

REVISED

**Tempe City Council
Formal Council Meeting
Harry E. Mitchell Government Center
Tempe City Hall - City Council Chambers
31 East Fifth Street, Tempe, Arizona
Thursday, November 04, 2010
7:30 PM**

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

1. INVOCATION - Councilmember Ellis

2. PLEDGE OF ALLEGIANCE

3. MINUTES - Councilmember Woods

A. Approval of Council Meeting Minutes

1. Formal Council Meeting - October 21, 2010
2. Issue Review Session - October 21, 2010
3. Executive Session - October 21, 2010
4. Neighborhood Parks, Rehabilitation & Maintenance Committee - May 19, 2010

B. Acceptance of Board & Commission Meeting Minutes

1. Parks, Recreation and Golf Advisory Board - June 16, 2010
2. Double Butte Cemetery Advisory Committee - June 16 & September 15, 2010
3. Historic Preservation Commission - September 9, 2010
4. Committee for Youth, Families and Community - September 14, 2010
5. Rio Salado Advisory Commission - September 28, 2010
6. Development Review Commission - September 28 & October 12, 2010
7. Mayor's Youth Advisory Commission - October 5, 2010
8. Special Events Task Force - October 19, 2010

4. REPORTS AND ANNOUNCEMENTS

A. Mayor's Announcements

1. **National Association of Government Defined Contribution Administrators (NAGDCA) Leadership Recognition Award**

B. Manager's Announcements

5. AGENDA

All items listed on the agenda will be considered as a group and will be enacted with one motion by the City Council unless an item is removed for separate consideration. Members of the public may remove public hearing items for separate consideration. Public hearing items are designated by an asterisk (*). Councilmembers may remove any item for separate consideration.

Agenda items scheduled for Introduction/First Public Hearing will be heard, but will not be voted upon at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon tonight.

'q-j' indicates quasi-judicial items. The City Council sits as a quasi-judicial body when hearing variances. In this situation, the City Council must conduct itself as a court, not as a legislative body. Pre-meeting contact with the City Council on quasi-judicial matters is prohibited. Any materials or conversations concerning the item shall only be presented to the City Council at the scheduled public hearing.

Legal Advice: If necessary, the City Council may vote to adjourn to executive session for the purpose of obtaining legal advice from the Council's attorney on any matter listed on the agenda pursuant to A.R.S §38-431.03(A)(3).

A. Miscellaneous Items

- *A1. This is a public hearing for an appeal by HAREM NIGHTS located at 1630 East Apache Boulevard, Suite 103, of the September 28, 2010 Development Review Commission's decision to uphold the May 19, 2010 Hearing Officer's revocation of use permit ZUP09063 to allow a hookah lounge.

COMMENTS Hold a public hearing for an appeal by HAREM NIGHTS (PL090148 / RVK10002 / RVA10003) (Kalil Abulaban/Harem Nights, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite 103, in the CSS, Commercial Shopping and Services District of the September 28, 2010 Development Review Commission's decision to uphold the May 19, 2010 Hearing Officer's revocation of the following: ZUP09063 Use permit to allow a hookah lounge.

DOCUMENT NAME 20101104cdsa01 PLANNED DEVELOPMENT (0406)

- *A2. This is a public hearing to recommend the approval of a Series 12 restaurant liquor license for Tres Amores, LLC, dba America's Taco Shop, 735 East University Drive.

COMMENTS Terry Dennis Bortin is the Agent for this application.
DOCUMENT NAME 20101104fsap01 124002 – LIQ LIC (0210-02)

- *A3. This is a public hearing to recommend the approval of a Series 04 In-State wholesaler's liquor license for Action Wine & Spirits USA, LLC, dba Action Wine & Spirits, 2055 East 5th Street.

COMMENTS Billy Edward Shields is the Agent for this application.
DOCUMENT NAME 20101104fsap02 124723 – LIQ LIC (0210-02)

- *A4. This is a public hearing to recommend the approval of a Series 12 restaurant liquor license for Luby's Fuddruckers Restaurants, LLC, dba Fuddruckers, 7470 South Priest Drive.

COMMENTS Andrea Dahlman Lewkowitz is the Agent for this application.
DOCUMENT NAME 20101104fsap03 124313 – LIQ LIC (0210-02)

- *A5. This is a public hearing to recommend the approval of a Series 06 bar liquor license for School of Rock Mill Ave, LLC dba School of Rock Mill Ave, 411 South Mill Avenue #210.

COMMENTS Randy D. Nations is the Agent for this application.
DOCUMENT NAME 20101104fsap05 124621 – LIQ LIC (0210-02)

- A6. Request approval of Amendment No. 1 to the Vehicle Lease Agreement between the City of Tempe and Downtown Tempe Community (DTC).

COMMENTS This Amendment requires a maintenance schedule for the vehicles, drug and alcohol testing of drivers following any accident and revises the term of the lease with DTC for two years, to lease trucks and hand-held computer equipment to be used for parking enforcement. There is no cost to the City under the Amendment.
DOCUMENT NAME 20101104cdcm01 DOWNTOWN TEMPE COMMUNITY, INC. (0109-30)

- *A7. **DELETED - THIS AGENDA ITEM HAS BEEN SCHEDULED FOR THE NOVEMBER 18, 2010 FORMAL COUNCIL MEETING**
Appeal hearing for the alleged breach of the Tempe Officers Association (TOA) Memorandum of Understanding (MOU).

- *A8. This is the introduction and first public hearing required by federal law to obtain citizen input regarding how funds could be allocated for the Community Development Block Grant (CDBG) and Home Programs for the 2011-2012 fiscal year. The second public hearing is scheduled for April 28, 2011.

COMMENTS N/A
DOCUMENT NAME 20101104cdch01 COMMUNITY DEVELOPMENT BLOCK GRANT (0207-32)

B. Award of Bids/Contracts

- B1. Request award of a design services contract with Damon S. Williams Associates, L.L.C. for Johnny G. Martinez Water Treatment Plant quality improvements.

COMMENTS Total cost for the design services contract is \$994,320.
DOCUMENT NAME 20101104pwwr02 JOHNNY G. MARTINEZ WATER TREATMENT PLANT (0811-03) PROJECT NO. 3201091

- B2. Request approval of job order no. 9 with Caliente Construction, Inc. for well disinfection conversion improvements.

COMMENTS Total amount of job order no. 9 is \$186,470 and the project contingency amount is \$10,000.
DOCUMENT NAME 20101104pwdr03 WELLS – CONSTRUCTION/MAINTENANCE (0811-01) PROJECT NO. 3200018

- B3. Request approval to ratify an award of a twenty-month contract with Rgon Enterprises, Inc. for restaurant management and operations at Ken McDonald Golf Course.

COMMENTS There is no cost to the City for this contract.
DOCUMENT NAME 20101104fslg02 PURCHASES (1004-01)

C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

- *C1. This is the introduction and first public hearing to adopt an ordinance authorizing the conveyance of certain real property owned by the City to Farmer Arts, LLC, and authorizing the Mayor to execute the requisite documents. Farmer Arts LLC and the City of Tempe are parties to a Development and Disposition Agreement (C2007-98) that allows the conveyance of City property to Farmer Arts LLC. The second public hearing is scheduled for November 18, 2010.

COMMENTS The second amendment to the Development and Disposition authorizes the sale of all or part of the parcel of land bounded by University Drive on the south, Farmer Avenue on the west, 5th Street on the north, and 35 feet west of the Union Pacific railroad tracks on the east. Developer has initially requested a conveyance of two of the 4 parcels located within Parcel 1.
DOCUMENT NAME 20101104cdaws01 TEMPE PACKING SITE - FIFTH AND FARMER (0403-02-09) Ordinance No. 2010.39

D. Ordinances and Items for Second Hearing/Final Adoption

- *D1. This is the second and final public hearing to approve an ordinance authorizing the mayor to execute agreements to terminate the Lease with, and convey property to CH Realty III/Hayden Ferry I, L.L.C..

COMMENTS N/A
DOCUMENT NAME 20101021cd02 RIO SALADO MASTER PLAN (112-07-03) Ordinance No. 2010.41

- *D2. This is the second and final public hearing to amend Chapter 2, Article V, Division 5 of the Tempe City Code relating to the composition and duties of the Tempe Aviation Commission.

COMMENTS The proposed ordinance amends the City Code by reducing the membership of the Tempe Aviation Commission from 13 to 11 members and broadening the subject area of the Commission from the impacts of aircraft noise to all impacts of aircraft and airport operations on Tempe residents.
DOCUMENT NAME 20101021pwcb01 TCC CH2 CITY CODE ADMINISTRATION (0503-02) Ordinance No. 2010.36

E. Resolutions

- E1. Request approval of a resolution to accept grant funding from the State of Arizona - Department of Homeland Security under the Urban Area Security Initiative to fund training for the Terrorism Liaison Officer.

COMMENTS The grant award totals \$4,000.
DOCUMENT NAME 20101104pdmk01 POLICE DEPARTMENT ADMIN (0606-02)
Resolution No. 2010.126

- E2. Request approval of a resolution authorizing the Mayor to execute the second Amendment to the Development and Disposition Agreement between Farmer Arts, LLC and the City of Tempe.

COMMENTS The second amendment to the Agreement further details the Public Amenities associated with the Project (i.e. Enhanced Streetscape and Linear Park), allows for the purchase of smaller Development Parcels, allocates the amount of Public Amenities on each Parcel, expands the requirements for transfer of the property, reduces the amount of the tax rebate and provides for 100 underground parking stalls on Parcel 2.
DOCUMENT NAME 20101104cdaws01 TEMPE PACKING SITE - FIFTH AND FARMER (0403-02-09) Resolution No. 2010.142

- E3. Request adoption of a resolution authorizing the approval of the Tempe South Corridor Study Recommendations.

COMMENTS This resolution reaffirms the unanimous direction provided at the October 21, 2010 IRS Council meeting to advance the Tempe South Study recommendations forward to the next stage of project development. This resolution is the initial step to adopt the project into the Regional Transportation Plan through Maricopa Association of Governments and provides an initial basis for the future commitment to fund operations of the system in connection with application to the Federal Transit Administration for capital funding. Staff will develop potential funding sources to review with Council prior to application to the Federal Transit Administration in the spring 2011.
DOCUMENT NAME 20101104cdjism01 TRANSPORTATION PLANNING (1101-01)
Resolution No. 2010.141

6. PUBLIC APPEARANCES

According to the Arizona Open Meeting Law, the City Council may only discuss matters listed on this agenda. Matters discussed by the public during public appearances cannot be discussed by the City Council unless they are specifically listed on this agenda. There is a five-minute time limit per speaker. Speaker's visual aids or recorded tapes are not allowed.

Members of the public shall refrain from making personal, impertinent or slanderous remarks and from becoming boisterous while addressing the City Council or while attending the meeting. Unauthorized remarks from the audience, clapping, stomping of feet, yelling or any similar demonstrations are also prohibited. Violations of these rules may result in removal from the City Council meeting.

A. Scheduled

B. Unscheduled

7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

The City of Tempe endeavors to make all public meetings accessible to persons with disabilities. With 72 hours advance notice, special assistance can also be provided for sight and/or hearing impaired persons at public meetings. Please call (480) 350-2905 (voice) or (480) 350-2750 (TDD) to request an accommodation to participate in the City Council meeting.

**Agendas are also available at www.tempe.gov/clerk
Watch this meeting live on Cox cable channel 11 or www.tempe.gov/tempe11.
Video replay of this meeting is available the next day at www.tempe.gov/tempe11.**



Minutes Formal City Council Meeting October 21, 2010

Minutes of the Formal Council Meeting of Thursday, October 21, 2010, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Tempe City Hall, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman

Councilmember Robin Arredondo-Savage

Councilmember Mark W. Mitchell

Councilmember Corey D. Woods

Vice Mayor Joel Navarro

Councilmember Shana Ellis

Councilmember Onnie Shekerjian

STAFF PRESENT:

Charlie Meyer, City Manager

Jeff Kulaga, Assistant City Manager

Andrew Ching, City Attorney

Various Department Heads or their representatives

Don Hawkes, Deputy Public Works Director - Water Utilities

Ken Jones, Finance and Technology Director

Brigitta M. Kuiper, City Clerk

Mayor Hallman called the meeting to order at 8:35 p.m.

1. Councilmember Woods gave the **invocation**.
2. Mayor Hallman led the audience in the **Pledge of Allegiance**.

3. MINUTES

A. Approval of Council Meeting Minutes

Motion by Councilmember Shekerjian to approve the following COUNCIL MEETING MINUTES; second by Councilmember Arredondo-Savage. Motion passed on a voice vote 7-0.

1. Formal Council Meeting - October 7, 2010
2. Issue Review Session - October 7, 2010
3. Executive Session - October 7, 2010

B. Acceptance of Board & Commission Meeting Minutes

Motion by Councilmember Shekerjian to accept the following COMMITTEE BOARD AND COMMISSION MEETING MINUTES; second by Councilmember Ellis. Motion passed on a voice vote 7-0.

1. Rio Salado Advisory Commission - January 26, & May 25, 2010
2. Accountability and Governance Transportation Commission Subcommittee - June 7, 2010
3. Aviation Commission - June 8, 2010
4. Commission on Disability Concerns - August 5, 2010
5. Tempe Fire Public Safety Personnel Retirement Board - August 19, 2010
6. Neighborhood Advisory Commission - September 1, 2010

7. Tempe Police Public Safety Retirement Board - September 2, 2010
8. Committee for Youth, Families and Community Town Hall Ad-Hoc Committee - September 8, 2010
9. Tardeada Advisory Board - September 8, 2010
10. Transportation Commission - September 14, 2010
11. Multi-modal Planning & Project Review Transportation Commission Subcommittee - September 15, 2010
12. Mayor's Youth Advisory Commission - September 21, 2010
13. Special Events Task Force - October 5, 2010

4. REPORTS AND ANNOUNCEMENTS

B. Manager's Announcements

Charlie Meyer, City Manager, made the following announcements:

- The September 2010 sales tax report shows positive growth for the first time since December of 2007.
- Council authorized bond refinancing at the October 7, 2010 Formal Council Meeting in order to save approximately \$4.3 million. Unfortunately, Moody's Bond Rating Agency has downgraded Tempe's bond rating status, however the remaining of bond rating agencies have reaffirmed Tempe's AAA bond rating status.

A. Mayor's Announcements

1. Valley Forward Environmental Excellence Awards
The Valley Forward Environmental Awards recognize outstanding contributions to the physical environment of Valley communities. The following projects were acknowledged for their award winning achievements:
 - *Art in Public Places*: located in the Tempe Center for the Arts' lobby; Mamie Kratz and Mark Ryan
 - *Buildings and Structures – Industrial and Public Works*: Tres Rio Environmental Restoration Project
 - *Site Developments and Landscape – Public Sector; Buildings and Structures – Historic Preservation*: O'Connor House/Green Line
 - *Livable Communities – Public Policy/Plans*: Papago Park Regional Master Plan
 - *Site Developments and Landscape – Trails*: Rio Salado Southbank Path & Tempe Western Canal Path
 - *Site Developments and Landscape – Parks*: Tempe Cole and Rotary Parks
2. Tales from Double Butte
October 31, 2010 at 2:00 p.m., there will be a walking tour of the Tempe Double Butte Cemetery. Tickets are \$15 each.
3. Board and Commission Recruitments
Mayor Hallman announced that the following boards and commissions have vacancies:
 - Aviation Commission
 - Board of Adjustment
 - Building Code Adv Board
 - Fire Department representative or a fire consultant
 - Commission on Disability Concerns
 - Double Butte Cemetery Advisory Board
 - Electrical Code Advisory Board of Appeals
 - Electrician
 - Electric Utility Representative
 - Fire Department Representative
 - Historical Museum Advisory Board
 - Human Relations Commission
 - Industrial Development Authority

- Joint ASU/Tempe Review Committee
- Library Advisory Board
- Municipal Arts Commission
- Neighborhood Advisory Commission
- Parks, Recreation & Golf Advisory Board
- Plumbing and Mechanical Code Advisory Board of Appeals
 - Doctor or Health Official
 - Mechanical Contractor
 - Plumbing Contractor
- Police Citizens Review Board
- Tardeada Advisory Board
- Transportation Commission

4. Tour de Tempe
October 24, 2010 at 7:00 a.m., at Kiwanis Park. Admission is free.

5. AGENDA

All items in these minutes identified with an asterisk (*) **are public hearing items**. All items listed on the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA** items.

Motion by Councilmember Arredondo-Savage to approve the Agenda with the exception of items 5B9, 5B10, 5E13, 5E14 which were removed for separate consideration; second by Councilmember Mitchell. Motion passed on a roll call vote 7-0.

A. Miscellaneous Items

- A1. Approved the Report of Claims Paid to be filed for audit for September 2010.

COMMENTS	N/A
DOCUMENT NAME	20101021fsnw01 ACCOUNTS PAYABLE (0208-01)

- *A2. Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for MAR-NJV, LLC, dba Diverti Bar & Grill, 4 East University Drive.

COMMENTS	Thomas Bryan Coe is the Agent for this application.
DOCUMENT NAME	20101021fsap01 Diverti 124619 – LIQ LIC (0210-02)

- *A3. Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for Lemongrass Thai Café, LLC, dba Lemongrass Thai Café, 818 West Broadway Road, #108.

COMMENTS	Nipha Spearnock is the Agent for this application.
DOCUMENT NAME	20101021fsap07 Lemongrass 124589 – LIQ LIC (0210-02)

- *A4. Held a public hearing and recommended the approval of a Series 09S liquor store sampling privileges liquor license for Safeway Inc., dba Safeway #1487, 926 East Broadway Road.

COMMENTS Janice Louise Martin is the Agent for this application.
DOCUMENT NAME 20101021fsap08 Safeway #1487 - 717 – LIQ LIC (0210-02)

- *A5. Held a public hearing and recommended the approval of a Series 09S liquor store sampling privileges liquor license for Safeway Inc., dba Safeway Food & Drug #1535, 1515 East Elliot Road.

COMMENTS Janice Louise Martin is the Agent for this application.
DOCUMENT NAME 20101021fsap09 Safeway #1535 - 50451 – LIQ LIC (0210-02)

- *A6. Held a public hearing and recommended the approval of a Series 12 restaurant liquor license for Oregano's Restaurants, Inc., dba Oregano's Pizza Bistro, 523 West University Drive.

COMMENTS Mark Steven Russell is the Agent for this application.
DOCUMENT NAME 20101021fsap03 Oregano 124705 – LIQ LIC (0210-02)

- *A7. Held a public hearing and recommended the approval of a Series 10 beer and wine store liquor license for QuikTrip Corporation, dba QuikTrip #1400, 2150 East University Drive.

COMMENTS Troy Charles DeVos is the Agent for this application.
DOCUMENT NAME 20101021fsap05 QuikTrip 124708 – LIQ LIC (0210-02)

- *A8. Held a public hearing and recommended the approval of a Series 10 beer and wine store liquor license for QuikTrip Corporation, dba QuikTrip #460, 3300 South Price Road.

COMMENTS Troy Charles DeVos is the Agent for this application.
DOCUMENT NAME 20101021fsap06 QuikTrip 124718 – LIQ LIC (0210-02)

- A9. Approved the appointment of Mary Jo Barsetti as a City Court Judge for Tempe Municipal Court and an employment agreement. **(Contract #2010.213)**

COMMENTS N/A
DOCUMENT NAME 20101021ccrr COURT ADMINISTRATION (0501-02)

- A10. Approved a Final Subdivision Plat for the FARMER ARTS DISTRICT located at 601 South Farmer Avenue.

COMMENTS Request by FARMER ARTS DISTRICT (PL100244) (City of Tempe, property owner; Todd Marshall, Farmer Arts LLC, applicant) located at 601 South Farmer Avenue in the MU-4, Mixed-Use High Density District, including the Transportation Overlay District and PAD. The request includes the following: SBD10020 – A Final Subdivision Plat dividing a parcel into four (4) lots and one (1) tract on 4.55 acres.
DOCUMENT NAME 20101021cdr101 PLANNED DEVELOPMENT (0406)

The following conditions of approval apply:

1. The Subdivision Plat shall be put into proper engineered format with appropriate signature blanks and recorded with Maricopa County Recorder's Office through the City of Tempe's Development Services

Department on or before October 21, 2011. Failure to record the plat on or before October 21, 2011, which is one (1) year from the date of City Council approval, shall make the approval of the plat null and void.

2. All subdivision corners shall be set and verified with staff upon final recordation of the subdivision plat, no later than three (3) months from the date of County recordation.

B. Award of Bids/Contracts

B1. Approved a one-year contract renewal with G4S Secure Solutions (formally The Wackenhut Corporation) and Truly Every Assignment Matters, LLC to provide armed and unarmed security officer services for various City departments.

COMMENTS (Contracts #08-185-01 and 02) Total combined amount of these one-year contract renewals shall not exceed \$750,000.
DOCUMENT NAME 20101021fsmg02 PURCHASES (1004-01)

B2. Approved the utilization of a one-year State of Arizona contract with Brown Evans Distributing Company for vehicle lubricants utilized for the maintenance of City vehicles by the Public Works and Fire Departments.

COMMENTS (SCC0700001) The total value of this contract will not exceed \$75,000 during the contract period.
DOCUMENT NAME 20101021fsta01 PURCHASES (1004-01)

B3. **THIS ITEM WAS DELETED FROM THE AGENDA.**

B4. Approved the utilization of a one-year State of Arizona contracts with Sprint Solutions, Inc. and Verizon Wireless for a wide variety of parts, accessories and services for laptops, cellular phones, and Blackberry's.

COMMENTS (EPS070070-1-A1 and 3-A1) Total cost of these contracts will not exceed \$460,000 during the one-year term.
DOCUMENT NAME 20101021fst06 PURCHASES (1004-10)

B5. Approved the utilization of an Arizona Department of Transportation contract with Kimley Horn and Associates, Inc. for on-call consulting for Intelligent Transportation (ITS) and Advanced Technologies for use by the Public Works Department.

COMMENTS (T07-59-B0047) Total cost of this contract shall not exceed \$97,000.
DOCUMENT NAME 20101021fslg04 PURCHASES (1004-01)

B6. Approved job order no. 9 with Foresite Design & Construction, Inc. for renovations to the splash playground at Jaycee Park. **(Contract #2008-138I)**

COMMENTS Total amount of job order no. 9 is \$104,529 and the project contingency amount is \$10,500.
DOCUMENT NAME 20101021pwdr02 JAYCEE PARK (0706-23) PROJECT NO. 6303881

- B7. Approved job order no. 6 with Hunter Contracting Company for phase three of the rehabilitation of a portion of the Tempe flood irrigation system. **(Contract #2008-251)**

COMMENTS Total amount of job order no. 6 is \$214,446.16 and the project contingency amount is \$15,000.
DOCUMENT NAME 20101021pwwr04 IRRIGATION (0806) PROJECT NO. 6704042

- B8. Awarded a professional services contract with Ricker Atkinson McBee Morman & Associates, Inc. for materials testing for the pedestrian bridge at Tempe Town Lake. **(Contract #2010.214)**

COMMENTS Total cost for the professional services contract is \$56,190.40.
DOCUMENT NAME 20101021pwwr03 RIO SALADO MASTER PLAN – TEMPE TOWN LAKE (0112-07-03) PROJECT NO. 6501541

- B9. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.**

Request approval to award a construction manager at risk construction services contract with Sundt Construction, Inc. and award of a construction management contract with Wilson Engineers, L.L.C. for improvements to the South Tempe Water Treatment Plant finished water pump station – guaranteed maximum price no. 3. This is a bond-funded project on the approved CIP water utilities project list.

- B10. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.**

Request approval to award a contract with six, one-year renewal options to JPMorgan Chase Bank, NA for banking services for the Finance and Technology Department.

C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

- *C1. Introduced and held the first public hearing to approve an ordinance authorizing the mayor to execute agreements to terminate the Lease with, and convey property to CH Realty III/Hayden Ferry I, L.L.C.. The second public hearing was scheduled for November 4, 2010.

COMMENTS N/A
DOCUMENT NAME 20101021cd02 RIO SALADO MASTER PLAN (112-07-03) Ordinance No. 2010.41

- *C2. Introduced and held the first public hearing to amend Chapter 2, Article V, Division 5 of the Tempe City Code relating to the composition and duties of the Tempe Aviation Commission. The second public hearing was scheduled for November 4, 2010.

COMMENTS The proposed ordinance amends the City Code by reducing the membership of the Tempe Aviation Commission from 13 to 11 members and broadening the subject area of the Commission from the impacts of aircraft noise to all impacts of aircraft and airport operations on Tempe residents.

DOCUMENT NAME 20101021pwwb01 TCC CH2 CITY CODE ADMINISTRATION (0503-02) Ordinance No. 2010.36

D. Ordinances and Items for Second Hearing/Final Adoption

- *D1. Held the second and final public hearing and adopted **ORDINANCE NO. 2010.37** authorizing the abandonment of an existing bus shelter and transit easement and the recording of a new bus shelter and transit easement at the McClintock Park and Ride facility.

COMMENTS The easements will correct the locations of the bus shelter and public ingress/egress easements that were modified to meet the final design requirements of the Grigio Metro project and the Metro Light Rail Park and Ride access requirements.
DOCUMENT NAME 20101021PWWS01 GRANT OF EASEMENT (0904-02) Ordinance No. 2010.37

- *D2. Held the second and final public hearing and adopted **ORDINANCE NO. 2010.38** amending Chapter 14 of the Tempe City Code relating to Fire Prevention and Protection adding new Article III relating to Fireworks.

COMMENTS The proposed ordinance will prohibit the use of consumer fireworks, as defined in Arizona Revised Statute 36-1301, in the City of Tempe. This ordinance will not prohibit the sale of consumer fireworks in retail businesses or temporary structures as per the State law. Additionally, this proposed ordinance will not prohibit the sale or use of consumer fireworks in the county islands within the borders of Tempe. Arizona Revised Statute 36-1301, Consumer Fireworks, will go into effect on December 1, 2010.
DOCUMENT NAME 20101021fd TCC CH 14 – FIRE PREVENTION AND PROTECTION (0503-14) Ordinance No. 2010.38

E. Resolutions

- E1. Adopted **RESOLUTION NO. 2010.119** authorizing the Mayor to execute a Second Amendment to Development and Disposition Agreement with Red's Moviola LLC, more commonly known as the Valley Art Theater. **(Contract #2000.134D)**

COMMENTS NA
DOCUMENT NAME 20101021cdcm01 SOUTHWEST QUADRANT DOWNTOWN TEMPE (0403-02-04) Resolution No. 2010.119

- E2. Adopted **RESOLUTION NO. 2010.122** accepting Federal Fiscal Year 2010 grant funding from the U.S. Department of Justice - Justice Assistance Grant (JAG) to fund an overhire program at the Tempe Police Department. **(Contract #2010.218)**

COMMENTS The award amount is \$118,301.
DOCUMENT NAME 20101021pdmk02 POLICE DEPT ADMIN (0606-02) Resolution No. 2010.122

- E3. Adopted **RESOLUTION NO. 2010.121** to enter into a Memorandum of Understanding (MOU) with U.S. Marshall Service to accept funding for the District Fugitive Task Force. **(Contract #2010.219)**

COMMENTS N/A
DOCUMENT NAME 20101021pdmk01 POLICE DEPT ADMIN (0606-02) Resolution No. 2010.121

- E4. Adopted **RESOLUTION NO. 2010.130** authorizing an amendment to the intergovernmental agreement between the City of Phoenix and the City of Tempe to provide additional Federal Transit Administration (FTA) grant funds to the City of Tempe. **(Contract #2007.150A)**

COMMENTS N/A
DOCUMENT NAME 20101021pwgj01 TRANSPORTATION PLANNING (1101-01) Resolution No. 2010.130

- E5. Adopted **RESOLUTION NO. 2010.128** amending an intergovernmental agreement between the City of Phoenix and the City of Tempe to increase the amount of Federal Transit Administration American Recovery and Reinvestment Act of 2009 grant funds to the City of Tempe. **(Contract #2009.161A)**

COMMENTS N/A
DOCUMENT NAME 20101021pwgj02 TRANSPORTATION PLANNING (1101-01) Resolution No. 2010.128

- E6. Adopted **RESOLUTION NO. 2010.129** authorizing an intergovernmental agreement between the City of Phoenix and the City of Tempe to provide Federal Transit Administration grant funds for bus fleet and facilities preventive maintenance. **(Contract #2010.220)**

COMMENTS N/A
DOCUMENT NAME 20101021pwgj03 TRANSPORTATION PLANNING (1101-01) Resolution No. 2010.129

- E7. Adopted **RESOLUTION NO. 2010.125** accepting grant funding from the State of Arizona - Department of Homeland Security under the Urban Area Security Initiative to fund SWAT and Rapid Response Team (RRT) Enhancements. **(Contract #2010.221)**

COMMENTS The grant award totals \$160,000.
DOCUMENT NAME 20101021pdmk4 POLICE DEPARTMENT ADMIN (0606-02) Resolution No. 2010.125

- E8. Adopted **RESOLUTION NO. 2010.131** accepting federal fiscal year 2011 grant funding from the Governor's Office of Highway Safety for overtime to enhance underage drinking enforcement activities throughout the city of Tempe. **(Contract #2010.222)**

COMMENTS The funded award amount is \$30,000.
DOCUMENT NAME 20101021pdmk07 POLICE DEPT ADMIN (0606-02-00) Resolution No. 2010.131

- E9. Adopted **RESOLUTION NO. 2010.127** accepting grant funding from the State of Arizona - Department of Homeland Security under the State Homeland Security Grant Program to fund bomb squad equipment. **(Contract #2010.223)**

COMMENTS The grant award totals \$150,550.
DOCUMENT NAME 20101021pdmk06 POLICE DEPARTMENT ADMIN (0606-02)
Resolution No. 2010.127

- E10. Adopted **RESOLUTION NO. 2010.133** authorizing the Mayor to execute an intergovernmental agreement (IGA) between the Salt River Pima Maricopa Indian Community (SRPMIC) and the City of Tempe for the disbursement of a portion of its gaming proceeds. **(Contract #2010.224)**

COMMENTS The City of Tempe will receive a distribution of a portion of 12% gaming proceeds from SRPMIC's annual contribution totaling \$2,336,852.07. Of that amount, the City of Tempe will receive \$300,000 for Choice of Submitted Projects.
DOCUMENT NAME 20101021graw01 STATE LEGISLATURE (0107-06) Resolution No. 2010.133

- E11. Adopted **RESOLUTION NO. 2010.134** authorizing the Mayor to execute funding agreements between the City of Tempe and twenty-one non-city recipients for the disbursement of a portion of the Salt River Pima Maricopa Indian Community monies from gaming proceeds.

COMMENTS The City of Tempe has agreed to disburse contributions to the non-city recipients pursuant to an intergovernmental agreement between Salt River Pima-Maricopa Indian Community and the City of Tempe. The total disbursement is \$2,036,852.07.
DOCUMENT NAME 20101021craw01 STATE LEGISLATURE (0107-06), Resolution No. 2010.134.

Organizations approved for funding:

- Arizona State University Indian Legal Program Scholarships/Clinic (ASU-ILP) - \$115,000.00 **(Contract #2010.225)**
Arizona METH Project - \$100,000.00 **(Contract #2010.226)**
Arizona Foundation for Eye Health (AFEH) - \$82,000.00 **(Contract #2010.227)**
American Red Cross (Red Cross) - \$75,000.00 **(Contract #2010.228)**
Arizona Science Center (Science Center) - \$75,000.00 **(Contract #2010.229)**
Arizona Town Hall (Town Hall) - \$10,000.00 **(Contract #2010.230)**
Center for the Future of Arizona (the Center) - \$75,000.00 **(Contract #2010.231)**
Hacienda Health Care Funding Gap (Hacienda) - \$344,852.07 **(Contract #2010.232)**
Heard Museum (Heard) - \$75,000.00 **(Contract #2010.233)**
Leukemia & Lymphoma Society Patient Services (LLS) - \$100,000.00 **(Contract #2010.234)**
Maricopa Community College Foundation (Foundation) - \$100,000.00 **(Contract #2010.235)**
Native American Community Service Center (NACSC) - \$125,000.00 **(Contract #2010.236)**
Phoenix Children's Hospital (Phoenix Children's) - \$250,000.00 **(Contract #2010.237)**
Phoenix Zoo (The Zoo) - \$40,000.00 **(Contract #2010.238)**
Phoenix Women's Sports Association (PWSA) - \$30,000.00 **(Contract #2010.239)**
Phoenix Symphony (Symphony) - \$25,000.00 **(Contract #2010.240)**
Ryan House (Ryan House) - \$100,000.00 **(Contract #2010.241)**
The Salvation Army - \$150,000.00 **(Contract #2010.242)**

Southwest Center for HIV/AIDS (SWHIV) - \$75,000.00 **(Contract #2010.243)**
Southwest Human Development (Southwest) - \$40,000.00 **(Contract #2010.244)**
Valley of the Sun United Way (United Way) - \$50,000.00 **(Contract #2010.245)**

- E12. Adopted **RESOLUTION NO. 2010.132** approving an intergovernmental agreement between the City of Tempe and the Regional Public Transportation Authority (RPTA) for funding bus stop improvements in the City of Tempe. **(Contract #2010.246)**

COMMENTS City to receive up to \$598,801 from RPTA as reimbursement for bus stop improvements.
DOCUMENT NAME 20101021pwgj04 TRANSPORTATION PLANNING (1101-01) Resolution No. 2010.132

- E13. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.**

Request approval of a resolution authorizing the Mayor to execute the Intergovernmental Agreement between the City of Tempe and Tempe Elementary School District No. 3 for public/community use of facilities.

- E14. **THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION. SEE BELOW FOR DISCUSSION AND ACTION.**

Request approval of a resolution amending the fees and charges associated with the issuance of City Liquor Licenses.

- E15. Adopted **RESOLUTION NO. 2010.124** accepting grant funding from the U.S. Department of Justice – Office of Community Oriented Policing Services (COPS) to purchase necessary equipment as a member of the Regional Wireless Cooperative. **(Contract #2010.248)**

COMMENTS The grant award totals \$300,000.
DOCUMENT NAME 20101021pdmk3 POLICE DEPT ADMIN (0606-02) Resolution No. 2010.124

- E16. Adopted **RESOLUTION NO. 2010.138** authorizing the Mayor to execute an agreement among creditors with regard to the Grigio Town Lake project. **(Contract #2010.249)**

COMMENTS The City and GDG Partners, LLC are parties to a Payment Agreement dated November 1, 2006 (c2006-301). GDG Partners, LLC are currently in default and are debtors-in-possession in proceedings under Chapter 11 of the United States Bankruptcy Code. The agreement between the City and Creditors will require payment of all water and sewer fees, residential development taxes, and special assessments and will provide for the amendment of the GPLET lease and DDA to reduce the amount of the privilege tax rebate and require an in-lieu payment to the City, if certain events occur in the bankruptcy proceeds.
DOCUMENT NAME 20101021cdaws02 RIO SALADOMASTER PLAN (0112-07-03) Resolution No. 2010.138

- E17. Adopted **RESOLUTION NO. 2010.139** adopting procedural guidelines governing the appeal of claims based upon an alleged breach of bargaining unit Memorandum of Understandings.

COMMENTS Resolution No. 2010.139 authorizes the City Council to adopt a set of procedural guidelines governing the appellate procedures related to claims of allegations of breach of MOUs brought by employee bargaining units (or its members). These procedures will help establish an orderly and organized presentation of the issues to be considered on appeal.

DOCUMENT NAME 20101021cajm01 PERSONNEL RULES AND REGULATIONS (0301-01) Resolution No. 2010.139

AGENDA ITEM(S) REMOVED FOR SEPARATE CONSIDERATION:

B9. Awarded a construction manager at risk construction services contract with Sundt Construction, Inc. (**Contract #2010.215**) and award of a construction management contract with Wilson Engineers, L.L.C. (**Contract #2010.216**) for improvements to the South Tempe Water Treatment Plant finished water pump station – guaranteed maximum price no. 3. This is a bond-funded project on the approved CIP water utilities project list.

COMMENTS Total cost for the construction manager at risk (CMAR) construction services contract is \$7,464,535, total cost for the construction management contract is \$413,010 and the amount of the project contingency is \$350,000.

DOCUMENT NAME 20101021pwdr01 SOUTH TEMPE WATER TREATMENT PLANT (0811-08) PROJECT NO. 3203211

Councilmember Shekerjian requested that this item be removed for separate consideration for purposes of transparency and its large dollar amount. Don Hawkes, Deputy Public Works Director for Water Utilities, stated that this project is the replacement of a 30-year old pump station at the South Tempe Water Treatment Plan and is funded by user fees and rates. No sales taxes are involved in this project. This project will improve operational efficiency.

Motion by Councilmember Shekerjian to approve agenda item 5B9; second by Councilmember Mitchell. Motion passed on a roll call vote 7-0.

B10. Awarded a four-year contract with six, one-year renewal options to JPMorgan Chase Bank, NA for banking services for the Finance and Technology Department. (**Contract #2010.217**)

COMMENTS (RFP10-161) Total cost of this contract will not exceed \$800,000 for the initial four-year term of the contract.

DOCUMENT NAME 20101021cskb01COMMUNITY SERVICES ADMIN (0701-01) Resolution No. 2010.135

Councilmember Shekerjian requested that this item be removed for separate consideration for purposes of transparency and because this expenditure has the potential to be over a \$1 million. Ken Jones, Finance and Technology Director, stated that this agenda item covers citywide banking services; costs for this activity are borne by each department.

Motion by Councilmember Shekerjian to approve agenda item 5B10; second by Councilmember Arredondo-Savage. Motion passed on a roll call vote 7-0.

- E13. Adopted **RESOLUTION NO. 2010.135** authorizing the Mayor to execute the Intergovernmental Agreement between the City of Tempe and Tempe Elementary School District No. 3 for public/community use of facilities. **(Contract #2010.247)**

COMMENTS The Intergovernmental Agreement allows the use of the Tempe Elementary School District's outdoor properties to be open for the Tempe public/community use during non-school hours, when not being used by the District or its lessees.

DOCUMENT NAME 20101021cskb01COMMUNITY SERVICES ADMIN (0701-01)
Resolution No. 2010.135

Councilmember Arredondo-Savage thanked city staff and the Tempe Elementary governing board for their participation in reaching an agreement to allow the public to utilize Tempe Elementary School District's outdoor properties.

Motion by Councilmember Arredondo-Savage to approve agenda item 5E13; second by Councilmember Mitchell. Motion passed on a roll call vote 7-0.

Vice Mayor Navarro thanked Councilmember Arredondo-Savage and Ben Arredondo for their contributions to this effort, which benefit the community.

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- E14. Adopted **RESOLUTION NO. 2010.136** amending the fees and charges associated with the issuance of City Liquor Licenses.

COMMENTS Resolution 2010.136 maintains a \$500 City application fee and waives first-year issuance fees for existing liquor store licensees who apply to the State and the City for a liquor store/sampling privilege license to replace an existing liquor store or beer & wine store liquor license.

DOCUMENT NAME 20101021fsbs01 TCC CH 4 ALCOHOLIC BEVERAGES (0503-04)
Resolution No. 2010.136

Councilmember Woods asked why staff is recommending a waiver of the liquor license issuance fee for liquor sampling applicants. Ken Jones, Finance and Technology Director, stated that currently licensed applicants are charged a \$500 application processing fee. However, since a sampling license amends an applicant's existing liquor license, no new license is issued and no additional fees are charged. Applicants that apply for a new liquor license with a sampling license, will be charged application and issuance fees.

Councilmember Woods asked if staff is continuing to work on the procedures regulating liquor sampling activities. Mr. Jones stated that liquor sampling license applications receive the same level of scrutiny as all other liquor license applications.

Motion by Councilmember Woods to approve agenda item 5E14; second by Councilmember Shekerjian. Motion passed on a roll call vote 7-0.

6. PUBLIC APPEARANCES

A. Scheduled

1. Dr. Ed Valenzuela – Support of Tempe Police Department by Los Vecinos of Tempe
On behalf of the Los Vecinos Neighborhood Association, Dr. Ed Valenzuela commended Police Chief Tom Ryff and the Tempe Police Department for their customer service, overall mission, and vision.

2. Eleanor Holguin - Crime in Tempe

Ms. Holguin voiced concern about the crime rate in Tempe and referenced some specific crime incidents.

Mayor Hallman stated that many of the crimes mentioned by Ms. Holguin have been solved. The Tempe Police Department (PD) is a professional organization that is valued by city leadership. Significant resources are used to assist in crime solving, locally and regionally. The City Council will not compromise investigations for publicity purposes and supports the PD in their efforts to solve crimes and provide information to the community in a professional manner. This community is committed to reducing crime, specifically violent crimes.

Mayor Hallman read portions of a Tempe Police Department media release regarding arrests made relating to the murder of Casey Blackwood.

B. Unscheduled

1. Ed Mitchell – Disability/accessible parking

Mr. Mitchell stated that the Police Department has reduced parking enforcement in downtown Tempe as a result of the economic downturn; he made the following comments:

- As of June, 2010, there were 33% fewer citations issued than were issued in 2009.
- There has been an increasing change in attitude regarding accessible parking. Awareness needs to be raised.
- People that have placards are unable to use parking spaces for the disabled population.
- Police Department personnel are not responsive
- Downtown Tempe Community, Inc., oversees parking, but their phone number is not publicized
- Volunteer enforcement has been unsuccessful due to lack of resources
- At times, Tempe Beach Park disability parking signs are covered up, making parking unavailable.
- Code Enforcement resources have diminished.
- Special events lack accessible restrooms for the disabled, which discourages attendance.

Mayor Hallman noted that Councilmembers are unable to respond under the unscheduled public appearances portion of the agenda and asked the City Manager to report back to the City Council on the issues raised.

7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

Councilmember Arredondo-Savage

- Congratulations to City Court Judge, Mary Joe Barsetti
- October 24, 2010 – Tour de Tempe event
- October 23, 2010 – G.A.I.N. event (Getting Arizona Involved in Neighborhoods)

Councilmember Shekerjian

- October 30, 2010 – Kiwanis Park Family Halloween Carnival

Vice Mayor Navarro

- October 23, 2010 – Old Settler's event
- October 25, 2010 – Naming of the Ben Arredondo Tempe Sports Complex event

Councilmember Woods

- October 25, 2010 – Naming of the Ben Arredondo Tempe Sports Complex event
- October 18, 2010 – Commended Councilmember Ellis for being named *Policymaker of the Year* at the Conference on Homelessness

Councilmember Ellis

- Happy Birthday to Vice Mayor Navarro

Mayor Hallman

- October 23, 2010 – G.A.I.N. event (Getting Arizona Involved in Neighborhoods)
- October 23, 2010 – Old Settler's event; bike ride honoring deceased Old Settler, Dick McQueen
- Thanked Councilmember Ellis for her work on the streetcar project and transportation issues in general

Meeting adjourned at 9:55 p.m.

I, Brigitta M. Kuiper, the duly-appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Formal City Council meeting of Thursday, October 21, 2010, by the Tempe City Council, Tempe, Arizona.

Hugh Hallman, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk



Minutes City Council Issue Review Session October 21, 2010

Minutes of the Tempe City Council Issue Review Session held on Thursday, October 21, 2010, 6:00 p.m., in the City Council Chambers, Tempe City Hall, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman
Councilmember Robin Arredondo-Savage
Councilmember Mark W. Mitchell
Councilmember Corey D. Woods

Vice Mayor Joel Navarro
Councilmember Shana Ellis
Councilmember Onnie Shekerjian

STAFF PRESENT:

Charlie Meyer, City Manager
Jeff Kulaga, Assistant City Manager
Andrew Ching, City Attorney
Brigitta M. Kuiper, City Clerk
Various Department Heads

Grace Kelly, Energy and Grants Project Manager
Don Bessler, Public Works Director
Chris Anaradian, Community Development Director
JymeSue McLaren, Deputy Public Works Manager, Light Rail Div.
Ken Jones, Finance and Technology Director

Mayor Hallman called the meeting to order at 6:33 p.m.

Call to the Audience

Kolby Granville, Tempe resident, stated that he has a different opinion from staff regarding the Tempe South Corridor Study. The path chosen for the proposed system does not make sense. Initially it was unclear whether the corridor would be on Rural or Mill Avenue. Costs were not an issue and the study was expanded to consider bus, rapid transit, and commuter rail. This has become the tail that wags the dog. A modern street car is a perfect development project since these areas are in need of redevelopment. However, eminent domain and the need for development is not a reason to build public transportation. Transportation needs to be built where the people are.

