember Carlat extended her thoughts and prayers to Mr. McCord's family.

Councilmember Edwards reported on the various City of Peoria activities he attended. Councilmember Edwards commended City staff for their participation in numerous charity events during the holiday season. Councilmember Edwards congratulated the Fire Department for being recognized by the Arizona Department of Health Services' Bureau of Emergency Medical Services and attaining Premier EMS Agency Status.

Council Youth Liaison Jelinek congratulated Peoria Student Broadcasting Network students and Centennial High School's Media Productions teacher, Mr. Ken Keene, for winning a NewTek Smartcar mobile production vehicle by creating an award-winning video demonstrating they are the best innovative media program in the nation.

Vice Mayor Aames reported on the various City of Peoria activities he attended. Vice Mayor Aames wished the citizens of Peoria a Happy New Year.

Councilmember Patena offered his condolences to Mr. McCord's family.

Councilmember Rivero reported he would be submitting an item for consideration by the Council regarding the ethics process.

**Reports from the Mayor:**

Mayor Barrett reported on the Wounded Warrior Amputee Softball Team double-header games held recently at the Peoria Sports Complex. Mayor Barrett extended his condolences to Mr. McCord's family.

**ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 8:22 p.m.

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Bob Barrett, Mayor

ATTEST:

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Rhonda Geriminsky, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct summary of the proceedings of the City Council Meetings of the City Council of Peoria, Arizona held on the 7<sup>th</sup> day of January, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 4<sup>th</sup> day of March, 2014.

(Seal)

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Rhonda Geriminsky, City Clerk

**MINUTES OF THE PEORIA CITY COUNCIL**  
CITY OF PEORIA, ARIZONA  
CITY COUNCIL CHAMBER  
January 21, 2014

A **Special Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 5:00 p.m.

**Members Present:** Mayor Bob Barrett; Vice Mayor Ron Aames; Councilmembers Cathy Carlat, Carlo Leone, Bill Patena, and Tony Rivero.

**Members Absent:** Councilmember Jon Edwards.

**Council Youth Liaisons:** Jacob Jelinek and Thomas Prior.

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; and Bo Larsen, Public Information Director.

**Audience:** Approximately two members of the public were present.

**Note:** The order in which items appear in the minutes is not necessarily the order in which they were discussed in the meeting.

## **CONSENT AGENDA**

**CONSENT AGENDA:** All items listed with a "C" are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

Motion was made by Vice Mayor Aames, seconded by Councilmember Carlat, to approve the Consent Agenda. Upon vote, the motion carried unanimously 6 to 0.

### **1C. Authorization to Hold an Executive Session**

Authorized the holding of an Executive Session for the purpose of discussion with legal counsel for legal advice on contemplated litigation pertaining to the Asset Purchase Agreement between the City of Peoria and DLGC II, LLC et al., and related parties pursuant to A.R.S. § 38-431.03.A.4.

### **ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 5:01 p.m.

A **Study Session Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 5:29 p.m.

**Members Present:** Mayor Bob Barrett; Vice Mayor Ron Aames; Councilmembers Cathy Carlat, Carlo Leone, Bill Patena, and Tony Rivero.

**Members Absent:** Councilmember Jon Edwards.

**Council Youth Liaisons:** Jacob Jelinek and Thomas Prior.

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; Chris Jacques, Planning and Community Development Director; Bo Larsen, Public Information Director; Roy Minter, Police Chief; and John Sefton, Community Services Director.

**Audience:** Approximately five members of the public were present.

## **STUDY SESSION AGENDA**

### **Subject(s) for Discussion Only**

#### 2. Community Services Master Plan Update

John Sefton, Community Services Director, introduced the Community Services Master Plan project and team.

Stacey Weaks, representing Norris Design, outlined the following regarding the Community Services Master Plan:

- Summary of community engagement
  - Survey statistics
  - Priority facilities
  - Priority programs
  - Funding the vision
- Master Plan approach and timeline
  - Inventory and needs assessment
- Planning integration
  - Council Policy Goals
  - General Plan
  - Sonoran Preservation Program
- Recommendations regarding the areas of focus
  - Park and facility development and enhancement
  - Programs and service delivery
  - Partnerships and collaborative efforts
  - Department organization, staffing and resources
  - Funding resources and opportunities

Discussion ensued regarding:

- Civic engagement in the Master Plan development
- Mini park classifications
  - Parking
  - Space
  - Maintenance
  - Size of mini parks
  - Number of mini parks appropriate for the City
- Repurposing turf areas in existing parks
- Solar energy for light fixtures
- Flexibility of the proposed Master Plan
- Quality of life in the City of Peoria
- Servicing parks and facilities in the City
- Priority of trail connectivity in the northern part of the City
- Right-of-way maintenance
- Total number of parks in the City of Peoria
- Skate or bike park needs
- ADA Study
- Open space preservation
- Swimming pools in the City
  - Aquatic fitness
  - Aquatic centers
  - Community swimming pool

**ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 6:31 p.m.

**EXECUTIVE SESSION AGENDA**

3. An Executive Session was convened immediately following the Special City Council Meeting pursuant to A.R.S. 38-431.03 for the purpose of discussion with legal counsel for legal advice on contemplated litigation pertaining to the Asset Purchase Agreement between the City of Peoria and DLGC II, LLC et al., and related parties pursuant to A.R.S. § 38-431.03.A.4.

**Clerk's Note: In accordance with A.R.S. § 38-431.03(B), minutes of executive sessions must be kept confidential except as outlined in statute.**

A **Regular Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 7:00 p.m.

Following a moment of silent reflection, Vice Mayor Aames led the Pledge of Allegiance.

**Members Present:** Mayor Bob Barrett; Vice Mayor Ron Aames; Councilmembers Cathy Carlat, Carlo Leone, Bill Patena and Tony Rivero.

**Members Absent:** Councilmember Jon Edwards.

**Council Youth Liaisons:** Jacob Jelinek and Thomas Prior.

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; Andy Granger, Engineering Director; John Imig, Information Technology Director; Chris Jacques, Planning and Community Development Director; Bo Larsen, Public Information Director; Bill Mattingly, Public Works Director; Roy Minter, Police Chief; Bobby Ruiz, Fire Chief; John Schell, Intergovernmental Affairs Director; John Sefton, Community Services Director; Scott Whyte, Economic Development Services Director; Corina Russo, Assistant to the City Manager; and Linda Blas, Deputy City Clerk.

**Audience:** Approximately ten members of the public were present.

**Note:** The order in which items appear in the minutes is not necessarily the order in which they were discussed in the meeting.

**Presentation:**

4. Certificates of Appointment

Mayor Barrett and Councilmember Carlat presented Certificates of Appointment to the following Board and Commission members who were appointed by Resolution at the January 7, 2014 City Council meeting:

- Mike Heath to the Historic Preservation Commission, and
- Lauren Allsopp to the Historic Preservation Commission.

**Clerk's Note:** Lauren Allsopp was not present to receive her certificate.

**CONSENT AGENDA:** All items listed with a "C" are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

Mayor Barrett asked if any Councilmember wished to have an item removed from the Consent Agenda. Having no requests from Council, motion was made by Vice Mayor Aames, seconded by Councilmember Leone, to approve the Consent Agenda. Upon vote, the motion carried unanimously 6 to 0.

5C. **Minutes**

Approved the following minutes:

- December 3, 2013 Meeting Minutes

6C. **Annexation, 75th Avenue and Pinnacle Peak Road**

ORDINANCE NO. 2014-06

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE CITY OF PEORIA OF MARICOPA COUNTY, STATE OF ARIZONA, PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARTICLE 7, ARIZONA REVISED STATUTES AND AMENDMENTS THERETO, BY ANNEXING THERETO CERTAIN TERRITORY CONTIGUOUS TO THE EXISTING CITY LIMITS OF THE CITY OF PEORIA, AND PROVIDING FOR SEVERABILITY.

Adopted **ORD. 2014-06** approving the annexation of approximately 1.17 acres of privately owned property located south of the Pinnacle Peak Road alignment at the 75th Avenue alignment. (ANX13-0002)

7C. **Initial Zoning, 75th Avenue and Pinnacle Peak Road**

ORDINANCE NO 2014-05

AN ORDINANCE OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA ESTABLISHING INITIAL ZONING ON PROPERTY FROM MARICOPA COUNTY RURAL-43 ZONING DISTRICT TO CITY OF PEORIA SR-43 ZONING DISTRICT; AMENDING THE ZONING MAP AND PROVIDING FOR AN EFFECTIVE DATE.

Concurred with the Planning and Zoning Commission's recommendation and adopted **ORD. 2014-05** establishing initial zoning of Suburban Ranch (SR-43) on approximately 1.17 acres of privately-owned property recently annexed from Maricopa County, generally located south of the Pinnacle Peak Road alignment at the 75th Avenue alignment. (Z13-0009)

8C. **Intergovernmental Agreement, Peoria Unified School District, Zuni Hills Elementary School Privacy Wall**

Approved an Intergovernmental Agreement with the Peoria Unified School District (PUSD) granting a temporary construction easement for the City to construct a privacy wall along the Zuni Hills Elementary School western property line and for PUSD to maintain the privacy wall.

9C. **Budget Amendment, Water and Wastewater Division, Accessory Equipment**

- (a) Approved a budget amendment in the amount of \$23,465 from the Water Equipment Reserve Fund contingency account to the Water Equipment Reserve Fund Trucks and Vans account; and
- (b) Approved a budget amendment in the amount of \$3,499 from the Wastewater Equipment Reserve Fund contingency account to Wastewater Equipment Reserve Fund Trucks and Vans account for accessory equipment needed for previously approved replacement vehicles.

10C. **Budget Amendment, Information Technology, Computer Replacements**

Approved the use of reserves and a budget amendment in the amount of \$125,000 from the General Fund contingency account to the IT Reserve Fund Computer Hardware account for additional computer replacements.

11C. **Maintenance Improvement District No. 1111, The Meadows Parcel 12A, 99th Avenue and Deer Valley Road**

RESOLUTION NO. 2014-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, DECLARING ITS INTENTION TO CREATE AN IMPROVEMENT DISTRICT TO MAINTAIN LANDSCAPING INCLUDED WITHIN, NEAR AND ADJACENT TO A PARKWAY AND RELATED FACILITIES TOGETHER WITH APPURTENANT STRUCTURES AS SHOWN ON THE PLANS, FOR MAINTENANCE WITHIN AN AREA IN THE CITY OF PEORIA AS DESCRIBED HEREIN; ADOPTING PLANS FOR CITY OF PEORIA MAINTENANCE IMPROVEMENT DISTRICT NO. 1111, THE MEADOWS PARCEL 12A, AS MORE PARTICULARLY DESCRIBED HEREIN, AND DECLARING THE WORK OR IMPROVEMENT TO BE OF MORE THAN LOCAL OR ORDINARY PUBLIC BENEFIT, AND THAT THE COST OF SAID WORK OR IMPROVEMENT SHALL BE ASSESSED UPON A CERTAIN DISTRICT, AND PROVIDING THAT THE PROPOSED WORK OR IMPROVEMENT SHALL BE PERFORMED UNDER ARIZONA REVISED STATUTES TITLE 48, CHAPTER 4, ARTICLE 2, AND AMENDMENTS THERETO AND DECLARING AN EMERGENCY.

RESOLUTION NO. 2014-07

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA DECLARING ITS INTENTION TO ORDER THE IMPROVEMENTS OF A CERTAIN AREA WITHIN THE CORPORATE LIMITS OF THE CITY AND CREATING AN IMPROVEMENT DISTRICT KNOWN AS THE CITY OF PEORIA MAINTENANCE IMPROVEMENT DISTRICT NO. 1111, THE MEADOWS PARCEL 12A; PROVIDING THAT THE COST OF THE MAINTENANCE OF THE LANDSCAPING INCLUDED WITHIN, NEAR, AND ADJACENT TO A PARKWAY AND RELATED FACILITIES TOGETHER WITH APPURTENANT STRUCTURES AS SHOWN ON THE PLANS, SHALL BE ASSESSED UNDER THE PROVISIONS OF TITLE 48, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, AS AMENDED; AND DECLARING AN EMERGENCY.

Approved the Petition for Formation and adopted **RES. 2014-06** intention and ordering the formation of proposed Maintenance Improvement District No. 1111, The Meadows Parcel 12A, located at 99th Avenue and Deer Valley Road; and adopted **RES. 2014-07** ordering the improvements within the proposed Maintenance Improvement District and declaring an emergency.

- 12C. **Street Light Improvement District No. 1054, The Meadows Parcel 12A, 99th Avenue and Deer Valley Road**

RESOLUTION NO. 2014-08

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA DECLARING ITS INTENTION TO ORDER THE PURCHASE OF ELECTRICITY FOR LIGHTING THE STREETS AND PUBLIC PARKS WITHIN THE PROPOSED DISTRICT AND THAT THE COST OF THE PURCHASE OF ELECTRICITY FOR LIGHTING THE STREETS AND PUBLIC PARKS, BE ASSESSED UPON A CERTAIN IMPROVEMENT DISTRICT TO BE KNOWN AS CITY OF PEORIA STREETLIGHT IMPROVEMENT DISTRICT NO. 1054, THE MEADOWS PARCEL 12A; PROVIDING THAT THE COST OF THE ELECTRICITY REQUIRED TO OPERATE THE SYSTEM BE ASSESSED UNDER THE PROVISIONS OF TITLE 48, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, AS AMENDED; AND DECLARING AN EMERGENCY.

RESOLUTION NO. 2014-09

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, ARIZONA ORDERING THE IMPROVEMENTS OF CERTAIN STREETS AND RIGHTS-OF-WAY WITHIN THE CORPORATE LIMITS OF THE TOWN AND CREATING AN IMPROVEMENT DISTRICT KNOWN AS THE CITY OF PEORIA STREETLIGHT IMPROVEMENT DISTRICT NO. 1054, THE MEADOWS PARCEL 12A, PURSUANT TO TITLE 48, CHAPTER 4, ARIZONA REVISED STATUTES AND AMENDMENTS THERETO FOR THE PURPOSE OF PURCHASING ELECTRICITY, WHICH INCLUDES A CHARGE FOR THE USE OF LIGHTING FACILITIES AND OTHER RELATED ITEMS TOGETHER WITH ALL APPURTENANT STRUCTURES AS SHOWN ON THE PLANS, AND DECLARING AN EMERGENCY.

Approved the Petition for Formation and adopted **RES. 2014-08** intention and ordering the formation of proposed Street Light Improvement District No. 1054, The Meadows Parcel 12A, located at 99th Avenue and Deer Valley Road; and adopted **RES. 2014-09** ordering the improvements within the proposed Street Light Improvement District and declaring an emergency.

13C. **Deeds and Easements, Various Locations**

RESOLUTION NO. 2014-15

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA ADOPTING A RESOLUTION FORMALLY ACCEPTING DEEDS AND EASEMENTS FOR PROPERTY RIGHTS CONVEYED TO THE CITY OF PEORIA.

Adopted **RES. 2014-15** accepting Deeds and Easements for various Real Property interests acquired by the City.

14C. **Final Plat, Peoria Village, 67th Avenue and Cactus Road**

Approved the Final Plat of Peoria Village, located at 67th Avenue and Cactus Road, subject to stipulations.

15C. **Final Plat, Tierra Buena II, 75th Avenue and Greenway Road**

Approved the Final Plat of Tierra Buena II, located at 75th Avenue and Greenway Road, subject to stipulations.

## REGULAR AGENDA

### **New Business:**

16R. **Memorandum of Understanding, Chicanos Por La Causa, Old Town, Redevelopment Projects**

Scott Whyte, Economic Services Director, presented an overview of the request to establish a partnership with Chicanos Por La Causa. Mr. Whyte reported that the Memorandum of Understanding outlines the terms and conditions for proposed redevelopment projects in the Old Town area and provides guiding principles for negotiations that may lead to future development agreements.

At the request of Councilmember Rivero, Mr. Whyte provided background information on the Chicanos Por La Causa organization.

Discussion ensued regarding public/private partnerships in order to pursue economic development opportunities.

Motion was made by Councilmember Rivero, seconded by Councilmember Carlat, to authorize the City Manager to enter into a Memorandum of Understanding with Chicanos Por La Causa, to collaborate on redevelopment projects in the Old Town area.

Upon vote, the motion carried unanimously 6 to 0.

### **Call To The Public (Non-Agenda Items)**

None.

### **Reports from City Manager**

17. **Council Calendar**

18. **Reports with Presentation**

A. 2014 State Legislative Update

John Schell, Intergovernmental Affairs Director, provided an overview of the 2014 Legislative Session and recapped the core principals that guide the City of Peoria's activities at the Legislature. Mr. Schell highlighted proposed legislation that would affect the City and provided information on the following:

- Governor's Budget for Fiscal Year 2015
- Highway User Revenue Fund
- Revenue Allocation Authority

B. Community Policing Update

Roy Minter, Police Chief, provided a brief overview of the youth programs and outreach efforts implemented during the past year in order to promote proactive and positive partnerships within the community.

19. **Informational (The following items are included for informational purposes only. There will be no separate discussion of these items unless a Councilmember so requests.)**

A. ParkFest! @ Paseo Verde Park

John Sefton, Community Services Director, provided information on the ParkFest! Event to be held at Paseo Verde Park, located at 7665 West Greenway Road, on Saturday, January 25, 2014 beginning at 2:00 p.m.

**Reports from City Council:**

Council Youth Liaison Pryor reported on the Youth Advisory Board's Holiday Angel Program. Mr. Pryor provided information on the first Youth Partner Network Meeting to be held on Thursday, January 23, 2014 at the Rio Vista Community Center.

Councilmember Leone reported on the various City of Peoria activities he attended. Councilmember Leone provided information on the upcoming Relay for Life Event to be held in April at the Peoria Sports Complex. Councilmember Leone offered his condolences to the families of community leader, Joe McCord, and Peoria employee, Randy Cordero.

Councilmember Carlat reported that the Bureau of Land Management has concurred with the City's preferred alignment near State Route 74 for the placement of high-powered overhead transmission lines by Arizona Public Service (APS). Councilmember Carlat thanked the Red Shirt Brigade and everyone involved for their diligence during the process.

Council Youth Liaison Jelinek recognized Heritage Elementary School teacher, Cindy Piano, who was a recipient of President Obama's Presidential Award for Excellence in Mathematics and Science. Mr. Jelinek recognized Parkridge Elemental School student, Addyson Delpier for conducting a shoe drive for children in need. Mr. Jelinek reported that Ms. Delipier was the recipient of \$500 from KPHO Broadcasting Corporation and Pay it Forward for her charitable efforts by collecting more than 750 pairs of shoes. Mr. Jelinek reported on his attendance at the Governor's State of the State Address.

Councilmember Patena reported on the various City of Peoria activities he attended. Councilmember Patena thanked the volunteers from Christ's Church of the Valley on behalf of Councilmember Edwards for their participation in a neighborhood cleanup event at the Lake Pleasant Estates mobile home subdivision.

Vice Mayor Aames reported on the various City of Peoria activities he attended. Vice Mayor Aames encouraged residents to attend the upcoming ParkFest! Event to be held at Paseo Verde Park in the Palo Verde District on January 25, 2014.

**Reports from the Mayor:**

Mayor Barrett expressed his appreciation to Congressman Trent Franks for his support regarding the APS line siting project. Mayor Barrett encouraged citizens to attend the Relay for Life event to be held at the Peoria Sports Complex on Saturday, April 26, 2014. Mayor Barrett extended his condolences to the family of Peoria employee, Randy Cordero.

**ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 8:29 p.m.

---

Bob Barrett, Mayor

ATTEST:

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Rhonda Geriminsky, City Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct summary of the proceedings of the City Council Meetings of the City Council of Peoria, Arizona held on the 21<sup>st</sup> day of January, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 4<sup>th</sup> day of March, 2014.

(Seal)

---

Rhonda Geriminsky, City Clerk

**MINUTES OF THE PEORIA CITY COUNCIL**  
CITY OF PEORIA, ARIZONA  
CITY COUNCIL CHAMBER  
January 28, 2014

A **Special Meeting and Study Session** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 5:00 p.m.

Following a moment of silent reflection, Council Youth Liaison Prior led the Pledge of Allegiance.

**Members Present:** Mayor Bob Barrett; Vice Mayor Ron Aames; Councilmembers Cathy Carlat, Carlo Leone, Bill Patena, and Tony Rivero.

**Members Absent:** Councilmember Jon Edwards.

**Council Youth Liaisons:** Thomas Prior.

**Youth Liaisons Absent:** Jacob Jelinek.

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; Bill Mattingly, Public Works Director; Brent Mattingly, Finance and Budget Director; Roy Minter, Police Chief; John Sefton, Community Services Director.

**Audience:** Approximately 10 members of the public were present.

**Note:** The order in which items appear in the minutes is not necessarily the order in which they were discussed in the meeting.

## **CONSENT AGENDA**

**CONSENT AGENDA:** All items listed with a "C" are considered to be routine or have been previously reviewed by the City Council, and will be enacted by one motion. There will be no separate discussion of these items unless a Councilmember so requests; in which event the item will be removed from the General Order of Business, and considered in its normal sequence on the Agenda.

Motion was made by Vice Mayor Aames, seconded by Councilmember Carlat, to approve the Consent Agenda. Upon vote, the motion carried unanimously 6 to 0.

1C. **Authorization to Hold an Executive Session**

Authorized the holding of an Executive Session for the purpose of discussion and consultation with legal counsel for legal advice pertaining to the potential sale of land and the Lease Agreement with Arizona Broadway Theatre pursuant to A.R.S. § 38-431.03.A.7.

**ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 5:49 p.m.

A **Study Session Meeting** of the City Council of the City of Peoria, Arizona was convened at 8401 West Monroe Street in open and public session at 5:49 p.m.

**Members Present:** Mayor Bob Barrett; Vice Mayor Tony Rivero; Councilmembers Ron Ames, Cathy Carlat, Jon Edwards, Carlo Leone and Bill Patena.

**Members Absent:** None

**Council Youth Liaisons:** Thomas Prior.

**Youth Liaisons Absent:** Jacob Jelinek.

**Other Municipal Officials Present:** Carl Swenson, City Manager; Susan Daluddung, Deputy City Manager; Jeff Tyne, Deputy City Manager; Steve Kemp, City Attorney; Rhonda Geriminsky, City Clerk; Andy Granger, Engineering Director; Chris Jacques, Planning and Community Development Director; Bo Larsen, Public Information Director; Bill Mattingly, Public Works Director; Roy Minter, Police Chief; John Schell, Intergovernmental Affairs Director; John Sefton, Community Services Director and Corina Russo, Assistant to the City Manager.

**Audience:** Approximately 25 members of the public were present.

## **STUDY SESSION AGENDA**

**Subject(s) for Discussion Only**

2. Citywide Sustainability Update

Lisa Estrada, Intergovernmental Affairs Coordinator, provided an update on the City's Sustainability Action Plan including:

- Peoria's perspective on sustainability
- Focus areas

- Sustainability year in review
- Related Council Policy goals
- Municipal Facilities – reduction in energy usage
- Green building design
- Transportation
- Recycle and waste reduction efforts
- Water resources
- Education and outreach
- Sustainable U website
- Peoria's Sustainable Campus Sign Project
- All Hands Green Team
- Awards and recognition
- Sustain and Gain mailer
- Eco Explorers Adventure Camp
- 2013 Key goals achieved
- Upcoming goals
- The City's Sustainability Team

Discussion ensued regarding:

- Reusable water bottle fountains
- The City's six-year underground water storage goal
- Outside companies' support of our sustainability efforts
- General Plan for reclaimed water for large master plan communities

### 3. Northern Parkway Project Update

Andy Granger, Engineering Director, introduced the Northern Parkway update and introduced representatives from Maricopa County including: John Hauskins, Director, Maricopa County Department of Transportation, and Scott Sayles and Robin Shishido, Consultants.

Mr. Hauskins provided background on the Northern Parkway Project including:

- Project limits
- Partners and participating agencies
- Overview of the Intergovernmental Agreement in place regarding Northern Parkway
- Project features
- Funding sources for the project
- Interim concept funded phasing plan
- Project progress update
- Northern Parkway in the first phase of construction

- Phase 2 of the project
- Public meetings held in Peoria and the purpose of the meetings
- Approved design concept
- Alternate design concept designed to address neighborhood concerns regarding noise and cut-through traffic

Discussion ensued regarding:

- Number of lanes involved in the project within the City of Peoria
- Purchase of homes
- Sound walls
- Number of streets eliminated in the project
- Getting out of neighborhoods due to street eliminations
- Funding for the project
- Using El Mirage Road as an alternative route
- Number of lanes proposed in the project
- Proposed alternate plan
- The need for changes to Northern Parkway
- Traffic projections
- Impact of not expanding Northern Parkway
- Cost of the pedestrian walkway to Country Meadows Elementary School
- Property values
- Community benefits
- Projected speed limits on Northern Parkway
- Land acquisition for Phase II buildouts
- Intergovernmental Agreement obligations for the City of Peoria
- Development projections (housing market)

## **EXECUTIVE SESSION AGENDA**

An Executive Session was convened immediately following the Special City Council Meeting pursuant to A.R.S. 38-431.03 for the purpose of discussion and consultation with legal counsel for legal advice pertaining to the potential sale of land and the Lease Agreement with Arizona Broadway Theatre pursuant to A.R.S. § 38-431.03.A.7.

**Clerk's Note: In accordance with A.R.S. § 38-431.03(B), minutes of executive sessions must be kept confidential except as outlined in statute.**

**ADJOURNMENT:**

Being no further business to come before the Council, the meeting was duly adjourned at 7:07 p.m.

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Bob Barrett, Mayor

ATTEST:

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Rhonda Geriminsky, City Clerk

**CERTIFICATION**

I hereby certify that the foregoing minutes are a true and correct summary of the proceedings of the City Council Meetings of the City Council of Peoria, Arizona held on the 28<sup>th</sup> day of January, 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 4<sup>th</sup> day of March, 2014.

(Seal)

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Rhonda Geriminsky, City Clerk

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 6C

**Date Prepared: February 13, 2014**

**Council Meeting Date: March 4, 2014**

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**TO:** Carl Swenson, City Manager  
**FROM:** Rhonda Geriminsky, CMC, City Clerk  
**THROUGH:** Susan Daluddung, Deputy City Manager  
**SUBJECT:** Board and Commission Appointments

---

**Purpose:**

This is a request for City Council to appoint board and commission members as recommended by the Council Subcommittee on Policy and Appointments as follows:

New Appointments

<b>Board/Commission</b>	<b>Name</b>	<b>Term Expiration</b>
Planning and Zoning Commission	Bridget Binsbacher	12/2017
	Jeff Nelson	12/2015

**Background/Summary:**

The Council Subcommittee makes recommendations for board and commission membership based on term expirations and vacancies from resignations or changes to member eligibility status.

**Previous Actions:**

On February 11, 2014, the Council Subcommittee on Policy and Appointments recommended appointments to various boards and commissions.

On February 13, 2014, a memorandum was submitted to Mayor and Council, outlining the appointment and reappointment recommendations from the February 11, 2014 Subcommittee meeting, asking for concerns to be submitted in writing to the Mayor. No comments were received.

**Options:**

- A.** Appoint recommended board and commission members.
- B.** Continue recruitment efforts to fill board and commission vacancies.

**Staff's Recommendation:**

This is a request for City Council to discuss and approve the recommendations from the Council Subcommittee on Policy and Appointments pertaining to the following appointments and adopt the Resolutions as presented:

Adopt RES. 2014-22 appointing Bridget Binsbacher, as a regular member, to the Planning and Zoning Commission to a term to expire December 2017, and Jeff Nelson, as an alternate member, to a term to expire December 2015.

**Fiscal Analysis:**

There is no fiscal impact regarding this item.

**Narrative:**

If appointed, the newly appointed board and commission members will be invited to attend the March 18, 2014 City Council meeting to accept Certificates of Appointment.

**Exhibit(s):**

Exhibit 1: Resolution No. 2014-22

**Contact Name and Number:** Rhonda Geriminsky, CMC, City Clerk, 623-773-7340

RESOLUTION 2014-22

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, APPOINTING BRIDGET BINSBACHER AND JEFF NELSON TO THE PLANNING AND ZONING COMMISSION AND ESTABLISHING THE TERMS OF OFFICE.

WHEREAS, there currently exists a vacant regular position and a vacant alternate position on the Planning and Zoning Commission; and

WHEREAS Bridget Binsbacher and Jeff Nelson desire to be members of and appointed to the Planning and Zoning Commission; and

WHEREAS, the Mayor and City Council of the City of Peoria desires to confirm said appointments of Bridget Binsbacher, as a regular member, and Jeff Nelson, as an alternate member, to the City of Peoria Planning and Zoning Commission.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Peoria that Bridget Binsbacher is appointed as a regular member and Jeff Nelson is appointed as an alternate member, to the City of Peoria Planning and Zoning Commission.

BE IT FURTHER RESOLVED that said appointment shall expire as follows:

Bridget Binsbacher	December 2017
Jeff Nelson	December 2015

PASSED AND ADOPTED by the Mayor and City Council of the City of Peoria, Arizona this 4<sup>th</sup> day of March 2014.

CITY OF PEORIA, an Arizona municipal corporation

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Bob Barrett, Mayor

RESOLUTION NO. 2014-22  
Page 2 of 2

ATTEST:

\_\_\_\_\_  
Rhonda Geriminsky, City Clerk

Approved as to Form:

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 7C

**Date Prepared:** February 6, 2014

**Council Meeting Date:**

March 4, 2014

---

**TO:** Carl Swenson, City Manager

**FROM:** Andrew Granger, P. E., Engineering Director

**THROUGH:** Susan J. Daluddung, Deputy City Manager

**SUBJECT:** Right of Way Annexation, Pinnacle Peak Road, 103<sup>rd</sup> Avenue east to City Limits

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**Purpose:**

This is a request for City Council to authorize the adoption of an Ordinance approving the annexation of a drainage channel and right of way (ROW) for a portion of Pinnacle Peak Road from 103<sup>rd</sup> Avenue east to existing City limits (approximately Lake Pleasant Parkway).

**Background/Summary:**

The Glendale/Peoria Area Drainage Master Plan (ADMP) proposed a drainage channel from 99<sup>th</sup> Avenue to the Agua Fria River to provide flood protection to properties located west and south of 99<sup>th</sup> Avenue and Pinnacle Peak Road and to safely convey 100 year flows to the Agua Fria River.

In 2007, the County prepared the Pinnacle Peak Road - 107<sup>th</sup> Avenue to 83<sup>rd</sup> Avenue Design Concept Report (DCR), which recommended that the drainage and roadway improvements between 99<sup>th</sup> Avenue and 107<sup>th</sup> Avenue be implemented together.

In 2009, the City, County and the Flood Control District of Maricopa County (FCDMC) entered into an intergovernmental agreement (IGA), LCON01609, for the purpose of identifying responsibilities for the cost sharing of design, ROW acquisition and utility relocation for the Pinnacle Peak Road channel and roadway improvements; between 99<sup>th</sup> Avenue and the Agua Fria River. At the time of this IGA, the City intended to design and cost share with the Maricopa County Department of Transportation (MCDOT) for the construction of the roadway improvements along Pinnacle Peak Road between 99<sup>th</sup> Avenue and 107<sup>th</sup> Avenue, and upon acceptance of the roadway improvements annex the ROW and assume maintenance responsibilities.

During the design phase of the Project, two public meetings were conducted. As a result of the public input from both County and City residents the construction of the Pinnacle Peak Road roadway improvements were deleted from the Project. In addition, MCDOT did not

have their proportionate share of the roadway construction funded.

In 2010, the City, County and FCDMC entered into an intergovernmental agreement (IGA), LCON09310, for the purpose of construction, construction management, operation and maintenance of the Pinnacle Peak Road channel and basin improvements; 99<sup>th</sup> Avenue to the Agua Fria River. The actual project improvements included:

- channel and storm drain improvements from 99<sup>th</sup> Avenue to 102<sup>nd</sup> Avenue
- basin along the south side of Pinnacle Peak Road between 102<sup>nd</sup> Avenue and 104<sup>th</sup> Avenue and improvements to the Rose Garden Lane drainage system.

Under the terms of this IGA the City is responsible for the ownership, liability, operation and maintenance of the drainage improvements. A portion of the drainage improvements located along the north side of Pinnacle Peak Road between 102<sup>nd</sup> Avenue and Lake Pleasant Parkway are located within Maricopa County jurisdiction, and although it is not typical protocol for the City to maintain infrastructure outside the City's jurisdiction, the City has maintained the drainage improvements in accordance with the IGA.

Staff is recommending that the City annex two parcels as described below and shown on the Location Map:

1. The drainage channel identified as Assessor Parcel Number 201-08-059B
2. A section of County right-of-way (ROW) along Pinnacle Peak Road extending from Lake Pleasant Parkway to approximately the 103rd Avenue alignment in order to bring the City limits contiguous to the drainage channel.

Annexing these parcels will incorporate all drainage and roadway improvements into City jurisdiction and clarify the City's responsibility for maintenance and emergency response. A portion of the roadway is unimproved and a portion has been constructed to less than City standards. Therefore, staff is recommending that the roadway improvements not be accepted into the City's roadway network for maintenance purposes.

**Previous Actions:**

- 2009 - IGA for the purpose of identifying responsibilities for cost sharing of design, ROW acquisition, and utility relocation for the Pinnacle Peak Road channel and roadway improvements; 99<sup>th</sup> Avenue to the Agua Fria River.
- 2010 - IGA for the purpose of construction, construction management, operation and maintenance of the Pinnacle Peak Road channel and basin improvements; 99<sup>th</sup> Avenue to the Agua Fria River.

**Options:**

- A:** Approve adoption of the Ordinance for annexation of the unincorporated drainage channel and Pinnacle Peak Road ROW from 103<sup>rd</sup> Avenue east to City limits.
- B:** Deny the adoption of the Ordinance for annexation of the unincorporated drainage channel and Pinnacle Peak Road ROW from 103<sup>rd</sup> Avenue east to City limits. This action will result in the drainage channel and ROW remaining in County jurisdiction.

**Staff's Recommendation:**

Staff recommends adopting the attached Ordinance for the annexation of the unincorporated drainage channel and the Pinnacle Peak Road ROW from 103<sup>rd</sup> Avenue east to City limits.

**Fiscal Analysis:**

Since the City has maintained the drainage improvements since 2010 there will be no additional maintenance costs as a result of this annexation.

Although, staff is recommending that a portion of the Pinnacle Peak Road ROW be annexed it is also being recommended that the roadway not be accepted into the City's roadway network for maintenance. Therefore, there will be no additional roadway maintenance costs.

**Narrative:**

Upon completion of the annexation process the City will assume all rights of ownership of the drainage channel and the Pinnacle Peak ROW.

**Exhibit(s):**

**Exhibit 1:** Vicinity Map

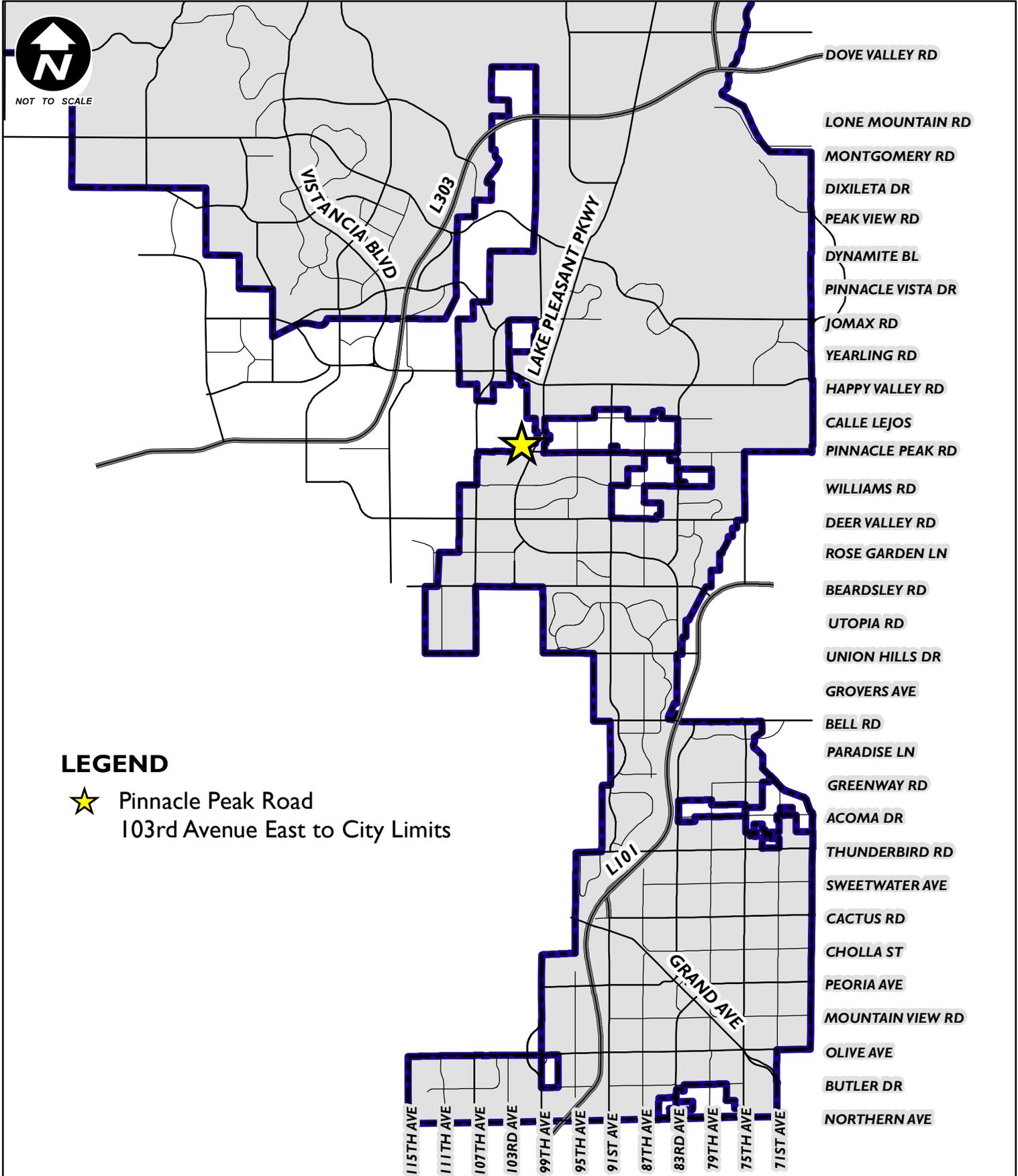
**Exhibit 2:** Location Map

**Exhibit 3:** Ordinance

**Contact Name and Number:** Dan Nissen, Assistant City Engineer, (623) 773-7214



NOT TO SCALE



**LEGEND**

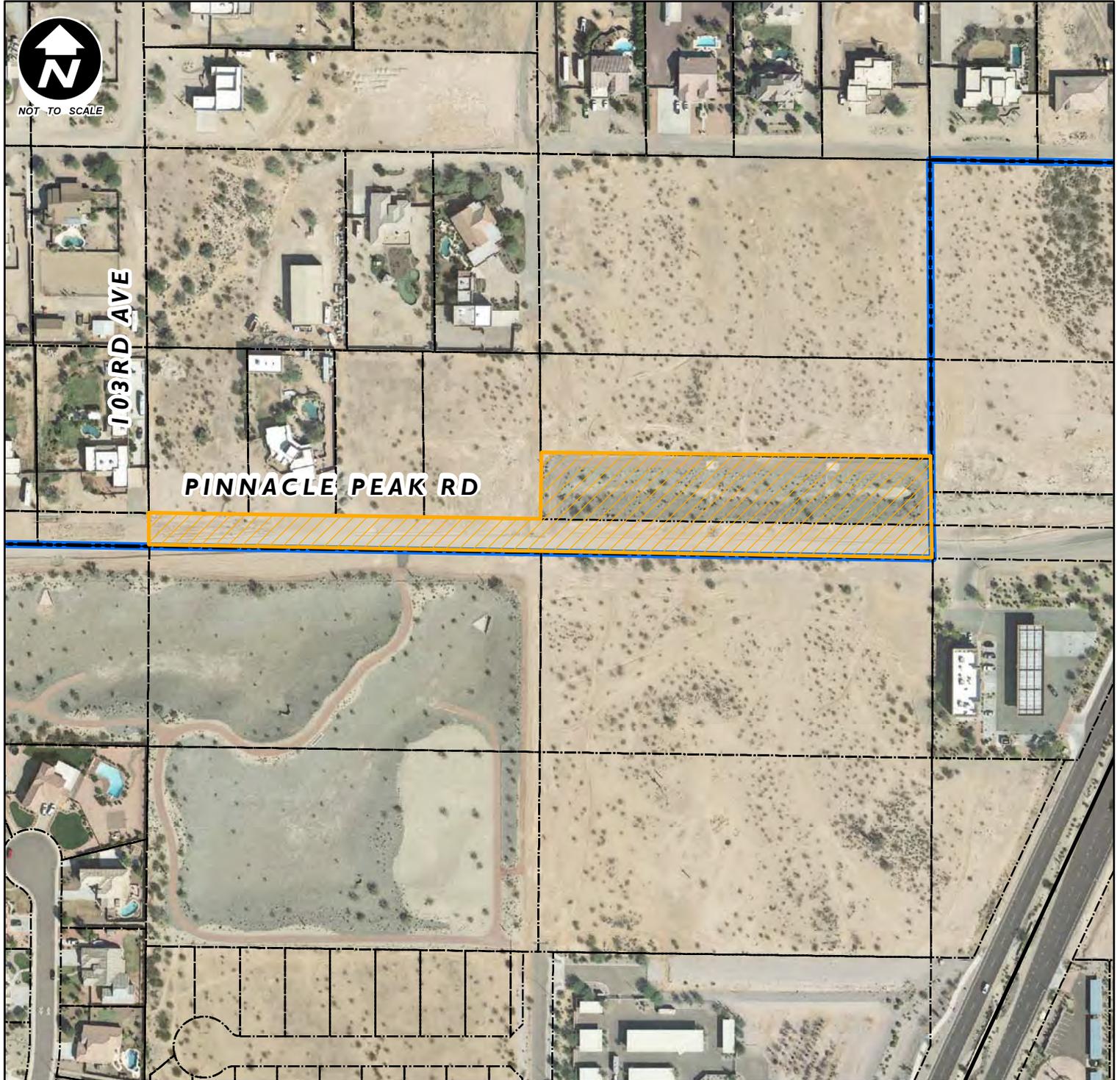
- ★ Pinnacle Peak Road  
103rd Avenue East to City Limits

- DOVE VALLEY RD
- LONE MOUNTAIN RD
- MONTGOMERY RD
- DIXILETA DR
- PEAK VIEW RD
- DYNAMITE BL
- PINNACLE VISTA DR
- JOMAX RD
- YEARLING RD
- HAPPY VALLEY RD
- CALLE LEJOS
- PINNACLE PEAK RD
- WILLIAMS RD
- DEER VALLEY RD
- ROSE GARDEN LN
- BEARDSLEY RD
- UTOPIA RD
- UNION HILLS DR
- GROVERS AVE
- BELL RD
- PARADISE LN
- GREENWAY RD
- ACOMA DR
- THUNDERBIRD RD
- SWEETWATER AVE
- CACTUS RD
- CHOLLA ST
- PEORIA AVE
- MOUNTAIN VIEW RD
- OLIVE AVE
- BUTLER DR
- NORTHERN AVE

- 115TH AVE
- 111TH AVE
- 107TH AVE
- 103RD AVE
- 99TH AVE
- 95TH AVE
- 91ST AVE
- 87TH AVE
- 83RD AVE
- 79TH AVE
- 75TH AVE
- 71ST AVE



NOT TO SCALE



**LEGEND**



Annexation



Parcels



City Limits



**NOTE:**  
This Map is based on imprecise  
source data, subject to change and  
FOR GENERAL REFERENCE ONLY.

ORDINANCE NO. 2014-11

AN ORDINANCE OF THE CITY OF PEORIA, ARIZONA, EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE CITY OF PEORIA, ARIZONA, MARICOPA COUNTY, STATE OF ARIZONA PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARTICLE 7, ARIZONA REVISED STATUTES AND AMENDMENTS THERETO, BY ANNEXING THERETO CERTAIN TERRITORY CONTIGUOUS TO THE EXISTING CITY LIMITS OF THE CITY OF PEORIA, AND PROVIDING FOR THE RECORDING OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE FOR THE ANNEXATION.

WHEREAS, the territory described in Exhibit A, attached hereto and incorporated herein by reference thereto, and as illustrated on the map attached hereto as Exhibit B, which is likewise incorporated herein reference thereto, is existing Maricopa County right of way (hereafter "right of way"), known as Pinnacle Peak Road from 103<sup>rd</sup> Avenue east to City limits; and

WHEREAS, such right of way has no taxable real property located within such right of way; and

WHEREAS, the City of Peoria, Arizona is desirous of extending and increasing the corporate limits of the City of Peoria, Arizona to include the right of way; and

WHEREAS, the right of way is adjacent to the existing corporate limits of the City of Peoria, Arizona for the entire length of the proposed annexation; and

WHEREAS, the governing body of Maricopa County, Arizona has or contemplates giving its mutual consent to the annexation of such territory within the County right of way by the City of Peoria, Arizona; and

WHEREAS, by adoption of this ordinance, it is the intent and desire of the Mayor and Council of the City of Peoria, Arizona, to mutually consent to and to annex the right of way to the City of Peoria, Arizona, and to give their mutual consent thereto;

Ordinance No. 2014-11  
Annexation Ordinance – Pinnacle Peak Road  
March 4, 2014  
Page 2 of 3 Pages

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Peoria, Arizona as follows:

SECTION 1. That the territory in the Maricopa County right of way as described in Exhibits A and B attached hereto is hereby annexed to the City of Peoria, Arizona, and that the present corporate limits of the City of Peoria, Arizona are hereby extended and increased to include the Maricopa County right of way described in Exhibits A and B attached hereto, all of which such right of way is contiguous for the entire length thereof to the present corporate limits of the City of Peoria, Arizona.

SECTION 2. That a copy of this Ordinance, together with an accurate map of the territory hereby annexed to the City of Peoria, Arizona, certified by the Mayor of said City be forthwith filed and recorded in the office of the County Recorder's of Maricopa County, Arizona.

SECTION 3. The annexation herein provided for shall become effective upon the last of the following to occur:

1. The effective date of this Ordinance, in the manner prescribed by law, or
2. The date that the consent of the governing body of Maricopa County, Arizona consenting the annexation herein enacted shall become effective in the manner provided by law.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Peoria, Arizona that this Ordinance become immediately effective, an emergency is declared to exist, and this Ordinance shall be effective immediately upon its passage and adoption.

Ordinance No. 2014-11  
Annexation Ordinance – Pinnacle Peak Road  
March 4, 2014  
Page 3 of 3 Pages

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria,  
Arizona this 4<sup>th</sup> day of March, 2014.

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Bob Barrett, Mayor

ATTEST:

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Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

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Stephen M. Kemp, City Attorney

ATTACHMENTS:

1. Exhibit A – Legal Description
2. Exhibit B – Map

Published in: Peoria Times  
Pub. Dates: March 14 and 21, 2014  
Effective Date:



# EXHIBIT A

## LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE RIGHT-OF-WAY OF PINNACLE PEAK ROAD, ALL OF ONE OF THOSE TRACTS AS CONVEYED TO THE CITY OF PEORIA BY DEED OF RECORD IN INSTRUMENT NUMBER 2013-0190854, MARICOPA COUNTY RECORDS (MCR) (SAID CITY OF PEORIA PARCEL BEING MORE PARTICULARLY DESCRIBED IN INSTRUMENT NUMBER 2012-0702325, MCR), AND A PORTION OF THE FOLLOWING FOUR (4) TRACTS: 1.) WILLIAM E. BONDI AND LYNN M. BONDI, TRUSTEES OF THE BONDI LIVING TRUST BY DEED OF RECORD IN INSTRUMENT NUMBER 2007-0399503, MCR, 2.) PAUL J. WELLS AND KRISTY A. WELLS BY DEED OF RECORD IN INSTRUMENT NUMBER 2013-0134831, MCR, 3.) KAMAL B. YOUSIF AND RHONDA L. YOUSIF BY DEED OF RECORD IN INSTRUMENT NUMBER 2000-0928300, MCR AND 4.) CZESLAW DYBISZ AND DANUTA DYBISZ BY DEED OF RECORD IN INSTRUMENT NUMBER 2001-0527666, MCR, ALL LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 EAST OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 8 (CALCULATED) SAID POINT BEING THE SOUTHWEST CORNER OF SAID BONDI TRACT, SAID POINT BEARS N89°06'47"W A DISTANCE OF 2587.47 FEET FROM THE SOUTHEAST CORNER OF SECTION 8 (CALCULATED);

THENCE N0°36'24"W, ACROSS THE RIGHT-OF-WAY OF PINNACLE PEAK ROAD ALONG THE WEST LINE OF SAID BONDI TRACT BEING THE WEST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 55.02 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE THEREOF;

THENCE S89°06'47"E, ACROSS SAID BONDI, WELLS, YOUSIF AND DYBISZ TRACTS ALONG THE NORTH RIGHT-OF-WAY LINE OF PINNACLE PEAK ROAD BEING 55.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, (SAID SOUTH LINE BEING THE SOUTH RIGHT-OF-WAY LINE OF PINNACLE PEAK ROAD) A DISTANCE OF 646.99 FEET TO THE SOUTHWEST CORNER OF SAID CITY OF PEORIA TRACT;

THENCE N0°28'15"W, ALONG THE WEST LINE OF SAID CITY OF PEORIA TRACT, A DISTANCE OF 110.03 FEET TO THE SOUTHWEST CORNER OF THAT TRACT AS CONVEYED TO THE POLLOCK-PFIZENMAIER FAMILY TRUST BY DEED OF RECORD IN INSTRUMENT NUMBER 2013-0377122, MCR;

THENCE S89°06'47"E, ALONG THE SOUTH LINE OF SAID POLLOCK-PFIZENMAIER TRACT ALONG A LINE 165.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER, (SAID SOUTH LINE BEING THE SOUTH RIGHT-OF-WAY LINE OF PINNACLE PEAK ROAD) A DISTANCE OF 647.25 FEET TO A POINT ON THE WEST LINE OF THAT TRACT AS CONVEYED TO JOHN C. N. CHAN AND MARILYN CHAN BY DEED OF RECORD IN INSTRUMENT NUMBER 1990-0578973, MCR;

**TITLE: PINNACLE PEAK ROAD ANNEXATION**

Sheet 1 of 5

**Preparing Firm: RITTOCH-POWELL & ASSOCIATES, INC.**

**Address: 3838 N. CENTRAL AVE., SUITE 1250 PHOENIX, AZ 85012**

**Phone: 602-263-1177**

**Fax: 602-277-6286**

*Professional Land  
Surveyor AZ No. 33868*

Digitally signed by Troy A.  
Ray RLS

Date: 2013.10.24 10:08:57  
-07'00'

*(Expires 6/30/14)*  
**ELECTRONIC SEAL**  
<http://www.btr.state.az.us/>



# EXHIBIT A

## LEGAL DESCRIPTION

THENCE S0°20'07"E, ALONG THE WEST LINE OF SAID CHAN TRACT, THE WEST LINE OF ONE OF THOSE TRACTS AS CONVEYED TO THE CITY OF PEORIA BY DEED OF RECORD IN SAID INSTRUMENT NUMBER 2013-0190854 AND ACROSS SAID RIGHT-OF-WAY OF PINNACLE PEAK ROAD A DISTANCE OF 165.04 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE THEREOF, SAID LINE ALSO BEING THE SOUTH LINE OF THE SOUTHEAST QUARTER;

THENCE N89°06'47"W, ALONG SAID SOUTH LINE OF THE SOUTHEAST QUARTER, ALSO BEING THE SOUTH RIGHT-OF-WAY LINE OF PINNACLE PEAK ROAD, A DISTANCE OF 1293.72 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIPTION CONTAINS 142,346 SQUARE FEET (3.2678 ACRES OF LAND), MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIBED PARCEL IS N89°06'47"W FOR THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 4 NORTH, RANGE 1 EAST OF THE GILA & SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN ON A RECORD OF SURVEY PLSS SUBDIVISION - MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 775, PAGE 37, MCR

Sheet 2 of 5

*Professional Land  
Surveyor AZ No. 33868*

Digitally signed by Troy A.  
Ray RLS

Date: 2013.10.24 10:09:13  
-07'00'

*(Expires 6/30/14)*

**ELECTRONIC SEAL**  
<http://www.blr.state.az.us/>

**TITLE: PINNACLE PEAK ROAD ANNEXATION**

**Preparing Firm: RITTOCH-POWELL & ASSOCIATES, INC.**

**Address: 3838 N. CENTRAL AVE., SUITE 1250 PHOENIX, AZ 85012**

**Phone: 602-263-1177**

**Fax: 602-277-6286**



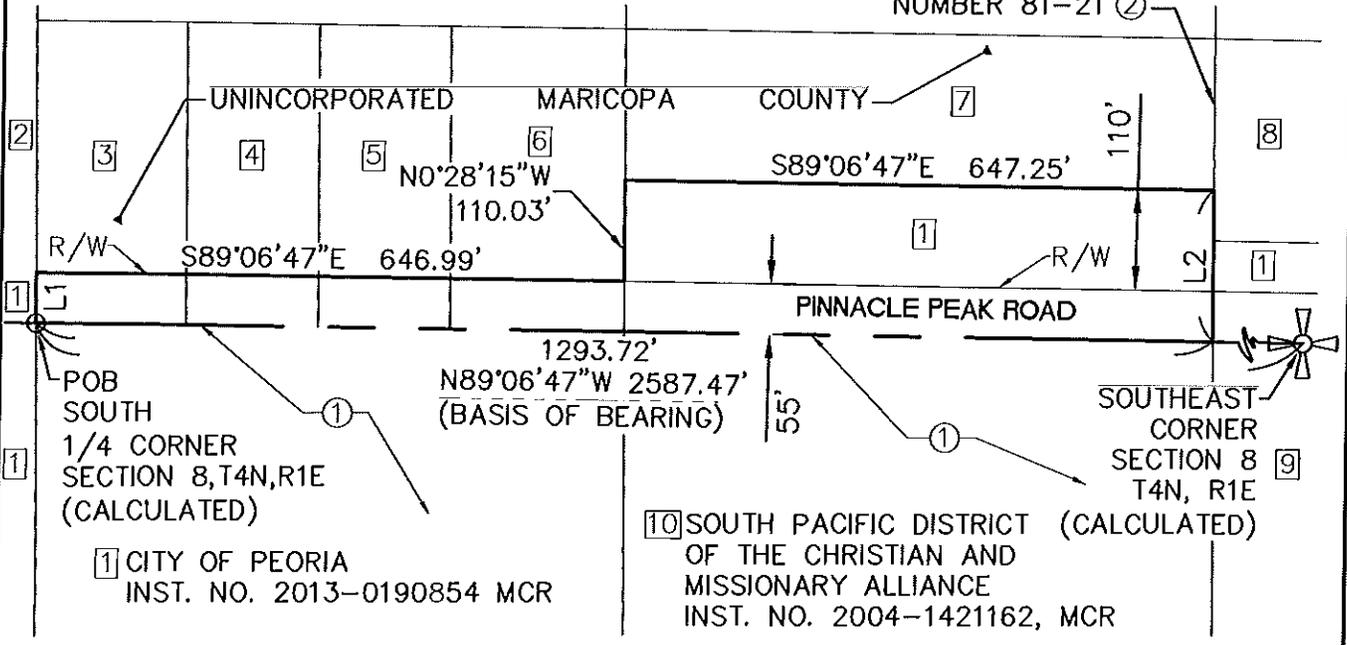
# EXHIBIT A

## SKETCH

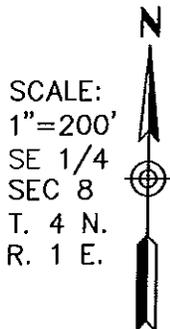
### CITY OF PEORIA ANNEXATIONS

- ① PEORIA ORDINANCE NUMBER 81-53
- ② PEORIA ORDINANCE NUMBER 81-21

WEST LINE OF  
CITY OF PEORIA  
ORDINANCE  
NUMBER 81-21 ②



\*\* SEE SHEET 3 FOR ADJOINING PROPERTY OWNER INFORMATION \*\*



LINE TABLE		
LINE	BEARING	LENGTH
L1	N0°36'24"W	55.02'
L2	S0°20'07"E	165.04'

ANNEXATION  
AREA =  
142,346 SQ. FT.  
(3.2678 ACRES)

Sheet 3 of 5

**TITLE: PINNACLE PEAK ROAD ANNEXATION**

**Preparing Firm: RITCOH-POWELL & ASSOCIATES, INC.**

**Address: 3838 N. CENTRAL AVE., SUITE 1250 PHOENIX, AZ 85012**

**Phone: 602-263-1177**

**Fax: 602-277-6286**

*Professional Land  
Surveyor AZ No. 33868*  
**Digitally signed by Troy  
A. Ray RLS**

**Date: 2013.10.24**

**10:09:33 -07'00'**

*(Expires 6/30/14)*  
**ELECTRONIC SEAL**  
<http://www.blr.state.az.us/>



# EXHIBIT A

## SKETCH

### ADJOINING PROPERTY OWNERS

- ① CITY OF PEORIA  
INST. NO. 2013-0190854, MCR
- ② DYLAN GREINER AND DEBORAH GREINER  
INST. NO. 2012-0984285, MCR
- ③ WILLIAM E. BONDI AND LYNN M. BONDI  
TRUSTEES OF THE BONDI LIVING TRUST  
INST. NO. 2007-0399503, MCR
- ④ PAUL J. WELLS AND KRISTY A. WELLS  
INST. NO. 2013-0134831, MCR
- ⑤ KAMAL B. YOUSIF AND RHONDA L. YOUSIF  
INST. NO. 2000-0928300, MCR
- ⑥ CZESLAW DYBISZ AND DANUTA DYBISZ  
INST. NO. 2001-0527666, MCR
- ⑦ POLLOCK-PFIZENMAIER FAMILY TRUST  
INST. NO. 2013-0377122, MCR
- ⑧ JOHN C. N. CHAN AND MARILYN CHAN  
INST. NO. 1990-0578973, MCR
- ⑨ LA STRADA DEL PALAZZO, L.L.C.  
INST. NO. 2007-0371237, MCR
- ⑩ SOUTH PACIFIC DISTRICT OF THE  
CHRISTIAN AND MISSIONARY ALLIANCE  
INST. NO. 2004-1421162, MCR

Sheet 4 of 5

**TITLE: PINNACLE PEAK ROAD ANNEXATION**

**Preparing Firm: RITICH-POWELL & ASSOCIATES, INC.**

**Address: 3838 N. CENTRAL AVE., SUITE 1250 PHOENIX, AZ 85012**

**Phone: 602-263-1177**

**Fax: 602-277-6286**

*Professional Land  
Surveyor AZ No. 33868*  
Digitally signed by Troy A.  
Ray RLS  
Date: 2013.10.24 10:09:49  
-07'00'

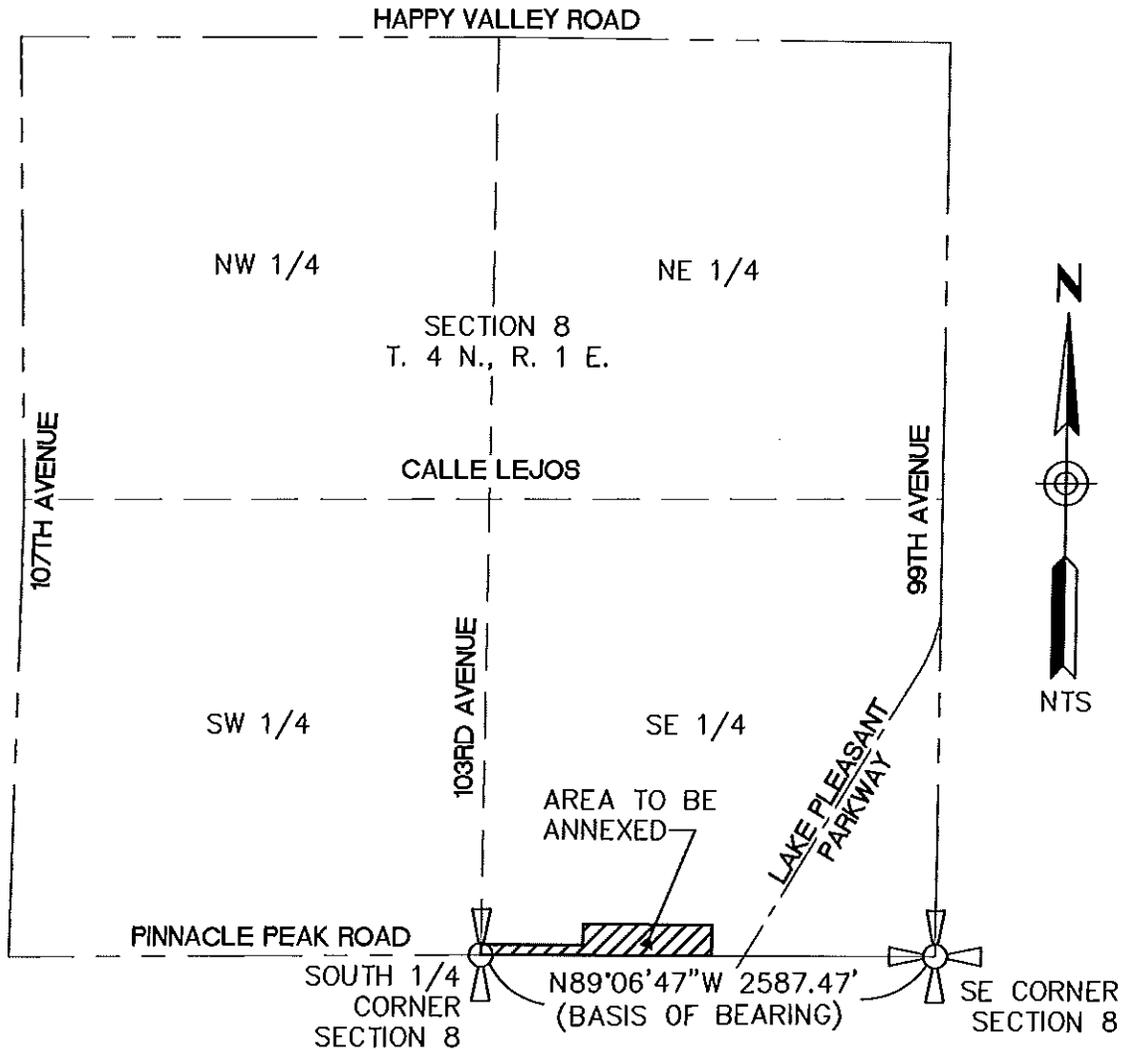
*(Expires 6/30/14)*  
**ELECTRONIC SEAL**  
<http://www.blr.state.az.us/>



# EXHIBIT B

## SKETCH

### VICINITY MAP



Sheet 5 of 5

Professional Land  
 Surveyor AZ No. 33868  
 Digitally signed by Troy A.  
 Ray RLS  
 Date: 2013.10.24 10:11:08  
 -07'00'

(Expires 6/30/14)  
 ELECTRONIC SEAL  
<http://www.btr.state.az.us/>

**TITLE: PINNACLE PEAK ROAD ANNEXATION**

**Preparing Firm: RITICH-POWELL & ASSOCIATES, INC.**

**Address: 3838 N. CENTRAL AVE., SUITE 1250 PHOENIX, AZ 85012**

**Phone: 602-263-1177**

**Fax: 602-277-6286**

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 8C

**Date Prepared:** February 18, 2014

**Council Meeting Date:** March 4, 2014

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**TO:** Carl Swenson, City Manager

**THROUGH:** Jeff Tyne, Deputy City Manager

**FROM:** Roy W. Minter, Chief of Police

**SUBJECT:** Authorization to accept grant funds from the Arizona Department of Homeland Security

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**Purpose:**

This is a request for City Council to authorize the Peoria Police Department to accept a grant from the Arizona Department of Homeland Security totaling \$7,000.

**Background/Summary:**

The City of Peoria Police Department has been working collaboratively over the past several years to develop various emergency response programs. In order to further integrate Peoria as part of the statewide disaster response program, the Peoria Police Department has received a Reallocation of 2012 Homeland Security Grant funds from the Arizona Department of Homeland Security (AZDOHS) in the amount of \$7,000 to strengthen chemical, biological, radiological, nuclear or explosive (CBRNE) weapon detection, response and decontamination capabilities.

Additional funds were available from the Arizona Department of Homeland Security from the 2012 grant cycle. These additional funds were reallocated and awarded to various agencies. This grant will be used to purchase night vision optical equipment to enhance advanced observation skills of the CBRNE response team.

This grant is reimbursable with funding through July 2014.

**Previous Actions:**

City Council has previously accepted grants from AZDOHS. This will be the sixth consecutive year that the City of Peoria has received grant funding from this organization.

**Options:**

**A:** Accept the grant award in the amount of \$7,000 from the Arizona Department of Homeland Security and approve a budget adjustment in the amount of \$7,000 from the Proposed Grants Contingency Account to the Homeland Security Fund, thus providing expenditure authority.

**B:** Choose not to accept the grant from the Arizona Department of Homeland Security.

**Staff's Recommendation:**

Authorize the Peoria Police Department to accept the grant totaling \$7,000 from the Arizona Department of Homeland Security and approve a budget adjustment.

**Fiscal Analysis:**

Request a budget adjustment of \$7,000 from the Proposed Grants Contingency account (7990-7990-570000) to the Homeland Security Grant Fund Operational Equipment Account (7545-7795-530019) thus providing expenditure authority.

**Narrative:**

Once approved by City Council, the grant contracts will be executed as needed.

**Exhibit(s):**

**Exhibit 1:** Award Letter from AZDOHS for CBRNE Reallocation Grant 999814-02

**Contact Name and Number:** Heather Cammarata, 623-773-7069



Governor Janice K. Brewer



Director Gilbert M. Orrantia

## State of Arizona

# Department of Homeland Security

February 5, 2014

Chief Roy Minter  
Peoria Police Department  
8351 W. Cinnabar  
Peoria, AZ 85345-2701

Subject: FFY 2012 Homeland Security Grant Program Award-REALLOCATION  
Sub Grant Agreement Number: **999814-02**  
Project Title: **Phoenix Urban Area CBRNE Response for Law Enforcement (FFY2012 Reallocation)**

Dear Chief Roy Minter:

The application that your agency submitted to the Arizona Department of Homeland Security (AZDOHS) for consideration under the Homeland Security Grant Program has been awarded. The project titled "**Phoenix Urban Area CBRNE Response for Law Enforcement (FFY2012 Reallocation)**" has been funded under the URBAN AREA SECURITY INITIATIVE for **\$7,000**. The grant performance period is **January 1, 2014 through July 31, 2014**. This grant program is part of the U.S. Department of Homeland Security Grant Program and specifically is awarded under CFDA #97.067 (Catalog of Federal Domestic Assistance).

To initiate the award process, the following action items must be completed, signed and returned to AZDOHS:

1. Two original Subgrantee Agreements (enclosed).
2. Project Administration Page (enclosed).
3. **NIMS Compliance Certification (enclosed)- New Requirement**
4. Environmental and Historic Preservation (EHP) required documentation (if applicable, see attached EHP Designation Letter).

These items must be completed and on file at AZDOHS in order for your agency to be eligible for reimbursement. **If all documentation listed in numbers 1, 2, and 3 above is not signed and received by AZDOHS on or before April 30, 2014 this award is rescinded and the funds will be reallocated.**

Additional grant requirements:

- Quarterly programmatic reports must be submitted on the most recent form/template, which was updated as of 10/1/2012.
- Subgrantees are required to submit a copy of their annual A133 Audit to AZDOHS each year. Subgrantees will not receive any positive action by AZDOHS, to include payment of reimbursements, until the A133 Audit has been received and, if applicable, an approved an action plan for compliance.
- Reimbursements are limited to approved quantities and funding thresholds.
- All radio equipment purchased with Homeland Security funds must be P25 capable and programmed in accordance with the Arizona's State Interoperable Priority Programming Guide Channels, which include standard names for national channels as identified in the National Interoperability Field Operations Guide (NIFOG).
- If your project requires an Environmental and Historic Preservation (EHP) review, this must be completed, submitted and **approved** by FEMA/AZDOHS prior to any expenditure of funds.

- All projects that support training initiatives including FEMA approved/state sponsored training must be in compliance with grant guidance, the subgrantee agreement, and approved through the ADEM/AZDOHS training request process prior to execution of training.
- All projects that support exercises must be:
  - In compliance with grant guidance and the subgrantee agreement.
  - Must utilize the FEMA Homeland Security Exercise and Evaluation Program (HSEEP) Toolkit.
  - All exercises, documentation and After Action Reports/Improvement Plans (AAR/IP) must be posted via the HSEEP Toolkit within 60 days after completion of an exercise.
  - Within 60-days of completion of an exercise, the exercise host subrecipient is required to upload the AAR/IP into the HSEEP Toolkit and email the AAR/IP to the local County Emergency Manager, the FEMA Region IX Exercise POC, [HSEEP@dhs.gov](mailto:HSEEP@dhs.gov), the AZDOHS Strategic Planner, and the Arizona Department of Emergency Management (ADEM) Exercise Officer.
- Terrorism Liaison Officer (TLO) Chemical, Biological, Radiological, Nuclear and Explosive (CBRNE) Response Vehicles purchased with Department of Homeland Security Grant Program funding must be assigned to and used by certified TLOs working with the Arizona Counter Terrorism Information Center (ACTIC).
  - Persons receiving TLO vehicles shall be available to respond to incidents and events on a "call out" basis and shall be available for regional and statewide deployment for TLO operations and training.
  - TLO equipment and/or services purchased or maintained with Department of Homeland Security Grant Program funding will be assigned to and used by certified TLOs working with the ACTIC TLO Program. This equipment may include: radios, computers, cell phones, cellular and satellite service fees, open source data services, cameras, GPS devices and any other equipment needed to complete the TLO mission.
- Subgrantees are subject to the AZDOHS Site Monitoring Program.
- All reimbursements for personnel costs must be in compliance with AZDOHS Time and Effort Reporting requirements.
- AZDOHS reserves the right to request additional documentation at any time.

If you should have any questions, please do not hesitate to contact your Strategic Planner.

Congratulations on your Homeland Security Grant Program award.

Sincerely,



Gilbert M. Orrantia  
Director

Cc: Lieutenant Douglas Steele

Attachments: Project Administration Page, EHP Designation Letter, Application Summary Page, Budget Narrative page(s), NIMS Compliance Certification

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 9C

**Date Prepared: February 12, 2014**

**Council Meeting Date: March 4, 2014**

---

**TO:** Carl Swenson, City Manager

**FROM:** Andrew Granger, P.E., Engineering Director

**THROUGH:** Susan J. Daluddung, Deputy City Manager

**SUBJECT:** Intergovernmental Agreement, Arizona Department of Transportation, Pave Shoulders along Lake Pleasant Parkway, between Loop 303 and State Route 74

---

**Purpose:**

This is a request for City Council to adopt a Resolution to approve an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation (ADOT) for the design and construction of the project to pave the shoulders along Lake Pleasant Parkway from the Loop 303 to State Route (SR) 74.

**Background/Summary:**

The Environmental Protection Agency has mandated that all agencies mitigate airborne dust down to the size of 10 microns in size, hence reduce the Particulate Matter to 10 microns (PM-10). While new roads require curbing and/or landscaping to control the dust many of the older roads still have unpaved shoulders. The Arizona Department of Environmental Quality (ADEQ) requires that cities control fugitive dust in the Salt River monitoring site portion of Maricopa County PM-10 Serious Nonattainment Area by either paving or covering the shoulders to reduce the dust that is kicked up by passing vehicles. This project was developed to comply with those requirements.

While there are approximately 50 lane miles of road abutted by dirt shoulders in the City, this project furthers the process of compliance by paving the 1.9 miles of shoulders along Lake Pleasant Parkway from the Loop 303 north to the SR 74. Construction of the project will be funded through a combination of federal funds programmed through the Maricopa Association of Government (MAG) along with City matching funds. The cost for design of the project will be paid by the City.

The Public Works-Utilities Department submitted an application for Federal Highway Administration (FHWA) funds through MAG to be used to pay for the design and construction of shoulders along Lake Pleasant Parkway. The application was approved and Congestion Mitigation and Air Quality (CMAQ) funds were successfully programmed in the FY2014-FY2015

Transportation Improvement Program (TIP), specifically the design was approved in FY2014, while the construction will be executed in FY2015.

This project will require that the City choose an on-call designer from the ADOT list and pay for that design. ADOT will then advertise the project for bid, award and administer the construction of the project.

The City is not certified through ADOT to administer federally funded projects. Therefore, an IGA is required to authorize ADOT to act as the City's agent to design and construct the project. A summary of the terms of the agreement s provided below.

The State Will:

- Upon execution of this IGA, and prior to performing or authorizing any work, invoice the City for the State's design review fee, currently estimated at \$30,000.
- Upon receipt of the design review fee, review and approve the documents required by the FHWA to qualify the project and to receive federal funds, providing comments to the City as appropriate.
- Request the maximum programmed federal funds for the construction of this project.
- Upon approval by the FHWA, proceed to advertise, receive and open bids, enter into contract with low bidder, administer the contract, and make all payments.

The City Will:

- Upon execution of the IGA designate the State as authorized agent for the City.
- Upon execution of the IGA remit to the State the State's design review fee, estimated at \$30,000, when invoiced.
- Act with ADOT to prepare and provide the design or materials purchase documents, incorporating comments as appropriate, for the execution of the funds.
- Transfer to the State design funds estimated at \$80,000 and construction funds estimated at \$24,298.
- Be responsible for all costs in excess of the maximum amount of federal funds and for any costs ineligible for federal funds.
- Ensure that the project will remain within existing right of way.
- Prevent any unauthorized encroachment into the right of way.
- Allow ADOT access to the City's right of way without cost for the construction of this project.
- Be responsible for claims or additional costs of the project.
- Assume responsibility for maintenance of and electricity for the new equipment after construction.
- Repay federal funds if the project is not advanced within 10 years.

**Previous Actions:**

- The City applied for and was granted CMAQ funds through the FY2011 - FY2014 Transportation Improvement Program (TIP) in the amount of \$426,281.
- The City budgeted matching funds in the FY2014 CIP to complete the project in the FY2014 CIP.
- July 22, 2013 – The City requested a TRACS number from ADOT to establish it as a project.
- September 30, 2013 – ADOT assigned a TRACS number and a Federal Funding number.
- November, 2013 – The City sent a letter to MAG committing to the project.

**Options:**

**A:** Approve the adoption of the Resolution approving the IGA with ADOT.

**B:** Deny the adoption of the Resolution approving the IGA with ADOT. The result will be the cancellation of the project and the estimated \$401,983 in federal funds will be in jeopardy. This will also delay the City's efforts to bring it into compliance with Federal and State environmental regulations.

**Staff's Recommendation:**

Staff recommends the adoption of the Resolution approving the IGA with ADOT.

**Fiscal Analysis:**

- Payment for construction of this project is anticipated to be 94.3% federally funded with CMAQ funds for the construction of the project.
- The City will fund 5.7% of the construction.
- The City may also extend the size of the construction budget with a 100% City contribution to bring the cost of the project up to the projected City CIP program.
- The City will fund 100% of the design.

The total estimated City cost of the design and construction of the project is \$134,298. Payment will be from the Highway User Fund, Street System Account, 7000-7050-543001-CIPST-PW01001.

The City's 2014-2023 CIP program contains \$459,622 in the budget for this project. Currently, there are no construction costs identified in the project that are ineligible for federal funding, and there is no anticipation of exceeding the maximum amount of federal funding available. However, the IGA states that any cost overrun must be covered completely by the City and it is

not unusual for ADOT to allow change orders during construction or expend more administrative costs than they originally anticipate.

The estimated operating and maintenance costs associated with these improvements should actually be a slight decrease in costs. Although this project paves approximately 1.9 miles of unpaved shoulder, it does not eliminate the need for on-going routine maintenance.

**Narrative:**

Approval of the agreement will allow the pavement of the shoulders along Lake Pleasant Parkway in FY2015. Even though no federal funds are being used for the design, the City has been working with the ADOT staff to choose a consultant from an ADOT on-call list. By using ADOT's selection process the door is left open for a possible federal reimbursement should additional funds become available. The City and ADOT will execute the design contract following the execution of the IGA.

The schedule is as follows:

- March 2014 – ADOT executes this IGA and proceeds with the design procurement process.
- May 2014 – Select an A/E from ADOT's on-call list and negotiate and execute a design contract.
- January 2015 – Begin Right of Way, Utility, and Environmental Clearance.
- March 2015 – Finalize design phase and begin construction procurement process.
- April 2015 – Complete clearances through ADOT procurement.
- June 2015 – Commit the funds.
- December 2015 – Complete the work.

The IGA has been reviewed by the City Attorney's office and the Public Works-Utilities Department.

**Exhibits:**

**Exhibit 1:** Location Map

**Exhibit 2:** Resolution w/IGA

**Contact Name and Number:** Geoffrey Zinnecker, P. E., Civil Engineer, X7293



NOT TO SCALE



**LEGEND**

 Roadway Improvements



**NOTE:**  
This Map is based on imprecise source data, subject to change and FOR GENERAL REFERENCE ONLY.

RESOLUTION NO. 2014-23

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, ARIZONA, ADOPTING A RESOLUTION APPROVING THE INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA AND THE CITY OF PEORIA TO PAVE THE SHOULDERS ALONG LAKE PLEASANT PARKWAY FROM LOOP 303 TO STATE ROUTE 74.

WHEREAS, the City of Peoria (City) Mayor and City Council are authorized by Title 9, Chapter 2, Article 4, Section 9-276 (1) to lay out and establish or otherwise improve streets, alleys, avenues, sidewalks, etc. and by Title 11, Chapter 7, Section 11-951 *et seq.* to enter into Intergovernmental Agreements with other governing bodies for services or joint exercise of powers; and

WHEREAS, the City desires to enter into an Intergovernmental Agreement with the State of Arizona to pave the shoulders along Lake Pleasant Parkway from Loop 303 to State Route 74; and

THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Peoria, Arizona approves and adopts this Resolution to enter an Intergovernmental Agreement with the State of Arizona, and the City of Peoria (attached) to pave the shoulders along Lake Pleasant Parkway from Loop 303 to State Route 74

PASSED AND APPROVED by the Mayor and City Council of the City of Peoria, Arizona this 4th day of March, 2014.

\_\_\_\_\_  
Bob Barrett, Mayor

ATTEST:

\_\_\_\_\_  
Rhonda Geriminsky, City Clerk

Resolution No. 14-23  
IGA - State of Arizona  
Pave Shoulders along Lake Pleasant Pkwy; Loop 303 to SR74  
March 4, 2014  
Page 2

APPROVED AS TO FORM:

---

Stephen M. Kemp, City Attorney

*Attachment:*

1. Intergovernmental Agreement

ADOT File No.: IGA/JPA 13-0003851-I  
AG Contract No.: 13-0003851  
Project: Lake Pleasant Parkway  
Section: Loop 303 to SR 74  
Federal Project No.: PEO-0(220)T  
ADOT Project No.: (SZ111) 01C 01D  
03D  
TIP/STIP No.: MAG TIP: PEO13-102  
CFDA No.: 20.205 - Highway Planning  
and Construction  
Budget Source Item No.: n/a

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF PEORIA

**THIS AGREEMENT** is entered into this date, \_\_\_\_\_, 2014, pursuant to the Arizona Revised Statutes §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF PEORIA, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties."

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
  2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
  3. The work proposed under this Agreement will consist of paving approximately 1.9 miles of unpaved shoulders along Lake Pleasant Parkway, between the Loop 303 and State Route (SR) 74, the "Project". The City will use an ADOT on-call firm for the design, and the State will facilitate contracting the design consultant and oversee the City's administration of the design. In addition, the State will advertise, bid, award, and administer the construction of the Project. The plans, estimates and specifications for the Project will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for its review and approval.
  4. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the City and to authorize such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the City.
  5. The Parties shall perform their responsibilities consistent with this Agreement and any change or modification to the Project will only occur with the mutual written consent of both Parties.
-

6. The federal funds will be used for the construction of the Project. The estimated Project scoping, design and construction costs are as follows:

**SZ111 01D (PMDR Cost)**

ADOT Estimated Project Management and Design Review (PMDR) Costs (SZ111 01D)*	\$ <u>30,000.00</u>
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**SZ111 03D (Scoping and Design)**

City's contribution @ 100% (SZ111 03D)*	\$ 80,000.00
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<b>Subtotal – Scoping/Design/PMDR</b>	<b>\$ 110,000.00</b>
---------------------------------------	----------------------

**SZ111 01C construction**

Federal-aid funds @ 94.30%	\$ 401,983.00
City's contribution @ 5.7%	\$ <u>24,298.00</u>

<b>Subtotal – Construction**</b>	<b>\$ 426,281.00</b>
----------------------------------	----------------------

**Summary:**

<b>Total Estimated City Funds</b>	<b>\$ 134,298.00</b>
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<b>Total Federal Funds</b>	<b>\$ 401,983.00</b>
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<b>Total Estimated Project Cost</b>	<b>\$ 536,281.00</b>
-------------------------------------	----------------------

\* (Included in the Estimated City Funds)

\*\* (Includes 15% CE and 5% Project contingencies)

The Parties acknowledge that the final Project scoping, design and construction costs may exceed the initial estimate(s) shown above, and in such case, the City is responsible for, and agrees to pay, any and all eventual, actual costs exceeding the initial estimate. If the final Project scoping, design and construction estimate is less than the initial estimate, the difference between the final scoping, design and construction estimate and the initial estimate will be de-obligated or otherwise released from the Project. The City acknowledges it remains responsible for, and agrees to pay according to the terms of this Agreement, any and all eventual, actual costs exceeding the estimated Project scoping, design and construction amount.

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State will:

a. Upon execution of this Agreement, be the designated agent for the City, if the Project is approved by FHWA and funds for the Project are available.

b. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for ADOT PMDR costs, currently estimated at **\$30,000.00**. If, during the development of the design, additional funding from the City is required, the State will invoice the City in increments of \$5,000.00 to cover projected PMDR costs.

c. Upon execution of this Agreement, and prior to performing or authorizing any work, invoice the City for the City's share of the Project scoping/design costs, currently estimated at **\$80,000.00**. Once these costs have been approved, the State will either invoice or reimburse the City for the difference between the estimated and approved scoping/design costs of the Project.

d. Upon receipt of the PMDR costs and the City's estimated share of the Project scoping/design costs, on behalf and with consent of the City, contract with one of the State's on-call consultants ("Consultant") to prepare all pertaining documents for the scoping/design of the Project, incorporating the City's comments as appropriate. Such documents may consist of, but are not specifically limited to, environmental documents, including the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way requirements and activities and such other related tasks essential to the achievement of the objectives of this Agreement.

e. Review and approve documents required by FHWA to qualify the Project for and to receive federal funds, including the issuance of appropriate clearance documents required for construction.

f. Upon completion of design and prior to bid advertisement, invoice the City, for the City's share of the Project construction costs currently estimated at **\$24,298.00**. Once the Project construction costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.

g. Upon receipt of the City's estimated share of the Project construction costs, submit all documentation required to FHWA with the recommendation that funding be approved for construction. Request the maximum programmed federal funds for the construction of this Project. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

h. Upon authorization by FHWA and with the aid and consent of the City and the FHWA, the State shall proceed to advertise for, receive and open bids subject to the concurrence of the FHWA and the City, to whom the award is made for and enter into a contract(s) with a firm(s) for the construction of the Project.

i. Be granted, without cost requirements, the right to enter City rights-of-way as required to conduct any and all pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry onto and over said rights-of-way of the City.

j. Enter into an agreement with the design consultant which states that the design consultant shall provide professional post-design services as required and requested throughout and upon completion of the construction phase of the Project. Upon completion of the construction phase of the Project, require its consultant to provide an electronic version of the as-built plans to the City.

k. Notify the City the Project has been completed and is considered acceptable, coordinating with the City as appropriate to turn over full responsibility of the Project improvements. De-obligate or otherwise release any remaining federal funds from the construction phase of the Project within ninety (90) days of final acceptance.

l. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

## 2. The City will:

- a. Upon execution of this Agreement, designate the State as authorized agent for the City.
- b. Upon execution of this Agreement, and prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, pay to the State the PMDR costs, currently estimated at **\$30,000.00**. If, during the development of the design, additional funding to cover PMDR costs is required, remit the invoiced amount to the State within 30 days of receipt.
- c. Upon execution of this Agreement, and prior to performing or authorizing any work, and within thirty (30) days of receipt of an invoice from the State, remit to the State the scoping/design costs, currently estimated at **\$80,000.00**. Be responsible for any difference between the estimated and approved scoping/design costs of the Project.
- d. Allow the State to enter into an agreement with the selected Consultant to provide services as required and requested throughout the design and post-design of the Project. Review the design plans, specifications and other such documents and services required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds. Provide design review comments to the State as appropriate.
- e. Monitor, and as required be involved with, all right-of-way activities and functions performed by the Consultant, including, but not specifically limited to, right-of-way survey, delineation, appraisal, review appraisal, acquisition, relocation and property management, as applicable.
- f. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the City is responsible for these costs, and payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.
- g. Upon completion of design and within thirty (30) days of receipt of an invoice from the State and prior to bid advertisement, pay to the State, the City's Project construction costs, currently estimated at **\$24,298.00**. Once the Project construction costs have been finalized, the State will either invoice or reimburse the City for the difference between estimated and actual costs.
- h. Certify that all necessary rights-of-way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right-of-way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT ROW Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.07 Monitoring Process and 9.08 Certification of Compliance. Coordinate with the appropriate State's Right-of-Way personnel during any right-of-way process performed by the City, if applicable.
- i. Not permit or allow any encroachments upon or private use of the right-of-way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.
- j. Grant the State, its agents and/or contractors, without cost, the right to enter City rights-of-way, as required, to conduct any and all preconstruction related activities, including without limitation, temporary construction easements or temporary rights of entry to accomplish among other things, soil and foundation investigations.
- k. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of scope of the work requested by the City, such changes require the prior approval of the State and FHWA. Be responsible for any consultant

claims for additional compensation caused by Project delays attributable to the City, payment for these costs shall be made within thirty (30) days of receipt of an invoice from the State.

I. Upon completion of the Project, assume responsibility for maintenance of the Project, at its own expense and as an annual item in its budget. Provide perpetual and proper maintenance of the completed Project.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty (30) days written notice to the other Party. It is understood and agreed that, in the event the City terminates this Agreement, the City will be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain or complete the Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid on behalf of the City and the fulfillment of any other responsibilities of the State as specifically set forth herein; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that, to the extent permitted by law, the City hereby agrees to save and hold harmless, defend and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non-performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

4. Should the federal funding related to this Project be terminated or reduced by the federal government, or if Congress rescinds, fails to renew, or otherwise reduces apportionments or obligation authority, the State shall in no way be obligated for funding or liable for any past, current or future expenses under this agreement.

5. The cost of the Project under this Agreement includes indirect costs approved by the Federal Highway Administration (FHWA), as applicable.

6. The Parties warrant compliance with the Federal Funding Accountability and Transparency Act of 2006 and associated 2008 Amendments (the "Act"). Additionally, in a timely manner, the City will provide information that is requested by the State to enable the State to comply with the requirements of the Act, as may be applicable.

7. This Agreement shall become effective upon signing and dating of the Determination Letter by the State's Attorney General.

8. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

9. To the extent applicable under law, the provisions set forth in Arizona Revised Statutes §§ 35-214 and 35-215 shall apply to this Agreement.

10. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 2009-09 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

11. Non-Availability of Funds: Every obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

12. In the event of any controversy which may arise out of this Agreement, the Parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

13. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 41-4401.

14. The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

15. All notices or demands upon any Party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 637E  
Phoenix, Arizona 85007  
(602) 712-7124  
(602) 712-3132 Fax

City of Peoria  
Attn: Geoffrey Zinnecker  
9875 North 85<sup>th</sup> Avenue  
Peoria, Arizona 85345  
(623) 773-7293

16. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each Party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

**CITY OF PEORIA**

**STATE OF ARIZONA**

Department of Transportation

By \_\_\_\_\_  
**BOB BARRETT**  
Mayor

By \_\_\_\_\_  
**DALLAS HAMMIT P.E.**  
Senior Deputy State Engineer, Development

**ATTEST:**

By \_\_\_\_\_  
**RHONDA GERIMINSKY**  
City Clerk

**ATTORNEY APPROVAL FORM FOR THE CITY OF PEORIA**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF PEORIA, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
City Attorney

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 10C

**Date Prepared:** February 11, 2014

**Council Meeting Date:** March 04, 2014

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**TO:** Carl Swenson, City Manager

**FROM:** William Mattingly, Public Works – Utilities Director

**THROUGH:** Jeff Tyne, Deputy City Manager

**SUBJECT:**

**Purpose:**

Discussion and possible action to approve an Intergovernmental Agreement between the City of Peoria and the City of Phoenix, to provide \$28,420 in operating assistance with Dial-a-Ride Plus from the Federal Transit Authority (FTA) by way of grant pass-through from the City of Phoenix (Grant Number AZ-57-X016-5317-New Freedom).

**Background/Summary:**

The City of Peoria Transit Division currently provides American with Disabilities Act (ADA), Paratransit Service through the Dial-a-Ride program. The City is eligible to receive reimbursement from the Federal Transit Administration (FTA) grant funding from A.R.S. title 9 by way of pass through agreement with the City of Phoenix. The FTA grant will pay for partial funding of the operating assistance with the Dial-a-Ride Plus program. The City of Phoenix has applied for additional funding from the Federal fiscal year 2013 grant allocation (Grant Number AZ-57-X016-5317-New Freedom).

This grant would provide the City of Peoria reimbursement eligibility for a portion of the Total Eligible Project Cost (TEPC) of \$56,840 for operating assistance costs for Dial-a-Ride Plus program (\$28,420 in Federal funding). The grant requires that the funds be used within 30 months of the award date. The City of Peoria will be required to provide 50% of the TEPC in local matching funds (\$28,420). The Peoria matching funds will be included in the Transit Division budget for fiscal year 2014.

The cost allocations are summarized as follows:

	Local Share	Federal Share	TEPC
DAR Plus operating assistance	\$28,420	\$28,420	\$56,840

**Options:**

**A:** Approve IGA for Grant Pass-through Agreement between City of Peoria and the City of Phoenix (Grant Number AZ-57-X016-5317-New Freedom)

**B:** Do not approve the IGA which would not qualify the City of Peoria eligible for reimbursement of its operating assistance costs for the DAR Plus program.

**Staff's Recommendation:**

Staff recommends approval of the Intergovernmental Agreement for reimbursement of operating assistance costs for the Dial-A-Ride Plus program from the Federal Transit Authority (FTA) by way of pass through grant from the City of Phoenix.

**Fiscal Analysis:**

Funding for this request is currently reflected in Transit's Fiscal Year 2013/2014 budget.

**Exhibit(s):**

**Exhibit 1:** IGA for Grant Pass-through Agreement between City of Peoria and the City of Phoenix (Grant Number AZ-57-X016-5317-New Freedom)

**Contact Name and Number:** William Mattingly, Public Works – Utilities Director, 623-773-5151

**AGREEMENT NO. \_\_\_\_\_**  
**CFDA #20.521**  
**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**THE CITY OF PHOENIX**  
**AND**  
**THE CITY OF PEORIA**  
**(Grant Pass-through Agreement)**  
**(Grant No. AZ-57-X016-537-New Freedom)**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the state of Arizona (hereinafter referred to as “PHOENIX”) and City of Peoria, a municipal corporation, duly organized and existing under the laws of the state of Arizona (hereinafter referred to as “SUB-RECIPIENT”).

**RECITALS**

WHEREAS, the City Manager of PHOENIX, is authorized and empowered by provisions of the City Charter to execute contracts; and,

WHEREAS, PHOENIX has Charter authority to provide transit services and Charter and statutory authority to enter into Agreements with other entities within the Phoenix Urban Area to provide transit services [A.R.S. Section 11-951, et seq.; Chapter 2, Section 2, Subsections (c)(i) and (l), Charter of the City of Phoenix, 1969]; and,

WHEREAS, SUB-RECIPIENT has all of the powers, functions, rights, privileges and immunities possible under the Constitution and general laws of the state of Arizona as fully as though they were specifically enumerated in its charter, and all of the powers, functions, rights, privileges and immunities granted, or to be granted, either expressly or by implication, to charter cities and towns incorporated under the provisions of A.R.S. title 9 and may enter into intergovernmental agreements with other governmental entities [Article I, Section 3 and Section 3(15), Charter of the City of Peoria; A.R.S. Section 11-951, et seq.]; and,

WHEREAS, the laws of the state of Arizona authorize municipalities to: (1) “engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from the municipal corporation . . .” [A.R.S. Section 9-511 (A)]; (2) “appropriate and spend public monies” on activities that “will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of (its) inhabitants . . .” (A.R.S. Section 9-500.11); and, (3) to “be vested with all of the powers of incorporated towns as set forth in title 9, in addition to all powers vested in them pursuant to their respective charters or other provisions of law . . .” (A.R.S. Section 9-499.01); and,

WHEREAS, transit activities are one of the types of activities authorized pursuant to the aforementioned statutory and Charter authority and such powers do not conflict with any of the provisions of SUB-RECIPIENT's charter; and,

WHEREAS, Chapter 53 of 49 United States Code (formerly the Federal Transit Act of 1964, as amended), makes financial aid available to municipalities and local units of government showing a substantial effort toward the preservation, improvement and operation of mass transit systems; and,

WHEREAS, PHOENIX successfully applied to the Federal Transit Administration (FTA) for a FTA grant for the purpose of operating assistance and same was awarded as Grant No. AZ-57-X016-537-New Freedom and,

WHEREAS, SUB-RECIPIENT shall receive funds from said Grant and perform the work as required therein all as set forth in Exhibit "A" hereto which Exhibit is, by this reference, incorporated herein as though fully set forth; and,

WHEREAS, PHOENIX and SUB-RECIPIENT have been authorized by their respective Councils to enter into this Agreement; NOW, THEREFORE,

### **AGREEMENT**

IT IS HEREBY AGREED, by and between the parties, as follows:

1. Grant Reimbursement. PHOENIX agrees to reimburse SUB-RECIPIENT for the federal share of the purchase of item/services shown in the "Project Description" box on Exhibit "A." Reimbursement shall not exceed the federal funds allocated to SUB-RECIPIENT, unless approved in writing by PHOENIX. The federal funds allocated to SUB-RECIPIENT under this Agreement shall not exceed \$28,420. SUB-RECIPIENT shall provide the required local match for these projects. No reimbursements shall be made unless all required reports have been submitted. Projects must be completed and reimbursement must be requested within thirty (30) months of the grant award by the FTA, i.e., the FTA obligation date. The thirty (30) month duration shall be the term of the Agreement. Funding for uncompleted and unbilled projects will be reassigned at the discretion of PHOENIX, as needed to close out the grant.

A. Application for reimbursement of federal share.

SUB-RECIPIENT shall submit their application for reimbursement of federal share to:

- City of Phoenix
- Public Transit Department
- Fiscal Services Division, Accounts Payable Section
- City of Phoenix
- 302 N. 1<sup>st</sup> Ave.; Suite 900
- Phoenix, AZ 85003

The cover letter must identify the City of Phoenix contract number and the period for which the application is submitted.

SUB-RECIPIENT shall submit its application with the reimbursement request form that is attached as **Exhibit “B”** to this Agreement.

B. Backup Documentation.

The application for reimbursement must be accompanied by detailed backup documentation for all eligible expenses. At a minimum the documentation shall include, but is not limited to, the following.

1. A listing of all invoiced costs with vendors and payment dates.
2. Copies of paid invoices received from vendors for purchases of supplies and services.
3. All purchases of vehicles shall be accompanied with “Vehicle Inventory Record” form.
4. All other asset purchases shall be accompanied with a “Capital Asset Purchase” form.

2. Exhibits and Incorporation by Reference. Attached hereto are the following Exhibits each of which is, by this reference, incorporated herein as though fully set forth.

- |         |   |   |
|---------|---|---|
| Exhibit | A | Federal Grant Pass Through Agreement Detail Summary |
| Exhibit | B | Federal Grant Reimbursement Form                    |
| Exhibit | C | Required Reports                                    |
| Exhibit | D | Required Federal Provisions                         |
| Exhibit | E | Partial List of Applicable Laws                     |
| Exhibit | F | Master Grant Agreement, Table of Contents           |
| Exhibit | G | Required Local Provisions                           |

3. Sub-recipient Performance. SUB-RECIPIENT shall complete the project for which grant funds have been awarded in a proper and timely manner. SUB-RECIPIENT further acknowledges that it is responsible for complying with all federal, state, and local requirements required under the grant. SUB-RECIPIENT agrees that failure to comply with all applicable requirements may result in the withholding of grant funds to SUB-RECIPIENT for the specific grant.

4. Insurance. SUB-RECIPIENT acknowledges that it has adequate insurance to cover the projects that are provided in Exhibit 'A' in the event of damage or complete loss.
5. Notice. Any notice, consent, or other communication (“NOTICE”) required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for SUB-RECIPIENT:

Bill Mattingly  
Public Works-Utilities Director  
City of Peoria  
8401 W. Monroe Street  
Peoria, AZ 85245  
Telephone: (623) 773.7449  
FAX: (623) 773.7309

If intended for PHOENIX:

Maria Hyatt  
Interim Public Transit Director  
Public Transit Department  
City of Phoenix  
302 N. 1<sup>st</sup> Ave.; Suite 900  
Phoenix, Arizona 85003  
Telephone: (602) 262.7242  
FAX: (602) 495.2002

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

6. Effective Date: This Agreement shall be in full force and effect upon approval of the Councils of PHOENIX and SUB-RECIPIENT. The effective date is the date provided above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF PHOENIX, ARIZONA  
Ed Zuercher, Acting City Manager

By \_\_\_\_\_  
Maria Hyatt  
Interim Public Transit Director

ATTEST:

\_\_\_\_\_  
City Clerk - PHOENIX

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney - PHOENIX

APPROVED BY PHOENIX CITY COUNCIL BY FORMAL ACTION ON  
\_\_\_\_\_.

CITY OF PEORIA, ARIZONA  
A Municipal Corporation

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk - PEORIA

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney for PEORIA

APPROVED BY SUB-RECIPIENT'S GOVERNING BODY BY FORMAL ACTION ON:  
\_\_\_\_\_

**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

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

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Attorney for PHOENIX

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Attorney for PEORIA

801934v1

**EXHIBIT "A"**

**FEDERAL GRANT PASS THRU AGREEMENT**

GRANT NUMBER: AZ-57-X016-5317-New Freedom				
GRANT RECIPIENT: CITY OF PHOENIX				
GRANT SUB- RECIPIENT'S NAME: CITY OF PEORIA				
GRANT SUB- RECIPIENT'S ADDRESS:  8401 W. Monroe Street Peoria, AZ 85245				
TOTAL ELIGIBLE PROJECT COST (TEPC):		\$56,840		
• Federal Share of TEPC:		\$28,420		
• Local Share/Match of TEPC:		\$28,420		
PROJECT(S) DESCRIPTION:				
Ali Code:	Project(s) Description:	Local:	Federal:	Total:
30.09.01	Operating Assistance: DAR Plus	\$28,420	\$28,420	\$56,840

## EXHIBIT "B"

### FTA Grant Expenditure Reimbursement Request Application

The information provided will be used by the City of Phoenix Public Transit Department (PTD) to monitor sub-recipient expenditures for FTA-funded projects and disburse FTA funds for eligible costs. No further FTA funds may be disbursed unless this report is completed and submitted as required.

<b>SUB-RECIPIENT ORGANIZATION NAME AND ADDRESS</b>	<b>GRANT AGREEMENT NUMBER</b>	<b>REQUEST NO.</b>
<b>REPORTING PERIOD (Dates)</b>		
<b>FROM:</b>		<b>TO:</b>

	TOTAL	LOCAL MATCH	FTA SHARE
<b>TOTAL ELIGIBLE PROJECT COSTS</b>	\$ -	\$ -	\$ -
<b>TOTAL PREVIOUS PAYMENTS</b>	\$ -	\$ -	\$ -
<b>CURRENT REIMBURSEMENT REQUESTED</b>	\$ -	\$ -	\$ -
<b>REMAINING FUNDING</b>	\$ -	\$ -	\$ -

#### REQUIRED SIGNATURES

This document must be signed by the sub-recipient's Transit Manager and Chief Financial Officer or their designated representative(s).

#### **CERTIFICATION**

We certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures, have been incurred compliant with all applicable Federal laws and regulations, have not been previously requested, and all matching requirements have been met. In addition, we understand that any discovery of a violation of a Federal law or regulation, or failure to follow any applicable Federal directives may result in withdrawal of federal participation.

SIGNATURE OF TRANSIT MANAGER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE
SIGNATURE OF CHIEF FINANCIAL OFFICER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE

#### ***Instructions***

1. Keep a copy of all documents submitted.
2. All project records, including financial records, must be maintained for 3 years beyond the later of asset disposal or final close-out of the grant with FTA.

*For PTD use only*

Date request received: -	Approved for funds availability (signature/date)
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## EXHIBIT “C”

### Required Reports

SUB-RECIPIENT agrees to submit reports and statements or plans as now or hereafter required by PHOENIX or the FTA. Quarterly reports are due on or before the 15th of the month following the end of the quarter, i.e., October 15, January 15, April 15 and July 15; and annual reports are due ninety days (except NTD Report which shall be due 150 days) after the end of the fiscal year (July 1 - June 30). Drug and Alcohol Reports are due January 31 for the previous calendar year.

<b>REPORT</b>	<b>FREQUENC Y</b>	<b>DESCRIPTION</b>
DBE Reports	As required by PHOENIX	DBE Participation, Utilization, Annual Goal Setting, Progress, and Information reports
Grant Status Report	Quarterly	Status of each project by grant number
NTD Report – Close Out Letter	Annually	Copy for information only
Fixed Assets Status Report	Annually	Inventory of all FTA funded assets
Single Audit Report	Annually	Copy of federally required audit
Drug and Alcohol Reports	Annually	FTA Drug and Alcohol Testing
<b><u>For JARC or New Freedom FTA Grants</u></b>		
Service Profile Information	Annually or as required by FTA	Evaluation of Grant Accomplishments
Data Collection Sheet	Annually or as required by FTA	Grant Performance Information

The reports and required submissions listed above may be increased, revised, reorganized, deleted or changed as required by FTA guidelines. **All reports must be current before any FTA funds will be disbursed by PHOENIX.**

## **EXHIBIT "D"**

### **Required Federal Provisions**

1. SUB-RECIPIENT shall permit the authorized representatives of PHOENIX, the United States Department of Transportation, and the Controller General of the United States to inspect and audit all data, books, records and reports relating to this Agreement and SUB-RECIPIENT's performance hereunder. PHOENIX's audit shall be at SUB-RECIPIENT's sole cost and expense. All required records shall be maintained for a minimum of three years, after the grant has been formally closed.
2. Both parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and, further, that no member or delegate to Congress, the City Council or any employee of PHOENIX or SUB-RECIPIENT, has any interest, financial or otherwise, in this Agreement.
3. SUB-RECIPIENT shall fully comply with the Disadvantaged Business Enterprise (DBE) Regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 and with the FTA-approved goal submitted by PHOENIX as the recipient on behalf of the region. SUB-RECIPIENT shall abide by all stipulations, regulations, and procedures set forth in the FTA-approved City of Phoenix DBE Program Plan. The Transit Civil Rights Officer of the City of Phoenix Public Transit Department and representative(s) of the City of Phoenix Equal Opportunity Department will meet annually with SUB-RECIPIENT to cooperatively determine DBE participation for all FTA assisted projects.
4. In performing the services for which federal funding is provided under this Agreement, SUB-RECIPIENT agrees to comply with all laws, rules, regulations, standards, orders or directives (hereinafter "Laws") applicable to this Agreement, to the services provided pursuant to this Agreement, and to PHOENIX as the designated recipient of FTA funding. The Laws referred to above include federal, state and local laws, and include, but is not limited to, those items set forth in Exhibit "D."

## EXHIBIT "D"

5. The parties acknowledge that federal funds are being used for the work, services and/or operations provided under this Agreement. In that regard the City of Phoenix, as the designated grant recipient, is obligated to accept and comply with all of the terms and conditions set forth in the Federal Transit Administration (FTA) Master Grant Agreement. In order for SUB-RECIPIENT to receive funding under this Agreement with the City of Phoenix, SUB-RECIPIENT is required to similarly accept and comply with all such terms and conditions and SUB-RECIPIENT does hereby specifically agree to be bound thereby. A copy of the Master Grant Agreement has been provided to SUB-RECIPIENT and additional copies are available from the City of Phoenix. The Master Grant Agreement for FY2013 and any subsequent revisions are, by this reference, incorporated herein as though fully set forth. Further, a summary of some of the terms of the Master Grant Agreement, as set forth its Table of Contents, are attached hereto as Exhibit "F" and are, by this reference, incorporated herein. The items listed in Exhibit "F" are illustrative only and are set forth in the Exhibit for SUB-RECIPIENT's ease of reference; SUB-RECIPIENT is solely responsible for complying with all of the terms and conditions of the Master Grant Agreement and any subsequent revisions whether or not they are set forth in Exhibit "F".
6. SUB-RECIPIENT understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (IRCA) and agrees to comply with the IRCA in the performance of this Agreement.
7. SUB-RECIPIENT shall fully comply with Equal Employment Opportunity (EEO) regulations of the U.S. Department of Transportation (USDOT) Urban Mass Transportation Administration (UMTA) Circular 4704.1. SUB-RECIPIENT shall provide an EEO Program Plan when they employ 50 or more transit-related employees and requests or receives capital or operating assistance under Section 3, 4(i), or 9 of the UMT Act; assistance under 23 U.S.C. 142 (a) (2) or 23 U.S.C. 103(e) (4), or any combination thereof, in excess of \$1 million in the previous Federal fiscal year; or requests or receives planning assistance under Section 8 and/or 9 in excess of \$250,000 in the previous Federal fiscal year. SUB-RECIPIENT shall fully comply with EEO regulations as they pertain to subcontractors. Any subcontractor with 50 or more transit-related employees shall provide an EEP Program Plan.

## EXHIBIT “E”

### Partial List of Applicable Laws

- A. Federal Codes. SUB-RECIPIENT shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to U.S.C. 2000d-4 (hereinafter referred to as the Act) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUB-RECIPIENT receives federal financial assistance, directly or indirectly, from the Department of Transportation, including the Federal Transit Administration, and hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, SUB-RECIPIENT hereby gives the following specific assurances with respect to the project:

1. SUB-RECIPIENT shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with a project under 49 U.S.C. chapter 53 and, in adapted form in all proposals for negotiated agreements:

CONTRACTOR, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, non-discrimination in federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders and proposers that it will affirmatively ensure that in regard to any contract or procurement entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit bids and proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

## EXHIBIT "E"

2. If SUB-RECIPIENT carries out a program of training under Section 5312 of Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to make selection of the trainee or fellow without regard to race, color, sex or national origin.
  3. Where SUB-RECIPIENT receives federal financial assistance to carry out a program under Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to assign transit operators and to furnish transit operators without regard to race, color, sex or national origin.
  4. Where SUB-RECIPIENT carries out a program under Title 49, United States Code chapter 53, routing, scheduling, quality of service, frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes and location of routes may not be determined on the basis of race, color, sex or national origin.
  5. This assurance obligates SUB-RECIPIENT for the period during which federal financial assistance is extended to the project.
  6. SUB-RECIPIENT shall provide for such methods of administration for the program as are found by PHOENIX to give reasonable guarantee that it, its contractors, sub-contractors, transferee's, successors in interest and other participants under such program will comply with all requirements imposed or pursuant to 49 U.S.C. chapter 53, the Regulations and this assurance.
  7. SUB-RECIPIENT agrees that PHOENIX has a right to seek judicial enforcement with regard to any matter arising under 49 U.S.C. chapter 53, the Regulations and this assurance.
- B. Compliance with FTA Regulations. During the performance of this Agreement, SUB-RECIPIENT, for itself, its assignees and successors in interest agrees as follows:
1. SUB-RECIPIENT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by this reference and made a part of this contract.
  2. With regard to the work performed by it during the contract, SUB-RECIPIENT shall not discriminate on the grounds of race, color, sex or

## EXHIBIT "E"

national origin in the selection and retention of sub-contractors, including procurement and leases of equipment.

3. In all solicitations, either by competitive bidding or negotiation, made by SUB-RECIPIENT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by SUB-RECIPIENT of the sub-contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.
4. SUB-RECIPIENT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by PHOENIX or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of SUB-RECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, SUB-RECIPIENT shall so certify to PHOENIX, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. In the event of SUB-RECIPIENT's noncompliance with the nondiscrimination provisions of this contract, PHOENIX shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to SUB-RECIPIENT under the grant award until SUB-RECIPIENT complies; and/or,
  - b) Cancellation, termination or suspension of this Agreement, in whole or in part.
6. SUB-RECIPIENT shall include the FTA provisions included in paragraphs 1 through 5 of Section B, in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. SUB-RECIPIENT shall take such action with respect to any sub-contract or procurement as PHOENIX or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that, in the event SUB-RECIPIENT becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, SUB-RECIPIENT may request that PHOENIX enter into such litigation to protect the interests of PHOENIX, and, in addition, SUB-RECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.