Mayor Hallman stated the light rail project had a mass transit option that included a wide corridor. The assumption with the original plans was that it was likely to be light rail. The purpose of the study in Tempe was to look at specific technology compatible with Proposition 400 funding and that would provide the best results. Three options were identified, one of those being a street car option. Council has indicated a desire to pursue all three options, placed in the right locations. Proposition 400 funding for bus rapid transit (BRT) on arterial streets has been depleted, which has stalled BRT growth. The City did not substitute the modern street car for BRT. Mayor Hallman explained the three options and the evaluation process for each option. Council determined that the modern street car was the best transit option to pursue.

The Mayor stated that eminent domain has not been discussed. Mr. Granville referred to the presentation diagram highlighted in red that highlights areas for redevelopment. Mayor Hallman stated that the private sector pursued development on Apache Boulevard; the City did not pursue eminent domain. The City Council does not want to pursue eminent domain. Mr. Granville noted that the areas of Broadway and Southern do not need additional density. Mayor Hallman responded that the modern street car will help older neighborhoods thrive by attracting new development; strip malls

are decaying. Mr. Granville disagreed as density has slowly been creeping into South Tempe; the street car will be a mechanism for additional density. He handed out a map of the Portland project urban core to Council to demonstrate the residential and job density in the area. Mayor Hallman stated it is not the intent of the City to replace single family residences with high density building development, but to revitalize older neighborhoods with infill development in vacant spaces. Businesses will thrive and support these older neighborhoods, improving the quality of life for single family residences. The modern street car is mainly for Tempe residents to use as part of the urban core. The modern street car brings amenities to the community thus increasing the tax base. Mr. Granville stated that the primary purpose of public transportation is to move people around the urban core.

Energy Efficiency and Conservation Block Grant (EECBG) Status Report

Grace Kelly, Energy and Grants Project Manager, stated staff has been working with an energy audit consultant, APS Energy Services Company (APSES), to conduct energy audits of City facilities and implement an Energy Performance Contract. The preliminary audit report indicates that the City could save an average of 22% per year on utility costs if proposed energy upgrades are implemented. Carbon emission savings would be the equivalent removing 1,400 cars from the road.

Funding sources for this project include \$878,000 in Energy Efficiency and Conservation Block Grant (EECBG) funds and approximately \$1 million in utility rebates. The remaining costs would be financed with energy cost savings. The final audit report will be complete in mid-November. Staff will present recommendations to Council at the December 9, 2010 Issue Review Session.

Vice Mayor Navarro stated he is ecstatic about this program since it will benefit the environment and is a savings to the City. This program is a start to help save jobs. It is sad that it took a budget crunch to think about energy conservation.

Councilmember Shekerjian echoed Vice Mayor Navarro's comments and stated that staff was already looking at these things before the budget crunch occurred in terms of finding ways to increase the number of sustainability projects. This project comes at a good time because of budgetary issues the City is facing now and in the future. Sustainability is something that Tempe has practiced and looked at for some time. It is the right thing to do. It is being respectful of City resources and tax dollars and demonstrating stewardship. The 22% average utility costs savings per year will help with tax dollars. She thanked staff for all their hard work.

Councilmember Arredondo-Savage agreed that this is a good project; it is moving in the right direction. She asked staff how each site was selected to be retrofitted. Ms. Kelly responded that the buildings selected were the buildings that used the most energy, were aging, or had an immediate need for equipment replacement.

Don Bessler, Public Works Manager, stated there is a significant issue with aging infrastructure and this program is good leverage for saving money for these buildings. As a companion component, by adopting a cultural change, occupancy behavior and operational business practices (cleanings) will bring other items forward. Staff is optimistic this can elevate consciousness. Councilmember Arredondo-Savage stated 30 buildings is a good number and it's the little things that make a difference.

Mayor Hallman stated this issue will be a future agenda item for a Council Committee. There was a Sustainability Committee but it was exhausted with the entire Council and included a lot of community members as well. These were good committees that updated City codes and were proactive.

Tempe South Corridor Study Findings and Recommendations

Chris Anaradian, Community Development Director, introduced Steve Banta, CEO of METRO and JymeSue McLaren, Deputy Public Works Director, Light Rail Division. Mr. Anaradian stated that over the past three years, METRO and the cities of Tempe and Chandler have been working together to analyze transit options for the Rural Road/Mill Avenue corridor. The area has been narrowed down to a corridor, not a plan or design. Although there is no detailed design, staff is seeking general direction from Council on the design in order to prepare a financial plan. Ken Jones, Finance and Technology Director, will address

Council regarding the financial aspects of this project. Staff is aware that there are many questions regarding project financing.

Steve Banta, CEO of METRO, stated he is present to answer questions regarding how the modern street car project fits into the regional transportation system and the recommended locally preferred alternative (LPA). Mr. Banta noted that he is the former Chief Operating Officer for the Portland Transportation System and the Portland street car. All modes of transit should support each other. If all modes of transportation are part of a total transit network, projects can be completed without delay, which saves money. The customer and the community must be kept in mind when systems are considered. A transit integrated network that is managed regionally provides mobility, economic vitality and options for riders. Mayor Hallman stated that the Portland street car model was originally proposed by the private sector and then taken to the local government for support.

Wulf Grote, METRO Director of Planning, Design and Construction, stated this project has made a lot of progress but there is a long way to go. After a three year study, METRO and City staff found that there is a two mile stretch of Tempe that is in need of high capacity transit. Unfortunately, with the economic downturn, funding has diminished.

The main purpose of the Alternatives Analysis is to define the appropriate technologies for the corridor as well as identify the appropriate route(s). Light rail, commuter rail, modern street car, and Bus Rapid Transit (BRT) have been studied, as well as Rural Road, McClintock, Mill, Kyrene, and Union Pacific Railroad corridor options. Project goals include:

- Improve mobility within the corridor
- Develop an efficient, affordable transportation system
- Accommodate future growth and demand
- Support the General Plan development goals and strategies
- Provide a transportation system that connects neighborhoods to employment and recreational opportunities

Travel characteristics for the Tempe south corridor have been defined into three separate areas: 1) ASU, 2) north Tempe and 3) south Tempe/Chandler. The LPA recommendation is a modern street car along Mill Avenue from Rio Salado Parkway to Southern Avenue. Staff and METRO will apply for federal funding for the project. A portion of Southern Avenue to Rural Road can be added in a future segment as there are many amenities at that intersection. There is also the potential to have a modern street car going east and west along Rio Salado Parkway as well as going south on Rural Road to Chandler.

Mr. Grote stated that the scope of the project analysis was expanded from Mill Avenue to the Mill Avenue/Ash Avenue loop concept for the following reasons:

- Defines the downtown
- Opportunity to simulate development/redevelopment
- Avoids utility impacts
- Reduces parking impacts
- Flexibility for special events
- Minimizes construction impacts on Mill Avenue
- Flexibility for future expansion
- Lowest cost of the three alignment options

The recommended modern streetcar proposal will:

- Increase transit ridership
- Connect neighborhoods to downtown Tempe
- Connect downtown residents to neighborhood services
- Encourage redevelopment and reinvestment in neighborhoods
- Promote livable city initiatives
- Provide seamless connection to Light Rail Transit (LRT)

The opening year ridership forecast is 1,100 to 1,600 passengers per day. Capital costs are estimated to be \$162 million. Capital funding comes from federal and regional sources; no funding from the City of Tempe will be used to build this project. Operations and maintenance costs are estimated to be \$3.6 million a year, which will be the responsibility of the City of Tempe.

BRT is also recommended with this project if funding becomes available as it will:

- Enhance bus service levels
- Relieve Rural Road bus overcrowding
- Improve bus operating speeds in the corridor
- Attract a significant number of new transit riders
- Provide seamless connections to LRT and other transit modes
- Better serve ASU, downtown Tempe and Chandler Fashion Mall travel destinations

Staff recommends the following be approved and forwarded to the Maricopa Association of Governments (MAG) for their approval:

- 1) A Locally Preferred Alternative for Federal Transit Administration (FTA) funding consideration for the Tempe South Corridor Project, including a modern streetcar on a Mill Avenue alignment with a one-way loop in downtown Tempe;
- 2) Inclusion of a potential future phase of modern streetcar east along Southern Avenue to Rural Road as an "illustrative" (unfunded) transit corridor in the MAG Regional Transportation Plan;
- 3) Future consideration for increased service levels and capital improvements for Rural Road BRT, per the description provided herein, through the MAG regional transportation planning process;
- 4) Future consideration for high capacity transit needs north of downtown Tempe along Rio Salado Parkway and south on Southern Avenue along Rural Road to the vicinity of Chandler Boulevard through the MAG regional transportation planning process; and
- 5) Further consideration of commuter rail along the Tempe Branch of the Union Pacific Railroad, through the MAG regional transportation planning process, and pending results from the Arizona Department of Transportation's Phoenix-Tucson Intercity Rail Alternatives Analysis.

Ms. McLaren stated there has been an extensive public involvement process over the past three years consisting of a series of ten public meetings to discuss the Tempe South Corridor Study, its scope and the tier analysis. A Tier 1 analysis is a qualitative analysis that encompasses the universe of options within the study area. Once identified, the options are then refined into a more quantitative analysis, which is referred to as a Tier 2 analysis. Staff has provided over 50 public presentations to advisory committees, neighborhood associations and civic groups. Continuous updates have also been available via website, e-mails, newsletters and fact sheets. One-on-one stakeholder meetings have also been held. Over 107 comments have been submitted by the public, as outlined in the briefing materials. Supplementary information including additional public comments, letters of support and endorsements has been provided to Councilmembers tonight. Capital funds available for this project total \$162 million.

Mr. Jones stated that the annual operating costs for the modern street car are projected at \$3.6 million. Staff anticipates presenting a draft financial plan to Council by January 2011. Staff is seeking direction regarding general funding mechanisms to move forward with creating a financial plan. Specific operating procedures have not been established. As part of the budget balancing plan, staff reduced the operational costs of the transit fund by 21%. Therefore, it will be necessary to find other funding alternative(s) for this project. Offsets to the \$3.6 million include fare revenue and could include a reduction or elimination in redundant bus services along Mill Avenue. The estimated net cost for operations the City will need to fund is approximately \$2.35 million. Staff is also reviewing new revenue potentials for the transit fund such as debt refinancing, advertising for stations and/or cars along the route, a special event transportation fee, a parking revenue fee, a special assessment fee and transferring the increased property tax revenues generated from the general fund. Staff is proposing to look out to year 2017 for funding options. There are some one time unbudgeted revenues and pending revenues of \$5.4 million in the transit fund that could be used to fund operations in the beginning years.

Mayor Hallman stated staff should look into giving naming rights to stations and cars as a revenue generator. The private sector created a funding source through property tax assessments in Portland. He also noted the increase in property values as a result of the light rail project along Apache Boulevard.

Ms. McLaren stated the next steps in the process are:

- Receive Council direction
- Seek project endorsement from the City of Chandler, the Metro Board, Maricopa Association of Governments (MAG) Transportation Policy Committee, and MAG Regional Council
- Submit the proposed plan to the Federal Transit Administration (FTA) for approval and funding
- Refine the system design and define specific elements of the project to the FTA

Mayor Hallman stated that the decision before Council is whether or not to adopt an LPA and to select the technology associated with that choice in order for staff to prepare a financial plan to move this project forward. He asked for clarification regarding if staff is seeking direction about whether or not to pursue BRT on a regional level. Ms. McLaren stated that staff recommends Council adopt all three elements of the study findings and reaffirm that the City is prepared to operate the system when it becomes operational. This is all part of the project development process. Council and staff can determine how this will be financed at a later date.

Councilmember Mitchell stated that this project will add tremendous value to properties adjacent to the location of the proposed street car. How to close the funding gap must be determined. Only transit funds can be used for this project; no jobs are on the line to fund this project. The return on investment for this project will have a tremendous impact, including its potential for development. He would like to see this project move forward with the understanding that staff addresses the funding gap.

Vice Mayor Navarro stated that it important to be fiscally responsible and commended staff on the public involvement during the initial part of this process. The street car is starting out in the perfect spot to draw in an urban feel. He asked staff to refine the options for the operational side so Council can determine what options will be most efficient and effective. Staff will also need to lay out all revenue options for Council's consideration.

Councilmember Arredondo-Savage asked for clarification on how this transportation system will impact special events. Has consideration been given to a park and ride option? Ms. McLaren stated that the proposed fee was a transportation surcharge assessed on special events, not for the transit riders. Staff is preparing to conduct a park and ride analysis to determine the demand. If the findings demonstrate that there is considerable demand for park and ride activity, staff will incorporate that into the system design. Councilmember Arredondo-Savage commended staff on the proactive public outreach. She asked if there has been any specific feedback based on address data. Ms. McLaren stated the comments were not summarized by location or address. Concerning the overall feel from the neighborhoods, Ms. McLaren stated staff has heard positive feedback during two neighborhood meetings. Mr. Grote stated that the only concern expressed by the residents was that the Orbit bus system would be adversely impacted by the streetcar project. Staff expressed to these individuals that Orbit services will not be impacted by the modern street car. Councilmember Arredondo-Savage stated that she liked the network concept, but staff needs to make sure financing is available. She voiced concern with taking money from the general fund. There needs to be a long term financing plan.

Mayor Hallman clarified that the general fund money would be used for this project to the extent that there is additional revenue to the general fund as a result of this project. The City should also look into tax increment financing and working with school districts to receive a portion of their cost savings achieved by utilizing City buses for student transportation.

Councilmember Arredondo-Savage asked staff to provide information regarding what Portland looked like before the modern street car was constructed. She also voiced support for partnerships with schools.

Councilmember Shekerjian agreed with the comments made by Councilmembers. She stated that it would also be helpful for the public to see how Portland looked before and after the modern street car was added. She commended staff on a wonderful job with communication and their due diligence. Unfortunately, there was misinformation in the community. She asked that correct, up-to-date information be included on the City's website or on Tempe Channel 11 so the public can have access to the facts. She voiced her support for the staff recommendations, however financing options for operations still needs to be determined.

Councilmember Woods stated that funding is important and thanked staff for their due diligence. He stated how impressed he is with the project; he is looking forward to it being built. Tempe is a full service city and the operations budget is funded through sales tax. This project will help stabilize and expand the tax base which will in turn generate additional revenue. There has been an outpouring of community support. He thanked Councilmember Ellis for her contributions to this project. Councilmember Woods voiced his support for the staff recommendations, but the gap on the operations budget remains an issue. This project will make Tempe the leader for multimodal transportation.

Councilmember Woods asked how much revenue is generated from the current advertising and wraps around the light rail cars. Mr. Grote stated the revenue estimate is \$250,000 a year. Councilmember Woods emphasized that this project is scheduled for 2016/17. He voiced support of taking advantage of this opportunity at this time.

Councilmember Ellis thanked the City and METRO staff for all the work they have done with the public presentations, including neighborhood groups. The presentations have constantly been revised to incorporate new information based on questions raised. She voiced her support of light rail and Mill Avenue; the street car is a wonderful additional community amenity. She requested that staff provide concrete information on operational funding. The City needs to maintain dialogue with communities that have street cars. Tempe has always been on the forefront of risk taking with projects such as Tempe Town Lake, light rail and the Orbit bus system. Tempe can make the modern street car successful as well. Funding dollars will go to another community if Tempe does not take this project on; there is also the potential loss in economic development opportunities.

Mayor Hallman stated he does not think this project poses much risk because of the approach that is being taken. The City is conducting life cycle costing of annual maintenance and operations, which goes beyond what the Federal government requires. Tempe has experience with the light rail system and its economic development impact along Apache Boulevard, including a reduction in crime. The development result is important and the amenities that will be provided to the community should not be undervalued. Now is the time to abolish the Regional Public Transportation Authority (RPTA) and Valley Metro Rail boards; it is unnecessary infrastructure and overhead. The \$2.35 million funding gap can be resolved. Tax increment financing does not mean taking tax revenues and giving that money to the private sector. This type of financing helps government fund projects. Mayor Hallman thanked Valley METRO, City staff, and community members for their contributions to the process. Transportation needs to be considered in the context of 'one system' and it should be built holistically to maximize efficiency and effectiveness. Michael Crow, Arizona State University President, supports this investment in public transportation. He acknowledged and thanked the contributions of Councilmember Ellis.

Council consensus is to support the three staff recommendations and move forward with a funding strategy.

Formal Council Agenda Items

None.

Future Agenda Items

- Council Committee recommendations

Mayor's Announcements/Manager's Announcements

None.

Meeting adjourned at 8:23 p.m.



Minutes Council Neighborhood Parks Rehabilitation & Maintenance Committee May 19, 2010

Minutes of the meeting of the City Council's Neighborhood Parks Rehabilitation & Maintenance Committee held on Wednesday, May 19, 2010, 3:00 p.m., in the 3rd Floor Conference Room, Tempe City Hall, and 31 E. 5th Street, Tempe, Arizona.

Committee Members Present:

Councilmember Joel Navarro, Chair
Councilmember Mark Mitchell

City Staff Present:

Jan Hort, City Clerk	Sam Thompson, Parks & Rec
Elizabeth Thomas, Neighborhood Svcs	Mark Richwine, Parks & Rec
Lucy Morales, Pub Wrks	Andy Goh, Pub Wks
Jenae Naumann, City Atty	Bob Pohlit, Parks & Rec
Tom Wilhite, Pub Wks	

Guests Present:

Adam Jones

Councilmember Navarro called the meeting to order at 3:30 p.m.

Agenda Item 1 – Public Appearances

None

Agenda Item 2 – Review of Minutes

The minutes of April 21, 2010 were accepted.

Agenda Item 3 – Cell Phone Towers in Parks

Bob Pohlit reported that staff has been approached by a company called Clear Wire to place cell phone towers and equipment in city parks. Staff is seeking guidance in terms of whether or not this is acceptable and if so, to define how the process should go. There are seven city parks Clear Wire is requesting to place their towers/equipment in: Kiwanis, Clark, Escalante, Corbell, Campbell, Meyer and Waggoner Parks. If Council decides that this is an acceptable practice, it is staff's recommendation that cell phone tower additions be limited to park facilities where similar facilities already exist. Kiwanis, Clark and Escalante Parks already have sports lighting poles which would be compatible with cell phone towers. Campbell, Corbell, Meyer and Waggoner Parks do not have similar facilities, and staff feels a cell tower would not be compatible in those environments. In addition, staff recommends that any cell tower addition request go to a public meeting so that neighborhood residents are able to provide their feedback on this activity. This would be in keeping with the current practice of seeking resident feedback for park renovations.

There is currently no policy allowing the use of city property for cell phone equipment.

Councilmember Mitchell suggested that staff talk to school district officials to get their feedback since most of these parks are located near schools and in neighborhoods.

Elizabeth Thomas mentioned that a use permit for this activity might be required.

Mr. Richwine brought up the fact that not only will there be cell phone towers in the parks, but that these towers will need an equipment facility structure located close to the poles (generally within 200 feet) that must have a source of electricity to support that facility. The concern to the public will be the exposure to children.

Jenae Naumann brought up historical issues of concern regarding the cell towers. City leaders have the final say on whether or not to allow cell towers on City property. The community commonly raises two additional issues of concern: 1) RF (radio frequency) emissions; 2) aesthetics – the way these structures look. Should the Council decide to allow this company to put cell towers up in certain parks, other companies may approach the City to do the same. If a proposed cell tower is in the middle of a park, then a legal public notice alerting residents and businesses of such might not be required by ordinance because of its distance from those residential or businesses. If the Council wishes to lease out a portion of a park for this purpose, there is the potential for angry citizens to attend the Council meeting where the lease agreement is scheduled to be approved. This would not be a desirable outcome for Council. Mark Richwine asked Ms. Naumann that if there was enough neighborhood opposition to the issuance of a use permit at a Council meeting, would it be grounds for Council deny the use permit. Ms Naumann stated that the City has the right to lease its property and it would be most appropriate to decide whether or not certain parks are or are not approved for this type of activity.

Councilmember Mitchell asked if there are sample ordinances from other communities that address this topic. Mark Richwine stated that this would be more of a lease agreement, instead of an ordinance. Mr. Richwine added that staff is seeking the Council's policy position regarding requests for cell phone equipment in City parks. From a staff perspective, it makes sense to look at adaptive use of existing ball field light poles. These are typically found at high school sports fields.

Councilmember Navarro asked what would be the public benefit to Tempe if Council were to approve this request. Ms. Naumann stated that Tempe would receive revenue from this activity via the negotiated lease agreement terms.

Councilmember Mitchell's concern with putting cell towers in small parks is building the housing unit that needs to be located close to the tower. This might be fine in big parks since the towers can be hooked up to large light fixtures, but in smaller parks, it would stand out and be a lot of work to put up.

Councilmember Navarro asked staff to get input from the schools and neighborhood residents.

Mr. Richwine stated that if the Council is a willing party to accept a cell tower on City property, staff could go through the neighborhood notification process and hold a public hearing. If the public is concerned with the RF issue, then that would not be sufficient grounds for the City to deny a use permit. This could be a slippery slope if the neighborhood is adamantly opposed to a cell tower and their sole justification for opposition is based on RF. There are or may be things that residents have concerns about that the City has no control over.

Mr. Richwine stated that no matter where the towers are placed, a use permit will be required. Staff is seeking direction from Council on whether or not to lease park property to cell phone providers.

Andy Goh commented that there will be some locations that do not meet the criteria for cell towers to operate properly.

In these fiscally trying times revenue opportunities are nothing to dismiss. However, Mr. Richwine advised the Committee that Council could end up being in a problematic position because of the challenges previously noted.

Councilmember Mitchell requested staff to prepare the pros/cons on this topic and asked that Neighborhood Services Department participate with Parks and Recreation staff on this process. It would also be helpful to have sample ordinances from other jurisdictions that address cell phone towers.

Ms. Naumann commented that cell phone tower companies also look at locating their equipment on top of fire stations, and other types of city buildings. Regardless of location, Mr. Richwine stated that either the Council accepts this at a certain location or all locations. This activity will require use permit for each location. Currently there is no cell equipment that is not city owned on city park property at this time. Ms. Naumann cautioned that if a city decided to lease park property to one carrier, it may be required to lease park property to other carriers as well.

Councilmember Navarro voiced his preference in researching the concept of putting cell towers up in athletic facilities and not consider the neighborhood parks until further research can be done. Councilmember Mitchell added that this should be done on a case by case basis.

Before this issue goes to the Issue Review Session, Councilmember Mitchell asked staff to provide the pros and cons, the average revenue a cell phone tower generates, and what would a city wide policy look like, including citizen involvement.

Agenda Item 4 –Clark Park Pool

Bob Pohlit explained that the Clark Park pool was closed for renovation in 2009. Due to the lack of Capital Improvement (CIP) and Operating funds, that renovation will not occur within the proposed five year CIP plan. Regardless, this pool continues to incur operating expenses for electricity, water, chemicals and maintenance which costs approximately \$25,000 annually. If this swimming pool were to be demolished and filled in, it would cost approximately \$18,000. To demolish the entire site would cost \$60,000. A swim team could practice there, but it would be for a limited time since the water is not heated. The pool has sat idle for the past 12 months. If the pool were to be drained it could pose a potential liability if someone were to become injured. If the site was to be demolished, the neighborhood could have input on what to do with the land for adaptive reuse. This site could potentially be converted into a community garden or a dog park.

Mr. Richwine stated that staff is diverting requests for use of the Clark Park pool to the McClintock High School swimming pool facility.

Councilmember Mitchell stated that staff should invite neighborhood residents to a public comment session on this matter to get their input on what they would like to have done with this facility prior to bringing this topic to an Issue Review Session.

Councilmember Navarro directed staff to monitor the feedback regarding community swimming pools and complaints from the public, given the staff and CIP budget reductions. This information would be helpful during next year's budget discussions.

Agenda Item 5 – Update on Neighborhood Park Rehabilitation Schedule

Park plans for the renovations for Hallman, Daley, Scudder and Goodwin parks are nearly completed. Once the plans are completed they will be put on file and no other park renovation plans will be advanced forward due to lack of CIP funding.

The Kiwanis park irrigation project is nearly complete. The Kiwanis Recreation Center (KRC) wave pool renovation is finished. The KRC rehabilitation will be done in August and is still funded. The renovations to the KRC include new lockers, disability access to locker rooms, additional electrical to deck area, equipment replacement, and changes to

the front desk area. The Escalante pool will be done by the end of the week and open for Memorial Day weekend. The construction for the replacement of field lighting for Diablo Stadium fields I & II is complete, but during testing some lighting issues were found. This problem should be fixed next week. The lighting system at these fields had to be replaced five additional poles at the main stadium might also need to be replaced due to rusting. If the entire lighting system were to be replaced at Diablo Stadium the cost would be close to one million dollars. However, there may be discounts based on quantity purchased. There are electrical service sections that are failing in some parks right now and will need to be replaced in the near future. Mr. Richwine explained that if there were still a Park and Restoration Program, it would have addressed many of these minor issues over time. Since these programs are being deferred to future years, infrastructure maintenance issues will still have to be addressed in the parks. Parks and Recreation staff is working with Financial Services staff to see what money is available in the CIP fund to cover basic infrastructure needs. Staff anticipates bringing a revised list of park infrastructure projects to the Council that will need funding. Old age is catching up to the parks, which is causing problems. Although there are many needs for the parks, the number one priority right now is Diablo Stadium.

Agenda Item 6 – Pilot Program for Placing Recycling Receptacles along Mill Avenue & in Various Park Locations

Lucy Morales stated that Parks and Recreation staff is working with Downtown Tempe Community, Inc., (DTC) to place five recycling containers in the downtown area along 5th and 6th Streets and Mill Avenue. Staff will be evaluating the performance of this pilot program in six months. Containers are used to recycle beverage containers, newspapers and glass. Staff is working on an education plan with DTC to promote these recycling receptacles via a public service announcement.

Councilmember Navarro asked staff if a recycling container is portable, so that if it is not being used to its full potential, could it be moved to a better location? Ms. Morales responded yes.

Recycling options at City parks is also being considered. There are several locations that staff is recommending that recycling barrels be located: Tempe Beach Park, Kiwanis Park, Benedict Park, Tempe Sports Complex, Mitchell Park and Daley Park. This would be a pilot program and that includes education outreach as a component. Staff will be seeking feedback from residents about this program.

The barrels for recycling cost \$10 a piece. Hopefully this becomes a revenue source if people use these receptacles to recycle.

Agenda Item 7 – Future Agenda Items

None

Agenda Item 8 – Future Meeting Date(s)

A tentative meeting was planned for August. There will be no meeting in June or July.

Agenda Item 9 – Announcements

None

Meeting adjourned at 4:30 p.m.

Prepared by: Jaclyn Levin
Reviewed by: Kay Savard



Minutes Parks, Recreation and Golf Advisory Board June 16, 2010

**Minutes of the Parks and Recreation Board meeting held on June 16, 2010 6:00 p.m.,
Library Board Room, 3500 S. Rural Rd.**

Members Present:

Chuy Carreon - Chair
Ron Cosner
Frank Granillo
Ed Roberts
Clem Star
Robert Lofgren
Angela Thornton
Don Watkins

Members Absent:

Scott Hamilton – Vice Chair (excused)
Chris Dahm
Alex Walsh

City Staff Present:

Travis Dray, Deputy Manager – Parks & Recreation Department
Cynthia Yanez, Executive Assistant – Parks & Recreation Department
Tim Pfannenstein, Parks Maintenance Supervisor – Parks & Recreation Department
Shawn Wagner, Recreation Supervisor – Parks & Recreation Department

Meeting convened at 6:07 p.m.

Chuy Carreon called the meeting to order.

Agenda Item 1 – Consideration of Meeting Minutes

The amended minutes of the May 19, 2010 Parks, Recreation & Golf Advisory Board meeting were accepted.

Agenda Item 2 – Golf Update

Tim Pfannenstein, Parks Maintenance Supervisor, provided an update for the on-going maintenance at both golf courses.

1. The greens at Ken McDonald have been aerified.
2. The aerification of the greens at Rolling Hills will be performed next week.
3. The rounds and revenue have declined at both courses.
4. The air conditioner at Rolling Hills has been replaced.
5. The roof at Rolling Hills will be replaced.
6. An RFP will be issued to for the combined operation of the Rolling Hills pro shop, restaurant and maintenance duties.

General Discussion by the Committee:

- Representatives from the Parks, Recreation and Golf Advisory Board will be invited to review the draft of the RFP.
- The current concession contract at Rolling Hills will expire in 2011.
- The contract for the pro shop concessions at Ken McDonald is in effect for 3 more years.

Agenda Item 3 – Participation Levels

Shawn Wagner, Recreation Supervisor, shared information regarding the levels of participation in recreational programs, classes and reservations.

1. There has been a slight decline in participation and revenue.
2. There was a decline in ramada reservations due to the irrigation project at Kiwanis Park, but revenues remained high due to an increase in reservation fees.
3. Currently, the revenue goal is approximately \$125K short, with two weeks left in the fiscal year.

Agenda Item 4 – Budget Update

Travis Dray, Deputy Manager, reviewed the future changes to the recreation budget.

1. The revenue target for the recreation department has been increased to \$2.9 million dollars for fiscal year 2011.
2. Additionally, there will be a reduction of \$174K in wage monies as well as a \$40K reduction in the operation and maintenance budget.
3. Staff will redistribute the budget targets for each work group based on past history.

Agenda Item 5 – Department Update

Travis Dray, Deputy Manager, discussed plans to reorganize the department to streamline the services that are provided by the recreation staff.

1. There will be four administrators to oversee the following:
 - a. Special Events, Programs (Linda Cano)
 - b. Finance, Facilities, Rio Salado (Shawn Wagner)
 - c. Kiwanis Recreation Center Campus, Aquatics (David Bucher)
 - d. Sports, Diablo Stadium (Mike Armfield)

Agenda Item 6 – Chair/Board Comments

Don Watkins was interested in the compost program that was advertised in the water bill.

Angela Thornton expressed her appreciation for David Bucher and his staff for their support of the Corona Grad Night.

Travis Dray thanked Angela Thornton for her service to the board over the past 6 years.

The next meeting will be held September 15, 2010.

Meeting adjourned at 6:56 p.m.

Prepared by: Cynthia Yanez, Executive Assistant, (480) 350-5240

Reviewed by: Travis Dray, Parks and Recreation Deputy Department Manager, (480) 350-5182

Minutes Double Butte Cemetery Advisory Committee June 16, 2010

Minutes of the Double Butte Cemetery Advisory Committee meeting held on June 16, 2010, 4:00 p.m., Tempe Public Library – Library Board Room, 2nd Floor, 3500 S. Rural Rd.

Members Present:

Sandi Hutson, Vice-Chair
Robert Marshak
Carol McKnight
Katherine Schmidt
Eduarda Yates

Members Absent:

Brad Olsen, Chair
Fr. John BonavitaCola
Jim Mack – Excused
Patty Tolson-Gonzalez – Excused

City Staff Present:

Shawn Wagner, Recreation Supervisor - Parks & Recreation
Cynthia Yanez, Executive Assistant - Parks & Recreation

Meeting convened at 4:05

Sandi Hutson called the meeting to order.

Agenda Item 1 – Consideration of Meeting Minutes

The amended minutes of the April 21, 2010 meeting were accepted.

Agenda Item 2 – Public Appearances

None.

Agenda Item 3 – Maintenance Updates

Shawn Wagner, Recreation Supervisor, provided an update on recent maintenance activity.

Comments:

- Some of the trees look like they could use additional water.
- The flowers in the flower pots may need to be replaced,

Agenda Item 4 – Sales Update

1. New sales for April & May were slow.
2. The sales for June are nearing \$17,000.
3. The board was provided with a copy of the new prices that will be implemented on July 1

Agenda Item 5 – Fall Fundraiser Proposal

Shawn Wagner, Recreation Supervisor, provided a brief update on the proposed fall fundraiser event.

1. The committee will meet on July 12 at 5:00 p.m. in the Tempe Connections Café.
2. Thirteen individuals that are interred in the cemetery will be highlighted during a walking tour and will be portrayed by actors.
3. The profits from the event will be shared between the museum and the cemetery enterprise fund.
4. The event will be held at twilight on October 30.

Comments:

- The maintenance staff will be asked to give special attention to the condition of the cemetery prior to the event.

Agenda Item 6 – Future Agenda Items

Public Art Update
Enterprise Fund Status

Agenda Item 7 – Chair/Board Comments

None.

Meeting adjourned at 4:36 p.m.

Prepared by: Cynthia Yanez, Executive Assistant, (480) 350-5240

Reviewed by: Shawn Wagner, Recreation Supervisor, (480) 350-5299



Minutes Double Butte Cemetery Advisory Committee September 15, 2010

Minutes of the Double Butte Cemetery Advisory Committee meeting held on September 15, 2010, 4:00 p.m., Tempe Public Library – Library Board Room, 2nd Floor, 3500 S. Rural Rd.

Members Present:

Brad Olsen, Chair
Sandi Hutson, Vice-Chair
Robert Marshak
Jim Mack
Eduarda Yates
Carol McKnight

Members Absent:

Katherine Schmidt (excused)
Patti Tolson-Gonzalez (excused)

City Staff Present:

John Osgood, Deputy Director – Public Works
Shenee Martin, Administrative Assistant II – Recreation/Community Services
Sam Thompson, Parks Supervisor – Public Works
Jerry Hart, Deputy Financial Services Manager
Shawn Wagner, Recreation Administrator – Recreation/Community Services
Cynthia Yanez, Executive Assistant – Community Services

Guest:

Allison Oswald – ASU/The State Press

Meeting convened at 4:05 pm.

Brad Olsen called the meeting to order.

Agenda Item 1 – Consideration of Meeting Minutes of July 21, 2010

No quorum.

Agenda Item 2 – Public Appearances

John Osgood, Deputy Director of Public Works introduced himself and let the committee know that the Public Works Department will be overseeing the maintenance of the Cemetery and

provide staff support for the committee. Cynthia Yanez will still administer the sales of the Cemetery.

Agenda Item 3 – Elections

Shawn Wagner stated that election of new officers no longer have term limits.

Motion: Robert Marshak moved to re-elect Brad Olsen, Chair and Sandi Hutson, Vice-Chair for another year.

Second: Carol McKnight

Motion carried.

Agenda Item 4 – Maintenance Updates

Sam Thompson informed the committee, that the city will maintain the cemetery with parks staff at least once a week and will rely on volunteers and county programs as additional support to maintain the Cemetery. The maintenance of the cemetery is being absorbed into the general fund operations. Sam assured that the City is doing what it can under the budget restraints.

Asphalt slurry seal was done in-house on September 1st.

Shawn Wagner stated that Sam Thompson coordinated the painting at the maintenance facility which is now completed.

Agenda Item 5 – Cemetery Enterprise Fund-Update

Jerry Hart, Deputy Financial Services Manager stated that the presentation the Double Butte Cemetery committee received on July 21st will be presented at the Tempe City Council Issue Review Session on Thursday, September 16th. Each committee member received a copy of the presentation materials. Shawn Wagner, Sam Thompson and Jerry Hart will be presenting:

- a) Budget Balancing Plan
- b) Long Range Forecast
- c) Cemetery Fund (long term projections)
- d) Report to Council and Committee – Deficit of the expenditures exceeding revenues on annual basis.

The Cemetery is currently operating in a deficit with expenditures exceeding revenues. City staff is proposing to council that all costs of administration and maintenance will be absorbed by the general fund. Sales administration will be absorbed into the Community Services Department and maintenance will be absorbed into the Public Works Department. All Double Butte Cemetery associated revenues will be used to offset the bond debt service.

Agenda Item 6 – Sales Report

Cynthia Yanez, Executive Assistant presented a handout sheet reflecting new burial and peripheral sales. She stated the numbers are a little off and there have been new sales after the renovation which doesn't include curbing, etc. Sales have been steady but not as strong as previous years. There have not been a lot of families purchasing large plots at this time. The City offers payment plan options for people to pre-purchase but it has been very slow.

Jerry Hart asked if other cemeteries were experiencing a slow time. Cynthia said yes other cemeteries and mortuaries have been slow and there has been an increase in cremations.

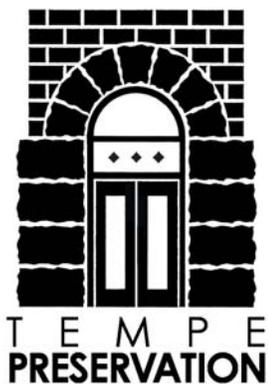
Agenda Item 7 – Chair/Board Comments

Jim Mack thanked Shawn and Cynthia and moved to draft letters of appreciation on their behalf.

Meeting adjourned at 4:38 p.m.

Prepared by: Shenee Martin, Administrative Assistant II, (480) 350-5242

Reviewed by: Shawn Wagner, Recreation Administrator, (480) 350-5299



**TEMPE HISTORIC
PRESERVATION
COMMISSION**

Ira Bennett, Alternate
Anne Bilsbarrow
Elias Y. Esquer
Bob Gasser, Chair
Andrea Gregory
Charlie Lee, Alternate
Kriste Melcher
Ann Patterson
Liz Wilson, Vice-Chair

**TEMPE HISTORIC
PRESERVATION
OFFICE**

Amy Douglass
Nathan Hallam
Hunter Hansen
Wm. "Billy" Kiser
Joe Nucci
John Southard
Mark Vinson

The City of Tempe is a
Certified Local Government,
in association with the United
States Department of the
Interior / National Park Service

Tempe Historic
Preservation Office
Community Development
Department
21 East 6th Street, Suite 208
P.O. Box 5002
Tempe, AZ 85280

480.350.8028
8579 FAX; 8913TDD



Tempe Historic Preservation Commission [Tempe HPC] MEETING MINUTES

Meeting Date: Thursday, September 09, 2010

Location: Hatton Hall, 34 East Seventh Street

Commissioners

Present: Ira Bennett
Anne Bilsbarrow
Elias Y. Esquer
Bob Gasser
Charlie Lee

Staff Present: Amy Douglass, Nathan Hallam, William "Billy" Kiser, Joe Nucci, John Southard, Mark Vinson

Public Present: Seth Anderson, Vic Linoff, Patricia Olson, Chris Paternoster, Woody Wilson

Call to Order: 6:00 PM, Bob Gasser, Chair

1. Call to Audience: *NO COMMENT*

2. Approval of HPC Minutes: 7/08/10 Tempe HPC meeting
MOTION: TO APPROVE THE 8/12/10 MINUTES AS WRITTEN [EE], SECOND [IB]; APPROVED: UNANIMOUSLY, [5-0].

Rev091510

3. Arizona State University Historic Preservation Update

Patricia Olson, Historic Preservation Coordinator, Office of the University Architect.

- No new evaluations of eligibility to be made until completion of Tempe campus MPDF.
- Landscaped area near Old Main to receive new paving.
- Historic building preservation plan for Kerr Cultural Center.
- Manzanita Hall rehabilitation now on hold.
- Institute of Human Origins interested in occupying Matthews Hall; awaiting structural study.
- Sahara Motor Inn near downtown campus slated for demolition; Section 106 documentation completed.
- Social Science building structural upgrades now on hold.
- West Hall to receive new signage and communication systems upgrades.
- New survey at Midvale site.
- Addition to Schwada Building; archaeological testing completed
- Fraternity houses between Alpha Drive and Rural Road demolished; recordation documentation as historic district in progress.
 - Q: Archaeology being considered?
 - A: Yes, working with Glen Rice.
- ASU Health Services Building addition and renovation; demolition of 1954 building; recordation documentation completed.
- Ceramics Studio building to be demolished.
 - Q: Archaeology being considered?
 - A: Yes, working with Glen Rice.
 - Q: Will historic preservation be integrated into general campus plan?
 - A: Updated every five years, planning to begin soon.

Rev091510

4. Discuss and Consider HPC Participation in Tempe HPF Fundraiser

Eisendrath Blues & BBQ Benefit, Fri, October 22, 6 p.m.

Woody Wilson, Chairman of the Tempe Historic Preservation Foundation

- Things moving along quickly: site plan emerging, tickets being sold, Pay Pal implemented, leveling two terraces for chairs, driveway graded, busses arranged, everything ADA compliant, everything on schedule.
- Window maintenance, generator, backlights, band (Francine Reed), table sponsors, landscaping, site plan, set-up and breakdown crews, security all lined up.
- Volunteers needed for parking, bus assistance, ushering.
 - Q: Will there be a vegetarian menu available?
 - A: Yes, no problem.
- Ideas for table favors needed.
- 150-200 tickets needed to break even.
- 4-bed Costa Rica condo vacation donated for silent auction; other items available.

5. Discuss and Consider Letters to National Register Property Owners

Chair update on correspondence.

- Letters sent; awaiting responses.

6. Discuss and Consider Program Operating Budget FY 2010-2012

HPO update on Historic Preservation Program Budget & Plan.

- HPO needs to budget for purposes of planning. What activities should we engage in—1, 5, 10 years down the road?
 - Q: Let me play devil's advocate...why offer residents tax services and send staff to conferences?
 - A: Because we need to prioritize customer service.
 - Q: Don't we need a statement of "no new zoning fees imposed on homeowners?"
 - A: Perhaps, if mayor and council agrees...
 - Q: \$6,000 for Tempe Women's Club—how do you justify that? Rev091510
 - A: **The Woman's Club is not owned by the City. Requests have therefore been considered on a year-by-year basis, reckoning that public benefit is derived from the ongoing maintenance of the local and national register-listed property and the availability of the facility to City-affiliated uses at no charge.** Rev091510
 - Q: In HPC's opinion, what should HPO prioritize?
 - A: Survey and inventory, and designation—as per ordinance.
 - Q: This is a confusing document, what do these lists mean?
 - A: We should adopt a spreadsheet format.
 - Q: What are HPC's goals...are we spending money properly, or should we re-prioritize?
 - A: Following the ordinance is the #1 priority, then promises, then the "good ideas."
 - Q: Should we provide some form of "preservation education" to City Hall?
 - A: Yes, we need to educate with some up-front statement in the budget.
 - A: Clarify City money and state/federal sources, use a spreadsheet.
 - A: Emphasize bond questions—involvement.
 - A: Use Donald Rypkema's book as an education tool.
 - Q: Arrange a separate meeting for budget discussion?
 - A: Perhaps we can use next month's meeting.
 - A: Priorities are important.
 - A: The ordinance outlines HPO's priorities.
 - A: The spreadsheet idea is good—perhaps we can get interns to take care of this.

7. Discuss and Consider Interns' Ongoing Project Activities

Nathan Hallam update on Pre 1941 Survey & Inventory and Kirkland-McKinney Ditch NRN

Billy Kiser update on Tempe (Hayden) Butte and Gov Pyle House NRNs

John Southard update on Hudson Manor and Governor Moeur House NRN

- Nathan: All of Park Tract and Gage Addition now photographed; survey forms for these two neighborhoods under preparation for September 30 target date.
 - Q: Are you still considering an outreach/informational handout for interested property owners.
 - A: Depends on zoning fees; can we promise no fees? Wait to see before producing handouts.
 - A: I like outreach idea.
- Billy: Meeting with Sites Review awaits Tempe (Hayden) Butte NRN. Pyle House NRN research continues. Sandra Day O'Connor House NRN underway.

- John: Next Monday, meeting with Hudson Manor residents and Phil Amorosi to explain Criteria "A" nomination findings. B. B. Moeur House NRN research continues.

8. Discuss and Consider Chair / Staff Updates:

- 2010 Beautification Awards outstanding projects completed in 2007, 2008 and 2009: Sandra Day O'Connor House up for an award.
- Tempe HP Foundation Plaque Program Update: Some property owners show interest in plaque program; no commitment yet.
- Tempe HPO Progress Report 4 to SHPO.
 - Q: Are you hiring interns from the Public History Program only; what about Archaeology?
 - A: Report is specific to 2010 internship program, not general internship policies.
- Tempe Historic Preservation Intern Program funded through December 2010.
- Tempe HPO Social Media Project n=1535 <http://www.facebook.com/TempeHPO> .