## EXHIBIT "E"

7. SUB-RECIPIENT hereby adopts the Title VI investigation and tracking procedure developed by PHOENIX. SUB-RECIPIENT agrees that PHOENIX personnel shall conduct Title VI investigations. The determinations made by PHOENIX of Title VI complaints shall be binding upon SUB-RECIPIENT. SUB-RECIPIENT shall maintain a list of any active Title VI investigations conducted by any governmental entity, including PHOENIX and shall maintain a Title VI complaint log of closed investigations for three (3) years. SUB-RECIPIENT shall provide information to the public concerning its Title VI obligations and apprise the public of protections offered by Title VI.
8. SUB-RECIPIENT specifically avows that, where applicable, it is and will provide fair and equitable labor protective arrangements, as reflected in 49 U.S.C. § 5333(b), otherwise known as 13(c).
9. SUB-RECIPIENT shall comply with the following Statutes and Regulations:
  - 18 U.S.C. 1001
  - Section 5323(d) of 49 U.S.C. chapter 53
  - Section 5323(f) of 49 U.S.C. chapter 53
  - Section 5307(k) of 49 U.S.C. chapter 53
  - Section 5309(h) of 49 U.S.C. chapter 53
  - Section 5301 of 49 U.S.C. chapter 53
  - Section 5333 of 49 U.S.C. chapter 53 which requires compliance with applicable labor requirements.
  - Section 5310 of 49 U.S.C. chapter 53 which provides, among other things, for the planning and design of mass transportation facilities to meet the special needs of senior persons and persons with disabilities.
  - Section 5332 of 49 U.S.C. chapter 53 which, among other things, prohibits discrimination on the basis of race, color, creed, national origin, sex or age.
  - Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d which, among other things, prohibits discrimination on the basis of race, color or national origin by recipients of federal financial assistance.

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Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e which, among other things, prohibits discrimination in employment.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 which, among other things, prohibits discrimination on the basis of disability.

49 CFR Part 600 et seq. regulations promulgated by FTA.

49 CFR Parts 21, 23, 25, 26 and 27 regulations promulgated by the Department of Transportation governing Title VI, Minority Business Enterprise (Disadvantaged Business Enterprise/ Women's Business Enterprise), Relocation and Land Acquisition and Nondiscrimination on the basis of disability, respectively.

46 CFR Part 381 regulations promulgated by the Maritime Administration governing cargo preference requirements.

36 CFR Part 800 regulations promulgated by the Advisory Council on Historic Preservation.

31 CFR part 205 regulations promulgated by the Department of the Treasury governing letter of credit.

40 CFR Part 15 regulations promulgated by the Environmental Protection Agency pertaining to administration of clean air and water pollution requirements.

29 CFR Parts 5 and 215 regulations promulgated by the Department of Labor pertaining to construction labor and transit employee protections.

- C. Drug and Alcohol Testing. SUB-RECIPIENT shall have in place, maintain, and implement a plan and a program for compliance with U.S. DOT Drug and Alcohol Regulations, as specified in 49 CFR 40, 49 CFR 653 and 49 CFR 654. Said plan and program shall be modified to incorporate and comply with such other regulations as were adopted in the USDOT and published in the Federal Register as of February 14, 1994 and any subsequent changes thereto.

# EXHIBIT “F”

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

## MASTER AGREEMENT

**For Federal Transit Administration Agreements authorized by  
49 U.S.C. chapter 53, Title 23, United States Code (Highways), the  
Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21),  
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users  
(SAFETEA-LU), as amended by the SAFETEA-LU Technical Corrections Act of 2008,  
or other Federal laws that FTA administers.**

**FTA MA(19)  
October 1, 2012**

<http://www.fta.dot.gov/documents/19-Master.pdf>

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## EXHIBIT “G”

### Required Local Provisions

1. Transactional Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. Section 38-511.
2. Assignability; Successors and Assigns. This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by SUB-RECIPIENT without the prior written consent of PHOENIX. Any attempt to assign without such prior written consent shall be void.
3. Employment and Organization Disclaimer. This Agreement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. Neither party is the agent of the other nor is neither party authorized to act on behalf of the other party. SUB-RECIPIENT shall be liable to PHOENIX for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
4. Entire Agreement; Modification (No Oral Modification). This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms, may not be modified or changed except in writing signed by both parties.
5. Invalidity of Any Provisions. This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.
6. Compliance with Laws, Permits and Indemnity. SUB-RECIPIENT shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, SUB-RECIPIENT shall be solely responsible for obtaining all approvals and permits necessary to perform the work called for under this Agreement. In addition, SUB-RECIPIENT shall indemnify, defend, save and hold harmless PHOENIX from all loss, cost and damage by reason of any violation of the provisions of this paragraph and from any liability including, but not limited to, fines, penalties and other costs arising therefrom.

## EXHIBIT "G"

7. Applicable Law and Litigation. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
8. Inspection and Audit. The provisions of Section 35-214, Arizona Revised Statutes, shall apply to this Agreement. CITY shall perform the inspection and audit function specified therein.
9. Non-waiver. Should PHOENIX fail or delay in exercising or enforcing any right, power, privilege or remedy under this Agreement such failure or delay shall not be deemed a waiver, release or modification of the requirements of this Agreement or of any of the terms or provisions thereof.
10. Labor Protective Provisions. SUB-RECIPIENT shall fully cooperate with PHOENIX in meeting the legal requirements of the labor protective provisions of Section 5333(b) of Title 49 U.S. Code [formerly Section 13(c) of the Federal Transit Act of 1964, as amended (49 U.S.C. 1609)] and the Labor Agreements and side letters currently in force and certified by the United States Department of Labor. Changes, including changes in service and any other changes that may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 5333(b) protections granted to employees. SUB-RECIPIENT shall defend and indemnify PHOENIX from any and all claims and losses due, or alleged to be due, in whole or in part, to the consequences of changes made by SUB-RECIPIENT, that were not requested by PHOENIX which result in grievances, claims and/or liability.
11. Sudan and Iran. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, contractor certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 11C

**Date Prepared:** March 13, 2013

**Council Meeting Date:** March 04, 2014

---

**TO:** Carl Swenson, City Manager

**FROM:** William Mattingly, Public Works – Utilities Director

**THROUGH:** Jeff Tyne, Deputy City Manager

**SUBJECT:** An Intergovernmental Agreement between the City of Peoria and the City of Phoenix for reimbursement of preventative maintenance costs from the Federal Transit Authority (FTA) by way of pass through grant from the City of Phoenix (Grant Number AZ-90-X114).

**Purpose:**

Discussion and possible action to approve an Intergovernmental Agreement between the City of Peoria and the City of Phoenix, to provide \$133,607 in preventative maintenance funds from the Federal Transit Authority (FTA) by way of pass through grant from the City of Phoenix (Grant Number AZ-90-X114).

**Background/Summary:**

The City of Peoria Transit Division currently provides American with Disabilities Act (ADA), Paratransit Service through the Dial-a-Ride program. The City is eligible to receive reimbursement from the Federal Transit Administration (FTA) grant funding from the Urbanized Area Formula Funding program (Section 5307 of 49 U.S.C.) by way of pass through agreement with the City of Phoenix. The FTA grant will pay for partial funding of the annual maintenance expenses. The City of Phoenix has applied for additional funding from the Federal fiscal year 2013 grant allocation (FTA Grant Number AZ-90-X114). This grant would provide the City of Peoria reimbursement eligibility for a portion of the Total Eligible Project Cost (TEPC) of \$167,009 for preventative maintenance costs for existing Dial-a-Ride buses (\$133,607 in Federal funding). The grant requires that the funds be used within 30 months of the award date. The City of Peoria will be required to provide 20% of the TEPC in local matching funds (\$33,402). The Peoria matching funds will be included in the Transit Division budget for fiscal year 2013 and/ or fiscal year 2014.

The cost allocations are summarized as follows:

	Local Share	Federal Share	TEPC
Preventative Maintenance	\$33,402	\$133,607	\$167,009

**Options:**

- A:** Approve IGA for Grant Pass-through Agreement between City of Peoria and the City of Phoenix (Grant Number AZ-90-X114)
  
- B:** Do not approve the IGA which would not qualify the City of Peoria eligible for reimbursement of its preventative Maintenance costs.

**Staff's Recommendation:**

Staff recommends approval the Intergovernmental Agreement for reimbursement of preventative maintenance costs from the Federal Transit Authority (FTA) by way of pass through grant from the City of Phoenix.

**Fiscal Analysis:**

Funding for this request is currently reflected in Transit's Fiscal Year 2014 budget.

**Exhibit(s):**

**Exhibit 1:** IGA for Grant Pass-through Agreement between City of Peoria and the City of Phoenix (Grant Number AZ-90-X114)

**Contact Name and Number:** William Mattingly, Public Works – Utilities Director, 623-773-5151

**AGREEMENT NO. \_\_\_\_\_**  
**CFDA #20.507**  
**INTERGOVERNMENTAL AGREEMENT**  
**BETWEEN**  
**THE CITY OF PHOENIX**  
**AND**  
**THE CITY OF PEORIA**

**(Grant Pass-through Agreement)**  
**(Grant No. AZ-90-X114)**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Phoenix, a municipal corporation duly organized and existing under the laws of the state of Arizona (hereinafter referred to as “PHOENIX”) and City of Peoria, a municipal corporation, duly organized and existing under the laws of the state of Arizona (hereinafter referred to as “SUB-RECIPIENT”).

**RECITALS**

WHEREAS, the City Manager of PHOENIX, is authorized and empowered by provisions of the City Charter to execute contracts; and,

WHEREAS, PHOENIX has Charter authority to provide transit services and Charter and statutory authority to enter into Agreements with other entities within the Phoenix Urban Area to provide transit services [A.R.S. Section 11-951, et seq.; Chapter 2, Section 2, Subsections (c)(i) and (l), Charter of the City of Phoenix, 1969]; and,

WHEREAS, SUB-RECIPIENT has all of the powers, functions, rights, privileges and immunities possible under the Constitution and general laws of the state of Arizona as fully as though they were specifically enumerated in its charter, and all of the powers, functions, rights, privileges and immunities granted, or to be granted, either expressly or by implication, to charter cities and towns incorporated under the provisions of A.R.S. title 9 and may enter into intergovernmental agreements with other governmental entities [Article I, Section 3 and Section 3(15), Charter of the City of Peoria; A.R.S. Section 11-951, et seq.]; and,

WHEREAS, the laws of the state of Arizona authorize municipalities to: (1) “engage in any business or enterprise which may be engaged in by persons by virtue of a franchise from the municipal corporation . . .” [A.R.S. Section 9-511 (A)]; (2) to “appropriate and spend public monies” on activities that “will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of (its) inhabitants . . .” (A.R.S. Section 9-500.11); and, (3) to “be vested with all of the powers of incorporated towns as set forth in title 9, in addition to all powers vested in them pursuant to their respective charters or other provisions of law . . .” (A.R.S. Section 9-499.01); and,

WHEREAS, transit activities are one of the types of activities authorized pursuant to the aforementioned statutory and Charter authority and such powers do not conflict with any of the provisions of SUB-RECIPIENT's charter; and,

WHEREAS, Chapter 53 of 49 United States Code (formerly the Federal Transit Act of 1964, as amended), makes financial aid available to municipalities and local units of government showing a substantial effort toward the preservation, improvement and operation of mass transit systems; and,

WHEREAS, PHOENIX successfully applied to the Federal Transit Administration (FTA) for a FTA grant for the purpose of PREVENTIVE MAINTENANCE and same was awarded as Grant No. AZ-90-X114 and,

WHEREAS, SUB-RECIPIENT shall receive funds from said Grant and perform the work as required therein all as set forth in Exhibit "A" hereto which Exhibit is, by this reference, incorporated herein as though fully set forth; and,

WHEREAS, PHOENIX and SUB-RECIPIENT have been authorized by their respective Councils to enter into this Agreement; NOW, THEREFORE,

### **AGREEMENT**

IT IS HEREBY AGREED, by and between the parties, as follows:

1. Grant Reimbursement. PHOENIX agrees to reimburse SUB-RECIPIENT for the federal share of the purchase of item/services shown in the "Project Description" box on Exhibit "A." Reimbursement shall not exceed the federal funds allocated to SUB-RECIPIENT, unless approved in writing by PHOENIX. The federal funds allocated to SUB-RECIPIENT under this Agreement shall not exceed \$133,607. SUB-RECIPIENT shall provide the required local match for these projects. No reimbursements shall be made unless all required reports have been submitted. Projects must be completed and reimbursement must be requested within thirty (30) months of the grant award by the FTA, i.e., the FTA obligation date. The thirty (30) month duration shall be the term of the Agreement. Funding for uncompleted and unbilled projects will be reassigned at the discretion of PHOENIX, as needed to close out the grant.

A. Application for reimbursement of federal share.

SUB-RECIPIENT shall submit their application for reimbursement of federal share to:

City of Phoenix  
Public Transit Department  
Fiscal Services Division, Accounts Payable Section  
City of Phoenix  
302 N. 1<sup>st</sup> Ave.; Suite 900  
Phoenix, AZ 85003

The cover letter must identify the City of Phoenix contract number and the period for which the application is submitted.

SUB-RECIPIENT shall submit its application with the reimbursement request form that is attached as **Exhibit “B”** to this Agreement.

**B. Backup Documentation.**

The application for reimbursement must be accompanied by detailed backup documentation for all eligible expenses. At a minimum the documentation shall include, but is not limited to, the following.

1. A listing of all invoiced costs with vendors and payment dates.
2. Copies of paid invoices received from vendors for purchases of supplies and services.
3. All purchases of vehicles shall be accompanied with “Vehicle Inventory Record” form.
4. All other asset purchases shall be accompanied with a “Capital Asset Purchase” form.

2. Exhibits and Incorporation by Reference. Attached hereto are the following Exhibits each of which is, by this reference, incorporated herein as though fully set forth.

- |         |   |   |
|---------|---|---|
| Exhibit | A | Federal Grant Pass Through Agreement Detail Summary |
| Exhibit | B | Federal Grant Reimbursement Form                    |
| Exhibit | C | Required Reports                                    |
| Exhibit | D | Required Federal Provisions                         |
| Exhibit | E | Partial List of Applicable Laws                     |
| Exhibit | F | Master Grant Agreement, Table of Contents           |
| Exhibit | G | Required Local Provisions                           |

3. Sub-recipient Performance. SUB-RECIPIENT shall complete the project for which grant funds have been awarded in a proper and timely manner. SUB-RECIPIENT further acknowledges that it is responsible for complying with all federal, state, and local requirements required under the grant. SUB-RECIPIENT agrees that failure to comply with all applicable requirements may result in the withholding of grant funds to SUB-RECIPIENT for the specific grant.

4. Insurance. SUB-RECIPIENT acknowledges that it has adequate insurance to cover the projects that are provided in Exhibit 'A' in the event of damage or complete loss.
5. Notice. Any notice, consent, or other communication (“NOTICE”) required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for SUB-RECIPIENT:

William J. Mattingly  
Public Works-Utilities Director  
City of Peoria  
8401 W. Monroe Street  
Peoria, AZ 85245  
Telephone: (623) 773.7449  
FAX: (623) 773.7309

If intended for PHOENIX:

Maria Hyatt  
Interim Public Transit Director  
Public Transit Department  
City of Phoenix  
302 N. 1<sup>st</sup> Ave.; Suite 900  
Phoenix, Arizona 85003  
Telephone: (602) 262.7242  
FAX: (602) 495.2002

Notice shall be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, FAX number, or the person to receive notice by notifying the other party as provided in this section.

Notice sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

6. Effective Date: This Agreement shall be in full force and effect upon approval of the Councils of PHOENIX and SUB-RECIPIENT. The effective date is the date provided above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF PHOENIX, ARIZONA  
Ed Zuercher, Acting City Manager

By \_\_\_\_\_  
Maria Hyatt  
Interim Public Transit Director

ATTEST:

\_\_\_\_\_  
City Clerk - PHOENIX

APPROVED AS TO FORM:

\_\_\_\_\_  
Acting City Attorney - PHOENIX

APPROVED BY PHOENIX CITY COUNCIL BY FORMAL ACTION ON  
OCTOBER 17, 2012.

CITY OF PEORIA, ARIZONA  
A Municipal Corporation

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk - PEORIA

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney for PEORIA

APPROVED BY SUB-RECIPIENT'S GOVERNING BODY BY FORMAL ACTION ON:

\_\_\_\_\_

**INTERGOVERNMENTAL AGREEMENT DETERMINATION**

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

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Attorney for PHOENIX

---

Attorney for PEORIA

801934v1

**EXHIBIT "A"**

**FEDERAL GRANT PASS THRU AGREEMENT**

GRANT NUMBER: AZ-90-X114				
GRANT RECIPIENT: CITY OF PHOENIX				
GRANT SUB- RECIPIENT'S NAME: CITY OF PEORIA				
GRANT SUB- RECIPIENT'S ADDRESS:  8401 W. Monroe Street Peoria, AZ 85245				
TOTAL ELIGIBLE PROJECT COST (TEPC):		\$167,009		
• Federal Share of TEPC:		\$133,607		
• Local Share/Match of TEPC:		\$33,402		
PROJECT(S) DESCRIPTION:				
Ali Code:	Project(s) Description:	Local:	Federal:	Total:
11.7A.00	Preventive Maintenance	\$33,402	\$133,607	\$167,009

**EXHIBIT "B"**

**FTA Grant Expenditure Reimbursement Request Application**

The information provided will be used by the City of Phoenix Public Transit Department (PTD) to monitor sub-recipient expenditures for FTA-funded projects and disburse FTA funds for eligible costs. No further FTA funds may be disbursed unless this report is completed and submitted as required.

<b>SUB-RECIPIENT ORGANIZATION NAME AND ADDRESS</b>	<b>GRANT AGREEMENT NUMBER</b>	<b>REQUEST NO.</b>
<b>REPORTING PERIOD (Dates)</b>		
<b>FROM:</b>		<b>TO:</b>
	<b>TOTAL</b>	<b>LOCAL MATCH</b>
<b>TOTAL ELIGIBLE PROJECT COSTS</b>	\$ -	\$ -
<b>TOTAL PREVIOUS PAYMENTS</b>	\$ -	\$ -
<b>CURRENT REIMBURSEMENT REQUESTED</b>	\$ -	\$ -
<b>REMAINING FUNDING</b>	\$ -	\$ -

**REQUIRED SIGNATURES**

**This document must be signed by the sub-recipient's Transit Manager and Chief Financial Officer or their designated representative(s).**

**CERTIFICATION**

We certify the financial expenditures submitted for reimbursement with this report, including supporting documentation, are eligible and allowable expenditures, have been incurred compliant with all applicable Federal laws and regulations, have not been previously requested, and all matching requirements have been met. In addition, we understand that any discovery of a violation of a Federal law or regulation, or failure to follow any applicable Federal directives may result in withdrawal of federal participation.

SIGNATURE OF TRANSIT MANAGER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE
SIGNATURE OF CHIEF FINANCIAL OFFICER OR DESIGNEE	DATE
TYPED OR PRINTED NAME AND TITLE	TELEPHONE

***Instructions***

1. Keep a copy of all documents submitted.
2. All project records, including financial records, must be maintained for 3 years beyond the later of asset disposal or final close-out of the grant with FTA.

*For PTD use only*

Date request received: -	Approved for funds availability (signature/date)
--------------------------	--

## EXHIBIT “C”

### Required Reports

SUB-RECIPIENT agrees to submit reports and statements or plans as now or hereafter required by PHOENIX or the FTA. Quarterly reports are due on or before the 15th of the month following the end of the quarter, i.e., October 15, January 15, April 15 and July 15; and annual reports are due ninety days (except NTD Report which shall be due 150 days) after the end of the fiscal year (July 1 - June 30). Drug and Alcohol Reports are due January 31 for the previous calendar year.

<b>REPORT</b>	<b>FREQUENC Y</b>	<b>DESCRIPTION</b>
DBE Reports	As required by PHOENIX	DBE Participation, Utilization, Annual Goal Setting, Progress, and Information reports
Grant Status Report	Quarterly	Status of each project by grant number
NTD Report – Close Out Letter	Annually	Copy for information only
Fixed Assets Status Report	Annually	Inventory of all FTA funded assets
Single Audit Report	Annually	Copy of federally required audit
Drug and Alcohol Reports	Annually	FTA Drug and Alcohol Testing
<b><u>For JARC or New Freedom FTA Grants</u></b>		
Service Profile Information	Annually or as required by FTA	Evaluation of Grant Accomplishments
Data Collection Sheet	Annually or as required by FTA	Grant Performance Information

The reports and required submissions listed above may be increased, revised, reorganized, deleted or changed as required by FTA guidelines. **All reports must be current before any FTA funds will be disbursed by PHOENIX.**

## **EXHIBIT "D"**

### **Required Federal Provisions**

1. SUB-RECIPIENT shall permit the authorized representatives of PHOENIX, the United States Department of Transportation, and the Controller General of the United States to inspect and audit all data, books, records and reports relating to this Agreement and SUB-RECIPIENT's performance hereunder. PHOENIX's audit shall be at SUB-RECIPIENT's sole cost and expense. All required records shall be maintained for a minimum of three years, after the grant has been formally closed.
2. Both parties warrant that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and, further, that no member or delegate to Congress, the City Council or any employee of PHOENIX or SUB-RECIPIENT, has any interest, financial or otherwise, in this Agreement.
3. SUB-RECIPIENT shall fully comply with the Disadvantaged Business Enterprise (DBE) Regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 and with the FTA-approved goal submitted by PHOENIX as the recipient on behalf of the region. SUB-RECIPIENT shall abide by all stipulations, regulations, and procedures set forth in the FTA-approved City of Phoenix DBE Program Plan. The Transit Civil Rights Officer of the City of Phoenix Public Transit Department and representative(s) of the City of Phoenix Equal Opportunity Department will meet annually with SUB-RECIPIENT to cooperatively determine DBE participation for all FTA assisted projects.
4. In performing the services for which federal funding is provided under this Agreement, SUB-RECIPIENT agrees to comply with all laws, rules, regulations, standards, orders or directives (hereinafter "Laws") applicable to this Agreement, to the services provided pursuant to this Agreement, and to PHOENIX as the designated recipient of FTA funding. The Laws referred to above include federal, state and local laws, and include, but is not limited to, those items set forth in Exhibit "D."

## EXHIBIT "D,"

5. The parties acknowledge that federal funds are being used for the work, services and/or operations provided under this Agreement. In that regard the City of Phoenix, as the designated grant recipient, is obligated to accept and comply with all of the terms and conditions set forth in the Federal Transit Administration (FTA) Master Grant Agreement. In order for SUB-RECIPIENT to receive funding under this Agreement with the City of Phoenix, SUB-RECIPIENT is required to similarly accept and comply with all such terms and conditions and SUB-RECIPIENT does hereby specifically agree to be bound thereby. A copy of the Master Grant Agreement has been provided to SUB-RECIPIENT and additional copies are available from the City of Phoenix. The Master Grant Agreement for FY2013 and any subsequent revisions are, by this reference, incorporated herein as though fully set forth. Further, a summary of some of the terms of the Master Grant Agreement, as set forth its Table of Contents, are attached hereto as Exhibit "F" and are, by this reference, incorporated herein. The items listed in Exhibit "F" are illustrative only and are set forth in the Exhibit for SUB-RECIPIENT's ease of reference; SUB-RECIPIENT is solely responsible for complying with all of the terms and conditions of the Master Grant Agreement and any subsequent revisions whether or not they are set forth in Exhibit "F".
6. SUB-RECIPIENT understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986 (IRCA) and agrees to comply with the IRCA in the performance of this Agreement.
7. SUB-RECIPIENT shall fully comply with Equal Employment Opportunity (EEO) regulations of the U.S. Department of Transportation (USDOT) Urban Mass Transportation Administration (UMTA) Circular 4704.1. SUB-RECIPIENT shall provide an EEO Program Plan when they employ 50 or more transit-related employees and requests or receives capital or operating assistance under Section 3, 4(i), or 9 of the UMT Act; assistance under 23 U.S.C. 142 (a) (2) or 23 U.S.C. 103(e) (4), or any combination thereof, in excess of \$1 million in the previous Federal fiscal year; or requests or receives planning assistance under Section 8 and/or 9 in excess of \$250,000 in the previous Federal fiscal year. SUB-RECIPIENT shall fully comply with EEO regulations as they pertain to subcontractors. Any subcontractor with 50 or more transit-related employees shall provide and EEP Program Plan.

## **EXHIBIT “E”**

### **Partial List of Applicable Laws**

- A. Federal Codes. SUB-RECIPIENT shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to U.S.C. 2000d-4 (hereinafter referred to as the Act) and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUB-RECIPIENT receives federal financial assistance, directly or indirectly, from the Department of Transportation, including the Federal Transit Administration, and hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, SUB-RECIPIENT hereby gives the following specific assurances with respect to the project:

1. SUB-RECIPIENT shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with a project under 49 U.S.C. chapter 53 and, in adapted form in all proposals for negotiated agreements:

CONTRACTOR, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, non-discrimination in federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders and proposers that it will affirmatively ensure that in regard to any contract or procurement entered into pursuant to this advertisement, Disadvantaged Business Enterprise will be afforded full opportunity to submit bids and proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

## EXHIBIT "E,"

2. If SUB-RECIPIENT carries out a program of training under Section 5312 of Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to make selection of the trainee or fellow without regard to race, color, sex or national origin.
  3. Where SUB-RECIPIENT receives federal financial assistance to carry out a program under Title 49, United States Code chapter 53, the assurance shall obligate SUB-RECIPIENT to assign transit operators and to furnish transit operators without regard to race, color, sex or national origin.
  4. Where SUB-RECIPIENT carries out a program under Title 49, United States Code chapter 53, routing, scheduling, quality of service, frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes and location of routes may not be determined on the basis of race, color, sex or national origin.
  5. This assurance obligates SUB-RECIPIENT for the period during which federal financial assistance is extended to the project.
  6. SUB-RECIPIENT shall provide for such methods of administration for the program as are found by PHOENIX to give reasonable guarantee that it, its contractors, sub-contractors, transferee's, successors in interest and other participants under such program will comply with all requirements imposed or pursuant to 49 U.S.C. chapter 53, the Regulations and this assurance.
  7. SUB-RECIPIENT agrees that PHOENIX has a right to seek judicial enforcement with regard to any matter arising under 49 U.S.C. chapter 53, the Regulations and this assurance.
- B. Compliance with FTA Regulations. During the performance of this Agreement, SUB-RECIPIENT, for itself, its assignees and successors in interest agrees as follows:
1. SUB-RECIPIENT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (DOT), Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by this reference and made a part of this contract.
  2. With regard to the work performed by it during the contract, SUB-RECIPIENT shall not discriminate on the grounds of race, color, sex or

## **EXHIBIT "E,**

national origin in the selection and retention of sub-contractors, including procurement and leases of equipment.

3. In all solicitations, either by competitive bidding or negotiation, made by SUB-RECIPIENT for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by SUB-RECIPIENT of the sub-contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, sex or national origin.
4. SUB-RECIPIENT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by PHOENIX or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of SUB-RECIPIENT is in the exclusive possession of another who fails or refuses to furnish this information, SUB-RECIPIENT shall so certify to PHOENIX, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. In the event of SUB-RECIPIENT's noncompliance with the nondiscrimination provisions of this contract, PHOENIX shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to SUB-RECIPIENT under the grant award until SUB-RECIPIENT complies; and/or,
  - b) Cancellation, termination or suspension of this Agreement, in whole or in part.
6. SUB-RECIPIENT shall include the FTA provisions included in paragraphs 1 through 5 of Section B, in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. SUB-RECIPIENT shall take such action with respect to any sub-contract or procurement as PHOENIX or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that, in the event SUB-RECIPIENT becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, SUB-RECIPIENT may request that PHOENIX enter into such litigation to protect the interests of PHOENIX, and, in addition, SUB-RECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.

## **EXHIBIT "E"**

7. SUB-RECIPIENT hereby adopts the Title VI investigation and tracking procedure developed by PHOENIX. SUB-RECIPIENT agrees that PHOENIX personnel shall conduct Title VI investigations. The determinations made by PHOENIX of Title VI complaints shall be binding upon SUB-RECIPIENT. SUB-RECIPIENT shall maintain a list of any active Title VI investigations conducted by any governmental entity, including PHOENIX and shall maintain a Title VI complaint log of closed investigations for three (3) years. SUB-RECIPIENT shall provide information to the public concerning its Title VI obligations and apprise the public of protections offered by Title VI.
  
8. SUB-RECIPIENT specifically avows that, where applicable, it is and will provide fair and equitable labor protective arrangements, as reflected in 49 U.S.C. § 5333(b), otherwise known as 13(c).
  
9. SUB-RECIPIENT shall comply with the following Statutes and Regulations:  
  
18 U.S.C. 1001  
  
Section 5323(d) of 49 U.S.C. chapter 53  
  
Section 5323(f) of 49 U.S.C. chapter 53  
  
Section 5307(k) of 49 U.S.C. chapter 53  
  
Section 5309(h) of 49 U.S.C. chapter 53  
  
Section 5301 of 49 U.S.C. chapter 53  
  
Section 5333 of 49 U.S.C. chapter 53 which requires compliance with applicable labor requirements.  
  
Section 5310 of 49 U.S.C. chapter 53 which provides, among other things, for the planning and design of mass transportation facilities to meet the special needs of senior persons and persons with disabilities.  
  
Section 5332 of 49 U.S.C. chapter 53 which, among other things, prohibits discrimination on the basis of race, color, creed, national origin, sex or age.

## **EXHIBIT “E”**

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d which, among other things, prohibits discrimination on the basis of race, color or national origin by recipients of federal financial assistance.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e which, among other things, prohibits discrimination in employment.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 which, among other things, prohibits discrimination on the basis of disability.

49 CFR Part 600 et seq. regulations promulgated by FTA.

49 CFR Parts 21, 23, 25, 26 and 27 regulations promulgated by the Department of Transportation governing Title VI, Minority Business Enterprise (Disadvantaged Business Enterprise/ Women's Business Enterprise), Relocation and Land Acquisition and Nondiscrimination on the basis of disability, respectively.

46 CFR Part 381 regulations promulgated by the Maritime Administration governing cargo preference requirements.

36 CFR Part 800 regulations promulgated by the Advisory Council on Historic Preservation.

31 CFR part 205 regulations promulgated by the Department of the Treasury governing letter of credit.

40 CFR Part 15 regulations promulgated by the Environmental Protection Agency pertaining to administration of clean air and water pollution requirements.

29 CFR Parts 5 and 215 regulations promulgated by the Department of Labor pertaining to construction labor and transit employee protections.

- C. Drug and Alcohol Testing. SUB-RECIPIENT shall have in place, maintain, and implement a plan and a program for compliance with U.S. DOT Drug and Alcohol Regulations, as specified in 49 CFR 40, 49 CFR 653 and 49 CFR 654. Said plan and program shall be modified to incorporate and comply with such other regulations as were adopted in the USDOT and published in the Federal Register as of February 14, 1994 and any subsequent changes thereto.

## **EXHIBIT “F”**

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION**

### **MASTER AGREEMENT**

**For Federal Transit Administration Agreements authorized by  
49 U.S.C. chapter 53, Title 23, United States Code (Highways), the  
Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21),  
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users  
(SAFETEA-LU), as amended by the SAFETEA-LU Technical Corrections Act of 2008,  
or other Federal laws that FTA administers.**

**FTA MA(19)  
October 1, 2012**

<http://www.fta.dot.gov/documents/19-Master.pdf>

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## **EXHIBIT “G”**

### **Required Local Provisions**

1. Transactional Conflicts of Interest. All parties hereto acknowledge that this Agreement is subject to cancellation by either party pursuant to the provisions of A.R.S. Section 38-511.
2. Assignability; Successors and Assigns. This Agreement, and any rights or obligations hereunder, shall not be transferred or assigned by SUB-RECIPIENT without the prior written consent of PHOENIX. Any attempt to assign without such prior written consent shall be void.
3. Employment and Organization Disclaimer. This Agreement is not intended to, and will not, constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind as existing between the parties, and the rights and the obligations of the parties shall be only those expressly set forth herein. Neither party is the agent of the other nor is neither party authorized to act on behalf of the other party. SUB-RECIPIENT shall be liable to PHOENIX for any financial liability arising from any finding to the contrary by any forum of competent jurisdiction.
4. Entire Agreement; Modification (No Oral Modification). This Agreement, and any Exhibits, Attachments, or Schedules attached hereto, constitute the full and complete understanding and agreement of the parties. It supersedes and replaces any and all previous representations, understandings, and agreements, written or oral, relating to its subject matter. There shall be no oral alteration or modification of this Agreement; this Agreement and its terms, may not be modified or changed except in writing signed by both parties.
5. Invalidity of Any Provisions. This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. Such a holding shall result in the offending term or provision being ineffective to the extent of its invalidity or unenforceability without invalidating the remaining terms and provisions hereof; this Agreement shall thereafter be construed as though the invalid or unenforceable term or provision were not contained herein.

## EXHIBIT "F"

6. Compliance with Laws, Permits and Indemnity. SUB-RECIPIENT shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local governments. Further, SUB-RECIPIENT shall be solely responsible for obtaining all approvals and permits necessary to perform the work called for under this Agreement. In addition, SUB-RECIPIENT shall indemnify, defend, save and hold harmless PHOENIX from all loss, cost and damage by reason of any violation of the provisions of this paragraph and from any liability including, but not limited to, fines, penalties and other costs arising therefrom.
7. Applicable Law and Litigation. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona. Any and all litigation between the parties arising from this Agreement shall be litigated solely in the appropriate state court located in Maricopa County, Arizona.
8. Inspection and Audit. The provisions of Section 35-214, Arizona Revised Statutes, shall apply to this Agreement. CITY shall perform the inspection and audit function specified therein.
9. Non-waiver. Should PHOENIX fail or delay in exercising or enforcing any right, power, privilege or remedy under this Agreement such failure or delay shall not be deemed a waiver, release or modification of the requirements of this Agreement or of any of the terms or provisions thereof.
10. Labor Protective Provisions. SUB-RECIPIENT shall fully cooperate with PHOENIX in meeting the legal requirements of the labor protective provisions of Section 5333(b) of Title 49 U.S. Code [formerly Section 13(c) of the Federal Transit Act of 1964, as amended (49 U.S.C. 1609)] and the Labor Agreements and side letters currently in force and certified by the United States Department of Labor. Changes, including changes in service and any other changes that may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 5333(b) protections granted to employees. SUB-RECIPIENT shall defend and indemnify PHOENIX from any and all claims and losses due, or alleged to be due, in whole or in part, to the consequences of changes made by SUB-RECIPIENT, that were not requested by PHOENIX which result in grievances, claims and/or liability.
11. Sudan and Iran. Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, contractor certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 12C

**Date Prepared: February 18, 2014**

**Council Meeting Date: March 4, 2014**

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**TO:** Carl Swenson, City Manager  
**FROM:** Scott Whyte, Economic Development Services Director  
**THROUGH:** Susan J. Daluddung, Deputy City Manager  
**SUBJECT:** Deeds and Easements, Various Locations

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**Purpose:**

This is a request for City Council to adopt a Resolution accepting Deeds and Easements for various Real Property interests acquired by the City. The deeds and easements have been recorded by the Maricopa County Recorder's Office and this process will formally accept them into the system.

**Background/Summary:**

The City of Peoria periodically acquires a number of property interests including deeds, roadway dedications and various types of easements. All documents are reviewed for accuracy and recorded. A Resolution to accept these documents has been prepared, which lists each document by recording number and provides information related to each so the property interest to be accepted can be identified.

**Previous Actions:**

This is an ongoing process which occurs when we have acquired a number of real property interests.

**Options:**

- A: Approve the adoption of the Resolution accepting Deeds and Easements into our system.
- B: Deny adoption of the Resolution that formally accepts the Deeds and Easements into our system, resulting in the City not having an official record of what has been transferred to the City through recordation in the Maricopa County Recorder's office.

**Staff's Recommendation:**

Staff recommends the adoption of a Resolution accepting Deeds and Easements for various Real Property interests acquired by the City and previously recorded by the Maricopa County Recorder's Office to ensure completeness of the process.

**Fiscal Analysis:**

There is no fiscal impact to the City.

**Narrative:**

This Resolution includes Real Property interests acquired since the adoption of the previous acceptance resolution. The acceptance of the Resolution by City Council would bring the deeds and easements into our system and is the final step in the process.

**Exhibit(s):**

**Exhibit 1:** Resolution

**Contact Name and Number:** Rebecca Zook, Deputy Director, EDS, (623) 773-7589

RESOLUTION NO. 2014-24

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA ADOPTING A RESOLUTION FORMALLY ACCEPTING DEEDS AND EASEMENTS FOR PROPERTY RIGHTS CONVEYED TO THE CITY OF PEORIA.

WHEREAS, the real estate interests hereinafter referenced have been conveyed to the City of Peoria;

WHEREAS, it is to the advantage of the City of Peoria to accept said real property interests; and

WHEREAS, the City has determined that acquisition of these property interests is in the interest of the public health, safety and welfare.

NOW THEREFORE, be it resolved by the Mayor and Council of the City of Peoria, Maricopa County, Arizona as follows:

SECTION 1. That the following real property interests are hereby accepted by the City of Peoria and referenced by the recording number issued by the Maricopa County Recorder's Office.

Vistancia Parcel A21/22  
Vistancia 150, LLC.  
EASEMENT FOR PUBLIC SEWER LINE  
Maricopa County Recording No. 2014-0092863  
(Project No. R130058 / Deed 14-006)

Vistancia Boulevard/ Sunrise Point

Vistancia Parcel A21/22  
Vistancia Maintenance Corporation  
EASEMENT FOR PUBLIC SEWER LINE  
Maricopa County Recording No. 2014-0092866  
(Project No. R130058/ Deed 14-007)

Vistancia Boulevard/ Sunrise Point  
West of A21/22

Resolution No. 2014-24  
Acceptance of Deeds and Easements  
March 4, 2014  
Page: 2

SECTION 2. Public Easement and Land Rights

That the Mayor and Council accept the deeds and public easements transferred to the City of Peoria as described herein.

SECTION 3. Recording Authorized

That the City Clerk shall record the original of this Resolution with the Maricopa County Recorder's Office.

PASSED AND ADOPTED by the Mayor and Council of the City of Peoria, Arizona, this 4<sup>th</sup> day of March 2014.

\_\_\_\_\_  
Bob Barrett, Mayor

ATTEST:

\_\_\_\_\_  
Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Stephen M. Kemp, City Attorney

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 13C

Date Prepared: January 22, 2014

Council Meeting Date: March 4, 2014

---

**TO:** Carl Swenson, City Manager

**FROM:** Scott Whyte, Economic Development Services Director

**THROUGH:** Susan J. Daluddung, Deputy City Manager

**SUBJECT:** Map of Dedication, El Mirage Road, Ridgeline Road, and Westward Skies Drive  
(Project No. R130044)

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**Purpose:**

This is a request for City Council to approve a Map of Dedication of El Mirage Road, Ridgeline Road, and Westward Skies Drive and authorize the Mayor and City Clerk to sign and record the Map of Dedication with the Maricopa County Recorder's Office subject to the following stipulations:

1. In the event that the Map of Dedication is not recorded within 60 days of Council approval, the Map of Dedication will become void. The developer may request re-approval from the City, with the understanding that the City has the option of imposing additional requirements or stipulations.

**Background/Summary:**

The purpose of this Map of Dedication is to amend the roadway tracts and right of way widths for El Mirage Road, Ridgeline Road, and Westward Skies Drive, within the Vistancia community. The boundaries of the roadway tracts are being adjusted to allow for entrances to individual parcels. Right of way widths are being updated to reflect the roadway classification.

**Previous Actions:**

The original Map of Dedication was approved by the City and recorded in December 2004.

**Options:**

A: The Map of Dedication has been approved through the Economic Development Services Department. An option would be to not accept the proposed Map of Dedication; although it

should be noted that not approving the Map of Dedication will hinder the adjacent parcels from developing.

B: The other option would be to formally approve the Map of Dedication and allow the adjacent parcels to be developed.

**Staff's Recommendation:**

Staff recommends the approval and subsequent recordation of the attached Map of Dedication.

**Fiscal Analysis:**

There is no direct budgetary impact to the City to approve the Map of Dedication.

**Narrative:**

The acceptance of this Map of Dedication by City Council will allow the developer to move forward in developing this property.

**Exhibit(s):**

**Exhibit 1:** Map of Dedication

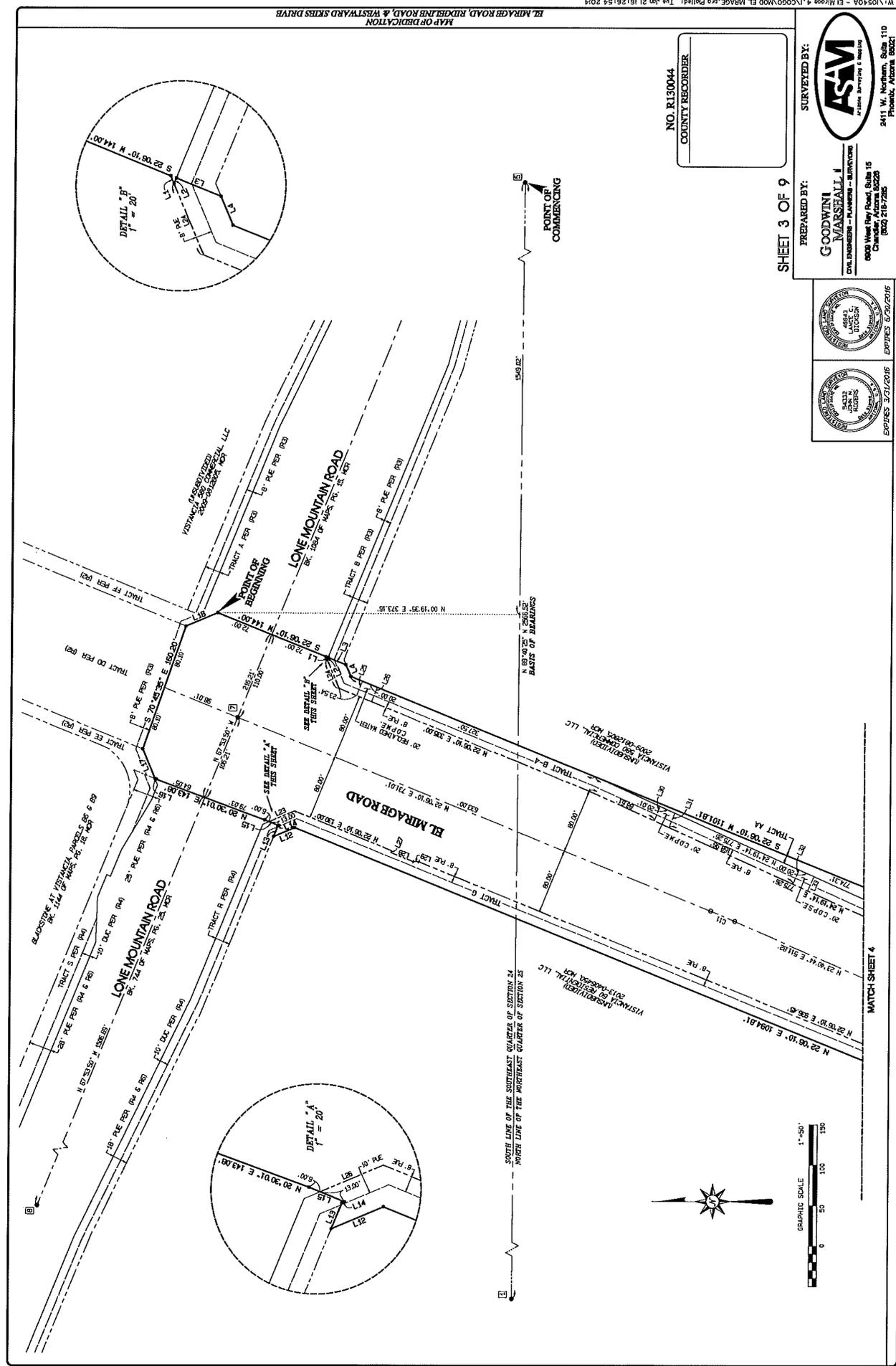
**Exhibit 2:** Vicinity Map

**Contact Name and Number:**

Jodi Breyfogle, PE, CFM: 623-773-7577







MAP OR DATUM  
 EL MIRAGE ROAD, RIDGE LANE ROAD, & WESTWARD SKYS DRIVE  
 11/15/2014 - 11/15/2014 5:10:00 PM EL MIRAGE, PLS PHILIP T. JUN 21 16:26:54 2014

NO. R130044  
 COUNTY RECORDER

SHEET 3 OF 9

SURVEYED BY:  
**ASAM**  
 A-Team Surveying & Mapping  
 2411 W. Northern, Suite 110  
 Phoenix, Arizona 85027  
 (602) 246-8818

PREPARED BY:  
**GOODWIN MARSELL**  
 CIVIL ENGINEER - PLANNING - SURVEYING  
 6800 Westway Road, Suite 15  
 Glendale, AZ 85303  
 (602) 218-7285



SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 24  
 N08°10'00" E 1094.81'

POINT OF COMMENCING  
 1549.02'

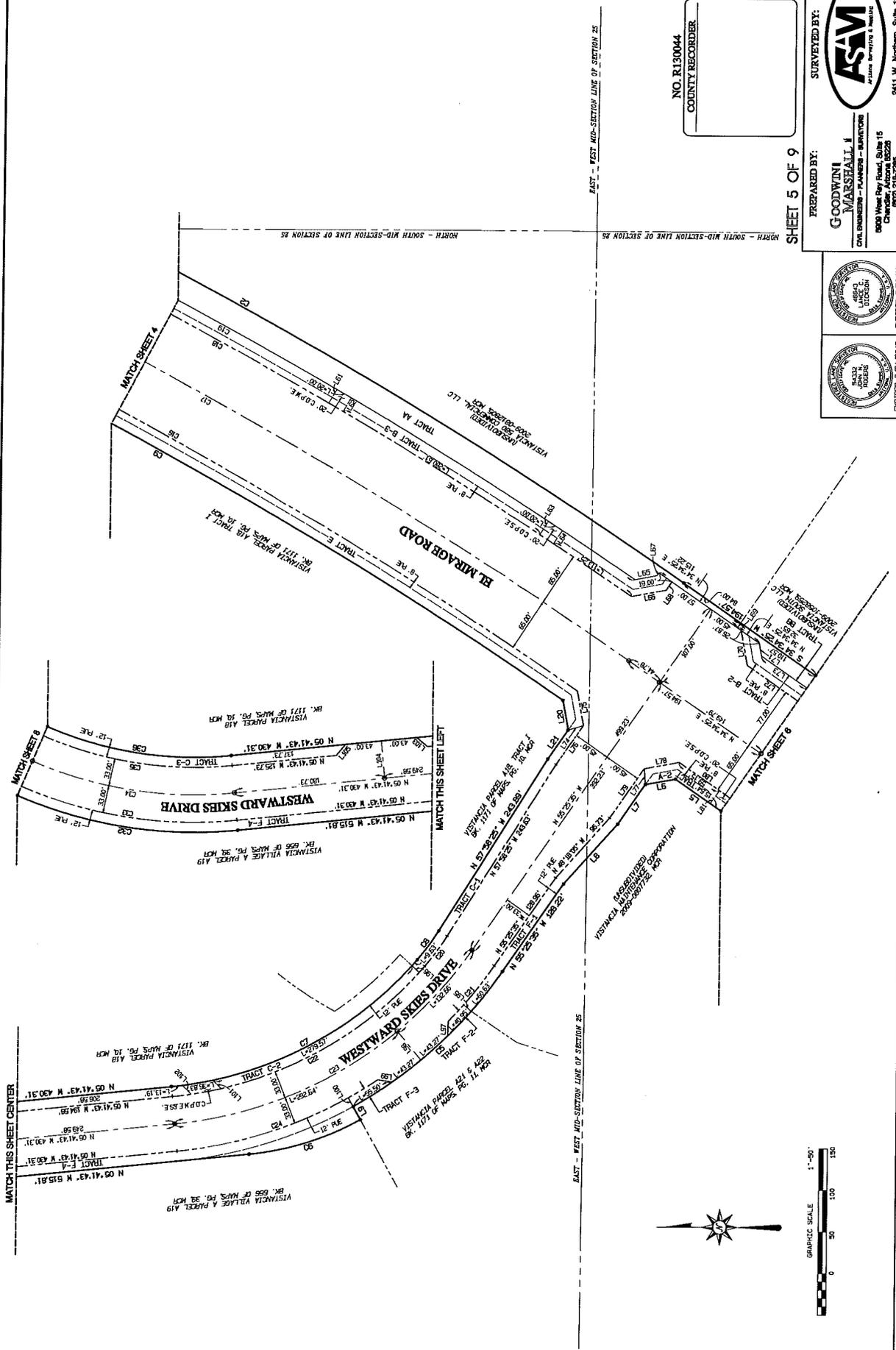
N 03°15'00" E 1549.02'  
 BASIS OF BEARINGS

MATCH SHEET 4



GRAPHIC SCALE  
 1"=50'  
 0 50 100 150





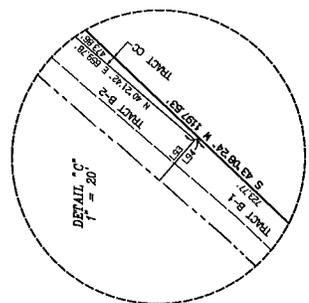
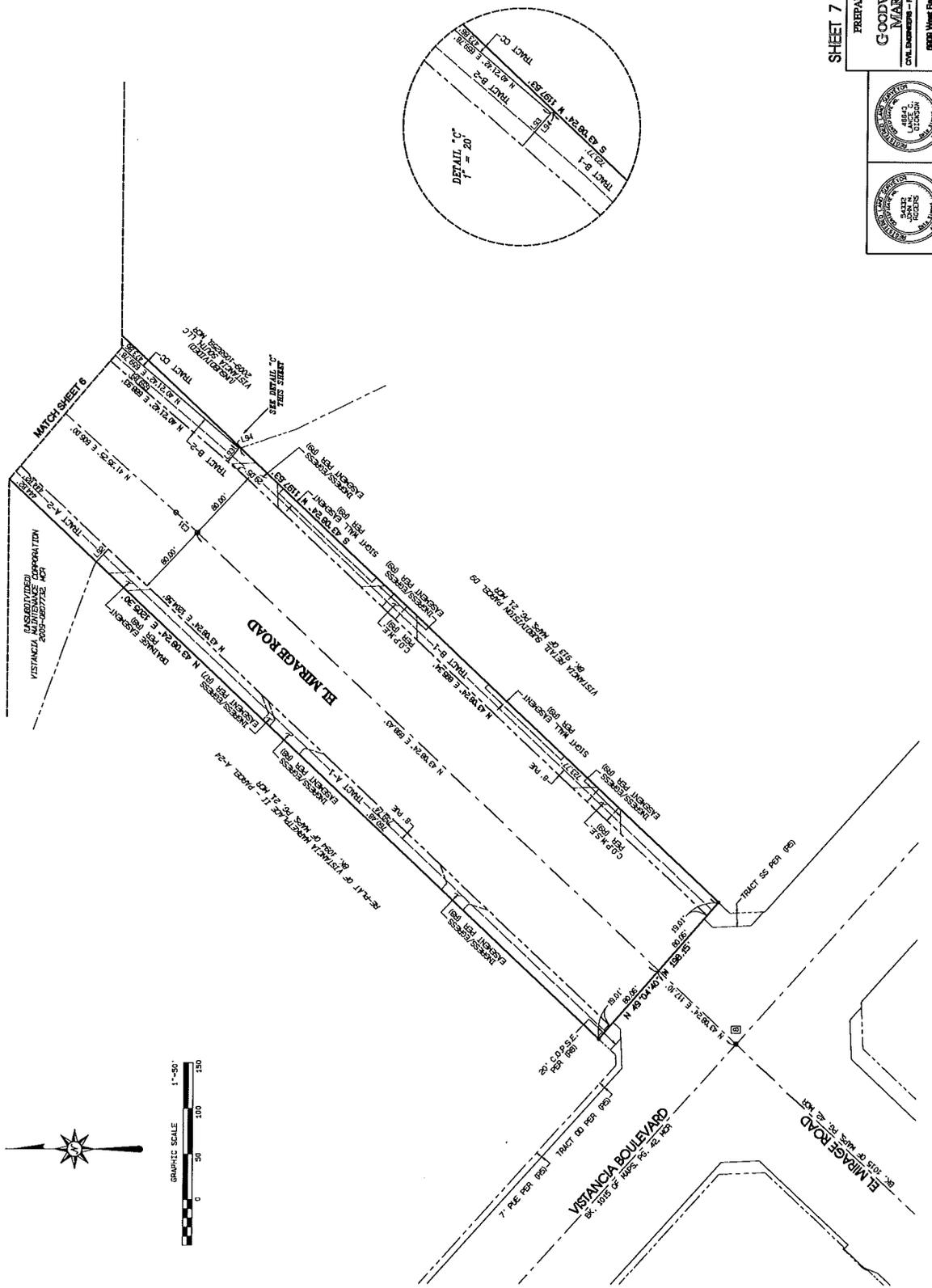
NO. R130044  
 COUNTY RECORDER

SHEET 5 OF 9

PREPARED BY:  
**GOODWIN MARKSHALL & ASSOCIATES**  
 CIVIL ENGINEERS - PLANNERS - SURVEYORS  
 8000 West Ray Road, Suite 15  
 Chandler, Arizona 85226  
 (602) 216-7225  
 FAX: (602) 248-5819







NO. R190044  
COUNTY RECORDER

SHEET 7 OF 9

PREPARED BY:  
**GOODWIN MARSHALL**  
CIVIL ENGINEERS - PLANNERS - SURVEYORS  
600 West Ray Road, Suite 15  
Chandler, Arizona 85226  
(480) 210-0200



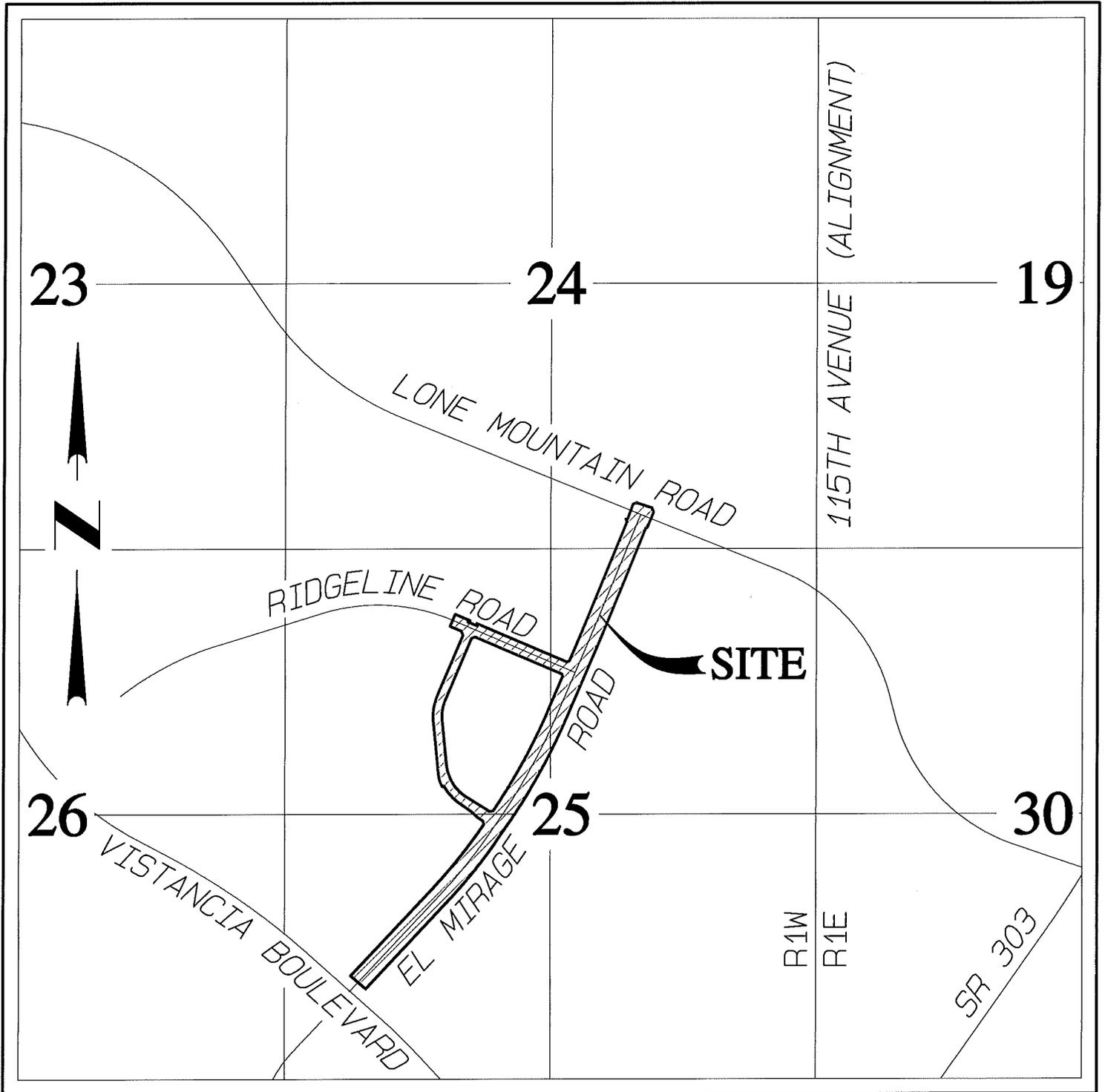
EXPIRES 3/31/2016  
EXPIRES 3/31/2016



2411 W. Northern, Suite 110  
Phoenix, Arizona 85027  
(602) 246-3819







# VICINITY MAP

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 14C

**Date Prepared: January 21, 2014**

**Council Meeting Date: March 4, 2014**

---

**TO:** Carl Swenson, City Manager

**FROM:** Scott Whyte, Economic Development Services Director

**THROUGH:** Susan J. Daluddung, Deputy City Manager

**SUBJECT:** Final Plat, Community Park No. 2, 83<sup>rd</sup> Avenue and Butler Drive (Project No. R130068)

---

**Purpose:**

This is a request for City Council to approve a Final Plat of Community Park No. 2, located on 83<sup>rd</sup> Avenue and Butler Drive, and authorize the Mayor and City Clerk to sign and record the Final Plat with the Maricopa County Recorder's Office subject to the following stipulations:

1. In the event that the Final Plat is not recorded within 60 days of Council approval, the Final Plat will become void. The developer may request re-approval from the City, with the understanding that the City has the option of imposing additional requirements or stipulations.

**Background/Summary:**

The purpose of the Final Plat is to plat a subdivision for municipal use. This development is within the City's water\sewer service area. This final plat creates a total of 2 lots for utility and recreational use. All necessary easements are being dedicated.

**Previous Actions:**

There have been no previous actions.

**Options:**

A: The Final Plat has been approved through the Economic Development Services Department. An option would be to not accept the proposed Final Plat; although it should be noted that not approving the Final Plat will prevent the necessary easements from being dedicated.

B: The other option would be to formally approve the Final Plat and allow the easements to be dedicated.

**Staff's Recommendation:**

Staff recommends the approval and subsequent recordation of the attached Final Plat.

**Fiscal Analysis:**

There is no direct budgetary impact to the City to approve the Final Plat.

**Narrative:**

The acceptance of this Final Plat by City Council will allow the utility and recreational parcels to be created and all necessary easements to be dedicated.

**Exhibit(s):**

**Exhibit 1:** Final Plat

**Exhibit 2:** Vicinity Map

**Contact Name and Number:**

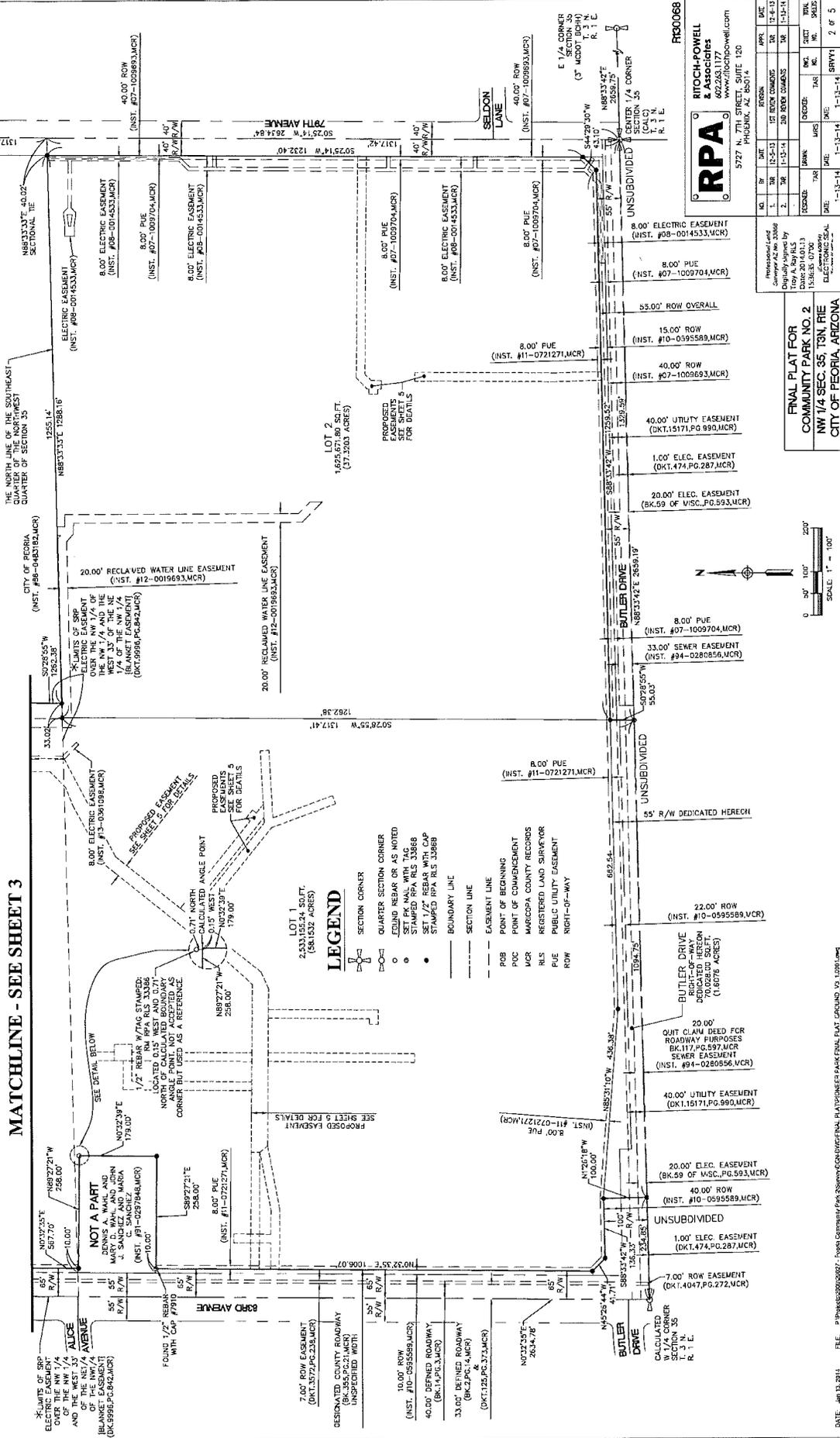
Jodi Breyfogle, PE, CFM: 623-773-7577



# FINAL PLAT FOR "COMMUNITY PARK NO. 2"

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 3 NORTH, RANGE 1  
EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, CITY OF PEORIA, ARIZONA

MATCHLINE - SEE SHEET 3



### LEGEND

- QUARTER SECTION CORNER
- FOUND REBAR OR AS NOTED
- STAMPED RPA RLS 33688
- SET 1/2" REBAR WITH CAP
- STAMPED RPA RLS 33688
- BOUNDARY LINE
- SECTION LINE
- EASEMENT LINE
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- MCR MARICOPA COUNTY RECORDS
- RLS REGISTERED LAND SURVEYOR
- PUE PUBLIC UTILITY EASEMENT
- ROW RIGHT-OF-WAY

**RPA**  
RITCHIE-POWER & Associates  
692.263.1177  
www.ritchiepower.com  
5772 N. THUNDERBOLT DRIVE  
PHOENIX, AZ 85014

NO.	BY	DATE	REASON	MFR.	DATE
1.	SM	12-2-13	1ST REVIEW COMMENTS	SM	12-6-13
2.	SM	1-13-14	2ND REVIEW COMMENTS	SM	1-13-14

Prepared and  
checked by  
Digitally signed by  
Troy A. Bayliss  
DN: cn=Troy A. Bayliss,  
o=Ritchie-Power & Associates,  
ou=Engineering, email=  
troy@ritchiepower.com

**FINAL PLAT FOR  
COMMUNITY PARK NO. 2  
NW 1/4 SEC. 35, T3N, R1E  
CITY OF PEORIA, ARIZONA**



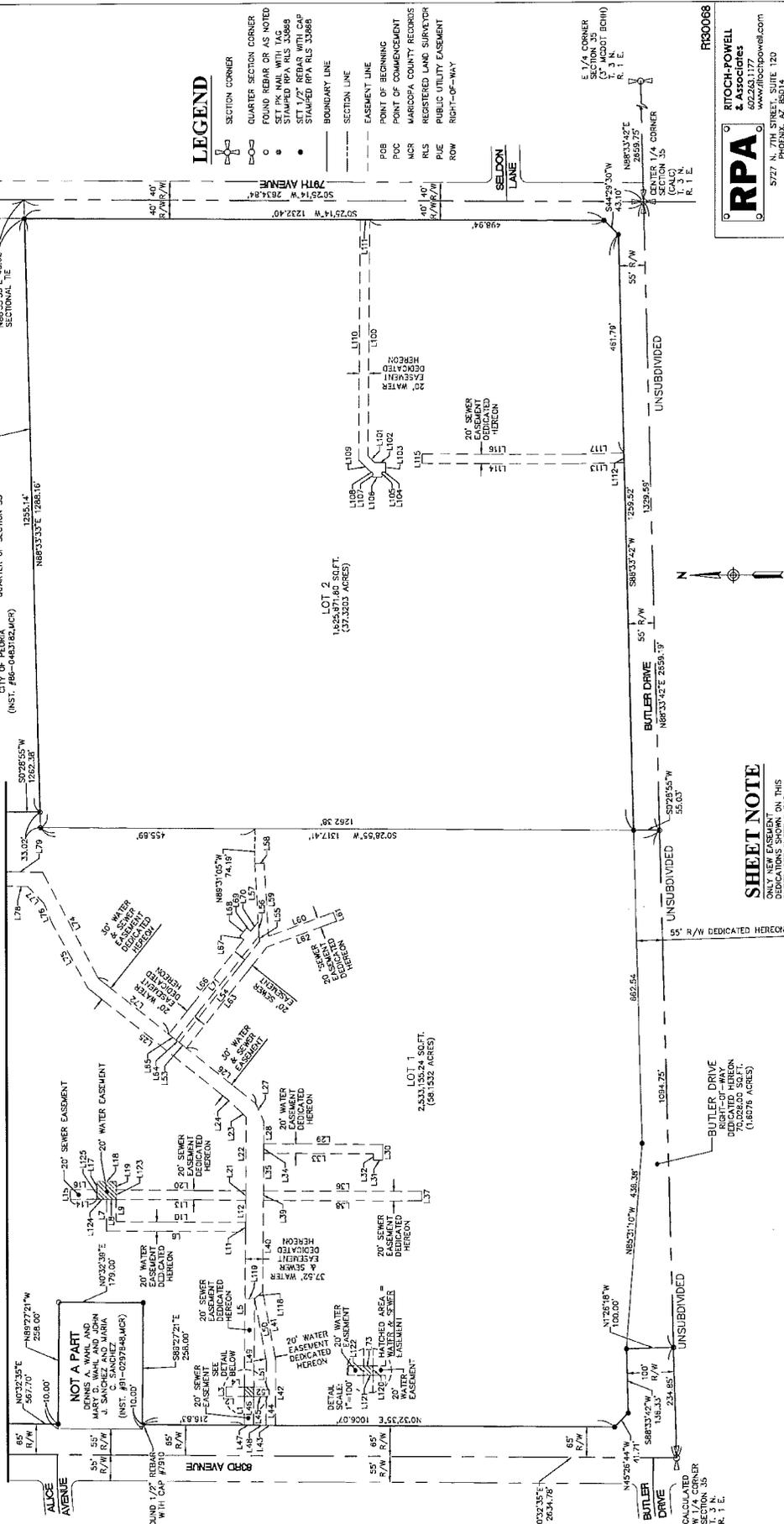




# FINAL PLAT FOR "COMMUNITY PARK NO. 2"

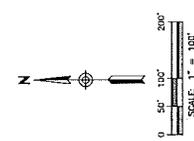
BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 3 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, CITY OF PEORIA, ARIZONA

## MATCHLINE - SEE SHEET 4



**LEGEND**

- SECTION CORNER
- QUARTER SECTION CORNER
- FOUND REBAR OR AS NOTED
- SET PK NAIL WITH TAG
- STAMPED RPA NLS 33869
- SET 1/2" REBAR WITH CAP
- STAMPED RPA NLS 33866
- BOUNDARY LINE
- SECTION LINE
- EASEMENT LINE
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- NCR MARICOPA COUNTY RECORDS
- NLS REGISTERED LAND SURVEYOR
- PIE PUBLIC UTILITY EASEMENT
- ROW RIGHT-OF-WAY



**SHEET NOTE**  
ONLY NEW EASEMENTS ON THIS SHEET. SEE SHEET 2 FOR EXISTING EASEMENTS.

NO.	D	DTE	REVISION	APP.	DNT
1	NR	12-5-13	1ST REVISION	DR	12-6-13
2	NR	1-13-14	2ND REVISION	DR	1-13-14

ISSUED:	DATE:	BY:	CHK:	DATE:	BY:
ISSUED:	1/13/14	DR	DR	1/13/14	DR

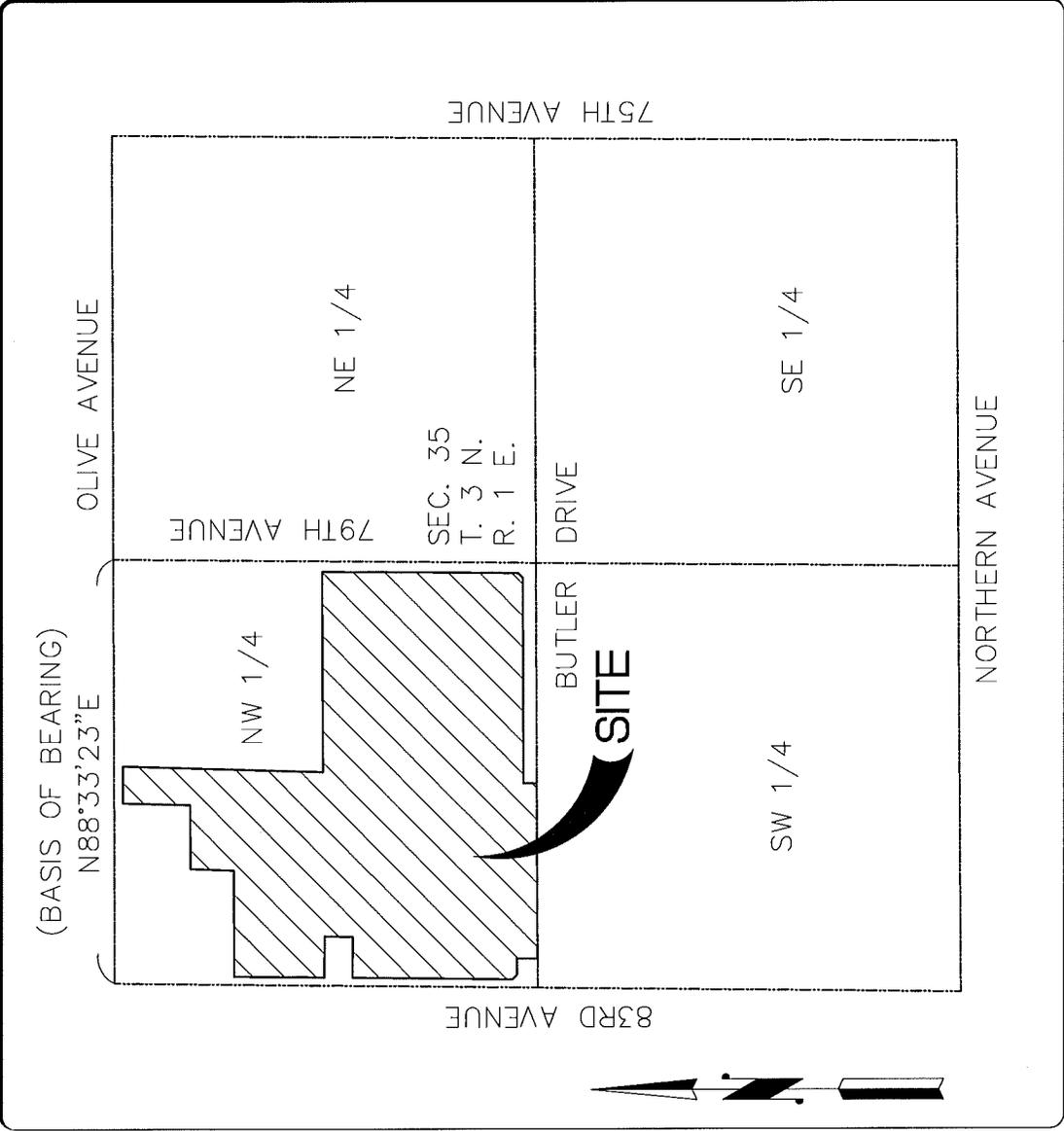
  

NO.	D	DTE	REVISION	APP.	DNT
1	NR	12-5-13	1ST REVISION	DR	12-6-13
2	NR	1-13-14	2ND REVISION	DR	1-13-14

**RPA**  
RITCH-POWELL & Associates  
www.ritchpowell.com  
5727 N. 7TH STREET, SUITE 120  
PHOENIX, AZ 85014

**NEW EASEMENT DEDICATIONS**  
FINAL PLAT FOR  
COMMUNITY PARK NO. 2  
NW 1/4 SEC. 85, T3N, R1E  
CITY OF PEORIA, ARIZONA

DATE: Jan 13, 2014 FILE: P:\Projects\0505\0505 - Peoria Community Park Final Plat\GROUND\_V0\_L001.dwg



# VICINITY MAP

NTS

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 15C

Date Prepared: January 22, 2014

Council Meeting Date: March 4, 2014

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**TO:** Carl Swenson, City Manager

**FROM:** Scott Whyte, Economic Development Services Director

**THROUGH:** Susan J. Daluddung, Deputy City Manager

**SUBJECT:** Final Plat, Vistancia Parcel A16, Lone Mountain Road and El Mirage Road  
(Project No. R130065)

---

**Purpose:**

This is a request for City Council to approve a Final Plat of Vistancia Parcel A16, located on Lone Mountain Road and El Mirage Road, and authorize the Mayor and City Clerk to sign and record the Final Plat with the Maricopa County Recorder's Office subject to the following stipulations:

1. All civil plans must be approved by the City of Peoria (City) prior to recordation of the Final Plat.
2. An approval of design from the City Engineering Department for the necessary improvements in accordance with the City Subdivision Regulations, as determined by the City Engineer, must be obtained prior to recording the Final Plat.
3. The developer must provide a financial assurance in the amount agreed upon by the City Engineer and an Agreement to Install for construction of the infrastructure improvements in accordance with the City Subdivision Regulations, prior to recordation of the Final Plat.
4. In the event that the Final Plat is not recorded within 60 days of Council approval, the Final Plat will become void. The developer may request re-approval from the City, with the understanding that the City has the option of imposing additional requirements or stipulations.

**Background/Summary:**

The purpose of the Final Plat is to plat a subdivision for residential use. This development is within the City's water/sewer service area. This final plat creates a total of 85 new lots within

the Vistancia Community. All internal roadways are private and will be maintained by the Homeowners' Association.

**Previous Actions:**

The preliminary plat was reviewed by the City and completed in August 2013 and no changes were made to the proposed Final Plat.

**Options:**

A: The Final Plat has been approved through the Economic Development Services Department. An option would be to not accept the proposed Final Plat; although it should be noted that not approving the Final Plat will prevent the Developer from developing this land.

B: The other option would be to formally approve the Final Plat and allow this parcel to be developed.

**Staff's Recommendation:**

Staff recommends the approval and subsequent recordation of the attached Final Plat.

**Fiscal Analysis:**

There is no direct budgetary impact to the City to approve the Final Plat.

**Narrative:**

The acceptance of this Final Plat by City Council will allow the developer to move forward in developing this property.

**Exhibit(s):**

**Exhibit 1:** Final Plat

**Exhibit 2:** Vicinity Map

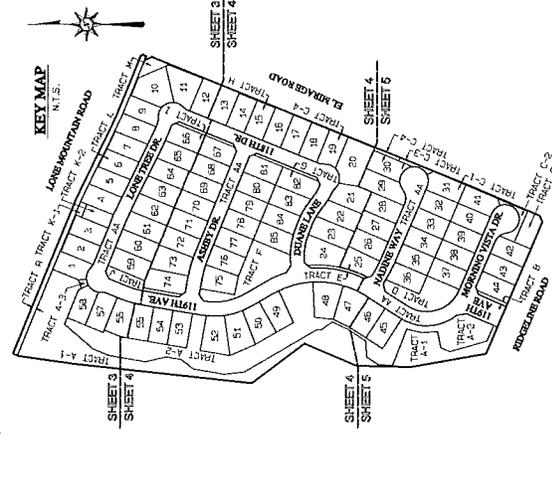
**Contact Name and Number:**

Jodi Breyfogle, PE, CFM: 623-773-7577



**LEGAL DESCRIPTION**

All land contained in, in, or across of, located in a portion of Section 24 and Section 25, Township 3 North, Range 1 West of the City and Salt River Water Conservancy District, Maricopa County, Arizona, and being more completely described as follows: Parcel 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 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971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.



**NOTES**

1. THIS SUBDIVISION IS SUBJECT TO MAINTENANCE IMPROVEMENT DISTRICT PLAN #1584.
2. THE UTILITY LOCATIONS AND DEPTHS ARE AS SHOWN ON THE ATTACHED RECORD DRAWING. THE UTILITY DEPTHS ARE TO BE MAINTAINED AS SHOWN ON THE RECORD DRAWING. THE UTILITY DEPTHS ARE TO BE MAINTAINED AS SHOWN ON THE RECORD DRAWING. THE UTILITY DEPTHS ARE TO BE MAINTAINED AS SHOWN ON THE RECORD DRAWING.
3. ALL NEW AND EXISTING UTILITY ELECTRICAL FACILITIES SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE CITY OF PHOENIX ELECTRICAL CODE AND THE CITY OF PHOENIX ELECTRICAL CODE. THE UTILITY DEPTHS ARE TO BE MAINTAINED AS SHOWN ON THE RECORD DRAWING. THE UTILITY DEPTHS ARE TO BE MAINTAINED AS SHOWN ON THE RECORD DRAWING. THE UTILITY DEPTHS ARE TO BE MAINTAINED AS SHOWN ON THE RECORD DRAWING.
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6. THE SUBDIVISION IS LOCATED WITHIN THE CITY OF PHOENIX SEWER SERVICE AREA AND HAS BEEN DESIGNATED AS WITHIN A 100-YEAR ASSIGNED WATER SERVICE AREA.
7. THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF PHOENIX WATER SERVICE AREA AND HAS BEEN DESIGNATED AS WITHIN A 100-YEAR ASSIGNED WATER SERVICE AREA.
8. THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF PHOENIX SEWER SERVICE AREA AND HAS BEEN DESIGNATED AS WITHIN A 100-YEAR ASSIGNED WATER SERVICE AREA.
9. THIS SUBDIVISION IS LOCATED WITHIN THE VICINITY OF A DESIGNATED TRUCK ROUTE OF THE CITY OF PHOENIX.
10. THIS SUBDIVISION IS LOCATED WITHIN THE VICINITY OF A DESIGNATED TRUCK ROUTE OF THE CITY OF PHOENIX.
11. THIS SUBDIVISION IS LOCATED WITHIN THE VICINITY OF A ROAD GRABBY TRAVEL CORRIDOR.
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14. THIS SUBDIVISION HAS A FENCED LEVEL OF STREET LIGHTING. ANY FENCED LEVEL OF STREET LIGHTING WILL BE AT THE EXPENSE OF THE BUYING PARTY AND NOT AT CITY EXPENSE.
15. THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF PHOENIX SEWER SERVICE AREA AND HAS BEEN DESIGNATED AS WITHIN A 100-YEAR ASSIGNED WATER SERVICE AREA.

**LAND USAGE LEGEND**

- A-1 200' X 200' L.S., O.S., P.U.E.
- A-2 100' X 200' L.S., O.S., P.U.E.
- A-3 75' X 200' L.S., O.S., P.U.E.
- C-1 375' X 150' L.S., O.S., P.U.E.
- C-2 375' X 150' L.S., O.S., P.U.E.
- D 100' X 200' L.S., O.S., P.U.E.
- F 200' X 100' L.S., O.S., P.U.E.
- G 200' X 100' L.S., O.S., P.U.E.
- I 200' X 100' L.S., O.S., P.U.E.
- K-1 100' X 200' L.S., O.S., P.U.E.
- K-2 100' X 200' L.S., O.S., P.U.E.
- M 400' X 100' L.S., O.S., P.U.E.
- W 200' X 100' L.S., O.S., P.U.E.
- Z/A 200' X 100' L.S., O.S., P.U.E.

**MAINTENANCE LEGEND**

- H.O.A. HOMEOWNERS ASSOCIATION
- V.M.C. VASTACIA MAINTENANCE CORPORATION

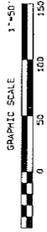
**LOT SUMMARY TABLE**

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**LOT SUMMARY TABLE**

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FINAL PLAT OF VISTANCA VILLAGE A, PARCEL A16

10:05:44 - VISTANCA VILLAGE A - PARCEL A16 PLAT #16 FINAL - FILED 17 13 19 14 2018

COUNTY RECORDER

R130065  
SHEET 4 OF 5

PREPARED BY:

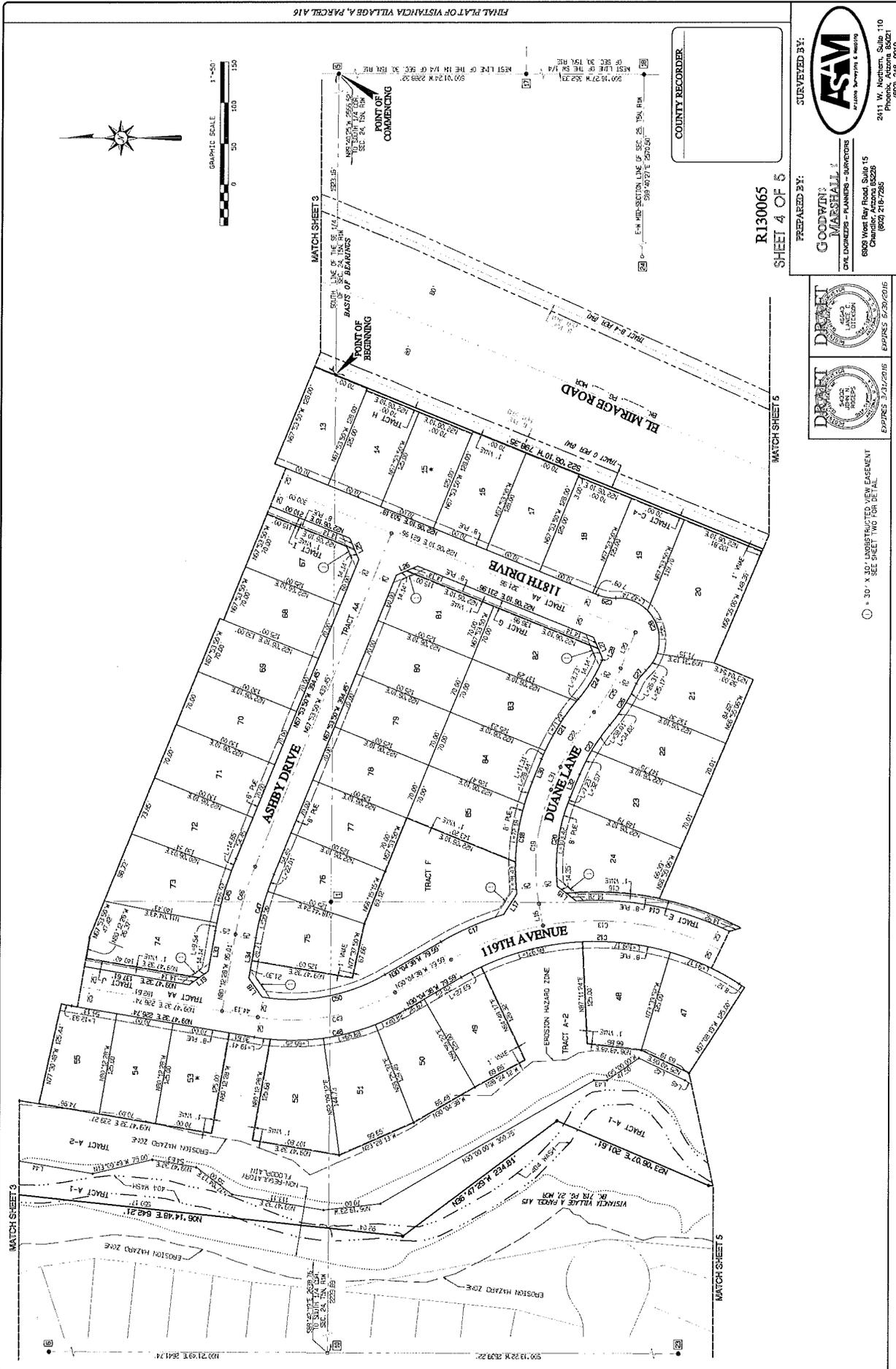
GOODWIN MARSHALL  
CIVIL ENGINEERS - PLANNERS - SURVEYORS  
6805 West Bay Road, Suite 15  
Chandler, Arizona 85226  
(602) 4787250

ASAM  
Arizona Surveyors & Mappers

2411 W. Northern, Suite 110  
Phoenix, Arizona 85021  
(602) 248-9818



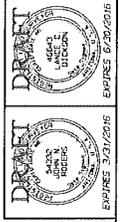
1" = 30' X 30' UNSTRUCTURED VIEW EASEMENT  
SEE SHEET TWO FOR DETAIL



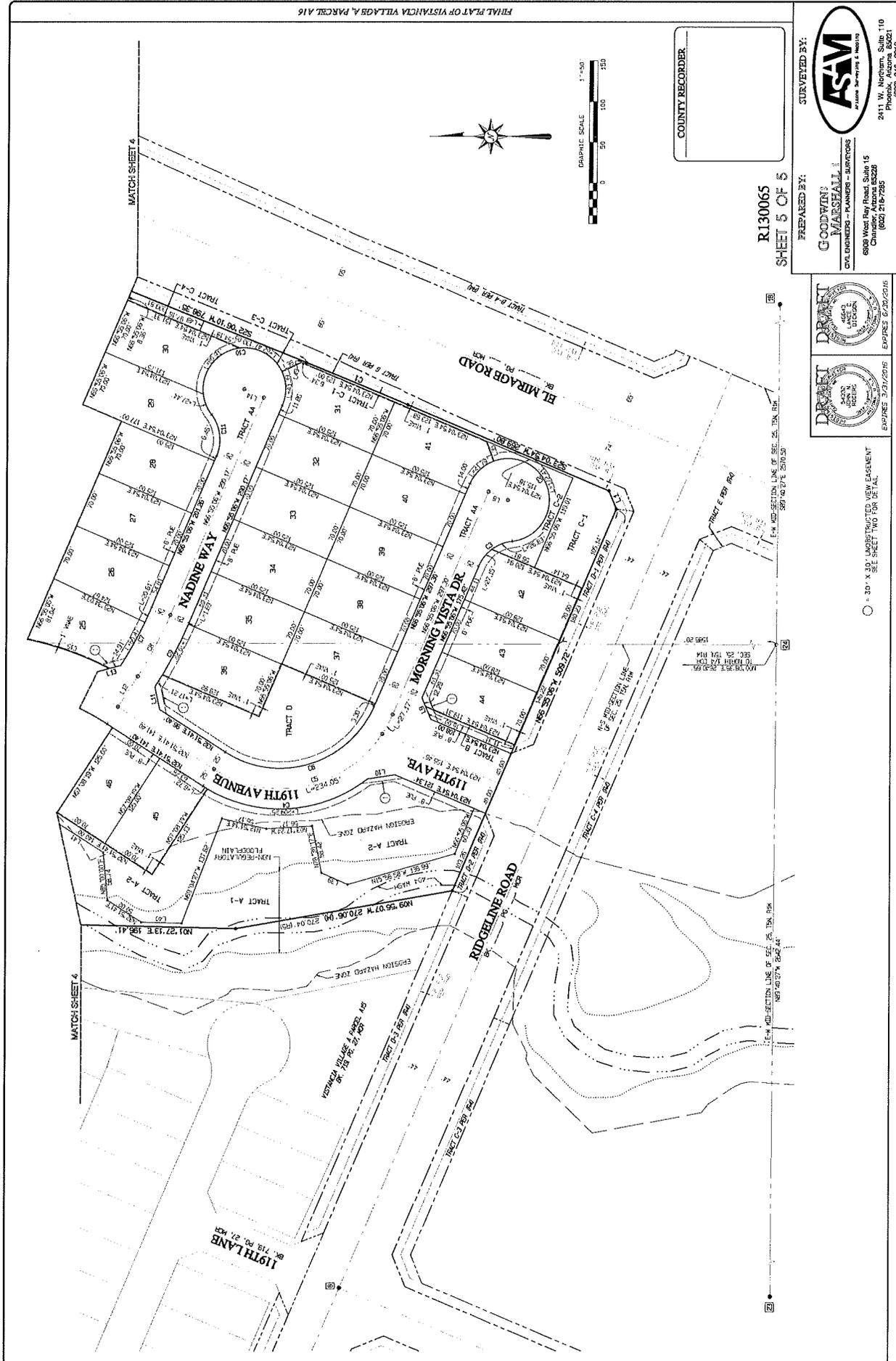
COUNTY RECORDER

R130065  
SHEET 5 OF 5

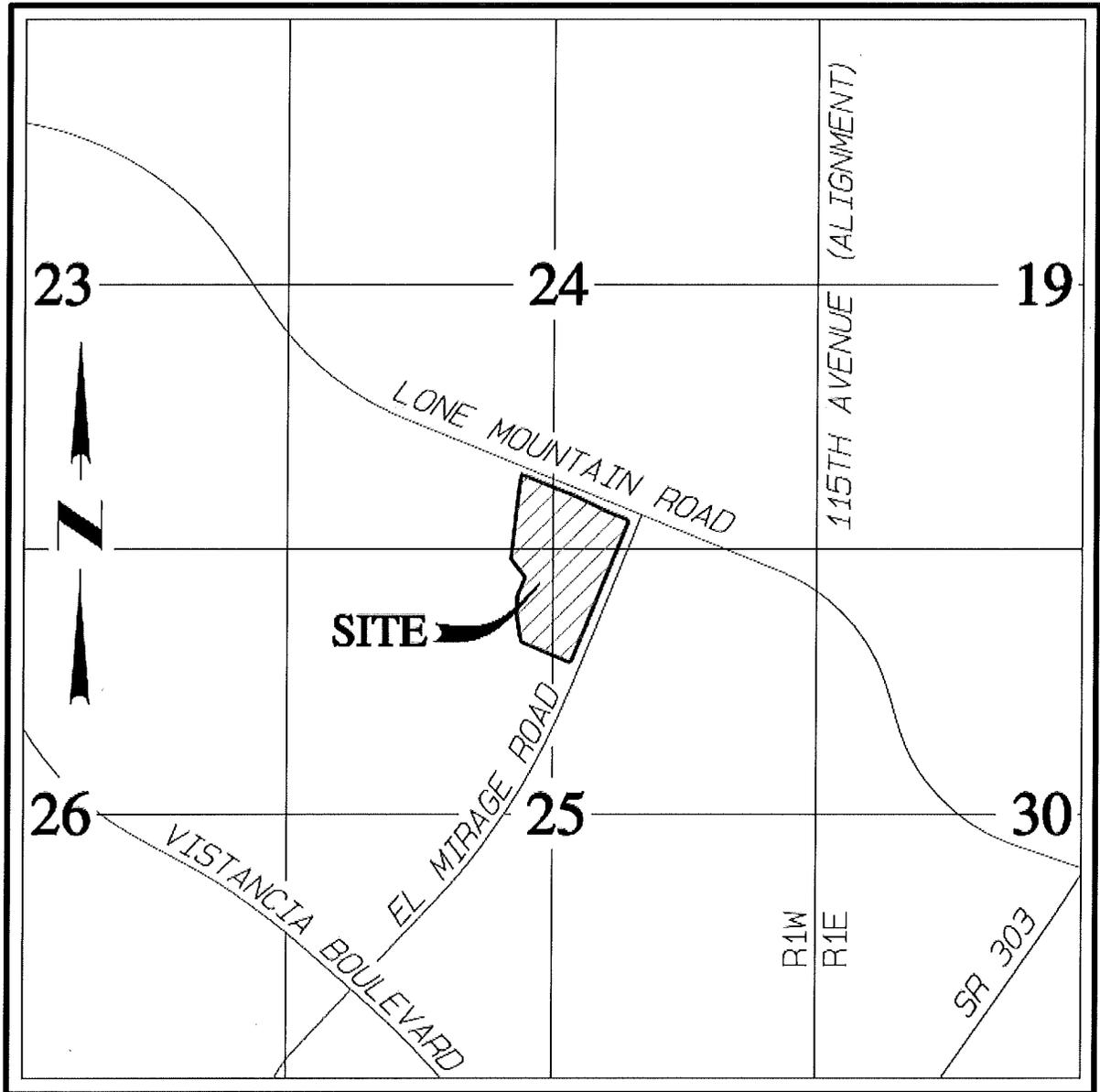
SURVEYED BY:  
**GOODWIN MARSHALL**  
 CIVIL ENGINEER - PLANNERS - SURVEYORS  
 6808 West Ray Road, Suite 15  
 Chandler, Arizona 85226  
 (602) 218-2300  
 (602) 248-9818



○ = 30' X 30' UNOBTAINED VIEW EASEMENT  
 SEE SHEET TWO FOR DETAIL



# Vistancia Parcel A-16



## VICINITY MAP

N.T.S

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 16R

**Date Prepared: February 18, 2014**

**Council Meeting Date: March 04, 2014**

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**TO:** Carl Swenson, City Manager

**FROM:** Brent Mattingly, Finance Director

**THROUGH:** Jeff Tyne, Deputy City Manager

**SUBJECT:** Public Hearing: Proposed Recommendations by the City to the Arizona State Liquor Board for Various Liquor Licenses.

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**Purpose:**

Pursuant to Arizona Law the City must recommend to the State Liquor Board for approval, applications to sell alcoholic beverages in the City. The Standard for the recommendation is whether the best interest of the community will be served by the issuance of these licenses and whether the public convenience is served.

**Background/Summary:**

Joseph Fradi, Agent for Shell Food Mart, has applied for a New Wine and Beer Liquor License (Series 10) located at 9102 W. Peoria Avenue.

Maria D. Andrade, Agent for Café Maria's, has applied for a New Restaurant Liquor License (Series 12) located at 13560 N. 94<sup>th</sup> Drive Suite N.

The public hearing notices were posted for at least 20 days, and no comments were received during the posting period. The license applications were reviewed according to State law and all Departments gave approvals.

**Previous Actions:**

In June 2006, the Mayor and Council recommended approval to the Arizona State Liquor Board for ARCO AM/PM for a New Wine and Beer Liquor License (Series 10) located at 9102 W. Peoria Avenue.

There has never been a Liquor License at 13560 N. 94<sup>th</sup> Drive Suite N.

**Options:**

**A:** Recommend approval to the Arizona State Liquor Board for a New Wine and Beer Liquor License (Series 10) for Shell Food Mart, located at 9102 W. Peoria Avenue, Joseph Fradi, Applicant, LL#20009767.

Recommend approval to the Arizona State Liquor Board for a New Restaurant Liquor License (Series 12) for Café Maria's, located at 13560 N. 94<sup>th</sup> Drive Suite N, Maria D Andrade, Applicant, LL#20009768.

**B:** Recommend denial to the Arizona State Liquor Board for a New Wine and Beer Liquor License (Series 10) for Shell Food Mart, located at 9102 W. Peoria Avenue, Joseph Fradi, Applicant, LL#20009767.

Recommend denial to the Arizona State Liquor Board for a New Restaurant Liquor License (Series 12) for Café Maria's, located at 13560 N. 94<sup>th</sup> Drive Suite N, Maria D Andrade, Applicant, LL#20009768.

**Staff's Recommendation:**

That the Mayor and Council recommend approval to the Arizona State Liquor Board for a New Wine and Beer Liquor License (Series 10) for Shell Food Mart, located at 9102 W. Peoria Avenue, Joseph Fradi, Applicant, LL#20009767.

That the Mayor and Council recommend approval to the Arizona State Liquor Board for a New Restaurant Liquor License (Series 12) for Café Maria's, located at 13560 N. 94<sup>th</sup> Drive Suite N, Maria D Andrade, Applicant, LL#20009768.

**Fiscal Analysis:**

The item has no financial implications.

**Narrative:**

The appropriate fees have been paid and the applicants have been advised that a representative needs to be present at the meeting to answer any questions that the Council or public may have.

**Exhibit 1:** New Liquor License Application.

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

14 JAN 19 11 17 AM '17

**APPLICATION FOR LIQUOR LICENSE**  
 TYPE OR PRINT WITH BLACK INK

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

**SECTION 1** This application is for a:

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

**SECTION 2** Type of ownership:

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

**SECTION 3** Type of license and fees LICENSE #(s): 10076483

1. Type of License(s): Beer & Wine Series 10

2. Total fees attached:

Department Use Only  
 \$ 200.00

**APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.**

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

**SECTION 4** Applicant

1. Owner/Agent's Name:  Mr. Fradi Joseph  
(Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: Peoria Fuel LLC B1051528  
(Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: Shell Food Mart B1008232  
(Exactly as it appears on the exterior of premises)
4. Principal Street Location 9102 W Peoria Ave Peoria Maricopa 85345  
(Do not use PO Box Number) City County Zip
5. Business Phone: 480-310-8542 Daytime Phone: 480-310-8542 Email: peoriafuel@gmail.com
6. Is the business located within the incorporated limits of the above city or town?  YES  NO
7. Mailing Address: 1201 E Northern Ave, Phoenix Arizona 85020  
City State Zip
8. Price paid for license only bar, beer and wine, or liquor store: Type \_\_\_\_\_ \$ \_\_\_\_\_ Type \_\_\_\_\_ \$ \_\_\_\_\_

**DEPARTMENT USE ONLY**

Fees: 100.00 100.00 \_\_\_\_\_  
 Application Interim Permit Site Inspection Finger Prints \$ 200.00  
 TOTAL OF ALL FEES

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete?  YES  NO

Accepted by [Redacted] Date: 1.7.14 Lic. # 10076483

**SECTION 5 Interim Permit:**

1. If you intend to operate business when your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. 10075245
4. Is the license currently in use?  YES  NO If no, how long has it been out of use? 5/2/13

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

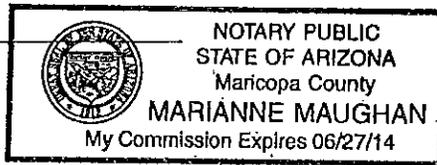
I, Russell Scaramella declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER, MEMBER, STOCKHOLDER, OR LICENSEE (circle the title which applies) of the stated license and location.

X   
(Signature)

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this

My commission expires on: \_\_\_\_\_



15 day of NOV, 2013  
Day Month Year

  
(Signature of NOTARY PUBLIC)

**SECTION 6 Individual or Partnership Owners:**

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

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City State Zip

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

General-Limited	Last	First	Middle	% Owned	Mailing Address	City State Zip
<input type="checkbox"/>						
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) Y R A S S E C E N F I

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

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

STATE OF ARIZONA

DEPARTMENT OF LIQUOR LICENSES  
**BEER AND WINE STORE**  
ALCOHOLIC BEVERAGE LICENSE

License 10075245

Issue Date: 10/3/2006

Expiration Date: 12/31/2013

Beer & Wine Store

Issued To:  
RUSSELL GENE SCARAMELLA, Agent  
PEORIA OIL LLC, Owner

Mailing Address:

RUSSELL GENE SCARAMELLA  
PEORIA OIL LLC  
ARCO AM/PM  
6441 E CROCUS DR  
SCOTTSDALE, AZ 85254

Location:  
ARCO AM/PM  
9102 W PEORIA AVE  
PEORIA, AZ 85345

**EXP 10/3/2006**  **12/31/2013**

POST THIS LICENSE IN A CONSPICUOUS PLACE

**SECTION 7 Corporation/Limited Liability Co.:**

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

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

1. Name of Corporation/L.L.C.: Peoria Fuel LLC  
 (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 11/18/2013 State where Incorporated/Organized: Arizona
3. AZ Corporation Commission File No.: L-1886585-1 Date authorized to do business in AZ: 11/18/2013
4. AZ L.L.C. File No.: L-1886585-1 Date authorized to do business in AZ: 11/18/2013
5. Is Corp./L.L.C. Non-profit?  YES  NO
6. List all directors, officers and members in Corporation/L.L.C.:

Last	First	Middle	Title	Mailing Address	City State Zip
Fradi	Joseph		Member	[REDACTED]	[REDACTED]

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

Last	First	Middle	% Owned	Mailing Address	City State Zip
Fradi	Joseph		100	[REDACTED]	[REDACTED]

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

**SECTION 8 Club Applicants:**

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

1. Name of Club: \_\_\_\_\_ Date Chartered: \_\_\_\_\_  
 (Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)
2. Is club non-profit?  YES  NO
3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

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

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

1. Governmental Entity: \_\_\_\_\_
2. Person/designee: \_\_\_\_\_  
Last First Middle Contact Phone Number

14 JAN 7 11:18 AM '18

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

**SECTION 11 Person to Person Transfer:**

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

1. Current Licensee's Name: \_\_\_\_\_ Entity: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
2. Corporation/L.L.C. Name: \_\_\_\_\_  
(Exactly as it appears on license)
3. Current Business Name: \_\_\_\_\_  
(Exactly as it appears on license)
4. Physical Street Location of Business: Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_
5. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
6. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
7. Current Mailing Address: Street \_\_\_\_\_  
(Other than business) City, State, Zip \_\_\_\_\_
8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer?  YES  NO
9. Does the applicant intend to operate the business while this application is pending?  YES  NO If yes, complete Section 5 of this application, attach fee, and current license to this application.

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

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

\_\_\_\_\_  
(Signature of CURRENT LICENSEE)

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this

\_\_\_\_\_  
Day Month Year

My commission expires on: \_\_\_\_\_

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

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

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

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

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

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

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

1. Distance to nearest school: 2620 ft. Name of school Peoria Accelerated High School  
Address 8885 W Peoria ave, Peoria AZ 85345  
City, State, Zip \_\_\_\_\_

2. Distance to nearest church: 2645 ft. Name of church Generation Life Church  
Address 9210 W Peoria Ave, Peoria AZ 85345  
City, State, Zip \_\_\_\_\_

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

4. If the premises is leased give lessors: Name National Retail Properties  
Address 450 S Orange Ave, Suite 900, Orlando Florida, 32801  
City, State, Zip \_\_\_\_\_

4a. Monthly rental/lease rate \$ 5,500 What is the remaining length of the lease 20 yrs. 0 mos.

4b. What is the penalty if the lease is not fulfilled? \$ 5,500 or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)

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

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip
None						

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? Gas Station & Convenience Store

**SECTION 13 - continued**

7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?  
 YES  NO If yes, attach explanation.

8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business?  YES  NO

9. Is the premises currently licensed with a liquor license?  YES  NO If yes, give license number and licensee's name:

License # 10075245 (exactly as it appears on license) Name Russell Gene Scaramella

**SECTION 14 Restaurant or hotel/motel license applicants:**

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

\_\_\_\_\_ and license #: \_\_\_\_\_  
Last First Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; Consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.

3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.

4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this  hotel/motel  restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

\_\_\_\_\_  
applicant's signature

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

\_\_\_\_\_  
applicants initials

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

1. Check ALL boxes that apply to your business:

- Entrances/Exits       Liquor storage areas      Patio:  Contiguous
- Service windows       Drive-in windows       Non Contiguous

2. Is your licensed premises currently closed due to construction, renovation, or redesign?  YES  NO  
If yes, what is your estimated opening date? \_\_\_\_\_

month/day/year

3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.

4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spirituous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).

5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

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

\_\_\_\_\_  
applicants initials

14 JAN 7 10:41 AM '11

**SECTION 15 Diagram of Premises**

4. In this diagram please show only the area where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, bar stools, hi-top tables, dining tables, dining chairs, the kitchen, dance floor, stage, and game room. Do not include parking lots, living quarters, etc. When completing diagram, North is up ↑.

If a legible copy of a rendering or drawing of your diagram of premises is attached to this application, please write the words "diagram attached" in box provided below.