9. Current Events / Announcements / Future Agenda Items

- Member Announcements.
- Staff Announcements: Episcopal Church of the Epiphany, \$10 benefit concert 9/12/2010 for building maintenance. Mark Vincent's streetscape design open house is on 9/13/2010.
- Next HPC Meeting Date Thursday 10/14/2010 6:00 p.m. at Hatton Hall

Meeting adjourned at 8:01 PM

Minutes scheduled for Tempe HPC approval 10/14/2010

Bob Gasser, Chair

FREQUENTLY USED ABBREVIATIONS OR ACRONYMS

CDD – City of Tempe Community Development Department: Established February 15, 2005, by City Manager Will Manley the CDD consists of six divisions; Economic Development, Housing Services, Redevelopment, Neighborhood Enhancement, Rio Salado/Town Lake, and Special Projects, as well as the Community Design Studio / City Architect. The Tempe Historic Preservation Office is an agency of the Special Projects Division.

CLG – Certified Local Government: In 1980, Congress established a framework for local preservation programs through an amendment to the National Historic Preservation Act empowering Arizona cities and counties to become Certified Local Governments (CLGs). Once certified, these entities are eligible for specialized assistance and funds for developing their own local preservation programs and entitled to comment on NR and other SHPO activities within their boundaries. The City of Tempe became a CLG in 1995.

DDA – Development & Disposition Agreement: a redevelopment contract between the City and one or more developers or redevelopers specifying terms and conditions for construction or reconstruction.

DSD – City of Tempe Development Services Department: dealing with Building Safety, Land Use, Planning and Zoning

DRC – City of Tempe Development Review Commission: volunteer board advising Mayor and Council on matters related to the built environment and administration of General Plan 2030 and the Zoning and Development Code.

HPAC – Historic Preservation Advisory Committee: Arizona State Parks is governed by the State Parks Board and receives direction and oversight from several advisory committees and groups such as the Historic Preservation Advisory Committee.

IEBC – International Existing Building Code: adopted by Tempe City Council by Ordinance No. 2005.89 on December 1, 2005, as part of the code body promulgated by the International Code Council, provides means for preservation of existing Tempe building inventory through reasonable and feasible code processes.

IRS – Issue Review Session: informal Mayor and Council public meeting where members of the public may come forward and talk with City Council during the “Call to the Audience” prior to regular Council meetings.

PAD – Planned Area Development: site plan overlay to define development standards for a specific project.

SHPO – State Historic Preservation Office: a division of Arizona State Parks, responsible for the identification, evaluation, and protection of Arizona's prehistoric and historic cultural resources; established by the National Historic Preservation Act of 1966.

SRP-MIC – Salt River Pima-Maricopa Indian Community: created by Executive Order on June 14, 1879 by President Rutherford B. Hayes, the Salt River Pima-Maricopa Indian Community (SRPMIC) is located in Maricopa County, aside the boundaries of Mesa, Tempe, Scottsdale, Fountain Hills and metropolitan Phoenix.

Tempe HPC – Tempe Historic Preservation Commission: Created by Ordinance 95.35, adopted November 9, 1995. Members serve three year terms with the exception of the initial appointments; charged with administering the Tempe Historic Preservation Ordinance and Plan, as well as advising Mayor / Council on all matters related to historic preservation

Tempe HPF – Tempe Historic Preservation Foundation: A private nonprofit corporation established in 2005, Mission Statement 02.02.06 “The Tempe HPF advocates preserving Tempe’s at-risk historic properties and supporting worthy preservation projects through education, community participation, and fundraising.”

Tempe HPO – Tempe Historic Preservation Office: Responsible for the identification and conservation of Tempe’s prehistoric and historic cultural resources, the Office uses Federal, state, and city funding for the historic preservation program and assists owners of historic properties with grant applications, property maintenance, and preservation activities; provides staff support to the Tempe HPC.

THM – Tempe Historical Museum: Located at 809 E. Southern Avenue in Tempe, the Tempe Historical Museum is a center where the community comes together to celebrate Tempe's past and ponder the future. Permanent and changing exhibits, educational programs, and research projects generally focus on some aspect of Tempe's history within the context of state and national events.

TOD – Tempe Transportation Overlay District: placed to encourage appropriate land development and redevelopment consistent with and complementary to the community’s focused investment in transit, bicycle, and pedestrian infrastructure in certain geographic areas of the City; typically in association with the light rail.

ZDC – Zoning & Development Code: Adopted by Mayor and Council on January 20, 2005, effective February 22, 2005, the ZDC implements Tempe General Plan 2030 by encouraging creative development of the built environment in order to build a community that promotes the livability and uniqueness of Tempe; establishes zoning districts and development standards.



Minutes Committee for Youth, Families and Community September 14, 2010

Minutes of the Committee for Youth, Families and Community held September 14, 2010 at the Tempe Transit Center Don Cassano Community Room, 200 E. Fifth Street, Tempe, Arizona.

MEMBERS Present:

Randy Lazar, Tempe Union High School District
Bobbie Cassano, Tempe Community Council
Lauren Johnson, Community Bridges
Barb Fries, Tempe Elementary School District
Kelley Lind, Cardon Children's Medical Center
Amanda Hamm, Kyrene School District
Lynette Stonefeld, Tempe/Kyrene Communities In Schools
Sean Donovan, Tempe Chamber of Commerce
Celeste Plumlee, Tempe Resident
Vic Cordts, Boys & Girls Club of the East Valley
Ilene Dode, Tempe Resident/EMPACT-SPC
Norm Saba, Cardon Children's Medical Center
Mark Wertsching, Maricopa County Juvenile Probation Department

MEMBERS Absent:

Maria Holmes, Association for Supportive Childcare
Alan Anderson, Checkmate Chess Instruction
Charmaine Trujillo, Mountain Park Health Center
Luis Morales, Chicanos Por La Causa, Inc.
Chad Diegle, Desert Cross Lutheran Church
Joe Spracale, Tempe Impact Education Foundation
Vicki Kringen, The Centers for Habilitation

City Staff Present:

Kim Bauman, Community Services-Social Services
Roni Alexander, Community Services – Social Services
Nancy Rodriguez, Municipal Court
Fran Santos, Tempe Police Department
Tricia Andrews-Gilman, Community Services – Social Services

Guests Present:

Sheran Mattson, Mattson Resource Development

Meeting convened at 3:10 p.m.

Agenda Item 1- Call Meeting to Order and Introductions

Ilene Dode called the meeting to order. Introductions were made.

Agenda Item 2 - Minutes from August 10, 2010 Meeting

The minutes from August 10, 2010 were reviewed.

MOTION: Amanda Hamm motioned to approve the minutes.

SECOND: Randy Lazar seconded the motion.

COMMITTEE CONSENSUS: Minutes were approved.

Agenda Item 3- 2010 Juvenile Accountability Block Grant

1) **Kim Bauman, City of Tempe** provided an overview of the Juvenile Accountability Block Grant (JABG).

- The City of Tempe is eligible for \$28,727 between October 1, 2010 and September 30, 2012.
- As in the past, the Town of Gilbert contributed their block grant allotment in the amount of \$3,290 which they would like to use to purchase curriculum materials and supplies to support their Adolescent Life Skills Fundamental Program.
- Notification of the City's grant eligibility was not sent directly to Kim and there was a delay in receiving notification. As a consequence, this item was not able to be placed on the Committee's August meeting agenda to receive approval of the City's plan prior to submitting the grant application that was due on September 10th.
- A plan was submitted to continue the Empowering Teens and Parents (ETAP) Program which is currently funded by the City's 2008 and 2009 JABG grants.
- The 2010 funding would allow the program to continue to operate between October 1, 2011 and September 30, 2012.
- The program would continue to provide 2 series of parents groups and boys groups and in addition would add two series of girls groups.

2) **Mark Werschting, Maricopa County Juvenile Probation Department** notified the committee that their department remains supportive of the program and there is a need for groups for parents and their teens.

MOTION: Nancy Rodriguez, Tempe Municipal Court motioned to approve utilizing the City of Tempe's 2010-12 Juvenile Accountability Block Grant funds to continue the Empowering Teens and Parents Program.

SECOND: Bobbie Cassano, Tempe Community Council seconded the motion.

COMMITTEE CONSENSUS: Motion was approved.

Agenda Item 4 – Town Hall Update

Randy Lazar, Tempe Union High School District and **Bobbie Cassano** provided the following update:

- 1) The Town Hall on Underage Drinking will be held on Monday, October 4, 2010 7-8:30 p.m. in Tempe Council Chambers. Registration begins at 6:30 p.m.
- 2) The Town Hall is for adults and will focus on underage drinking between the ages of 12 and 18.
- 3) We anticipate having 140-150 people attend and will have an overflow room. Pre-registration is being encouraged.

- 4) The Town Hall will include presentations by Community Bridges, Not My Kid, a high school prevention counselor, and the Tempe Police Department. A question and answer session with the panel will follow the presentations.
- 5) Committee members have solicited a number of donations from businesses which will be used as incentives in a drawing to encourage participants to complete the Community Norms Survey.
- 6) Sheets were passed around to committee members to sign up to assist the evening of the event.
- 7) Prior to the Town Hall vendors will be in front of the Council Chambers to provide information to attendees. Vendors will include Parks and Recreation, the Boys & Girls Club, Tempe Youth Leadership, and All Stars/ Peer Leaders.
- 8) Each participant will receive a bag that includes a "Talking To Your Teen About Alcohol" pamphlet and other informational materials.
- 9) Flyers were given to each committee member who were requested to give them to ten people they know and encourage them to attend the Town Hall.
- 10) A press release has gone out and the Town Hall has been noted in the East Valley Tribune. The hope is that the Arizona Republic will highlight the Town Hall in its Tempe Community section.
- 11) T-shirts with the winning youth design were distributed to committee members who were requested to wear their shirts at the event unless they are presenters.

Agenda Item 5 - Announcements

- 1) **Sean Donovan, Tempe Chamber of Commerce** announced they are hosting a Health and Wellness Fair on Friday, September 17th from 3 to 6 p.m. at the Tempe YMCA.
- 2) **Lynette Stonefeld, Tempe/Kyrene Communities in School** announced the coalition's Drug Free Community grant was not funded. Three coalitions in Arizona received funding: ICAN located in Chandler, Touchstone located in the West Valley, and the Fountain Hills coalition. We should receive feedback in October regarding our application.

Agenda Item 6-Coalition Building Workshop

Bobbie Cassano introduced coalition building workshop facilitator **Sheran Mattson, Mattson Resource Development**. Members spent the duration of the meeting participating in coalition building exercises.

The committee's next meeting will be on **October 12, 2010 at 4:00 p.m.** in the Tempe Public Library Board Room.

Meeting adjourned at 6:00 p.m.

Prepared by: Kim Bauman

Ilene Dode, Chair



Minutes Rio Salado Advisory Commission September 28, 2010

Minutes of the Rio Salado Advisory Commission held on September 28, 7:00 PM at Hatton Hall, 34 E. 7th St., Tempe, Arizona.

Members Present:

Alana Chavez-Langdon
Michael Curlee
Mary Hannaman
Sue Lofgren
Julie Ramsey
Brett Siegal

Members Absent:

Sharon Doyle
Eric Emmert

City Staff Present:

Diane Johnson
Kevin O'Melia
Nancy Ryan

Guests Present:

Alana Chavez called the meeting to order at 7:13 PM.

Agenda Item 1 – Consideration of Meeting Minutes from May 25, 2010

Alana asked the commission members if there was a motion to approve the RSAC minutes from May 25, 2010.

MOTION: Sue Lofgren moved to approve minutes

SECOND: Mary Hannaman

DECISION: Minutes were approved unanimously

Agenda Item 2 – Public Appearances

There were no public appearances.

Agenda Item 3 – Development Review of New Industrial Building

Kevin O'Melia, COT Planner gave a development review overview of the new industrial building for Phoenix Pumps located at 1212 N. McClintock Dr. This site is located within the Rio Salado overlay district. The plan review is for a 35,600 sq. ft. building with an office, warehouse, and manufacturing component on 2 1/4 acres. They are asking to amend the general use plan from commercial to industrial.

General discussion regarding the **Development Review**, including:

- Michael Curlee recommended putting windows for light and visual interest on the McClintock side of the building. Kevin said the City planners had also suggested windows on the same side of the building.
- Julie Ramsey asked how many parking spaces will be provided. Kevin reported there will be 66 parking spaces.

Committee Consensus: The Commission agreed Phoenix Pumps development, located at 1212 N. McClintock Drive, is an appropriate use and meets the goals of Rio Salado.

Agenda Item 4 – Dam Replacement / Pedestrian Bridge

Nancy Ryan, Rio Salado Project Manager reported the downstream dam replacement is ahead of schedule. In July the contractor was able to mobilize shortly after the dam failure and they have finished installing three rubber bladders and placed a coffer dam where the fourth bladder is located. The fourth bladder is currently being shipped to Tempe. Today was media day where reporters came down to the lake to see the newly installed bladders.

On Friday, October 8th the City will start to fill Town Lake and it will take approximately two weeks to complete. While the lake was empty staff has been able to grade the bottom of the lake, level sand bars, repair docks, and remove debris from the lake bottom. Once the lake is filled the City will test the water quality for the upcoming Ironman in November. Next week staff will recommend when recreation boating should return to the lake. Arizona Game and Fish Department will be adding fish habitats to the lake after the lake fill is completed. Some fish are expected to come in with the fill and the initial fish stocking for the lake are the type of fish that eat mosquito and midge fly larva.

The Pedestrian Bridge is being fabricated off site and will be delivered in December. A sprinkler system to cool the new rubber bladders will be attached under the bridge. The project should be completed in April/May.

General discussion regarding the **Dam Replacement / Pedestrian Bridge**, including:

- Brett Siegal asked what the status was on the permanent dam replacement. Nancy stated the rubber bladders are temporary for five years. In that time the City will select a dam type, identify funds, design, and install a permanent dam replacement. Staff has narrowed their recommendations down to three technologies – rubber bladders, hybrid of rubber pillows with metal gates, and full hydraulic gates. In the order given there will be more cost, more complexity in design, and more regulatory approvals required.

Agenda Item 5 – Rio Salado / CFD Budget Update

Nancy gave an update on the Rio Salado and CFD budget. She reported the City has consolidated Community Development and Development Services into one department. Additionally substantial reductions have been made to Rio Salado and Community Facility District (CFD) budgets. Rio Salado/CFD budget was reduced 1.1 million this fiscal year with a commitment for another half million next year.

Agenda Item 6 - Committee Updates

- Friends of Rio Salado – Julie Ramsey reported the October scary boat ride has been canceled because the lake will not be open until the first of November.
- Enhanced Services Commission – Nancy Ryan reported the items discussed at the ESC meeting were departmental re-organization, CFD budget reductions, ESC bylaw changes, and the Town Lake reserve study. Staff also announced the turnover of the private development Hayden Ferry Lakeside to Sunbelt Holdings.

Agenda Item 7 – Project Updates

- 1) The TTL south bank path from TCA to Priest has been identified as a finalist for a Valley Forward award. Also up for an award is the O'Connor House. The awards banquet will be held this Saturday, October 3rd.
- 2) South bank USACE path from east dam to McClintock is projected to open November 1st.
- 3) The City and ADOT jointly submitted for a State highway improvement grant to fund the path underpass that drops below the 202 at the 101. The pedestrian underpass has been ranked number one in the State for a one million dollar grant. This is part of a larger path project providing a connection from McClintock to Dobson.
- 4) Staff is taking to Council on Oct. 7th a recommendation for a new boat concessionaire for the lake.

General discussion regarding the **Project Update**, including:

- Julie asked what was happening with the Veterans Memorial. Nancy stated there has not been a formal meeting since February, this is partially due to lack of fundraising efforts to move the design forward to construction.

The Rio Salado Advisory Commission's next meeting will be held on **October 26**. Committee members have voted to combine the November and December meeting and they will meet on November 30th. This will be the RSAC last meeting as a commission.

MOTION: Michael Curlee moved to adjourn the meeting

SECOND: Brett Siegel

DECISION: Meeting was adjourned at 8:00 PM

Prepared by: Diane Johnson

Reviewed by: Nancy Ryan

Nancy Ryan
Rio Salado Manager

MINUTES OF THE DEVELOPMENT REVIEW COMMISSION SEPTEMBER 28, 2010

Harry E. Mitchell Government Center
Tempe City Hall - City Council Chambers
31 E. 5th Street, Tempe, AZ 85281
6:00 PM (5:30 Study Session)

Commission Present:

Vanessa MacDonald, Chair
Stanley Nicpon
Monica Attridge
Dennis Webb
Paul Kent
Peggy Tinsley, Alternate
Mario Torregrossa, Alternate

Commission Not In Attendance:

Mike DiDomenico
Tom Oteri
Kolby Granville, Alternate

City Staff Present

Lisa Collins, Deputy Director Community Development
Steve Abrahamson, Planning & Zoning Coordinator
Ryan Levesque, Senior Planner
Kevin O'Melia, Senior Planner
Sherri Lesser, Senior Planner
Shawn Daffara, Code Inspector II

1. **CONSIDERATION OF MEETING MINUTES: 09/14/10**

On a motion by Commissioner Kent and seconded by Commissioner Torregrossa, the Commission with a vote of 4-0 (Nicpon, Webb, Tinsley abstained) approved the minutes from the September 14, 2010 meeting.

CONSENT AGENDA

On a motion by Commissioner Nicpon and seconded by Commissioner Kent, the Commission with a vote of 7-0 approved the Consent Agenda as recommended in the following staff reports and with the modified conditions as read by staff:

2. Request for **MEMO'S CAFE (PL080109/RVK10001)** (Ramez Rabata/Memos Cafe, applicant; Red Mountain Retail Group, property owner) to appeal the Hearing Officer's Decision of April 6, 2010 to revoke the Use Permit. Memo's Café is located at 1845 East Broadway Road, Suite No. 9, in the CSS, Commercial Shopping and Services District. The request includes the following:

RVA10001 - To appeal the revocation of a Use Permit to allow a hookah lounge/tobacco retailer.

THIS CASE WAS CONTINUED FROM THE JUNE 8, JUNE 22 AND AUGUST 24, 2010 MEETINGS

STAFF REPORT: [DRCr MemosAppeal 092810.pdf](#)

THIS APPEAL WAS APPROVED, THE USE PERMIT WAS NOT REVOKED

4. Request for **PAPPAS RESIDENCE (PL100157)** (Michael Pappas, property owner, Tessa Jones/The Phactory, applicant) for a 7,000 +/- s.f., two unit multi-family development including a main residence and an accessory dwelling unit located at 55 West 13th Street in the R-2, Multi-Family Residential District. The request includes the following:

DPR10106 – Development Plan Review including site plan and building elevations.

THIS CASE WAS CONTINUED FROM THE JULY 13, 2010 MEETING

STAFF REPORT: [DRCR PAPPASRESIDENCE 092810.PDF](#)

THIS CASE WAS CONTINUED TO THE OCTOBER 26, 2010 MEETING

5. Request for **CITY OF TEMPE SOUTH WATER TREATMENT PLANT ENVIRONMENTAL LABORATORY (PL100054)** (City of Tempe, property owner; James W. Dettmer, PE, Malcolm Pirnie, Inc., applicant) consisting of the addition to the South Water Treatment Plant of a 14,609 s.f. freestanding building on a +/- 53.37 acre site, located at 6600 South Price Road in the AG, Agricultural District. The request includes the following:

DPR10149 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCR SWTP ENVLAB 092810.PDF](#)

APPROVED WITH MODIFIED CONDITION NO. 10 TO READ AS FOLLOWS:

Locate the electrical service entrance section inside the building as is indicated **or in an enclosed, exterior yard.**

6. Request for **QUIK TRIP # 1400 (PL100107)** (Dave Mason, University LLC, property owner; Juan Romero, Quik Trip Corporation, applicant) consisting of a 6,071 s.f. convenience store with a 7,670 s.f. fuel sales canopy on a +/- 1.97 acre site, located at 2150 East University Drive in the GID, General Industrial District. The request includes the following:

ZUP10082 – Use Permit for fuel sales and convenience store in the GID District.

ZUP10083 – Use Permit for vehicle parking quantity in excess of 125% of required parking quantity.

DPR10148 -- Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCR QUIKTRIP1400 092810.PDF](#)

APPROVED WITH MODIFIED CONDITION NO. 9 TO READ AS FOLLOWS:

Provide upgraded paving at each installed driveway apron consisting of ~~clay unit~~ or concrete ~~unit~~ paving. Extend ~~unit~~ paving in the driveway from the back of the accessible public sidewalk bypass to 20'-0" on site and from curb to curb at the drive edges.

9. Request for **CARLIFE PROFESSIONAL AUTO SERVICE (PL100205)** (L & G Ray LLC, property owner, Ridenour, Hieton & Lewis, applicant;) consisting of a new 7,249 sf. building on a vacant pad for an automotive business on approx. 1.31 acres, located at 9895 South Priest Drive in the PCC-2, Planned Commercial Center General District. The request includes the following:

ZUP10079 – Use Permit to allow vehicle repair.

DPR10144 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCr_CarLifeAuto_092810.pdf](#)

THIS CASE WAS CONTINUED TO THE OCTOBER 26, 2010 MEETING

10. Request for **FARMER ARTS SENIOR HOUSING (PL100244)** (City of Tempe, property owner, Huellmantel & Affiliates, applicant) consisting of a new 5-story multi-family housing complex with 56 units, all within 53,910 sf. of building area on approx. 0.92 acres, located at 601 South Farmer Avenue in the MU-4, Mixed Use High Density District within the Transportation Overlay District and a Planned Area Development Overlay. The request includes the following:

DPR10147 – Development Plan Review including site plan, building elevations and landscape plan.

SBD10020 – Preliminary Subdivision Plat for four (4) lots and one (1) tract.

THIS CASE WAS APPROVED AS RECOMMENDED IN THE STAFF REPORT

REGULAR AGENDA

3. Request for **HAREM NIGHTS (PL090148/RVK10002)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) to appeal the Hearing Officer's Decision of May 19, 2010 to revoke the Use Permit. Harem Nights is located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District. The request includes the following:

RVA10002 - To appeal the revocation of a Use Permit to allow a hookah lounge/tobacco retailer.

THIS CASE WAS CONTINUED FROM THE JULY 13 AND JULY 27, 2010 MEETINGS

STAFF REPORT: [DRCR_HAREMNIGHTSAPPEAL_092810.PDF](#)

This case was presented by Shawn Daffara and represented by Chris Duran. Mr. Daffara made a brief presentation on the history of the case and indicated that the applicant and his engineer have been in Building Safety plan review four times and just made their fifth submittal of corrections.

Mr. Duran indicated that he and the applicant have had considerable difficulty with the mechanical engineer hired to complete their portion of the submittal and that his involvement has only been within the last two plan reviews. After speaking with the Building Safety plan reviewer assigned to the case, Mr. Duran stated that it's his belief they are very close to being able to pull permits.

Commissioner Nicpon asked Mr. Duran at what percentage they are towards completion. Mr. Duran indicated they are at 90-95% complete at having plans completed and approximately 4 to 6 weeks away from getting permits.

Chair MacDonald verified that if the Commission voted to uphold the Hearing Officer's decision and revoke the Use Permit, the applicant would have a two week window to appeal this Commission's decision to the City Council.

Chair MacDonald opened the hearing to public input.

One person spoke in support of this case.

Chair MacDonald closed the hearing to public input.

Commissioner Nicpon stated that he felt the Commission should continue the case and give the business owner the chance to complete his submittal process and obtain building permits.

On a motion by Commissioner Webb and seconded by Commissioner Tinsley, the Commission with a vote of 6-1 (Commissioner Nicpon opposed) denied the appeal and upheld the Hearing Officer's decision to revoke the Use Permit.

-
7. Request for **VALLEY WESLEY RESIDENCE HALL (PL100108)** (First United Methodist Church of Tempe, property owner, ORB Architecture LLC, applicant) consisting of demolishing an existing building for a new 5-level residence hall with 57 bedrooms, all within 23,551 sf. of building area on approx. 1.45 acres, located at 215 East University Drive in the CC, City Center District within the Transportation Overlay District. The request includes the following:

DPR10140 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCR_VALLEYWESLEYRESHALL_092810.PDF](#)

This case was presented by Ryan Levesque and represented by Rich Barber, Architect. Mr. Barber made a brief presentation regarding the Wesley Foundation and how this student residence hall would tie into ASU and the campus housing.

Commissioner Attridge asked for clarification on the parking. Mr. Barber indicated that residents will be issued standard ASU parking passes and that onsite parking is for office, guests and services.

Commissioner Kent questioned whether this building had any historic significance. Mr. Levesque indicated that this property was listed as a "potential contributing property". Individually this property does not fall under any historic designation.

Commissioner Webb questioned the use and design of the brick exterior. Mr. Barber indicated that the brick design is similar to the existing sanctuary building. The brick line was held down so as not to dwarf the sanctuary building.

Chair MacDonald opened the hearing to public input.

Reverend Summers of the First United Methodist Church and resident, Don Dotts spoke in support of this case.

Brandon White, ASU student, questioned the applicant as to who could reside in the hall and whether is it open to only ASU students, and if it's open to all students or only members of the church.

Reverend Summers addressed Mr. White's question and indicated that the hall is intended for ASU students regardless of religious affiliation.

Chair MacDonald closed the hearing to public input.

On a motion by Commissioner Nicpon and seconded by Commissioner Kent, the Commission with a vote of 7-0 approved this Development Plan Review as recommended in the staff report.

-
8. Request for **QUIK TRIP # 460 (PL100187)** (Celeste Robb, Price & Southern Properties LLC, property owner; Juan Romero, Quik Trip Corporation, applicant) for a 6,071 sf. convenience store with a 9,598 sf. fuel sales canopy on a +/- 2.52 acre site located at 3300 South Price Road in the PCC-1, Planned Commercial Center District. The request includes the following:

ZUP10080 – Use Permit for fuel sales and convenience store in the PCC-1 District.

ZUP10081 – Use Permit for vehicle parking quantity in excess of 125 percent of required parking quantity.

DPR10146 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCr_Quiktrip460_092810.pdf](#)

This case was presented by Sherri Lesser and represented by Charles Huellmantel, applicant. Ms. Lesser made a brief presentation which included the modification of Condition Nos. 19 and 25a to read as follows:

19. Limit light on paving surface under canopy to an **average** ~~maximum~~ of 30 foot-candles.

25a. **Applicant will work with Planning staff to replace existing trees along Southern Avenue street frontage with canopy type shade trees per ZDC requirements.**

Mr. Huellmantel made no formal presentation but stated that this is not a zoning case and the proposed use for this site is allowed and is appropriate for this site.

Commissioners Kent and Attridge asked for clarification of the landscaping in regards to the large trees on the southern portion of the site and the groundcover. Mr. Huellmantel stated there would be groundcover and the large trees would not be removed.

Commissioner Kent questioned the over parking of the site.

Mr. Huellmantel stated that there is significant use of the convenience store, even when customers are not stopping for fuel; therefore, the canopy spots are not included in the parking count.

Commissioner Tinsley read a letter of opposition into the record from Douglas Sanke. The letter stated that there are concerns regarding considerably larger amounts of traffic being introduced into the area and increasing carbon monoxide and other noxious fumes. It also mentions an inadequate landscape plan, issues regarding increased heat, noise and lighting.

Mr. Huellmantel stated that they took the landscaping concerns brought up in the letter to heart and have since modified the landscaping, not only removing existing landscaping but they will provide a new palette. With the modifications to the landscaping, this will directly assist with the heat-island effect.

Mr. Huellmantel respectfully disagreed with Mr. Sanke and indicated that the site is currently almost all asphalt with no landscaping or trees and this use is extremely appropriate for this site and is an area in need of service. This site is an extremely difficult site to develop and not well suited for very many uses. This site is a challenge to get to and with the studies the applicant has done, this site is ideal for people headed home in the evening, i.e., east on Southern and south on Price. Mr. Huellmantel also addressed the concern of additional traffic. Quik Trips are not destination businesses. They are frequented by people already in the area and driving by.

On a motion by Commissioner Nicpon and seconded by Commissioner Attridge, the Commission with a vote of 7-0 approved this Development Plan Review as recommended in the staff report with Condition Nos. 19 and 25a to read as follows:

19. Limit light on paving surface under canopy to an **average maximum** of 30 foot-candles.

25a. Applicant will work with Planning staff to replace existing trees along Southern Avenue street frontage with canopy type shade trees per ZDC requirements.

- 9. ANNOUNCEMENTS** – Commissioner Nicpon asked staff about the next upcoming agenda on October 12th. Ms. Collins stated that the Pappas Residence was continued to that agenda and at this time, is the only case on the agenda.

The hearing adjourned at 7:10 P.M.

Prepared by: Lisa Novia, Administrative Assistant II
Reviewed by: Lisa Collins, Deputy Director Community Development Department



Lisa Collins, Deputy Director Community Development Department

MINUTES OF THE DEVELOPMENT REVIEW COMMISSION OCTOBER 12, 2010

Harry E. Mitchell Government Center
Tempe City Hall - City Council Chambers
31 E. 5th Street, Tempe, AZ 85281
6:00 PM (5:30 Study Session)

Commission Present:

Vanessa MacDonald, Chair
Mike DiDomenico, Vice Chair
Stanley Nicpon
Monica Attridge
Dennis Webb
Tom Oteri
Paul Kent

Commission Not In Attendance:

Peggy Tinsley, Alternate
Mario Torregrossa, Alternate
Kolby Granville, Alternate

City Staff Present:

Lisa Collins, Deputy Community Development Director/Planning
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner

Chair MacDonald stated that she would forego introductions as there was only one case on the agenda and as discussed in Study Session, City staff had requested a continuance of this case to the October 26, 2010 meeting. There was also a presentation by Mark Vinson, City Architect, and Kevin O'Melia, Senior Planner, at the Study Session in regards to the draft Downtown Mill and Lake Streetscape Design Guidelines.

1. **CONSIDERATION OF MEETING MINUTES: 09/28/10 (POSTPONED TO OCTOBER 26, 2010)**
2. Request by **PAPPAS RESIDENCE (PL100157)** (Michael Pappas, property owner, Tessa Jones/The Phactory, applicant;) for a 7,000 +/- s.f., two unit multi-family development including a main residence and an accessory dwelling unit located at 55 West 13th Street in the R-2, Multi-Family Residential District. The request includes the following:

DPR10106 – Development Plan Review including site plan and building elevations.

THIS CASE WAS CONTINUED FROM THE JULY 13 AND SEPTEMBER 28, 2010 MEETINGS

STAFF REPORT: DRCr_PappasResidence_101210.pdf

On a motion by Commissioner Nicpon and seconded by Commissioner Oteri, the Commission with a vote of 7-0 continued the Pappas case to the October 26, 2010 meeting.

3. ANNOUNCEMENTS – None

The hearing adjourned at 6:02 p.m.

Prepared by: Lisa Novia, Administrative Assistant II
Reviewed by: Lisa Collins, Deputy Director Community Development Department

A handwritten signature in cursive script, appearing to read "Lisa Collins".

Lisa Collins, Deputy Director Community Development Department



Minutes Mayor's Youth Advisory Commission October 5, 2010

Minutes of the Mayor's Youth Advisory Commission held on October 5, 2010, 6:30 p.m., at the Tempe, Public Library Board Room, 3500 S. Rural Road 2nd Floor, Tempe, Arizona.

MEMBERS Present: Jeff Darge, Maria Eller, Dirk Fenstermacher, Nick Gaitan, Varun Gregory, Rafael Gutierrez, Jevin Hodge, Lauren Milovich, Ben Moffat, Will Morgan, Anjali Nair, Sanna Rahman, David Reynolds, Katrina Rodrigues, Kristen Rund, Marcos Souffle, An Tran, Grayce Whiting, Kayle Wong and Humza Zubair.

MEMBERS Absent: Katie Barone, Ashley Noble and Oscar Ramirez-Rivera.

City Staff Present: Kim Bauman and Peggy Goldberg.

Guests Present: None

Meeting convened at 6:35 p.m.

Jevin Hodge, MYAC Chair called the meeting to order.

Agenda Item 1 – Icebreaker/Introductions

MYAC members participated in a icebreaker activity.

Agenda Item 2 – Minutes from September 21, 2010 Meeting

Anjali Nair read the minutes from the October 5, 2010 meeting.

MOTION: Maria Eller motioned to approve the minutes.

SECOND: David Reynolds seconded the motion.

DECISION: Minutes were approved.

Agenda Item 3 – Treasurer's Report

Jevin Hodge provided the Treasurer's Report.

Agenda Item 4- Announcements

- 1) **Kim Bauman, MYAC Advisor** had members review the commission membership list and report any inaccuracies with the listed information.

Agenda Item 5 – Officer's Elections

- 1) **Jevin Hodge** and **Kim Bauman** provided a brief overview on the responsibilities of the MYAC officers and the election process.
- 2) Elections for the 2010-11 MYAC Officers were conducted with the following outcomes:
 - Nicholas Gaitan, MYAC Chair
 - Maria Eller, MYAC Vice Chair
 - Kaylee Wong, Administrative Recorder
 - An Tran, Treasurer
 - Lauren Milovich, Youth Town Hall Chair
 - Dirk Fenstermacher, Community Service Project Chair

Agenda Item 6- Future Agenda Items

- Community Service Project
- Youth Town Hall

The Commission's next meeting will be **October 19, 2010**.

Meeting adjourned at 7:30 p.m.

Prepared by: Kaylee Wong

Reviewed by: Kim Bauman

Nick Gaitan, Chair
Mayor's Youth Advisory Commission



Minutes Special Events Task Force Meeting October 19, 2010

Minutes of the Special Events Task Force Meeting held on October 19, 2010
200 E. 5th Street, Tempe Transportation Center, Tempe, AZ 85281

Meeting convened at 1:00 p.m.

Jonni Wolfe, Sr. Recreation Coordinator, called the meeting to order and gave opening remarks regarding process and procedure. She made a call to the audience asking if anyone not on the agenda wanted to address the committee. There was no response.

City Staff Present: John Ferrin (PD), Fran Santos (PD), Bill Gallauer (PD), Mike McComb (Fire), Jeff Tamulevich (Development Services), Martin Sparr (Parks), Karl Stephens (ADA Specialist), Jerry Judkins (Parks), Julian Dresang (Transportation), Jerry Hall (Recreation), Chad Holmes, (Recreation), Alicia Stuebner (Recreation), Jonni Wolfe (Recreation), Jodie Garth (Recreation)

Guests Present: Mitchell Mastrin (Lupus AZ), Lonie Padilla (Lupus AZ), Lynda Woodson (Church of Epiphany), April Conti (East Valley Sol), Mark Goldman (Walk to Save Animals), Kevin Jones (College Dropouts), David Benjes (DCB), Eleanor Brierley (Abiding Savior), Jesse Feller (Final Round), Robin Trick (House of Tricks), Pete Calantoni (Monster Impound & Recovery), Jay Johari (Vintage)

I. Special Event Liquor License

- A. The Sol Devils for Tailgate, Saturday, November 13, 2010 and Friday, November 26, 2010 (6th Street Park): Chad Holmes made a motion to approve this license request. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the license
- B. Church of the Epiphany for Holiday Boutique, Friday, November 19, 2010 (2222 S. Price Rd.): Jerry Judkins made a motion to approve this license request. It was seconded by Karl Stephens. It was the consensus of the committee to approve the license.

II. Approval of Extension of Premises

- A. College Dropouts, Saturday, October 30, 2010 (560 S. College Ave. #101): Julian Dresang made a motion to approve this event with the stipulation that a letter from that landlord was received granting permission to hold the event. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the event with the mentioned stipulation.
- B. College Dropouts, Saturday, November 13, 2010 and Friday, November 26, 2010 (560 S. College Ave. #101): Julian Dresang made a motion to approve this event with the stipulation that a letter from that landlord was received granting permission to hold the event. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the event with the mentioned stipulation.
- C. Tempe Center for the Arts, Saturday, November 6, 2010 (700 W. Rio Salado Parkway): Chad Holmes made a motion to approve this extension with the stipulation that an off-duty police agreement was submitted. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the extension with the mentioned stipulation.
- D. The Chuckbox, Saturday, November 13, 2010 and Friday, November 26, 2010 (202 E. University Dr.): Karl Stephens made a motion to approve this extension. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the extension.

III. Events/Licenses for Final Review

- A. There are no events for final review.

IV. Events for Initial Review

- A. Halloween, Saturday, October 30, 2010 (Vintage Bar & Grill-414 S. Mill Ave.): Karl Stephens made a motion to approve this extension with the stipulation that the applicant attends a meeting with the police department personnel and agrees on the number of security staff necessary to make the event safe. It was seconded by Mike McComb. It was the consensus of the committee to approve the extension with the mentioned stipulation.
- B. Fiesta del Sol, Saturday, November 6, 2010 (Tempe Diablo Stadium-2200 W. Alameda): Julian Dresang made a motion to approve this event. It was seconded by Mike McComb. It was the consensus of the committee to approve the event.
- C. Arizona Open Water Swim, Saturday, November 6, 2010 (Tempe Town Lake): Chad Holmes made a motion to approve this event with the stipulation that all insurance requirements were met and a deposit was received. It was seconded by Mike McComb. It was the consensus of the committee to approve the event with the mentioned stipulation.
- D. Fall Block Party, Saturday, November 6, 2010 (Final Round-5030 S. Mill Ave.-): Karl Stephens made a motion to approve this event with the stipulation that an approval letter from the landlord was received. It was seconded by Julian Dresang. It was the consensus of the committee to approve the event with the mentioned stipulation.

- E. Arrive Alive Tour, Saturday, November 6, 2010 (Abiding Savior Lutheran Church-515 E. Continental Dr.): Jeff Tamulevich made a motion to approve this event. It was seconded by Chad Holmes. It was the consensus of the committee to approve the event.
- F. Congenital Heart Run/Walk, Sunday, November 7, 2010 (Tempe Diablo Stadium-2200 W. Alameda): Chad Holmes made a motion to approve this event. It was seconded by Bill Gallauer. It was the consensus of the committee to approve the event.
- G. The Women's Half Marathon, Sunday, November 7, 2010 (Tempe Beach Park and city streets): Chad Holmes made a motion to approve this event with the stipulation that all vendors are properly permitted, insurance requirements are met and the required deposit it received. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the event with the mentioned stipulations.
- H. Light the Night Walk, Saturday, November 13, 2010 (Tempe Arts Park): Alicia Stuebner made a motion to table this event because the applicants were unable to attend this task force meeting. It was seconded by Julian Dresang. It was the consensus of the committee to table the meeting.
- I. Walk to Save Animals, Saturday, November 13, 2010 (Tempe Beach Park): Mike McComb made a motion to approve this event with the stipulation that a police off-duty agreement was received, all vendors are properly permitted and all insurance requirements are met. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the event with the mentioned stipulations.
- J. Walk for Lupus Now, Sunday, November 14, 2010 (Kiwanis Park soccer fields): Mike McComb made a motion to approve this event. It was seconded by Alicia Stuebner. It was the consensus of the committee to approve the event.
- K. Wine Fiesta XIX, Sunday, November 14, 2010 (House of Tricks-114 E. 7th Street): Alicia Stuebner made a motion to approve this event with the stipulation that the identity of the individual representing the liquor license was verified. It was seconded by Mike McComb. It was the consensus of the committee to approve the event with the mentioned stipulation.
- L. NXN Southwest Region, Saturday, November 20, 2010 (Kiwanis Park): Event cancelled by promoter.

V. Special Event Liquor License associated with a Special Event on the agenda

- A. East Valley Sol for Fiesta del Sol, Saturday, November 6, 2010 (Tempe Diablo Stadium-2200 W. Alameda): Julian Dresang made a motion to approve this license request. It was seconded by Mike McComb. It was the consensus of the committee to approve the license.
- B. Ear Candy Productions, Inc for Wine Fiesta, Sunday, November 14, 2010 (House of Tricks-114 E. 7th Street): Alicia Stuebner made a motion to approve this license request with the stipulation that the identity of the individual representing the license was verified. It was seconded by Mike McComb. It was the consensus of the committee to approve the license with the mentioned stipulation.

VI. **Extension of Premise associated with a Special Event on the agenda**

- A. Vintage Bar & Grill for Halloween, Saturday, October 30, 2010 (414 S. Mill Ave.- Vintage): Karl Stephens made a motion to approve this extension with the stipulation that the applicant attends a meeting with the police department personnel and agrees on the number of security staff necessary to make the event safe. It was seconded by Mike McComb. It was the consensus of the committee to approve the extension with the mentioned stipulation.
- B. Final Round for Fall Block Party, Saturday, November 6, 2010 (5030 S. Mill Ave.- Final Round): Karl Stephens made a motion to approve this extension of premise with the stipulation that an approval letter from the landlord was received. It was seconded by Julian Dresang. It was the consensus of the committee to approve the extension with the mentioned stipulation.

VII. **Events for Post Review-Other**

- A. Tour de Fat on Oct 9 at TBP: Sergeant John Ferrin requested a meeting take place at a later time when staff other than just Special Events Task Force members could meet to discuss this event in greater detail. He feels like the event has grown so much that a change in the traffic plan and security needs to be discussed.
- B. Tardeada on Oct 10, Library Complex: No problems reported.
- C. H & I Jamboree on Oct 10 at Kiwanis Park: The lights in the ramada did not come on for this group. They requested a credit for the venue costs, it was granted by the Recreation Division.
- D. Stache Dash 5K on Oct 10 at Arts Park: This group was never granted a liquor license because they were unable to come up with the required insurance. They showed up with alcohol anyway and were told by the off-duty officer on site as well as recreation staff that no alcohol could be on the premise. The alcohol was removed and the rest of the event was held as planned.
- E. Galindo Wedding on Oct 16 at 6th Street Park: No problems reported.
- F. Frank Kush Run on Oct 16 at Tempe Beach Park: No problems reported.
- G. Deals on Wheels on Oct 16 & 17 at Tempe Schools Credit Union: No problems reported.

Meeting adjourned at 2:29 p.m.

The Committee's next meeting is November 2, 2010 at 1:00pm., at the Tempe Transportation Center, 200 E. 5th St.

Prepared by: Jodie Garth
Reviewed by: Jonni Wolfe

Jonni Wolfe
City of Tempe
Sr. Recreation Coordinator

Staff Summary Report



City Council Meeting Date: 11/04/10

Agenda Item Number: ___

SUBJECT: This is a public hearing for an appeal by **HAREM NIGHTS** located at 1630 East Apache Boulevard, Suite 103, of the September 28, 2010 Development Review Commission's decision to uphold the May 19, 2010 Hearing Officer's revocation of use permit ZUP09063 to allow a hookah lounge.

DOCUMENT NAME: 20101104cdsa01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Hold a public hearing for an appeal by **HAREM NIGHTS (PL090148 / RVK10002 / RVA10003)** (Kalil Abulaban/Harem Nights, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite 103, in the CSS, Commercial Shopping and Services District of the September 28, 2010 Development Review Commission's decision to uphold the May 19, 2010 Hearing Officer's revocation of the following:

ZUP09063 Use permit to allow a hookah lounge.

PREPARED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

REVIEWED BY: Lisa Collins, Community Development Deputy Director-Planning (480-350-8989)

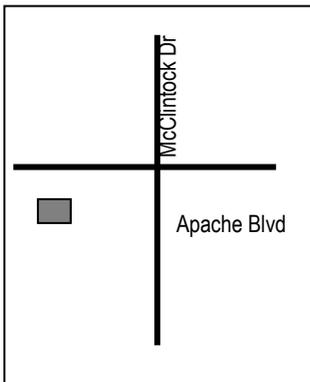
LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (480-350-8814)

DEPARTMENT REVIEW BY: Chris Anaradian, Community Development Director (480-858-2204)

FISCAL NOTE: A specific fiscal impact is not applicable to this type of administrative action.

RECOMMENDATION: Because this is an appellate hearing of a Development Review Board decision to revoke a use permit, staff will not make a recommendation.

ADDITIONAL INFO:



Gross/Net site area	1.01 acres
Total Building area	12,000 s.f.
Tenant Area	2,000 s.f.
Vehicle Parking	67 spaces Required for entire building. 7 spaces Required for this tenant.

A neighborhood meeting was not required with this application.

The revocation was initiated by city staff due to non-compliance with use permit conditions. The applicant is requesting an appeal of the Development Review Commission September 28, 2010 decision to uphold the Hearing Officer's decision of May 19, 2010 to revoke the Use Permit for Harem Nights.