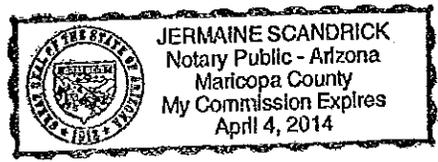
Diagram Attached

14 JAN 7 11P. LIC. RM 2118

**SECTION 16 Signature Block**

I, Joseph Fradi, hereby declare that I am the OWNER/AGENT filing this application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X [Redacted Signature]  
(signature of applicant listed in Section 4, Question 1)

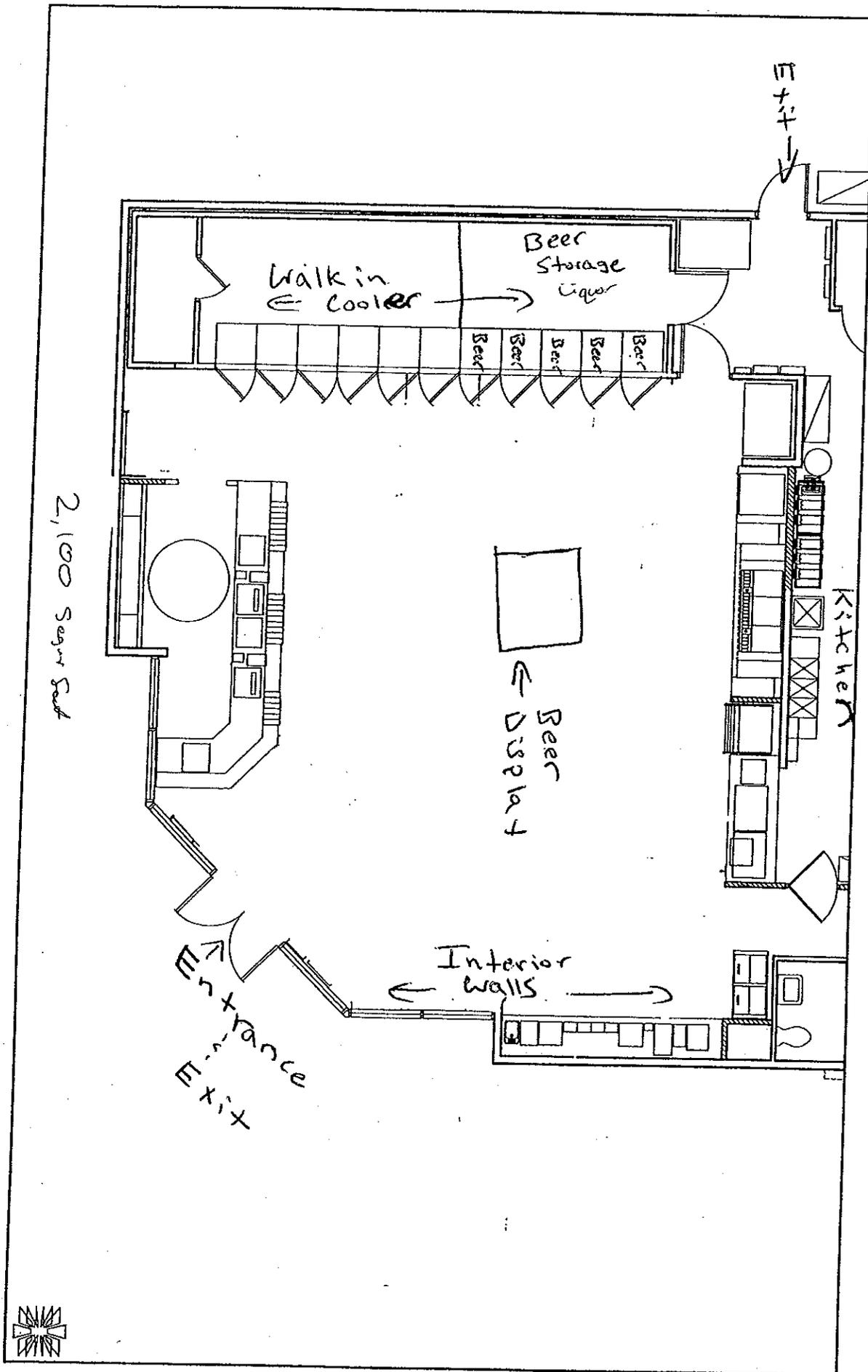


State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this 7th of Jan 2014  
Day of Month Year

[Redacted Signature]  
signature of NOTARY PUBLIC

My commission expires on: 4th Apr 2014  
Day Month Year



14 JAN 7 1994 Lic. RW 218

2,100 Sq ft



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

**APPLICATION FOR LIQUOR LICENSE**  
 TYPE OR PRINT WITH BLACK INK

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

**SECTION 1** This application is for a:

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

**SECTION 2** Type of ownership:

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

12079776 Lic. Dept. Form 14

**SECTION 3** Type of license and fees LICENSE #(s): #12

1. Type of License(s): Beer & Wine

2. Total fees attached: \$ 185.00

Department Use Only
\$ 185.00

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

**SECTION 4** Applicant

- 1. Owner/Agent's Name:  Mr. Andrade Maria Dolores  
(Insert one name ONLY to appear on license) Last First Middle
- 2. Corp./Partnership/L.L.C.: Cafe Marias L.L.C. B1051524  
(Exactly as it appears on Articles of Inc. or Articles of Org.)
- 3. Business Name: Cafe Marias B1051525  
(Exactly as it appears on the exterior of premises)
- 4. Principal Street Location 13500 N. 94th DR. STE N Peoria Maricopa 85381  
(Do not use PO Box Number) City County Zip
- 5. Business Phone: 602.974.4702 Daytime Phone: [REDACTED] Email: N/A
- 6. Is the business located within the incorporated limits of the above city or town?  YES  NO
- 7. Mailing Address: 13500 N. 94th DR. Peoria AZ 85381  
City State Zip
- 8. Price paid for license only bar, beer and wine, or liquor store: Type \_\_\_\_\_ \$ \_\_\_\_\_ Type \_\_\_\_\_ \$ \_\_\_\_\_

**DEPARTMENT USE ONLY**

Fees: <u>\$100.00</u>	<u>      </u>	<u>\$50.00</u>	<u>\$35.00</u>	<u>\$ 185.00</u>
Application	Interim Permit	Site Inspection	Finger Prints	TOTAL OF ALL FEES

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete?  YES  NO

Accepted by: [REDACTED] Date: 1/7/14 Lic. # 12079776

**SECTION 5 Interim Permit:**

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

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

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

X \_\_\_\_\_ State of \_\_\_\_\_ County of \_\_\_\_\_  
 (Signature) The foregoing instrument was acknowledged before me this  
 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ Year  
 My commission expires on: \_\_\_\_\_  
 \_\_\_\_\_  
 (Signature of NOTARY PUBLIC)

14 JAN 7 11:47 AM '14

**SECTION 6 Individual or Partnership Owners:**

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

**1. Individual:**

Last	First	Middle	% Owned	Mailing Address	City State Zip

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

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

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

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

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

**SECTION 7 Corporation/Limited Liability Co.:**

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

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

1. Name of Corporation/L.L.C.: Comp MARIAS LLC  
 (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 6-24-13 State where Incorporated/Organized: 6-27-13
3. AZ Corporation Commission File No.: \_\_\_\_\_ Date authorized to do business in AZ: \_\_\_\_\_
4. AZ L.L.C. File No: 218557328 Date authorized to do business in AZ: 6-27-13
5. Is Corp./L.L.C. Non-profit?  YES  NO
6. List all directors, officers and members in Corporation/L.L.C.:

Last	First	Middle	Title	Mailing Address	City State Zip
Andrade	MARIA	Dolores	member	13560 N 94 DR SW	Peoria AZ 85381

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

Last	First	Middle	% Owned	Mailing Address	City State Zip
Andrade	MARIA	Dolores	100	13560 N 94 DR SW	Peoria AZ 85381

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

**SECTION 8 Club Applicants:**

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

1. Name of Club: \_\_\_\_\_ Date Chartered: \_\_\_\_\_  
 (Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)
2. Is club non-profit?  YES  NO
3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

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

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

1. Governmental Entity: \_\_\_\_\_
2. Person/designee: \_\_\_\_\_  
Last First Middle Contact Phone Number

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

**SECTION 11 Person to Person Transfer:**

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

1. Current Licensee's Name: \_\_\_\_\_ Entity: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
2. Corporation/L.L.C. Name: \_\_\_\_\_  
(Exactly as it appears on license)
3. Current Business Name: \_\_\_\_\_  
(Exactly as it appears on license)
4. Physical Street Location of Business: Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_
5. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
6. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
7. Current Mailing Address: Street \_\_\_\_\_  
(Other than business) City, State, Zip \_\_\_\_\_
8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer?  YES  NO
9. Does the applicant intend to operate the business while this application is pending?  YES  NO If yes, complete Section 5 of this application, attach fee, and current license to this application.

14 JAN 7 LIQR. DEPT. RM1214

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

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

\_\_\_\_\_  
(Signature of CURRENT LICENSEE)

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this

\_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_

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

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

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

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

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

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

7-14-2011 7 Licq. Dept

1. Distance to nearest school: 0.3mi ft. Name of school Montessori Kingdom of Learning  
Address 13111 N. 94th DR. Peoria AZ 85381  
City, State, Zip
2. Distance to nearest church: 0.9mi ft. Name of church Phoenix Free Presbyterian Church  
Address 8925 W. Larkspur dr. Peoria AZ 85381  
City, State, Zip
3. I am the:  Lessee  Sublessee  Owner  Purchaser (of premises)
4. If the premises is leased give lessors: Name Plaza Companies  
Address 9401 W Thunderbird Rd. Peoria AZ 85381  
City, State, Zip
- 4a. Monthly rental/lease rate \$ 2,262.79 What is the remaining length of the lease 4 yrs. 6 mos.
- 4b. What is the penalty if the lease is not fulfilled? \$ 0 or other \_\_\_\_\_  
(give details - attach additional sheet if necessary)
5. What is the total **business** indebtedness for this license/location excluding the lease? \$ 0  
Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

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

**SECTION 13 - continued**

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

**SECTION 14 Restaurant or hotel/motel license applicants:**

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

\_\_\_\_\_ and license #: \_\_\_\_\_  
Last First Middle

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

\_\_\_\_\_  
 applicant's signature

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

\_\_\_\_\_  
 applicants initials

4 JAN 7 10 49 AM '14

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

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

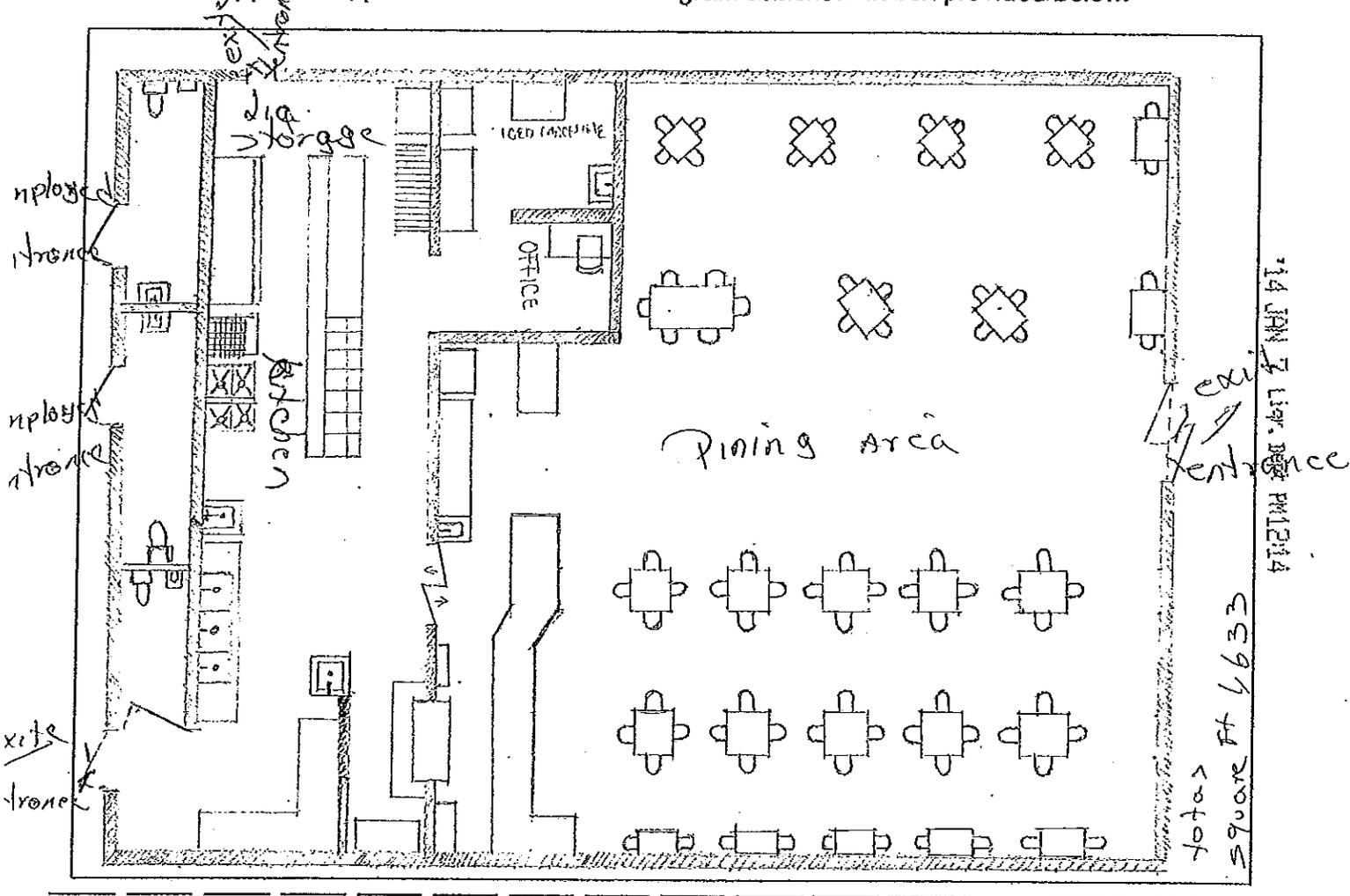
As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows, or increase or decrease to the square footage after submitting this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

\_\_\_\_\_  
 applicants initials

**SECTION 15 Diagram of Premises**

4. In this diagram please show only the area where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, bar stools, hi-top tables, dining tables, dining chairs, the kitchen, dance floor, stage, and game room. Do not include parking lots, living quarters, etc. When completing diagram, North is up ↑.

If a legible copy of a rendering or drawing of your diagram of premises is attached to this application, please write the words "diagram attached" in box provided below.



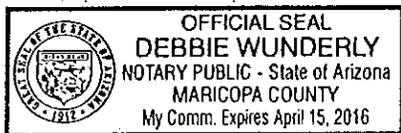
**SECTION 16 Signature Block**

I, MARIA Dolores Andrade, hereby declare that I am the OWNER/AGENT filing this  
(print full name of applicant)

application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X [Redacted Signature]  
(signature of applicant listed in Section 4, Question 1)

State of ARIZONA County of MARICOPA



The foregoing instrument was acknowledged before me this

7 of January, 2014  
Day Month Year

My commission expires on : \_\_\_\_\_  
Day Month Year

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

Agenda Item: 17R

**Date Prepared: 02/12/14**

**Council Meeting Date: 03/04/14**

---

**TO: City Council**

**FROM: Bob Barrett, Mayor**

**SUBJECT: Council Subcommittee Appointments**

---

**Purpose:**

This is a request for Council to consent to the appointments which I have made to the city council subcommittees.

**Background/Summary:**

The City Council has adopted a policy creating Council Subcommittees. Pursuant to this policy, the mayor is to select city council members for appointments to each committee. After the Mayor selects the members of each subcommittee, the selections are submitted to the Council for their consent.

In accordance with the adopted council policy, I have asked each council member to submit their requests for assignment to the subcommittees. I have received these requests.

Attached are four resolutions one for each of the subcommittees with the respective appointments. Should an appointment not be consented to, it will be deleted from the resolution and will be filled in a subsequent meeting.

**Previous Actions:**

The City Council reduced the number of subcommittees from six to four and consolidated four previous subcommittees on March 6, 2012.

The City Council adopted Council Policy 1-10 on September 20, 2011.

The City Council discussed Council Subcommittees at a study session on June 14, 2011. Staff sent a packet of information to Council on August 3<sup>rd</sup> with alternatives. Council met in study sessions on August 23<sup>rd</sup>, September 6<sup>th</sup> and September 13<sup>th</sup> to discuss the policy and work through the issues.

**Options:**

**A:** Determine whether to consent to the appointments by the Mayor to City Council Subcommittees.

**Exhibits:**

**Exhibit 1:** Resolution on Appointments to the City Council Subcommittee on Community Culture and Public Safety.

**Exhibit 2:** Resolution on Appointments to the City Council Subcommittee on Sustainable Development and Public Services.

**Exhibit 3:** Resolution on Appointments to the City Council Subcommittee on Policy and Appointments.

**Exhibit 4:** Resolution on Appointments to the City Council Subcommittee on General Government.

**Contact Name and Number:**

Bob Barrett, 623-773-7368

RESOLUTION No. 2014-25

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, CONSENTING TO THE APPOINTMENTS TO THE CITY OF PEORIA, ARIZONA CITY COUNCIL SUBCOMMITTEE ON COMMUNITY CULTURE AND PUBLIC SAFETY AND ESTABLISHING THE TERM OF OFFICE.

WHEREAS, the City Council has adopted a policy establishing City Council Subcommittees and one of the Subcommittees is the Subcommittee on Community Culture and Public Safety. The terms of appointees shall commence from the effective date of this Resolution and shall expire on the first council meeting in January 2015; and

WHEREAS, the Mayor has reviewed the requests of Council members seeking appointment to City Council Subcommittees and pursuant to the adopted City Council Policy on Council Subcommittees, the Mayor has submitted the following appointments for the Council's consent.

City Council Subcommittee on Community Culture and Public Safety.

Councilmember Ron Aames  
Councilmember Jon Edwards  
Councilmember Tony Rivero

WHEREAS, pursuant to the adopted City Council Policy on City Council Subcommittees, the Mayor and City Council of the City of Peoria shall consent to the appointments by the Mayor to a City Council Subcommittee, the Mayor and Council by adopting this resolution are consenting to the above appointments as members of the City of Peoria, Arizona, City Council Subcommittee on Community Culture and Public Safety.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Peoria, Arizona that they consent to the appointment by the Mayor of Peoria,

Resolution No. 2014-25  
March 4, 2014  
Page 2 of 2

Arizona of the following members of the City Council Subcommittee on Community Culture and Public Safety:

City Council Subcommittee on Community Culture and Public Safety.

Councilmember Ron Aames  
Councilmember Jon Edwards  
Councilmember Tony Rivero

PASSED AND ADOPTED by the Mayor and City Council of the City of Peoria, Arizona this 4<sup>th</sup> day of March, 2014.

---

Bob Barrett, Mayor

ATTEST:

---

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

---

Stephen M. Kemp, City Attorney

RESOLUTION No. 2014-26

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, CONSENTING TO THE APPOINTMENTS TO THE CITY OF PEORIA, ARIZONA CITY COUNCIL SUBCOMMITTEE ON GENERAL GOVERNMENT AND ESTABLISHING THE TERM OF OFFICE.

WHEREAS, the City Council has adopted a policy establishing City Council Subcommittees and one of the Subcommittees is the Subcommittee on General Government. The terms of appointees shall commence from the effective date of this Resolution and shall expire on the first council meeting in January 2015; and

WHEREAS, the Mayor has reviewed the requests of Council members seeking appointment to City Council Subcommittees and pursuant to the adopted City Council Policy on Council Subcommittees, the Mayor has submitted the following appointments for the Council's consent.

City Council Subcommittee on General Government.

Councilmember Ron Aames  
Councilmember Carlo Leone  
Councilmember Bill Patena

WHEREAS, pursuant to the adopted City Council Policy on City Council Subcommittees, the Mayor and City Council of the City of Peoria shall consent to the appointments by the Mayor to a City Council Subcommittee, the Mayor and Council by adopting this resolution are consenting to the above appointments as members of the City of Peoria, Arizona, City Council Subcommittee on General Government.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Peoria, Arizona that they consent to the appointment by the Mayor of Peoria, Arizona of the following members of the City Council Subcommittee on General Government:

Resolution No. 2014-26  
March 4, 2014  
Page 2 of 2

City Council Subcommittee on General Government.

Councilmember Ron Aames  
Councilmember Carlo Leone  
Councilmember Bill Patena

PASSED AND ADOPTED by the Mayor and City Council of the City of Peoria,  
Arizona this 4<sup>th</sup> day of March, 2014.

---

Bob Barrett, Mayor

ATTEST:

---

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

---

Stephen M. Kemp, City Attorney

RESOLUTION No. 2014-27

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, CONSENTING TO THE APPOINTMENTS TO THE CITY OF PEORIA, ARIZONA CITY COUNCIL SUBCOMMITTEE ON POLICY AND APPOINTMENTS AND ESTABLISHING THE TERM OF OFFICE.

WHEREAS, the City Council has adopted a policy establishing City Council Subcommittees and one of the Subcommittees is the Subcommittee on Policy and Appointments. The terms of appointees shall commence from the effective date of this Resolution and shall expire on the first council meeting in January 2015; and

WHEREAS, the Mayor has reviewed the requests of Council members seeking appointment to City Council Subcommittees and pursuant to the adopted City Council Policy on Council Subcommittees, the Mayor has submitted the following appointments for the Council's consent.

City Council Subcommittee on Policy and Appointments.

Councilmember Cathy Carlat  
Councilmember Jon Edwards  
Councilmember Bill Patena

WHEREAS, pursuant to the adopted City Council Policy on City Council Subcommittees, the Mayor and City Council of the City of Peoria shall consent to the appointments by the Mayor to a City Council Subcommittee, the Mayor and Council by adopting this resolution are consenting to the above appointments as members of the City of Peoria, Arizona, City Council Subcommittee on Policy and Appointments.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Peoria, Arizona that they consent to the appointment by the Mayor of Peoria, Arizona of the following members of the City Council Subcommittee on Policy and Appointments:

Resolution No. 2014-27  
March 4, 2014  
Page 2 of 2

City Council Subcommittee on Policy and Appointments.

Councilmember Cathy Carlat  
Councilmember Jon Edwards  
Councilmember Bill Patena

PASSED AND ADOPTED by the Mayor and City Council of the City of Peoria,  
Arizona this 4<sup>th</sup> day of March, 2014.

---

Bob Barrett, Mayor

ATTEST:

---

Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

---

Stephen M. Kemp, City Attorney

RESOLUTION No. 2014-28

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PEORIA, MARICOPA COUNTY, ARIZONA, CONSENTING TO THE APPOINTMENTS TO THE CITY OF PEORIA, ARIZONA CITY COUNCIL SUBCOMMITTEE ON SUSTAINABLE DEVELOPMENT AND PUBLIC SERVICES AND ESTABLISHING THE TERM OF OFFICE.

WHEREAS, the City Council has adopted a policy establishing City Council Subcommittees and one of the Subcommittees is the Subcommittee on Sustainable Development and Public Services. The terms of appointees shall commence from the effective date of this Resolution and shall expire on the first council meeting in January 2015; and

WHEREAS, the Mayor has reviewed the requests of Council members seeking appointment to City Council Subcommittees and pursuant to the adopted City Council Policy on Council Subcommittees, the Mayor has submitted the following appointments for the Council's consent.

City Council Subcommittee on Sustainable Development and Public Services.

Councilmember Cathy Carlat  
Councilmember Carlo Leone  
Councilmember Tony Rivero

WHEREAS, pursuant to the adopted City Council Policy on City Council Subcommittees, the Mayor and City Council of the City of Peoria shall consent to the appointments by the Mayor to a City Council Subcommittee, the Mayor and Council by adopting this resolution are consenting to the above appointments as members of the City of Peoria, Arizona, City Council Subcommittee on Sustainable Development and Public Services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the

Resolution No. 2014-28  
March 4, 2014  
Page 2 of 2

City of Peoria, Arizona that they consent to the appointment by the Mayor of Peoria, Arizona of the following members of the City Council Subcommittee on Sustainable Development and Public Services:

City Council Subcommittee on Sustainable Development and Public Services.

Councilmember Cathy Carlat  
Councilmember Carlo Leone  
Councilmember Tony Rivero

PASSED AND ADOPTED by the Mayor and City Council of the City of Peoria, Arizona this 4<sup>th</sup> day of March, 2014.

---

Bob Barrett, Mayor

ATTEST:

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Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

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Stephen M. Kemp, City Attorney

Date Prepared: February 18, 2014

Council Meeting Date: March 4, 2014

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**TO:** Carl Swenson, City Manager

**FROM:** Scott Whyte, Economic Development Services Director

**THROUGH:** Susan J. Daluddung, Deputy City Manager

**SUBJECT:** Development Agreement and Amended Ground Lease with The Avenue Shoppes at P83

---

**Purpose:**

This is a request for the City Council to authorize the City Manager to execute a Development Agreement (DA) and amended Ground Lease between the City and The Avenue Shoppes at P83. Both the Development Agreement and Amended Ground Lease will be effective for one year from the date of approval.

**Background/Summary:**

The Avenue Shoppes at P83 (previously referred to as the PSP Project) has a Ground Lease and Memorandum of Understanding (MOU) with the City of Peoria, providing the framework to explore a redevelopment opportunity next to the Sports Complex, and to negotiate a public/private partnership for the financing, acquisition, development and operation of a mixed-use redevelopment project. The MOU established a path forward for the City and The Avenue Shoppes at P83 in terms of the steps required to be completed in moving the project forward. Such steps contained in the MOU include:

- Council approval of the MOU (effective 10/29/12)
- Council approval of the Ground Lease (1/22/13)
- Submittal of a Project Proposal by The Avenue Shoppes at P83 (1<sup>st</sup> Proposal dated May 1, 2013)
- Completion of an Economic Analysis of the Project Proposal (6/25/13 Study Session. The Study Session resulted in The Avenue Shoppes at P83 being required to submit a revised proposal by 9/30/13)
- Submittal of The Avenue Shoppes at P83 New Project Proposal (received 9/30/13)
- Staff provided an update at the 12/10/13 Study Session concerning the economic and financial analysis for The Avenue Shoppes at P83 revised project proposal dated 9/30/13. The consensus from the City Council resulting from that presentation was to move forward with a Development Agreement and Amend the Ground Lease.

**Development Agreement Terms:**

- The term of the DA is for one year from the date of Council approval;
- The DA will automatically terminate at the end of the one year term;
- The city has the sole and exclusive option to extend the term of the DA upon satisfactory performance by the developer of the following performance requirements:
  - The Avenue Shoppes at P83 shall enter into a partnership with a national or regional retail developer who has the demonstrated experience, expertise and tenant relationships with the tenant mix necessary for the success of the project. The City shall have approval rights to the retail development partner proposed by The Avenue Shoppes at P83 as part of this joint venture partnership;
  - The Avenue Shoppes at P83 shall secure executed, contingent leases, with the only contingency being the construction of the parking garages, from restaurant, retail and entertainment tenants identified in the approved Tenant Mix Matrix documents (see Exhibit 1) representing 80% of the retail, restaurant and entertainment space available pursuant to the final Preferred Site Plan (see Exhibit 2);
  - The Avenue Shoppes at P83 shall secure 100% of the equity financing needed for the construction of the project as evidenced in a written, non-contingent commitment to invest from a bona fide investment entity;
  - The Avenue Shoppes at P83 shall secure 100% of the debt financing needed for the construction of the project as evidenced by an unconditional written commitment to lend from a bona fide construction lender;
  - City has approval rights for the selection of the anchor tenants for the project. For anchor tenants contained in the attached Tenant Mix Matrix documents, no further City approvals are necessary. For anchor tenants not contained in the attached Tenant Mix Matrix documents, the City will have 30 calendar days from the date a written Request for Anchor Tenant Approval is received from The Avenue Shoppes at P83 to approve or deny the proposed anchor tenant(s). Failure of the city to act within 30 calendar days equates to city approval of the proposed anchor tenant(s);
  - No digital billboards along the Loop 101 Freeway will be a part of this project until such time as the city sign code allows such billboards along the 101 Freeway; and
  - The Avenue Shoppes at P83 shall submit to the city construction and operating pro forma documents evidencing final project construction cost estimates and clearly demonstrating that the debt and equity financing secured is sufficient to fund the construction of the project.

**Hotel Provisions:**

The Avenue Shoppes at P83 must deliver a hotel with the following characteristics:

- Full service hotel not limited service
- 10,000 square feet of conference/convention space
- On-site, full service restaurant for food and beverage, room service, and banquet services
- Roof top bar and lounge
- 5 stories in height
- 140 rooms with full service room amenities
- A pool
- Full gym
- Distinctive architecture, materials, finishes, fixtures, furnishings and equipment
- Functionally integrated into the retail and dining component of the project
- Guest laundry

### **Understanding of the Parties**

Should The Avenue Shoppes at P83 satisfy the abovementioned performance stipulations to the city's satisfaction, the Development Agreement and Ground Lease shall be amended to extend the term of both documents to the full 99 year term as contained in the existing Ground Lease document. Additionally, the city shall pursue the construction of the parking garage facilities as described in the Development Agreement.

### **Ground Lease Revisions:**

- Extend the term for one year equivalent to the one year term of the DA
- Contains Government Property Lease Excise Tax (GPLET) provision with legal protections to the city and enumeration of the limitations on representations from the city on GPLET applicability.

### **Previous Actions:**

Following is a list of previous Council actions on this project:

- The City Council approved an Exclusive Negotiating Agreement (ENA) between the City and Osage West, LLC on March 22, 2011
- A request to extend the ENA for another year was approved by the City Council on February 8, 2012
- A Memorandum of Understanding (MOU) was approved by City Council with The Avenue Shoppes at P83 on October 23, 2012
- A Ground Lease was approved by City Council on January 22, 2013
- City Council approved the Ernst and Young consultant contract on April 9, 2013
- On June 25, 2013 a Council study session was held on the results of EY's review of The Avenue Shoppes at P83 initial project proposal
- On December 10, 2013 staff provided an update on the financial analysis for The Avenue Shoppes at P83 revised project proposal dated September 30, 2013

**Options:**

**A: Approve the request to extend the Ground Lease for another year and Authorize the City Manager to sign the Development Agreement.** This action will enable the next phase of due diligence on the proposed redevelopment project.

**B: Reject the request to extend the Ground Lease and execute a Development Agreement.** This action would result in the termination of the Project.

**Staff's Recommendation:**

Authorize the City Manager to execute the Ground Lease Amendment and the Parking Facilities and Development Agreement with The Avenue Shoppes at P83.

**Fiscal Analysis:**

There is no fiscal consideration at this time.

**Exhibit 1:** Tenant Mix Matrix Documents (2)

**Exhibit 2:** Preferred Site Plan

**Exhibit 3:** Ground Lease Amendment

**Exhibit 4:** Parking Facilities and Development Agreement

**Exhibit 5:** Rent Exhibit for Ground Lease

**Exhibit 6:** Alter Group Letter of Support

## Exhibit 1



30 December 2013

Mr. Michael Oliver  
Peoria Sports Park, LLC

Via email to: [REDACTED]

Mike:

Pursuant to our conversation, below is a preliminary list of “Target Tenants” for the Avenue Shoppes at P83. Please note that this list is our initial Target list. It does not include all potential Tenants that we will contact for the property, and it in no way is a Guaranty that we will be able to bring any or all of these Tenants to the Avenue Shoppes, although a few have already expressed initial interest, pending the outcome of the Development Agreement and Developers’ procurement of Financing.

Should you have any questions regarding these Target Tenants, please reach out to me so we can discuss them in greater detail. Thank you again for the opportunity to be a part of the team working on The Avenue Shoppes. We are excited to continue forward in making your vision a reality.

Respectfully,

[REDACTED]

Larry Miller, Jr.  
Senior Associate – Velocity Retail Group  
Direct: 602-682-8145  
Cell: [REDACTED]  
Email: [larry.miller@velocityretail.com](mailto:larry.miller@velocityretail.com)

Cc: MO, File.

Attachments: Target Tenant List



**The Avenue Shoppes at P83 Target Tenant List**

<b><u>PROPOSED "ANCHOR" TENANTS (15,000 SF OR LARGER)</u></b>	
AMERICAN GIRL	J. CREW
CHARMING CHARLIE	LIMITED BRANDS - LIMITED
COPENHAGEN IMPORTS/DENMARKET	PGA SUPERSTORE
CRATE & BARREL	POTTERY BARN/POTTERY BARN KIDS
DAVE & BUSTER'S	R.E.I.
ESPN ZONE	URBAN OUTFITTERS
H&M (HENNES & MAURITZ)	WEST ELM
HOUSE OF BLUES	WILLIAMS SONOMA
iPic THEATERS	Z GALLERIE
<b><u>PROPOSED "SHOP" TENANTS (SMALLER THAN 15,000 SF)</u></b>	
ABERCROMBIE & FITCH	INDUSTRIAL RIDESHOP
ALLEN EDMOND'S SHOE CORP.	J. JILL STORE, THE
AMERICAN EAGLE OUTFITTERS	JOE'S JEANS
AEROPOSTALE	JOS. A. BANK CLOTHIERS
ANCHOR BLUE	JUICY COUTURE
ANN KLEIN	JUST SPORTS
ANN TAYLOR STORES	KITCHEN COLLECTION
ANNE FONTAINE	LE GOURMET CHEF
APRICOT LANE Home furnishings	LIDS
ATHLETA	LIMITED BRANDS- BATH & BODY WORKS
AVEDA LIFESTYLE STORES	LIMITED BRANDS -JUSTICE
BABY BLOOMERS	LIMITED BRANDS – VICTORIA'S SECRET
BANANA REPUBLIC	LIZ CLAIBORNE
BARDOLINO	LUCKY BRAND DUNGAREES INC.
BCBG MAX AZRIA	LUCY SPORTSWEAR



BEBE STORES INC.	LULULEMON ATHLETICA
BEN BRIDGE JEWELER	MICROSOFT
BETSEY JOHNSON	NAARTJIE CUSTOM KIDS INC
BODY HEAT	NICOLE MILLER
BRIGHTON COLLECTIBLES	NYS COLLECTION
BROOKS BROTHERS	OAKLEY INC.
BUCKLE, INC.	OPTICAL SHOP OF ASPEN
CHARLOTTE RUSSE	ORIGINS NATURAL
CHICO'S FAS INC.	PACIFIC SUNWEAR OF CALIFORNIA INC.
CHRISTOPHER & BANKS	PAPAYA CLOTHING
COACH, INC.	PEA IN A POD
COLDWATER CREEK INC.	POLO BY RALPH LAUREN
CRABREE & EVELYN	PUMPKIN PATCH
DESTINATION MATERNITY	ROADRUNNER SPORTS
DGB LUGGAGE & LEATHER	RUE 21
THE DISNEY STORE	SKECHER'S USA
ELIZABETH ARDEN RED DOOR SPA	SUR LA TABLE INC.
EVERYTHING BUT WATER SWIMWEAR	TESLA MOTORS
EXPRESS	THE BODY SHOP INC.
FERRAGAMO USA, INC.	THE CHILDREN'S PLACE
FRANCESCA'S COLLECTIONS	THE HAT COMPANY
FREE PEOPLE	THE LOVE SAC CORP.
FRIEDMAN JEWELERS	THE TALBOTS, INC.
GANEM JEWELERS	THE WALKING COMPANY
GAP, INC.	TIFFANY & CO.
GUCCI AMERICA INC.	TILLY'S
GUESS?, INC.	TOM JAMES CO. Custom Suit Store
GYMBOREE	TUMI, INC.
H2O PLUS	VAN'S
HANNOUSH JEWELERS	WET SEAL
HOT TOPIC	WHITE HOUSE / BLACK MARKET
HOT TOPIC	Z BOWL

# SPECIALTY RETAIL PROPERTIES

## COMMERCIAL REAL ESTATE

January 28, 2014

Mr. Michael Oliver  
Peoria Sports Park, LLC

Re: The Avenue Shoppes at P83  
Proposed Restaurant Tenants

Mr. Oliver,

Congratulations on the significant progress you have made on The Avenue Shoppes at P83 development. Your timing is excellent as the retail/restaurant sector of commercial real estate is starting to gain momentum.

Attached please find a preliminary list of potential restaurants for the development. This list is comprised of target tenants illustrating unique concepts either new to the area or new to the market. While it is not possible to predict the probability of each, the uniqueness of each is our primary leasing focus and shows the tenant mix we are working towards. The list is only a partial glimpse into our target tenants as there are many additional alternatives beyond what we have shown.

Please let me know if you have any questions or require additional information. We look forward to the completion of the Development Agreement with the City and the opportunity to fully engage in the marketing of The Avenue Shoppes. While we have seen significant tenant interest in the project, tenants want to know it is fully approved before engaging in their due diligence and lease negotiations.

Best regards,

  
John A. Rigau  
Designated Broker  
Specialty Retail Properties, LLC  
480-443-2502 Direct  
  
Jr@srpaz.com

Attachments: Proposed Restaurant Tenants P83

**The Avenue Shoppes at P83 Target Tenant List**

**Proposed Restaurant Tenants (3,000 or Larger)**

Sol Cocina	Urban Plates
Majerle's Sports Bar	Z Tejas
Paul Martin's	Sting Ray Sushi
Blue 32	First Watch
Hopdoddy Burger Bar	Four Peaks Brewing Company
Cadillac Ranch	BRIO
True Food Kitchen	Ling & Louie's
Steak 44	Kona Grill

**Proposed Restaurant Tenants (1,500 -3,000 sf)**

Panini Café	Postino
Veggie Grill	Oregano's
Mendocino Farms	Eureka!
Lyfe Kitchen	Lemonade
Snooze	Desert Jade
800 Degrees	Scramble
Ra Sushi	

**Proposed Restaurant Tenants (up to 1,500 sf)**

Starbucks Coffee	Wingstop
Zoyo Frozen Yogurt	Golden Spoon
Menchie's Frozen Yogurt	Jamba Juice
Potbelly's	Grabba Green
Coffee Bean	Nectar Juice Bar
Pinkberry	

# THE AVENUE SHOPPES AT P83

PEORIA, AZ.

## PHASE 1

DATE: JAN. 15, 2014

**Baker**

### LEVEL 1

W		
W 100	12,026	RETAIL
NW		
NW 100	4,060	RESTAURANT
NW 101	1,850	RESTAURANT
NW 102	4,765	RESTAURANT
NW 103	4,814	RETAIL
NW 104	5,036	RETAIL
NE		
NE 100	15,070	ENTERTAINMENT
NE 101	7,390	RETAIL
NE 102	16,543	RETAIL
NE 103	1,603	RESTAURANT
NE 104	1,968	RETAIL
NE 105	3,597	RETAIL
NE 106	2,014	RETAIL
NE 107	3,350	RESTAURANT
SE		
SE 100	5,620	RESTAURANT
SE 101	6,438	RETAIL
SE 102	4,950	RETAIL
SE 103	9,022	RETAIL
SE 104	2,632	ENTERTAINMENT
SE 105	8,012	RESTAURANT
SW		
SW 100	4,028	RESTAURANT
SW 101	2,335	RETAIL
SW 102	1,760	RETAIL
SW 103	1,100	RESTAURANT
SW 104	1,760	RETAIL
SW 105	2,025	RETAIL
SW 106	1,865	RETAIL
KIOSKS		
#1	76	RETAIL
#2	76	RETAIL
#3	76	RETAIL
#4	76	RETAIL
#5	153	RETAIL
#6	153	RETAIL
#7	76	RESTAURANT
#8	76	RESTAURANT
#9	153	RESTAURANT
#10	153	RESTAURANT

### LEVEL 1 AND 2 AS OCCURS

- ENTERTAINMENT AREA: 17,702 SF
- RESTAURANTS AREA: 34,846 SF
- RETAIL AREA: 84,153 SF

**52,548 SF**

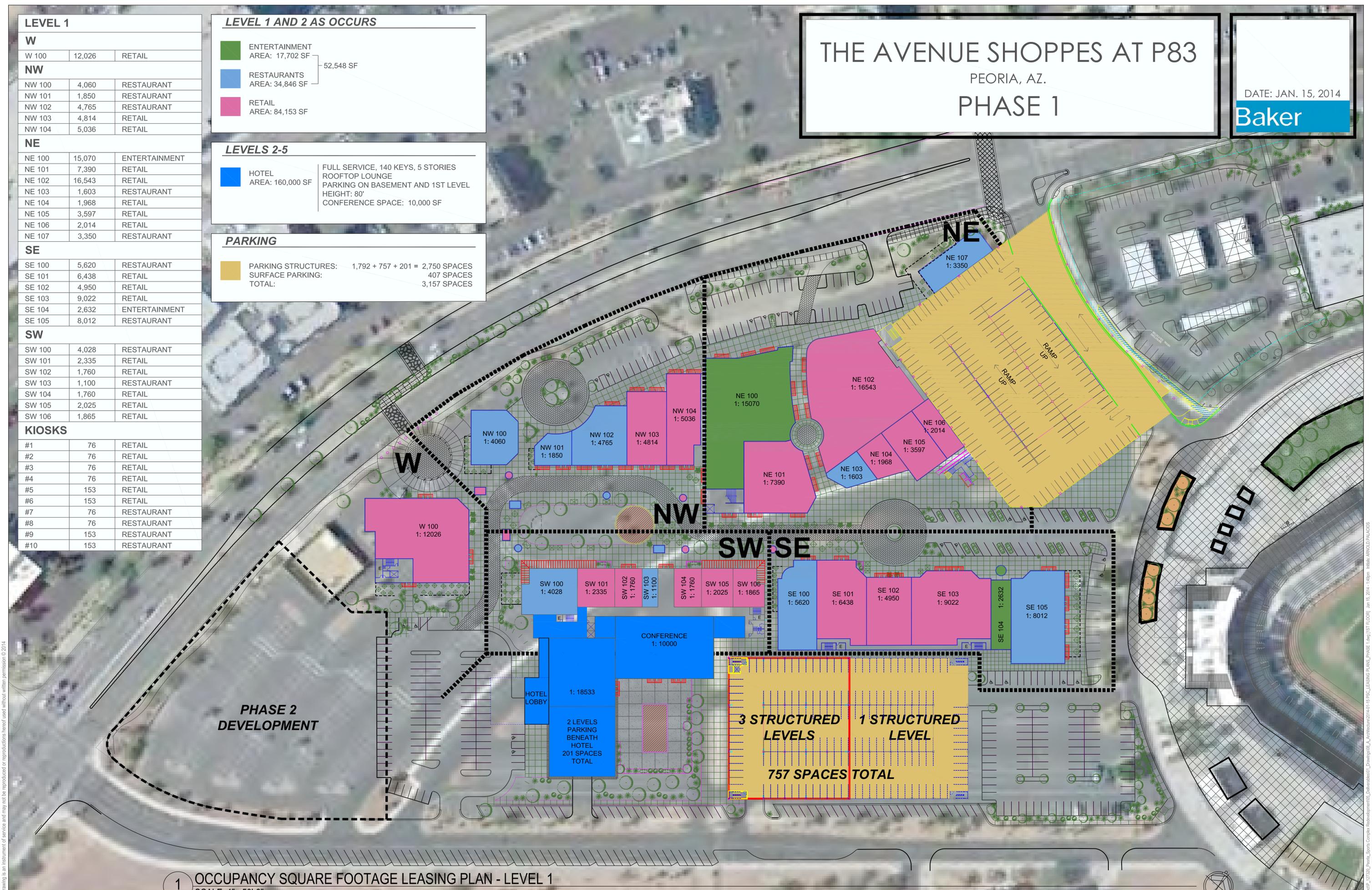
### LEVELS 2-5

- HOTEL AREA: 160,000 SF

FULL SERVICE, 140 KEYS, 5 STORIES  
ROOFTOP LOUNGE  
PARKING ON BASEMENT AND 1ST LEVEL  
HEIGHT: 80'  
CONFERENCE SPACE: 10,000 SF

### PARKING

- PARKING STRUCTURES: 1,792 + 757 + 201 = 2,750 SPACES
- SURFACE PARKING: 407 SPACES
- TOTAL: 3,157 SPACES



1 OCCUPANCY SQUARE FOOTAGE LEASING PLAN - LEVEL 1  
SCALE: 1" = 50'-0"

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P:\ProjectP\_127320\_Peoria\_Sports\_Center\_Rebuild\p83\_05\_Deliverables\01\_Drawings\08\_A\_Architectural\2014-01-15\_PSC\_LEASING\_PLANS\_PHASE\_1.dwg [1ST FLOOR] Jan 15, 2014 - 1:48pm initials: ARNOLD/PALACIOS



=====

**FIRST AMENDMENT TO  
P83 GROUND LEASE, EASEMENT AND PURCHASE OPTION AGREEMENT  
FOR PREMISES LOCATED SOUTH OF BELL ROAD  
ADJACENT TO 83RD AVENUE AND MARINER WAY, PEORIA, ARIZONA**

=====

This *First Amendment to P83 Ground Lease, Easement and Purchase Option Agreement for Premises Located South of Bell Road Adjacent to 83rd Avenue in Peoria, Arizona* (“Amendment”) is made as of the \_\_\_\_ day of March, 2014, by and between the City of Peoria, Arizona, an Arizona charter municipality (“Lessor”) and Peoria Sports Park, LLC, an Arizona limited liability company (“Tenant”). Lessor and Tenant may be referred to in this Amendment individually as a “Party” or collectively as the “Parties.”

1. Recitals. As background to this Agreement, the Parties recite, state and acknowledge the following:

A. The Parties previously executed and delivered that certain “P83 Ground Lease, Easement and Purchase Option Agreement for Premises Located South of Bell Road Adjacent to 83rd Avenue and Mariner Way in Peoria, Arizona,” dated January 23, 2013 (the “2013 Lease”).

B. Subsequent to the execution and delivery of the Lease, Tenant has completed a Site Plan (as defined in the 2013 Lease) which now requires, among other things, (i) certain revisions to Exhibit “B,” Exhibit “C,” Exhibit “D” and Exhibit “E” to the 2013 Lease, including the relocation of the Parking Garage Parcels within the Project Parcel, which, in turn, requires certain re-descriptions of the Lease Parcels, a recalculation of Rent and certain revisions to Exhibit “G” to the 2013 Lease; and (ii) certain revisions to the designations of the numbered Parcels within the Project Parcel.

C. The Parties also wish to establish a form of lease to be utilized by them with respect to certain improvements to be constructed upon the Lease Parcels by Tenant that may be subject to taxation pursuant to A.R.S. §§ 42-6201 *et seq.*

2. Amendments. The Parties agree that the 2013 Lease shall be amended in accordance with the term of this Amendment and the amended exhibits attached to this Amendment.

A. Exhibit “B,” Exhibit “C,” Exhibit “D” and Exhibit “E” to the 2013 Lease shall be deleted in their entirety and replaced with Exhibit “B,” Exhibit “C,” Exhibit “D” and Exhibit “E” in the forms that are attached to this Amendment. The Parties acknowledge that the revised exhibits that are attached to this Amendment retain their same designations in this Amendment as given in the 2013 Lease in order to avoid confusion.

B. The designations of the numbered Parcels as set forth in Section 1, “Project Parcel,” shall be revised to be as follows:

- (1) Parcel 1 – the Retail and Entertainment Parcel(s);
- (2) Parcel 2 – the “Phase 2 Parcel,” which may be developed subsequent to the development on Parcels 1, 3, 4 and 5, but which is intended solely for retail and entertainment development;
- (3) Parcel 3 – the Hotel Parcel;
- (4) Parcel 4 – the Surface Parking Parcel(s); and
- (5) Parcel 5 – the Parking Garage Parcels.

Parcels 1 through 4 will be located within the Lease Parcel. Parcel 5 will be retained by the City and will not be part of the Lease Parcel. The Project shall no longer include any “Multifamily Parcel” or other residential component.

C. The definition of “Lease Parcel” in Section 1 of the 2013 Lease shall be deleted in its entirety and replaced with the following:

(1) Lease Parcel. Approximately fourteen and eight/one hundredths (14.08) acres of real property located within the Project Parcel (the “Lease Parcel”); as legally described in Exhibit “C” and depicted on Exhibit “B” attached hereto and incorporated herein by reference.

D. The Commencement Date of the 2013 Lease shall now be the date of this Amendment as set forth in the first grammatical paragraph of this Amendment, and the definition of “Commencement Date” in Section 1 of the 2013 Lease shall be completed as follows:

Commencement Date: March \_\_\_\_, 2014

E. The legal description of Parcel 5 (the Parking Garage Parcels) shall be as described in Exhibit “D” to this Amendment and as depicted as Parcel 5 and on Exhibit “B” and Exhibit “E” attached to this Amendment and incorporated herein by reference.

F. Section 2.1(d) of the 2013 Lease shall be deleted in its entirety and replaced with the following:

d. Parking Facilities and Development Agreement. Agreement that addresses the construction and operation of one or more Parking Garage(s) to serve the Peoria Sports Complex uses, uses on the Lease Parcel, and other matters related to the development of, and construction on, the Lease Parcel.

G. Section 2.1(e) of the 2013 Lease shall be deleted in its entirety.

H. Section 2.1(g) of the 2013 Lease shall be deleted in its entirety. The Parties agree and acknowledge in this Amendment that static, digital and wireless signage components within the Lease Parcel are either governed by applicable zoning, the PAD, or are not regulated by the City. The 2013 Lease, as amended by this Amendment, confers no such signage rights in areas of the Project Parcel that are outside the Lease Parcel, or in any areas that are outside the Project Parcel (including but not limited to areas along the Loop 101 Freeway).

I. Pursuant to Section 2.2(a) of the 2013 Lease, the Parties acknowledge that they have met and negotiated the Project Documents in good faith.

J. The definition of "Parking Garage Parcel Easement" in Section 1 of the 2013 Lease, and Section 3.2 of the 2013 Lease are deleted in their entirety, and Tenant shall have no easement rights in, on, over or upon the Parking Garage Parcels, as those improvements intended to be constructed on Parcel 5 are public parking garages, the use of which does not require easement or related rights. In addition, since there is no longer any residential development included within the Project, there is no "exclusive parking easement" or similar right of Tenant to any spaces for multi-family residential uses. Accordingly, any references in the 2013 Lease to (i) Tenant's easement rights in the Parking Garage or Parking Garage Parcels or to (ii) any residential or multi-family development in the Project, shall be deleted.

K. Section 4.1 of the 2013 Lease shall be amended to provide the introductory clause, "Subject in all events to the provisions of Section 4.3..."

L. Subject in all events to Section 2(P) of this Amendment, Section 4.3 of the 2013 Lease shall be amended to read as follows:

4.3. This Lease shall terminate automatically with no further act or notice required upon the termination of the Parking Facilities and Development Agreement described in Section 2.1(d), as the same may be permitted to be amended by Lessor from time-to-time in its sole discretion (the "Development Agreement"). If this Lease terminates pursuant to this provision, both Lessor and Tenant acknowledge and agree that they shall have no claims of any kind, whether legal, equitable or otherwise against the other Party related to the Lease termination and each Party shall bear its respective fees and costs incurred, including but not limited to, those incurred in negotiating the Development Agreement, this Lease, and the amendments to this Lease, any and all other agreements related to this Project.

M. Section 27.1 of the 2013 Lease shall be deleted in its entirety and replaced with the following:

27.1 During Term. Prior to the receipt of a Certificate of Occupancy, title to all Improvements constructed on the Premises by Tenant pursuant to this Lease shall be in the Tenant. In the event Tenant constructs improvements upon the Lease Parcel that

may be subject to A.R.S. §§ 42-6201 *et seq.* if owned by Lessor, Tenant may convey title to such improvements to Lessor upon the condition that Lessor leases such improvements back to Tenant utilizing the Lease attached to this Amendment as Exhibit “K” (each such Lease, a “GPLET Lease”). The term of any GPLET Lease shall be concurrent with the Term of this Lease, or the earlier termination of this Lease, unless such GPLET Lease is otherwise terminated.

N. The rental schedule attached to the 2013 Lease as Exhibit “G” shall be deleted in its entirety and replaced with Exhibit “G” attached to this Amendment.

O. The Parties acknowledge that there are no Exhibit “A,” Exhibit “F,” Exhibit “H,” Exhibit “I” and Exhibit “J” to this Amendment.

P. The 2013 Lease automatically terminated on January 23, 2014, pursuant to Section 4.3 of the 2013 Lease, prior to its amendment by this Amendment. By their entering into this Amendment, the Parties agree and acknowledge that the Lease shall be deemed to have continued uninterrupted and not to have terminated on January 23, 2014, and that the execution and delivery of this Amendment by the Parties constitutes a timely extension of the Lease Term, as amended by this Amendment.

Q. Tenant’s official address for all purposes under the Lease is as follows:

Peoria Sports Park, LLC  
Attn: Michael Oliver, CEO/Principal  
8194 West Deer Valley Road  
#106-266  
Peoria, Arizona 85382  
Email: [REDACTED]

With a copy to:

Fennemore Craig, P.C.  
Attn: Michael J. Phalen, Esq.  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016-3429  
Email: mphalen@fclaw.com

3. All defined terms used in this Amendment shall have the meanings or definitions attributed to them in the 2013 Lease, unless otherwise defined or described in this Amendment. Except as expressly amended and modified by this Amendment, all terms and conditions of the 2013 Lease shall remain in full force and effect, as amended by this Amendment.

*[Remainder of this page is intentionally left blank; signatures are on the following pages.]*

IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective as of the date listed above on page 1.

City of Peoria, Arizona, an Arizona municipal corporation

By: \_\_\_\_\_  
Carl Swenson, City Manager

ATTEST

By: \_\_\_\_\_  
Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Stephen M. Kemp, City Attorney

Peoria Sports Park LLC, an Arizona limited liability company

By: [Redacted]  
Michael Oliver, CEO/Principal

STATE OF ARIZONA        )  
  ) ss:  
COUNTY OF MARICOPA    )

The foregoing Amendment was acknowledged before me this 18 day of February, 2014, by Michael Oliver, CEO/Principal of Peoria Sports Park, LLC, an Arizona limited liability company on behalf of the company.

[Redacted]  
Notary Public



Exhibit "B" to  
First Amendment to Ground Lease  
Amended Depiction of Project, Lease Parcel  
and Parking Parcels

Parcel Number	Square Feet	Acres
Parcel 1 Retail and Entertainment	251,709	5.78
Parcel 2 Phase 2	82,491	1.89
Parcel 3 Hotel	44,410	1.02
Parcel 4 - Tract A Lessor's Surface Parking	75,364	1.73
Parcel 4 - Tract B Lessor's Surface Parking	159,525	3.66
Parcel 5 - Tract A City Parking Structure (excluded from ground lease)	54,881	1.26
Parcel 5 - Tract B City Parking Structure (excluded from ground lease)	73,828	1.69

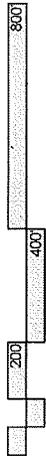
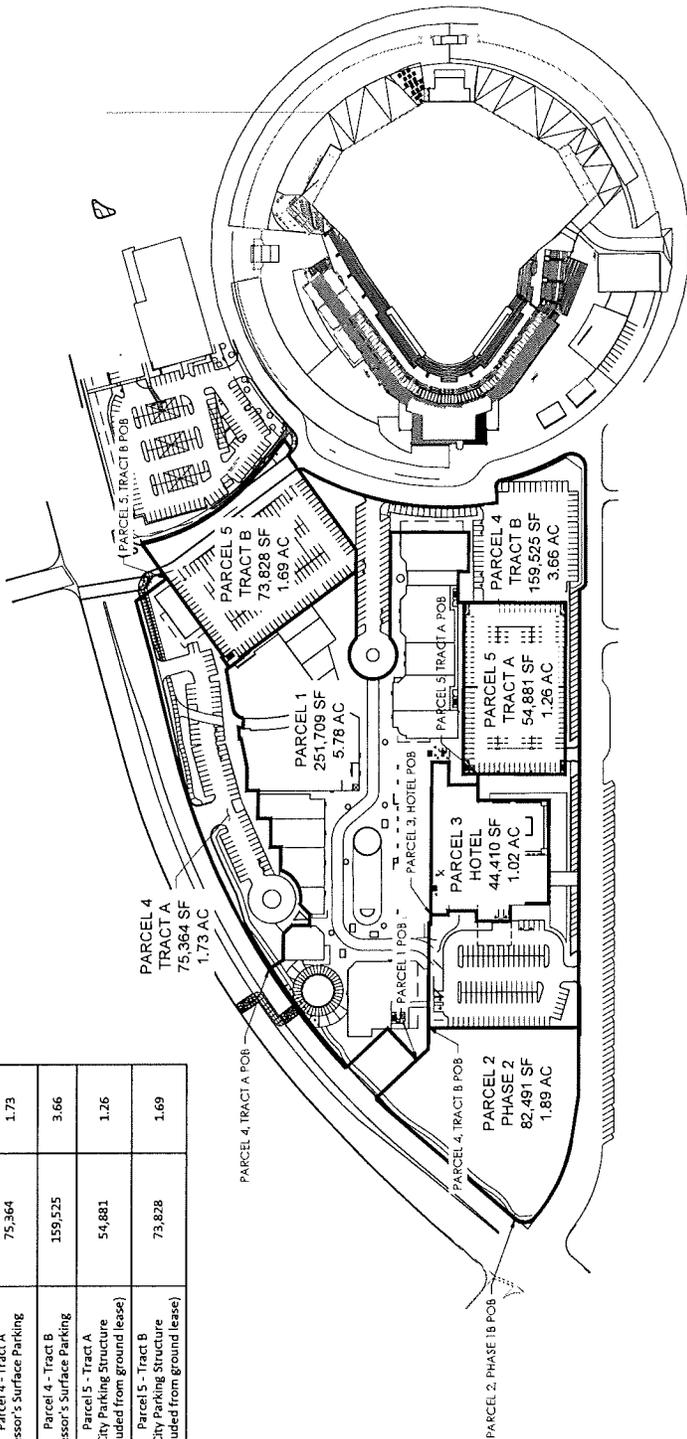


Exhibit "C" to  
First Amendment to Ground Lease

Amended Legal Description of  
Lease Parcel

DESCRIPTION  
FOR  
THE AVENUE SHOPPES AT P83  
PRELIMINARY OVERALL PROJECT BOUNDARY

A parcel of land situated in a portion of Section 2, Township 3 North, Range 1 East of Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2 bearing South 00 degrees 36 minutes 18 seconds West, a distance of 2635.57 feet from the West Quarter Corner of said Section 02;

THENCE North 00 degrees 36 minutes 18 seconds East, along the West line of said Section 2, a distance of 1593.50 feet;

THENCE departing said West line, South 89 degrees 23 minutes 42 seconds East, a distance of 46.40 feet to the POINT OF BEGINNING;

Thence, N 00° 35' 37" E for a distance of 261.39 feet to the beginning of a curve,

Said curve turning to the right through an angle of 02° 56' 56.3", having a radius of 1295.00 feet, and whose long chord bears N 02° 04' 05" E for a distance of 66.65 feet to a point of intersection with a non-tangential line.

Thence, S 83° 13' 48" E for a distance of 100.64 feet;

Thence, N 06° 34' 12" E for a distance of 76.33 feet;

Thence, N 83° 16' 07" W for a distance of 102.42 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 29° 35' 11.3", having a radius of 1295.00 feet, and whose long chord bears N 21° 42' 42" E for a distance of 661.31 feet.

Thence, N 36° 30' 18" E for a distance of 134.12 feet;

Thence, N 34° 24' 43" E for a distance of 118.16 feet;

Thence, S 76° 15' 09" E for a distance of 67.92 feet;

Thence, N 13° 45' 13" E for a distance of 77.63 feet to the beginning of a non-tangential curve,

Said curve turning to the left through an angle of  $38^{\circ} 42' 07.9''$ , having a radius of 353.83 feet, and whose long chord bears  $S 70^{\circ} 19' 52'' E$  for a distance of 234.49 feet to a point of intersection with a non-tangential line.

Thence,  $S 85^{\circ} 25' 24'' E$  for a distance of 26.08 feet;

Thence,  $S 89^{\circ} 38' 56'' E$  for a distance of 19.96 feet;

Thence,  $N 35^{\circ} 13' 29'' E$  for a distance of 0.91 feet;

Thence,  $N 88^{\circ} 42' 00'' E$  for a distance of 35.90 feet;

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 14.54 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of  $95^{\circ} 38' 11.0''$ , having a radius of 10.41 feet, and whose long chord bears  $S 61^{\circ} 22' 57'' W$  for a distance of 15.43 feet to a point of intersection with a non-tangential line.

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 31.04 feet to the beginning of a non-tangential curve,

Said curve turning to the right through  $46^{\circ} 14' 01.5''$ , having a radius of 15.00 feet, and whose long chord bears  $S 33^{\circ} 48' 44'' E$  for a distance of 11.78 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $39^{\circ} 13' 32.0''$ , having a radius of 517.96 feet, and whose long chord bears  $S 30^{\circ} 18' 29'' E$  for a distance of 347.72 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $06^{\circ} 37' 16.1''$ , having a radius of 232.00 feet, and whose long chord bears  $N 46^{\circ} 31' 11'' E$  for a distance of 26.80 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $83^{\circ} 45' 25.6''$ , having a radius of 12.00 feet, and whose long chord bears  $N 85^{\circ} 05' 16'' E$  for a distance of 16.02 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $16^{\circ} 17' 24.6''$ , having a radius of 427.48 feet, and whose long chord bears  $S 61^{\circ} 10' 44'' E$  for a distance of 121.13 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $118^{\circ} 54' 04.6''$ , having a radius of 24.00 feet, and whose long chord bears  $S 09^{\circ} 52' 24'' E$  for a distance of 41.34 feet to the POINT OF BEGINNING.

From the POINT OF BEGINNING; Thence, S 49° 51' 50" W for a distance of 202.95 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 60° 12' 38.1", having a radius of 12.00 feet, and whose long chord bears S 79° 52' 18" W for a distance of 12.04 feet.

Thence, N 70° 01' 23" W for a distance of 5.12 feet;

Thence, S 50° 00' 14" W for a distance of 895.57 feet;

Thence, S 58° 45' 16" W for a distance of 75.89 feet to the beginning of a curve,

Said curve turning to the right through 31° 42' 33.9", having a radius of 283.91 feet, and whose long chord bears S 74° 36' 33" W for a distance of 155.13 feet to the beginning of a non-tangential curve.

Said curve turning to the right through an angle of 89° 28' 44.8", having a radius of 25.00 feet, and whose long chord bears N 44° 47' 47" W for a distance of 35.19 feet to a point of intersection with a non-tangential line to the POINT OF BEGINNING.

Parcel contains 742209.05 square feet or 17.04 acres more or less.

Exhibit "D" to  
First Amendment to Ground Lease

Amended Legal Description of  
Parking Parcels

DESCRIPTION  
FOR  
THE AVENUE SHOPPES AT P83  
Parcel 4, Tract A

A parcel of land situated in a portion of Section 2, Township 3 North, Range 1 East of Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2 bearing South 00 degrees 36 minutes 18 seconds West, a distance of 2635.57 feet from the West Quarter Corner of said Section 02;

THENCE North 00 degrees 36 minutes 18 seconds East, along the West line of said Section 2, a distance of 1593.50 feet;

THENCE departing said West line, South 89 degrees 23 minutes 42 seconds East, a distance of 46.40 feet;

Said curve turning to the right through an angle of 19° 42' 40.5", having a radius of 1295.00 feet, and whose long chord bears N 26° 38' 57" E for a distance of 443.32 feet.

Thence, N 36° 30' 18" E for a distance of 134.12 feet;

Thence, N 34° 24' 43" E for a distance of 118.16 feet;

Thence, S 76° 15' 09" E for a distance of 67.92 feet;

Thence, S 13° 45' 13" W for a distance of 171.83 feet;

Thence, N 76° 15' 09" W for a distance of 3.22 feet;

Thence, S 13° 44' 51" W for a distance of 21.60 feet;

Thence N 76° 15' 09" W a distance of 6.62 feet;

Thence, N 00° 35' 37" E for a distance of 261.39 feet to the beginning of a curve,

Said curve turning to the right through an angle of 02° 56' 56.3", having a radius of 1295.00 feet, and whose long chord bears N 02° 04' 05" E for a distance of 66.65 feet to a point of intersection with a non-tangential line.

Thence, S 83° 13' 48" E for a distance of 100.64 feet;

Thence, N 06° 34' 12" E for a distance of 76.33 feet;

Thence, N 83° 16' 07" W for a distance of 102.42 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 09° 52' 30.8", having a radius of 1295.00 feet, and whose long chord bears N 11° 51' 22" E for a distance of 222.92 feet to a point of intersection with a non-tangential line to the POINT OF BEGINNING;

Said curve turning to the right through an angle of 19° 42' 40.5", having a radius of 1295.00 feet, and whose long chord bears N 26° 38' 57" E for a distance of 443.32 feet.

Thence, N 36° 30' 18" E for a distance of 134.12 feet;

Thence, N 34° 24' 43" E for a distance of 118.16 feet;

Thence, S 76° 15' 09" E for a distance of 67.92 feet;

Thence, S 13° 45' 13" W for a distance of 171.83 feet;

Thence, N 76° 15' 09" W for a distance of 3.22 feet;

Thence, S 13° 44' 51" W for a distance of 21.60 feet;

thence N 76° 15' 09" W a distance of 6.62 feet;

From the POINT OF BEGINNING; Thence, S 39° 54' 40" W for a distance of 72.77 feet to the beginning of a non-tangential curve,

Said curve turning to the left through an angle of 70° 50' 37.8", having a radius of 20.00 feet, and whose long chord bears S 01° 31' 49" E for a distance of 23.18 feet to a point of intersection with a non-tangential line.

Thence, S 53° 02' 52" W for a distance of 17.00 feet;

Thence, N 36° 20' 44" W for a distance of 7.93 feet;

Thence, S 44° 42' 51" W for a distance of 20.27 feet;

Thence, S 36° 26' 45" E for a distance of 3.01 feet;

Thence, S 38° 16' 02" W for a distance of 51.00 feet;

Thence, S 50° 11' 15" W for a distance of 42.07 feet;

Thence, S 39° 48' 45" E for a distance of 19.94 feet;

Thence, S 50° 11' 15" W for a distance of 49.50 feet;

Thence, S 39° 48' 45" E for a distance of 22.91 feet;

Thence, S 50° 11' 15" W for a distance of 50.50 feet;

Thence, S 39° 48' 45" E for a distance of 18.20 feet;

Thence, S 50° 11' 15" W for a distance of 40.13 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 82° 48' 35.5", having a radius of 53.00 feet, and whose long chord bears S 19° 53' 58" W for a distance of 70.10 feet to a point of intersection with a non-tangential line.

Thence, S 05° 11' 15" W for a distance of 23.89 feet;

Thence, S 50° 11' 15" W for a distance of 20.00 feet;

Thence, N 39° 48' 45" W for a distance of 31.51 feet;

Thence, N 84° 48' 45" W for a distance of 21.21 feet;

Thence, S 50° 11' 15" W for a distance of 45.67 feet;

thence, N 72° 32' 17" W for a distance of 30.18 feet to the POINT OF BEGINNING;

Parcel contains 75364.23 square feet or 1.73 acres more or less.

DESCRIPTION  
FOR  
THE AVENUE SHOPPES AT P83  
Parcel 4, Tract B

A parcel of land situated in a portion of Section 2, Township 3 North, Range 1 East of Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2 bearing South 00 degrees 36 minutes 18 seconds West, a distance of 2635.57 feet from the West Quarter Corner of said Section 02;

THENCE North 00 degrees 36 minutes 18 seconds East, along the West line of said Section 2, a distance of 1593.50 feet;

THENCE departing said West line, South 89 degrees 23 minutes 42 seconds East, a distance of 46.40 feet;

Thence, N 00° 35' 37" E for a distance of 261.39 feet to the beginning of a curve,

Said curve turning to the right through an angle of 02° 56' 56.3", having a radius of 1295.00 feet, and whose long chord bears N 02° 04' 05" E for a distance of 66.65 feet to a point of intersection with a non-tangential line.

Thence, S 83° 13' 48" E for a distance of 100.64 feet;

Thence, S 83° 13' 50" E for a distance of 27.10 feet;

Thence, N 50° 05' 38" E for a distance of 37.57 feet to the POINT OF BEGINNING;

Thence, N 50° 05' 38" E for a distance of 184.36 feet;

Thence, S 39° 48' 45" E for a distance of 3.58 feet;

Thence, N 50° 11' 15" E for a distance of 14.99 feet;

Thence, S 39° 48' 45" E for a distance of 30.00 feet;

Thence, N 50° 11' 15" E for a distance of 7.05 feet;

Thence, S 39° 48' 45" E for a distance of 50.81 feet;

Thence, S 50° 11' 15" W for a distance of 18.02 feet;

Thence, S 39° 48' 45" E for a distance of 60.00 feet;

Thence, N 50° 11' 15" E for a distance of 31.03 feet;

Thence, S 39° 48' 45" E for a distance of 67.19 feet;

Thence, N 50° 11' 15" E for a distance of 182.03 feet;

Thence, N 39° 57' 07" W for a distance of 125.80 feet;

Thence, N 50° 02' 53" E for a distance of 27.59 feet;

Thence, N 50° 02' 53" E for a distance of 19.32 feet;

Thence, S 39° 48' 45" E for a distance of 154.23 feet;

Thence, N 50° 07' 30" E for a distance of 304.33 feet;

Thence, N 39° 48' 45" W for a distance of 180.00 feet;

Thence, S 50° 15' 01" W for a distance of 0.02 feet;

Thence, N 39° 49' 12" W for a distance of 10.58 feet;

Thence, N 50° 02' 53" E for a distance of 54.73 feet;

Thence, S 39° 48' 45" E for a distance of 17.97 feet;

Thence, N 50° 02' 53" E for a distance of 69.11 feet;

Thence, N 39° 57' 07" W for a distance of 138.70 feet;

Thence, S 50° 02' 53" W for a distance of 186.98 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 268° 58' 17.0", having a radius of 42.50 feet, and whose long chord bears N 39° 55' 39" W for a distance of 60.64 feet to a point of intersection with a non-tangential line.

Thence, N 49° 51' 54" E for a distance of 118.45 feet;

Thence, N 49° 51' 54" E for a distance of 38.14 feet;

Thence, N 13° 44' 51" E for a distance of 175.95 feet to the beginning of a non-tangential curve,

Said curve turning to the right through  $46^{\circ} 14' 01.5''$ , having a radius of 15.00 feet, and whose long chord bears  $S 33^{\circ} 48' 44'' E$  for a distance of 11.78 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $39^{\circ} 13' 32.0''$ , having a radius of 517.96 feet, and whose long chord bears  $S 30^{\circ} 18' 29'' E$  for a distance of 347.72 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $06^{\circ} 37' 16.1''$ , having a radius of 232.00 feet, and whose long chord bears  $N 46^{\circ} 31' 11'' E$  for a distance of 26.80 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $83^{\circ} 45' 25.6''$ , having a radius of 12.00 feet, and whose long chord bears  $N 85^{\circ} 05' 16'' E$  for a distance of 16.02 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $16^{\circ} 17' 24.6''$ , having a radius of 427.48 feet, and whose long chord bears  $S 61^{\circ} 10' 44'' E$  for a distance of 121.13 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $118^{\circ} 54' 04.6''$ , having a radius of 24.00 feet, and whose long chord bears  $S 09^{\circ} 52' 24'' E$  for a distance of 41.34 feet;

Thence,  $S 49^{\circ} 51' 50'' W$  for a distance of 202.95 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of  $60^{\circ} 12' 38.1''$ , having a radius of 12.00 feet, and whose long chord bears  $S 79^{\circ} 52' 18'' W$  for a distance of 12.04 feet.

Thence,  $N 70^{\circ} 01' 23'' W$  for a distance of 5.12 feet;

Thence,  $S 50^{\circ} 00' 14'' W$  for a distance of 774.86 feet;

thence,  $N 39^{\circ} 58' 39'' W$  for a distance of 266.06 feet to the POINT OF BEGINNING.

Parcel contains 159524.81 square feet or 3.66 acres more or less.

DESCRIPTION  
FOR  
THE AVENUE SHOPPES AT P83  
Parcel 5, Tract A

A parcel of land situated in a portion of Section 2, Township 3 North, Range 1 East of Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2 bearing South 00 degrees 36 minutes 18 seconds West, a distance of 2635.57 feet from the West Quarter Corner of said Section 02;

THENCE North 00 degrees 36 minutes 18 seconds East, along the West line of said Section 2, a distance of 1593.50 feet;

THENCE departing said West line, South 89 degrees 23 minutes 42 seconds East, a distance of 46.40 feet;

Thence, N 00° 35' 37" E for a distance of 261.39 feet to the beginning of a curve,

Said curve turning to the right through an angle of 02° 56' 56.3", having a radius of 1295.00 feet, and whose long chord bears N 02° 04' 05" E for a distance of 66.65 feet to a point of intersection with a non-tangential line.

Thence, S 83° 13' 48" E for a distance of 100.64 feet;

Thence, S 83° 13' 50" E for a distance of 27.10 feet;

Thence, N 50° 05' 38" E for a distance of 37.57 feet;

Thence, N 50° 05' 38" E for a distance of 184.36 feet;

Thence, S 39° 48' 45" E for a distance of 3.58 feet;

Thence, N 50° 11' 15" E for a distance of 14.99 feet;

Thence, N 50° 11' 09" E for a distance of 269.38 feet;

Thence, S 39° 48' 45" E for a distance of 30.01 feet;

Thence, S 50° 11' 15" W for a distance of 40.00 feet;

Thence, S 39° 48' 45" E for a distance of 52.13 feet;

Thence, S 50° 02' 53" W for a distance of 19.32 feet to the POINT OF BEGINNING;

Thence, N 39° 48' 45" W for a distance of 26.44 feet;

Thence, N 50° 15' 01" E for a distance of 304.31 feet;

Thence, N 50° 15' 01" E for a distance of 0.02 feet;

Thence, S 39° 48' 45" E for a distance of 180.00 feet;

Thence S 50° 07' 30" W a distance of 304.33 feet

thence, N 39° 48' 45" W for a distance of 154.23 feet to the POINT OF BEGINNING;

Parcel contains 54881.44 square feet or 1.26 acres more or less.

DESCRIPTION  
FOR  
THE AVENUE SHOPPES AT P83  
Parcel 5, Tract B

A parcel of land situated in a portion of Section 2, Township 3 North, Range 1 East of Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2 bearing South 00 degrees 36 minutes 18 seconds West, a distance of 2635.57 feet from the West Quarter Corner of said Section 02;

THENCE North 00 degrees 36 minutes 18 seconds East, along the West line of said Section 2, a distance of 1593.50 feet;

THENCE departing said West line, South 89 degrees 23 minutes 42 seconds East, a distance of 46.40 feet to the;

Thence, N 00° 35' 37" E for a distance of 261.39 feet to the beginning of a curve,

Said curve turning to the right through an angle of 02° 56' 56.3", having a radius of 1295.00 feet, and whose long chord bears N 02° 04' 05" E for a distance of 66.65 feet to a point of intersection with a non-tangential line.

Thence, S 83° 13' 48" E for a distance of 100.64 feet;

Thence, N 06° 34' 12" E for a distance of 76.33 feet;

Thence, N 83° 16' 07" W for a distance of 102.42 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 29° 35' 11.3", having a radius of 1295.00 feet, and whose long chord bears N 21° 42' 42" E for a distance of 661.31 feet.

Thence, N 36° 30' 18" E for a distance of 134.12 feet;

Thence, N 34° 24' 43" E for a distance of 118.16 feet;

Thence, S 76° 15' 09" E for a distance of 67.92 feet to the POINT OF BEGINNING;

Thence, N 13° 45' 13" E for a distance of 77.63 feet to the beginning of a non-tangential curve,

Said curve turning to the left through an angle of  $38^{\circ} 42' 07.9''$ , having a radius of 353.83 feet, and whose long chord bears  $S 70^{\circ} 19' 52'' E$  for a distance of 234.49 feet to a point of intersection with a non-tangential line.

Thence,  $S 85^{\circ} 25' 24'' E$  for a distance of 26.08 feet;

Thence,  $S 89^{\circ} 38' 56'' E$  for a distance of 19.96 feet;

Thence,  $N 35^{\circ} 13' 29'' E$  for a distance of 0.91 feet;

Thence,  $N 88^{\circ} 42' 00'' E$  for a distance of 35.90 feet;

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 14.54 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of  $95^{\circ} 38' 11.0''$ , having a radius of 10.41 feet, and whose long chord bears  $S 61^{\circ} 22' 57'' W$  for a distance of 15.43 feet to a point of intersection with a non-tangential line.

Thence  $S 13^{\circ} 44' 51'' W$  a distance of 31.04 feet;

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 175.95 feet;

Thence,  $S 49^{\circ} 51' 54'' W$  for a distance of 38.14 feet;

Thence,  $N 76^{\circ} 15' 09'' W$  for a distance of 255.84 feet;

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 3.08 feet;

Thence,  $N 76^{\circ} 15' 09'' W$  for a distance of 26.93 feet;

Thence,  $N 13^{\circ} 44' 51'' E$  for a distance of 21.60 feet;

Thence,  $S 76^{\circ} 15' 09'' E$  for a distance of 3.22 feet;

thence,  $N 13^{\circ} 45' 13'' E$  for a distance of 171.83 feet to the POINT OF BEGINNING.

Parcel contains 73828.09 square feet or 1.69 acres more or less.

Exhibit "E" to  
First Amendment to Ground Lease  
Amended Draft Site Plan

# THE AVENUE SHOPPES AT P83 PEORIA, AZ. PHASE 1

DATE: JAN. 15, 2014

**Baker**

## LEVEL 1 AND 2 AS OCCURS

- ENTERTAINMENT  
AREA: 17,702 SF
- RESTAURANTS  
AREA: 34,848 SF
- RETAIL  
AREA: 94,133 SF

## LEVELS 2-5

- FULL SERVICE, 140 KEYS, 3 STORIES  
HOTEL  
AREA: 160,000 SF  
PARKING ON BASEMENT AND 1ST LEVEL  
HEIGHT: 80'  
CONFERENCE SPACE: 10,000 SF

## PARKING

- PARKING STRUCTURES: 1,782 + 757 + 201 = 2,740 SPACES
- OFFICE PARKING: 45 SPACES
- TOTAL: 3,187 SPACES

## LEVEL 1

W	12,026	RETAIL
<b>NW</b>		
NW 100	4,060	RESTAURANT
NW 101	1,650	RESTAURANT
NW 102	4,795	RESTAURANT
NW 103	4,814	RETAIL
NW 104	5,098	RETAIL
<b>NE</b>		
NE 100	15,070	ENTERTAINMENT
NE 101	7,390	RETAIL
NE 102	16,543	RETAIL
NE 103	1,603	RESTAURANT
NE 104	1,997	RETAIL
NE 105	3,597	RETAIL
NE 106	2,014	RETAIL
NE 107	3,359	RESTAURANT
<b>SE</b>		
SE 100	5,020	RESTAURANT
SE 101	6,038	RETAIL
SE 102	4,950	RETAIL
SE 103	9,027	RETAIL
SE 104	2,022	ENTERTAINMENT
SE 105	5,072	RESTAURANT
<b>SW</b>		
SW 100	4,028	RESTAURANT
SW 101	2,335	RETAIL
SW 102	1,760	RETAIL
SW 103	1,100	RESTAURANT
SW 104	1,760	RETAIL
SW 105	2,025	RETAIL
SW 106	1,865	RETAIL
<b>KIOSKS</b>		
#1	76	RETAIL
#2	76	RETAIL
#3	76	RETAIL
#4	76	RETAIL
#5	153	RETAIL
#6	153	RETAIL
#7	76	RESTAURANT
#8	76	RESTAURANT
#9	153	RESTAURANT
#10	153	RESTAURANT

PHASE 2  
DEVELOPMENT

3 STRUCTURED LEVELS  
1 STRUCTURED LEVEL  
757 SPACES TOTAL

1 OCCUPANCY SQUARE FOOTAGE LEASING PLAN - LEVEL 1

SCALE: 1"=50'-0"



Exhibit "G" to  
First Amendment to Ground Lease  
Amended Schedule of Rents

Exhibit "G"

RENT\*

(\*The Date that Rent payments begin is set forth in SECTION 5.4 of the Lease. The following chart is inserted for illustrative purposes. This version of the Exhibit "G" Rent chart will be updated and amended by mutual agreement of the parties based upon when the payment of Rent is triggered under the terms of SECTION 5.4 of the Lease)

LEASE YEAR PERIOD	RENT RATE	RENT ESCALATOR 8.5% EVERY FIVE (5) YEARS BEGINNING IN YEAR 8	PARCEL 1: RETAIL - RESTAURANT	PARCEL 2: PHASE 1B	PARCEL 3: HOTEL	PARCEL 4: SURFACE PARKING	TOTAL MONTHLY RENT
			MONTHLY RENT	MONTHLY RENT	MONTHLY RENT	MONTHLY RENT	
1-2	0		\$0	\$0	\$0	\$0	\$0
3-7	8.00%		\$8,367	\$2,736	\$1,477	\$1,951	\$14,530
8-12	8.68%	8.5% in Lease Year 8	\$9,078	\$2,969	\$1,602	\$2,116	\$15,765
13-17	9.42%	8.5% in Lease Year 13	\$9,850	\$3,221	\$1,738	\$2,296	\$17,106
18-22	10.22%	8.5% in Lease Year 18	\$10,687	\$3,495	\$1,886	\$2,492	\$18,560
23-27	11.09%	8.5% in Lease Year 23	\$11,596	\$3,792	\$2,046	\$2,703	\$20,137
28-32	12.03%	8.5% in Lease Year 28	\$12,581	\$4,114	\$2,220	\$2,933	\$21,849
33-37	13.05%	8.5% in Lease Year 33	\$13,651	\$4,464	\$2,409	\$3,182	\$23,706
38-42	14.16%	8.5% in Lease Year 38	\$14,811	\$4,843	\$2,614	\$3,453	\$25,721
43-47	15.36%	8.5% in Lease Year 43	\$16,070	\$5,255	\$2,836	\$3,746	\$27,907
48-50	16.67%	8.5% in Lease Year 48	\$17,436	\$5,701	\$3,077	\$4,065	\$30,279
<b>1<sup>ST</sup> OPTION PERIOD</b>							
51-52			\$17,436	\$5,701	\$3,077	\$4,065	\$30,279
53-57	18.09%	8.5% in Lease Year 53	\$18,918	\$6,186	\$3,338	\$4,410	\$32,853
58-62	19.63%	8.5% in Lease Year 58	\$20,526	\$6,712	\$3,622	\$4,785	\$35,646
63-67	21.29%	8.5% in Lease Year 63	\$22,271	\$7,282	\$3,930	\$5,192	\$38,675
68-72	23.10%	8.5% in Lease Year 68	\$24,164	\$7,901	\$4,264	\$5,633	\$41,963
73-74	25.07%	8.5% in Lease Year 73	\$26,218	\$8,573	\$4,627	\$6,112	\$45,530

2 <sup>nd</sup> OPTION PERIOD							
74-77			\$26,218	\$8,573	\$4,627	\$6,112	\$45,530
78-82	27.20%	8.5% in Lease Year 78	\$28,446	\$9,302	\$5,020	\$6,632	\$49,400
83-87	29.51%	8.5% in Lease Year 83	\$30,864	\$10,092	\$5,447	\$7,195	\$53,599
88-92	32.02%	8.5% in Lease Year 88	\$33,488	\$10,950	\$5,910	\$7,807	\$58,155
93-97	34.74%	8.5% in Lease Year 93	\$36,334	\$11,881	\$6,412	\$8,471	\$63,098
98-99	37.69%	8.5% in Lease Year 98	\$39,423	\$12,891	\$6,957	\$9,191	\$68,461

Exhibit "K" to  
First Amendment to Ground Lease  
Form of GPLET Lease

=====

**LEASE**  
*Peoria Sports Park*

=====

1. **Date.** The date of this Lease (the "Lease") is \_\_\_\_\_ (the "Effective Date").

2. **Parties.** The parties to this Lease are as follows:

A. City of Peoria, Arizona  
Attn:  
8401 West Monroe Street  
Peoria, Arizona 85345

"Landlord"

B. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

"Tenant"

C. **Parties.** Landlord and Tenant may be referred to in this Lease individually as a "Party," or collectively as the "Parties."

3. **Lease of the Premises.**

A. **Improvements.** Landlord leases to Tenant, and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained in this Lease, those certain improvements (the "Improvements") constructed and situated upon that certain parcel of real property located in Peoria, Maricopa County, Arizona, as more particularly described in Exhibit "A" attached hereto (the "Property"); subject, however, to:

(1) Other covenants, restrictions, easements, agreements, and reservations, if any;

(2) The Ground Lease as defined in Section 3(B);

(3) The Development Agreement as defined in Section 12(A);

(4) Present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of the City of Peoria and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction; and

(5) The condition and state of repair of the Premises as the same may be on the Commencement Date.

B. Ground Lease. Tenant has previously leased the Property from Landlord pursuant to that certain "P83 Ground Lease, Easement and Purchase Option Agreement for Premises located South of Bell Road Adjacent to 83<sup>rd</sup> Avenue and Mariner Way in Peoria, Arizona" dated January 23, 2013, as amended March \_\_\_\_, 2014 (the "Ground Lease").

C. Premises. The Improvements were constructed by or for the benefit of Tenant, and (concurrently with Tenant's execution and delivery of this Lease to Landlord) title to the Improvements is being or has been conveyed to Landlord by Tenant pursuant to that certain deed recorded in the Official Records of Maricopa County, Arizona, as Instrument no. \_\_\_\_\_ (the "Deed"). The Improvements, consisting of a building or buildings containing approximately \_\_\_\_\_ square feet and commonly known as \_\_\_\_\_, may also be referred to in this Lease as the "Premises."

D. Government Property Improvement. It is the intention of Landlord and Tenant that the Premises constitute a "government property improvement" as defined in A.R.S. § 42-6201(2).

E. Term. The term of this Lease ("Term") shall commence on the date of execution of this Lease ("Commencement Date"), and shall expire at 12:00 midnight on the last day of the term of the Ground Lease, as the same be extended in accordance with the terms and conditions of the Ground Lease.

#### 4. Definitions.

For the purposes of this Lease, the following words shall have the definition and meaning set forth in this Lease:

- (a) "Commencement Date": As defined in Section 3(E).
- (b) "Development Agreement": As defined in Section 12(A).
- (c) "Event of Default": As defined in Section 19(A).
- (d) "Ground Lease": As defined in Section 3(B).
- (e) "Impositions": As defined in Section 6(A).
- (f) "Landlord": As defined in Section 2(A).
- (g) "Mortgagee": The holder, trustee, or beneficiary of any Permitted Mortgage.
- (h) "Option Period": As defined in Section 27(B).
- (i) "Permitted Mortgage": Any Mortgage or security interest not held by a Related Party (unless such Related Party is approved by Landlord) that constitutes a lien upon this Lease, the leasehold estate hereby created, and/or Tenant's interest in the Improvements or other improvements constructed on the Premises.

(j) "Permitted Mortgagee": The beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.

(k) "Premises": As defined in Section 3(A) and described in Exhibit "A."

(l) "Property": As defined in Section 3(A).

(m) "Purchase Option": As defined in Section 27(A).

(n) "Related Party": With respect to Tenant (including all entities which have an ownership interest in Tenant), any person or legal entity that is controlled by Tenant, that controls Tenant or that is under common control with Tenant, whether direct or indirect, and whether through ownership of voting securities, by control or otherwise. For purposes of this definition, "control" shall be conclusively presumed in the case of direct or indirect ownership of more than fifty percent of outstanding interests in terms of value or voting power of Tenant.

(o) "Sublease": Any agreement, written or oral, by which Tenant gives any individual or entity any rights of use or occupancy of or any benefit flowing from the Premises or a portion thereof, including a permit, license or concession.

(p) "Tenant": As defined in Section 2(B).

(q) "Term": As defined in Section 3(E).

(r) "Unavoidable Delays": As defined in Section 26.

## 5. **Rent**

### A. Net Rent.

(1) Base and Adjustments. Tenant shall pay to Landlord, at Landlord's address set forth in Section 22, during the Term, a net annual rental ("Net Rent"), as follows:

(a) During the first ten (10) years (or any portion thereof) of the Term, \$5,000.00 per year; and

(b) During the second (10) years (or any portion thereof) of the Term, \$10,000.00 per year; and

(c) During the third (10) years (or any portion thereof) of the Term, \$15,000.00 per year; and

(d) During the fourth (10) years (or any portion thereof) of the Term, \$20,000.00 per year; and

(e) During the fifth (10) years (or any portion thereof) of the Term, \$25,000.00 per year; and

(f) During the sixth (10) years (or any portion thereof) of the Term, \$30,000.00 per year; and

(g) During the seventh (10) years (or any portion thereof) of the Term, \$35,000.00 per year; and

(h) During the eighth (10) years (or any portion thereof) of the Term, \$40,000.00 per year; and

(i) During the ninth (10) years (or any portion thereof) of the Term, \$45,000.00 per year; and

(j) During the tenth (10) years (or any portion thereof) of the Term, \$50,000.00 per year.

(2) Annual Installments. All payments of annual Net Rent shall be made in annual installments in advance, without notice, on the first day of the month following the date of recording of the Deed, and on the same day of each year thereafter during the Term.

(3) Additional to Other Payments. Net Rent shall be in addition to and over and above all of the other payments to be made by Tenant as hereinafter provided.

B. Rent Absolutely Net. It is the purpose and intent of the Landlord and Tenant that Net Rent payable hereunder shall be absolutely net to Landlord so that this Lease shall yield to Landlord the Net Rent herein specified, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction or set-off by the Tenant, and Landlord shall not be expected or required to pay any such charge, assessment or Imposition or be under any obligation or liability hereunder except as herein expressly set forth, and that all costs expenses, and obligations of any kind relating to the maintenance and operation of the Premises, including all construction, alterations, repairs, reconstruction, and replacements as hereinafter provided, and further including all structural repairs and replacements, which may arise or become due during the term hereof shall be paid by Tenant, and Landlord shall be indemnified and saved harmless by Tenant from and against such costs, expenses, and obligations.

C. Non-Subordination. Landlord's interest in this Lease, as the same may be modified, amended or renewed, shall not be subject or subordinate to (a) any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

D. No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary shall permit the Tenant to quit or surrender the Premises or this Lease nor shall it relieve the Tenant of its liability to pay the Net Rent and Additional Payments and other charges under this Lease, nor shall it relieve the Tenant of any of its other obligations under this Lease.

6. **Additional Payments.**

A. **"Additional Payments" Defined.** Tenant shall pay as Additional Payments during the Term hereof, without notice (except as specifically provided) and without abatement, deduction or setoff, before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all sums, impositions, costs, expenses and other payments and all taxes (including personal property taxes and taxes on rents, leases or occupancy, if any, government property improvement lease excise tax and any applicable ad valorem taxes), assessments, special assessments, enhanced municipal services district assessments, water and sewer rents, rates and charges, charges for public utilities, excises, levies, licenses, and permit fees, any expenses incurred by Landlord on behalf of Tenant pursuant to this Lease, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which, at any time during the Term hereof may be lawfully assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or with respect to, or become a lien on, the Premises or any part thereof, or any appurtenances thereto, any use or occupation of the Premises, or such franchises as may be appurtenant to the use of the Premises (all of which are sometimes herein referred to collectively as "Impositions" and individually as "Imposition") provided, however, that:

(1) if, by law, any Imposition may at the option of the Tenant be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments as they become due during the Term hereof before any fine, penalty, further interest or cost may be added thereto; and

(2) any Imposition (including Impositions which have been converted into installment payments by Tenant, as referred to in paragraph (A) of this Section 4.1) relating to a fiscal period of the taxing authority, a part of which period is included within the Term hereof and a part of which is included in the period of time after the expiration of the Term hereof shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or become a lien upon the Premises, or shall become payable, during the Term hereof) be adjusted between Landlord and Tenant as of the expiration of the Term hereof, so that Tenant shall pay that portion of such Imposition attributable to the tenancy period and Landlord shall pay the remainder thereof.

B. **Payments.** Tenant shall pay to Landlord, with and in addition to the annual payment of Base Rent, all taxes imposed by any governmental unit on the rentals received by Landlord pursuant to the terms of this Lease. Tenant shall pay all other Impositions directly to the levying or taxing authority or authorities.

C. **Contest.** Tenant, in its sole election, may contest the validity or amount of any Imposition, in which event, Tenant may defer the payment thereof during the pendency of such contest; provided, that upon request by Landlord at any time after the same shall have become due, Tenant shall deposit with the Landlord any amount sufficient to pay such contested item

together with the interest and penalties thereon (as reasonably estimated by Landlord), which amount shall be applied to the payment of such item when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such item to remain unpaid for a length of time that permits the Premises or any part thereof, or the lien thereon created by such Imposition to be sold for the nonpayment of the same. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord together with all interest, penalties or other charges accruing thereon.

D. Assessment Reduction. Tenant in its sole election and without expense to Landlord, may seek at any time to obtain a lowering of an imposition or assessment upon the Premises for the purpose of reducing the amount thereof. Tenant shall be authorized to collect any refund payable as a result of any proceeding Tenant may institute for that purpose and any such refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant.

E. Hold Harmless. Landlord shall not be required to join in any action or proceeding referred to in Sections 6(C) or 6(D) (unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of the Landlord only with Landlord's prior written consent). Tenant hereby agrees to save Landlord harmless from all costs, expenses, claims, loss or damage by reason of, in connection with, on account of, growing out of or resulting from, any such action or proceeding.

F. Government Property Lease Excise Tax. As required under Arizona Revised Statutes Section 42-6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax provisions of Arizona Revised Statutes, Section 42-6201, *et seq.*, as amended from time to time. Failure of Tenant to pay the tax after notice and an opportunity to cure is an Event of Default that could result in the termination of Tenant's interest in this Lease and of its right to occupy the Premises. Notwithstanding the foregoing, Landlord makes no representation to Tenant that the Premises qualify for excise taxation under or pursuant to Section 42-6201, *et seq.*; nor will Landlord, at any time during the Rental Term, certify, represent, state, acknowledge or agree that the Premises constitute a "government property improvement" or that the Premises qualify for excise taxation under or pursuant to Section 42-6201, *et seq.*, or that Tenant is able or entitled to pay excise rather than ad valorem taxes with respect to the Improvements, whether such obligation arises by law, under the Ground Lease, or under this Lease; provided, however, that Landlord agrees to cooperate with Tenant to provide to the taxing authority or authorities that have the statutory authority to analyze or determine compliance with Section 42-6201, *et seq.*, such documents they may reasonably request, including but not limited to this Lease, the Ground Lease and the Development Agreement, to determine, among other things, whether: (i) the Premises qualify for excise taxation under or pursuant to Section 42-6201, *et seq.*; (ii) the Premises constitute a "government property improvement"; or (iii) Tenant is able or entitled to pay excise rather than ad valorem taxes with respect to the Improvements. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all tax liability of any nature, whether excise, ad valorem or

otherwise, that may be imposed upon Landlord, its representatives or its property, with respect to the Deed, the Premises, the Improvements or this Lease.

**7. Insurance.**

A. Tenant Obligation to Insure. Tenant shall procure and maintain for the duration of this Lease, at Tenant's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Lease by the Tenant, its agents, subtenants, employees, contractors, licensees or invitees in commercially reasonable amounts.

B. Insurable Interests of Parties. Any property policies required by this Section 7 shall be issued in the name of Tenant, and shall name Tenant and Landlord as "loss payees as their interests may appear." Any liability policies required and obtained by Tenant pursuant to this Section 7 shall name Tenant and Landlord as additional insureds. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All such policies of insurance (or certificates) required by this Section 7 and delivered to Landlord shall include a provision that the company writing the policy will give Landlord thirty (30) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance.

C. Failure to Maintain Insurance. Subject to Section 7(A), if Tenant fails or refuses to provide a copy of the renewal insurance certificates, together with evidence of payment of premiums therefor, or otherwise fails or refuses to procure or maintain insurance as required by this Lease, Landlord shall have the right, at Landlord's election, and without notice, to procure and maintain such insurance. The premiums paid by Landlord shall be due and payable from Tenant to Landlord on the first day of the month following the date on which the premiums were paid. Landlord shall give prompt notice of the payment of such premiums, stating the amounts paid and the names of the insurer(s) and insured(s). The lapse or cancellation of any policy of insurance required herein, in whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

**8. Surrender.**

A. Surrender--Removable Property. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 27, upon the expiration of the Term of this Lease or on the earlier termination of this Lease, Tenant shall peaceably and quietly leave, surrender, and yield up to the Landlord all of the Premises broom-clean and free of occupants, and shall repair all damage to the Premises caused by or resulting from the removal of any removable property of Tenant or of subtenants, normal wear and tear excepted. Any property of Tenant or any subtenant which shall remain in any building on the Premises after the expiration of the Term hereof or sooner termination thereof shall be deemed to have been abandoned, and may either be retained by Landlord as its property or disposed of in such manner as Landlord

may see fit. If such property or any part thereof shall be sold, Landlord shall receive and retain the proceeds of such sale. Tenant shall be liable to Landlord for any and all costs of removal and the repair of any and all damages caused thereby in excess of any proceeds received by Landlord from any sale of Tenant's property pursuant to this provision.

B. Waste. Tenant shall not commit or permit any waste or impairment of the Premises.

C. Hazardous Materials. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 27, within the three (3) months immediately preceding the expiration of the Term of this Lease or within (2) two months of any earlier termination of the Lease (unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 31), Tenant shall deliver to Landlord an environmental site assessment prepared in compliance with current ASTM standards by an independent qualified engineer, licensed by the State of Arizona, stating that the Premises are free of any hazardous materials as they are hereinafter defined or identified by either the United States Environmental Protection Agency or similar State agency as such. If any hazardous materials are identified, Tenant shall be liable for removing the hazard and leaving the Premises in a hazard free condition.

9. **Landlord's Performance For Tenant**. If Tenant fails to pay any Imposition or make any other payment required to be made under this Lease or defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition herein contained, Landlord, without being under any obligation to do so and without thereby waiving such default, but in any event subject to Section 19, may make such payment and/or remedy such other default for the account and at the expense of Tenant, immediately and without notice. Bills for any expense required by Landlord in connection therewith, and bills for all such expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's or administrative fees, involved in collection or endeavoring to collect the rent or Additional Payments or any part thereof, or enforcing or endeavoring to enforce any right against Tenant, under or in connection with this Lease, or pursuant to law, including (without being limited to) any such cost, expense, and disbursements involved in instituting and prosecuting summary proceedings, as well as bills for any property, material, labor, or services provided furnished, or rendered, or caused to be furnished or rendered, by Landlord to Tenant, with respect to the Premises and other equipment and construction work done for the account of the Tenant together with interest at the rate of twelve percent (12%) per annum compounded monthly from the respective dates of the Landlord's making of each such payment or incurring of each such cost or expense, may be sent by Landlord to Tenant monthly, or immediately, at Landlord's option, and shall be due and payable in accordance with the terms of said bills and if not paid when due the amount thereof shall immediately become due and payable as Additional Payments.

10. **Uses And Maintenance**.

A. Landlord's Disclaimer. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Commencement Date, throughout the Term hereof. Tenant hereby

assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land.

B. Permitted Uses. The Premises may be used for any lawful use permitted by all applicable zoning and use restrictions and A.R.S. § 42-6201 *et. seq.*

C. Maintenance, Repairs, Indemnity. Tenant shall take good care of the Premises, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises in good order, repair, and condition. Tenant shall indemnify Landlord and save it harmless from any and all claims or demands, upon or arising out of any accident, injury, or damage to any person or property occurring in or upon the Premises or any part thereof, or upon the sidewalks about the Premises, however caused, and shall keep the Premises free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Premises.

D. Alterations. Tenant may erect any structures, make any improvements, and do any other construction work on the Premises, and alter, modify, or make additions, improvements, or repairs to or replacements of any structure, now existing or built at any time during the Term hereof, and install any fixtures in compliance with Applicable Laws, but only at Tenant's sole cost and expense.

## 11. Compliance

A. Tenant Obligations. Tenant shall diligently comply with, at its own expense during the Term hereof, all present and future laws, acts, rules, requirements, orders, directions, ordinances, and/or regulations, ordinary or extraordinary, foreseen or unforeseen, concerning the Premises or any part thereof, or the use thereof, or the streets adjacent thereto, of any federal, state, municipal, or other public department, bureau, officer, or authority, or other body having similar functions, or of any liability, fire, or other insurance company having policies outstanding with respect to the Premises, provided, however, that Tenant may, in good faith (and wherever necessary, in the name of, but without expense to and with the prior written permission of, Landlord), contest the validity of any such law, act, rule, requirement, order, direction, ordinance and/or regulation and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or to prosecute for a crime, or to cause the Premises or any part thereof to be condemned or to be vacated.

B. Certificate of Occupancy. Tenant shall obtain any certificate of occupancy (or similar certificate of instrument) with respect to the Premises which may at any time be required by any governmental agency having jurisdiction.

## 12. Construction And Operation Of New Improvements

A. Project. The Property is a portion of the real property that is the subject of the Ground Lease and that is referred to in the Ground Lease as the "Lease Parcel." As set forth in the Ground Lease, Tenant may construct certain improvements and fixtures on the Lease Parcel (the "Improvements"). However, the rights and obligations of Landlord and Tenant under this Lease may be conditioned upon the construction of the Improvements or any further or additional improvements on the Property by Tenant. In addition, the Lease Parcel (including the Premises) is subject to all terms and conditions of that certain Development Agreement between the City of Peoria and Peoria Sports Park, LLC, dated \_\_\_\_\_, and recorded in the Official Records of Maricopa County, Arizona, as instrument no. \_\_\_\_\_ (the "Development Agreement").

B. Construction Requirements.

(1) All costs of construction of the Improvements, or any other improvements constructed on the Property, shall be borne solely by Tenant.

(2) Tenant will also obtain the approval of the final plans and specifications by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter and provide conformed copies of executed approvals to Landlord.

(3) Tenant will construct all Improvements in a good, careful, proper, and workmanlike manner in accordance with (a) the approved plans and specifications; (b) all provisions of law and any and all permits and authority required by ordinance, code, law, or public regulations or by any authority at any time having jurisdiction over the Premises; and (c) the requirements of any public or quasi-public body having similar jurisdiction.

C. Ownership of Buildings and Improvements.

(1) During Term. Prior to receipt of a Certificate of Occupancy (or similar official certificate or instrument establishing the completion of the Improvements and authorizing their operation for their intended purpose), title to all Improvements constructed on the Premises by Tenant pursuant to this Lease shall be in the Tenant.

(2) Upon Completion. Following issuance of a Certificate of Occupancy and conveyance of title to the Improvements to Landlord, title shall be vested in the Landlord subject to the rights of any subtenant, leasehold mortgagee and other parties claiming by, through or under Tenant, and with the use and occupancy of the Improvements subject to all terms and conditions of this Lease. There shall be no increase in the rental payment owing to Landlord under the Ground Lease as a result of such conveyance.

(3) Ownership at Termination. Unless Tenant has purchased the Premises pursuant to the Purchase Option set forth in Article 27, on the expiration or sooner termination of this Lease term, title to all buildings and improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Lessee and subtenants, shall (without the payment of compensation to Tenant or others) remain in Landlord free and clear of

all claims and encumbrances on such buildings and improvements by Tenant, and anyone claiming under or through Tenant. Any piping, wells, pumps, tanks or other equipment installed on the property by Tenant shall be left in a structurally sound, nonleaking condition so as not to become the source of any future environmental contamination or hazard. Upon request, Tenant shall quitclaim to Landlord its possessory interest in the buildings and improvements. Tenant agrees to and shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liability and loss which may arise from or in connection with the assertion of any claims and any encumbrances on such buildings and Improvements; provided, however, such duty to indemnify and hold harmless shall not apply to any claims or encumbrances which are attributable solely to the acts or conduct of the Landlord. Additionally, Tenant shall assign to Landlord, and Landlord shall be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease.

(4) Tenant's Management and Operating Covenant. Following issuance of the Certificate of Occupancy and continuing during the remainder of the Term, subject to the provisions of Articles 9, 14 and 15 with respect to alterations, damage and destruction and condemnation, Tenant shall prudently manage and operate (or cause to be managed and operate) and will properly maintain the Improvements and all other improvements to the Premises in good repair, reasonable wear and tear excepted.

13. **Impairment Of Landlord's Title.**

A. No Liens. Tenant shall not create, or suffer to be created or to remain, and shall discharge any mechanic's, laborer's, or materialman's lien which might be or become a lien, encumbrance, or charge upon the Premises or any part thereof or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights, and interests of Landlord in the Premises or any part thereof might be impaired. The provisions of this Section 13 are not intended to limit any rights Tenant may have under Section 3 of this Lease.

B. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. Tenant shall notify Landlord in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded.

C. No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

D. No Agency Intended. The parties acknowledge that Tenant is entitled to construct the Improvements. In connection therewith, the parties agree that Tenant is not the agent of Landlord for the construction, alteration or repair of any improvement Tenant may construct upon the Premises, the same being done at the sole expense of Tenant.

14. Inspection. Landlord shall have the right to enter upon the Premises, or any part thereof, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant, provided that such entry does not interfere with Tenant's business operations and provided that Landlord shall give Tenant at least seventy-two (72) hours written notice prior to any inspection of any building interior. Notwithstanding the foregoing, the seventy-two (72) hour notice provision shall not be construed to prohibit or delay any entry by Landlord in its capacity as a municipality exercising its police power or in its criminal law enforcement capacity, nor to any entry authorized by any writ or warrant issued by any Court, nor to any entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

15. Indemnification.

A. Tenant shall indemnify, defend, pay and hold Landlord harmless for, from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including property damage, personal injury and wrongful death and further including, without limitation, architects' and attorneys' fees and disbursements, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurring during the term unless caused solely by the active negligence or intentional acts or omissions of Landlord, its agents, employees or contractors, or a failure to act by the Landlord, its agents, employees or contractors when a duty to act is present:

(1) construction of the Improvements or any other work or thing done in, on or about the Premises or any part thereof by Tenant or its agents;

(2) any use, nonuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Premises or improvements or any nuisance made or suffered thereon or any failure by Tenant to keep the Premises or improvements or any part thereof, in a safe condition;

(3) any acts of the Tenant or any subtenant or any of its or their respective agents, contractors, servants, employees, licensees or invitees;

(4) any fire, accident, injury (including death) or damage to any person or property occurring in, on or about the Premises or improvements or any part thereof;

(5) any failure on the part of Tenant to pay rent or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with and the exercise by Landlord of any remedy provided in this Lease with respect thereto;

(6) any lien or claim which may be alleged to have arisen against or on the Premises or improvements or any part thereof or any of the assets of, or funds appropriated to, Landlord or any liability which may be asserted against Landlord with respect thereto to the extent arising, in each such case, out of the acts of Tenant, its contractors, agents, sublessees;

(7) any failure on the part of Tenant to keep, observe, comply with and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the subleases or other contracts and agreements affecting the Premises or improvements or any part thereof, on Tenant's part to be kept, observed or performed;

(8) any transaction relating to or arising out of the execution of this Lease or other contracts and agreements affecting the Premises or any part thereof or any activities performed by any party, person or entity which are required by the terms of this Lease or such other contracts and agreements;

(9) any tax, including any tax attributable to the execution, delivery or recording of this Lease, with respect to events occurring during the term of this Lease.

B. Tenant will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at the sole risk of Tenant and save the Landlord harmless from any loss or damage thereto by any cause whatsoever.

C. The obligations of Tenant under this Section shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

D. If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in this Section, then, upon demand by Landlord, Tenant, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Landlord's name, if necessary, by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Landlord shall approve, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Landlord may engage its own attorneys to defend it or to assist in its defense and Tenant shall pay the reasonable fees and disbursements of such attorneys.

E. The provisions of this Section 15 shall survive the expiration or earlier termination of this Lease for a period of ten (10) years.

16. **Damage Or Destruction.**

A. **Tenant Repair and Restoration.** If, at any time during the Term hereof, the Premises or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant, at its sole cost and expense, and whether or not the insurance proceeds, if any, shall be sufficient for the purpose, may at Tenant's sole option proceed with reasonable diligence to repair, alter, restore, replace, or rebuild the same as nearly as possible to its value, condition, and character immediately prior to

such damage or destruction. Anything herein to the contrary notwithstanding, Tenant shall immediately secure the Premises and undertake temporary repairs and work necessary to protect the public and to protect the Premises from further damage.

B. Payment of Insurance Proceeds. All insurance proceeds on account of such damage or destruction under the policies of insurance provided for in Article 7, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (herein sometimes referred to as the "insurance proceeds") shall be paid to Tenant (or to Landlord, as applicable, if Landlord has procured insurance pursuant to Section 7(C) of this Lease).

C. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Premises shall be untenantable owing to the partial or total destruction thereof. No such damage or destruction shall affect in any way the obligation of Tenant to pay the rent, Additional Payments, and other charges herein reserved or required to be paid, nor release Tenant from obligations imposed upon Tenant hereunder.

D. Substantial Damage at End of Term. If 50% or more of the square footage of the Improvements constituting the Premises is substantially damaged or destroyed by fire or other casualty at any time during the last five (5) years of the Term, Tenant may, at its option, terminate this Lease within ninety (90) days after serving upon the Landlord written notice of Tenant's election to so terminate in which case title to the Premises shall be conveyed to Tenant who shall accept conveyance of the Premises in an "as-is" condition.

17. **Condemnation.**

A. Substantial Taking, or Unusable Remainder. If at any time during the term of this Lease, title to the whole or substantially all of the Premises shall be taken in condemnation proceedings or by any right of eminent domain or by agreement in lieu of such proceedings, this Lease shall terminate and expire on the date possession is transferred to the condemning authority and the Net Rent and Additional Payments reserved shall be apportioned and paid to the date of such taking. All compensation paid by the condemning authority in the case of any condemnation (total or partial) shall be the sole property of Tenant free and clear of any right, title, claim or interest of Landlord.

B. Partial Taking--Lease Continues. In the event of any taking of less than the whole or substantially all of the Premises, neither Net Rent nor the Term of this Lease shall be reduced or affected in any way.

C. Rights of Participation. Tenant shall have the sole right, at its own expense, to appear in and defend any condemnation proceeding and participate in any and all hearings, trials, and appeals therein. Landlord, at the request of Tenant, shall execute a Disclaimer of Interest in the condemnation action evidencing the fact that Landlord has no interest in the proceeds of the condemnation.

D. Notice of Proceeding. In the event Landlord or Tenant shall receive notice of any proposed or pending condemnation proceedings affecting the Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents thereof.

E. Relocation Benefits. Tenant shall also retain any federal, state or local relocation benefits or assistance provided in connection with any condemnation or prospective condemnation action.

18. **Assignment, Subletting, Mortgage.**

A. Permitted Assignments. Upon the prior written consent of Landlord (which shall not be unreasonably withheld), and provided that there is no act or omission by Tenant that, upon the passage of time, or the giving of notice, or both, would constitute an Event of Default, Tenant may assign, mortgage, pledge, encumber, sublease or transfer this Lease and further provided that no such assignment shall release Tenant of its continuing obligations hereunder unless it meets the requirements of a "Permitted Assignment," as hereinafter defined.

(1) "Permitted Assignment" shall be any assignment of Tenant's interest in this Lease which meets at least one of the following requirements:

(a) The assignment shall be of the entirety of Tenant's rights and obligations under this Lease, and there shall be no severing of the Improvements from the Lease.

(b) The assignment shall be an assignment of the entire interest of Tenant for the remainder of the Term.

(c) Prior to such assignment the proposed assignee shall submit to Landlord a financial statement, together with reasonable supporting documentation (but not including new appraisals) establishing that such proposed assignee, either by itself or in combination with a guarantor willing to guaranty such proposed assignee's obligations under this Lease, will have at the time of the assignment a net worth satisfactory to Landlord in Landlord's reasonable determination.

(2) The assignee under a Permitted Assignment is herein called a "Permitted Assignee." Upon the occurrence of a Permitted Assignment and the Permitted Assignee's delivery to Landlord of the assumption instrument referred to in Section 18(A)(4) below, the prior Tenant shall be released from liabilities and obligations under this Lease accruing thereafter, and the Permitted Assignee shall be and become and remain liable for the payment of all rents and other sums payable hereunder and for the due performance of all the covenants, agreements, terms and provisions hereof on Tenant's part to be performed throughout the remainder of the Lease Term, from and after the Permitted Assignment; provided, however, that the prior Tenant shall not be released from its liabilities and obligations arising under Section 28 without the express consent of Landlord, which shall not be unreasonably withheld, conditioned or delayed. The provisions hereof shall be operative for and apply to each subsequent Permitted Assignment.