PAGES:

1. List of Attachments
2. Appeal/Revocation Comments
3. Original Conditions of Approval; Reasons for Revocation; History & Facts
4. History & Facts continued; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
3. Letter of Intent for Use Permit, dated April 21, 2009
- 4-5. Use Permit Approval Letter, dated May 21, 2009
6. Code Enforcement Violation Letter, dated January 13, 2010
7. Administrative Hearing Letter, dated January 29, 2010
8. Use Permit Revocation Letter, dated May 25, 2010
- 9-11. Hearing Officer Minutes from May 19, 2009 agenda.
- 12-13. Hearing Officer Minutes from May 19, 2010 agenda.
14. Site plan
15. Floor plan
16. Staff Photograph(s)
17. Applicant's Letter of Appeal to DRC decision of 9/28/10, dated 10/7/10
- 18-23. DRC Approved Minutes of 9/28/10

APPEAL COMMENTS:

Mr. Kalil Abulaban has been before the Development Review Commission two (2) times and each time the applicant has been granted additional time to show progress on obtaining a building permit. It has been 60 days since the last hearing and the plans have been in and out of plan review four (4) times with corrections.

The Tenant Improvement (T.I.) plans have been submitted on July 9, 2010 with first review due date of July 21, 2010.

CURRENT STATUS:

The applicant has yet to receive the building permit to start construction. The building safety plan review has been in and out four (4) times with corrections. The resubmitted plans were approved on October 14, 2010. Permits are being held pending the outcome of the appeal.

REVOCATION COMMENTS MAY 19, 2010:

See minutes from the May 19, 2010 Hearing Officer.

COMMENTS FROM USE PERMIT (ZUP09063) MAY 19, 2009

See minutes from the May 19, 2009 Hearing Officer.

Use Permit

The Zoning and Development Code requires a Tobacco Retailer to obtain a Use Permit in the CSS, Commercial Shopping and Services District. When the Use Permit was approved it met applicable tests in the following manner:

Evaluating the Use Permit, the proposal appears to pass the Use Permit test listed below:

- a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - This is a retail use, similar to others within the shopping center; there should be no nuisances.
- c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
 - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This Use Permit request is consistent with the General Plan 2030's Land Use Element. The requested Use Permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- d. Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses.
- e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public.
 - The use is confined to the second floor suite with sole purpose of providing hookah smoking inside which should not create a nuisance to the surrounding area.

**ORIGINAL
CONDITION(S)
OF APPROVAL (ZUP09063) MAY 19, 2009:**

1. The Use Permit is valid for Harem Nights and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
7. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment shall not violate the City of Tempe Noise Ordinance.
9. Existing fluorescent lighting above entrance doors shall be operable from dusk until dawn. Staff will conduct evening inspection to verify.
10. All business signs shall receive a Sign Permit. Please contact the Planning Division at (480) 350-8331.
11. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Please contact Crime Prevention at (480) 858-6027 before June 19, 2009.
12. Live entertainment is restricted to live belly dancing only.
13. Live entertainment shall cease at 11:30 PM nightly.

**REASON(S) FOR
REVOCAATION:**

1. Non-compliance with the conditions of approval. Zoning and Development Code, Section 6-603 allows for a review and possible revocation of Use Permits, if conditions of approval are not met.

HISTORY & FACTS:

May 19, 2009 ZUP09063: Hearing Officer approved Use Permit for a hookah lounge/tobacco retailer.

January 8, 2010 CM100037: Violation of Use Permit condition of approval # 4 - All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective."

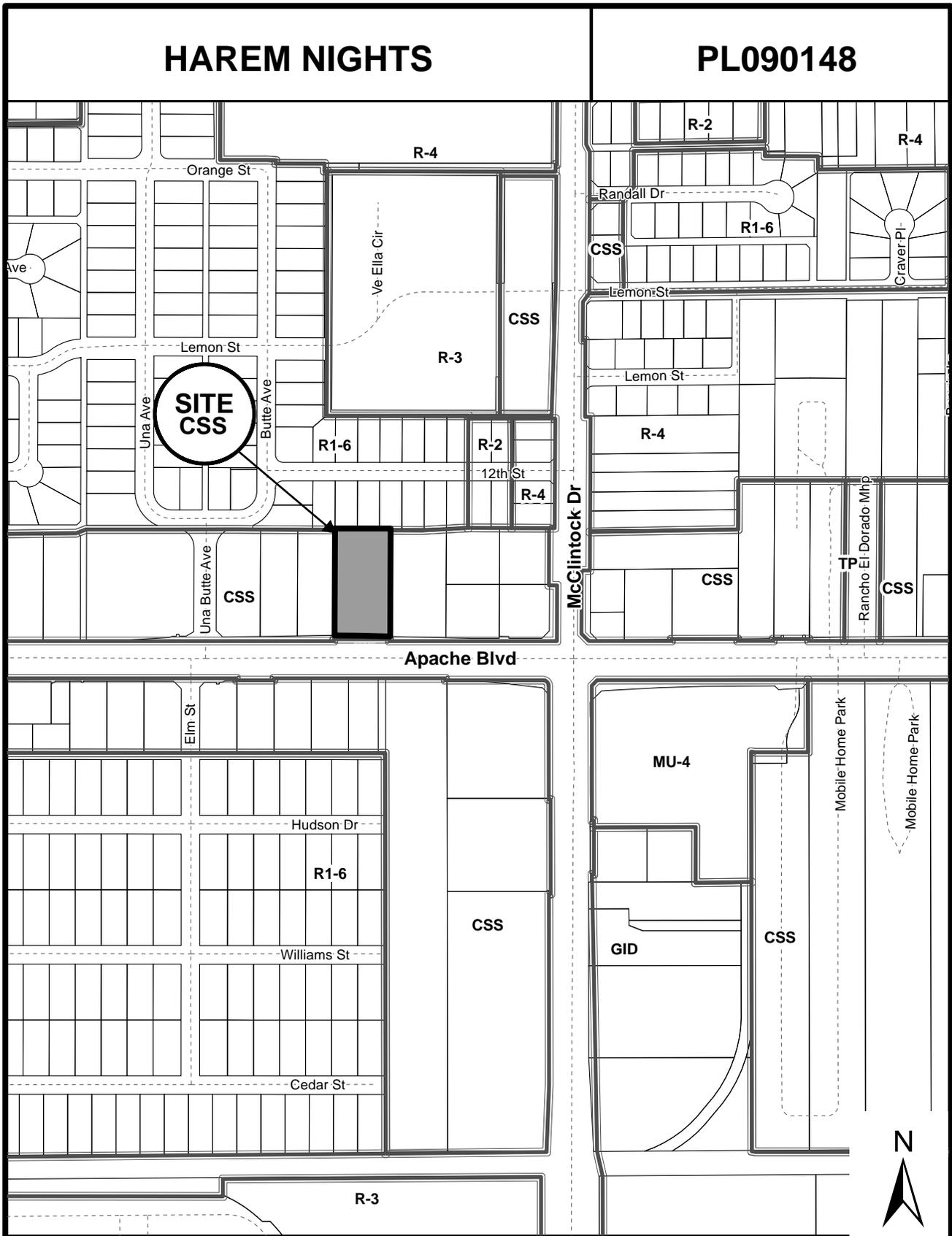
February 19, 2010 Administrative Hearing with business owner to gain compliance.

April 7, 2010 Business owner Kalil Abulaban requested a continuance due to a death in the family. Case continued until May 19, 2010.

May 19, 2010	<u>RVK10002</u> : Hearing Officer revoked the Use Permit to allow a hookah lounge/tobacco retailer.
June 1, 2010	Harem Nights filed an appeal of the Hearing Officer's decision to revoke the Use Permit. Appeal to be heard before Development Review Commission on July 13, 2010.
July 9, 2010	<u>BP100982</u> : Tenant Improvement Plans submitted to Building Safety.
July 13, 2010	Development Review Commission continued the case for 2 weeks, to the July 27, 2010 agenda.
July 27, 2010	Development Review Commission continued the case for 60 days, to the September 28, 2010 agenda.
September 28, 2010	Development Review Commission denied the appeal and upheld the May 19, 2010 Hearing Officer's decision to revoke this use permit.

**ZONING AND
DEVELOPMENT**

CODE REFERENCE: **Part 1, Chapter 1, Section 1-311(B)(6) – City Council Duties and Powers**
 Part 3, Chapter 2, Section 3-202, Table 3-202A – Permitted Land Uses in CSS, Commercial and Shopping and Services District.
 Part 3, Chapter 4, Section 3-423 – Use Separation Requirements
 Part 6, Chapter 3, Section 6-308 – Use Permit
 Part 6, Chapter 3, Section 6-313 – Security Plan
 Part 6, Chapter 9, Section 6-902 – Revocation of Use Permit



Location Map



Apache Blvd

HAREM NIGHTS (PL090148)

Harem Nights
1630 E. Apache Blvd Ste 3
Tempe, Arizona 85281

April 21, 2009

LETTER OF INTENT

To Whom It May Concern:

This letter is to serve as my letter of intent and apprise the City of Tempe of my intended function and operation.

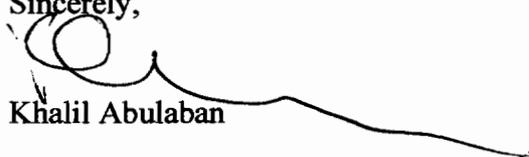
I previously owned and operated a family restaurant from 2001-2007 in the City of Tempe. The establishment provided food, beverage, entertainment, and was also one of the City of Tempe's first hookah lounge.

My intention is to establish a hookah lounge; Harem Nights located at 1630 E. Apache Blvd. Tempe, Arizona and comply with all City codes and zoning regulations

Harem Nights hours of operation will be from 5pm-4am 7 days a week where hookah's with flavored tobacco will be served along with non-alcoholic beverages. There will be no food served staying in compliance with the City of Tempe's no smoking ban. Harem Nights will also provide the sale of flavored hookah tobacco, hookahs and hookah accessories.

Thank you for your timely consideration to my application.

Sincerely,


Khalil Abulaban

(480) 350-8331 (Phone)

May 21, 2009

Mr. Khalil Abulaban
Harem Nights
4704 South Kenwood Lane
Tempe, Arizona 85282

**RE: HAREM NIGHTS
PL090148 / ZUP09063 / ZUP09067**

Dear Mr. Abulaban:

You are hereby advised that at the hearing held May 19, 2009, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District for:

ZUP09063 Use permit to allow a hookah lounge.

ZUP09067 Use permit to allow live entertainment.

Approved subject to the following conditions:

1. The use permit is valid for Harem Nights and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff or review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment shall not violate the City of Tempe Noise Ordinance.
9. Existing fluorescent lighting above entrance doors shall be operable from dusk until dawn. Staff will conduct evening inspection to verify.
10. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
11. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Contact Crime Prevention at (480) 858-6027 before June 19, 2009.

12. **Live entertainment is restricted to live belly dancing only. ADDED BY STAFF**
13. **Live entertainment shall cease at 11:30 PM nightly. ADDED BY STAFF**

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Hearing Officer as indicated above, shall be fully complied with. If the action of the Hearing Officer was required for the purposes of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

In sign-related violations, corrections shall be made within five (5) days of Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the Hearing Officer. You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,



Shawn Daffara
Planner II

SD:dm

cc: Mr. Milivoje Djordjevich/1630 Apache LLC
File

January 13, 2010

Mr. Khalil Abulaban
Harem Nights
4704 South Kenwood Lane
Tempe, AZ 85282

RE: Zoning Violation – 1630 East Apache Blvd. Tempe

Dear Mr. Abulaban:

Your business, located at 1630 East Apache Blvd. continues to be in violation of the City of Tempe Zoning and Development Code section 6-308(I). The use permit approval for your Hookah Lounge/Tobacco Retailer was based on several specific conditions. Condition number four (4) of the approval letter, dated May 21, 2009, states that “All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective”. Our records indicate that your business has not complied with this condition of approval.

The purpose of this letter is to inform you that if corrective actions are not taken, then the original decision making body may revoke the use permit, per City of Tempe Zoning and Development Code, Part 6, Chapter 9, Section 6-902.

Please contact me if you have any questions or concerns. Your cooperation in this matter is greatly appreciated.

Sincerely,



Dean Miller
Sr. Code Inspector
Development Services Department
480-350-8435

Copy: File

January 29, 2010

Mr. Khalil Abulaban
4704 South Kenwood Lane
Tempe, AZ 85282

**RE: HAREM NIGHTS - Use Permit
1630 East Apache Blvd.
PL090148/DS090389/ZUP09063**

Dear Mr. Abulaban:

We are requesting your presence at an administrative hearing to discuss the conditions of approval for your use permit for Harem Nights at 1630 East Apache Blvd (ZUP09063). Condition number four (4) of the approval letter dated May 21, 2009 stated that "All permits and clearances required by the Building Safety Division be obtained prior to the use permit becoming effective". Our records indicate that this condition has not been complied with.

Please be advised that the City of Tempe Zoning and Development Code Part 6, Chapter 9, Section 6-902 states that if the applicant has not taken corrective actions to resolve the issues related to the approval, then the original decision making body may revoke the use permit. We have scheduled the hearing for Friday, February 19, 2010 at 9:00 AM in the City of Tempe Development Services Department Conference Room located at 31 E. 5th Street, Tempe. Staff recommends that you be in attendance for the hearing to provide any relevant information and/or plans for possible corrective actions that may be taken to avoid the revocation of your use permit.

Should you have questions concerning this notice, please contact me directly at (480) 350-8435.

Sincerely,



Dean Miller
Senior Code Inspector
Development Services Department
480-350-8435

Copy: File
1630 E. Apache Blvd.

City of Tempe
P. O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
www.tempe.gov



Development Services
Planning

(480) 350-8331

May 25, 2010

Mr. Khalil Abulaban
Harem Nights
4704 South Kenwood Lane
Tempe, Arizona 85282

RE: **HAREM NIGHTS**
Revocation of use permit ZUP09063
PL090148 / ZUP09063

Dear Mr. Abulaban:

You are hereby advised that at the hearing held May 19, 2010, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code revoked ZUP09063 – use permit to allow a hookah lounge – due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code."

This use permit had been formerly approved for **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District on May 19, 2009.

If you have any questions, please contact me at (480) 350-8989.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa Collins'.

Lisa Collins
Planning Director

LC/dm

cc: Mr. Jeff Tamulevich/COT
Mr. Dean Miller/COT
Mr. Steve Abrahamson/COT
Mr. Shawn Daffara/COT
File

3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.

5. Request by the **KEEGAN RESIDENCE (PL090145)** (Pat Keegan, applicant/property owner) located at 1325 East Secretariat Drive in the AG, Agricultural District for:

ZUP09061 Use permit to allow an accessory building (ramada).

Mr. Pat Keegan was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued.

DECISION:

Mr. Williams approved PL090145/ZUP09061 subject to the following conditions of approval:

1. Obtain necessary clearances from the Building Safety Division.
2. The use permit is valid for the plans as submitted to the Hearing Officer.

6. Request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District for:

ZUP09063 Use permit to allow a hookah lounge.

ZUP09067 Use permit to allow live entertainment.

Ms. Tara Eivers was present to represent this case. TV's are available to watch sports events, entertainment is belly dancing only. The belly dancer provides her own music on a CD and there are two (2) shows of 20 minutes duration – one at 10 PM and one at 11 PM.

Shawn Daffara, staff planner, gave an overview of this case and stated calls of inquiry had been received since the staff report had been issued. He identified the location of the nearest Single Family Residential District to the north and that the live entertainment would only consist of belly dancing. The calls of inquiry had concerned the nature of the live entertainment and no letters of complaint had been received. Mr. Daffara confirmed in response to a question from Mr. Williams that this applicant is required to comply with the Smoke Free Arizona stipulations. No liquor is allowed to be served, just coffee, tea, soft drinks, water – there is no liquor license. Customers can bring in their own food from other sources but the applicant is not allowed to serve food on site.

Mr. Chuck Buss, Tempe resident of the University Heights neighborhood, stated that the biggest concern is that the building is ten (10) feet from a residential area. Residents had experienced noise problems from a bar that was in this location previously. This business has a very small parking lot and there are concerns about parking issues as overflow parking may occur on 12th Street. He presented thirteen (13) statements of opposition to this request to the Hearing Officer, noting that the lack of a neighborhood meeting generated the calls of inquiry to staff.

Mr. Williams asked staff whether a neighborhood meeting was required. Mr. Daffara responded that the Zoning and Development Code only requires that a neighborhood meeting be held in when issues of variances or PADs exist. Staff does recommend that neighborhood meetings be held when there are residential areas nearby use permit requests however they cannot require that the applicant(s) do so. Applicants who receive letters/inquires of concern from residents often decide to hold a neighborhood meeting in order to alleviate those issues of

concern. Mr. Daffara explained that there had been no calls or inquiry until after the staff report had been issued to the applicant.

Mr. Williams asked how long Harem Nights had been in operation. Mr. Daffara responded that they are not yet in operation so no track record as to the number of patrons, or issues of operation exist at this time. Mr. Daffara stated that based on staff's experience with other hookah lounges, the majority of patrons usually number 15 to 20 people. Mr. Daffara read the conditions of approval into the record for those present.

Mr. Christopher McKee, Tempe resident of the University Heights neighborhood, stated that the conditions of approval address the residents' concerns. He would recommend that the applicant seek an agreement for overflow parking on another lot. He asked that the applicant assure that the entertainment/patrons do not overflow into the parking lot or patio area.

Ms. Eivers explained that Harem Nights is an upscale place catering mainly to the 25 to 85 year age group. She is very conscious of the homeowners in the nearby area and would be happy to hold a neighborhood meeting even after the use permit is approved if the residents so desired. Everything will be indoors and there is no room for an outdoor patio. She assured Mr. Williams that she had no problem being accountable to the residents concerns. There are no other tenants of this center who have night time activities so parking should not be an issue. She expects that most people will like to come on the weekends when the belly dancer is present and estimated that there may be 10 to 40 patrons at that time.

In response to a question from Mr. Williams as to the seating availability, Ms. Eivers stated that on the floor itself there is seating for about 23 people. An upper area seats about 20 people comfortably and there are additional stools available.

Mr. Williams noted that in essence that the residents in the audience were in fact now having a neighborhood meeting. He asked if anyone had additional questions for this applicant. Mr. Buss returned to the podium to question Ms. Eivers about the current status of this business/security plan/parking. She responded that they were currently doing renovations. She explained that several of the parking lot lights were inactive and that the property owner would be rectifying that situation which relate to the security issue(s). A security plan is required to be implemented within thirty (30) days. The property owner has agreed to have the parking lights in operation by May 19th.

Mr. Buss noted that there had been a homeless contingent in this parking lot area. Ms. Eivers explained that she had been working with the Tempe Police Department on this issue and that there were a lot of more police officers driving thru this area to resolve this situation of homeless tenancy.

Mr. Buss asked what would be required should this business decided to expand in the future and the subsequent parking affect. Mr. Williams confirmed that they would be required to return to Development Services staff to obtain approval for anything of that nature. Ms. Eivers noted that their objective is to be a good neighbor.

DECISION:

Mr. Williams approved PL090148/ZUP09063/ZUP09067 subject to the following conditions of approval:

1. The use permit is valid for Harem Nights and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff or review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.

5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment shall not violate the City of Tempe Noise Ordinance.
9. Existing fluorescent lighting above entrance doors shall be operable from dusk until dawn. Staff will conduct evening inspection to verify.
10. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
11. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Contact Crime Prevention at (480) 858-6027 before June 19, 2009.
12. Live entertainment is restricted to live belly dancing only. ADDED BY STAFF
13. Live entertainment shall cease at 11:30 PM nightly. ADDED BY STAFF

-
7. Request by TEMPE TOWNE CENTER – URBAN CAMPFIRE (PL090150) (Steve Wolff, applicant; Tempe Towne Holding Company, property owner) located at 921 East University Drive in the CSS, Commercial Shopping and Services District for:

ZUP09064 Use permit to allow live entertainment.

Mr. Steve Wolff was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. This business owner had spoken with the adjacent business owner and obtained a petition of support from them for this request. The patio is located on the north side of the building.

At Mr. Wolff's request, Mr. Williams read the conditions of approval. Mr. Wolff stated that they are working with the Crime Prevention Department and the landlord will be removing the weeds. He acknowledged the need for a sign permit for the painted sign on the building.

DECISION:

Mr. Williams approved PL090150/ZUP09064 subject to the following conditions of approval:

1. The use permit is valid for Urban Campfire and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
3. Noise generated from the use shall conform to the City of Tempe Noise Ordinance requirements for noise control.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. The band and/or karaoke area to maintain a minimum 3' clearance from patio entrance to comply with ADA accessibility requirements.
6. The use permit is valid for the plans as submitted within the application.
7. The applicant shall work with the Tempe Police Department to update the Security Plan for the business. Contact the Crime Prevention Department at 480-858-6027.
8. Remove weeds from landscape areas on site by 06/19/09.
9. Obtain approval of painted sign on rear of building or remove by 06/19/09.

6. Request by the **DUPLEX AT THIRD STREET (PL100119)** (Glenn Odegard/Nordic Builders Inc., applicant /property owner) located at 839 West 3rd Street in the R-3, Multi-Family Residential Limited District for:

ZUP10040 Use permit standard to reduce the north and south side yard setbacks by twenty percent (20%) from 10 ft to 8 ft.

Mr. Glenn Odegard was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no public input has been received since the staff report was issued. She noted that the current address of 324 South Carney Avenue will be changed to 839 West 3rd Street in the near future. This request is to support a second story addition, she explained.

Mr. Williams questioned whether a use permit was required for this second story addition. Ms. Lesser responded that it was not.

DECISION:

Mr. Williams approved PL100119/ZUP10040 subject to the following conditions:

1. Obtain a separate Development Plan Review approval for the design of the addition.
2. Obtain all necessary clearances and permits from the Building Safety and Engineering Divisions.

7. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code."**

Request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District for:

ZUP09063 Use permit to allow a hookah lounge.
(Use permit was approved by the Hearing Officer at the May 19, 2009 HO hearing.)

Mr. Kahlil Abulaban was not present at this hearing.

Shawn Daffara, staff planner, gave a brief overview of the history of this business and the chronology of events to date. He noted that there was an attempt to submit plans in March 2010 however they were incomplete and were rejected. Mr. Abulaban requested a continuance due to a death in the family and this continuance was granted. Currently, no plans have been submitted or building permits issued.

In response to a question from Mr. Williams, Mr. Daffara confirmed that this business has been opened since the May 19, 2009 hearing.

Mr. Morena was present to represent this case and requested that the proceedings be continued. Mr. Williams asked when plans would be submitted in accordance with the submittal requirements. Mr. Morena was indicated an undetermined time.

Mr. Williams stated that this use permit with the accompanying conditions of approval was approved a year ago and since that date Mr. Abulaban has been enjoying the benefits without complying with the conditions. This is unfair to other applicants who go to the time and expense to comply with assigned conditions.

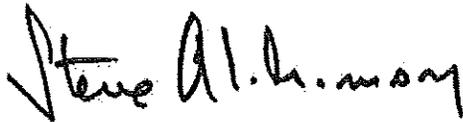
DECISION:

Mr. Williams approved revocation proceedings for PL090148 and revoked ZUP09063.

The next Hearing Officer public hearing will be held on Tuesday, June 1, 2010.

There being no further business the public hearing adjourned at 2:07 PM.

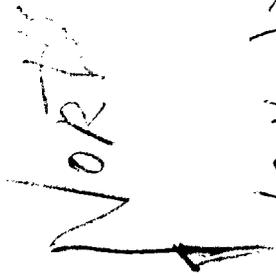
Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:

A handwritten signature in black ink that reads "Steve Abrahamson". The signature is written in a cursive style with a large initial "S".

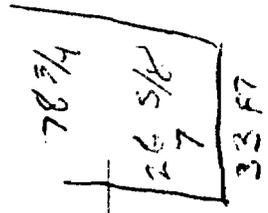
Steve Abrahamson, Planning & Zoning Coordinator
for David Williams, Hearing Officer

SA:dm

APACHE

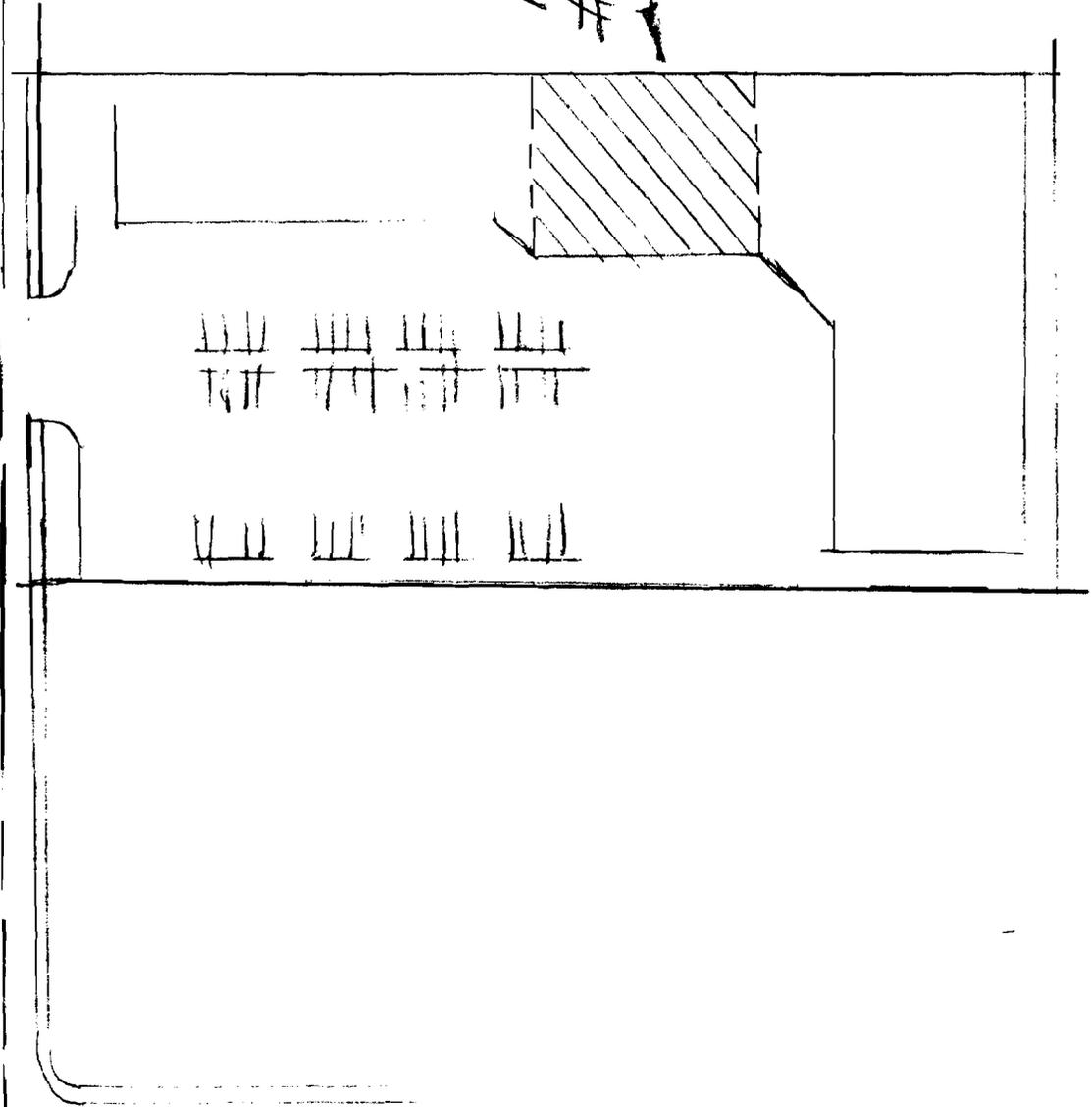


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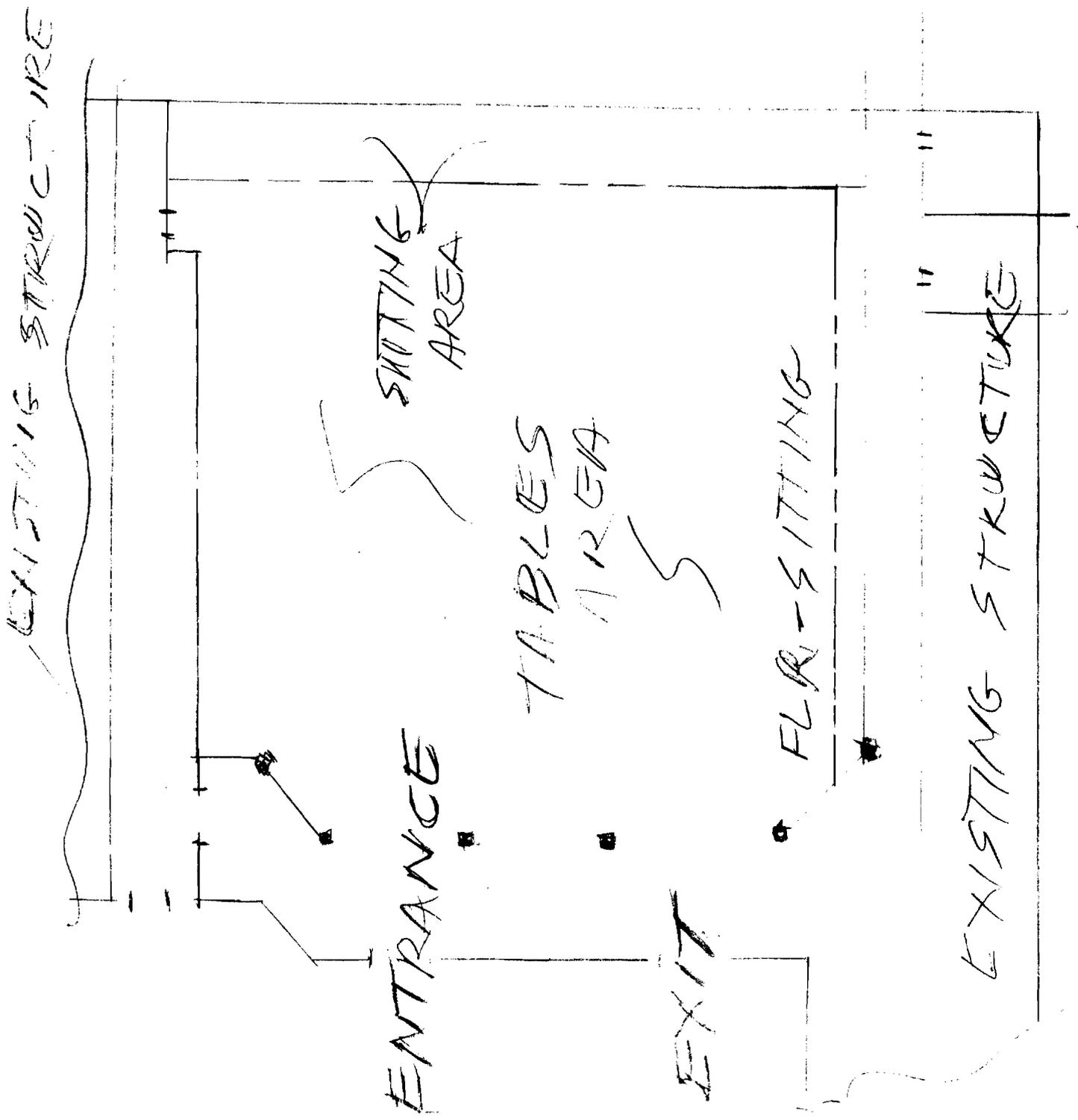


McCLINTOCK

SITE PLAN

FLOOR PLAN (NOT TO SCALE)

~~TRUCK~~
KHAIL BY LARSON
1630 East Beach #102
- Tempe, AZ 85282





HAREM NIGHTS

1630 EAST APACHE BOULEVARD,
SUITE NO. 103

PL090148

FRONT OF BUSINESS



SDS Consulting, Inc.
2375 East Camelback Road, #5127
Phoenix, Arizona 85016
602-405-8951

Date: 10-7-10

Project: Harem Nights Hookah Lounge (# PL090148/RVK10002)
Address: 1630 East Apache Trail
Tempe, AZ
Owner: Khalil Bei-Laban

Dear Council/~~BOARD~~:

We hereby request an appeal be heard by the City Council regarding this case.

Considerable progress has been made toward meeting city requirements. A building permit has, at long last and with considerable difficulty with the building department, been secured.

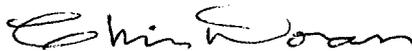
We are currently working on the code required improvements and plan to be done by November 30.

Approval of our appeal for an extension on the Use Permit will allow us to complete the improvements and to continue to operate our lounge in conformance with all city requirements.

Contact me if there are any further questions.

Thank you for your support in this matter,

Chris Doran, Architect for
Khalil Bei-Laban, Owner



MINUTES OF THE
DEVELOPMENT REVIEW COMMISSION
SEPTEMBER 28, 2010

Harry E. Mitchell Government Center
Tempe City Hall - City Council Chambers
31 E. 5th Street, Tempe, AZ 85281
6:00 PM (5:30 Study Session)

Commission Present:

Vanessa MacDonald, Chair
Stanley Nicpon
Monica Attridge
Dennis Webb
Paul Kent
Peggy Tinsley, Alternate
Mario Torregrossa, Alternate

Commission Not In Attendance:

Mike DiDomenico
Tom Oteri
Kolby Granville, Alternate

City Staff Present

Lisa Collins, Deputy Director Community Development
Steve Abrahamson, Planning & Zoning Coordinator
Ryan Levesque, Senior Planner
Kevin O'Melia, Senior Planner
Sherri Lesser, Senior Planner
Shawn Daffara, Code Inspector II

1. **CONSIDERATION OF MEETING MINUTES: 09/14/10**

On a motion by Commissioner Kent and seconded by Commissioner Torregrossa, the Commission with a vote of 4-0 (Nicpon, Webb, Tinsley abstained) approved the minutes from the September 14, 2010 meeting.

CONSENT AGENDA

On a motion by Commissioner Nicpon and seconded by Commissioner Kent, the Commission with a vote of 7-0 approved the Consent Agenda as recommended in the following staff reports and with the modified conditions as read by staff:

2. Request for **MEMO'S CAFE (PL080109/RVK10001)** (Ramez Rabata/Memos Cafe, applicant; Red Mountain Retail Group, property owner) to appeal the Hearing Officer's Decision of April 6, 2010 to revoke the Use Permit. Memo's Café is located at 1845 East Broadway Road, Suite No. 9, in the CSS, Commercial Shopping and Services District. The request includes the following:

RVA10001 - To appeal the revocation of a Use Permit to allow a hookah lounge/tobacco retailer.

THIS CASE WAS CONTINUED FROM THE JUNE 8, JUNE 22 AND AUGUST 24, 2010 MEETINGS

STAFF REPORT: [DRCr_MemosAppeal_092810.pdf](#)

THIS APPEAL WAS APPROVED, THE USE PERMIT WAS NOT REVOKED

4. Request for **PAPPAS RESIDENCE (PL100157)** (Michael Pappas, property owner, Tessa Jones/The Phactory, applicant) for a 7,000 +/- s.f., two unit multi-family development including a main residence and an accessory dwelling unit located at 55 West 13th Street in the R-2, Multi-Family Residential District. The request includes the following:

DPR10106 – Development Plan Review including site plan and building elevations.

THIS CASE WAS CONTINUED FROM THE JULY 13, 2010 MEETING

STAFF REPORT: [DRCR_PAPPASRESIDENCE_092810.PDF](#)

THIS CASE WAS CONTINUED TO THE OCTOBER 26, 2010 MEETING

5. Request for **CITY OF TEMPE SOUTH WATER TREATMENT PLANT ENVIRONMENTAL LABORATORY (PL100054)** (City of Tempe, property owner; James W. Dettmer, PE, Malcolm Pirnie, Inc., applicant) consisting of the addition to the South Water Treatment Plant of a 14,605 s.f. freestanding building on a +/- 53.37 acre site, located at 6600 South Price Road in the AG, Agricultural District. The request includes the following:

DPR10149 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCR_SWTP_ENVLAB_092810.PDF](#)

APPROVED WITH MODIFIED CONDITION NO. 10 TO READ AS FOLLOWS:

Locate the electrical service entrance section inside the building as is indicated **or in an enclosed, exterior yard.**

6. Request for **QUIK TRIP # 1400 (PL100107)** (Dave Mason, University LLC, property owner; Juan Romero, Quik Trip Corporation, applicant) consisting of a 6,071 s.f. convenience store with a 7,670 s.f. fuel sales canopy on a +/- 1.97 acre site, located at 2150 East University Drive in the GID, General Industrial District. The request includes the following:

ZUP10082 – Use Permit for fuel sales and convenience store in the GID District.

ZUP10083 – Use Permit for vehicle parking quantity in excess of 125% of required parking quantity.

DPR10148 -- Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCR_QUIKTRIP1400_092810.PDF](#)

APPROVED WITH MODIFIED CONDITION NO. 9 TO READ AS FOLLOWS:

Provide upgraded paving at each installed driveway apron consisting of ~~clay unit~~ or concrete ~~unit~~ paving. Extend ~~unit~~ paving in the driveway from the back of the accessible public sidewalk bypass to 20'-0" on site and from curb to curb at the drive edges.

9. Request for **CARLIFE PROFESSIONAL AUTO SERVICE (PL100205)** (L & G Ray LLC, property owner, Ridenour, Hieton & Lewis, applicant;) consisting of a new 7,249 sf. building on a vacant pad for an automotive business on approx. 1.31 acres, located at 9895 South Priest Drive in the PCC-2, Planned Commercial Center General District. The request includes the following:

ZUP10079 – Use Permit to allow vehicle repair.

DPR10144 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCr_CarLifeAuto_092810.pdf](#)

THIS CASE WAS CONTINUED TO THE OCTOBER 26, 2010 MEETING

10. Request for **FARMER ARTS SENIOR HOUSING (PL100244)** (City of Tempe, property owner, Huellmantel & Associates, applicant) consisting of a new 5-story multi-family housing complex with 56 units, all within 53,910 sf. of building area on approx. 0.92 acres, located at 601 South Farmer Avenue in the MU-4, Mixed Use High Density District within the Transportation Overlay District and a Planned Area Development Overlay. The request includes the following:

DPR10147 – Development Plan Review including site plan, building elevations and landscape plan.

SBD10020 – Preliminary Subdivision Plat for four (4) lots and one (1) tract.

THIS CASE WAS APPROVED AS RECOMMENDED IN THE STAFF REPORT

REGULAR AGENDA

3. Request for **HAREM NIGHTS (PL090148/RVA10002)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) to appeal the Hearing Officer's Decision of May 19, 2010 to revoke the Use Permit. Harem Nights is located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District. The request includes the following:

RVA10002 - To appeal the revocation of a Use Permit to allow a hookah lounge/tobacco retailer.

THIS CASE WAS CONTINUED FROM THE JULY 13 AND JULY 27, 2010 MEETINGS

STAFF REPORT: [DRCR_HAREMNIGHTSAPPEAL_092810.PDF](#)

This case was presented by Shawn Daffara and represented by Chris Duran. Mr. Daffara made a brief presentation on the history of the case and indicated that the applicant and his engineer have been in Building Safety plan review four times and just made their fifth submittal of corrections.

Mr. Duran indicated that he and the applicant have had considerable difficulty with the mechanical engineer hired to complete their portion of the submittal and that his involvement has only been within the last two plan reviews. After speaking with the Building Safety plan reviewer assigned to the case, Mr. Duran stated that it's his belief they are very close to being able to pull permits.

Commissioner Nicpon asked Mr. Duran at what percentage they are towards completion. Mr. Duran indicated they are at 90-95% complete at having plans completed and approximately 4 to 6 weeks away from getting permits.

Chair MacDonald verified that if the Commission voted to uphold the Hearing Officer's decision and revoke the Use Permit, the applicant would have a two week window to appeal this Commission's decision to the City Council.

Chair MacDonald opened the hearing to public input.

One person spoke in support of this case.

Chair MacDonald closed the hearing to public input.

Commissioner Nicpon stated that he felt the Commission should continue the case and give the business owner the chance to complete his submittal process and obtain building permits.

On a motion by Commissioner Webb and seconded by Commissioner Tinsley, the Commission with a vote of 6-1 (Commissioner Nicpon opposed) denied the appeal and upheld the Hearing Officer's decision to revoke the Use Permit.

-
7. Request for **VALLEY WESLEY RESIDENCE HALL (PL100108)** (First United Methodist Church of Tempe, property owner, ORB Architecture LLC, applicant) consisting of demolishing an existing building for a new 5-level residence hall with 57 bedrooms, all within 23,551 sf. of building area on approx. 1.45 acres, located at 215 East University Drive in the CC, City Center District within the Transportation Overlay District. The request includes the following:

DPR10140 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCR_VALLEYWESLEYRESHALL_092810.PDF](#)

This case was presented by Ryan Levesque and represented by Rich Barber, Architect. Mr. Barber made a brief presentation regarding the Wesley Foundation and how this student residence hall would tie into ASU and the campus housing.

Commissioner Attrill asked for clarification on the parking. Mr. Barber indicated that residents will be issued standard ASU parking passes and that onsite parking is for office, guests and services.

Commissioner Kent questioned whether this building had any historic significance. Mr. Levesque indicated that this property was listed as a "potential contributing property". Individually this property does not fall under any historic designation.

Commissioner Webb questioned the use and design of the brick exterior. Mr. Barber indicated that the brick design is similar to the existing sanctuary building. The brick line was held down so as not to dwarf the sanctuary building.

Chair MacDonald opened the hearing to public input.

Reverend Summers of the First United Methodist Church and resident, Don Dotts spoke in support of this case.

Brandon White, ASU student, questioned the applicant as to who could reside in the hall and whether is it open to only ASU students, and if it's open to all students or only members of the church.

Reverend Summers addressed Mr. White's question and indicated that the hall is intended for ASU students regardless of religious affiliation.

Chair MacDonald closed the hearing to public input.

On a motion by Commissioner Nicpon and seconded by Commissioner Kent, the Commission with a vote of 7-0 approved this Development Plan Review as recommended in the staff report.

-
8. Request for **QUIK TRIP # 460 (PL100187)** (Celeste Robb, Price & Southern Properties LLC, property owner; Juan Romero, Quik Trip Corporation, applicant) for a 6,071 sf. convenience store with a 9,598 sf. fuel sales canopy on a +/- 2.52 acre site located at 3300 South Price Road in the PCC-1, Planned Commercial Center District. The request includes the following:

ZUP10080 – Use Permit for fuel sales and convenience store in the PCC-1 District

ZUP10081 – Use Permit for vehicle parking quantity in excess of 125 percent of required parking quantity.

DPR10146 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCr_Quiktrip460_092810.pdf](#)

This case was presented by Sherri Lesser and represented by Charles Huellmantel, applicant. Ms. Lesser made a brief presentation which included the modification of Condition Nos. 19 and 25a to read as follows:

19. Limit light on paving surface under canopy to an average maximum of 30 foot-candles.

25a. Applicant will work with Planning staff to replace existing trees along Southern Avenue street frontage with canopy type shade trees per ZDC requirements.

Mr. Huellmantel made no formal presentation but stated that this is not a zoning case and the proposed use for this site is allowed and is appropriate for this site.

Commissioners Kent and Attridge asked for clarification of the landscaping in regards to the large trees on the southern portion of the site and the groundcover. Mr. Huellmantel stated there would be groundcover and the large trees would not be removed.

Commissioner Kent questioned the over parking of the site.

Mr. Huellmantel stated that there is significant use of the convenience store, even when customers are not stopping for fuel; therefore, the canopy spots are not included in the parking count.

Commissioner Tinsley read a letter of opposition into the record from Douglas Sanke. The letter stated that there are concerns regarding considerably larger amounts of traffic being introduced into the area and increasing carbon monoxide and other noxious fumes. It also mentions an inadequate landscape plan, issues regarding increased heat, noise and lighting.

Mr. Huellmantel stated that they took the landscaping concerns brought up in the letter to heart and have since modified the landscaping, not only removing existing landscaping but they will provide a new palette. With the modifications to the landscaping, this will directly assist with the heat-island effect.

Mr. Huellmantel respectfully disagreed with Mr. Sanke and indicated that the site is currently almost all asphalt with no landscaping or trees and this use is extremely appropriate for this site and is an area in need of service. This site is an extremely difficult site to develop and not well suited for very many uses. This site is a challenge to get to and with the studies the applicant has done, this site is ideal for people headed home in the evening, i.e., east on Southern and south on Price. Mr. Huellmantel also addressed the concern of additional traffic. Quik Trips are not destination businesses. They are frequented by people already in the area and driving by.

On a motion by Commissioner Nicpon and seconded by Commissioner Attridge, the Commission with a vote of 7-0 approved this Development Plan Review as recommended in the staff report with Condition Nos. 19 and 25a to read as follows:

19. Limit light on paving surface under canopy to an **average maximum** of 30 foot-candles.

25a. **Applicant will work with Planning staff to replace existing trees along Southern Avenue street frontage with canopy type shade trees per ZDC requirements.**

9. **ANNOUNCEMENTS** – Commissioner Nicpon asked staff about the next upcoming agenda on October 12th. Ms. Collins stated that the Pappas Residence was continued to that agenda and at this time, is the only case on the agenda.

The hearing adjourned at 7:10 P.M.

Prepared by: Lisa Novia, Administrative Assistant II
Reviewed by: Lisa Collins, Deputy Director Community Development Department



Lisa Collins, Deputy Director Community Development Department

APPROVED

Staff Summary Report



Council Meeting Date:

Agenda Item Number: _____

SUBJECT: This is a public hearing to recommend the approval of a Series 12 restaurant liquor license for Tres Amores, LLC, dba America's Taco Shop, 735 East University Drive.

DOCUMENT NAME: 20101104fsap01 124002 – LIQ LIC (0210-02)

COMMENTS: Terry Dennis Bortin is the Agent for this application.

PREPARED BY: Ana Perez, Financial Services Technician II (x8651)

REVIEWED BY: Bruce L. Smith, License & Collection Supervisor (x8509)

LEGAL REVIEW BY: David Park, Assistant City Attorney (x8907)

DEPARTMENT REVIEW BY: Ken Jones, Finance and Technology Director (x8504)

FISCAL NOTE: N/A

RECOMMENDATION: Recommend approval of this application because the applicant and location have met all city and county liquor licensing criteria.

ADDITIONAL INFO: Tempe city code requires that the Tempe Police Department conduct a background investigation on all liquor license applicants. Additionally, the city code requires that business locations be inspected by Fire Prevention, Building Safety and the County Health Department to ensure the establishment meets minimum city and county code licensing criteria. The Community Development Department has determined that a use permit is not required at this time. The premises has been posted for a 20-day period, per Arizona Revised Statute. No public opposition has been received regarding this liquor license application.

State statute requires municipalities to make one of three recommendations to the Arizona Department of Liquor Licenses and Control (AZ DOL):

1. Approval
2. Denial (this results in a public hearing set by the AZ DOL)
3. No recommendation (this may result in a public hearing set by the AZ DOL)

Staff Summary Report



Council Meeting Date: _____

Agenda Item Number: _____

SUBJECT: This is a public hearing to recommend the approval of a Series 04 In-State wholesaler's liquor license for Action Wine & Spirits USA, LLC, dba Action Wine & Spirits, 2055 East 5th Street.

DOCUMENT NAME: 20101104fsap02 124723 – LIQ LIC (0210-02)

COMMENTS: Billy Edward Shields is the Agent for this application.

PREPARED BY: Ana Perez, Financial Services Technician II (x8651)

REVIEWED BY: Bruce L. Smith, License & Collection Supervisor (x8509)

LEGAL REVIEW BY: David Park, Assistant City Attorney (x8907)

DEPARTMENT REVIEW BY: Ken Jones, Finance and Technology Director (x8504)

FISCAL NOTE: N/A

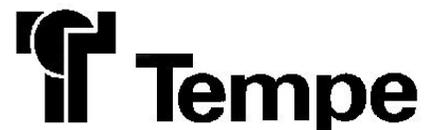
RECOMMENDATION: Recommend approval of this application because the applicant and location have met all city and county liquor licensing criteria.

ADDITIONAL INFO: Tempe city code requires that the Tempe Police Department conduct a background investigation on all liquor license applicants. Additionally, the city code requires that business locations be inspected by Fire Prevention, Building Safety and the County Health Department to ensure the establishment meets minimum city and county code licensing criteria. The Community Development Department has determined that a use permit is not required at this time. The premises has been posted for a 20-day period, per Arizona Revised Statute. No public opposition has been received regarding this liquor license application.

State statute requires municipalities to make one of three recommendations to the Arizona Department of Liquor Licenses and Control (AZ DOL):

1. Approval
2. Denial (this results in a public hearing set by the AZ DOL)
3. No recommendation (this may result in a public hearing set by the AZ DOL)

Staff Summary Report



Council Meeting Date:

Agenda Item Number: _____

SUBJECT: This is a public hearing to recommend the approval of a Series 12 restaurant liquor license for Luby's Fuddruckers Restaurants, LLC, dba Fuddruckers, 7470 South Priest Drive.

DOCUMENT NAME: 20101104fsap03 124313 – LIQ LIC (0210-02)

COMMENTS: Andrea Dahlman Lewkowitz is the Agent for this application.

PREPARED BY: Ana Perez, Financial Services Technician II (x8651)

REVIEWED BY: Bruce L. Smith, License & Collection Supervisor (x8509)

LEGAL REVIEW BY: David Park, Assistant City Attorney (x8907)

DEPARTMENT REVIEW BY: Ken Jones, Finance and Technology Director (x8504)

FISCAL NOTE: N/A

RECOMMENDATION: Recommend approval of this application because the applicant and location have met all city and county liquor licensing criteria.

ADDITIONAL INFO: Tempe city code requires that the Tempe Police Department conduct a background investigation on all liquor license applicants. Additionally, the city code requires that business locations be inspected by Fire Prevention, Building Safety and the County Health Department to ensure the establishment meets minimum city and county code licensing criteria. The Community Development Department has determined that a use permit is not required at this time. The premises has been posted for a 20-day period, per Arizona Revised Statute. No public opposition has been received regarding this liquor license application.

State statute requires municipalities to make one of three recommendations to the Arizona Department of Liquor Licenses and Control (AZ DOL):

1. Approval
2. Denial (this results in a public hearing set by the AZ DOL)
3. No recommendation (this may result in a public hearing set by the AZ DOL)

Staff Summary Report



Council Meeting Date: _____

Agenda Item Number: _____

SUBJECT: This is a public hearing to recommend the approval of a Series 06 bar liquor license for School of Rock Mill Ave, LLC dba School of Rock Mill Ave, 411 South Mill Avenue #210.

DOCUMENT NAME: 20101104fsap05 124621 – LIQ LIC (0210-02)

COMMENTS: Randy D. Nations is the Agent for this application.

PREPARED BY: Ana Perez, Financial Services Technician II (x8651)

REVIEWED BY: Bruce L. Smith, License & Collection Supervisor (x8509)

LEGAL REVIEW BY: David Park, Assistant City Attorney (x8907)

DEPARTMENT REVIEW BY: Ken Jones, Finance and Technology Director (x8504)

FISCAL NOTE: N/A

RECOMMENDATION: Recommend approval of this application because the applicant and location have met all city and county liquor licensing criteria.

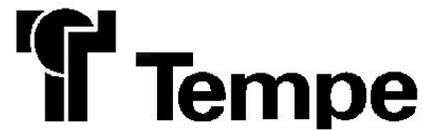
ADDITIONAL INFO: This application is a person to person transfer of a Series 6 bar liquor license from Club Peso Inc., dba Club Cherry, 411 South Mill Avenue #201, Randy D. Nations, Agent, to School of Rock Mill Ave, LLC, dba School of Rock Mill Ave, 411 South Mill Avenue #210, Randy D. Nations, Agent

Tempe city code requires that the Tempe Police Department conduct a background investigation on all liquor license applicants. Additionally, the city code requires that business locations be inspected by Fire Prevention, Building Safety and the County Health Department to ensure the establishment meets minimum city and county code licensing criteria. The Community Development Department has determined that a use permit is not required at this time. The premises has been posted for a 20-day period, per Arizona Revised Statute. No public opposition has been received regarding this liquor license application.

State statute requires municipalities to make one of three recommendations to the Arizona Department of Liquor Licenses and Control (AZ DOL):

1. Approval
2. Denial (this results in a public hearing set by the AZ DOL)
3. No recommendation (this may result in a public hearing set by the AZ DOL)

Staff Summary Report



City Council Meeting Date: 11/4/10

Agenda Item Number: _____

SUBJECT: Request approval of Amendment No. 1 to the Vehicle Lease Agreement between the City of Tempe and Downtown Tempe Community (DTC).

DOCUMENT NAME: 20101104cdcm01 DOWNTOWN TEMPE COMMUNITY, INC. (0109-30)

COMMENTS: This Amendment requires a maintenance schedule for the vehicles, drug and alcohol testing of drivers following any accident and revises the term of the lease with DTC for two years, to lease trucks and hand-held computer equipment to be used for parking enforcement. There is no cost to the City under the Amendment.

PREPARED BY: Chris Messer, Principal Planner (350-8562)

REVIEWED BY: Lisa Collins, Deputy Community Development Manager (350-8989)

LEGAL REVIEW BY: Judi Morgan, Deputy City Attorney (350-8779)

DEPARTMENT REVIEW BY: Chris Anaradian, Community Development Director (858-2204)

FISCAL NOTE: The Amendment No. 1 results in no change to the fiscal terms of the Lease. DTC leases the vehicles for \$10 per year per vehicle, and is responsible for all other costs of the vehicles (including, but not limited to licensing, taxes, insurance, maintenance, repairs, fuel, cleaning, and registration). DTC will pay for these costs from revenue generated from the City's parking meters per contract C2010-148.

RECOMMENDATION: Approve Amendment No. 1 to the Lease Agreement

ADDITIONAL INFO: On June 24, 2010, the City of Tempe entered into an Amended and Restated Parking Agreement with the DTC (C2010-148). Under the Agreement the City leases two trucks and hand-held computer equipment to the DTC for the purpose of parking enforcement. The Lease secures the transfer of the vehicles and equipment from the City to DTC. The Amendment No. 1 requires a maintenance schedule, drug and alcohol testing of drivers following any accident and revises the term of the Lease to two years.

ATTACHMENTS: Lease

AMENDMENT NO. 1

LEASE AGREEMENT BETWEEN THE CITY OF TEMPE
AND
THE DOWNTOWN TEMPE COMMUNITY
C2010-148A

This Amendment No. 1 amends that certain lease agreement made and entered into on September 16, 2010 (C2010-148) (“Lease”) between the Downtown Tempe Community, a private, non-profit Arizona organization (“DTC” or “Lessee”) and the City of Tempe, a municipal corporation organized under the laws of the State of Arizona (“City” or “Lessor”) as stated herein.

WHEREAS, City and DTC have previously entered into that certain Parking Agreement dated June 24, 2010 (“Agreement”); and

WHEREAS, the parties to the Agreement entered into the Lease referenced above to provide City-owned vehicles and units of equipment for use by DTC in the parking enforcement operations; and

WHEREAS, the parties wish to modify the Lease as follows, in order to ensure the continuous effective management and enforcement of the parking management.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties contained herein, the parties hereby amend the Lease as follows:

1. Section 2 *Term*, is hereby revised to read as follows: The term of this Lease shall commence on or about September 16, 2010 (“Effective Date”), and shall continue for approximately two (2) years, with an expiration of the Lease of September 16, 2012, unless otherwise terminated or cancelled pursuant to the terms of this Lease.
2. Section 7 *Maintenance*, is hereby revised to read as follows: DTC acknowledges and agrees that DTC shall be solely responsible for all maintenance, upkeep and repairs to equipment and Leased Vehicles, and agrees to undertake such obligations in a timely and efficient manner consistent with the Preventative Maintenance Requirements more specifically set forth on **Exhibit D**, attached hereto and incorporated herein by this reference, at DTC’s sole expense. DTC shall return all equipment and each Leased Vehicle to City in reasonably good condition, ordinary wear and tear excepted, at the expiration of the term of the Lease. In addition, DTC shall return each unit of equipment and Leased Vehicle to the City at the end of its useful life.

3. Section 11 *Insurance*, is hereby revised to read as follows: DTC shall provide insurance, evidence by certificate issued to City, for such amounts and coverages as are satisfactory and approved by City, with minimum amounts and coverages as specified by the City Manager or his authorized representative, naming the City, its employees, officers and directors, as additional insureds, to protect against loss arising out of this Agreement and the performance thereof. This provision and the naming of the City as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s). Insurance requirements shall be set forth on **Exhibit C** attached hereto and incorporated herein by this reference.

4. Drug and Alcohol Testing Requirements. DTC hereby represents and warrants to the City that it shall perform drug and alcohol testing on its employees and/or agents as set forth in **Exhibit E** attached hereto and incorporated herein by this reference, and additionally upon reasonable suspicion, as permitted by Arizona law. Further, DTC covenants to hold harmless and indemnify the City for any and all violations of this provision. DTC further agrees that the City shall not be liable and no liability shall attach to City for any negligence which may be imputed by law, arising out of the maintenance, operation or use of a Leased Vehicle by DTC, its employees, agents, officers or assigns, or create responsibility or liability on the part of the City for drug or alcohol testing of DTC, its employees, agents, officers or assigns.

5. All other provision of the Agreement where not inconsistent with this Amendment No. 1 shall remain binding on the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 this _____ day of _____, 2010.

Downtown Tempe Community, an Arizona non-profit organization

Name

Title

CITY OF TEMPE, a municipal corporation

Hugh Hallman, Mayor

ATTEST

City Clerk

APPROVED:

City Attorney

Exhibit D

Preventative Maintenance Guidelines

DTC shall perform the following preventative maintenance on the Leased Vehicles as follows:

1. Inspect Leased Vehicles every Three Thousand Five Hundred (3,500) miles as follows:

- Check for body damage.
- Listen for noises, or problems when pulling into shop. Verify no check engine light.
- Inspect headlights, high beams, turn signals, back up, brake, running, four ways & emergency lighting.
- Check tire press. and condition, including spare. Check for jack and lug wrench.
- Interior functions: power windows & locks, a/c functions, horn, siren, park brake, seats, and seatbelts.
- Check fluid level and condition of oil, p/s and transmission fluid, coolant, brake fluid. If low, determine cause.
- Inspect wiper blades, washer level and operation. Inspect windshield.
- Remove and inspect air filter & cab air filter. Clean or replace.
- Disconnect battery and clean battery terminals. Check battery level.
- General inspection of engine compartment.
- Inspect engine belts, tensioner and hoses.
- Check upper motor mounts, strut mounts or bushings, change engine oil and oil filter.
- Inspect steering and suspension. Steering gear, tie rods, center link, struts, shocks, idler arm, ball joints, upper and lower control arm bushings, sway bar bushings and end links.
- Grease ball joints, tie rods, steering components, etc.
- Remove wheels. Inspect all brake linings lines, wheel cylinders, hoses, and parking brake and cables.
- Inspect exhaust system for leaks or broken mounts or supports.
- Inspect drive train: axle shafts and seals, CV boots, U-joints. Check differential level.
- Inspect lower engine mounts and transmission mounts.
- Inspect for oil, transmission, brake fluid, p/s fluid, or coolant leaks.
- Rotate tires and reinstall. Torque to specification.
- Run engine and recheck oil level.
- Apply PM sticker and reset change oil light. Fill out oil slip.
- Test drive: check for noises, drivability, shifting, and braking.

2. Perform a transmission flush at Twenty One Thousand (21,000) miles; and,

3. Perform a flush of the cooling system, braking system and power steering system at Fifty Thousand (50,000) miles, or as needed prior to that time.

EXHIBIT E

Post Accident Testing:

DTC shall perform a controlled substances and alcohol test within thirty-two (32) hours and eight (8) hours, respectively, on each driver of an accident involving a Leased Vehicle at any time when:

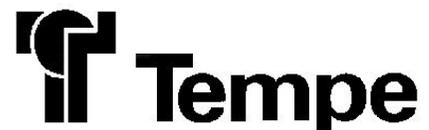
- 1) There is a loss of life, or
- 2) The driver receives a citation for a moving traffic violation arising from the accident, or
- 3) There is an injury requiring treatment away from the scene of the accident, or
- 4) A vehicle is required to be towed away from the scene, or
- 5) It appears the driver may have been at fault, when the actions of the DTC employee apparently caused, or cannot be discounted as having caused an accident.

In no event shall this section require the delay of necessary medical attention for any injured persons following an accident, or prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary medical care. DTC acknowledges and agrees that its driver, who is subject to post-accident testing as set forth herein, shall remain readily available for such testing. Failure to remain readily available shall be considered a refusal to submit for testing, and be disciplined by DTC accordingly, including possible termination. DTC agrees to subject its driver, subject to post-accident testing under this provision, to refrain from consuming alcohol for eight (8) hours following the accident, or until he or she submits to an alcohol test, whichever comes first.

If an alcohol test required by this provision is not administered within two (2) hours following the accident, DTC shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If an alcohol test required by this provision is not administered within eight (8) hours following the accident, DTC agrees to cease attempts to administer an alcohol test, and prepare and maintain the same record as stated herein.

If a drug or controlled substances test required by this section is not administered within thirty-two (32) hours following an accident, DTC shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. For purposes of this provision, a controlled substance shall have the following meaning: marijuana; cocaine; opiates; phencyclidine (PCP; amphetamines (including methamphetamines), or any form of the foregoing listed substances.

Staff Summary Report



Council Meeting Date: 11/4/10

Agenda Item Number: 5A8

SUBJECT: This is the introduction and first public hearing required by federal law to obtain citizen input regarding how funds could be allocated for the Community Development Block Grant (CDBG) and Home Programs for the 2011-2012 fiscal year. The second public hearing is scheduled for April 28, 2011.

DOCUMENT NAME: 20101104cdch01 COMMUNITY DEVELOPMENT BLOCK GRANT (0207-32)

COMMENTS: N/A

PREPARED BY: Craig Hittie, Affordable Housing Supervisor (480/350-8960)

REVIEWED BY: Liz Chavez, Housing Administrator (480/350/8958)

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (480/350-8814)

DEPARTMENT REVIEW BY: Chris Anaradian, Community Development Director (480/858-2204)

FISCAL NOTE: Expenses related to staff time required for administering these programs are subject to annual appropriation by the City Council.

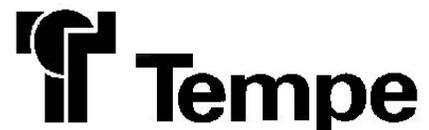
RECOMMENDATION: No action is required by the City Council at this public hearing.

ADDITIONAL INFO: The purpose of the first public hearing is to obtain input from citizens regarding how the estimated \$1,750,323 in Community Development Block Grant (CDBG) funds and \$502,093 in HOME funds might be allocated.

Through this hearing process, staff will prepare various funding alternatives for City Council review and selection of activities to fund in fiscal year 2011-2012. The preliminary selection of these activities will take place at the City Council Issue Review Session on March 24, 2011. After the Council's preliminary selection of the 2011-2012 program activities, an Action Plan of the City's proposed use of funds will be prepared. A second public hearing will be held on April 28, 2011 to gain further public comment prior to the adoption of the Action Plan on May 5, 2011. Once the final Action Plan is adopted, staff will submit the plan to the U.S. Department of Housing and Urban Development (HUD) for approval prior to the May 15, 2011 deadline.

All public service activities for the proposed 2011-2012 Annual Plan will be referred to Tempe Community Council for review and recommendation.

Staff Summary Report



Council Meeting Date: 11/4/10

Agenda Item Number: _____

SUBJECT: Request award of a design services contract with Damon S. Williams Associates, L.L.C. for Johnny G. Martinez Water Treatment Plant quality improvements.

DOCUMENT NAME: 20101104pwr02 JOHNNY G. MARTINEZ WATER TREATMENT PLANT (0811-03) PROJECT NO. 3201091

COMMENTS: Total cost for the design services contract is \$994,320.

PREPARED BY: Donna Rygiel, Engineering Contracts Administrator (x8520)

REVIEWED BY: Don Hawkes, Deputy PW Director/Water Utilities (x2660)
Andy Goh, Deputy PW Director/City Engineer (x8896)

LEGAL REVIEW BY: Judi Morgan, Deputy City Attorney (x8779)

DEPARTMENT REVIEW BY: Don Bessler, Public Works Director (x8205)

FISCAL NOTE: Sufficient funds are available in Capital Improvement Fund No. 3201091, Johnny G. Martinez Water Treatment Plant Expansion.

RECOMMENDATION: Award design services contract.

ADDITIONAL INFO: Improvements to the Johnny G. Martinez Water Treatment Plant (JGMWTP) are required in order to assure compliance with new federally mandated water quality standards and to replace equipment nearing the end of its serviceable lifespan.

New Environmental Protection Agency drinking water standards, which go into effect in 2012, limit the levels of disinfection by-products in drinking water. In response to the new standards, this project will include the addition of carbon dioxide and sodium hydroxide dosing systems, groundwater treatment and blending facilities and modifications to the finished water reservoir. The project will also include the replacement of carbon pumps, construction of a holding area for waste solids roll-off bins, a new oils storage area, pre-sedimentation basin drive shaft replacement and miscellaneous other improvements to the JGMWTP. The scope of work for this contract is to provide design and post-design services for these improvements.

Damon S. Williams Associates, L.L.C. was selected by a review committee as the most qualified firm for these services using a process pursuant to A.R.S. § 34-603. The qualifications based selection process includes evaluation of each firm's statement of qualifications in response to our request for qualifications (RFQ); holding selection panel interviews with at least three qualified firms based on selection criteria with relative weights as follows:

- 5% General description of the professional skills, experience and ability of the proposed firm;
- 20% Relevant experience and qualifications of the proposed firm;
- 20% Relevant experience of key project personnel;
- 20% Understanding of this project and approach to performing required services;

- 30% In depth discussion through question and answer session of the proposed firm's expertise, qualifications of key personnel and their knowledge related to this project, and;
- 5% Overall evaluation of the proposed firm and its ability to provide the required services.

Staff has negotiated the construction management services fee with Damon S. Williams Associates, L.L.C. and considers it reasonable for the scope of services.

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

CONTRACT FOR PROFESSIONAL SERVICES

This Contract is made and entered into on the 4th day of November, 2010, by and between the City of Tempe, an Arizona municipal corporation (“City”), and **Damon S. Williams Associates, L.L.C.**, an Arizona limited liability company (“Consultant”).

City engages Consultant to perform professional services for a project known and described as **Johnny G. Martinez Water Treatment Plant Water Quality Upgrades – Disinfection By-Products Control**, Project No. **3201091** (“Project”).

1. SERVICES OF CONSULTANT

Consultant shall perform the following professional services to City in conformance with applicable professional standards and in accordance with the degree of care and skill that a registered professional in Arizona would exercise under similar conditions:

- 1.1. Consultant shall provide design and post-design services, as described in Exhibit “A” attached.
- 1.2. Consultant has assigned Dusan Stanisic as the project manager for this Contract. Prior written approval by City is required in the event Consultant needs to change the project manager. Consultant shall submit the qualifications of the proposed substituted personnel to City for approval prior to any substitution or change.
- 1.3. Consultant shall prepare and submit a detailed opinion of probable cost of the Project.
- 1.4. Consultant shall follow and comply with the Public Improvement Project Guide as directed by City.
- 1.5. Consultant shall prepare plans and technical specifications per the requirements of the applicable chapters of the City’s Engineering Design Criteria Manual, latest revision, and the Maricopa Association of Governments (MAG) Uniform Standard Details for Public Works Construction as amended by City. All plans shall be prepared on CADD as required by City. The final original plans shall be submitted on 3 ml double matte black line mylar and shall be 24” x 36” in size.
- 1.6. Consultant shall submit all final construction documents in both hard copy and electronic format. Plans shall be MicroStation or AutoCADD compatible and all other documents shall be Microsoft Office compatible. The software version used shall be compatible to current City standards. Other support documents, for

example, structural calculations, drainage reports and geotechnical reports, shall be submitted in hard copy only.

- 1.7. Consultant shall obtain all necessary permits and licenses required for the performance of its work. Failure of Consultant to obtain said permits prior to the commencement of its work shall constitute a breach of this Contract.
- 1.8. Consultant shall perform the work in a manner and at times which do not impede or delay City's operations and/or functions.
- 1.9. Consultant shall be solely responsible for any repair, replacement, remediation and/or clean-up of any damage done by Consultant including any impairment of access to City or other lawful invitees, by such work performed on this Project.

2. TERM OF CONTRACT

Consultant shall complete all services within one thousand one hundred (1,100) calendar days of the date appearing on the "Notice to Proceed" issued by City. In the event delays are experienced beyond the control of Consultant, the schedule may be revised as determined by City in its sole discretion, and pursuant to Section 3, Consultant's Compensation.

3. CONSULTANT'S COMPENSATION

- 3.1. The method of payment for this Contract is payment by installments. Total compensation for the services performed shall not exceed \$994,320.00, unless otherwise authorized by City. This fee includes the sum of \$699,268.00 for design services; an amount not to exceed \$260,552.00 for post-design services based on hourly rates established in the attached Exhibit "A" incorporated hereby by this reference, and \$34,500.00 for reimbursable expenses, which in no event will ever be more than actual cost.
- 3.2. City shall pay Consultant by installments, each installment based upon monthly progress reports and related, detailed invoices submitted by Consultant. If detailed invoice(s) are approved by City, such installment payment shall be made within thirty (30) days after City's approval of the progress report and detailed invoice subject to the following limitations:
 - 3.2.1. Prior to approval of the preliminary design (60% plans), payments to Consultants shall not exceed 50% of the total Contract amount.
 - 3.2.2. Prior to approval of the final design documents, payments to Consultants shall not exceed 80% of the total Contract amount. The final approval and payment will be made within a reasonable period of time.
 - 3.2.3. If the scope of work of this Contract includes the preparation of studies, design concepts, or other investigations, progress payments shall not

exceed 80% of the total Contract amount prior to submittal of the final report deliverables.

- 3.2.4. Payment for reimbursable expenses shall be made during all phases based on actual expenses.
- 3.3. City at its discretion may, by written notification, waive the above limitations.
- 3.4. Consultant acknowledges and agrees that invoices shall be submitted to City for review and approval no more than sixty (60) days after work or services have been performed. City reserves the right to deny in whole or in part, payment to Consultant, including but not limited to, fees and expenses contained in any invoice not received by the City within sixty (60) days of the date such work or services were performed. This in no way shall be construed to waive or diminish City's rights and remedies for otherwise withholding funds under Arizona law.

4. CITY'S RESPONSIBILITIES

- 4.1. City shall designate a project manager during the term of this Contract. The project manager has the authority to administer this Contract and shall monitor compliance with all terms and conditions stated herein. All requests for information from or a decision by City on any aspect of the work shall be directed to the project manager.
- 4.2. City shall review requests for information related to the Project by Consultant and will endeavor to provide a prompt response to minimize delay in the progress of Consultant's work. City will also endeavor to keep Consultant advised concerning the progress of City's review of the work. Consultant agrees that City's inspection, review, acceptance or approval of Consultant's work shall not relieve Consultant of its responsibility for errors or omissions of Consultant or its subconsultant(s).
- 4.3. Unless included in Consultant's services as identified in Section 1, City may furnish with or without charge, upon Consultant's reasonable request, the following information to the extent it is within City's possession or control:
 - 4.3.1. One copy of its maps, records, laboratory tests, survey ties, and benchmarks, or other data pertinent to the services. However, Consultant shall be solely responsible for searching the records and requesting specific drawings or information and independently verifying said information.
 - 4.3.2. Available City data relative to policies, regulations, standards, criteria, studies, etc., relevant to the Project.

4.3.3. When required, title searches, legal descriptions, detailed ALTA Surveys, and environmental assessments.

5. TERMINATION AND DEFAULT

- 5.1. City shall be entitled to terminate this Contract at any time, in its discretion. In addition, City may terminate this Contract for default, non-performance, breach or convenience, or abandon any portion of the Project for which services have not been fully or properly performed by Consultant. Termination shall be commenced by delivery of written notice delivered to Consultant, personally or by certified mail at 2355 E. Camelback Road, Suite 700, Phoenix, Arizona 85016. Termination shall be effective upon fourteen (14) days of delivery of notice to Consultant. In addition, this Contract may be terminated pursuant to A.R.S. § 38-511.
- 5.2. Upon the occurrence of Consultant's default, non-performance or breach of the Contract, City may recover any and all damages permitted by law or in equity against Consultant, in addition to termination of the Contract, including but not limited to compensatory damages, together with all costs and expenses as set forth in Section 12 herein.
- 5.3. In the event of Consultant's default, non-performance or breach, City agrees to, before exercising any right or remedy available to it, give Consultant written notice of the default, non-performance or breach. For the thirty (30) days following such notice, Consultant shall have the right to cure such default, non-performance or breach.
- 5.4. If Consultant fails to cure, immediately after receiving notice of termination from City, Consultant shall discontinue performance under this Contract and proceed to close said operations under this Contract. Consultant shall submit a detailed breakdown of completed work to City for evaluation. City shall have the right to inspect Consultant's work to analyze the services completed. Payment to Consultant shall be determined by City upon approval or disapproval of the services completed as of the date of delivery of notice of termination, and pursuant to Section 5.9.
- 5.5. Within ten (10) days of receipt of notice of termination as set forth herein, Consultant shall deliver to City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by Consultant under the Contract, entirely or partially completed, together with all unused materials supplied by City.
- 5.6. In the event of such termination or abandonment, Consultant shall be paid only for those services performed in a good and workmanlike manner, in accordance with all plans, specifications and governmental requirements completed prior to receipt of said notice of termination, subject to approval by City. To the extent

permitted by this Contract, such payment may include reimbursable expenses then incurred by Consultant, in City's sole discretion.

- 5.7. If the remuneration scheduled hereunder is based upon a fixed fee or definitely ascertainable sum, the portion of such sum payable shall be proportionate to the percentage of services completed by Consultant as determined and approved by City based upon the scope of work set forth in Exhibit "A." However, in no event shall the fee exceed that set forth in Section 3 of this Contract.
- 5.8. City shall make a determination as to approval or denial of any requested final payment within sixty (60) days after Consultant has delivered the last of the completed items and the final appraisal has been submitted to City.
- 5.9. The parties agree that in the event of any damages suffered by City as a result of any delay, default, non-performance or breach by Consultant, Consultant agrees to reimburse City ten percent (10%) of the Contract amount per Section 3.1 for damages caused by its delay. This sum may be deducted from Consultant's payment or anticipated payment for failure to deliver and/or perform as specified. No premium will be awarded to Consultant for delivery and/or performance within the Contract term. Waiver by City of any of the provisions contained in this Section 5.9, or by way of the extension of the Contract term, shall in no way be deemed to waive or diminish City's rights available by law or in equity under the Contract.

6. INSURANCE

Without limiting any obligations or liabilities, Consultant, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance, and with forms reasonably satisfactory to City. Each insurer shall have a current A.M. Best Company, Inc. rating of not less than A-VII. Use of alternative insurers requires prior approval from City.

6.1. General Clauses

- 6.1.1. Additional Insured. The insurance coverage, except workers' compensation and professional liability, required by this Contract, shall name City, its agents, representatives, directors, officials, and employees, as additional insured, and shall specify that insurance afforded Consultant shall be primary insurance, and that any self insured retention and/or insurance coverage carried by City or its employees shall be excess coverage, and not contributory coverage to that provided by Consultant. This provision and the naming of the City as an additional insured shall in no way be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(s).

- 6.1.2. Coverage Term. All insurance required herein shall be maintained in full force and effect until services required to be performed under the terms of this Contract are satisfactorily completed and formally accepted; failure to do so shall constitute a material breach of this Contract.
- 6.1.3. Primary Coverage. Consultant's insurance shall be primary insurance as respects City, and any insurance or self insurance maintained by City shall be in excess of Consultant's insurance and shall not contribute to it.
- 6.1.4. Claim Reporting. Consultant shall not fail to comply with the claim reporting provisions of the policies or cause any breach of a policy warranty that would affect coverage afforded under the policy to protect City.
- 6.1.5. Waiver. The policies for workers' compensation and general liability shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, representatives, directors, officers, and employees for any claims arising out of the work of Consultant.
- 6.1.6. Deductible/Retention. The policies may provide coverage, which contains deductibles or self-insured retentions. Such deductible or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Consultant shall be solely responsible for deductible or self-insured retentions and City may require Consultant to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 6.1.7. Policies and Endorsements. City reserves the right to request and to receive, within ten (10) working days, information on any or all of the above policies or endorsements.
- 6.1.8. Certificates of Insurance. Prior to commencing services under this Contract, Consultant shall furnish City with certificates of insurance, or formal endorsements as required by the Contract, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Contract are in full force and effect. Such certificates shall identify this Contract by referencing the Project number and/or Project name and shall provide for not less than thirty (30) days advance written notice by certified mail to City of cancellation or termination of insurance.
- 6.1.9. Subconsultants/Contractors. Consultant shall include all subconsultants and subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subconsultant and subcontractor.

- 6.2. Workers' Compensation. Consultant shall carry workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of the services; and employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

In case services under this Contract are subcontracted, Consultant shall require all subconsultant(s) to provide workers' compensation and employer's liability to at least the same extent as provided by Consultant.

- 6.3. Automobile Liability. Consultant shall carry commercial/business automobile liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000 each occurrence regarding any owned, hired, and non-owned vehicles assigned to or used in performance of Consultant services. Coverage will be at least as broad as coverage Code 1 "any auto" (Insurance Service Office policy form CA 0001 1/87 or any replacements thereof). Such coverage shall include coverage for loading and unloading hazards.

- 6.4. Commercial General Liability. Consultant shall carry commercial general liability insurance with a combined single limit of not less than \$1,000,000. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office policy form CG 0002 1-11-88 or any replacement thereof.

In the event the general liability insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision (also known as "cross liability" and "separation of insured").

- 6.5. Professional Liability. Consultant retained by City to provide the engineering services required by the Contract will maintain professional liability insurance covering errors and omissions arising out of the services performed by Consultant or any person employed by it, with an unimpaired limit of not less than \$1,000,000 each claim and \$1,000,000 all claims, or 10% of the construction budget, whichever is larger. In the event the insurance policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of services as evidenced by annual certificates of insurance.

- 6.6. Property Coverage – Valuable Papers. Consultant shall carry property coverage on all-risk, replacement cost, agreed amount form with valuable papers insurance sufficient to assure the restoration of any documents, memoranda, reports, or

other similar data relating to the services of Consultant used in the completion of this Contract.

7. HEALTH INSURANCE REQUIREMENTS

- 7.1. Consultant must certify that it has or will offer health insurance to all eligible employees working on services set forth in this Contract prior to the performance of any work or services. An affidavit certifying such offering must be signed in a form approved by City. All required health insurance must be maintained during the entire time of the Contract with City. Health insurance pursuant to this Section 7 is not required for temporary employees or students working part-time who are enrolled in a recognized educational institution.
- 7.2. The health insurance requirements herein shall apply to all of Consultant's eligible employees directly involved with the services set forth in this Contract, including support and administrative personnel.
- 7.3. Any and all complaints concerning violations of the health insurance requirements shall be filed, in writing, with the City's Public Works Department, within thirty (30) days from discovery of a potential violation. An administrative hearing will be held before the Public Works Manager, and a written decision of findings will be provided to the parties to the hearing within ten (10) days thereafter. Appeal from the decision of the Public Works Manager may be made within ten (10) days of the date of the decision by filing a notice of appeal in writing with the Public Works Department. If an appeal is timely filed, an administrative hearing will be held before an administrative hearing officer appointed by the City Manager. The decision of the administrative hearing officer shall be final.
- 7.4. Penalties for failing to comply with this Section 7 include, but are not limited to the following: Consultant may be barred from bidding on, or entering into any Public Works contract with City for a period of three (3) years from the execution of the Contract.
- 7.5. All Consultants subject to the health insurance requirements shall post in English, notice of the health insurance requirements at their office and at the job site.

8. WORK FOR HIRE AND OWNERSHIP OF DELIVERABLES

- 8.1. Consultant shall ensure that all the results and proceeds of Consultant's and any and all work on the Project and any related projects, including that of all agents, employees, officers, and contractors, shall be owned by City, including the copyright thereto, as work for hire. In the event, for any reason, such results and proceeds are not deemed work for hire, Consultant shall be deemed hereby to have assigned to City all of its right, title and interest in such results and proceeds and content to City, without limitation.

- 8.2. All work products (electronically or manually generated), including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Contract, are the property of City and are to be delivered to City on the particular type of storage media on which they are stored (e.g. CD, thumb drive, etc.) before the final payment is made to Consultant. City shall retain ownership of these original works. If approved in writing by City, Consultant may retain the originals and supply City with reproducible copies of the work.

9. CONFLICT OF INTEREST

- 9.1. Consultant agrees to promptly disclose any and all financial and/or economic interest in the property, or any property affected by the work, or the Project itself other than as set forth herein, existing prior to the execution of this Contract. Further, Consultant agrees to promptly disclose any financial or economic interest in the Project property or any property affected by the work, if Consultant gains such interest during the course of this Contract.
- 9.2. If Consultant gains any financial or economic interest in the Project during the course of this Contract, this may be grounds for terminating this Contract at the sole discretion of City.
- 9.3. Consultant shall not engage the services on this Contract of any present or former City employee who was involved as a decision-maker in the selection or approval processes, or who negotiated or approved billings or contract modifications for this Contract.
- 9.4. Consultant agrees that it shall not perform services on this Project for any other contractor, subcontractor, or any supplier, other than City. In addition, Consultant shall not negotiate, contract, or make any agreement with a contractor, subcontractor, or any supplier with regard to any of the work under this Contract, or any services, equipment or facilities to be used on this Project other than with City.

10. COVENANT AGAINST CONTINGENT FEES

Consultant affirms that it has not employed or retained any company or person, other than a bona fide employee working for Consultant to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the Contract. For breach or violation of this clause, City may terminate this Contract without liability, or in its discretion may deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

11. INDEMNIFICATION

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless City, its agents, officers, officials, and employees from and against all claims, damages, losses, liability and/or expenses, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, mistakes or omissions in the work, services, or professional services of Consultant, its agents, employees, or any other person for whose negligent acts, errors, mistakes or omissions in the work, services, or professional services Consultant may be deemed legally liable in the performance of this Contract, or any breach of the Contract. Consultant's duty herein shall arise in connection with any and all claims for damage, loss, liability and/or expenses attributable to bodily injury, sickness, disease, death, or injury to, impairment or destruction of any person or property including loss of use resulting therefrom. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

12. DISPUTE RESOLUTION

In the event of a dispute concerning or in any way connected to the Contract or subject Project, the parties agree that the unsuccessful party shall pay to the prevailing party a reasonable sum for attorneys' fees, including taxable and non-taxable costs, fees, costs and disbursements of experts, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. In addition, should City retain and/or utilize legal counsel as a result of a breach by Consultant of any term, covenant or provision of this Contract, in addition to paying any recovery owed to City and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, Consultant shall reimburse City for reasonable attorneys' fees, taxable and non-taxable costs and disbursements, incurred by City in enforcing Consultant's obligations, whether or not a legal action is commenced, including but not limited to the cost of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

13. ADDITIONAL SERVICES

Additional services which are outside the scope of basic services contained in this Contract shall not be performed by Consultant without prior written authorization from City, at City's sole discretion. Additional services, when authorized by an executed contract or an amendment to this Contract shall be compensated for by a fee mutually agreed upon between City and Consultant.

14. PROHIBITION ON ASSIGNMENT

This Contract and all duties and obligations of Consultant set forth in this Contract shall not be assignable except by prior written consent of City, and such prohibition shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of Consultant.

15. MISCELLANEOUS PROVISIONS

- 15.1. Lawful Presence in the United States. Pursuant to A.R.S. §1-502, any individual/sole proprietor who applies for local public benefits by signing this Contract shall also sign a sworn affidavit (Exhibit B) and present one of the documents listed on the affidavit to verify lawful presence in the United States. This Contract shall not be fully executed by the City if the individual/sole proprietor fails to sign the affidavit and present one of the listed documents.
- 15.2. Equal Opportunity. Consultant covenants for itself, its employees, agents, assigns and all persons claiming under or through it, that it shall comply with all applicable federal, state, and local laws and ordinances at the time of execution of this Contract and shall not discriminate against or segregate any person or group of persons any person on account of race, color, religion, gender, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition in the performance of this Contract and shall comply with the terms and intent of all applicable federal, state and local governance concerning nondiscrimination. Consultant agrees to post hereinafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of this clause.
- 15.3. Legal Compliance. Consultant agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Contract, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, and the Arizona Fair and Legal Employment Act, and all amendments thereto, along with all attendant laws, rules and regulations. Consultant acknowledges that a breach of this warranty is a material breach of this Contract and Consultant is subject to penalties for violation(s) of this provision, including termination of this Contract. City retains the legal right to inspect the documents of any and all Consultants, subconsultants and sub-subconsultants performing work and/or services relating to the Contract to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of Consultant. Consultant hereby agrees to indemnify, defend and hold City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

- 15.4. Specially Designated Nationals and Blocked Persons List. Consultant represents and warrants to City that neither Consultant nor any affiliate or representative of Consultant (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order No. 13224, 66 Fed.Reg. 49079 (“Order”); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s); (iii) is engaged in activities prohibited in the Order; or (iv) has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering. In addition, Contractor certifies that it does not have a scrutinized business operation in either Iran or Sudan.

Consultant further agrees to include the provisions set forth in Sections 15.1 through 15.3 in any and all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Contract.

- 15.5. Effective Date. This Contract shall be in full force and effect only when it has been approved by the City Council of the City of Tempe, Arizona and when executed by the duly authorized City officials and the duly authorized agent of Consultant.
- 15.6. Governing Law. This Contract shall be governed and interpreted by the laws of the State of Arizona.
- 15.7. Exhibits. All exhibits attached to this Contract are made a part of and are incorporated into, this Contract. If any inconsistencies exist between this Contract and any exhibit hereto, the terms of this Contract shall govern.
- 15.8. Force Majeure. Any prevention, delay or stoppage of this Project for a cause beyond the reasonable control of Consultant due to acts of God, acts of war or terrorism, fire or other casualty, shall, notwithstanding anything to the contrary contained herein, excuse the performance of Consultant, for a period equal to such prevention, delay or stoppage. For purposes of this Section 15.7, a cause shall not be deemed beyond a party’s control if it is within the control of such party’s agents, employees, assigns, contractors or subcontractors.
- 15.9. Entire Agreement. This Contract contains all of the agreements of the parties with respect to the Project and related matters, and no prior agreement, negotiations, postings, offerings, or understanding pertaining to any such matter shall be effective for any purpose unless expressly contained herein.
- 15.10. Consultant’s Good Standing. Consultant hereby warrants and represents that it is an Arizona limited liability company, licensed to do business in the state of Arizona and currently in good standing, and that it is not now in violation of any

agreement, instrument, contract, law, rule or regulation by which Consultant is bound.

- 15.11. Independent Contractor. Nothing contained in this Contract shall be deemed or construed by the parties hereto or otherwise, to create the relationship of principal and agent, partnership, joint venturer, employer and employee, or any association between City and Consultant. Consultant is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to Consultant hereunder or for any and all services or materials provided by or rendered to Consultant hereunder in connection with the work set forth in this Contract.
- 15.12. Severability. If any provision of this Contract shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and every other term and provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 15.13. Time is of the Essence. Time is of the essence in this Contract and each and every provision herein, except as may expressly be provided in writing by City.
- 15.14. No Waiver. No breach or default hereunder shall be deemed to have been waived City, except by a writing to that effect signed on behalf of City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after written notice thereof and demand by City for strict performance of this Contract. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of City.
- 15.15. Survival. Any and all representations, obligations, indemnities, warranties, covenants, conditions and agreements contained in this Contract which are expressed as surviving the expiration or earlier termination of this Contract, or by their nature, are to be performed, observed or survive, in whole or in part, after the termination or expiration of this Contract term, shall survive the termination or expiration of this Contract.
- 15.16. Retention of Records. City, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Contract. Consultant will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or five (5) years following termination of this Contract.