(3) Continuing Liability. The making of any assignment that is not a Permitted Assignment, shall not operate to relieve Tenant from its obligations under this Lease and, notwithstanding any such assignment, except as otherwise provided in this Article, Tenant shall remain liable for the payment of all Net Rent and Additional Payments and for the due performance of all the covenants, agreements, terms, and provisions of this Lease to the full end of the Term hereof, whether or not there shall have been any prior termination of this Lease by summary proceedings or otherwise.

(4) Assignee Bound. Every assignee, whether as assignee or as successor in interest of any assignee of Tenant herein named or as assignee of the holder of any Permitted Mortgage, or as successor in interest of any assignee, including any purchaser of the Lease under a foreclosure of any Permitted Mortgage, shall immediately be and become and remain liable for the payment of Net Rent and Additional Payments, and for the due performance of all the covenants, agreements, terms, and provisions hereof on Tenant's part to be performed to the end of the Term, and every provision of this Lease applicable to Tenant shall apply to and bind every such assignee and purchaser with the same force and effect as though such assignee or purchaser were the Tenant named in this Lease. No transfer to such assignee or to such purchaser shall be binding upon Landlord unless such assignee or purchaser shall deliver to the Landlord a recordable instrument which contains a covenant of assumption by said assignee or purchaser to such effect, but the failure or refusal of such assignee or purchaser to deliver such instrument shall not release or discharge such assignee or purchaser from its obligations and liability as above set forth.

B. Permitted Subleases. Tenant may sublease all or any portion of the Premises in the normal course of Tenant's business for occupancy consistent with the uses permitted by Section 10 of this Lease, subject to the rights of Landlord, and neither the consent of Landlord nor the assumption of this Lease shall be required in connection with such renting or subleasing if all of the conditions set forth below are satisfied. Any Sublease which is permitted by this Section 18(B) is herein referred to as a "Permitted Sublease":

(1) Each Sublease shall be subject and subordinate to this Lease and the rights of Landlord hereunder and the rights of the First Permitted Mortgagee, as provided herein;

(2) Any violation of any provision of this Lease, whether by act or omission by any subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the Parties that Tenant shall assume and be liable to Landlord for any and all acts and omissions of any and all subtenants with respect to this Lease.

(3) Each such sublease shall provide that in the event such Lease is terminated, the subtenant will attorn to Landlord if Landlord shall accept such attornment upon such termination; and

(4) Each subtenant shall deliver to Landlord an instrument confirming the agreement of such subtenant to attorn to Landlord and to recognize Landlord as the subtenant's landlord under its sublease, which instrument shall provide that neither Landlord, nor anyone claiming by, through or under Landlord shall be:

(a) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord), or

(b) subject to any offsets or defenses which the subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord), or

(c) bound by any payment of rent which the subtenant might have paid for more than the current month to any prior landlord (including, without limitation, the then defaulting landlord), or

(d) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof demised by said sublease, or

(e) bound by any obligation to make any payment to the subtenant, or

(f) bound by any modification of the sublease which reduces the basic rent, Additional Payments, supplemental rent or other charges payable under the sublease, or shortens the term thereof, or otherwise materially adversely affects the rights of the landlord thereunder, made without the written consent of Landlord.

C. Permitted Mortgages.

(1) Tenant from time to time during the Term of this Lease may make one or more Permitted Mortgages, provided that:

(a) Each Permitted Mortgage shall cover no interests in real property other than Tenant's interest in the Premises and the subleases;

(b) Tenant or the holder of such Permitted Mortgage shall promptly deliver to Landlord in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

(c) Each Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and Condemnation Awards in the manner provided in this Lease.

(2) For the purpose of this Section 18(C), the making of a Permitted Mortgage shall not be deemed to constitute an assignment or transfer of this Lease, nor shall any holder of a Permitted Mortgage (a "Permitted Mortgagee"), as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such holder of a Permitted Mortgage, as such, to assume the performance of any of the terms, covenants, or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of this Lease in any proceedings for the foreclosure of any Permitted Mortgage, or the assignee or transferee of this Lease under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section and shall be deemed to have assumed the performance of all the terms, covenants, and conditions on

the part of Tenant to be performed hereunder from and after the date of such purchase and assignment.

(3) Notice to Permitted Mortgagees. So long as any Permitted Mortgage shall remain a lien on Tenant's leasehold estate hereunder, Landlord agrees, simultaneously with the giving of any notice required by Section 19 of this Lease to Tenant (i) of default, or (ii) of a termination hereof, to give duplicate copies thereof or of any process in any action or proceeding brought to terminate or to otherwise in any way affect this Lease, to each Permitted Mortgagee as defined in Section 18(C)(2) only, and no such notice to Tenant or process shall be effective unless a copy of such notice is given to the Permitted Mortgagee in the manner herein provided. Concurrently with Tenant, the Permitted Mortgagee will have the same period after receipt of the aforesaid notice by Tenant to remedy the default or cause the same to be remedied plus twenty (20) days thereafter, and Landlord agrees to accept such performance on the part of a Permitted Mortgagee as though the same had been done or performed by Tenant.

(4) Mortgagee Cures Landlord will take no action to terminate this Lease by reason of any default by Tenant without first giving to the Permitted Mortgagee that has a first lien of record against Tenant's Leasehold interest (the "First Permitted Mortgagee") a reasonable time within which either (i) to obtain possession of the Premises (including possession by a receiver) and thereafter to cure such default if the default can be cured with the exercise of reasonable diligence by the First Permitted Mortgagee, or (ii) to institute foreclosure proceedings and to complete such foreclosure, or otherwise to acquire Tenant's interest under this Lease with diligence and without unreasonable delay in the case of a default which cannot be cured with the exercise of reasonable diligence by the First Permitted Mortgagee. In either such case, the default of which notice shall have been given shall be deemed cured. The First Permitted Mortgagee shall not be required to continue such foreclosure proceedings if the default shall be cured by Tenant; provided, further, that nothing herein shall preclude Landlord from exercising any rights or remedies under this Lease with respect to any other default by Tenant during any period of such forbearance.

(5) Conditions of Cure. The provisions of Section 18(C)(4) are conditioned on the following:

(a) First Permitted Mortgagee notifying Landlord of its election to proceed with due diligence promptly to acquire possession of the Premises or to foreclose the First Permitted Mortgage or otherwise to extinguish Tenant's interest in this Lease; and

(b) First Permitted Mortgagee delivering to Landlord an instrument in writing duly executed and acknowledged wherein such First Permitted Mortgagee agrees that:

(i) During the period that such First Permitted Mortgagee shall be in possession of the Premises and so long as it remains in possession and/or during the pendency of any such foreclosure or other proceedings and until the interest of Tenant in this Lease shall terminate or such proceeding shall be discontinued as provided in this Section, as the case may be, it will pay or cause to be promptly paid to Landlord all sums that are then due or that may, from time to time, become due hereunder for Net Rent or Additional Payments; and

(ii) If delivery of possession of the Premises shall be made to such First Permitted Mortgagee, whether voluntarily or pursuant to any foreclosure, other proceedings or otherwise, such First Permitted Mortgagee shall, promptly following such delivery of possession, perform all the covenants and agreements herein contained on Tenant's part to be performed (including but not limited to payment of Net Rent and Additional Payments) to the extent that Tenant shall have failed to perform the same to the date of delivery of possession, as aforesaid.

19. **Default By Tenant.**

A. Events of Default. The happening of any one of the following events (herein called "Events of Default") shall be considered a material breach and default by Tenant under this Lease:

(1) Monetary Default. If default shall be made in the due and punctual payment of any Net Rent or Additional Payments within ninety (90) days after written notice thereof to Tenant; or

(2) Non-Monetary Default. If default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms, limitations, or conditions hereof other than those referred to in the foregoing subsection (A), and such default shall continue for a period of ninety (90) days after written notice thereof from Landlord to Tenant (provided, that if Tenant proceeds with due diligence during such ninety (90) day period to substantially cure such default and is unable by reason of the nature of the work involved, to cure the same within the required ninety (90) days, its time to do so shall be extended by the time reasonably necessary to cure the same as determined by Landlord); or

(3) Bankruptcy, Voluntary. If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall take the benefit of any relevant legislation that may be in force for bankrupt or insolvent debtors or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or if Tenant shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors; or

(4) Bankruptcy, Involuntary. If a petition shall be filed against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation, and shall remain undismissed or unstayed for ninety (90) days, or if any trustee, receiver or liquidator of Tenant, or of all or substantial part of its properties, shall be appointed without the consent or acquiescence of Tenant and such appointment shall remain unvacated and unstayed for ninety (90) days; or

(5) Insurance, Lapse or Termination. Notwithstanding the provisions of Section 19(A)(2), above, the lapse or cancellation of any policy of insurance required herein, in

whole or in part for the benefit of Landlord, shall be an event of default. No cure of such default can be accomplished unless a new or renewed policy is issued which specifically provides the required coverage to the Landlord for any liability arising during the lapsed or previously uncovered period.

B. Notice and Termination. Upon the occurrence of one or more of the events listed in Section 19(A) the Landlord at any time thereafter, but not after such default is cured, may give written notice ("Second Notice") to Tenant specifying such Event(s) of Default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least ninety (90) days after the giving of such Second Notice, and upon the date specified in such Second Notice, this Lease and the term hereby demised and all rights of Tenant under this Lease shall expire and terminate as though such date were the date originally set forth herein for the termination hereof.

C. Reletting. At any time after any expiration or termination of this Lease as provided in this Article or by summary proceedings, ejectment or otherwise, Landlord shall use its best efforts to relet the Premises or any part thereof, in the name of Landlord. It being understood that if other suitable parcels are available, Landlord is not required to relet the subject property first.

D. Tenant Liability Continues. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination for a period of ten (10) years.

E. No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

F. Remedies Cumulative. In the event of any breach by Tenant of any of the covenants, agreements, terms or conditions hereof, Landlord, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach as though reentry, summary proceedings, and other remedies were not provided for in this Lease.

G. Specific Performance. If a default is not commenced to be cured within ninety (90) days after service of the notice of default and is not cured promptly in a continuous and diligent manner within a reasonable period of time after commencement, Landlord may, at its option, thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

20. **Default By Landlord.**

A. **Limitations of Landlord's Liability.** The term "Landlord," as used herein, so far as Landlord's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Premises or those having the right of immediate possession in a pending condemnation action at the time in question. In the event of any conveyance of such title, and regardless of whether the grantee is financially responsible or solvent and notwithstanding that the grantor may be a stockholder, officer or director of a corporate grantee, Landlord herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's covenants and agreements thereafter to be performed, and such grantee shall be bound by all such covenants and agreements; it being intended that Landlord's covenants and agreements shall be binding on Landlord, its successors and assigns, only during and in respect of their successive periods of ownership.

B. **Remedies.** In the event of any breach by Landlord of any of the covenants, agreements, terms, or conditions hereof, Tenant, in addition to any and all other rights, shall be entitled to enjoin such breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise for such breach.

21. **Unenforceable Terms.** If any term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and be enforced to the fullest extent permitted by law.

22. **Notices.**

Any notice, request, demand, statement, or consent herein required or permitted to be given by either party to the other hereunder, in writing signed by or on behalf of the party giving the notice and addressed to the other at the address as set forth below:

If to Landlord: City of Peoria  
Attn: City Clerk  
8401 West Monroe Street  
Peoria, Arizona 85345

With a copy to: City of Peoria  
Attn: City Attorney  
8401 West Monroe Street  
Peoria, Arizona 85345

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Each party may by notice in writing change its address for the purpose of this Lease, which address shall thereafter be used in place of the former address. Each notice, demand, request, or communication which shall be mailed to any of the aforesaid shall be deemed sufficiently given, served, or sent for all purposes hereunder five (5) business days (i) after it shall be mailed by United States registered or certified mail, postage prepaid, in any post office or branch post office regularly maintained by the United States Government, (ii) upon personal delivery, or (iii) one business day after deposit with any commercial air courier or express service.

23. **Quiet Enjoyment.** Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Net Rent, and additional payments and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

24. **Estoppel Certificates.** Landlord or Tenant may request from the other, a certificate evidencing whether or not:

A. The Lease is in full force and effect along with the amount and current status of the Net Rent and Additional Payments due hereunder;

B. The Lease has been modified or amended in any respect or describing such modifications or amendments, if any;

C. There are any existing defaults thereunder, to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any; and

D. Any other matters reasonably required or requested in connection with a transaction for which the estoppel certificate has been requested.

25. **Consents.**

A. **Parties and Notice.** Whenever the consent or approval of a party to this Lease is required or reasonably requested under this Lease, if such party fails to notify the other party in writing within thirty (30) days (except where a longer period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice of such party's refusal to consent or disapproval, it shall be concluded that such consent or approval has been given.

B. **No Unreasonable Withholding.** Wherever in this Lease the consent or approval of either party is required, such consent or approval shall not be unreasonably withheld nor delayed, except where otherwise specifically provided. The remedy of the party requesting such consent or approval, in the event such party should claim or establish that the other party has unreasonably withheld or delayed such consent or approval, shall be an action for issuance of an injunction or declaratory judgment.

26. **Unavoidable Delay; Extension of Time of Performance.** In addition to specific provisions of this Lease, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes, lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability (when either party is faultless) of any contractor, subcontractor or supplier; acts of the other party. A lack of funds or inability to obtain funds shall not be included in this definition of Unavoidable Delays. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the parties hereto.

27. **Option To Purchase Premises.**

A. **Option to Purchase.** Landlord hereby grants to Tenant the exclusive option to purchase the Premises ("Purchase Option") according to the terms and conditions set forth in this Section 31.

B. **Exercise of Option.** The Purchase Option shall become effective and Tenant shall have the right to exercise the Purchase Option at any time after the Commencement Date ("Option Period"), provided that Tenant's right to exercise the Purchase Option shall be conditioned upon Tenant not being in default under this Lease or under any other agreement

between Landlord and Tenant regarding or relating to the Premises. In addition, Tenant (i) shall be obligated to exercise the Purchase Option concurrently with Tenant's exercise of the "Purchase Option" (so called) granted by Section 28 of the Ground Lease, and (ii) may not exercise the Purchase Option after the expiration (without exercise) of the "Purchase Option" (so called) granted by Section 28 of the Ground Lease. Subject to the foregoing, the Purchase Option may be exercised by Tenant at any time during the Option Period by Tenant delivering written notice of exercise to Landlord in the manner provided in the Ground Lease, including but not limited to the form of "Option Notice" and the designation of the Closing Date.

C. Conveyance of Premises.

(1) Purchase Price. The purchase price for the Premises shall be:

(a) \$10,000.00, if the Closing Date occurs during the first ten years of the Term;

(b) \$20,000.00, if the Closing Date occurs during the second ten years of the Term;

(c) \$30,000.00, if the Closing Date occurs during the third ten years of the Term;

(d) \$40,000.00, if the Closing Date occurs during the fourth ten years of the Term; and

(e) \$50,000.00, if the Closing Date occurs during the fifth ten years of the Term.

The purchase price shall be paid to Landlord prior to conveyance of title.

(2) Conveyance of Title and Delivery of Possession. Landlord and Tenant agree to perform all acts necessary for conveyance in sufficient time for the property interest to be conveyed promptly after delivery to Landlord of Tenant's notice of exercise or on the last day of the Term, whichever first occurs, and compliance by Landlord with all requirements imposed upon Landlord by Applicable Law with respect to its disposition of real property. Landlord's entire interest in the Premises shall be conveyed by Special Warranty Deed in the form of Exhibit B. All expenses in connection with conveyance of the Premises to Tenant including, but not limited to, title insurance, recordation and notary fees and all other closing costs, shall be paid by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title.

28. Compliance With Environmental Laws.

A. Definitions.

(1) "Environmental Law." Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are

amended from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Arizona Environmental Quality Act, Title 49, Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. Sections 651-678; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

(2) "Regulated Substances."

(a) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 *et seq.*, and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. Sections 6991 to 6991i.

(b) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. Section 49-201 *et seq.*; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. Section 49-281 *et seq.*; the Solid Waste Management Act, A.R.S. Section 49-701 *et seq.*; the Underground Storage Tank Regulation Act, A.R.S. Section 49-1001 *et seq.*; and Management of Special Waste, A.R.S. Section 49-851 to 49-868.

(c) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Agreement.

(3) "Release." Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

B. Compliance. Tenant shall, at Tenant's own expense, comply with all present and hereinafter enacted Environmental Laws, and any amendments thereto, affecting Tenant's operation on the Premises. Tenant shall not cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, brought upon, or released on, or under the Premises, or transported to or from the Premises, by Tenant, its agents, employees, contractors, invitees or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under an Environmental Law.

C. Indemnification.

(1) Tenant shall indemnify, defend and hold harmless, on demand, Landlord, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from and against any and all liabilities, obligations, damages, charges and expenses, penalties, suits, fines, claims, legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, the environment or the Premises and any and all claims or actions brought by any person, entity or governmental body, alleging or arising in connection with contamination of, or adverse effects on, human health, property or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment or order of any governmental agency or judicial entity, which are incurred or assessed as a result, whether in part or in whole, of any use of the Premises during the term of this Lease or any previous lease or uses of the Premises by Tenant or its owners or affiliated entities, agents, employees, invitees, contractors, visitors or licensees. Regardless of the date of termination of this Lease, Tenant's obligations and liabilities under this Article 32 shall continue so long as the Landlord bears any liability or responsibility under the Environmental Laws for any use of the Premises during the term of this Lease. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal or restoration work required or conducted by any federal, state or local governmental agency or political subdivision because of Regulated Substances located on the Premises or present in the soil or ground water on, or under the Premises. The parties agree that Landlord's right to enforce this covenant to indemnify is not an adequate remedy at law for Tenant's violation of any provision of this Article and that Landlord shall also have the rights set forth in this Article in addition to all other rights and remedies provided by law or otherwise provided for in this Lease.

(2) Without limiting the foregoing, if the presence of any Regulated Substance on, or under the Premises results in any contamination of the demised Premises or any adjacent real property during the term of this Lease, Tenant shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment. Tenant shall then undertake any further action necessary to return the Premises or other property to the condition existing prior to the introduction of any Regulated Substance to the Premises; provided that Landlord's written approval of such actions shall first be obtained. Tenant shall undertake such actions without regard to the potential legal liability of any other person, however, any remedial activities by Tenant shall not be construed as to impair Tenant's rights, if any, to seek contribution or indemnity from another person.

(3) Tenant shall, at Tenant's own cost and expense, make all tests, reports, studies and provide all information to any appropriate governmental agency as may be required pursuant to the Environmental Laws pertaining to Tenant's use of the Premises. This obligation includes but is not limited to any requirements for a site characterization, site assessment and/or a cleanup plan that may be necessary due to any actual or potential spills or discharges of Regulated Substances on, or under the Premises, during the term of this Lease. At no cost or expense to Landlord, Tenant shall promptly provide all information requested by Landlord pertaining to the applicability of the Environmental Laws to the Premises, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination.

In addition, Landlord shall have the right to access, within ten (10) days of Tenant's receipt of written request, and copy any and all records, test results, studies and/or other documentation, other than trade secrets, regarding environmental conditions relating to the use, storage, or treatment of Regulated Substances by the Tenant on, or under the Premises.

(4) Tenant shall immediately notify Landlord of any of the following: (1) any correspondence or communication from any governmental agency regarding the application of Environmental Laws to the Premises or Tenant's use of the Premises, (2) any change in Tenant's use of the Premises that will change or has the potential to change Tenant's or Landlord's obligations or liabilities under Environmental Laws, and (3) any assertion of a claim or other occurrence for which Tenant may incur an obligation under this Article.

(5) Tenant shall insert the provisions of this Article 28 in any sublease agreement or contract by which it grants a right or privilege to any person, firm or corporation under this Lease.

(6) Tenant shall, at its own expense, obtain and comply with any permits or approvals that are required or may become required as a result of any use of the Premises by the Tenant, its agents, employees, contractors, invitees and assigns.

(7) Tenant shall obtain and maintain compliance with any applicable financial responsibility requirements of federal and/or state law regarding the ownership or operation of any underground storage tank(s) or any device used for the treatment or storage of a Regulated Substance and present evidence thereof to Landlord, as may be applicable.

D. Noncompliance.

(1) Tenant's failure or the failure of its agents, employees, contractors, invitees or of a third party to comply with any of the requirements and obligations of this Article 32 or applicable Environmental Law shall constitute a material default of this Lease. Notwithstanding any other provision in this Lease to the contrary, Landlord shall have the right of "self-help" or similar remedy in order to minimize any damages, expenses, penalties and related fees or costs, arising from or related to a violation of Environmental Law on, or under the Premises, without waiving any of its rights under this Lease. The exercise by Landlord of any of its rights under this Article shall not release Tenant from any obligation it would otherwise have hereunder.

(2) The covenants in this Article 28 shall survive the expiration or earlier termination of this Lease.

29. General Provisions.

A. Limitation of Landlord's Liability. Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Building or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way

responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor. Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work and Landlord shall not be liable for any latent or any other defects in the Premises.

B. City's Right of Cancellation. All parties hereto acknowledge that this agreement is subject to cancellation by the City of Peoria pursuant to the provisions of section 38-511, Arizona Revised Statutes.

C. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of Arizona, with reference to principles of conflicts of law.

D. Memorandum. Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease in a form satisfactory for recording in the Office of the County Recorder, Maricopa County, Arizona.

E. Entire Agreement. This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

F. Captions. The captions of Articles and Sections in this Lease are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

G. Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

H. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either the Landlord or the Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants" and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

I. Multiple Parties. If at any time Landlord, Tenant, any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "party") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such party with respect to such party's estate or interest in the Premises or this Lease shall bind

all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such party's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such party as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

J. Exhibits and Incorporation. The exhibits to this Lease, which are attached hereto or are in the possession of the Landlord and Tenant, are incorporated herein by reference as though fully set forth.

K. Equal Employment Opportunity. Tenant shall comply with all requirements of the "equal employment opportunity" or similar ordinances of the City of Peoria.

30. Signatures. The Parties have executed this Lease to be effective as of the Effective Date.

LANDLORD:

CITY OF PEORIA, ARIZONA, a municipal corporation

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

Its: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

TENANT:

Peoria Sports Park LLC

a(n) \_\_\_\_\_

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

Name: Michael Oliver

Title: CEO/Principal

**Exhibit A**  
**Legal Description**

DESCRIPTION  
FOR  
THE AVENUE SHOPPES AT P83  
PRELIMINARY OVERALL PROJECT BOUNDARY

A parcel of land situated in a portion of Section 2, Township 3 North, Range 1 East of Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2 bearing South 00 degrees 36 minutes 18 seconds West, a distance of 2635.57 feet from the West Quarter Corner of said Section 02;

THENCE North 00 degrees 36 minutes 18 seconds East, along the West line of said Section 2, a distance of 1593.50 feet;

THENCE departing said West line, South 89 degrees 23 minutes 42 seconds East, a distance of 46.40 feet to the POINT OF BEGINNING;

Thence, N 00° 35' 37" E for a distance of 261.39 feet to the beginning of a curve,

Said curve turning to the right through an angle of 02° 56' 56.3", having a radius of 1295.00 feet, and whose long chord bears N 02° 04' 05" E for a distance of 66.65 feet to a point of intersection with a non-tangential line.

Thence, S 83° 13' 48" E for a distance of 100.64 feet;

Thence, N 06° 34' 12" E for a distance of 76.33 feet;

Thence, N 83° 16' 07" W for a distance of 102.42 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 29° 35' 11.3", having a radius of 1295.00 feet, and whose long chord bears N 21° 42' 42" E for a distance of 661.31 feet.

Thence, N 36° 30' 18" E for a distance of 134.12 feet;

Thence, N 34° 24' 43" E for a distance of 118.16 feet;

Thence, S 76° 15' 09" E for a distance of 67.92 feet;

Thence, N 13° 45' 13" E for a distance of 77.63 feet to the beginning of a non-tangential curve,

Said curve turning to the left through an angle of  $38^{\circ} 42' 07.9''$ , having a radius of 353.83 feet, and whose long chord bears  $S 70^{\circ} 19' 52'' E$  for a distance of 234.49 feet to a point of intersection with a non-tangential line.

Thence,  $S 85^{\circ} 25' 24'' E$  for a distance of 26.08 feet;

Thence,  $S 89^{\circ} 38' 56'' E$  for a distance of 19.96 feet;

Thence,  $N 35^{\circ} 13' 29'' E$  for a distance of 0.91 feet;

Thence,  $N 88^{\circ} 42' 00'' E$  for a distance of 35.90 feet;

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 14.54 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of  $95^{\circ} 38' 11.0''$ , having a radius of 10.41 feet, and whose long chord bears  $S 61^{\circ} 22' 57'' W$  for a distance of 15.43 feet to a point of intersection with a non-tangential line.

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 31.04 feet to the beginning of a non-tangential curve,

Said curve turning to the right through  $46^{\circ} 14' 01.5''$ , having a radius of 15.00 feet, and whose long chord bears  $S 33^{\circ} 48' 44'' E$  for a distance of 11.78 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $39^{\circ} 13' 32.0''$ , having a radius of 517.96 feet, and whose long chord bears  $S 30^{\circ} 18' 29'' E$  for a distance of 347.72 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $06^{\circ} 37' 16.1''$ , having a radius of 232.00 feet, and whose long chord bears  $N 46^{\circ} 31' 11'' E$  for a distance of 26.80 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $83^{\circ} 45' 25.6''$ , having a radius of 12.00 feet, and whose long chord bears  $N 85^{\circ} 05' 16'' E$  for a distance of 16.02 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $16^{\circ} 17' 24.6''$ , having a radius of 427.48 feet, and whose long chord bears  $S 61^{\circ} 10' 44'' E$  for a distance of 121.13 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $118^{\circ} 54' 04.6''$ , having a radius of 24.00 feet, and whose long chord bears  $S 09^{\circ} 52' 24'' E$  for a distance of 41.34 feet to the POINT OF BEGINNING.

From the POINT OF BEGINNING; Thence, S 49° 51' 50" W for a distance of 202.95 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 60° 12' 38.1", having a radius of 12.00 feet, and whose long chord bears S 79° 52' 18" W for a distance of 12.04 feet.

Thence, N 70° 01' 23" W for a distance of 5.12 feet;

Thence, S 50° 00' 14" W for a distance of 895.57 feet;

Thence, S 58° 45' 16" W for a distance of 75.89 feet to the beginning of a curve,

Said curve turning to the right through 31° 42' 33.9", having a radius of 283.91 feet, and whose long chord bears S 74° 36' 33" W for a distance of 155.13 feet to the beginning of a non-tangential curve.

Said curve turning to the right through an angle of 89° 28' 44.8", having a radius of 25.00 feet, and whose long chord bears N 44° 47' 47" W for a distance of 35.19 feet to a point of intersection with a non-tangential line to the POINT OF BEGINNING.

Parcel contains 742209.05 square feet or 17.04 acres more or less.

**Exhibit B**  
**Form of Special Warranty Deed**

When recorded, return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPECIAL WARRANTY DEED

For and in consideration of TEN DOLLARS, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City of Peoria, Arizona, an Arizona charter municipality (“Grantor”), hereby conveys to \_\_\_\_\_ (“Grantee”), all buildings, structures, fixtures and improvements located on the following real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto, to wit (the “Property”):

SEE EXHIBIT “A” ATTACHED HERETO AND INCORPORATED  
HEREIN BY THIS REFERENCE FOR LEGAL DESCRIPTION

Subject to taxes not yet delinquent and other assessments, reservation in patents and all easements, rights of way, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record; and such state of facts as would be disclosed by a proper inspection or accurate ALTA survey of the Property, the Grantor warrants the title as against all acts of the Grantor and no other.

DATED as of this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

GRANTOR:

When recorded, return to:

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**PARKING FACILITIES AND DEVELOPMENT AGREEMENT**

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This Parking Facilities and Development Agreement (the "Agreement") is made to be effective as March \_\_\_\_, 2014 ("Effective Date") by, between and among The City of Peoria, Arizona, an Arizona municipal corporation (the "City") and Peoria Sports Park, LLC, an Arizona limited liability company ("PSP"). Each of the City and PSP may be referred to in this Agreement as a "Party," or collectively as the "Parties."

1        Recitals. As background to this Agreement, the Parties recite, acknowledge and state the following, each of which is a material term and provision of this Agreement:

(a)        The City owns certain real property that has been leased (or otherwise made available) as a spring training stadium and related facilities (the "Spring Training Facilities") used by the San Diego Padres ("Padres") and Seattle Mariners ("Mariners"; Padres and Mariners collectively referred to as the "Teams") pursuant to those certain "Sports Facilities Use Agreements" between the City and Baseball Club of Seattle, L.P., and San Diego Padres Baseball Partnership, respectively, as amended (the "Team Lease Agreements"), and that certain "Sports Complex Improvements Agreement" dated as of June --, 2012, by and among the City, Padres, L.P. and the Baseball Club of Seattle, LLLP (the "Improvements Agreement").

(b)        The City owns certain real property (the "Project Parcel") adjacent to the Spring Training Facilities. The Project Parcel is legally described in Exhibit A-1 to this Agreement, which Exhibit A-1 is incorporated into this Agreement. The Project Parcel is depicted on Exhibit A-2 to this Agreement, which Exhibit A-2 is incorporated into this Agreement.

(c)        The City traditionally has used all, or a significant portion of, the Project Parcel to provide surface parking, most specifically with respect to the Spring Training Facilities as required by the Team Lease Agreements and the Improvements Agreement.

(d)        The City has determined that the Project Parcel is not being utilized to its highest and best use as a surface parking lot, as evidenced by, among other things, the City's adoption of the Peoria Sports Complex Area Urban Design Plan (the "Plan") and its offering of its Request for Proposal entitled the "Redevelopment of 17-Acre Peoria Sports Complex Parking Lot" (P11-0039; the "RFP"), and that it should be developed as a commercial, mixed use project given its location adjacent to the Spring Training Facilities and existing commercial uses on the west side of 83<sup>rd</sup> Avenue.

(e)        The City wishes to cause the Project Parcel to be developed to its highest and best use, including but not limited to uses envisioned by the Plan such as entertainment, hospitality, restaurant and retail uses that complement and enhance the adjacent existing uses and that can provide support for the Spring Training Facilities.

(f) In furtherance of the Plan, the City's determination that the Project Parcel is not being put to its highest and best use, the provisions of the RFP to which PSP timely and successfully responded, the City has:

(i) Previously ground leased a portion of the Project Parcel (the "Lease Parcel") to PSP, which has proposed a mixed use development on the Land, with such mixed uses to include a hotel, retail shops, restaurants and entertainment space ("Phase 1"), and a development of additional retail shops, restaurants and entertainment facilities that may be developed subsequent to Phase 1 ("Phase 2," with Phases 1 and 2, collectively, referred to as the "PSP Project"). The Site Plan for Phase 1 is attached to this Agreement as Exhibit B, which Exhibit B is incorporated into this Agreement. The preliminary Site Plan for Phase 2 is attached to this Agreement as Exhibit C, which Exhibit C is incorporated into this Agreement, and which the Parties recognize and acknowledge will change during the Term. The lease of the Lease Parcel to PSP for the development of the PSP Project may be referred to in this Agreement as the "PSP Lease"; and

(ii) Subject to the other terms and conditions of this Agreement, and in recognition of the City's obligation to provide adequate public parking for, *inter alia*, the Spring Training Facilities, determined that it shall design and construct not more than two (2) structured parking garages for public parking (the "Garages") on those portions of the Project Parcel that are not subject to the PSP Lease (the "Parking Garage Property"), including a structured parking facility on the Parking Garage Property along 83rd Avenue ("Garage 83") and a structured parking facility on the Parking Garage Property along Mariners' Way ("Mariners' Garage"), in order to provide alternative public parking to the surface parking provided on the rest of the Project Parcel in conjunction with an approved development on the Project Parcel.

(g) The City previously has ground leased certain land adjacent to the Project Parcel to the Alter Group pursuant to two leases dated June 28, 2005 (the "Alter Leases"), and upon which the Alter Group has constructed certain office buildings and adjacent surface parking lots.

(h) Preliminary designs for the PSP Project suggest that it will be necessary to amend one or both of the Alter Leases, among other matters, to move or relocate certain parking lot entryways and trash enclosures.

(i) The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement shall constitute covenants running with the land as more fully described in this Agreement.

(j) The Parties also understand and acknowledge that this Agreement is authorized by and entered into in accordance with the terms of A.R.S. §9-500.11. The actions taken by the City pursuant to this Agreement are for economic development purposes as that term is used in A.R.S. §9-500.11

(k) This Agreement is an administrative implementation of certain policies previously approved by the City, as enacted in the Plan and as undertaken in the PSP Lease.

## 2 Definitions.

**"Added Elements"** means as defined in Section 4(f).

**"Agreement"** means as defined in the first grammatical paragraph of this Agreement.

**“Alter Leases”** means as defined in Section 1(g).

**“Base Cost”** means as defined in Section 4(f).

**“City”** means as defined in the first grammatical paragraph of this Agreement.

**“City Representative”** means as defined in Section 8(a)(i).

**“Commencement of Construction”** means as defined in Section 5(e).

**“Completion of Construction”** means as defined in Section 4(l) as to the Garages; and as defined in Section 5(f) as to the PSP Project.

**“Cure Period”** means as defined in Section 8(b).

**“Default”** means as defined in Section 8(b).

**“Default Notice”** means as defined in Section 7(a).

**“Defaulting Party”** means as defined in Section 8(b).

**“Development Criteria”** means as defined in Section 5(g).

**“Effective Date”** means as defined in the first grammatical paragraph of this Agreement.

**“Excess Amount”** means as defined in Section 4(e).

**“Force Majeure”** means as defined in Section 8(e).

**“Funding Amount”** means as defined in Section 4(e).

**“Garages”** means as defined in Section 1(f)(ii).

**“Garage Construction Criteria”** means as defined in Section 4(g).

**“Garage 83”** means as defined in Section 1(f)(ii).

**“Hotel”** means as defined in Section 4(g)(ix).

**“Improvements Agreement”** means as defined in Section 1(a).

**“Lease Parcel”** means as defined in Section 1(f)(i).

**“Mariners”** means as defined in Section 1(a).

**“Mariners’ Garage”** means as defined in Section 1(f)(ii).

**“Minimum Construction Obligations”** means as defined in Section 5(a).

**“Non-Defaulting Party”** means as defined in Section 7(a).

**“Notice”** means as defined in Section 9(d).

“**PAD**” means as defined in Section 5(h).

“**PSP**” means as defined in the first grammatical paragraph of this Agreement.

“**Padres**” means as defined in Section 1(a).

“**Parking Garage Property**” means as defined in Section 1(f)(ii).

“**Party**” or “**Parties**” means as defined in the first grammatical paragraph of this Agreement.

“**Phase 1**” means as defined in Section 1(f)(i).

“**Phase 2**” means as defined in Section 1(f)(i).

“**Plan**” means as defined in Section 1(d).

“**Project Committee**” means as defined in Section 4(a).

“**Project Parcel**” means as defined in Section 1(b).

“**PSP Contribution**” means as defined in Section 4(e).

“**PSP Lease**” means as defined in Section 1(f)(i).

“**PSP Project**” means as defined in Section 1(f)(i).

“**PSP Representative**” means as defined in Section 7(b)(i).

“**RFP**” means as defined in Section 1(d).

“**Spring Training Facilities**” means as defined in Section 1(a).

“**Teams**” means as defined in Section 1(a).

“**Team Lease Agreements**” means as defined in Section 1(a).

“**Termination Notice**” means as defined in Section 7(c).

3 Condition to the Effectiveness of this Agreement and the Parties' Obligations. On or before that date that is six (6) months from the Effective Date, the City shall have obtained, in a form satisfactory to the City in its sole and absolute discretion, any waivers of terms in, or amendments to, the Alter Leases that may be required by Alter Group in order to permit the construction of the PSP Project in accordance with PSP's plans and specifications for the PSP Project. PSP acknowledges that Alter Group is not required to consent to any such amendment, and that the City will not legally compel Alter Group to amend the Alter Leases or pay any consideration to cause Alter Group to amend either or both of the Alter Leases; but the City agrees to use reasonable, good faith efforts in its dealings with Alter Group in order to obtain, in a form satisfactory to the City in its sole and absolute discretion, any waivers of terms in, or amendments to, the Alter Leases that are required in order for the PSP Project to proceed. In the event the City determines that it is unable timely to secure an amendment to one or both of the Alter Leases as deemed necessary by the City to satisfy the provisions of this Section 3, then the City, upon written Notice to PSP, may terminate this Agreement, and neither Party shall have any rights under this Agreement except for certain obligations of indemnity that may survive termination; provided, however, that not fewer than ten (10) days prior to its delivery of such Notice to PSP, the City shall meet and confer with PSP to attempt to determine alternative site plans that are both satisfactory to the City in its sole and absolute discretion and that do not require waivers of terms in, or amendments to, the Alter Leases.

4 Construction of Garages

(a) The City will retain PSP to design and construct the Garages with such features, and on terms and conditions, acceptable to both Parties, in accordance with applicable City Codes and the City's structural, design and cost specifications, and at the City's sole cost and expense (except as otherwise provided in this Agreement). At such times as the Parties may reasonably agree and following their execution of this Agreement, PSP and the City will establish a project committee ("Project Committee") for the purposes of effecting the terms and provisions of this Agreement. The City, acting through its Engineer or such Engineer's designee, shall be a member of the Project Committee and shall be a required attendee at all project meetings.

(b) All construction contracts will be entered into in the name of PSP as the City's construction manager and shall recognize the City, as owner, and shall be in such form (for example, design-build, construction manager at risk, etc.) as determined by the City's Engineer and shall contain such terms and conditions as are agreed by the City. All construction contracts shall contain standard provisions relating to the payment of draw requests (to be not more frequent than monthly) and shall require the City's prior approval for any change order.

(c) The Garages will contain features (such as equipment, mechanical elements and other amenities) and facades (being the exterior and exterior design of the Garages) as developed by PSP in the design process for the Garages and approved by the City in its sole discretion. It is the intent of the City and PSP that such facades be similar to, and compatible with, the features and facades currently planned for the City's upgrades to the Baseball Team Clubhouses; provided, however, that PSP may propose to the City that certain design elements from the PSP development be integrated into the exterior design of the Garages, subject in all events to (i) the determination by the City that the cost and expense of such design elements are reasonably included within the amount that the City has determined to be the Base Cost, and (ii) the limitations of Section 4(e).

(d) The Project Parcel shall provide surface and structured parking spaces for not fewer than 3,157 cars. The Lease Parcel shall provide not fewer than 407 surface parking spaces and not fewer than 201 structured parking spaces within the Hotel Parcel (designated as Parcel 3 in the PSP Lease). The Garages collectively will provide not fewer than 1,792 spaces of public parking within Garage 83 and not fewer than 757 spaces of public parking provided in the Mariners' Garage.

Notwithstanding the foregoing, the number of surface and structured parking spaces provided on the Project Parcel (whether on the Lease Parcel or in the Garages) is subject to adjustment by the Project Committee that does not result in fewer than 3,100 surface and structured parking spaces provided on the Project Parcel.

(e) The City shall not pay, nor be required to pay, more than \$30,000,000.00 (the "Funding Amount") for the design and construction of the Garages and related costs (including, by way of illustration and not of limitation, management, supervision, bonds and insurance), subject to any PSP Contribution, as that term is defined below. The City will determine, in its sole election, how to pay the cost of design and construction for the Garages; provided, however, the City is committed pursuant to this Agreement to funding up to the full Funding Amount towards the construction of the Garages upon the satisfaction of the Garage Construction Criteria set forth in Section 4(g). Any costs associated with the design and construction of the Garages prior to the Effective Date will be the sole responsibility of PSP and shall not be paid or reimbursed by the City. Any costs associated with the design and construction of the Garages subsequent to the Effective Date shall be paid or reimbursed by the City in accordance with the terms of this Agreement. If the Parties' preliminary cost estimates to design and construct the Garages exceeds the Funding Amount, the Parties agree to work together in good faith to determine methods for reducing the costs (i.e., "value engineering") of the Garages. In the event that the Parties are unable to agree on methods to reduce the costs of the Garages to an amount less than the Funding Amount, then PSP shall promptly fund all of any excess cost at PSP's sole cost and expense (the "Excess Amount"). In the event that PSP elects not to fund the Excess Amount at its sole cost and expense, then either Party, upon Notice to the other, may terminate this Agreement, in which event neither Party shall have any further obligation to the other with respect to the design and construction of the Garages or under this Agreement.

(f) Subject to the provisions of Section 4(e) above, during the design process the Project Committee will meet and work in good faith to determine the base cost to construct two fully improved and fully functioning Garages, including (by way of example) the cost of the City's design of the façade, elevators, walkways and other means of access to and from the Garages, and other improvements and landscaping determined by the City to be required for a public improvement of the quality typically undertaken and constructed by the City (the "Base Cost"). The Project Committee will subsequently meet to discuss design elements (including physical features and equipment or mechanical elements) that PSP seeks to incorporate into the Garages that are not a part of the City's design of the Garages and thus are not included in the Base Cost, but which are intended to cause the Garages to conform to the themes or designs of the buildings and other structures to be constructed by PSP within the PSP Project. PSP shall pay for that portion of the cost of any such design elements (including physical features and equipment or mechanical elements) agreed to be included by the City to accommodate PSP's requests that exceeds the City's Base Cost estimate for the same or substantially similar design element (the "PSP Contribution"). The design elements, physical features, equipment and mechanical elements requested by PSP above the Base Cost and agreed by the City to be included in the Garages upon receipt of the PSP Contribution shall be referred to in this Agreement as the "Added Elements."

(g) The City shall commence steps necessary to publicly fund the construction of the Garages (for example, and not by way of limitation, the issuance of bonds or incurring other indebtedness) up to the Funding Amount, upon the satisfaction of all of the following (collectively the "Garage Construction Criteria"):

(i) The City has approved final plans and specifications for the Garages, the City has approved a final budget for the costs of design and construction of the Garages, PSP has developed public procurement criteria satisfactory to the City, PSP has provided the City with a seat on the procurement review committee, a contractor has been selected that is satisfactory to the City, the City

has approved the terms of one or more construction contracts for the construction of the Garages for a guaranteed maximum price or similar committed bid amount, all other standard pre-construction obligations have been satisfied by PSP, and the Garages are ready in all respects for the issuance of required permits for the commencement of construction;

(ii) PSP has obtained and provided to the City executed, contingent leases for at least eighty percent (80%) of Phase 1's retail, restaurant and entertainment space, with the sole contingency in each such lease being the completion of construction of the Garages. The tenants named in such leases shall be either (A) the tenants proposed by PSP to the City as tenants in PSP's "Tenant Mix Matrices" dated December 30, 2013, and January 28, 2014; (B) comparable tenants (as reasonably determined by the City) to such proposed tenants in reputation and financial strength as measured by average annual sales figures and transactional volume; or (C) such other tenants approved by the City in its sole discretion based upon evidence provided by PSP to the City to demonstrate a pattern of growth and name identification that would make the proposed tenant comparable in key respects to a tenant listed in the "Tenant Mix Matrices";

(iii) PSP has obtained and provided to the City an unconditional written commitment from PSP's construction lender to lend the funds necessary to construct all of Phase 1, (including, to the extent permitted by PSP's construction lender, a copy of such lender's due diligence and underwriting package for the construction loan for Phase 1 for the purpose of the City's assessing the degree of additional documentation and information otherwise necessary to assess the likely success of achieving completion of construction and occupancy by the required tenants);

(iv) PSP has obtained and provided to the City proof of an equity commitment from a bona fide investment entity reasonably approved by the City (including certifications to the City, if required by the City) in an amount to satisfy the difference between the cost of construction of Phase 1 and the amount which PSP's construction lender has unconditionally committed to finance;

(v) Payment in full to the City of any PSP Contribution;

(vi) PSP has (1) obtained and provided to the City proof (in a form reasonably satisfactory to the City) of available funds or unconditional financing for the cost of completing construction of Phase 1; and (2) made arrangements satisfactory to the City for payment of the Excess Amount (if applicable);

(vii) Notwithstanding the provisions of Section 4(g)(ii) of this Agreement, in the event that PSP provides to the City (1) an unconditional written commitment from PSP's construction lender to lend the funds necessary to complete the construction of Phase 1, and the City's review and approval of such lender's due diligence and underwriting package, and (2) proof of an equity commitment (including certifications to the City, if required by the City) in an amount to satisfy the difference between the cost of construction of Phase 1 and the amount which PSP's construction has conditionally committed to finance, then the City shall accept executed, contingent leases for sixty percent (60%) of Phase 1's retail, restaurant and entertainment space (including one hundred percent (100%) of the City's previously approved "anchor" tenants as proposed by PSP to the City as anchor tenants in PSP's "Tenant Mix Matrices" (or such other "anchor" tenants reasonably approved by the City), which approval shall not be unreasonably withheld, conditioned or delayed, with the sole contingency in each such lease being the completion of construction of the Garages.

(viii) PSP has entered into an agreement with a national or regional retail developer who has demonstrated experience, expertise and tenant relationships with the types of tenants on the "Tenant Mix Matrices" necessary for the success of the PSP Project, for the design, construction

and marketing of Phase 1. The City shall have the right to approve such developer, such approval not to be unreasonably withheld.

(ix) PSP has supplied the City with documentary evidence (consisting of signed non-contingent agreements with a hotel manager reasonably approved by the City, proof of adequate and sufficient equity and construction financing, and such other information as the City may reasonably request) for the design, construction and subsequent operation of a hotel (the “Hotel”) on that portion of the Project Parcel shown or designated on Exhibit A-2 as “Parcel 3/Hotel/44,410 SF/1.02 AC” that includes all of the following characters, features, functions and amenities: (A) a “full-service” Hotel; (B) not fewer than 140 rooms with full-service room amenities; (C) not more or fewer than five (5) stories; (D) not less than 10,000 square feet of conference or convention space; (E) on-site, full service restaurant for food and beverage, room service, and conference/convention/banquet services; (F) roof top bar and lounge; (G) heated swimming pool and spa; (H) gym or full fitness center; (I) guest laundry; (J) parking for not fewer than 201 cars; (K) distinctive architecture, materials, finishes, fixtures, furnishings and equipment; and (L) be functionally and architecturally integrated into Phase 1 of the PSP Project.

(h) Notwithstanding anything in this Agreement to the contrary, the Completion of Construction of the Garages shall be no later than February 15<sup>th</sup> of the year following the date of commencement of construction of a particular Garage, subject to Force Majeure and written waivers of this deadline from the City. In the event the Parties are unable to commence construction in time to complete construction of the Garages prior to February 15<sup>th</sup> of the year following commencement of construction, then the Parties agree to work together in good faith to (a) establish a revised construction schedule so that Completion of Construction occurs as promptly after the end of the applicable Spring Training Season as practicably possible or is suspended at the City’s sole election for that time period so as not to interfere with the Spring Training Season, and (b) to provide a sufficient number of replacement parking spaces at agreed upon alternative locations to meet the needs of the Team’s spring training parking needs.

(i) No construction activities shall be permitted on the Project Parcel during Spring Training Season (February 15 – April 15); provided, however, that the foregoing time period may be amended by mutual agreement of the Parties.

(j) PSP shall procure all design and construction work in accordance with all applicable public bidding processes as determined by the City’s city attorney. It is intended by the Parties that the cost of design of the Garages shall be paid by PSP and shall be reimbursed to PSP from the Funding Amount to the extent permitted by Applicable Law, including public bidding and procurement requirements, with all rights in the design contracts thereupon being assigned to the City, on terms reasonably satisfactory to the City.

(k) PSP shall maintain all standard insurance during the construction of the Garages as required by the City, including but not limited to course of construction insurance.

(l) “Completion of Construction” of the Garages shall occur upon (i) the issuance of a certificate of occupancy for the Garages by the City, (ii) certification to the City by the Garages’ architect that the Garages have been built in compliance with the plans, drawings, and specifications, (iii) certification to the City by the contractor (or contractors) that the Garages have been constructed in accordance with all applicable plans and specifications, and (iv) acceptance by the City following a “walk-through,” subject only to reasonable “punch-list” items. Notwithstanding the foregoing, Completion of Construction of Garage 83 shall be no later than February 1, 2016, and Completion of Construction of Mariners’ Garage shall be no later than the date required for the Completion of Construction of Phase 1.

(m) PSP shall provide the City with a two-year warranty or shall provide (or unconditionally assign) comparable warranties from contractors and materialmen. The two-year warranty time period shall run from the date the City issues its certificate of occupancy for all work and material included within the subject Garage.

(n) The Garages shall belong to and shall be controlled and managed exclusively by the City and shall be public improvements for the purpose of providing public parking for all purposes, including but not limited to all City sponsored or sanctioned events held in and around the Stadium including the Spring Training baseball games. Notwithstanding the foregoing, any Added Elements that may be included in the Garages (even though such Added Elements may have been paid for in their entirety by PSP as a part of the PSP Contribution), shall belong to and be controlled exclusively by the City, and shall be public improvements for all purposes.

(o) Notwithstanding anything in this Agreement to the contrary, in the event that the Garage Construction Criteria have not been satisfied (or waived by the City in its sole, absolute and unfettered discretion) by the first anniversary of the Effective Date (“Term”), then this Agreement, without further act or notice required, shall automatically be terminated except for obligations of indemnity that expressly survive the termination of this Agreement, and neither Party shall have further rights or obligations under this Agreement; provided, however, that if PSP has satisfied all of the Garage Construction Criteria except for having executed, contingent leases for sixty percent (60%) of Phase 1’s retail, restaurant and entertainment space, then the City, in its sole discretion, may extend the time for the satisfaction of the Garage Construction Criteria by a period of one hundred and twenty (120) days. In the event that the Garage Construction Criteria have been satisfied (or waived by the City in its sole, absolute and unfettered discretion) by the first anniversary of the Effective Date (as the same may be extended by the provisions of the previous sentence), then the Term of this Agreement, without further act or notice required, shall automatically (but in all events subject to Section 8 of this Agreement) be extended to March \_\_\_, 2064. Provided that PSP is not then in default of any term or provision of this Agreement (or the PSP Lease) beyond the expiration of any applicable cure period, and further provided that PSP has extended the PSP Lease in accordance with the terms of the PSP Lease, PSP may extend the Term of this Agreement for two (2) successive terms of twenty-four and one-half (24.5) years each, upon the same terms and conditions set forth in this Agreement. Such extensions may be exercised consecutively only, and not concurrently. In order for PSP to exercise any such extension, PSP shall provide Notice to the City not less than six (6) months prior to the commencement date of the applicable extension period. Failure by PSP to exercise any extension right shall terminate PSP’s right to extend any subsequent extension right.

5 Construction of PSP Project. Promptly following its satisfaction of the Garage Construction Criteria (or their waiver, in whole or in part, by the City in its sole, absolute and unfettered discretion), PSP shall commence, and thereafter diligently prosecute to Completion of Construction, the PSP Project as follows:

(a) The “Minimum Construction Obligations” of PSP consist of:

(i) As to Phase 1 as depicted in PSP’s approved Site Plan for Phase 1, Commencement of Construction to be on or before twelve (12) months following satisfaction by PSP of the Garage Construction Criteria (subject only to required delays during Spring Training Season), and Completion of Construction of Phase 1 to be on or before twenty-four (24) months following Commencement of Construction; and

(ii) As to Phase 2 as depicted in PSP’s approved Site Plan for Phase 2, Completion of Construction of Phase 2 to be on or before twenty-four (24) months following Completion

of Construction of Phase 1 (subject to a possible one-year extension of such date upon the prior consent of the Parties).

All of the dates specified in this Section 5(a) are subject to Force Majeure.

(b) PSP covenants and agrees to complete the Minimum Construction Obligations in accordance with this Agreement. If PSP fails to complete the Minimum Construction Obligations, the City's sole and exclusive remedy arising from this contract is that the City may terminate this Agreement (following expiration of any applicable notice and cure period and PSP's failure to cure the default within the applicable cure period) and require PSP to mitigate any unsafe condition on the Property caused by the PSP. The City's authority as a municipal government (e.g., to require construction of public improvements as a condition of zoning, to exercise police powers, and to protect public health and safety) is not affected by this Agreement or by this limitation of remedies.

(c) PSP must provide evidence of the satisfaction of each item of the Minimum Construction Obligations to the City on or before the dates or events specified in Section 5(a).

(d) The use of the term "Minimum Construction Obligations" is not intended to and does not limit the scope of the infrastructure to be required by the City pursuant to the exercise of its police powers in the zoning, subdivision, permitting processes, or elsewhere; it is a term used in this Agreement to describe the timing and scope of the infrastructure forming part of the consideration for this Agreement.

(e) "Commencement of Construction" of each phase of the PSP Project shall occur upon the issuance of all applicable permits and the pouring of footings and foundations for the applicable Phase.

(f) "Completion of Construction" of the PSP Project shall occur upon (i) the issuance by the City of one or more certificates of occupancy for the applicable Phase or Phases, (ii) certification to the City by the architect for the applicable Phase that the applicable improvements have been built in compliance with the plans, drawings, and specifications, and (iii) certification to the City by the contractor (or contractors) that the improvements for the applicable Phase have been constructed in accordance with all applicable plans and specifications.

(g) No development fee credits of any kind and no other consideration will be due from the City for or in connection with the Minimum Construction Obligations. PSP must pay all development (i.e., impact) and all other building, permit, approval and related fees listed in Peoria City Code (P.C.C.) (e.g., in P.C.C. § 2-199(a), Table 2-199, and in P.C.C. § 2-211(a), Table 2-211).

(h) The development and operation of the PSP Project including, without limitation, the type of use, the maximum height and size of buildings, building setback requirements, parking requirements, landscaping requirements, loading zone requirements and provisions for reservation or dedication of land for public purposes, will be governed by the following, (collectively the "Development Criteria") as they existed on the date on which the City Council approved Peoria Sports Park Planned Area Development (the "PAD") for the Property:

(i) The City's General Plan;

(ii) Regulations and requirements of the City's Zoning Ordinance and other building regulations contained in the City Code;

- (iii) The PAD; and
- (iv) This Agreement.

(i) PSP will adhere to and perform all of the conditions of approval of the PAD, and any minor amendments thereto as administratively approved by the City's Planning Department.

(j) The City will approve the final site plan and infrastructure plans if they are drafted fully in accordance with the ordinances, regulations, and established practices of the City at the time of this Agreement (unless amended for health or safety reasons only).