- 15.17. Antitrust Violations. City and Consultant recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore, Consultant assigns to City any and all claims for such overcharges. Consultant in all subcontracts shall require all subcontractors to likewise assign all claims for overcharges to City.
- 15.18. Headings. The heading use in this Contract is for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 15.19. No Construction Against Drafting Party. Each party acknowledges that it has had an opportunity to review the Contract with counsel, and such documents shall not be construed against any party that is determined to have been the drafter of the documents.
- 15.20. Notices to Parties:

All notices pursuant to this Contract shall be made in writing and delivered or mailed by certified mail to the parties at the following addresses:

CITY:

Andy Goh, City Engineer
 City of Tempe
 Public Works/Engineering Dept.
 P.O. Box 5002
 Tempe, AZ 85280

CONSULTANT:

Dusan Stanisic
 Damon S. Williams
 Associates, L.L.C.
 2355 E. Camelback Road, Suite 700
 Phoenix, AZ 85016

- 15.21. Non-Appropriation of Funds. If funds appropriated by the City Council or otherwise allocated to perform the work becomes unavailable for payment by City under this Contract, City may delay the work for a period up to six (6) months, after which date if no funds are legally available, City may terminate the Contract at City's sole option. In case of any such delay by City, Consultant may suspend performance of work or services as applicable. However, nothing herein shall be construed to allow termination of the Contract by Consultant for such delay.

[SIGNATURE PAGE TO FOLLOW]

**Johnny G. Martinez Water Treatment Plant Water Quality Upgrades – Disinfection By-Products Control
Project No. 3201091**

DATED this _____ day of _____, 2010.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

By: _____
Public Works Director

ATTEST:

Recommended By:

City Clerk

Deputy PW Director/City Engineer

APPROVED AS TO FORM:

City Attorney

Consultant warrants that the person who is signing this Contract on behalf of Consultant is authorized to do so and to execute all other documents necessary to carry out the terms of this Contract.

CONSULTANT
Damon S. Williams Associates, L.L.C.

Signature

Printed Name

Title

Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT B
AFFIDAVIT DEMONSTRATING LAWFUL PRESENCE IN THE UNITED STATES

ARS §§1-501 and 502 require completion of the form to apply to the City for a local public benefit (defined as a grant, contract or loan). You must demonstrate through the presentation of one of the following documents that you are lawfully present in the United States.

LAWFUL PRESENCE IN THE UNITED STATES CAN BE DEMONSTRATED BY PRESENTATION OF ONE (1) OF THE DOCUMENTS LISTED BELOW.

Please present the document indicated below to the City. If mailing the document, attach a copy of the document to this Affidavit. (If the document may not be copied, present the document in person to the City for review and signing of the affidavit.)

- _____ 1. An Arizona driver license issued after 1996.
Print first 4 numbers/letters from license: _____
- _____ 2. An Arizona non-operating identification License.
Print first 4 numbers/letters: _____
- _____ 3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
Year of birth: _____: Place of birth: _____
- _____ 4. A United States Certificate of Birth abroad.
Year of birth: _____: Place of birth: _____
- _____ 5. A United States passport.
Print first 4 numbers/letters on Passport: _____
- _____ 6. A foreign passport with a United States Visa.
Print first 4 numbers/letters on Passport _____
Print first 4 numbers/letters on Visa _____
- _____ 7. An I-94 form with a photograph.
Print first 4 numbers on I-94: _____
- _____ 8. **A United States Citizenship and Immigration Services Employment Authorization Document (EAD).**
Print first 4 numbers/letters on EAD: _____
- _____ 9. **Refugee travel document.**
Date of Issuance: _____ Refugee Country: _____
- _____ 10. **A United States Certificate of Naturalization.**
Print first 4 digits of CIS Reg. No.: _____
- _____ 11. **A United States Certificate of Citizenship.**
Date of Issuance: _____ Place of Issuance: _____
- _____ 12. **A tribal Certificate of Indian Blood.**
Date of Issuance: _____ Name of Tribe: _____
- _____ 13. **A tribal or Bureau of Indian Affairs Affidavit of Birth.**
Year of Birth: _____ Place of Birth: _____

I DO SWEAR OR AFFIRM UNDER PENALTY OF LAW THAT I AM LAWFULLY PRESENT IN THE UNITED STATES AND THAT THE DOCUMENT I PRESENTED ABOVE AS VERIFICATION IS TRUE.

Signature

Business/Company (if applicable)

Print Name

Address

Date: _____

City, State, Zip Code

OFFICE USE ONLY: EMPLOYEE NAME: _____
EMPLOYEE NUMBER: _____

ALL VIOLATIONS OF FEDERAL IMMIGRATION LAW SHALL BE REPORTED TO 1-866-347-2423.

EXHIBIT A



DAMON S. WILLIAMS ASSOCIATES, LLC
2355 East Camelback Road, Suite 700 ☉ Phoenix, Arizona 85016-3458
Phone: 602-265-5400 ☉ Fax: 602-265-5632
www.dswa.net

Principals
Damon S. Williams, P.E.
Dusan Stanistic, P.E.
Glen W. Roth, P.E.
Chad Seidel, Ph.D., P.E.

September 27, 2010

Mr. Philip C. Brown P.E.
City of Tempe
Public Works Department
31 East Fifth Street
Tempe, AZ 85281

Re: Johnny G. Martinez WTP Water Quality Upgrades Disinfection By-Products Control
Project No. 3201091

Dear Mr. Brown,

Attached is our professional engineering services proposal for the City of Tempe Water Utilities Department Johnny G. Martinez WTP Water Quality Upgrades Disinfection By-Products Control project. We propose to complete our design services for a lump sum amount of \$699,268.00 and furnish engineering during construction services on a time and material basis, for a not to exceed amount of \$260,552.00. The total proposed amount for all services including reimbursable expenses is \$994,320.00.

Thank you for the opportunity to assist the City with this important project. We are looking forward to working with you and other City staff. Please feel free to contact me with any questions at (602) 217-1027, or at dstanistic@dswa.net.

Very truly yours,

DAMON S. WILLIAMS ASSOCIATES, L.L.C.

A handwritten signature in black ink that reads "Dusan Stanistic".

Dusan Stanistic, P.E.
Principal

DSW/File

A small, handwritten signature or set of initials in the bottom right corner of the page.



**City of Tempe
Water Utilities Department**

**Johnny G. Martinez WTP
Water Quality Upgrades
Disinfection By-Products Control
Project No. 3201091**

**Engineering Services
Proposal**

September 27, 2010

DSWA
DAMON S. WILLIAMS ASSOCIATES, LLC

RS



PROJECT SCOPE OF WORK, FEE & SCHEDULE PROPOSAL

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Damon S. Williams Associates, L.L.C. (DSWA) is proposing to provide design and construction services for the City of Tempe (City) Water Quality Upgrades - Disinfection Byproducts (DBP) Control Project at the City's Johnny G. Martinez Water Treatment Plant (JGMWTP).

GENERAL

The City operates the JGMWTP that treating and supplying drinking water to its residents. As a result of a reaction between disinfectants used to treat drinking water and natural organic matter (NOM) in the source water from the SRP Canal, Disinfection Byproducts (DBPs) are formed including Total Trihalomethanes (TTHM) and Haloacetic Acids (HAA5). The City needs to comply with Stage 1 and upcoming Stage 2 DBP Rules to meet the maximum contaminant level (MCL) of 80 ug/L for TTHM and 60 ug/L for HAA5. The Stage 1 DBP Rule requires sampling throughout the water distribution system and compliance based on a system-wide Running Annual Average (RAA). The Stage 2 DBP Rule, which requires compliance starting in second quarter of 2012, is based on a locational RAA (LRAA), which in essence requires that all compliance points, on an annual average basis, have water with less than the DBP MCLs.

The objective of this project is to design and implement JGMWTP upgrades primarily aimed at addressing the upcoming Stage 2 Disinfection By-Product Rules. Other modifications to improve overall plant performance are also included. It is anticipated that the project will be delivered via a Construction Manager at Risk (CMAR) delivery method in two construction packages. The first package (Task 1000) will focus on implementing enhanced coagulation and other minor improvements at the JGMWTP. The second package (Task 2000) will implement ground water treatment and/or blending and additional minor improvements. Services during construction in this scope of work (Task 3000) are assumed for both construction packages.

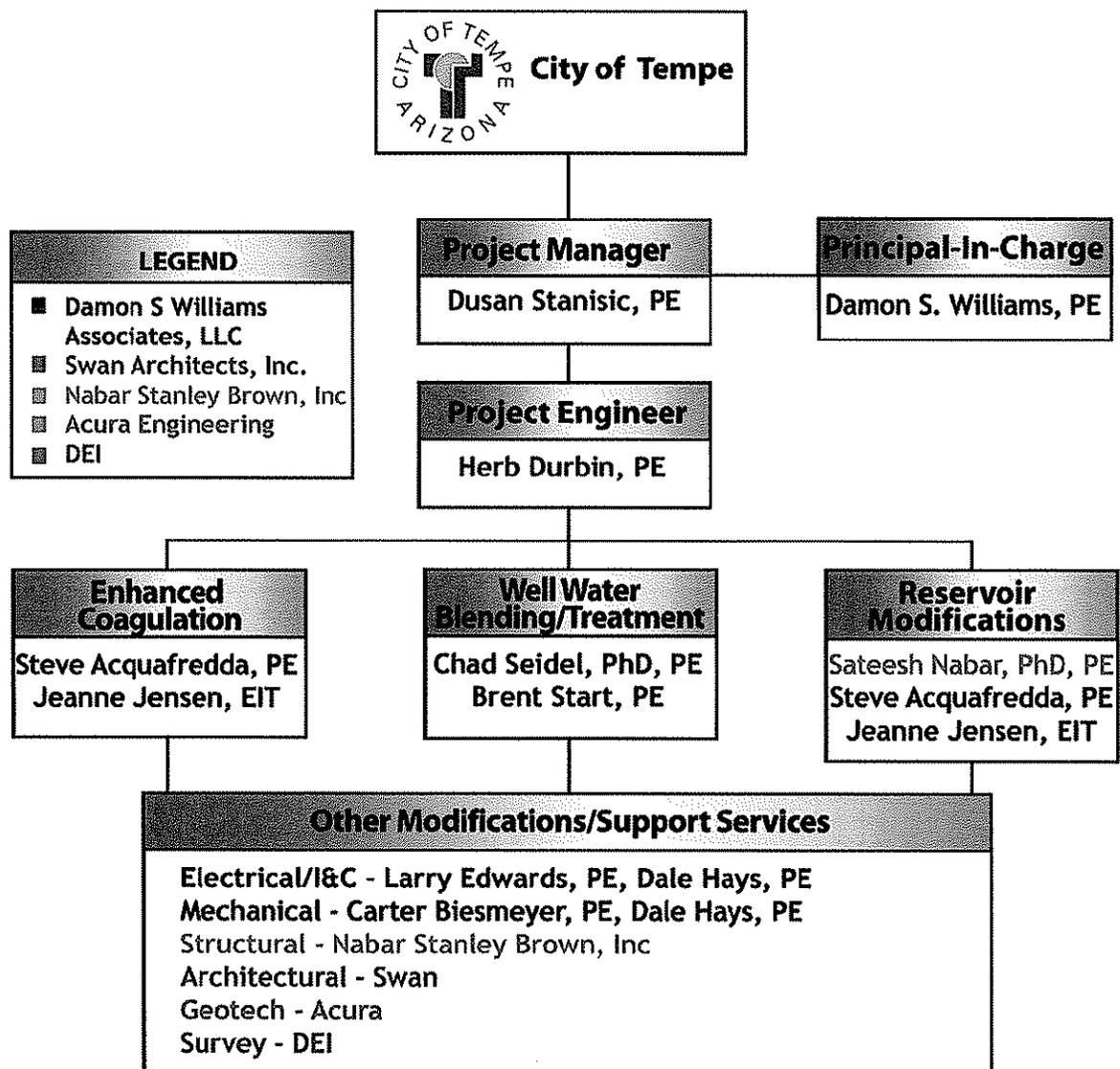
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PROJECT ORGANIZATIONAL CHART

DSWA has assembled a skilled team of technical professionals to serve the City’s project needs. The collective experience of our team members offers the City a broad range of design expertise, as well as a strong working familiarity with DBP reduction challenges. A project organizational chart is provided in Figure 1.

Figure 1 Project Organizational Chart



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ASSUMPTIONS

The following assumptions have been identified for the scope of work:

- DSWA will utilize City's bench testing apparatus and equipment to support the testing effort.
- The City will provide JGMWTP As-Built drawings in AutoCAD format.
- The City will provide design drawings for the STWTP DBP improvements in AutoCAD format.
- The City will provide all relevant water quality data for JGMWTP.

LIST OF PROJECT STAGES

A four-digit number identifies tasks and subtasks within each major Project Stage and will be used in all references in project correspondence, meeting notes, progress payments, status reports, schedules, and filing. The major project stages are outlined as follows:

TASK 1000 – WATER QUALITY UPGRADES

TASK 2000 – GROUND WATER TREATMENT DESIGN

TASK 3000 – CONSTRUCTION AND POST-CONSTRUCTION SERVICES

Subtask detailed descriptions for each Stage are provided in the following sections.

TASK 1000 – WATER QUALITY UPGRADES

Task 1100 General Project Management

DSWA will perform general project management duties associated with this Project. The efforts include preparation and monitoring of project budget and schedules, implementation of quality assurance and quality control programs, Project Team coordination and preparation of monthly progress reports and invoices.

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Task 1200 Project Meetings

Subtask 1210 Kickoff Meeting

DSWA will conduct a project kick-off meeting with City representatives. The purpose of this meeting will be to initiate the project and develop a working understanding of the following:

- Introduce the Project Team
- Review project Scope of Work
- Review project schedule
- Identify information needed from the City
- Identify City contacts
- Establish communication protocol and project procedures
- Develop a project meeting schedule

Deliverables: Meeting Agenda, Handouts and Notes

Subtask 1220 Monthly Progress Meetings

DSWA will conduct monthly progress meetings with City representatives. The purpose of these meetings will be to discuss project progress related to design items and obtain continuous City feedback. These meetings will be incorporated into Design Review Workshops when possible. This task assumes six (6) 2-hour meetings.

Deliverables: Meeting Agenda, Handouts and Notes

Subtask 1230 Design Review Workshops

DSWA will conduct design review workshops with City representatives. The purpose of these meetings will be to review the contents of major project deliverables and obtain feedback from the City regarding next steps towards project objectives. This task assumes the following five (5) 4-hour meetings:



- Data Analysis and Equipment Sizing Workshop
- Chemical Facilities Siting & Other Improvements Workshop
- 30% Design Review Workshop
- 60% Design Review Workshop
- 90% Design Review Workshop

Deliverables: Meeting Agenda, Handouts and Notes

Subtask 1240 Focus Group Meetings

DSWA will conduct focus group meetings with selected City staff. The purpose of these meetings will be to review the Ground Water Treatment Evaluation and obtain feedback from the City regarding next steps towards project objectives. This task assumes the following four (4) 2-hour meetings.

- Preliminary Ground Water Treatment Workshop
- Second Ground Water Treatment Workshop
- Testing Results Workshop
- Final Ground Water Treatment Workshop

Deliverables: Meeting Agenda, Handouts and Notes

Task 1300 Preliminary (30%) Design

As a prerequisite to the preparation of detailed plans and specifications, DSWA will develop a 30% Drawings Set and Preliminary Design Report (PDR) for the items listed below. The PDR will provide a dual purpose: 1.) to satisfy MCESD AOC requirements for development of a Preliminary Design Report, and 2.) to develop a clear and concise preliminary design roadmap for future design stages.

A prerequisite to the preparation of plans and specifications is the development of a specific design agenda that incorporates the Project site conditions and constraints, summarizes the

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rationale for each major Detailed Design decision, and contains design criteria including process control criteria and process descriptions for each component and system incorporated into the Project. In addition, the Preliminary Design will identify any desirable equipment types, as well as the need to specify sole source procurement and/or equipment.

Subtask 1305 Background and Data Review

The purpose for this task is to gain familiarity with available JGMWTP water quality and background data and evaluate the design criteria used for the similar project at the STWTP.

As part of this evaluation, some limited bench scale chemical enhancement testing will likely be required. DSWA will develop detailed testing protocol for use during the project and by the City thereafter including: preparing the experimental set-up procedures and materials list, bench-scale jar testing protocols and associated electronic data reporting logs. For the fee development purposes, an assumption has been made that there will be one protocol. DSWA will perform the lab work utilizing City bench testing equipment and supplies. DSWA will have analyticals performed by a certified laboratory.

Chemical Enhancements: Jar testing will be conducted for adjustment of pH utilizing sulfuric acid and caustic. Empirical WTP models will be used to verify doses by incorporating bench test results.

The background and data review will be presented to the City in the Data Analysis and Equipment Sizing workshop and documented in the meeting minutes. This will be also documented in the Preliminary Design Report.

Subtask 1310 Carbon Dioxide Storage and Feed System

DSWA will investigate two potential locations for the carbon dioxide storage and feed system. The carrier water system that is injected with the carbon dioxide and forms the carbonic acid may utilize the pressurized source at the existing Marigold booster pump station or a new pressurize source may be required. DSWA will investigate these and other alternatives for the carrier water system and determine the most efficient option. The investigation will include siting pros and cons, access, safety, proximity to feed points and potential conflicts with existing utilities. The siting investigation will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The selected location will be developed to the 30% design level and included in the Preliminary Design Report.



Subtask 1315 Sodium Hydroxide Storage and Feed System

DSWA will investigate two potential locations for the sodium hydroxide storage and feed system. The investigation will include siting pros and cons, access, safety, proximity to feed points and potential conflicts with existing utilities. The siting study will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The selected location will be developed to the 30% design level and included in the Preliminary Design Report

Subtask 1320 Static Mixer for Sludge Clarifier

DSWA will determine the type and size of static mixer required to improve mixing the polymer with the sludge prior to discharge into the sludge clarifier. Installation requirements, existing piping suitability and access will be also evaluated. The evaluation results will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The static mixer design will be developed to the 30% level and included in the Preliminary Design Report.

Subtask 1325 PAC Tank Liner Modifications

DSWA will note the removal of the PAC tank liner that is leaking. Initially both PAC tanks were installed with liners, one of the liners was caught in the mixer and was removed. Since, there have been no issues associated with the tank that had the liner removed. The PAC liner removal will be included in the Preliminary Design Report.

Subtask 1330 Evaluate Sludge Clarifier Access and Sample Issues

DSWA will investigate options to access the overflow weir level of the sludge clarifier. Operations staff needs to periodically to take samples and access the polymer injection feeds and piping under the catwalk. The options will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The selected option will be developed to the 30% design level and included in the Preliminary Design Report.

Subtask 1335 Oils Storage Area

DSWA will develop a preliminary design of an oils storage area with canopy. This area will store the miscellaneous oils, cleaners, acids, and other hazardous on-site materials. Operations

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staff will take an inventory of these materials to assist in determining the size of the area required. The location of the area will be investigated and discussed with the staff to determine the most suitable location. The area may require forklift access and a pony wall around it for separation. DSWA will perform a code review to determine the requirements for the storage area. The location and layout alternatives including cabinet, shelving, containment, etc. will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The selected option will be developed to the 30% design level and included in the Preliminary Design Report.

Subtask 1340 Roll-Off Containers Area

The driveway area west of the solids handling building is currently paved with asphalt. The roll-off containers used to dispose of the cake from the filter presses are stored in this area. The asphalt is being torn up by the roll-off containers and trucks used to haul them away. DSWA will design a concrete driveway to replace the existing asphalt driveway to store 4 to 6 roll-off containers. The design will be developed to the 30% level and included in the Preliminary Design Report.

Subtask 1345 Carbon Pump Upgrades

DSWA will evaluate options for retrofitting or replacing the existing powder activated carbon (PAC) feed pumps. The existing PAC pumps are oversized for the application and are near the end of their useful life. DSWA will determine the required size, turndown and type of pump for the application. The options will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The selected option will be developed to the 30% design level and included in the Preliminary Design Report.

Subtask 1350 Pre-Sedimentation Basins Shaft Replacement

The existing shafts and sprockets exhibit excessive wear and are near the end of their useful life. DSWA will determine the required replacement size and type of shafts and sprockets for the application. The drive systems, motors, and chains are in acceptable condition and will not require replacement. The replacement requirements will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. Requirements for the replacement shafts and sprockets will be included in the Preliminary Design Report.



Subtask 1355 South Sedimentation Basin Access

The south sedimentation basin access hatch is narrow, resulting in a very difficult access to the basin. DSWA will investigate options to enlarge the current access point, or add a larger one in a more beneficial location. The location options and layout will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The selected option will be developed to the 30% design level and included in the Preliminary Design Report.

Subtask 1360 North Sedimentation Basin Influent Channel Dewatering

DSWA will investigate options to drain the north sedimentation basin influent channel. The pipe used to drain the channel to the park and is no longer in use. DSWA will review the as-built drawings to determine viable options for draining the channel. The drainage options and locations will be presented to the City in the Chemical Facilities Siting & Other Improvements Workshop and documented in the meeting minutes. The selected option will be developed to the 30% design level and included in the Preliminary Design Report.

Subtask 1365 Filter Media Evaluation

DSWA will evaluate the filter media depths and provide the depth recommendations. The recommendations will be included in the Preliminary Design Report.

Subtask 1370 Preparation of Preliminary Design Report & 30% Drawings

The results of Water Quality Upgrades Task items described above will be compiled into a Preliminary Design Report (PDR). 30% Drawings will be developed after the Project Team has conclusively adopted the decisions documented during the project Workshops.

The Preliminary Design Report (PDR) will investigate, analyze and establish the design parameters, criteria, and concepts necessary for preparation of 30% plans and a specifications outline. More specifically, the PDR will define flow rates, anticipated constituent concentrations, calculations (calculation formulae and values will be shown in the text), equipment and operational requirements.

DSWA will meet with the Community Development Department to review the preliminary site plan and receive any comments.



The following drawings are anticipated to be developed at the 30% design level.

CIVIL DESIGN

DSWA will develop preliminary level site plans identifying the location of major equipment.

PRELIMINARY PROCESS SCHEMATIC

DSWA will update the overall water treatment plant schematic and develop process schematics for new systems.

ARCHITECTURAL DESIGN

DSWA will provide, through a qualified sub-consultant, preliminary architectural services as required to support the design of the Water Quality Upgrades (as needed). The subconsultant will perform the following items:

- Two different 3-D color renderings of Carbon Dioxide Storage Tank in relation to the existing plant surroundings
- Two different 3-D color renderings of Sodium Hydroxide Storage Tanks in relation to the existing plant surroundings
- Architectural details for a screening wall
- Code review for the Oils Storage Area and Canopy and other plant upgrades.

STRUCTURAL DESIGN

DSWA will, through a qualified sub-consultant prepare the structural design criteria for the Project. The criteria will include general design loads, applicable building codes, design reference manuals and a geotechnical summary section (from the Geotechnical Report results).

Structural design will be provided for:

- Carbon dioxide storage tank and PSF pads
- Sodium hydroxide storage and containment area
- Change the roll-off bin area west of the filter press building from Asphalt to Concrete.
- Raw water flume assessment



- Oils storage area – Approximately 400 sf pad with pony walls and canopy
- South sedimentation basin access enlargement – existing access hole in concrete not large enough for access, will enlarge or make new one
- Access to sludge clarifier-evaluate access for sampling and polymer injection point on the line. Evaluate options and possibly design an access platform lower in the clarifier.

PROCESS DESIGN

Under this task DSWA will develop preliminary equipment and system layouts. Included will be information on the facilities, basis of design, equipment data sheets, updated hydraulics and equipment selection, detailed system control descriptions, and interface/coordination required with anticipated facilities.

ELECTRICAL AND I&C SYSTEM DESIGN

DSWA will confirm electrical and control system philosophy related to the existing system. DSWA will develop a process and instrumentation diagram, basic control logic description, and the method of control (either PLC or centralized data acquisition and control). DSWA will provide type, number, size and approximate electrical load for major equipment. Power feed criteria will also be developed.

DSWA will coordinate with City Staff for I&C design and SCADA integration into the existing JGMWTP systems.

DSWA will provide the services of a Quality Control Committee (QCC) that will be led by a senior engineer that will meet independently to review the Draft PDR and 30% drawings for technical merit and coordination prior to submittal to the City. The Design Team and QCC will meet to review and resolve QCC comments and suggested modifications to the PDR. The comments and resolutions will be documented in comment resolution spreadsheet.

DSWA will submit twelve (12) copies of the Draft and twelve (12) copies of the Final PDR to the City including preliminary Drawings. All parts of the PDR will be provided electronically as MS Word and PDF file.

Deliverables: 12 Copies of the Preliminary Design Report Draft
12 Copies of the Preliminary Design Drawings (1/2 size)



1 CD with Electronic copies of the Preliminary Design Report and Drawings (DWF and PDF files (a DWF is similar to a PDF for AutoCAD that can be reviewed and marked up electronically))

Subtask 1375 Geotechnical Investigation

DSWA will provide, through a qualified sub-consultant, sub-surface geotechnical investigations as required to support the design of the following systems:

- Carbon Dioxide Storage and Feed Area
- Sodium Hydroxide Storage and Feed Area
- Ground Water TCE Treatment System Area
- North Reservoir Hydraulic Control Structure

The geotechnical subconsultant shall perform all required soils laboratory analysis and summarize its findings in a report. The report shall summarize the investigation conducted, provide a site conditions and geotechnical profile and present discussion and recommendations. At a minimum, the following information shall be included in the Geotechnical Report:

- Vicinity map for each treatment site recommended
- Plot plan showing location of soil and pavement borings for each site
- Boring logs
- Detailed descriptions of surface and subsurface conditions
- Summary of laboratory tests performed and tests results
- Summary of geotechnical recommendations

Findings will be incorporated into the bid documents (if warranted) for excavation and foundation bidding and construction.

Deliverables: Geotechnical Investigation Report and Boring Log Figures



Subtask 1380 Utility Locating (Potholing and Blue Staking) Services

DSWA will engage a specialized firm to provide up to 2 days of potholing. DSWA will develop a list of potholing requirements, field coordinate for verification of underground utilities (e.g., water, electrical, etc.), and will submit the list for City review and approval. DSWA will contact Blue stake to identify other utilities (e.g., gas, electrical, cable, etc.). The subsurface utility horizontal and vertical locations will be located prior to surveying. Survey will show all utilities in the area.

Subtask 1385 Site Survey

DSWA will provide, through a qualified subconsultant, survey services. This task will establish a topographic map of the improvement locations and includes major features and structures around the project site. The improvement locations that will be surveyed are:

- Carbon Dioxide Storage and Feed System
- Sodium Hydroxide Storage and Feed System
- Oils Storage Area
- Roll-off Bin Area
- TCE Well Treatment Area

The topographic survey of the improvement locations, including a base map file with 0.5-ft contours, including setbacks, major features and structures and TIN file, will be used as the base file for the contract drawings. A copy of the survey data will be provided for City records.

Deliverables: AutoCAD files with results of survey, as required, hardcopy of field notes, as required, reports of field visits, as required

Task 1400 Miscellaneous Improvements Evaluation

DSWA will complete evaluation of the additional potential upgrades at the JGMWTP under this task. Detail design for the selected upgrades will be carried under Task 2000.



Subtask 1410 North Reservoir Liner

DSWA will determine if reservoir liner, specified under a previous project (Johnny G. Martinez WTP 12 MG Reservoir and Finished Water Pump Station City of Tempe Project No. 3201094, September 2006), is required for the North Reservoir. The South Reservoir initially had a liner specified in the design, but it was not installed. This evaluation will be discussed at the Ground Water Treatment workshop and documented in the meeting notes. If it is determined that the liner is required, the detail design will be developed under the Task 2000.

Subtask 1420 Raw Water Flume Assessment

DSWA will investigate the raw water flume leaks and determine options for a short and a long term fix. The different cost options will be evaluated to determine the most economical with respect to the life of the repair. The City plans to replace the elevated flumes with buried ones in 2014. This evaluation will be discussed at the Ground Water Treatment workshop and documented in the meeting notes. The repair option determined in the workshop will be designed under the Task 2000.

Subtask 1430 Alum Room Drainage

DSWA will investigate the alum rooms plugged drains and determine options to fix the plugged drain lines or remove and replace them. DSWA will also look at options for washdown trenches with gratings that could be directed to a new working drain line. The different cost options will be evaluated to determine the most economical with operations. This evaluation will be discussed at the Ground Water Treatment workshop and documented in the meeting notes. The repair option determined in the workshop will be designed under the Task 2000.

Task 1500 Detailed Design

The intent of Task 1500 is to prepare a set of Contract Documents to establish and describe the size and character of upgrades at the JGMWTP in such a manner that the documents satisfy requirements of governing regulatory agencies and convey the design intent and requirements to the Contractor clearly and completely. DSWA will prepare final detailed plans and technical specifications in accordance with the PDR and any adjustments to the Preliminary Design authorized by the City.

DSWA will utilize the specifications and details from the City's Design Standards to the largest

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extent practical.

Subtask 1510 60 % Design

GENERAL DESIGN

Includes updates to process schematics, design criteria, general notes, numbering systems, legend and symbol development, cover sheets, vicinity maps.

CIVIL DESIGN

DSWA will develop site plans taking into consideration site access, plant roads, structure locations, yard piping and grading and paving plans. DSWA will develop Plans and Profiles (as required) of all off site connecting piping and major on-site piping. DSWA will develop grading and paving plans taking into consideration yard piping, roads and flood control improvements. A site drainage plan will be develop to reflect the proposed improvements. Under this task, DSWA will evaluate on-site detention or drainage features of storm water runoff taking into consideration the proposed facilities.

ARCHITECTURAL DESIGN

Architectural design items listed above will address comments and further design details.

STRUCTURAL DESIGN

Structural design includes structural member thickness, foundation designs, and framing layouts.

PROCESS/MECHANICAL DESIGN

Includes layout and elevation of major process equipment/process piping, chemical feed schematics, plans and sections, equipment catalog sheets, equipment data forms, equipment specifications, and typical details.

ELECTRICAL AND INSTRUMENTATION CONTROL SYSTEM DESIGN

DSWA will evaluate power requirements. DSWA will develop electrical single line diagrams showing major equipment and method of providing power, determine any offsite improvements required and coordination with the local electric authority, determine estimated electrical equipment sizes for housing requirements and develop preliminary electrical load calculations. Process and instrumentation diagrams, electrical site plans, electrical equipment layouts, electrical and control schematics, motor control center elevations, panel layouts and schedules, lighting and fixture layout and schedules, electrical load calculations, instrument lists, and draft

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control descriptions will be included.

DSWA will review the City control system standards and coordinate with the City's control staff, for interface with existing equipment. DSWA will evaluate existing JGMWTP control system capacity, define the design approach, delineate boundaries of responsibility for the CMAR, Engineer, and the City for modification and relocation of, and interface to, the existing control system.

DSWA will meet with the City Electrical and I&C staff to review the 60% design development.

During construction the CMAR will perform programming of the City's control system under a separate contract. This will include configuration of the control system to accept the new equipment and modification of the operator displays.

SPECIFICATIONS PREPARATION

It is anticipated that the City will prepare any Bidding and Contract Requirements (CSI Division 0). DSWA will review the City's Division 0 documents and coordinate these documents with the Design Consultant's Division 1 documents. DSWA will provide text for special conditions if necessary.

For the 60 percent phase, technical specifications for Divisions 1 through 17 will be formatted and initial edits will be performed. The 60 percent specifications will include all anticipated sections in draft form. The Specifications will also include control descriptions to facilitate the programming work anticipated during the Construction Phase.

QUALITY CONTROL REVIEWS AND DOCUMENTATION

For each package, a quality control review will be conducted for internal purposes and progress sets of plans and specifications will be provided to the City and all subconsultants for review and comment.

DSWA will provide the services of a QCC led by a senior engineer with expertise to conduct overall technical and design reviews of the project. The QCC shall be responsible for the following focused areas of review for the 60 percent submittal:

- Technical merit and design concepts
- Consistency with the intent of the design concepts



- Inter-discipline coordination
- Constructability
- Operability

Deliverables: 12 Progress Sets of Plans (1/2 Size) and Specifications
1 CD with Electronic Drawings (DWF and PDF files)
Documentation of Quality Control Review Comments and Resolutions

Subtask 1520 90 % Design

Under this task, the design will be advanced to the 90% level. Work will generally consists of addressing review comments from 60 percent, completing typical and project details, completing specifications, and completing coordination between civil, mechanical, structural, architectural, electrical and control system designers. The 90% design will be essentially complete and will include the following: General Design, Civil Design, Architectural Design, Structural Design, Process/Mechanical/HVAC Design, Electrical and Instrumentation Control System, Design Specifications Preparation and Quality Control Reviews and Documentation.

DSWA will meet with the City Electrical and I&C staff to review the 90% design development.

DSWA will provide the services of a QCC led by a senior engineer with expertise to conduct overall technical and design reviews of the project. The QCC shall be responsible for the following focused areas of review for the 90 percent submittal:

- Consistency with the intent of the design concepts established in previous Stages of the Scope of Work
- Accuracy of cross-references between plans and specifications
- Conformance with Design Consultant's Design Checklist
- Conformance with Regulatory Agency and Development Services Design Checklists
- Interdisciplinary coordination
- Constructability
- Operability.



Deliverables: 12 Progress Sets of Plans (1/2 size) and Specifications
1 CD with Electronic Drawings (DWF and PDF files)
Documentation of Quality Control Review Comments and Resolutions
Calculations (including electrical)

Subtask 1530 Regulatory/GMP Submittal

Based on the 90% design review, DSWA will develop construction documents for regulatory reviews and to CMAR for developing the Guaranteed Maximum Price (GMP). All plans, specifications, and calculations required for the CMAR GMP and MCESD AOC submittal will be sealed and signed by a Professional Engineer registered in the State of Arizona. The calculations will include those calculations required for permit review and approval (e.g. structural, electrical, and drainage). Specifications will be delivered as an 8-1/2 x 11 set and on CD in Microsoft Word (version 2003 or as directed by City). Plans will be submitted on hard copies and electronically on CD in AutoCAD 2010 and PDF.

DSWA will provide the services of a specialized cost estimating firm to develop an independent third party estimate at this design submittal stage.

Deliverables: 3 sets of Plans (22x34)
1 Set 3-mil Mylar Drawings, 22-inch by 34-inch image size (extra-large margins) on 24-inch by 36-inch paper size
12 Sets of Plans (1/2 size) and Specifications (Contract Documents)
1 CD with Electronic Drawings (PDF, and DWG files)
Documentation of Quality Control Review Comments and Resolutions
Calculations (including electrical)

Subtask 1540 Conformed Construction Documents

DSWA will develop Conformed Construction Documents to provide the City and CMAR with a final set of construction documents. Upon the receipt of the Regulatory/GMP submittal comments from City Public Works Department, the CMAR, and MCESD, DSWA will incorporate the comments into the Conformed Construction Documents and prepare documents for final production.

Deliverables: 3 Sets of Plans (22x34)
12 Sets of Plans (1/2 size) and Specifications (Contract Documents)
1 CD with Electronic Drawings (PDF and DWG files)
Documentation of Quality Control Review Comments and Resolutions
Calculations (including electrical)



Task 1600 Coordination with CMAR

It is anticipated that this project will be delivered under a Construction Manager at Risk (CMAR) delivery method. DSWA will review the CMAR cost model and schedule for the 30%, 60%, and Regulatory/GMP design submittals and provide written comments. DSWA will meet with the City and the CMAR to discuss 30%, 60% and Regulatory/GMP design submittals with respect to constructability.

Assumptions:

- The CMAR cost model will be provided in Excel spreadsheet format supplemented with additional backup from subcontractors and suppliers.
- The CMAR will maintain a design evolution log. The design evolution log will track all changes to the Work between design submittals and the monetary value of the changes (including all factors as applicable). An Excel spreadsheet that includes an itemized list of all changes, the dates they were proposed, and the monetary values of each change will be provided by the CMAR.

The CMAR will develop the construction schedule at the 60% and Regulatory/GMP design levels. DSWA will review and provide written schedule comments.

The CMAR, with assistance from DSWA, will develop a list of coordination issues regarding MOPOs during construction identified at the time of each design submittal.

CMAR coordination items may include:

- a. CMAR's work plan, including identification and justification of self-performed work, selection of subcontractors and suppliers, and rationale for selection.
- b. Review equipment price quotations.
- c. Review material quantities and unit prices developed.
- d. Review bids received by the CMAR for work that is anticipated to be self-performed.
- e. Field questions from bidders delivered through the CMAR and prepare addenda as required by the CMAR to obtain accurate price quotations. Addenda will be submitted to the CMAR for reproduction and distribution.

Special Meetings: The majority of meeting coordination between the City, DSWA and the CMAR is anticipated to occur during the regular schedule of project progress meetings. Up to

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six additional special coordination meetings between City, DSWA and the CMAR are assumed. Design Workshop meetings will be with operators only. These special meetings will be separate from the workshops and may coincide with monthly project status meetings.

Task 1700 Permitting

The permitting effort will include the following:

Coordination with Maricopa County Environmental Services Department (MCESD):

- a. DSWA will attend one meeting with the City and MCESD to brief MCESD staff on the project, present results of the design report, and advise MCESD of the City's intent to complete detailed design and submit an application to MCESD for a Certificate of Approval to Construct Drinking Water Facilities.
- b. DSWA will prepare application materials for obtaining a Certificate of Approval to Construct Drinking Water Facilities. DSWA will address MCESD review comments necessary to facilitate issuance of Approval to Construct.
- c. DSWA will be responsible for all submittal/review fees required by Maricopa County.

Coordination with City of Tempe Building Safety Division:

- a. DSWA will coordinate obtaining approval of the design by the Building Safety Division. DSWA will submit documents as required for approval by Building Safety Division. Review comments received from the Building Safety Division will be incorporated in the Regulatory/GMP Design Submittal.
- b. DSWA will coordinate obtaining approval from the Community Development Department. DSWA will submit documents as required for approval by the Community Development Department at the 30% Design. Review comments received from the Department will be incorporated in the subsequent submittals.
- c. DSWA will meet with the City's Fire Department at the 60% and 90% design phase to review the project and discuss potential issues. Prior to submitting final design documents, DSWA will conduct a formal review meeting with the Fire Department and submit the pre-final plans for its review and approval. DSWA will respond to any comments and revise the drawings to incorporate Fire Department comments into the final plans and specifications.
- d. The City will be responsible for all internal review fees associated with this task.



Task 1800 Ground Water Treatment Evaluation

Blending low TOC groundwater with treated surface water may provide a cost-effective DBP control alternative. The City has indicated that potential trace-levels of trichloroethylene (TCE) occur in groundwater (at concentrations near the current maximum contaminant level (MCL) of 5 µg/L) that could be considered for blending and subsequent DBP control. As such, DSWA will evaluate groundwater TCE control alternatives considering both current and potential future regulatory conditions. While the current TCE MCL is 5 µg/L, both TCE and tetrachloroethylene (PCE) are currently being considered by the USEPA as candidates for MCL revisions as a part of the second Six-Year Review of existing regulations under the 1996 SDWA Amendments. The current maximum contaminant level goals (MCLGs) for TCE and PCE are zero and both have MCLs set at 5 µg/L, based on analytical method performance available when the MCLs were promulgated. Advances in analytical methods have results in current methods with method detection limits below 0.1 µg/L and reliable laboratory reporting of TCE and PCE at 0.5 µg/L or lower. As such, it is plausible that the TCE and PCE MCLs could be lowered substantially below their current 5 µg/L MCLs.

Alternatives to be evaluated include:

- Blending with:
 - Other groundwater sources
 - Treated surface water
- Treatment by:
 - Liquid-phase granular activated carbon (GAC)
 - Aeration
- Wellhead packed tower aeration for TCE control only
- Reservoir surface aeration for combined TCE and TTHM control
- Reservoir deep bubble aeration for combined TCE, TTHM, and CO₂ control

Capital and operational costs will be calculated to determine the lifecycle costs for the different alternatives.

The different evaluations listed below will be reviewed at four focus group meeting as discussed



in Subtask 1240. These focus group meetings will allow DSWA to gain feedback from focus group members and determine the next steps as a collective group. A detail design for the outcome of this evaluation will be completed under Task 2000.

Subtask 1810 Baseline Water Quality and Treatment Process Evaluation

DSWA will request, analyze and summarize appropriate groundwater well and treated surface water data needed to determine the feasibility and viability of the blending and treatment alternatives. At minimum, the water quality data should include TCE, PCE, other VOCs, bromide, general physical and mineral water quality of the groundwater and TOC, bromide, general physical and mineral water quality of the surface water.

Subtask 1820 Performance Modeling and/or Bench-Scale Testing

Performance modeling will be conducted for each of the alternatives to determine system design details necessary to develop capital, operational, and lifecycle costs. DSWA will use established models (e.g. ASAP, AdDesigns, USEPA Water Treatment Plant Model) for this task. In cases where established models may not fully determine system design details, bench-scale testing (e.g. RSSCTs for GAC treatment performance) may be conducted. This task assumes protocol development and analysis of results for one bench testing. DSWA will perform the lab work utilizing City bench testing equipment and supplies. DSWA will have analyticals performed by a certified laboratory.

Subtask 1830 Ground Water Treatment Technical Memorandum

DSWA will develop a technical memorandum that identifies the selected groundwater TCE control alternatives that best achieves the City objectives for DBP and TCE control. This memorandum will summarize the evaluations for each TCE control alternative including results from all performance modeling and/or bench-scale testing and provide preliminary design details needed to support the detailed design.

Deliverable: 12 Copies of the Draft Ground Water Treatment Technical Memorandum
12 Copies of the Final Ground Water Treatment Technical Memorandum
1 CD with Electronic copies of the Ground Water Treatment Technical Memorandum



TASK 2000 –GROUND WATER TREATMENT AND RESERVOIR MODIFICATIONS DESIGN

Task 2100 General Project Management

DSWA will perform general project management duties associated with this Project effort. The efforts include preparation and monitoring of project budget and schedules, implementation of quality assurance and quality control programs, Project Team coordination, and preparation of monthly progress reports and invoices.

Task 2200 Project Meetings

Subtask 2210 Monthly Progress Meetings

DSWA will conduct monthly progress meetings with representatives of the City. The purpose of these meetings will be to discuss project progress related to design items and obtain continuous City feedback. These meetings will be coordinated with workshop meetings when possible. This task assumes three (3) 2-hr meetings.

Deliverables: Meeting Agenda, Handouts and Notes

Subtask 2220 Design Review Workshops

DSWA will conduct design review workshops with representatives of the City. The purpose of these meetings will be to review the contents of major project deliverables and obtain feedback from the City regarding next steps towards project objectives. This task assumes the following three (3) 4-hour meetings:

- Preliminary (30%) Design Workshop
- 60% Design Workshop
- 90% Design Workshop

Deliverables: Meeting Agenda, Handouts and Notes

DSWA



Task 2300 Preliminary (30%) Design

As a prerequisite to the preparation of detailed plans and specifications, DSWA will develop 30% Drawings and Preliminary Design Report (PDR) for the items listed below. The PDR will provide a dual purpose: 1.) to satisfy MCESD AOC requirements for development of a Preliminary Design Report, and 2.) to develop a clear and concise preliminary design roadmap for future design stages.

A prerequisite to the preparation of plans and specifications is the development of a specific design agenda that incorporates the Project site conditions and constraints, summarizes the rationale for each major Detailed Design decision, and contains design criteria including process control criteria and process descriptions for each component and system incorporated into the Project. In addition, Preliminary Design will identify any desirable equipment types, as well as the need to specify sole source procurement and/or equipment.

Subtask 2305 Groundwater Treatment System and Blending Design

Based on the evaluation in Task 1800 the best treatment option will be implemented and designed as part of this task. For the purpose of scoping this item we are assuming that liquid phase GAC treatment system will be designed to remove the TCE from the well water.

Subtask 2310 North Reservoir Hydraulic Control Structure

DSWA will review the previously designed reservoir control structure and revise as necessary for installation at the JGMWTP between the North and South Reservoirs.

Subtask 2315 North Reservoir Upgrades

DSWA will evaluate the following upgrades to the North Reservoir:

- Review and design baffles in the reservoir designed as part of a previous project.
- Incorporate installation of three secure air vents. The City has already purchased the vents and they are stored on-site.
- Design 60-inch pipe connections between the North and South Reservoirs
- Show demolition of the Northern Reservoir Finished Water Pump Station.



- Remove the existing reservoir fill weir. DSWA will investigate the best location to perform this without creating a dead end.
- Based on the evaluation of the liner in Subtask 1410 the liner will be shown if determined necessary as part of the design upgrades to the reservoir in the Preliminary Design Report.

Subtask 2320 Raw Water Flume Design

Based on the evaluation in Subtask 1420 the selected option will be designed as part of this task and included in the Preliminary Design Report.

Subtask 2325 Alum Room Drainage Design

Based on the evaluation in Subtask 1430 the selected option will be designed as part of this task and included in the Preliminary Design Report.

Subtask 2330 Preparation of Preliminary Design Report & 30% Drawings

The results of evaluations completed under Task 2000 will be compiled into a Preliminary Design Report (PDR). 30% Drawings will be developed after the Project Team has conclusively adopted decisions documented during the project Workshops.

The Preliminary Design Report (PDR) will investigate, analyze and establish the design parameters, criteria, and concepts necessary for preparation of 30% plans and a specifications outline. More specifically, the PDR will define flow rates, anticipated constituent concentrations, equipment and operational requirements.

DSWA will meet with the Community Development Department to review the preliminary site plan and receive any comments.

The following drawings are anticipated to be developed at the 30% design level.

CIVIL DESIGN

DSWA will develop conceptual level site plans identifying the location of major equipment.



PRELIMINARY HYDRAULIC PROFILE

DSWA will edit and update the hydraulic profile in order to establish elevation of critical structures and hydraulic control points and determine the hydraulic parameters. The hydraulic profile will take into consideration the new systems being installed.

PRELIMINARY PROCESS SCHEMATIC

DSWA will update the overall water treatment plant schematic and develop process schematics for new systems.

STRUCTURAL DESIGN

DSWA will provide through a qualified sub-consultant the structural design criteria for the Project. The criteria will include general design loads, applicable building codes, design reference manuals and a geotechnical summary section (from the Geotechnical Report results).

Structural design will be provided for:

- Raw water flume (design the solution from Subtask 1420).
- Reservoir hydraulic structure design review and design

PROCESS DESIGN

Under this task DSWA will develop preliminary equipment and system layouts. Included will be information on the facilities, basis of design, equipment data sheets, updated hydraulics and equipment selection, detailed system control descriptions, and interface/coordination required with anticipated facilities.

ELECTRICAL AND I&C SYSTEM DESIGN

DSWA will confirm electrical and control system philosophy related to the existing system. DSWA will develop a process and instrumentation diagram, basic control logic description, and the method of control (either PLC or centralized data acquisition and control). DSWA will provide type, number, size and approximate electrical load for major equipment. Power feed criteria will also be developed.

DSWA will coordinate with City Staff for I&C design and SCADA integration into existing JGMWTP systems.



DSWA will provide the services of a Quality Control Committee (QCC) that will be led by a senior engineer that will meet independently to review the Draft PDR and 30% drawings for technical merit and coordination prior to submittal to the City. The Design Team and QCC will meet to review and resolve QCC comments and suggested modifications to the PDR. The comments and resolutions will be documented in comment resolution spreadsheet.

DSWA will submit twelve (12) copies of the Draft and twelve (12) copies of the Final PDR to the City including preliminary Drawings. All parts of the PDR will be provided electronically as a MS Word and PDF file.

Deliverable: 12 Copies of the Preliminary Design Report Draft
12 Copies of the Preliminary Design Drawings (1/2 size)
1 CD with Electronic copies of the Preliminary Design Report and Drawings
(DWF and PDF files (a DWF is similar to a PDF for AutoCAD that can be reviewed and marked up electronically))

Subtask 2335 Geotechnical Investigation

The geotechnical portion for this task will be performed under Subtask 1375.

Subtask 2340 Utility Locating (Potholing and Blue Staking) Services

The utility portion for this task will be performed under Subtask 1380.

Subtask 2345 Site Survey

The survey portion for this task will be performed in Subtask 1385.

Task 2400 Detailed Design

The intent of Task 2400 of this project is to prepare a set of Contract Documents to establish and describe the size and character of upgrades at the JGMWTP in such a manner that the documents satisfy requirements of governing regulatory agencies and convey the design intent and requirements to the Contractor clearly and completely. DSWA will prepare final detailed plans and technical specifications in accordance with the PDR and any adjustments to the Preliminary Design authorized by the City.

DSWA will utilize the specifications and details from the City's Design Standards to the largest

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extent practical.

Subtask 2410 60 % Design

GENERAL DESIGN

Includes updates to process schematics, design criteria, general notes, numbering systems, legend and symbol development, cover sheets, vicinity maps.

CIVIL DESIGN

DSWA will develop site plans taking into consideration site access, plant roads, structure locations, yard piping and grading and paving plans. DSWA will develop Plans and Profiles (as required) of all off site connecting piping and major on-site piping. DSWA will develop grading and paving plans taking into consideration yard piping, roads and flood control improvements. A site drainage plan will be develop to reflect the proposed improvements. Under this task, DSWA will evaluate on-site detention or drainage features of storm water runoff taking into consideration the proposed facilities.

STRUCTURAL DESIGN

Structural design includes structural member thickness, foundation designs, and framing layouts.

PROCESS/MECHANICAL DESIGN

Includes layout and elevation of major process equipment/process piping, chemical feed schematics, plans and sections, equipment catalog sheets, equipment data forms, equipment specifications, and typical details.

ELECTRICAL AND INSTRUMENTATION CONTROL SYSTEM DESIGN

DSWA will evaluate power requirements. DSWA will develop electrical single line diagrams showing major equipment and method of providing power, determine any offsite improvements required and coordination with the local electric authority, determine estimated electrical equipment sizes for housing requirements and develop preliminary electrical load calculations. Process and instrumentation diagrams, electrical site plans, electrical equipment layouts, electrical and control schematics, motor control center elevations, panel layouts and schedules, lighting and fixture layout and schedules, electrical load calculations, instrument lists, and draft control descriptions will be included.

DSWA will review the City control system standards and coordinate with the City's control staff, for interface with existing equipment. DSWA will evaluate existing JGMWTP control

PLB



system capacity, define the design approach, delineate boundaries of responsibility for the CMAR, Engineer, and the City for modification and relocation of, and interface to, the existing control system.

DSWA will meet with the City Electrical and I&C staff to review the 60% design development.

During construction the CMAR will perform programming of the City's control system under a separate contract. This will include configuration of the control system to accept the new equipment and modification of the operator displays.

SPECIFICATIONS PREPARATION

It is anticipated that the City will prepare any Bidding and Contract Requirements (CSI Division 0). DSWA will review the City's Division 0 documents and coordinate these documents with the Design Consultant's Division 1 documents. DSWA will provide text for special conditions if necessary.

For the 60 percent phase, technical specifications for Divisions 1 through 17 will be formatted and initial edits will be performed. The 60 percent specifications will include all anticipated sections in draft form. The Specifications will also include control descriptions to facilitate the programming work anticipated during the Construction Phase.

QUALITY CONTROL REVIEWS AND DOCUMENTATION

For each package, a quality control review will be conducted by the Design Team for internal purposes and progress sets of plans and specifications will be provided to the City and all subconsultants for review and comment.

DSWA will provide the services of a QCC led by a senior engineer with expertise to conduct overall technical and design reviews of the project. The QCC shall be responsible for the following focused areas of review for the 60 percent submittal:

- Technical merit and design concepts
- Consistency with the intent of the design concepts
- Interdisciplinary coordination
- Constructability
- Operability



Deliverables: 12 Progress Sets of Plans (1/2 Size) and Specifications
1 CD with Electronic Drawings (DWF and PDF files)
Documentation of Quality Control Review Comments and Resolutions
Opinion of Probable Construction Cost

Subtask 2420 90 % Design

Under this task, the design will be advanced to the 90% level. Work will generally consists of addressing review comments from 60 percent, completing typical and project details, completing specifications, and completing coordination between civil, mechanical, structural, architectural, electrical and control system designers. The 90% design will include the following: General Design, Civil Design, Architectural Design, Structural Design, Process/Mechanical/HVAC Design, Electrical and Instrumentation Control System, Design Specifications Preparation and Quality Control Reviews and Documentation.

DSWA will meet with the City Electrical and I&C staff to review the 90% design development.

DSWA will provide the services of a QCC led by a senior engineer with expertise to conduct overall technical and design reviews of the project. The QCC shall be responsible for the following focused areas of review for the 90 percent submittal:

- Consistency with the intent of the design concepts established in previous Stages of the Scope of Work
- Accuracy of cross-references between plans and specifications
- Conformance with Design Consultant's Design Checklist
- Conformance with Regulatory Agency and Development Services Design Checklists
- Interdisciplinary coordination
- Constructability
- Operability

Deliverables: 12 Progress Sets of Plans (1/2 size) and Specifications
1 CD with Electronic Drawings (DWF and PDF files)
Documentation of Quality Control Review Comments and Resolutions
Calculations (including electrical)



Subtask 2430 Regulator/GMP Submittal

Based on the 90% design review, DSWA will develop construction documents for regulatory reviews and to CMAR for developing the Guaranteed Maximum Price (GMP). All plans, specifications, and calculations required for the CMAR GMP and MCESD AOC submittal will be sealed and signed by a Professional Engineer registered in the State of Arizona. The calculations will include those calculations required for permit review and approval (e.g. structural, electrical, and drainage). Specifications will be delivered as an 8-1/2 x 11 set and on CD in Microsoft Word (version 2000 or as directed by City). Plans will be submitted on hard copies and electronically on CD in AutoCAD 2010, DWF, and PDF.

DSWA will provide the services of a specialized cost estimating firm to develop an independent third party estimate at this design submittal stage.

Deliverables: 3 sets of Plans (22x34)
1 Set 3-mil Mylar Drawings, 22-inch by 34-inch image size (extra-large margins) on 24-inch by 36-inch paper size
12 Sets of Plans (1/2 size) and Specifications (Contract Documents)
1 CD with Electronic Drawings (PDF and DWG files)
Documentation of Quality Control Review Comments and Resolutions
Calculations (including electrical)

Subtask 2440 Conformed Construction Documents

DSWA will develop Conformed Construction Documents to provide the City and CMAR with a final set of construction documents. Upon the receipt of the Regulatory/GMP submittal comments from City Public Works Department, the CMAR, and MCESD, DSWA will incorporate the comments into the Conformed Construction Documents and prepare documents for final production.

Deliverables: 3 sets of Plans (22x34)
12 Sets of Plans (1/2 size) and Specifications (Contract Documents)
1 CD with Electronic Drawings (DSW, PDF, and DWG files)
Documentation of Quality Control Review Comments and Resolutions
Calculations (including electrical)



Task 2500 Coordination with CMAR

It is anticipated that this project will be delivered under a Construction Manager at Risk (CMAR) delivery method. DSWA will review the CMAR cost model and schedule for the 30%, 60%, and Regulatory/GMP design submittals and provide written comments. DSWA will meet with the City and the CMAR to discuss 30%, 60% and Regulatory/GMP design submittals with respect to constructability.

Assumptions:

- The CMAR cost model will be provided in Excel spreadsheet format supplemented with additional backup from subcontractors and suppliers.
- The CMAR will maintain a design evolution log. The design evolution log will track all changes to the Work between design submittals and the monetary value of the changes (including all factors as applicable). An Excel spreadsheet that includes an itemized list of all changes, the dates they were proposed, and the monetary values of each change will be provided by the CMAR.

The CMAR will develop the construction schedule at the 60% and Regulatory/GMP design levels. DSWA will review and provide written schedule comments.

The CMAR, with assistance from DSWA, will develop a list of coordination issues regarding MOPOs during construction identified at the time of each design submittal.

CMAR coordination items may include:

- a. CMAR's work plan, including identification and justification of self-performed work, selection of subcontractors and suppliers, and rationale for selection.
- b. Review equipment price quotations.
- c. Review material quantities and unit prices developed.
- d. Review bids received by the CMAR for work that is anticipated to be self-performed.
- e. Field questions from bidders delivered through the CMAR and prepare addenda as required by the CMAR to obtain accurate price quotations. Addenda will be submitted to the CMAR for reproduction and distribution.

Special Meetings: The majority of meeting coordination between the City, DSWA and the CMAR is anticipated to occur during the regular schedule of project progress meetings. Up to



six additional special coordination meetings between City, DSWA and the CMAR are assumed. Design Workshop meetings will be with operators only. These special meetings will be separate from the workshops and may coincide with monthly project status meetings.

Task 2600 Permitting

The permitting effort will include the following:

Coordination with Maricopa County Environmental Services Department (MCESD):

- a. DSWA will attend one meeting with the City and MCESD to brief MCESD staff on the project, present results of the design report, and advise MCESD of the City's intent to complete detailed design and submit an application to MCESD for a Certificate of Approval to Construct Drinking Water Facilities.
- b. DSWA will prepare application materials for obtaining a Certificate of Approval to Construct Drinking Water Facilities. DSWA will address MCESD review comments necessary to facilitate issuance of Approval to Construct.
- c. DSWA will be responsible for all submittal/review fees required by Maricopa County.

Coordination with City of Tempe Building Safety Division:

- a. DSWA will coordinate obtaining approval of the design by the Building Safety Division. DSWA will submit documents as required for approval by Building Safety Division. Review comments received from the Building Safety Division will be incorporated in the Regulatory/GMP Design Submittal.
- b. DSWA will coordinate obtaining approval from the Community Development Department. DSWA will submit documents as required for approval by the Community Development Department at the 30% Design. Review comments received from the Department will be incorporated in the subsequent submittals.
- c. DSWA will meet with the City's Fire Department at the 60% and 90% design phase to review the project and discuss potential issues. Prior to submitting final design documents, DSWA will conduct a formal review meeting with the Fire Department and submit the pre-final plans for its review and approval. DSWA will respond to any comments and revise the drawings to incorporate Fire Department comments into the final plans and specifications.
- d. The City will be responsible for all internal review fees associated with this task.



TASK 3000 – CONSTRUCTION AND POST-CONSTRUCTION SERVICES

Assumptions:

- The City will separately contract for the following construction management and inspection services (CM consultant; not in this contract):
 - Execution of day-to-day inspection services.
 - Coordination of project meetings and documentation.
 - Review of the CPM construction schedule.
 - Review of CMAR requests for change orders.
 - Scheduling materials testing.
 - Review and approval of CMAR pay requests.
 - Web-based project information including all electronic submittals handling.
- All materials inspection and testing services will be provided by the CMAR, the CM consultant, or independent testing firm.
- Construction duration for the project is assumed to be 18 months (from Notice-to-Proceed to Final Completion and acceptance).
- A 12-month warranty period is assumed.
- The CMAR will complete certain portions of the work in advance of the overall project substantial completion date defined in the Contract Documents.
- The Contract Documents are defined as the Construction Manager at Risk Construction Services Contract, Drawings, Standard Details, Specifications, Addenda, and executed change orders prepared for construction of the project.
- The CMAR shall receive all submittals, correspondence and necessary documentation from its suppliers and subcontractors and transmit them to the CM consultant, who will forward, as needed, to DSWA. Prior to transmitting these materials to DSWA, the CMAR and CM consultant will review the materials for completeness and



compliance with the Contract Documents. The CMAR will receive all responses from DSWA and transmit them to its suppliers and subcontractors.

- DSWA shall not be responsible for the means, methods techniques, sequences or procedures of construction selected by CMAR (unless otherwise specified in the Contract Documents) or the safety precautions and programs incident to the work of CMAR.
- Select submittals will be provided to the City for its review upon request. Review comments will be coordinated by DSWA and returned to the CMAR.

DSWA will provide construction support services as defined below on a time and materials, not to exceed basis.

Task 3100 Engineering Assistance during Construction

Attend Pre-Construction Conference Conducted by the CMAR: The CMAR shall conduct a Pre-Construction Conference for the work. The conference will be held in accordance with the Contract Documents. At the conference, the Construction Phase Team (the City, DSWA, the CMAR, and the CM consultant) shall identify field services to be provided by the respective parties and discuss appropriate coordination procedures. The CMAR will conduct the conference and prepare and distribute meeting minutes.

Attend Progress Meetings through Construction: DSWA will attend weekly progress meetings throughout the construction phase of the project.

Assumption: Duration of 18 months, 72 weekly construction meetings.

Regulatory Agency Coordination: DSWA shall work with the City, the CMAR and the CM consultant to assist on agency issues with the agencies involved in the completion of this project. Those agencies include Arizona Department of Environmental Quality (ADEQ), Maricopa County Environmental Services Department (MCESD), and the Salt River Project (SRP). DSWA shall document all coordination and correspondence with the agencies.

Track Project Progress and Schedule: Monitor and report the progress of DSWA's project efforts from a budget and schedule perspective. Prepare a tabular monthly budget status report indicating expenditures versus planned budgets for the City's Project Manager. Maintain an updated project schedule and distribute to the City project team at project progress meetings, as required.

Prepare Monthly Billing Statements: Monthly statements will be prepared and submitted to the



City's project manager. Each statement will include summary information, the monthly budget status report prepared under the previous task, lump sum billings by percent complete, and itemized billings for allowances and time and materials tasks.

Perform Site Visits: DSWA's design staff will make site visits on an as-needed basis to determine in general if the work is proceeding in accordance with the design intent.

Review Shop Drawings and Test Results:

- a. DSWA shall receive through the CM and provide review comments for Shop Drawings, samples, test results, and other data that the CMAR is required to submit. DSWA's review shall only be for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such review or other action shall not extend to means, methods, sequences, techniques or procedures of construction selected by CMAR, or to safety precautions and programs incident thereto.
- b. As part of this task, DSWA shall maintain a submittal log showing dates of submittal, any transmittal action to other subconsultants, dates of return and review action. The log will be posted to the web site.

Assumptions:

- The level of effort associated with this task is based on up to 100 first-time Shop Drawing submittals and 10 Operations and Maintenance (O&M) Manuals and Lesson Plan submittals.
- 50 percent of the original submittals will require a re-submittal or supplementary submittal.
- 10 percent of those re-submittals will require a third submittal.
- O&M manuals will be submitted in Adobe PDF, or other usable software format for development/upgrade of existing Electronic Operations Manual content.

Issue Interpretations and Clarifications: Routine technical interpretations shall be responded to by the CM consultant. DSWA shall respond to issues raised during construction regarding interpretation and clarification of the contractual administrative and technical requirements of the Contract Documents through responses to Requests for Information (RFIs) and Engineer's Clarifications (ECs).

Assumption: The level of effort for this task is based upon receiving a total of up to 25 RFIs.



Task 3200 Record Drawings

DSWA shall prepare Record Drawings for this Project based upon information received from the CMAR. The Record Drawings will utilize the original Conformed Construction Documents with the original seals and signatures. The field changes will be clouded or hatched to indicate changes performed during construction. Record drawings will be delivered to the City within 60 days from receipt of all acceptable/legible redlines from the CMAR.

Deliverables:

- Drawings, 22-inch by 34-inch image size (extra-large margins) on 24-inch by 36-inch paper size, 3-mil Mylar: one set.
- Drawings, 22-inch by 34-inch size (extra-large margins acceptable), bond: 5 sets.
- Electronic copies: two computer CDs with PDF and AutoCAD files.

Task 3300 Application for Approval of Construction from MCESD

DSWA will prepare the Approval of Construction application to MCESD on behalf of the City. The request for approval of construction will contain the following:

- Certificate of Completion
- Equipment/Piping Test Summary
- Operations Manual
- Record Documents
- CMAR's Start-up Plan

Assumptions:

- Test summaries and start-up plan will be prepared by the CMAR and delivered to DSWA for inclusion in the Approval of Construction application.
- The Certificate of Completion will be prepared by the CM consultant and delivered to DSWA for inclusion in the Approval of Construction application.

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Task 3400 System Operations Manual

The City has an existing electronic operations manual (EOM) for the JGMWTP. As part of this project, the technical content will be updated to reflect the changes to the WTP processes and operations. DSWA will provide EOM content development services to produce final documents in the appropriate format to operate within the existing architecture.

1. EOM Content Planning and Coordination: DSWA will hold a 2-hour Content Coordination Workshop to develop an initial content production schedule and review process. Subsequent meetings will be scheduled to deliver and/or review draft content.
2. EOM Content Development: DSWA will revise existing content and develop new content as necessary for all major treatment systems affected by this project. Information from existing O&M manuals, design documents, construction submittals, SOPs, and other sources of information will be consulted, verified, and incorporated into the EOM, as appropriate. DSWA will produce draft hardcopy versions of each chapter and submit them to the City for review and comment prior to producing the final product in electronic-only format for each process and system covered.
3. EOM Content Integration: DSWA will install and integrate the final version of EOM content on the City's server and will provide the City with two copies of the new content developed under this Scope of Work in electronic format on CD-ROM storage media. DSWA will also provide up to 16 hours of on-going technical support.

Deliverable: Electronic copies: two computer CDs with editable versions of each EOM chapter.

Task 3500 System Training

Assumptions

- CMAR and CM consultant will be responsible for delivery and coordination of all manufacturers' O&M training required in the specifications developed by DSWA.
- DSWA's training will be strictly related to the operations plan and control system programming and configuration provided by DSWA.

Process Operations Training: DSWA will provide training to City staff regarding operation of the new treatment systems and processes installed at the WTP. Training will be based on the content developed for the EOM and delivered during shift operations. In addition to instruction regarding the systems' methods of operation, this training will include review of the modifications to the plant control system control screens.



Assumption: Up to 12 hours of shift training, divided into no more than three sessions, will be provided.

Task 3600 Commissioning

Assumption: The CMAR and the CM consultant will have primary responsibilities for commissioning the new facilities (Commissioning is defined as the process in which the newly constructed facilities are placed into routine operation).

DSWA will be available to assist the City with operations services during commissioning of the facilities to demonstrate that the new facilities successfully operate at the design treatment capacity and meet the treated water quality parameters established by DSWA during detailed design development.

Task 3700 Warranty Period Services and Plant Operations Assistance

DSWA shall provide assistance for resolution of defects to be corrected under warranty during the 12-month guarantee/warranty period. Once construction and commissioning are complete, DSWA staff will be available for enhanced coagulation optimization support on an as-needed basis. DSWA will be available for optimization support on an as-needed basis, for the first 12 months of operation, up to the amount budgeted for this task.



FEE ESTIMATE

The Fee Estimate for all services under this Scope of Work is provided in Exhibit A. Our fee proposal is broken down by task and includes estimated hours by labor category for each task. Reimbursable expenses are also identified in the total amount of \$34,500.00. Based on our understanding of the project, we propose to complete engineering services for the Task 1000 and Task 2000 as a lump sum in the amount of \$699,268.00. Task 3000 will be billed on a time and materials basis for a not to exceed amount of \$260,552.00. Additional services other than those specified herein, or those required above the amount identified for tasks may be added through a Contract Addendum with the City.

SCHEDULE

A draft project schedule is included in Exhibit B. November 5, 2010 is assumed for Notice to Proceed (NTP). The schedule may be adjusted based on the actual NTP date.

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EXHIBIT A – Project Fees



CITY OF TEMPE WATER UTILITIES DEPARTMENT
Johnny G Martinez WTP Water Quality Upgrades DBP Control



EXHIBIT A - PROJECT FEES

Task No.	Description	CONSULTANT HOURS													Total Hours	Total Cost
		BILLABLE RATES \$	PIC	PM	O&OC	Prof. Eng.	Staff Eng.	EE4	EE2	CAD Design	CAD Draft	Cler				
1520	90% Design		4	24	16	64	72	24	40	32	80			356	\$44,052	
1530	Regulatory Submittal		2	8	4	16	24	8	16	8	40			130	\$15,250	
1540	100% Design		2	4	4	8	16	4	12	8	24			86	\$10,134	
	Sub - NSB Structural													0	\$67,600	
	Sub - Swan Architectural													0	\$8,050	
	Total Task 1500															
1600	Coordination with CMAR		2	16		32	16	8	16					976	\$193,570	
1760	Permitting			8		16	24							48	\$6,312	
1800	Ground Water Treatment Evaluation															
1810	Baseline Water Quality and Treatment Process Evaluation			8	8	24	32							72	\$9,656	
1820	Performance Modeling and/or Bench-Scale Testing			8	8	24	32							72	\$9,656	
1830	Ground Water Treatment Technical Memorandum		2	8	8	24	32							74	\$10,054	
	Total Task 1800													218	\$29,366	
	TOTAL HOURS TASK 1000		72	292	84	790	690	92	164	96	344			2,680	\$449,180	
	TOTAL COST TASK 1000															

DSW



CITY OF TEMPE WATER UTILITIES DEPARTMENT
Johnny G Martinez WTP Water Quality Upgrades DBP Control



EXHIBIT A - PROJECT FEES

Task No.	Description	CONSULTANT HOURS											Total Cost				
		BILLABLE RATES	PIC	PM	QA/QC	Prof. Eng.	Staff Eng.	EE4	EE2	CAD Design	CAD Draft	Cler		Total Hours			
2000	GROUND WATER TREATMENT DESIGN																
2100	General Project Management		4	8		24									8	44	\$6,060
2200	Project Meetings																
2210	Monthly Progress Meetings		6	12		18									6	60	\$8,268
2210	Design Review Workshops		12	18		24									4	82	\$11,870
	Total Task 2200															142	\$20,138
2300	Preliminary (30%) Design																
2305	Ground Water Treatment System and Blending Design		4	16		40		8		16						132	\$17,532
2310	North Reservoir Hydraulic Control Structure			8		24										64	\$8,296
2315	North Reservoir Upgrades			8		24										64	\$8,296
2320	Raw Water Flume Design			8		16										48	\$6,312
2325	Alum Room Drainage Design			8		16										48	\$6,312
2330	Preparation of Preliminary Design Report		4	16		20		8		16		20		80	8	208	\$23,964
	Total Task 2300															554	\$64,362
2400	Detailed Design																
2410	60% Design		4	20		24		16		24		24		96	8	284	\$32,920
2420	90% Design		4	20		40		8		24		24		64	8	252	\$30,152
2430	Regulatory Submittal		2	8		16		8		8		8		32	4	122	\$14,594
2440	100% Design		2	4		8		4		4		4		24	4	78	\$9,142
	Total Task 2400															0	\$31,850
2500	Coordination with CMAR		2	16		32		8		16						736	\$118,658
2600	Permitting			8		32		24								90	\$12,414
	TOTAL HOURS TASK 2000		44	178	20	358	438	60	116	80	296	50	1,640				
TOTAL TASK 2000 COST																	
	TOTAL TASKS 1000 THROUGH 2000		116	470	104	1,148	1,128	152	280	176	640	106	4,320				
																	\$699,268

RD



CITY OF TEMPE WATER UTILITIES DEPARTMENT
Johnny G Martinez WTP Water Quality Upgrades DBP Control



EXHIBIT A - PROJECT FEES

Task No.	Description	Consultant Hours											Total Hours	Total Cost
		PIC	PM	QA/QC	Proj Eng	Staff Eng.	EE4	EE2	CAD Design	CAD Draft	Cler			
BILLABLE RATES		\$ 199.00	\$ 179.00	\$ 170.00	\$ 134.00	\$ 114.00	\$ 152.00	\$ 114.00	\$ 134.00	\$ 87.00	\$ 77.00			
3000	CONSTRUCTION & POST-CONSTRUCTION SERVICES (Allowance)													
3100	Construction Administration	8	72		200	180	40	60			32	592	\$77,184	
	Sub - NSB Structural Construction Admin											0	\$65,000	
3200	Record Drawings		24		40	80	20	40	40	80		324	\$38,696	
3300	Application for Approval of Construction from MCESD		4		16	16					12	48	\$5,608	
3400	Systems Operations Manual		16		40	80	16	32	20	40	16	260	\$30,816	
3500	System Training		16		32	40		8				96	\$12,624	
3600	Commissioning		16		60	40						116	\$15,464	
3700	Warranty Period Services		8		48		48					104	\$15,160	
	TOTAL HOURS	8	156	0	436	436	124	140	60	120	60	1,540	\$260,552	
	TOTAL TASK 3000 COST													
	TOTAL TASKS 1000 THROUGH 3000	124	626	104	1,584	1,564	276	420	236	760	166	5,860	\$959,820	
	OTHER DIRECT COSTS													
1	Reproduction and Printing													
2	Lab Work													
3	Permitting Fees													
4	Potholing													
5	Cost Engineering													
6	Courier Services													
	TOTAL OTHER DIRECT COSTS	0	0	0	0	0	0	0	0	0	0	0	\$34,500	
	ALLOWANCES													
1														
	GRAND TOTAL	124	626	104	1,584	1,564	276	420	236	760	166	5,860	\$994,320	

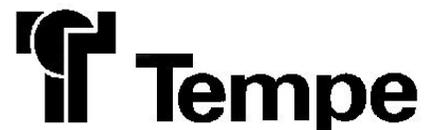
Total Lump Sum: \$699,268
Total Time & Material (NTE): \$260,552
Total Direct Costs: \$34,500



EXHIBIT B – Project Schedule

DSWA

Staff Summary Report



Council Meeting Date: 11/04/2010

Agenda Item Number: _____

SUBJECT: Request approval of job order no. 9 with Caliente Construction, Inc. for well disinfection conversion improvements.

DOCUMENT NAME: 20101104pwr03 WELLS – CONSTRUCTION/MAINTENANCE (0811-01)
PROJECT NO. 3200018

COMMENTS: Total amount of job order no. 9 is \$186,470 and the project contingency amount is \$10,000.

PREPARED BY: Donna Rygiel, Engineering Contract Administrator (x8520)

REVIEWED BY: Don Hawkes, Deputy PW Director/Water Utilities (x2660)
Andy Goh, Deputy PW Director/City Engineer (x8896)

LEGAL REVIEW BY: Judi Morgan, Deputy City Attorney (x8779)

DEPARTMENT REVIEW BY: Don Bessler, Public Works Director (x8205)

FISCAL NOTE: Sufficient funds are available in Capital Improvement Fund No. 3200019, New Production Wells.

RECOMMENDATION: Approve job order no. 9 with Caliente Construction, Inc. through existing job order contract no. C2008-137.

ADDITIONAL INFO: The purpose of this project is to improve operational safety and monitoring at six existing well sites, which will result in more consistent infrastructure among all sites. The scope of work for this contract includes completing the installation of miscellaneous equipment and appurtenances on the chlorine liquid disinfection systems at well site nos. 1, 7, 10, 11, 12 and 15. Work includes the installation of liquid chlorine storage tanks; filling and distribution of piping and chlorine metering pumps and injectors; the installation of eyewash/showers, concrete shower slabs and flow switches and associated electrical conduit, wiring and connections; installation of hose bibs and associated piping and connections; and, at well site no. 12, one 10' x 10' pre-fabricated fiberglass reinforced plastic building and concrete slab to cover and protect the chlorine liquid tanks and metering pump.

The project contingency has been established at \$10,000, which is approximately five percent (5%) of the contract amount, to cover possible unforeseen conditions during construction.

Caliente Construction, Inc. is one of three on-call contractors previously selected through a qualifications based process consistent with A.R.S. § 34-601 through 611 for job order contracting construction services. The qualifications based selection process for job order contracting includes evaluation of each contractor's statement of qualifications in response to our request for qualifications (RFQ); holding selection panel interviews with qualified firms based on selection criteria with relative weights as follows:

- 20% Relevant experience and qualifications of the proposed firm;
- 20% Relevant experience of key personnel;
- 20% Understanding of and approach to performing required services;
- 30% In depth discussion through question and answer session of the proposed firm's expertise, knowledge and qualifications of key personnel, and;
- 5% Overall evaluation of the proposed firm and its ability to provide the required services.

Once interviews are held, a final list of up to three qualified firms is established to negotiate and enter into contracts with. Once job order contracts are awarded, work is performed as a series of individual job orders. Each job order is defined by staff and negotiated with the job order contractor. Scope, schedule and price are established for each individual job order, which is recommended to Mayor and Council for award if the job order exceeds \$50,000. Staff has reviewed the proposal from Caliente Construction, Inc. and found it to be in order.

CITY OF TEMPE, ARIZONA
PUBLIC WORKS DEPARTMENT
DIVISION OF ENGINEERING

JOB ORDER NO. 9 TO CALIENTE CONSTRUCTION, INC.
THROUGH EXISTING CONTRACT NO. C2008-137

WELL DISINFECTION CONVERSION IMPROVEMENTS

PROJECT NO. 3200018

This **JOB ORDER NO. 9** is entered into on this 4th day of November, 2010, by and between the **City of Tempe**, an Arizona municipal corporation (“City”) and **Caliente Construction, Inc.**, an Arizona corporation (“JOC”), through the existing Contract made and entered into by and between the parties on July 22, 2008, (Contract No. C2008-137) along with that certain Amendment No. 1 entered into on May 28, 2009 and Addendum No. 1 on July 2, 2009, (collectively “Contract”).

SECTION 1 – JOB ORDER PRICE AND WORK LOCATION: JOC shall furnish any and all plant, materials, labor, construction equipment, services and transportation (all applicable taxes included) required for performing all work for the construction of Well Disinfection Conversion Improvements, (Project No. 3200018) (“Project”) for the sum of One Hundred Eighty Six Thousand Four Hundred Seventy and 00/100 Dollars (\$186,470.00), as detailed in the Proposal (Exhibit “A”) attached hereto and incorporated herein by this reference, and to completely and totally construct the same and install the materials therein for the Project, in a good and workmanlike and substantial manner and to the satisfaction of City or its properly authorized agents and strictly pursuant to and in conformity with the Specifications and Plans for the Project and other documents that may be requested by City through its Engineer or other properly authorized agents, as provided herein. The full street or physical addresses of the construction work locations (“Work Location”) are 1595 S. College Avenue, 1925 S. Smith Road, 2126 E. Southern Avenue, 5617 S. McClintock Drive, 6600 S. Price Road, Tempe, Arizona. JOC shall list

the Work Location in any subcontract related to this job order at any level and each subcontractor shall likewise include the Work Location in any of its subcontracts.

SECTION 2 – REQUIRED SUBMITTALS: JOC shall submit the completed forms referenced in the Forms Appendix (Exhibit “B”) attached hereto to City for approval prior to receipt of a Notice to Proceed issued by City for the Project.

SECTION 3 – AMENDMENT: City of Tempe Contract No. C2008-137, as amended on May 28, 2009 and July 2, 2009, the terms and conditions contained therein and all exhibits attached to the Contract and to this Job Order No. 9, are by reference incorporated into this Job Order No. 9. All provisions of the underlying Contract where not inconsistent with this Job Order No. 9 shall remain binding on the parties.

SECTION 4 – CONTRACT TERM: Work shall start as soon as practicable, and in no case later than seven (7) calendar days after the Notice to Proceed is issued by City, and shall be completed within one hundred twenty (120) calendar days thereafter.

[SIGNATURE PAGE TO FOLLOW]

Well Disinfection Conversion Improvements
Project No. 3200018

DATED this _____ day of _____, 2010.

CITY OF TEMPE, ARIZONA

By: _____
Mayor

By: _____
Public Works Director

ATTEST:

Recommended by:

City Clerk

Deputy PW Director/City Engineer

APPROVED AS TO FORM:

City Attorney

JOC warrants that the person who is signing this Job Order on behalf of the JOC is authorized to do so and to execute all other documents necessary to carry out the terms of this Job Order.

CALIENTE CONSTRUCTION, INC.

By: _____
Signature

Printed Name

Its: _____
Title

Federal I.D. No./Social Security No.

Certified to be a true and exact copy.

Karen M. Fillmore
Records Specialist

EXHIBIT B

FORMS APPENDIX

The following forms shall be completed and submitted with each Job Order.

LIST OF SUBCONTRACTORS SB-1

STATUTORY PERFORMANCE BOND PB-1

STATUTORY PAYMENT BOND PB-3

STATUTORY PERFORMANCE BOND
PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (“Principal”) and _____,
a corporation organized and existing under the laws of the State of _____, with
its principal office in the City of _____ (“Surety”), are held and firmly bound
unto _____ (“Obligee”) in the amount of _____ Dollars
(\$_____), for the payment whereof, the said Principal and Surety bind themselves,
and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the Principal has entered into a certain written Contract with the
Obligee, dated the 4th day of November, 2010, to complete Project No. 3200018, which Contract
is hereby referred to and made a part hereof as fully and to the same extent as if copied at length
herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said
Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions
and agreements of said Contract during the original term of said Contract and any extension
thereof, with or without notice to the Surety, and during the life of any guaranty required under
the Contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions,
and agreements of any and all duly authorized modifications of said Contract that may hereafter
be made, notice of which modifications to the Surety being hereby waived; then the above
obligation shall be void, otherwise to remain in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title and Chapter, to the extent as if it were copied at length herein.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by the Court. The performance under this bond is limited to the construction to be performed under this Contract and does not include any design services, preconstruction services, finance services, maintenance services, operations services or any other related services included in the Contract.

DATED this ____ day of _____, 2010.

PRINCIPAL SEAL

BY: _____

**

SURETY SEAL

BY: _____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

STATUTORY PAYMENT BOND
PURSUANT TO TITLE 34,
CHAPTER 6, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That _____ (“Principal”) and _____,
a corporation organized and existing under the laws of the State of _____,
with its principal office in the City of _____ (“Surety”), as held and firmly
bound unto _____ (“Obligee”) in the amount of _____
Dollars (\$_____), for the payment whereof, the said Principal and Surety bind
themselves, and their heirs, administrators, executors, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the
Obligee, dated the 4th day of November, 2010, to complete Project No. 3200018, which Contract
is hereby referred to and made a part hereof as fully and to the same extent as if copied at length
herein.

NOW, THEREFORE, the condition of this obligation is such, that if the said
Principal shall promptly pay all monies due to all persons supplying labor or materials to the
Principal or the Principal’s Subcontractors in the prosecution of the construction provided for the
Contract, then this obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that this bond is executed pursuant to Title 34, Chapter 6,
Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with
the provisions, conditions and limitations of said Title and Chapter to the same extent as if it
were copied at length in this Contract.

The prevailing party in a suit on this bond shall recover as a part of the judgment
reasonable attorney fees that may be fixed by the Court.

DATED this _____ day of _____, 2010.

PRINCIPAL SEAL

BY: _____

**

SURETY SEAL

BY: _____

AGENCY ADDRESS

** Surety hereby acknowledges they are licensed to do business in the State of Arizona **

**CITY OF TEMPE DEPARTMENT OF PUBLIC WORKS
UNCONDITIONAL WAIVER AND RELEASE
FOR CONTRACTOR'S PAYMENT
AND SETTLEMENT OF CLAIMS**

Upon receipt of payment from the City of Tempe, the undersigned:

Contractor's Name: _____

Contractor's Address: _____

The undersigned has been paid and acknowledges having received final payment from the City of Tempe in the amount of \$_____ [state dollar amount for final, total contract amount] for full and final payment of all work, services, equipment, labor, skill and material furnished, delivered and performed by the undersigned for the city or anyone in the construction [or other services] for WELL DISINFECTION CONVERSION IMPROVEMENTS and PROJECT NO. 3200018 at the locations of 1595 S. College Ave., 1925 S. Smith Rd., 2126 E. Southern Ave., 5617 S. McClintock Dr. and 6600 S. Price Rd.; and does hereby waive and release any and all rights to mechanic's liens, any state or federal statutory bond right, any private bond right, any claim for payment and any and all rights under any applicable federal, state or local laws related to claim or payment rights for persons in the undersigned's position held on the above-referenced project against the City of Tempe, for this value received. The undersigned further agrees to defend, indemnify and hold harmless the City of Tempe against any and all liens, claims, suits, actions, damages, charges and expenses whatsoever, which the City may incur arising out of the failure or the undersigned to pay in full for all work, services, equipment, labor, skill and material furnished with regard to the project.

The undersigned, in consideration of the payment acknowledged, hereby warrants that he has already paid or will pay using the monies received from this final payment to promptly pay in full all of his contractors, subcontractors, laborers, materialmen and suppliers for all work, materials, equipment or services provided to the above-referenced project.

Contractor Signature

Date

By (Print Name and Title)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if signed, even if you have not been paid. If you have not been paid in full, use a conditional release form.

[NOTARY SEAL TO FOLLOW]

STATE OF ARIZONA)
COUNTY OF MARICOPA)

On ____ day of _____, 2010, _____ personally appeared before me, and proved by lawful identification documents to be the person who signed the preceding document in my presence, and who affirmed to me that the contents therein are truthful and accurate to the best of his/her knowledge and belief.

Notary Seal

Notary Public

Printed Name

My Commission Expires:



Caliente

Construction Inc.

General Construction
Facilities Management

EXHIBIT A

**City of Tempe
Well Disinfection Conversion Improvements
Wells 1, 7, 10, 11, 12, 15**

PROPOSAL QUALIFICATIONS, CLARIFICATIONS,

8-5-10

Qualifications:

- 1) CCI has included all costs required to provide a 100% Payment and Performance Bond.
- 2) Cost includes builder's risk, general liability, workers' compensation and auto insurance costs complying with limits specified in the owner / contractor agreement.
- 3) Cost includes all applicable sales tax costs.
- 4) Cost includes a one-year warranty from date of owner accepted completion. All equipment manufactures extended warranties will be forwarded to the owner.
- 5) Proposal is based on normal working hours and days.

Specific Project Clarifications:

- 1) CCI has not included any funds for removal and handling hazardous wastes or buried remnants from previous construction, if encountered.
- 2) It is assumed that materials testing and special structural inspections (if required) will be provided by City of Tempe.



242 S. El Dorado Circle, Mesa AZ 85202, Phone: (480) 894-5500 Fax: (480) 894-2323

AZ ROC091625 AZ ROC098769 AZ ROC164561 CA 770323 UT 4741522-5501 NV 0051507 NM 85371 CO 233580

SDP



Caliente

Construction Inc.

General Construction
Facilities Management

Scope of Work Well Specific:

Due to the changes in scope from plans, the following scopes will be defined at each Well Site.

Well # 1

Furnish and install 14"x12"x8" Fiberglass Enclosure (Hoffman A14128CHQRF) Pad lock provided by COT.

New Signage per plans.

New heavy duty hose rack. Location as specified by COT.

Furnish and install new eyewash and pad per the details on the plans. The location of the eyewash has been moved to the northeast corner (east side) of the building. The water supply for the eyewash will be connected to a new 1-1/2" copper water supply from main well line downstream from injector. The underground water supply line will be wrapped. Includes 1-1/2" backflow, manufacture Watts 009 or Febco 825Y. Certification of backflow. Location of backflow will be at new water tap location. Price includes 2 - 3/4" quarter turn hosebib w/brass vacuum breaker.

A new diffuser assembly will be provided per the detail on the plans. The diffuser will be placed in the existing saddle (Recently replaced by COT). The detail has been modified slightly between the existing chlorine supply line and connection to new diffuser assembly. The location of the ball valve has been moved to right before the reducer, per COT. From the ball valve to the existing chlorine supply line, Gorilla 500 psi 2G-14C-14 yellow hose will be used, per COT.(Spec attached) The Gorilla hose will be connected with (2) hose clamps at each connection.

The electrical scope has been slightly modified, per COT. The addition of a duplex outlet will be necessary for the hypochlorite metering pump. The low voltage monitoring wire will be run as shown on the plans, final terminations into the RTU will be made by COT. Includes corrosive resistant conduit (PVC Coated).

Well # 7

Furnish and install 14"x12"x8" Fiberglass Enclosure (Hoffman A14128CHQRF) Pad lock provided by COT.

New Signage per plans.

New heavy duty hose rack. Location as specified by COT.

Furnish and install new eyewash and pad per the details on the plans. The location of the eyewash is per plan. The water supply for the eyewash will be connected to a new 1-1/2" copper water supply from main well line downstream from injector. The underground water supply line will be wrapped. Includes 1-1/2" backflow, manufacture Watts 009 or Febco 825Y. Certification of backflow. Location of backflow will be at new water tap location. Price includes 2 - 3/4" quarter turn hosebib w/brass vacuum breaker.



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SAB



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Construction Inc.

General Construction
Facilities Management

Well # 7(cont)

Electrical demolition will be performed per plan.

The low voltage monitoring wire will be run as shown on the plans, final terminations into the RTU will be made by COT. Includes corrosive resistant conduit (PVC Coated).

Well # 10

Furnish and install 14"x12"x8" Fiberglass Enclosure (Hoffman A14128CHQRFG) Pad lock provided by COT.

New Signage per plans.

New heavy duty hose rack. Location as specified by COT.

Furnish and install new eyewash and pad per the details on the plans. The location of the eyewash will be per plan.

The water supply for the eyewash will be connected to a new 1-1/2" copper water supply from main well line downstream from injector. The underground water supply line will be wrapped. Includes 1-1/2" backflow, manufacture Watts 009 or Febco 825Y. Certification of backflow. Location of backflow will be at new water tap location. Price includes 2 - 3/4" quarter turn hosebib w/brass vacuum breaker.