(k) PSP and the City shall cooperate in obtaining all necessary permits, with the cost of such permits being the sole responsibility of PSP. At the request of PSP, from time to time the City will accept applications for and process on a priority basis (based on the City Expedited review process and guidelines and upon payment of the applicable fees), in compliance with the City's standard practices and procedures as modified by this Agreement, any discretionary and non-discretionary approvals or permits which PSP may require from time to time with regard to the development or operation of the Property, including without limitation any construction permits, inspections, variances, special use permits, and certificates of occupancy. Without limiting the generality of the foregoing, the City will use its best efforts to promptly issue each construction permit and other authorization necessary for the development and operation of the Property.

(l) At all times, PSP will remain solely liable for all PSP activities contemplated by this Agreement, and will indemnify, defend, pay and hold the City harmless for, from and against any and all losses, claims, damages or liabilities, joint or several, arising from any matter relating to the actions of PSP hereunder as required by the PSP Lease.

(m) Regulatory Takings Claims.

(i) PSP and the City agree that the conditions set forth in its application for zoning, including any approvals and conditions attached to the PAD or any amendments to the PAD (collectively, "the Zoning Application"), shall be included as part of the ordinance submitting the Zoning Application to the Peoria City Council for action. PSP, by signing below, covenants that it is lawfully empowered to accept such conditions on behalf of all parties interested in the PSP Project. PSP and the City agree that compliance with the conditions set forth in the Zoning Application as determined by the City is a requirement for approval of the Zoning Application and any additional future land use applications pertaining to the PSP Project.

(ii) The City acknowledges that the Zoning Application conforms to and is consistent with the City's General Plan. PSP acknowledges that the City has determined that the Zoning Application conforms to and complies with the City's General Plan. PSP knowingly and intelligently waives any and all claims against City under the provisions of Proposition 207, in particular A.R.S. §12-1134, whether known at the time of execution of this Agreement or unknown, which may result in the future or may hereafter be discovered, that arise out of or are related to the Zoning, this Agreement or any actions taken by the City pursuant to the terms of the Zoning or this Agreement, including, but not limited to:

A. Any actual or claimed reduction of any existing rights to use, divide, sell, or possess the Lease Parcel and the PSP Project (including but not limited to PSP's leasehold interest granted by the PSP Lease) by the enactment or applicability of any land use laws adopted by the City on or before the Effective Date;

B. Any actual or claimed reduction in the fair market value of the Lease Parcel and PSP Project by the enactment or applicability of any land use laws adopted by the City on or before the Effective Date;

C. Any actual or claimed right to not be required, as a prerequisite to demanding or receiving just compensation for an actual or claimed regulatory taking, to first submit a land use application to remove, modify, vary, or otherwise alter the application of a land use law to the Lease Parcel and PSP Project;

D. Any actual or claimed right to file a lawsuit against the City seeking just compensation for an actual or claimed regulatory taking in a court in the county in which the Lease Parcel is located; and

E. Any actual or claimed right to secure a binding waiver of enforcement of a particular land use law against the Property.

The foregoing waiver shall not limit, in any way, the legal rights of PSP to pursue any other right or remedy available at law or in equity in enforcing the Zoning or this Agreement or in pursuing any other rights or remedies held by PSP other than those expressly waived hereby. The only rights being waived by PSP are the rights granted under Proposition 207.

(iii) PSP and the City agree that this waiver shall run with the Land and be binding upon all subsequent owners.

(iv) PSP agrees that requiring this waiver or the following indemnity as a condition of any municipal discretionary approvals does not constitute a taking.

(n) PSP shall indemnify, defend, pay and hold the City, its agents, representatives, officers, directors, elected and appointed officials and employees (the "Indemnitees") harmless for, from and against any and all liabilities, obligations, claims, suits, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or asserted against the Indemnitees, by reason of or arising out of this Agreement or the Zoning and further arising out of A.R.S. Sections 12-1131, et seq.

(o) PSP agrees that, as of the date of this Agreement, it has received the equal protection of the laws, has received due process of all of its claims and requests, and has not suffered from a compensable regulatory taking (as those terms and their related claims are defined by Arizona State and Federal constitutional jurisprudence). To the actual knowledge of the Parties after diligent inquiry, neither PSP nor the City has any claim against the other as of the date this Agreement is executed by both Parties. PSP agrees that the conditions imposed by the City in the Zoning are proportional and directly related to the burden that the development of the Lease Parcel and PSP Project will place on the City. PSP agrees that it will comply with the City's ordinances (including those regarding impact fees) having to do with the construction and development of the Lease Parcel and PSP Project as they exist as of the Effective Date and will not at any time bring any claim challenging the legality or the City's enforcement of such ordinances.

6 Operation and Maintenance of the Garages. Upon Completion of Construction of the Garages, City shall:

(a) Operate and maintain the Garages as public amenities, at its sole cost and expense, provided, however, that although the operation and maintenance of the Garages shall be solely

the right, obligation and responsibility of the City, the costs of maintaining the Added Elements, if any, shall be borne exclusively by PSP and such costs shall be paid to the City on demand upon receipt by PSP of invoice(s) for such costs from the City.

(b) Provide continuous, free and open parking in the Garages to the public except for City sponsored or sanctioned Spring Training games as determined solely and exclusively by the City, as well as other special events as determined by the City in consultation with PSP, in which event the Garages may be restricted by the City on such terms and conditions (including but not limited to payment for parking) as the City may elect and impose in its sole and absolute discretion. All costs of traffic and parking control shall be borne by the City. All revenue generated from the use of the Garages shall belong to the City.

(c) Maintain the surface of the Garages and all access facilities in a smooth condition, evenly covered with the type of surfacing prescribed in the approved plans and specifications for the Garages, or with a substitute that is in all respects substantially equal (or better) in quality, appearance and durability to the surfacing materials described in the approved plans and specifications for the Garages;

(d) Maintain the Garages in good quality and a fully operational condition and shall promptly remove all paper, refuse and debris from and periodically wash and thoroughly sweep the Garages;

(e) Install and maintain such appropriate entrance, exit and directional signs, markers and lights as are reasonably required for the Garages, and clean, maintain, repair and replace such signs, markers and lights;

(f) Clean and re-lamp lighting fixtures in the Garages;

(g) Maintain, repair and replace striping that delineates individual spaces; and

(h) Maintain, repair and replace landscaping and irrigation systems adjacent to the Garages on Parking Garage Property.

#### 7 Management of Garages.

(a) The City shall establish reasonable and lawful rules and regulations governing the use of the Garages, and shall (or cause the parking manager to do so, if management responsibilities are not being undertaken directly by the City) to:

(i) Prohibit the use of the Garages for the parking of any passenger vehicle overnight;

(ii) Prohibit the use of the Garages for parking of any vehicle other than a passenger vehicle;

(iii) Prohibit the use of the Garages for the parking of any inoperable vehicle, any vehicle not displaying a current license plate, or any vehicle which has one or more tires that is not fully inflated;

(iv) Provide for the exclusion or removal from the Garages of any person or vehicle creating a nuisance or unreasonable disturbance, or using or attempting to use the Garages in violation of any applicable rule or regulation of the City;

(v) Provide for the removal of any vehicle parked or placed in any of the Garages in violation of any reserved or restricted parking requirement.

(b) The City may cause the Garages to be operated and maintained as public amenities by a third party, including but not limited to PSP or a professional parking management company selected by the City and reasonably approved by PSP, on such terms and conditions as the City may reasonably determine and require.

## 8 General Contract Provisions.

### (a) Cooperation and Alternative Dispute Resolution.

(i) Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and PSP each shall designate and appoint a representative to act as a liaison between the City and its various departments and PSP. The initial representative for the City shall be its Director of Community Development as designated by the City Manager from time to time (the "City Representative") and the initial representative for PSP shall be its Project Manager, as identified by PSP from time to time (the "PSP Representative"). The City's and PSP's Representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Property.

(ii) Impasse. The City acknowledges and agrees that it is desirable for PSP to proceed rapidly with the implementation of this Agreement and the development of the PSP Project. Accordingly, the Parties agree that if at any time PSP believes an impasse has been reached with the City staff on any issue affecting the PSP Project which is not an Event of Default, PSP shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Section. If the issue on which an impasse is reached is an issue where a final decision can be reached by the City staff, the City Representative shall give PSP a final administrative decision within seven (7) days after PSP's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Representative shall request a City Council hearing on the issue to take place within thirty (30) days after PSP's request for an expedited decision; provided, however, that if the issue is appropriate for review by the City's Planning and Zoning Commission, the matter shall be submitted to the Planning and Zoning Commission within thirty (30) days, and then to the City Council at its first meeting following the Planning and Zoning Commission hearing and the applicable public notice period. Both the City and PSP agree to continue to use reasonable good faith efforts to resolve any impasse pending such expedited decision.

(iii) Mediation. If there is a dispute hereunder which is not an Event of Default and which the Parties cannot resolve between themselves in the time frame set forth in Section 8(a)(ii), the Parties agree that there shall be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association but shall not be under the administration of the AAA unless agreed to by the Parties in writing, in which case all administrative fees shall be divided evenly between the City and PSP. The matter in dispute shall be submitted to a mediator mutually selected by PSP and the City. If the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the City and PSP shall request that the Presiding Judge of the Superior Court in and for the

County of Maricopa, State of Arizona, appoint the mediator. The mediator selected shall have at least ten (10) years' experience in mediating or arbitrating disputes relating to commercial property. The cost of any such mediation shall be divided equally between the City and PSP. The results of the mediation shall be nonbinding with any Party free to initiate litigation upon the conclusion of the latter of the mediation or of the ninety (90) day moratorium on litigation. The mediation shall be completed in one day (or less) and shall be confidential, private, and otherwise governed by the provisions of A.R.S. § 12-2238.

(b) Events of Default. If either Party fails to perform a material obligation under this Agreement and such failure continues for a period of thirty (30) calendar days from such Party's written notice thereof ("Cure Period"), such failure shall constitute a default under this Agreement ("Default"). Where such Default is a non-monetary Default and more than thirty (30) calendar days reasonably are required to perform or otherwise comply with this Agreement, the Cure Period shall be extended by such additional time as reasonably necessary (not exceeding thirty (30) total calendar days or such other time period as shall be agreed by the Parties in writing) for the Party in Default ("Defaulting Party") to cure such Default, provided that the Defaulting Party commences performance or compliance within the initial Cure Period and thereafter diligently and in good faith pursues performance or compliance in a manner reasonably calculated to cure the Default, with any excess cost or expense incurred as a result of such Default being the obligation solely of the Defaulting Party. Any notice of an alleged Default ("Default Notice") shall specify (i) the nature of the alleged Default and (ii) the manner in which the Default may be cured to the satisfaction of the Party not in Default ("Non-Defaulting Party"). A breach by PSP of the PSP Lease shall be deemed for all purposes a breach of this Agreement.

(c) Remedies. If a Defaulting Party does not cure its Default as provided herein, the Non-Defaulting Party may provide written notice of termination of this Agreement ("Termination Notice"), such termination to be effective upon receipt by the Defaulting Party of the Termination Notice. Any termination under this Section 8(c) shall not act to release a Defaulting Party from any payment or performance obligations then due, nor shall it preclude the Non-Defaulting party from seeking and recovering any and all remedies available to it under applicable laws.

(d) Casualty. If any part of the Garages is damaged or destroyed by fire, flood or other casualty, but to such an extent that the Garages remain substantially suitable for their use as contemplated in this Agreement, this Agreement shall continue in full force and effect and the City shall repair and rebuild the Garages with reasonable diligence to their condition immediately before such loss, to the extent that insurance proceeds are available. If such damage or destruction is total or of such extent as would materially interfere with the use of the Garages as contemplated in this Agreement, or if insurance proceeds are not available or sufficient to permit the repair and rebuilding of the Garages to their condition immediately before such loss, then the City may elect, in its sole discretion, not to repair or rebuild the Garages by providing written notice to PSP within thirty (30) calendar days of the damage or destruction. In the event of such notice, this Agreement shall be deemed terminated upon PSP's receipt of such written notice. If the City does not timely notify PSP of the City's election not to repair or rebuild, this Agreement shall continue in full force and effect and the City shall rebuild or repair such damage or destruction to the condition immediately preceding such damage or destruction; provided, however, that in the event of damage or destruction that has been caused in whole or in part by the negligent or intentional acts of PSP or its Affiliates, or their employees, agents, contractors, then the cost of repair, restoration and rebuilding shall be paid by PSP and PSP shall have no right to terminate this Agreement.

(e) Force Majeure. Neither Party shall be considered in Default under this Agreement in the event of a delay due to causes beyond such Party's control and without such Party's fault ("Force Majeure"), including but not limited to the following: acts of God, acts of a public enemy, acts of terrorism, fires, floods, earthquakes or other natural disasters, unusually severe weather,

epidemics, quarantine, restrictions, embargoes, strikes or labor disputes, acts of the federal or state government, and acts of Third Parties (including contractors, subcontractors and suppliers) resulting in delay beyond the reasonable control of such Party. In the event of Force Majeure, the time(s) for performance for the affected Party shall be extended throughout the event of Force Majeure, provided that the affected Party notifies the other Party of such Force Majeure event within ten (10) days of such event's commencement or, if such timely notice is impossible, as soon as reasonably practicable thereafter. The affected Party shall notify the other Party within ten (10) days of the end of the Force Majeure period.

9 Miscellaneous.

(a) Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 9(a).

(b) Limited Severability. In the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation or City code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

(c) Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and each Party hereby waives the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

(d) Notices.

(i) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "Notice") shall be in writing and shall be given by (A) personal delivery, (B) deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section 9(d), or (C) any nationally recognized express or overnight service (e.g., Federal Express or UPS) for next business day delivery, delivery charges prepaid:

If to the City:

City of Peoria  
Attn: City Manager  
8401 West Monroe Street  
Peoria, Arizona 85345

With a copy to: City of Peoria  
Attn: City Attorney  
8401 West Monroe Street  
Peoria, Arizona 85345

With a copy to: City of Peoria  
Attn: Economic Development Services Director  
9875 North 85th Avenue  
Peoria, Arizona 85345

If to PSP: Peoria Sports Park, LLC  
Attn: Michael Oliver  
8194 West Deer Valley Road, #106-266  
Peoria, Arizona 85382

With a copy to: Fennemore Craig, P.C.  
Attn: Michael J. Phalen, Esq.  
2394 East Camelback Road, Suite 600  
Phoenix, Arizona 85016

(ii) Effective Date of Notices. Any notice sent by United States Postal Service certified mail shall be deemed to be effective the earlier of the actual delivery or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee.

(iii) Any Party may designate a different person or entity or change the place to which any notice shall be given as provided in this Section 9(d).

(iv) Payments. Payments shall be made and delivered in the same manner as notices and shall be effective at the same time that a notice would be deemed effective under Section 9(d)(ii).

(e) Time of Essence. Time is of the essence of this Agreement and each of its provisions.

(f) Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

(g) Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute shall be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

(h) Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver of such

right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

(i) Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement, except for permitted transferees, assignees, to the extent that they assume or succeed to the rights and/or obligations of PSP under this Agreement.

(j) Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes. In the event of any discrepancy, difference or ambiguity between a legal description and a depiction of the comparable property or parcel, the legal description shall control.

(k) Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. Notwithstanding the foregoing, PSP agrees that its obligations with respect to operating the PSP Project are as set forth in the PSP Lease, which is not deemed superseded by this Agreement.

(l) Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect; and (b) the performance of the obligations under this Agreement at any time during its Term.

(m) Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

(n) Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

(o) Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all so executed shall constitute one agreement, binding on the Parties.

(p) Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Parking Garage Property shall run with the Parking Garage Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Parking Garage Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

(q) Recordation. Within ten (10) days after this Agreement has been approved by the City and executed by the Parties, the City shall cause a Memorandum of this Agreement to be recorded in the Official Records of Maricopa County, Arizona.

(r) Amendment. No change or addition is to be made to this Agreement except by written amendment executed by the City and PSP. Within ten (10) days after any amendment to this Agreement, an Amendment to the Memorandum of this Agreement shall be recorded in the Official Records of Maricopa County, Arizona.

(s) Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily or capriciously and will not unreasonably withhold, delay or condition any requested approval, acknowledgment or consent.

(t) Nonliability of City Officials. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to PSP, or to any successor in interest to PSP, in the event of any Default or breach by the City or for any amount which may become due to PSP or its successors, or with respect to any obligation of the City under the terms of this Agreement.

(u) Conflict of Interest Statute. This Agreement is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

*[Remainder of this page is intentionally left blank; signatures are on the following page.]*

City of Peoria, Arizona, an Arizona municipal corporation

By: \_\_\_\_\_  
Carl Swenson, City Manager

ATTEST

By: \_\_\_\_\_  
Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Stephen M. Kemp, City Attorney

Peoria Sports Park LLC, an Arizona limited liability company

By: \_\_\_\_\_  
Michael Oliver, CEO/Principal

STATE OF ARIZONA            )  
  ) ss:  
COUNTY OF MARICOPA    )

The foregoing Amendment was acknowledged before me this 18 day of February, 2014, by Michael Oliver, CEO/Principal of Peoria Sports Park, LLC, an Arizona limited liability company on behalf of the company.

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

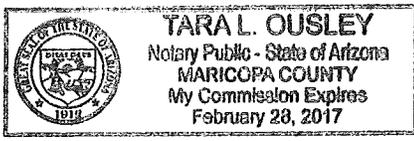


Exhibit A-1  
Legal Description of Project Parcel

DESCRIPTION  
FOR  
THE AVENUE SHOPPES AT P83  
PRELIMINARY OVERALL PROJECT BOUNDARY

A parcel of land situated in a portion of Section 2, Township 3 North, Range 1 East of Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest Corner of said Section 2 bearing South 00 degrees 36 minutes 18 seconds West, a distance of 2635.57 feet from the West Quarter Corner of said Section 02;

THENCE North 00 degrees 36 minutes 18 seconds East, along the West line of said Section 2, a distance of 1593.50 feet;

THENCE departing said West line, South 89 degrees 23 minutes 42 seconds East, a distance of 46.40 feet to the POINT OF BEGINNING;

Thence, N 00° 35' 37" E for a distance of 261.39 feet to the beginning of a curve,

Said curve turning to the right through an angle of 02° 56' 56.3", having a radius of 1295.00 feet, and whose long chord bears N 02° 04' 05" E for a distance of 66.65 feet to a point of intersection with a non-tangential line.

Thence, S 83° 13' 48" E for a distance of 100.64 feet;

Thence, N 06° 34' 12" E for a distance of 76.33 feet;

Thence, N 83° 16' 07" W for a distance of 102.42 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 29° 35' 11.3", having a radius of 1295.00 feet, and whose long chord bears N 21° 42' 42" E for a distance of 661.31 feet.

Thence, N 36° 30' 18" E for a distance of 134.12 feet;

Thence, N 34° 24' 43" E for a distance of 118.16 feet;

Thence, S 76° 15' 09" E for a distance of 67.92 feet;

Thence, N 13° 45' 13" E for a distance of 77.63 feet to the beginning of a non-tangential curve,

Said curve turning to the left through an angle of  $38^{\circ} 42' 07.9''$ , having a radius of 353.83 feet, and whose long chord bears  $S 70^{\circ} 19' 52'' E$  for a distance of 234.49 feet to a point of intersection with a non-tangential line.

Thence,  $S 85^{\circ} 25' 24'' E$  for a distance of 26.08 feet;

Thence,  $S 89^{\circ} 38' 56'' E$  for a distance of 19.96 feet;

Thence,  $N 35^{\circ} 13' 29'' E$  for a distance of 0.91 feet;

Thence,  $N 88^{\circ} 42' 00'' E$  for a distance of 35.90 feet;

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 14.54 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of  $95^{\circ} 38' 11.0''$ , having a radius of 10.41 feet, and whose long chord bears  $S 61^{\circ} 22' 57'' W$  for a distance of 15.43 feet to a point of intersection with a non-tangential line.

Thence,  $S 13^{\circ} 44' 51'' W$  for a distance of 31.04 feet to the beginning of a non-tangential curve,

Said curve turning to the right through  $46^{\circ} 14' 01.5''$ , having a radius of 15.00 feet, and whose long chord bears  $S 33^{\circ} 48' 44'' E$  for a distance of 11.78 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $39^{\circ} 13' 32.0''$ , having a radius of 517.96 feet, and whose long chord bears  $S 30^{\circ} 18' 29'' E$  for a distance of 347.72 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $06^{\circ} 37' 16.1''$ , having a radius of 232.00 feet, and whose long chord bears  $N 46^{\circ} 31' 11'' E$  for a distance of 26.80 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $83^{\circ} 45' 25.6''$ , having a radius of 12.00 feet, and whose long chord bears  $N 85^{\circ} 05' 16'' E$  for a distance of 16.02 feet to the beginning of a non-tangential curve.

Said curve turning to the left through  $16^{\circ} 17' 24.6''$ , having a radius of 427.48 feet, and whose long chord bears  $S 61^{\circ} 10' 44'' E$  for a distance of 121.13 feet to the beginning of a non-tangential curve.

Said curve turning to the right through  $118^{\circ} 54' 04.6''$ , having a radius of 24.00 feet, and whose long chord bears  $S 09^{\circ} 52' 24'' E$  for a distance of 41.34 feet to the POINT OF BEGINNING.

From the POINT OF BEGINNING; Thence, S 49° 51' 50" W for a distance of 202.95 feet to the beginning of a non-tangential curve,

Said curve turning to the right through an angle of 60° 12' 38.1", having a radius of 12.00 feet, and whose long chord bears S 79° 52' 18" W for a distance of 12.04 feet.

Thence, N 70° 01' 23" W for a distance of 5.12 feet;

Thence, S 50° 00' 14" W for a distance of 895.57 feet;

Thence, S 58° 45' 16" W for a distance of 75.89 feet to the beginning of a curve,

Said curve turning to the right through 31° 42' 33.9", having a radius of 283.91 feet, and whose long chord bears S 74° 36' 33" W for a distance of 155.13 feet to the beginning of a non-tangential curve.

Said curve turning to the right through an angle of 89° 28' 44.8", having a radius of 25.00 feet, and whose long chord bears N 44° 47' 47" W for a distance of 35.19 feet to a point of intersection with a non-tangential line to the POINT OF BEGINNING.

Parcel contains 742209.05 square feet or 17.04 acres more or less.

Exhibit A-2  
Depiction of Project Parcel

Parcel Name	Square Feet	Acres
Parcel 1 Retail and Entertainment	251,709	5.78
Parcel 2 Phase 2	82,491	1.89
Parcel 3 Hotel	44,410	1.02
Parcel 4 - Tract A Lessor's Surface Parking	75,364	1.73
Parcel 4 - Tract B Lessor's Surface Parking	159,525	3.66
Parcel 5 - Tract A City Parking Structure (excluded from ground lease)	54,881	1.26
Parcel 5 - Tract B City Parking Structure (excluded from ground lease)	73,828	1.69

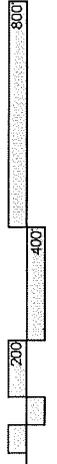
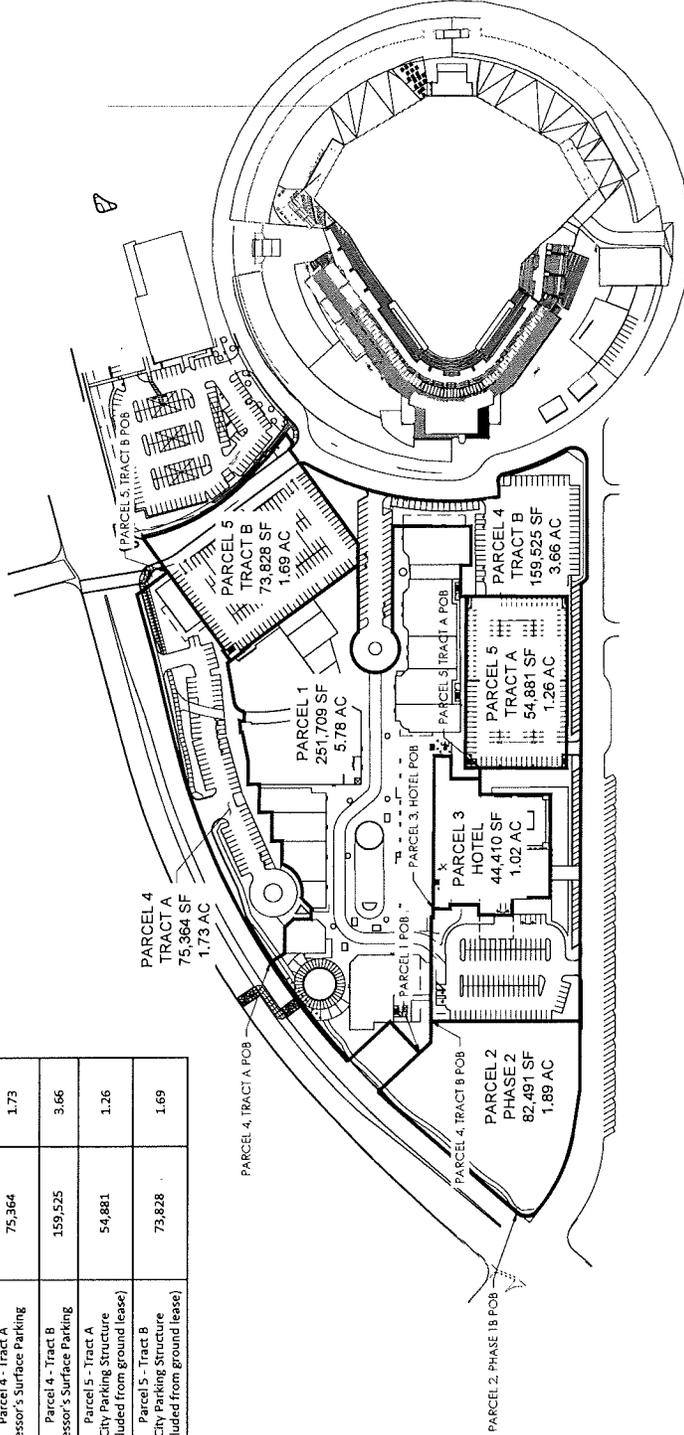


Exhibit B  
Site Plan – Phase 1

# THE AVENUE SHOPPES AT P83 PEORIA, AZ. PHASE 1

DATE: JAN. 15, 2014  
**Baker**

## LEVEL 1 AND 2 AS OCCURS

ENTERTAINMENT	AREA: 17,702 SF	-52,548 SF
RESTAURANTS	AREA: 34,848 SF	
RETAIL	AREA: 84,183 SF	

## LEVELS 2-5

FULL SERVICE, 140 SEVS, 3 STORES  
ROOFTOP LOUNGE  
PARKING ON BASEMENT AND 1ST LEVEL  
HEIGHT: 87'  
CONFERENCE SPACE: 10,000 SF

## PARKING

PARKING STRUCTURES: 1,792 x 757 x 201 = 2,750 SPACES  
SURFACE PARKING: 407 SPACES  
TOTAL: 3,157 SPACES

LEVEL 1		
W		
W 100	12,028	RETAIL
NW		
NW 100	4,069	RESTAURANT
NW 101	1,620	RESTAURANT
NW 102	4,765	RESTAURANT
NW 103	4,814	RETAIL
NW 104	5,026	RETAIL
NE		
NE 100	15,070	ENTERTAINMENT
NE 101	7,286	RETAIL
NE 102	16,243	RETAIL
NE 103	1,603	RESTAURANT
NE 104	1,998	RETAIL
NE 105	3,297	RETAIL
NE 106	2,074	RETAIL
NE 107	3,350	RESTAURANT
SE		
SE 100	5,020	RESTAURANT
SE 101	6,198	RETAIL
SE 102	4,560	RETAIL
SE 103	9,222	RETAIL
SE 104	2,632	ENTERTAINMENT
SE 105	5,272	RESTAURANT
SW		
SW 100	4,028	RESTAURANT
SW 101	2,335	RETAIL
SW 102	1,760	RETAIL
SW 103	1,100	RESTAURANT
SW 104	1,760	RETAIL
SW 105	2,025	RETAIL
SW 106	1,865	RETAIL
KIOSKS		
#1	76	RETAIL
#2	76	RETAIL
#3	76	RETAIL
#4	76	RETAIL
#5	153	RETAIL
#6	153	RETAIL
#7	76	RESTAURANT
#8	76	RESTAURANT
#9	153	RESTAURANT
#10	153	RESTAURANT

PHASE 2 DEVELOPMENT

3 STRUCTURED LEVELS  
1 STRUCTURED LEVEL  
757 SPACES TOTAL

SW SWISE

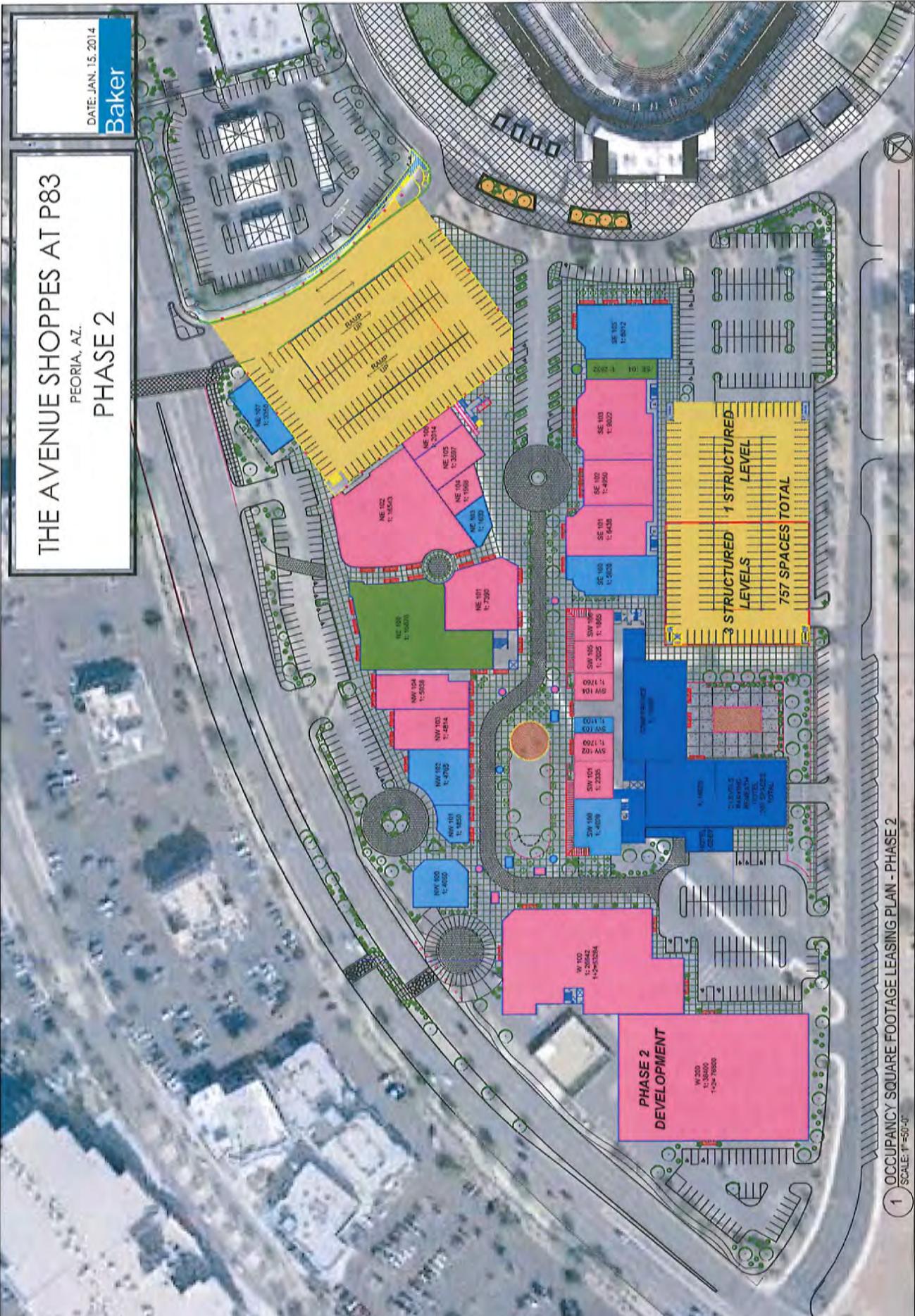
1 OCCUPANCY SQUARE FOOTAGE LEASING PLAN - LEVEL 1  
SCALE: 1"=50'-0"

Exhibit C  
Site Plan – Phase 2

# THE AVENUE SHOPPES AT P83 PEORIA, AZ. PHASE 2

DATE: JAN. 15, 2014

**Baker**



1 OCCUPANCY SQUARE FOOTAGE LEASING PLAN - PHASE 2  
SCALE: 1"=50'-0"

**Exhibit 5**

**Exhibit "G"**

**RENT\***

(\*The Date that Rent payments begin is set forth in SECTION 5.4 of the Lease. The following chart is inserted for illustrative purposes. This version of the Exhibit "G" Rent chart will be updated and amended by mutual agreement of the parties based upon when the payment of Rent is triggered under the terms of SECTION 5.4 of the Lease)

<b>LEASE YEAR PERIOD</b>	<b>RENT RATE</b>	<b>RENT ESCALATOR 8.5% EVERY FIVE (5) YEARS BEGINNING IN YEAR 8</b>	<b>PARCEL 1: RETAIL - RESTAURANT</b>	<b>PARCEL 2: PHASE 1B</b>	<b>PARCEL 3: HOTEL</b>	<b>PARCEL 4: SURFACE PARKING</b>	<b>TOTAL MONTHLY RENT</b>
			MONTHLY RENT	MONTHLY RENT	MONTHLY RENT	MONTHLY RENT	
1-2	0		\$0	\$0	\$0	\$0	\$0
3-7	8.00%		\$8,367	\$2,736	\$1,477	\$1,951	\$14,530
8-12	8.68%	8.5% in Lease Year 8	\$9,078	\$2,969	\$1,602	\$2,116	\$15,765
13-17	9.42%	8.5% in Lease Year 13	\$9,850	\$3,221	\$1,738	\$2,296	\$17,106
18-22	10.22%	8.5% in Lease Year 18	\$10,687	\$3,495	\$1,886	\$2,492	\$18,560
23-27	11.09%	8.5% in Lease Year 23	\$11,596	\$3,792	\$2,046	\$2,703	\$20,137
28-32	12.03%	8.5% in Lease Year 28	\$12,581	\$4,114	\$2,220	\$2,933	\$21,849
33-37	13.05%	8.5% in Lease Year 33	\$13,651	\$4,464	\$2,409	\$3,182	\$23,706
38-42	14.16%	8.5% in Lease Year 38	\$14,811	\$4,843	\$2,614	\$3,453	\$25,721
43-47	15.36%	8.5% in Lease Year 43	\$16,070	\$5,255	\$2,836	\$3,746	\$27,907
48-50	16.67%	8.5% in Lease Year 48	\$17,436	\$5,701	\$3,077	\$4,065	\$30,279
<b>1<sup>ST</sup> OPTION PERIOD</b>							
51-52			\$17,436	\$5,701	\$3,077	\$4,065	\$30,279
53-57	18.09%	8.5% in Lease Year 53	\$18,918	\$6,186	\$3,338	\$4,410	\$32,853
58-62	19.63%	8.5% in Lease Year 58	\$20,526	\$6,712	\$3,622	\$4,785	\$35,646
63-67	21.29%	8.5% in Lease Year 63	\$22,271	\$7,282	\$3,930	\$5,192	\$38,675
68-72	23.10%	8.5% in Lease Year 68	\$24,164	\$7,901	\$4,264	\$5,633	\$41,963
73-74	25.07%	8.5% in Lease Year 73	\$26,218	\$8,573	\$4,627	\$6,112	\$45,530

<b>2<sup>nd</sup> OPTION PERIOD</b>							
74-77			\$26,218	\$8,573	\$4,627	\$6,112	\$45,530
78-82	27.20%	8.5% in Lease Year 78	\$28,446	\$9,302	\$5,020	\$6,632	\$49,400
83-87	29.51%	8.5% in Lease Year 83	\$30,864	\$10,092	\$5,447	\$7,195	\$53,599
88-92	32.02%	8.5% in Lease Year 88	\$33,488	\$10,950	\$5,910	\$7,807	\$58,155
93-97	34.74%	8.5% in Lease Year 93	\$36,334	\$11,881	\$6,412	\$8,471	\$63,098
98-99	37.69%	8.5% in Lease Year 98	\$39,423	\$12,891	\$6,957	\$9,191	\$68,461

7500 North Dobson Road  
Suite 151  
Scottsdale, Arizona 85256  
TEL (480) 302-6600  
FAX (480) 302-6606  
NET altergroup.com



January 6, 2014

Scott Whyte  
Director  
Economic Development Services Dept.  
City of Peoria  
9875 N. 85th Avenue  
Peoria, AZ 85345

**RE: The Avenue Shops at P83  
Peoria, Arizona**

Dear Scott

The Alter Group supports approval of the new plans dated November 26<sup>th</sup>, 2013. The willingness of the City of Peoria to relocate the parking structure to the south (off of our leased premises) is much appreciated. Once you have final execution of a Development Agreement and you move towards final planning, we have several requests:

1. In finalizing the revised access and amendment to our parking layout (located at 16155 North 83<sup>rd</sup> Avenue), we would like to be involved with the design and approval of same. We would hope to find a better location for proposed relocated refuse dumpster so it is in closer proximity to the building. We also know that the plans were preliminary, but want to make certain that the vehicular access and drives are properly design.
2. Any design, permitting, construction, etc. will be the responsibility of the City of Peoria and The Alter Group will not incur any charges for the proposed changes.
3. We are also requesting that we have a seat-at-the-table, for the design process of the parking deck to be included as part of The Avenue Shops at P83. We like the direction of the preliminary sketches and would just appreciate being able to see how the final design develops.

**THEALTERGROUP®**

7500 North Dobson Road  
Suite 151  
Scottsdale, Arizona 85256

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NET altergroup.com



4. We would like a schedule of the development as it unfolds as we will need to provide information of any disruption to parking and/or access to our tenants.

Scott, once again, we really appreciate you working with our concerns and feel that the proposed development will work well for all parties. We also believe that the introduction of this mixed-use project will enhance the overall experience of all visitors and residents of the City of Peoria.

Please let us know when we can schedule additional meetings to work with you and the developer to further design of the project.

Sincerely,

A solid black rectangular box used to redact the signature of Kurt W. Rosene.

Kurt W. Rosene  
Senior Vice President  
The Alter Group



# City Council Calendar

Color Key:  
City Council

< February	March 2014					April >
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	<b>4</b> <u>Regular City Council Meeting</u>  <u>Special Meeting &amp; Study Session</u>	5	6	7	8
9	10	11	12	13	14	15
16	17	<b>18</b> <u>Regular City Council Meeting</u>  <u>Special Meeting &amp; Study Session</u>	<b>19</b> <u>Council Subcommittee on Policy and Appointments Meeting</u>	20	21	22
23	<b>24</b> <u>City Council Subcommittee on Community Culture &amp; Public Safety</u>	<b>25</b> <u>Budget Study Session</u>	<b>26</b> <u>Budget Study Session</u>	<b>27</b> <u>Budget Study Session</u>	28	29
30	31					



# City Council Calendar

Color Key:  
City Council

< March	April 2014					May >
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		<u><b>1</b></u> Regular City Council Meeting  Special Meeting & Study Session	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	<u><b>22</b></u> Regular City Council Meeting	<u><b>23</b></u> Council Subcommittee on Policy and Appointments Meeting	24	25	26
27	<u><b>28</b></u> City Council Subcommittee on Community Culture & Public Safety	29	30			

**CITY OF PEORIA, ARIZONA  
CITY MANAGER REPORT**

Agenda Item: RCM 20A

**Date Prepared: 18 February 2014**

**Council Meeting Date: 4 March 2014**

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**TO: Carl Swenson, City Manager**

**FROM: Tamara Shreeve, Council Office and Grant Program Manager**

**THROUGH: John Schell, Director, Governmental Affairs and Council Office**

**SUBJECT: Council Subcommittee Update**

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**Summary:**

The purpose of this report is to update the Mayor and Council on the Council Subcommittee activities. The attached spreadsheet lists the Council Subcommittees and the agenda item topics that have been assigned to each Council Subcommittee. If the item has been reviewed at a subcommittee meeting, the outcome of that discussion is also listed.

**Exhibit 1:** Council Subcommittee assigned agenda items

**Contact Name and Number:** Tamara Shreeve, x5143

**Peoria Council Subcommittees  
Updated 18 February 2014**

**Community Culture  
and Public Safety  
Subcommittee**

<b>Submitter</b>	<b>Subject</b>	<b>Sub- committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
Jeff Tyne / Susan D	Trail System Lighting	1/30/2012	Forward item to study session. Completed	7/3/2012
Jeff Tyne / Susan D	Field Rental Policy	1/30/2012	Forward item to study session. Completed	7/3/2012
Jeff Tyne / Susan D	Recreation Fees Policy	11/14/2011	Forward item to study session. Completed	3/20/2012
Jeff Tyne / Susan D	Veterans Discount Program	2/27/2012	Discussed item. Taken directly to Regular Council meeting. Completed	Regular Council Meeting 5/15/12
Jeff Tyne / Susan D	Establish "Peoria Friends of the Arts"	2/27/2012	Forward item to study session. Completed	12/4/2012
Jeff Tyne / Susan D	Youth Master Plan	4/9/2012	Forward item to study session. Completed	9/4/2012
Jeff Tyne / Susan D	Veterans Memorial Board Sponsorship	1/30/2012	Discussed item. Taken directly to Regular Council meeting. Completed	Regular Council Meeting 5/15/12
Claudia Lujan	Structure of the Sister Cities Board	6/25/2012	Item was discussed. Forward item to Council Study Session (6/25/12). Completed	
Roy Minter	False Alarm Ordinance	11/7/2011	Forward to study session (11/7/2011). Completed	4/17/2012
Dave Pearson	Recreational Vehicle Ordinance	1/11/2012	Forward to study session with full recommendation (1/11/12). Completed	6/5/2012
Tony Rivero	Recreational Vehicles City Code Section 14-110	1/11/2012	Forward to study session with full recommendation (1/11/12). Completed	6/5/2012

**Peoria Council Subcommittees  
Updated 18 February 2014**

Carlo Leone	Traffic calming agenda item	4/11/2012	Forward to study session. Completed	Regular Council Meeting 6/19/12
Carlo Leone	Traffic management agenda item	4/11/2012	Item discussed. Informational only.	NA
Roy Minter	Park Ranger Staffing Study	12/14/2011	Informational item.	NA
Carlo Leone	Feral Cat Control	9/10/2012	Discussion only. Completed	NA
Carlo Leone	Residential Parking	11/15/2012	Item discussed. Forward to Council Study Session.	
Carlo Leone	Dirt Ordinance	11/15/2012	Discussion only. Completed	NA
Jamal Rahimi/Andy Grainger	Neighborhood Traffic Management Program (NTMP) Policy Change	4/11/2012	Item discussed. Informational only. Completed	NA
Tamara Shreeve/Susan Thorpe	Community/Outside Agency Funding & Assistance Policy	6/25/2012	Item was discussed. Forward item to Council Study Session (6/25/12). Completed	11/13/2012
Ron Aames	Roadside Memorials	11/15/2012	Discussion only. Completed	NA
Carlo Leone	Feeding Nuisance Animals	9/10/2012	Item was discussed. Staff will draft ordinance to present at a Council Study Session. (9/10/12)	
Ron Aames	Permissible Number of Animals per Residence	9/10/2012	Discussion only. Completed	NA
Carlo Leone	Policy of Swine in Peoria	1/28/2014	Item was discussed. Forward item to Council Study Session. Completed.	

**Peoria Council Subcommittees  
Updated 18 February 2014**

**General Government  
Subcommittee**

<b>Submitter</b>	<b>Subject</b>	<b>Sub-committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
Brent Mattingly	Utility bill format	11/14/2011	Forward the item for full Council Study Session discussion of solid waste service options and rates. Completed	2/7/2012
Tony Rivero	Residential Development Impact Fees	11/14/2011	Consensus of the subcommittee members was to wait for the full Impact Fee Study to address policy issues identified by Council.	7/3/2012 10/23/2012
Dave Pearson	Itemizing Utility Bill	12/19/2011	Forward the item for full Council Study Session discussion of solid waste service options and rates. Completed	2/7/2012
Steve Kemp	Adoption of Resolution supporting designating certain areas of the City with Peoria addresses and zip codes	2/13/2012	Will be placed as a regular agenda item.	Regular Agenda 7/3/12
Katie Gregory	Development Service User Fees	2/13/2012	Forward to Council Study Session. Completed	7/3/2012
Ron Aames	Taxes	9/18/2013	Item was discussed. Forward to Council Study Session. Completed	12/6/2013
Ron Aames	City Financing Program	9/18/2013	Item was discussed. Forward to Council Study Session. Completed	12/6/2013

**Peoria Council Subcommittees  
Updated 18 February 2014**

<b>Policy and Appointments Subcommittee</b>		<b>Sub-committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
<b>Submitter</b>	<b>Subject</b>			
Dave Pearson	Volunteer Appreciation	11/7/2011 1/10/2012	No further Action. Completed (11/7/11). Revisited item on 1/10/12. No further action. Completed	NA
Dave Pearson	B&C Appointment Process	11/7/2011 12/13/2011 1/10/2012	Bring back to Subcommittee for further discussion (11/7/11). Administrative action - Use the new application form. Interviews and Resumes will be at the discretion of the SC. (12/13/11). Completed. Revisited item on 1/10/12. Completed	NA
Rhonda Geriminsky	Board and Commission Appointments & Reappointments	Ongoing	Appointments and reappointments reviewed and recommended by subcommittee. Ongoing topic.	NA
Dave Pearson	Charter Amendments	12/13/2011 1/10/12 1/24/2012	Bring back to Subcommittee for further discussion (12/13/11). Discussed seven proposed charter amendments. Forward 6 of those to Study Session. One proposed amendment was withdrawn ( 1/10/12). Reviewed remainder charter amendments. Forward charter amendments to study session. (1/24/2012) Completed	2/21/2012

**Peoria Council Subcommittees**

**Updated 18 February 2014**

Dave Pearson	Council Ethics Committee	11/7/2011 12/13/2011 1/10/2012	Bring back to Subcommittee for further discussion (11/7/11). Bring back to Subcommittee. Include a process flow chart (12/13/11). Forward to study session with consensus recommendation (1/10/12). Completed	2/7/2012
Dave Pearson	CP1-5 Appointments to Boards and Commission	11/7/2011 12/13/11	Bring back to Subcommittee for further discussion (11/7/11). Consensus recommendation to forward to study session (12/13/11). Completed	5/15/2012
Dave Pearson	CP 1-2 review. Edit Council Meeting Procedures to reflect Subcommittee Structure	12/13/2011	Bring back to subcommittee for further discussion (12/13/11). Subcommittee procedures are addressed in CP 1-6. Completed	NA
Dave Pearson	Council Role in review and approval of director appointments	12/13/2011	Consensus to move forward to regular council agenda/through a City Manager's report. Completed	Regular Council Meeting 1/3/2012

**Peoria Council Subcommittees  
Updated 18 February 2014**

Susan Thorpe	Council Code of Ethics	2/14/2012 3/15/2012 4/10/12 5/8/12 9/11/12	Discussed item - continue discussion at the next meeting (2/14/2012). Discussed Item - continue discussion at the next meeting (3/15/2012). Discussed item - will continue discussion at the next meeting (4/10/12). Discussed item-continue discussion at the next meeting (5/8/12). Consensus to forward draft policy to Study Session (9/11/2012). Completed.	
Dave Pearson	Code of Ethics for Elected Officials and Citizen Advisory Committees	2/14/2012 3/15/2012 4/10/12 5/8/12 9/11/12	Discussed item - continue discussion at the next meeting (2/14/2012). Discussed Item - continue discussion at the next meeting (3/15/2012). Discussed item - will continue discussion at the next meeting (4/10/12). Discussed item-continue discussion at the next meeting (5/8/12). Consensus to forward draft policy to Study Session (9/11/2012). Completed	
Rhonda Geriminsky	Youth Master Plan Initiative	3/20/2013 6/11/2013	Item was discussed. City Attorney will draft some ideas on how youth can be involved in committees (3/20/2013). Item was discussed and forward to study session (6/11/2013). Completed	
Rhonda Geriminsky	2013 Board and Commission Recognition Event	3/20/2013	Item was discussed. Staff will identify potential dates for the event (3/20/2013). Completed	NA

**Peoria Council Subcommittees**

**Updated 18 February 2014**

Rhonda Geriminsky	2013 and 2014 Board and Commission Recognition Events	8/13/2013	Item was discussed. Staff will continue to gather options for holding the next recognition event. (8/13/2013)	NA
John Sefton	Youth Advisory Board Council Liaison Interviews	9/10/2013	Interviews were conducted. Recommendations will be forwarded to the Council for the Council Youth Liaison and the Council Youth Liaison Alternate.	10/1/2013
Steve Kemp	Proposed Charter Amendment to allow council members to place agenda items on regular city council meetings and special meetings	2/11/2014	Item was discussed. Forward to Council Study Session. Completed	
Steve Kemp	Proposed Charter Amendment as to Council Assistants	2/11/2014	Item was discussed. Forward to Council Study Session. Completed	
Steve Kemp	Proposed City Charter Amendment as to a City Treasurer Position	2/11/2014	Item was discussed. Forward to Council Study Session. Completed	

**Peoria Council Subcommittees  
Updated 18 February 2014**

**Sustainable  
Development and  
Public Services  
Subcommittee**

<b>Submitter</b>	<b>Subject</b>	<b>Sub- committee agenda date</b>	<b>Action</b>	<b>Study Session</b>
Chris Jacques	Political Signs Zoning Ordinance	11/2/2011	Forward item to Council Study Session. Completed	11/15/2011
Chris Jacques/ Susan D.	Open Space Preservation Program and Decision Support Model	2/1/2012	Start community outreach activities and forward item to Council Study Session. Completed	8/21/2012
Chris/Scott and Susan D.	Digital Billboards - Civic Engagement	11/7/2011	Forward Item to Study Session. Completed	11/15/2011
Dave Pearson	Council Not-For-Profit and Housing Subcommittee	11/8/2011 6/6/12	Bring back to subcommittee for further discussion upon completion of research and alternative identification (11/8/11). Item was discussed. Forward item to study session (6/6/12). Completed	
Cathy Carlat	Not for Profit Committee	11/8/2011 6/6/12	Bring back to subcommittee for further discussion upon completion of research and alternative identification (11/8/11). Item was discussed. Forward Item to study session (6/6/12). Completed	
Scott Whyte/ Chris Jacques/ Susan D.	Old Town Entertainment District Designation	12/7/2011 1/4/2012	Bring back to subcommittee for further discussion (12/7/11). Forward to Regular Council Meeting (1/14/2012). Completed	Regular Council Meeting 1/17/2012

**Peoria Council Subcommittees  
Updated 18 February 2014**

Bill Mattingly	Dial-a-Ride rates	11/17/2011	Forward item to Council Study Session. Completed	4/17/2012
Ron Aames	Transit Jurisdictional Equity Position	11/17/2011	Informational item. Forward information, through a City Manager's report, to the Council on a Regular Council Agenda. Completed	Regular Council mtg. 1/3/2012
Susan Thorpe	Solid Waste Services	12/1/2011	Forward Item to Council Study Session. Completed	2/7/2012
Bill Mattingly/ Susan Thorpe	Commercial Solid Waste Services	12/15/2011	Forward Item to Council Study Session. Completed	2/7/2012
Dave Pearson	Change in City Ordinance regarding multi-family solid waste service	1/5/2012	Item was discussed, then withdrawn by Councilman Pearson. Completed	NA
Scott Whyte	Old Town Indicators	6/6/2012	Item was discussed. Forward item to Study Session (6/6/2012). Completed	8/21/2012
Chris Jacques	Senate Bill 1598-Aggregate Mining	6/6/2012	Item was discussed. Forward item to Study Session (6/6/2012). Completed	8/21/2012
Carlo Leone	Street Maintenance	11/7/2012	Item was discussed. No further action needed. Completed	NA
Ron Aames	Maintaining Traffic During Construction of Street Projects	5/8/2013	Item was discussed. No further action needed. Completed	NA
Carlo Leone	Code Amendment - Placement of Trash Receptacles	11/6/2013	Item was discussed. Forward item to Study Session. Completed	

**CITY OF PEORIA, ARIZONA  
CITY MANAGER REPORT**

Agenda Item: RCM 20B

**Date Prepared: February 5, 2014**

**Council Meeting Date: March 4, 2014**

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**TO:** Carl Swenson, City Manager  
**FROM:** John R. Sefton, Jr., Community Services Director  
**THROUGH:** Jeff Tyne, Deputy City Manager  
**SUBJECT:** Bravo Peoria

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**Summary:**

In collaboration with the *Friends of the Peoria Public Library*, a new element has been added to the **Bravo Peoria!** experience. Honored guests will be invited to the **Friends of the Peoria Public Library Inaugural Membership Reception** on Friday, March 7 from 6:30-8:30pm at Sunrise Mountain Library. A quartette from the Phoenix Symphony Orchestra will set the mood as attendees enjoy refreshments and an opportunity to learn more about how to support and get involved with the *Friends*. The event is open to the public but those attending should RSVP as space is limited.

**Bravo Peoria!** will be held on Saturday, March 8 from 10am-2pm. This year's event will include face painting, juggling, a balloon artist, entertainment, food vendors, kid's crafts, a book sale, and much more. Families are invited to join us at the Sunrise Mountain Library located at 21109 N. 98th Avenue, just off Lake Pleasant Parkway.

**Exhibit(s):**

Exhibit (1) Friends of the Peoria Public Library Inaugural Membership Reception Invitation  
Exhibit (2) Bravo Peoria Flyer

**Contact Name and Number:** Matt Kalcevich (623)773-7133

# Please Join Us

Friends of the Peoria Public Library  
**Inaugural Membership  
Reception!**

OPEN TO THE PUBLIC

Friday, March 7, 2014 • 6:30-8:30 p.m.

Sunrise Mountain Library  
21109 North 98th Avenue  
Peoria, Arizona

*Featuring live music with members of the Phoenix  
Symphony, guest speakers & refreshments*

**RSVP by February 20th**

Colleen McElroy at 602-445-6431 or [mcelroyc@dcspllc.com](mailto:mcelroyc@dcspllc.com)

FRIENDS OF THE  
PEORIA PUBLIC

Friends of the Peoria  
Public Library  
present

# BRAVO PEORIA!

at the  
Sunrise Mountain Library  
21109 N. 98th Ave.  
Peoria, Az

Sat  
Mar 8, 2014  
10 am - 2 pm

FUN  
FOR THE  
WHOLE  
FAMILY!

Juggling!

Balloon  
Artist!

Reptile Show!



City of Peoria



MAIN LIBRARY  
8463 West Monroe Street

SUNRISE MOUNTAIN LIBRARY  
21109 North 98th Avenue