A new diffuser assembly will be provided per the detail on the plans. The diffuser will be placed in the new saddle. The detail has been modified slightly between the existing chlorine supply line and connection to new diffuser assembly. The location of the ball valve has been moved to right before the reducer, per COT. From the ball valve to the existing chlorine supply line, Gorilla 500 psi 2G-14C-14 yellow hose will be used, per COT.(Spec attached) The Gorilla hose will be connected with (2) hose clamps at each connection.

Electrical demolition will be performed per plan.

The low voltage monitoring wire will be run as shown on the plans, final terminations into the RTU will be made by COT. Includes corrosive resistant conduit (PVC Coated).

Well # 11

Furnish and install 14"x12"x8" Fiberglass Enclosure (Hoffman A14128CHQRFG) Pad lock provided by COT.

New Signage per plans.

New heavy duty hose rack. Location as specified by COT.

Furnish and install new eyewash and pad per the details on the plans. The location of the eyewash will be per plan.

The water supply for the eyewash will be connected to a new 1-1/2" copper water supply from main well line downstream from injector. The underground water supply line will be wrapped. Includes 1-1/2" backflow, manufacture Watts 009 or Febco 825Y. Certification of backflow.



242 S. El Dorado Circle, Mesa AZ 85202, Phone: (480) 894-5500 Fax: (480) 894-2323

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SDB



Caliente

Construction Inc.
General Construction
Facilities Management

Well # 11(cont)

Location of backflow will be at new water tap location. Price includes 2 - 3/4" quarter turn hosebib w/brass vacuum breaker.

A new diffuser assembly will be provided per the detail on the plans. The diffuser will be placed in the new saddle. The detail has been modified slightly between the existing chlorine supply line and connection to new diffuser assembly. The location of the ball valve has been moved to right before the reducer, per COT. From the ball valve to the existing chlorine supply line, Gorilla 500 psi 2G-14C-14 yellow hose will be used, per COT.(Spec attached) The Gorilla hose will be connected with (2) hose clamps at each connection.

Electrical demolition will be performed per plan.

The low voltage monitoring wire will be run as shown on the plans, final terminations into the RTU will be made by COT. Includes corrosive resistant conduit (PVC Coated).

Well # 12

Furnish and install 14"x12"x8" Fiberglass Enclosure (Hoffman A14128CHQRFQ) Pad lock provided by COT.

New Signage per plans.

Furnish and install new eyewash and pad per the details on the plans, with the addition of a hose bib. The location of the eyewash will be per plan.

The water supply for the eyewash will be connected to the existing 3/4 inch PVC water line at location shown on plans.

Furnish and install new FRP building and pad per plans and specs.

New diffuser assemblies will be provided per the detail on the plans. The diffusers will be placed in the new saddle. The detail has been modified slightly between the existing/new chlorine supply line and connection to new diffuser assembly. The location of the ball valve has been moved to right before the reducer, per COT. From the ball valve to the existing chlorine supply line, Gorilla 500 psi 2G-14C-14 yellow hose will be used, per COT.(Spec attached) The Gorilla hose will be connected with (2) hose clamps at each connection.

Install owner furnish items.

The low voltage monitoring wire will be run as shown on the plans, final terminations into the RTU will be made by COT. Includes corrosive resistant conduit (PVC Coated).

Includes patch back of asphalt.



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AZ ROC091625 AZ ROC098769 AZ ROC164561 CA 770323 UT 4741522-5501 NV 0051507 NM 85371 CO 233580

SDP



Caliente

Construction Inc.

General Construction
Facilities Management

Well 15

The low voltage monitoring wire will be run as shown on the plans, final terminations into the RTU will be made by COT. Includes corrosive resistant conduit (PVC Coated).

Please let me know if you have any questions. Thank you for the opportunity.

Jeff Schaffer
Project Manager



242 S. El Dorado Circle, Mesa AZ 85202, Phone: (480) 894-5500 Fax: (480) 894-2323

AZ ROC091625 AZ ROC098769 AZ ROC164561 CA 770323 UT 4741522-5501 NV 0051507 NM 85371 CO 233580



242 S. El Dorado Circle
 Mesa, AZ 85202
 Phone: 480-894-5500 Fax: 480-894-2323
 Lic. # AZ ROC 091625; AZ ROC 164561

Caliente
 Construction Inc.

5-Aug-10

CITY OF TEMPE WELL DISINFECTION CONVERSION IMPROVEMENTS - SUMMARY SHEET

DIV. CODE	ITEM	QTY	TYP	RATE	LABOR	SUBCONTR	OTHER	SUBTOTAL	TOTAL
01	GENERAL CONDITIONS								\$ 35,480.00
03	SITENWORK								\$ 3,400.00
8	CONCRETE								\$ 8,400.00
10	DOORS/HARDWARE								\$ 500.00
13	SPECIALTIES								\$ 3,250.00
15	SPECIAL CONSTRUCTION								\$ 25,185.00
16	PLUMBING								\$ 39,806.00
	ELECTRICAL								\$ 41,620.00
	SUBTOTAL				\$ -	\$ -	\$ -	\$ -	\$ 157,421.00
	BOND	1.00%							\$ 1,864.70
	GENERAL LIABILITY INSURANCE	1.00%							\$ 1,864.70
	BUILDERS RISK INSURANCE	1.00%							\$ 1,864.70
	SUBTOTAL								\$ 163,015.10
	FEE	8.00%							\$ 13,041.21
	TAX	5.915%							\$ 10,413.73
	TOTAL								\$ 186,470.64
									\$ 186,470

Respectfully submitted,
 Jeff Schaffer
 Caliente Construction, Inc.



SPB



242 S. El Dorado Circle
 Mesa, AZ 85202
 Phone: 480-894-5500 Fax: 480-894-2323
 Lic. # AZ ROC 091625; AZ ROC 164561

Calliente
 Construction Inc.

5-Aug-10

CITY OF TEMPE WELL DISINFECTION CONVERSION IMPROVEMENTS - WELL NO 1

DIY CODE	ITEM	QTY	UNIT	RATE	LABOR	SUBCONTR	OTHER	SUBTOTAL	TOTAL
01	GENERAL CONDITIONS								
	Project Manager	25	wk	2,500.00	625.00			625.00	
	Project Engineer	25	wk	1,250.00	312.50			312.50	
	General Supt	0	wk	2,400.00					
	Superintendent	2	wk	2,150.00	4,300.00			4,300.00	
	Mobile Phone	2	wk	50.00			100.00	100.00	
	Pick Up Truck	2	wk	100.00			200.00	200.00	
	Vehicle Fuel	2	wk	150.00			300.00	300.00	
	Clean Up	2	wk	200.00	400.00			400.00	
	Subtotal								\$ 6,237.50
02	SITE WORK								
	Private Locator	1	ls	300.00			300.00	300.00	
	Subtotal								\$ 300.00
03	CONCRETE								
	Eyewash Slab	1	ea	850.00		850.00		850.00	
	Subtotal								\$ 850.00
10	SPECIALTIES								
	Signage	1	ea	250.00			250.00	250.00	
	Fiberglass Enclosure	1	ea	300.00			300.00	300.00	
	Heavy Duty Hose Rack	1	ea	100.00			100.00	100.00	
	Subtotal								\$ 650.00
15	Plumbing								
	Supply new 1-1/2" water supply to new EW and hose bibs. Furnish and install eyewash.	1	ea	6,772.50		6,772.50		6,772.50	
	Subtotal								\$ 6,772.50
16	ELECTRICAL								
	Electrical and Controls	1	ea	2,400.00		2,400.00		2,400.00	
	Subtotal								\$ 2,400.00
	SUBTOTAL				\$ 5,637.50	\$ 10,022.50	\$ 1,550.00	\$ 17,210.00	\$ 17,210.00
	BOND		1.00%					203.86	\$ 203.86
	GENERAL LIABILITY INSURANCE		1.00%					203.86	\$ 203.86
	BUILDERS RISK INSURANCE		1.00%					203.86	\$ 203.86
	SUBTOTAL							17,821.58	\$ 17,821.58
	FEE		5.00%					1,425.73	\$ 1,425.73
	TAX		5.915%					1,138.48	\$ 1,138.48
	TOTAL								\$ 20,385.79
	TOTAL								\$ 20,386

Respectfully submitted,
 Jeff Schaffer
 Calliente Construction, Inc.

SAB



242 S. El Dorado Circle
 Mesa, AZ 85202
 Phone: 480-894-5500 Fax 480-894-2323
 Lic. # AZ ROC 091825; AZ ROC 164561

Calliente
 Construction Inc.

5-Aug-10

CITY OF TEMPE WELL DISINFECTION CONVERSION IMPROVEMENTS - WELL NO. 7

DIY CODE	ITEM	QTY	U/P	RATE	LABOR	SUBCONTR	OTHER	SUBTOTAL	TOTAL
01	GENERAL CONDITIONS								
	Project Manager	25	wk	2,500.00	625.00			625.00	
	Project Engineer	25	wk	1,250.00	312.50			312.50	
	General Supt	0	wk	2,400.00					
	Superintendent	2	wk	2,150.00	4,300.00			4,300.00	
	Mobile Phone	2	wk	50.00			100.00	100.00	
	Pick Up Truck	2	wk	100.00			200.00	200.00	
	Vehicle Fuel	2	wk	150.00			300.00	300.00	
	Dumpster & Fees	0	pull	590.00					
	Clean Up	2	wk	200.00	400.00			400.00	
	Subtotal:								\$ 6,237.50
02	SITE WORK								
	Private Locator	1	ls	300.00			300.00	300.00	
	Subtotal:								\$ 300.00
03	CONCRETE								
	Eyewash slab	1	ea	850.00		850.00		850.00	
	Subtotal:								\$ 850.00
10	SPECIALTIES								
	Signage	1	ea	250.00			250.00	250.00	
	Fiberglass Enclosure	1	ea	300.00			300.00	300.00	
	Heavy Duty Hose Rack	1	ea	100.00			100.00	100.00	
	Subtotal:								\$ 650.00
15	PLUMBING								
	Supply new 1-1/2" water supply to new EW and hose bibs. Furnish and install eyewash.	1	ea	7,497.00		7,497.00		7,497.00	
	Subtotal:								\$ 7,497.00
16	ELECTRICAL								
	Electrical and Controls	1	ea	2,400.00		2,400.00		2,400.00	
	Subtotal:								\$ 2,400.00
	SUBTOTAL								\$ 17,934.50
	BOND								\$ 17,934.50
	GENERAL LIABILITY INSURANCE	1.00%						\$ 212.44	
	BUILDERS RISK INSURANCE	1.00%						\$ 212.44	
	SUBTOTAL								\$ 424.88
	FEE								\$ 18,571.82
	TAX	8.00%						\$ 1,485.75	
	TOTAL	5.915%						\$ 1,188.41	
	TOTAL								\$ 21,243.98
	<i>Respectfully submitted,</i>								\$ 21,243.98
	Jeff Schaffer								
	Calliente Construction, Inc.								

SSB



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Caliente
Construction Inc.

5-Aug-10

DIV. CODE	ITEM	QTY	UNIT	RATE	LABOR	SUBCONTR	OTHER	SUBTOTAL	TOTAL
GENERAL CONDITIONS									
01	Project Manager	.25	WK	2,500.00	625.00			625.00	
	Project Engineer	.25	WK	1,250.00	312.50			312.50	
	General Supt	0	WK	2,400.00					
	Supercintendent	2	WK	2,150.00	4,300.00			4,300.00	
	Mobile Phone	2	WK	50.00			100.00	100.00	
	Pick Up Truck	2	WK	100.00			200.00	200.00	
	Vehicle Fuel	2	WK	150.00			300.00	300.00	
	Dumpster & Fees	0	pull	550.00					
	Clean Up	2	WK	200.00	400.00			400.00	
	Subtotal								\$ 6,237.50
02	SITE WORK								
	Private Locator	1	ls	300.00			300.00	300.00	
	Subtotal								\$ 300.00
03	CONCRETE								
	Eyewash slab	1	ea	850.00		850.00		850.00	
	Subtotal								\$ 850.00
08	DOOR & HARDWARE								
	Demoreinstall framew/hardware	1	ea	500.00		500.00		500.00	
	Subtotal								\$ 500.00
10	SPECIALTIES								
	Signage	1	ea	250.00			250.00	250.00	
	Fiberglass Enclosure	1	ea	300.00			300.00	300.00	
		1	ea	100.00			100.00	100.00	
	Subtotal								\$ 650.00
15	PLUMBING								
	Supply new 1-1/2" water supply to new EW and hose bibs. Furnish and install eyewash.	1	ea	7,245.00		7,245.00		7,245.00	
	Subtotal								\$ 7,245.00
16	ELECTRICAL								
	Electrical and Controls	1	ea	2,400.00		2,400.00		2,400.00	
	Subtotal								\$ 2,400.00
	SUBTOTAL				\$ 5,637.50	\$ 10,985.00	\$ 1,550.00	\$ 18,182.50	\$ 18,182.50
	BOND								\$ 215.38
	GENERAL LIABILITY INSURANCE	1.00%							\$ 215.38
	BUILDERS RISK INSURANCE	1.00%							\$ 215.38
	SUBTOTAL								\$ 18,828.64
	FEE	8.00%							\$ 1,506.29
	TAX	5.915%							\$ 1,202.81
	TOTAL								\$ 21,537.74
	Subtotal								\$ 21,538

Respectfully submitted,
Jeff Schaffer
Caliente Construction, Inc.

JDS



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Lic. # AZ ROC 091625; AZ ROC 164561

Caliente
Construction Inc.

5-Aug-10

DM CODE	ITEM	QTY	TYP	RATE	LABOR	SUBCONTR	OTHER	SUBTOTAL	TOTAL
01	GENERAL CONDITIONS								
	Project Manager	.25	WK	2,600.00	625.00			625.00	
	Project Engineer	25	WK	1,250.00	312.50			312.50	
	Superintendent	2	WK	2,150.00	4,300.00			4,300.00	
	Mobile Phone	2	WK	50.00			100.00	100.00	
	Pick Up Truck	2	WK	100.00			200.00	200.00	
	Vehicle Fuel	2	WK	150.00			300.00	300.00	
	Clean Up	2	WK	200.00	400.00			400.00	
	Subtotal:								\$ 6,237.50
02	SITE WORK								
	Private Locator	1	ls	300.00			300.00	300.00	
	Subtotal:								\$ 300.00
03	CONCRETE								
	Eyewash slab	1	ea	850.00		850.00		850.00	
	Subtotal:								\$ 850.00
10	SPECIALTIES								
	Signage	1	ea	250.00		250.00		250.00	
	Fiberglass Enclosure	1	ea	300.00		300.00		300.00	
	Heavy Duty Hose Rack	1	ea	100.00		100.00		100.00	
	Subtotal:								\$ 650.00
15	PLUMBING								
	Supply new 1-1/2" water supply to new EW and hose bibs. Furnish and install eyewash.	1	ea	6,489.00		6,489.00		6,489.00	
	Subtotal:								\$ 6,489.00
16	ELECTRICAL								
	Electrical and Controls	1	ea	2,400.00		2,400.00		2,400.00	
	Subtotal:								\$ 2,400.00
	SUBTOTAL				\$ 5,637.50	\$ 8,738.00	\$ 1,550.00	\$ 16,926.50	\$ 16,926.50
	BOND	1.00%						200.50	
	GENERAL LIABILITY INSURANCE	1.00%						200.50	
	BUILDERS RISK INSURANCE	1.00%						200.50	
	SUBTOTAL							\$ 17,528.00	\$ 17,528.00
	FEE	8.00%						1,402.24	
	TAX	5.915%						1,119.72	
	TOTAL							\$ 20,049.96	\$ 20,049.96
	Subtotal:								\$ 20,050

Respectfully submitted,
Jeff Schaffer
Caliente Construction, Inc.

JDS



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 Construction Inc.

5-Aug-10

CITY OF TEMPE WELL DISINFECTION CONVERSION IMPROVEMENTS - WELL NO. 12

DM CODE	ITEM	QTY	UNIT	RATE	LABOR	SUBCONTR	OTHER	SUBTOTAL	TOTAL
01	GENERAL CONDITIONS								
	Project Manager	50	WK	2,500.00	1,250.00			1,250.00	
	Project Engineer	25	WK	1,250.00	312.50			312.50	
	General Supt	0	WK	2,400.00					
	Superintendent	3.5	WK	2,150.00	7,525.00			7,525.00	
	Mobile Phone	3	WK	50.00			150.00	150.00	
	Pick Up Truck	3	WK	100.00			300.00	300.00	
	Vehicle Fuel	3	WK	150.00			450.00	450.00	
	Dumpster & Fees	0	PKT	550.00					
	Clean Up	1	WK	200.00	200.00			200.00	
	Subtotal							\$ 10,187.50	
02	SITE WORK								
	Locator	1	ea	600		600.00		600.00	
	Asphalt Patch Back	1	ea	1600		1,600.00		1,600.00	
	Subtotal							\$ 2,200.00	
03	CONCRETE								
	Building Pad & Eyewash Pad	1	ea	5,000.00		5,000.00		5,000.00	
	Subtotal							\$ 5,000.00	
10	SPECIALTIES								
	Signage	1	ea	250.00			250.00	250.00	
	Fiberglass Enclosure	1	ea	300.00			300.00	300.00	
	Heavy Duty Hose Rack	1	ea	100.00			100.00	100.00	
	Subtotal							\$ 650.00	
13	SPECIAL CONSTRUCTION								
	FRP Building	1	ea	23,685.00		23,685.00		23,685.00	
	Installation of Building	1	ea	1,500.00		1,500.00		1,500.00	
	Subtotal							\$ 25,185.00	
15	PLUMBING								
	Water Supply, Eyewash, install owner furnished items, run new chlorine lines to diffusers	1	ea	11,602.50		11,602.50		11,602.50	
	Subtotal							\$ 11,602.50	
16	ELECTRICAL								
	Electrical and Controls	1	ea	31,320.00		31,320.00		31,320.00	
	Subtotal							\$ 31,320.00	
	SUBTOTAL				\$ 9,287.50	\$ 76,307.50	\$ 1,550.00	\$ 86,145.00	
	BOND							\$ 1,020.41	
	GENERAL LIABILITY INSURANCE							\$ 1,020.41	
	BUILDERS RISK INSURANCE							\$ 1,020.41	
	SUBTOTAL							\$ 3,060.82	
	FEE							\$ 7,196.50	
	TAX							\$ 5,698.67	
	TOTAL							\$ 102,041.40	
								\$ 102,041.40	

Respectfully submitted,
 Jeff Schaller
 Caliente Construction, Inc.

SSB



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Caliente
 Construction Inc.

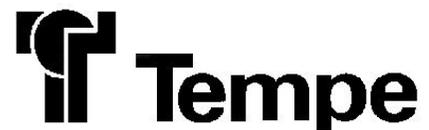
5-Aug-10

CITY OF TEMPE WELL DISINFECTION CONVERSION IMPROVEMENTS - WELL NO. 15

DIV. CODE	ITEM	CITY	ITY	RATE	LABOR	SUBCONTR	OTHER	SUBTOTAL	TOTAL
01	GENERAL CONDITIONS	15	wk	2,150.00	322.50			322.50	\$ 322.50
	Supintendent								
16	ELECTRICAL	1	ea	700.00		700.00		700.00	\$ 700.00
	Electrical and Controls								
	SUBTOTAL				\$ 322.50	\$ 700.00	\$	\$ 1,022.50	\$ 1,022.50
	BOND		1.00%					12.11	\$ 12.11
	GENERAL LIABILITY INSURANCE		1.00%					12.11	\$ 12.11
	BUILDERS RISK INSURANCE		1.00%					1,058.83	\$ 1,058.83
	SUBTOTAL							84.71	\$ 84.71
	FEE		8.00%					67.64	\$ 67.64
	TAX		5.919%						\$
	TOTAL								\$ 1,211.18
									\$ 1,211.18

Respectfully submitted,
 Jeff Schaffer
 Caliente Construction, Inc.

Staff Summary Report



Council Meeting Date: _____

Agenda Item Number: _____

SUBJECT: Request approval to ratify an award of a twenty-month contract with Rgon Enterprises, Inc. for restaurant management and operations at Ken McDonald Golf Course.

DOCUMENT NAME: 20101104fslg02 PURCHASES (1004-01)

COMMENTS: There is no cost to the City for this contract.

PREPARED BY: Lisa Goodman, Procurement Officer, 480-350-8533

REVIEWED BY: Michael Greene, CPM, Central Services Administrator, 480-350-8516
Jerry Hart, CPA, Deputy Director - Financial Services, 480-350-8505
Don Bessler, Director of Public Works, 480-350-8205
John Osgood, Deputy Director - Field Operations, 480-350-8949

LEGAL REVIEW BY: Dave Park, Assistant City Attorney, 480-350-8907

DEPARTMENT REVIEW BY: Ken Jones, Finance and Technology Director, 480-350-8504

FISCAL NOTE: There is no cost to the City for this contract. The Contractor will compensate the City a monthly rental rate for the restaurant of \$1,600 plus a portion of utilities.

RECOMMENDATION: Ratify the contract award.

ADDITIONAL INFO: Background Information

The City issued an emergency procurement for restaurant operations at Ken McDonald Golf Course. The restaurant's current operator, Jim Godfrey, elected to terminate his contract under the termination provisions of his contract and provided the City with 60-days notice. Due to the critical need to have a new concessionaire in place for the high-peak golf season, the City determined it was necessary to issue an emergency procurement in order to avoid closing restaurant operations for some period of time.

The City can solicit limited competition under the emergency procurement process. The City issued an RFP to the following six firms:

- Bellows Golf Holdings
- Aramark
- Rgon Enterprises
- Heidi's Catering
- Santa Barbara Catering
- Special Moments Catering

Only one response was received from Bellows Golf Holdings. After the City found the Bellows Golf Holdings' proposal to be non-responsive, it contacted two of the six firms who were solicited and attended the pre-proposal conference but did not submit proposals – Aramark and Rgon Enterprises.

Aramark proposed to operate the restaurant at Ken McDonald Golf Course for an annual management fee of \$50,000 payable by the City in addition to the monthly difference between revenue and expenses.

Rgon Enterprises proposed to operate the restaurant at Ken McDonald Golf Course paying the City \$1,600 a month for rent (the first two months rent is waived) plus a portion of the utilities and maintenance and repair of all kitchen equipment and furnishings.

An evaluation committee reviewed the proposals and determined that Rgon Enterprises' proposal was the most advantageous to the City.

Effective October 15, 2010, Rgon Enterprises assumed restaurant operations at Ken McDonald Golf Course. A contract has been developed with Rgon Enterprises that provides for a term through June 30, 2012 at which time a new solicitation will be developed for a longer term agreement.

EXHIBIT A
Purchase Agreement #T11-044-01

This Agreement is attached to the Contract Award Notice and made a part thereof and is entered into by the City of Tempe (hereinafter referred to as the "City") and Rgon Enterprises, Inc. (hereinafter referred to as "Concessionaire").

The parties agree as follows:

1. Concession Services

The City hereby grants to Concessionaire the exclusive right and privilege to provide concession services on the grounds of the Tempe Ken McDonald Golf Course including, without limitation, managing operating and supervising the sale of all food, food products, candy, tobacco products, non-alcoholic and alcoholic beverages, and catering services during all events at the golf course. The Concessionaire is required to provide mobile concession service on the golf course every day between 9:00 a.m. and 5:00 p.m. during the winter rate season. The Concessionaire may start earlier if needed to accommodate patrons. During off-peak season, the Concessionaire shall provide mobile concession service during peak morning and evening hours and as dictated by demand.

2. Term of Agreement

The term of this Agreement shall commence on October 15, 2010 and end on June 30, 2012.

3. Monthly Agreement Payment

Concessionaire shall pay to City as consideration for this Agreement the sum of \$1,600 monthly. The first two (2) months of compensation to the City shall be "gratis".

4. Late Payments

In the event that payments are not made to the City when due, Concessionaire shall, in addition to making such payments, pay to the City, on or before thirty (30) calendar days after the due date, a late charge of five percent (5%) of the total amount due. In the further event said payments, plus late charges are not timely paid as outlined in Section 3 above, the City may give Concessionaire written notice to make said payments plus late charges. If Concessionaire fails to do so within twenty-one (21) calendar days of such written notice, the City may, at its option, terminate this Agreement and Concessionaire shall be liable to the City for all damage suffered by the City as a result of the default and termination, including, without limitation, all costs and attorney's fees.

5. Facilities

While the City owns the facility, it is the responsibility of the Concessionaire to furnish all necessary food, linens, kitchen equipment, utensils, serving dishes and any other items required to operate a full-service restaurant and mobile beverage cart. The City does own a variety of kitchen equipment, furnishings and utensils detailed in Exhibit A that will be made available to the Concessionaire. Concessionaire shall have the right to use all the City-owned equipment. All other kitchen equipment needed to complete operations will be provided by the Concessionaire.

The mobile beverage cart will be provided by the City and will be the existing cart currently located at Ken McDonald Golf Course. Concessionaire will acquire a second beverage cart for use at Ken McDonald Golf Course for use as needed to meet demand.

The Concessionaire is responsible for obtaining all applicable food service licenses. The Concessionaire shall keep all licenses current and remain in compliance throughout the term of the Agreement.

The Concessionaire shall always be in compliance with the Maricopa County health regulations and pass all health inspections.

The Concessionaire will make the facility available for catering, weddings, and various other special events.

6. **Food and Beverages**

The Concessionaire shall sell food, food products, candy, tobacco products, non-alcoholic and alcoholic beverages. Menus for breakfast and lunch shall be provided by Concessionaire. Menu pricing must be competitive with other local golf course markets.

Concessionaire agrees to strictly comply with the laws of the State of Arizona regarding the sale of alcoholic beverages. Concessionaire further agrees to adopt an identifications policy to verify the age of potential purchasers of alcoholic beverages.

The Concessionaire must provide mobile beverage cart services for patrons on the golf course. This service requires a series 7 liquor license.

7. **Liquor Licenses**

The City will acquire the series 7 liquor license from the current Concessionaire at the City's expense. The Concessionaire shall be named on the license and shall relinquish ownership of the liquor license to the City at the end of the Agreement. The Concessionaire shall maintain the liquor licenses in good standing.

The Concessionaire will acquire a series 12 liquor license for the premises.

8. **Catering**

The Concessionaire shall provide catering services to all patrons and other groups requesting such services within the Restaurant. The Concessionaire shall have exclusive catering rights in the clubhouse and at the golf course when used by outside groups and/or organizations for functions where food is provided by a caterer.

The Concessionaire shall pay the City a commission rate for all catering services prepared and/or held at the club house or golf course. The commission rate shall be mutually agreed upon in writing by the City and Concessionaire.

The City is to be notified in advance of all outside (non-golf related) scheduled catering events by the Concessionaire. A copy of the catering Agreement must be sent to the City Contract Administrator when Agreement is signed showing event date, time and estimated amount. A copy of the final invoice detailing all services must be delivered to the City Contract Administrator within seven (7) days of the event. Fax copies will not be acceptable.

9. **Hours of Operation**

The Concessionaire will operate and maintain the restaurant seven (7) days a week including holidays from dawn to dusk. Closures may occur with approval by the City due to weather conditions. Concessionaire may utilize facility for after hour events.

The Concessionaire will operate a beverage cart every day of the week, except on days on which the volume of golfers does not require beverage service or on closure days.

10. **Concession Operations**

The Concessionaire shall supervise all the day to day restaurant operations, including the mobile snack and beverage cart, catered events, tournament outings and special events. The Concessionaire may work with the Pro Shop concessionaire to offer various discounts and specials.

11. **Concessionaire Employees**

The City maintains the right of prior approval before any person, employed by the Concessionaire, is placed in charge of the food service operations at the restaurant. Any employee of the Concessionaire, who is determined by the Authorized City Representative or designee to be unacceptable, in accordance with City standards shall be removed from the staff and replaced with a satisfactory replacement. Issues that may initiate replacement include, but are not limited to, inappropriate behavior to customers or fellow contract employees, failure to comply with Food Handler standards and practices.

The Concessionaire shall at all times provide an active, qualified and competent supervisor at the restaurant who is authorized to represent and act for the Concessionaire in matters pertaining to the day to day operation of the facility. The supervisor must have successfully completed any and all programs and any courses and received any and all training and licenses required by the State and County Departments of Health Services. A copy of all such certificates and licenses shall be provided to the City upon request. If at any time the City notifies the Concessionaire that the supervisor or his/her assistant(s) are unsatisfactory, the Concessionaire shall remedy the situation within forty-eight (48) hours to the City's satisfaction. The Concessionaire further agrees to have at all times sufficient attendants on duty to render adequate service to the public, the City being the sole judge of the adequacy of such service.

The Concessionaire, at its own expense, shall employ and compensate the necessary number of employees required to properly perform its contractual obligations as defined in this Agreement. Employees shall be appropriately skilled, experienced and trained for their assigned duties. All food-handling employees shall possess a valid health certificate and shall present to the City upon request. The City shall have no liability for any of the specific provisions, modifications or termination of the Concessionaire's employment agreement with its employees.

Concessionaire employees shall be neat and clean in appearance and courteous towards the patrons, the public and their fellow employees. All Concessionaire employees are required to wear appropriate work attire and a name identification tag at all times while at Tempe facilities. The Concessionaire is required to notify the City representative of any staff changes.

12. Furnishing and Supplies

The Concessionaire shall provide furnishing and decorate the Restaurant with all items necessary and appropriate for the restaurant and catering facilities to function properly, including initial signage. Such items shall include, but are not limited to, dining and banquet tables, chairs and moveable restaurant equipment such as china, glass, silverware, linens, catering carts, kitchen supplies and uniforms. Any signage provided by the Concessionaire must be prior approved by the City.

The Concessionaire will purchase, if necessary, the cash register and the credit card terminal for the facility. The initial point of sale system will be provided by the City and will be returned to the City at the end of the Agreement.

Upon completion of the Agreement all equipment purchased by the City will remain the property of the City.

13. Facility Maintenance

The City shall be responsible for facility maintenance and upkeep to include air conditioning, heating equipment, evaporative coolers, exhaust system, plumbing beyond the exterior walls of the restaurant, lights/light systems, doors/locks, windows, alarm systems, structural elements, foundation, support beams, columns, structural integrity of flooring, carpet replacement, termite treatment, roofing, exterior walls, interior wall structure, gutters, downspouts, and utility lines to the exterior point of entry to the leases premises. City responsibility for these components shall be waived if maintenance as necessitated by the negligence or intentional wrongful acts of the Concessionaire, its agents, or employees.

The Concessionaire will be responsible for any damages caused that that might have been otherwise prevented with reasonable action by the Concessionaire. Concessionaire shall be responsible after mutual inspection and acceptance for grease trap maintenance, kitchen equipment repair and upkeep, general pest control, carpet cleaning, office equipment including printer, fax machines, copier, PA, video systems, signage, interior wall painting/touchup, window blinds/treatments, drain maintenance, etc.

The Concessionaire shall deliver the premises to the City upon termination of the Agreement in as good condition as at Agreement commencement, reasonable wear and tear to be allowed.

14. **Restrooms**

The restrooms located in the breezeway between the restaurant and the Pro Shop are the responsibility of the Concessionaire during operating hours. The Concessionaire shall restock the restrooms and keep them neat and tidy during business hours. The City will provide once per day cleaning before the Restaurant opens. All supplies used in the restrooms will be the responsibility of the City.

15. **Utilities**

The Concessionaire shall transfer all utility accounts to the name of the legal entity operating the facility with the exception of electrical. Since there is a combined meter at Ken McDonald Golf Course for the restaurant and pro-shop, the Concessionaire's allocation of electricity shall be 65%. Utilities will include but not be limited to gas, electric, water, trash removal, telephone, internet, cable and sewer services. Utilities are to be paid in full by the Concessionaire by the end of the month.

16. **Taxes**

Concessionaire shall collect and pay all taxes, at the current rates, imposed upon the sale of concession items hereunder, as required by Federal, State, or local law. Concessionaire shall be responsible for and pay all social security, unemployment insurance, old age retirement and other federal and state taxes that are measured by wages, salaries, or other remuneration paid to persons employed by the Concessionaire.

17. **Accounting System**

The Concessionaire shall maintain and use an accounting system that documents all point of sales transactions. Such records shall be maintained for the entire duration of the Agreement period, including any Agreement extension periods, and shall be made available to the City for inspection/audit upon request. The Concessionaire shall maintain a system of accounting that accounts for all monies received at the time of the sale and at any time be prepared to submit accurate records of all transactions. The Concessionaire shall provide receipts to customers for all goods and services provided. The Concessionaire will be responsible for maintaining all records in accordance with standard book-keeping and accounting practices which are industry standard within the State of Arizona. The Concessionaire shall be timely in payment of any and all local, state, and federal taxes, including but not limited to payroll taxes. In the event of any delinquency, the Concessionaire must immediately notify the City in writing with an explanation and plan for remedy. The Concessionaire will be required to provide monthly gross sales reports within thirty (30) days after the end of each month.

18. **Default Provisions**

- A. The occurrence of any or more of the following events shall constitute a material breach of and default under the Agreement. The City reserves the right to terminate the whole or any part of the Agreement due to Concessionaire's failure to fully comply with any term or condition herein.
- i) Any failure by Concessionaire to pay funds or furnish materials, services and/or goods that fail to conform to any requirement of this Agreement or provide personnel that do not meet Agreement requirements;
 - ii) Any failure by Concessionaire to observe, perform or undertake any provision, covenant or condition of this Agreement to be observed or performed by Concessionaire herein, including but not limited to failing to submit any report required herein;
 - iii) Any failure to make progress in the performance required pursuant to the Agreement and/or gives the City reason to believe that Concessionaire cannot or will not perform to the requirements of the Agreement; or,
 - iv) Any failure of Concessionaire to commence construction, work or services within the time specified herein, and to diligently undertake Concessionaire's work to completion.

- B. Upon and during the continuance of an event of default, the City, at its option and in addition to any other remedies available by law or in equity, without further notice or demand of any kind to Concessionaire, may do the following:
- i) Terminate the Agreement;
 - ii) Pursue and/or reserve any and all rights for claims to damages for breach or default of the Agreement; and/or,
 - iii) Recover any and all monies due from Concessionaire, including but not limited to, the detriment proximately caused by Concessionaire's failure to perform its obligations under the Agreement, or which in the ordinary course would likely result there from, including, any and all costs and expenses incurred by the City in: (a) maintaining, repairing, altering and/or preserving the premises (if any) of the Project; (b) costs incurred in selecting and retaining substitute Concessionaire for the purchase of services, materials and/or work from another source; and/or (c) attorneys' fees and costs in pursuing any remedies under the Agreement and/or arising there from.
- C. The exercise of any one of the City's remedies as set forth herein shall not preclude subsequent or concurrent exercise of further or additional remedies. In addition, the City shall be entitled to terminate this Agreement at any time, in its discretion. The City may terminate this Agreement for default, non-performance, breach or convenience, or pursuant to A.R.S. § 38-511, or abandon any portion of the project for which services have not been fully and/or properly performed by the Concessionaire.
- D. Termination shall be commenced by delivery of written notice to Concessionaire by the City personally or by certified mail, return receipt requested. Upon notice of termination, Concessionaire shall immediately stop all work, services and/or shipment of goods hereunder and cause its suppliers and/or Sub-contractors to cease work pursuant to the Agreement. Concessionaire shall not be paid for work or services performed or costs incurred after receipt of notice of termination, nor for any costs incurred that Concessionaire could reasonably have avoided.
- E. The City, in its sole discretion, may terminate or reduce the scope of this Agreement if available funding is reduced for any reason.

19. Termination for Convenience

The City at its sole discretion may terminate this Agreement for convenience with ninety (90) days advance notice to Concessionaire. Concessionaire shall be reimbursed for all appropriate costs as provided for within the Agreement up to the termination date specified

20. Applicable Law

This agreement shall be governed by, and the City and Concessionaire shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this Agreement and in statutes or ordinances pertaining specifically to the City. This Agreement shall be governed by State of Arizona law and suits pertaining to this Agreement may only be brought in courts located in Maricopa County, Arizona.

21. Insurance

Prior to commencing services under this Agreement, Concessionaire shall procure and maintain for the duration of the Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder by the Concessionaire, its agents, representatives, employees, Sub-contractors, or sub-Sub-contractors. For a Concessionaire with self-insurance, proof of self insurance with minimum limits expressed below must be submitted on proper forms prior to commencement of services.

Agreement Award Notice shall not commence until receipt of all required insurance documents by the City Procurement Office and such documents must meet all requirements of this Insurance clause. In addition, before any Agreement is renewed for additional time periods, all required insurance must be in force and on file with the City Procurement Office. Concessionaire must submit required insurance within ten (10) calendar days after request by the City Procurement Office.

A. Minimum Limits of Coverage: Without limiting any obligations or liabilities, the Concessionaire, at its sole expense, shall purchase and maintain the minimum insurance specified below with companies duly licensed or otherwise approved by the State of Arizona, Department of Insurance and with forms satisfactory to the City. Each insurer shall have a current A.M. Best Company, Inc., rating of not less than A-VII. Use of alternative insurers requires prior approval from the City.

i. Minimum Limits of Insurance. Concessionaire shall maintain limits no less than:

a. Commercial General Liability

Commercial general liability insurance limit of not less than \$1,000,000 for each occurrence, with a \$2,000,000 general aggregate limit. The general aggregate limit shall apply separately to the services under this Agreement or the general aggregate shall be twice the required per claim limit. The policy shall be primary and include coverage for bodily injury, property damage, personal injury, products, completed operations, and blanket contractual coverage, including but not limited to the liability assumed under the indemnification provisions of this Agreement which coverage will be at least as broad as insurance service officer policy form CG2010 11/85 edition or any replacement thereof.

In the event the general liability policy is written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the services as evidenced by annual certificates of insurance.

Such policy shall contain a "severability of interests" provision.

b. Worker's Compensation

The Concessionaire shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Concessionaire's employees engaged in the performance of services; and employer's liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

In case services are subcontracted, the Concessionaire will require the Sub-contractor to provide worker's compensation and employer's liability to at least the same extent as provided by Concessionaire.

c. Automobile Liability

Commercial business automobile liability insurance with a combined single life or bodily injury and property damages of not less than \$1,000,000 per accident regarding any owned, hired, and non-owned vehicles assigned to or used in performance of the contracted services. Coverage will be at least as broad as coverage Code 1 "any auto". Insurance Service Office policy form CA0001 Y87 or any replacements thereof. Such coverage shall include coverage for loading and unloading hazards.

d. Liquor Liability

Liquor liability insurance limit of not less than \$2,000,000 for each occurrence.

- B. Additional Insured. The insurance coverage, except for workers compensation required by this Agreement, shall name the City, its agents, representatives, directors, officials, employees, and officers, as additional insureds, and shall specify that insurance afforded the Concessionaire shall be primary insurance.
- C. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted by the City. Failure to do so shall constitute a material breach of this Agreement.
- D. Primary Coverage. Concessionaire's insurance shall be primary insurance to the City and any insurance maintained by the City shall not contribute to it.
- E. Claim Reporting. Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City.
- F. Waiver. The policies, including workers' compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the work or services of the Concessionaire.
- G. Deductible/Retention. The policies may provide coverage which contain deductibles or self-insured retentions. Such deductible and/or self insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. Concessionaire shall be solely responsible for deductible and/or self-insurance retention and the City, at its option, may require Concessionaire to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- H. Certificates of Insurance. Prior to commencing work or services under this Agreement, Concessionaire shall furnish the City with certificates of insurance, or formal endorsements as required by the Agreement, issued by the Concessionaire's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this Agreement are in full force and effect. Such certificates shall identify this Agreement number or name and shall provide for not less than thirty (30) days advance notice of cancellation, termination, or material alteration. Such certificates shall be sent directly to: Contract Administrator, City of Tempe, P. O. Box 5002, Tempe, AZ 85280.
- I. Copies of Policies. The City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the above policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Concessionaire of any deficiencies in such policies and endorsements, and such receipt shall not relieve Concessionaire from, or be deemed a waiver of, the City's right to insist on strict fulfillment of Concessionaire's obligations under this Agreement.

22. Licenses and Permits

Concessionaire shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Concessionaire, at its sole expense.

23. Sub-contractors and Sub-Sub-contractors

The City has the right to approve all Sub-contractors. Concessionaire is responsible for all actions of Sub-contractors. Concessionaire shall include all Sub-contractors and sub-Sub-contractors as insureds under its policies or shall furnish separate certificates and endorsements for each Sub-contractor and sub-Sub-contractor. All coverage for Sub-contractors and sub-Sub-contractors shall be subject to all of the requirements stated herein for the Concessionaire.

24. **Safety**
The Concessionaire shall be solely and completely responsible for conditions of the job site, including safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. The Concessionaire's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations set forth therein.
25. **Responsibility for Work**
The Concessionaire shall properly guard, protect, and take every reasonable precaution necessary against damage or injury to all finished or partially finished work due to weathering action by the elements or from any other cause, until the entire portion of their respective Agreement obligation is completed and accepted by the City. The Concessionaire shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work before final acceptance at no cost to the City. Partial payment for any completed portion of work shall not release the Concessionaire from such responsibility.
26. **Sub-Contractor(s)**
The City reserves the right to approve all sub-contractors. Concessionaire is responsible for all actions of sub-contractors.
27. **Severability**
The provisions of this Agreement are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.
28. **Specially Designated Nationals and Blocked Persons List**
Concessionaire represents and warrants to the City that neither Concessionaire nor any affiliate or representative of Concessionaire:
- A. Is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury (OFAC) pursuant to Executive Order no. 13224, 66 Fed. Reg. 49079 ("Order");
 - B. Is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other related Order(s);
 - C. Is engaged in activities prohibited in the Order; or,
 - D. Has been convicted, pleaded *nolo contendere*, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.
29. **Confidentiality of Records**
The Concessionaire shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Agreement shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Agreement. Persons requesting such information should be referred to the City. Concessionaire also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Concessionaire as needed for the performance of duties under the Agreement, unless otherwise agreed to in writing by the City.

30. **Key Personnel**

It is essential that the Concessionaire provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Agreement. The Concessionaire must agree to assign specific individuals to the key positions.

- A. The Concessionaire agrees that, once assigned to work under this Agreement, key personnel shall not be removed or replaced without written notice to the City.
- B. If key personnel are not available for work under this Agreement for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Concessionaire shall immediately notify the City, and shall, subject to the concurrence of the City, replace each person with personnel of substantially equal ability and qualifications.

31. **Conduct and Dress Code**

The Concessionaire's employees shall maintain proper conduct at all times while on City property. Employees shall respect other personnel at the work site. Abusive language, ethnic and racial slurs, sexual comments and jokes, shouting, and gestures toward other personnel will not be tolerated. Any occurrence will result in immediate action with possible dismissal of that employee.

Employees will be neatly dressed with badges or uniforms that identify them as employees of the Concessionaire.

32. **Safety, Health and Sanitation**

The Concessionaire shall provide and maintain in a neat, sanitary condition such facility accommodations for the use by their employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code.

The Concessionaire shall be fully responsible for the safety of their employees, the public and property in connection with the performance of the work covered by this Agreement. The Concessionaire shall provide all safeguards, safety devices and protective equipment and be responsible for taking any needed actions to protect the life and health of their employees and the public during work activity. The Concessionaire shall also take any necessary actions as directed by the City to reasonably protect the life and health of employees on this job and others coming into contact with the job site.

Precaution shall be exercised by the Concessionaire at all times for the protection of persons (including employees) and property. The Concessionaire shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State Occupational Safety and Health Acts, and Standards and Regulations promulgated there under.

33. **Protection and Restoration of Property and Landscape**

The Concessionaire shall be responsible for all damage or injury to public or private property of any character, during the prosecution of the work resulting from any act, omission, neglect, or misconduct in its manner or method of executing the work or at any time due to defective work or materials. The Concessionaire's responsibility will not be released until the project has been completed and accepted.

If damage is caused by the Concessionaire, the Concessionaire shall restore at no cost to the City such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding or otherwise restoring as may be directed, or they shall make good such damage or injury in an acceptable manner. Further payments will be withheld until the City has inspected the corrected damage or injury and has signed-off the completion and acceptance.

Concessionaire shall not dump spoils or waste material on private or private public property without first obtaining from the owner written permission for such dumping.

34. Indemnification

To the fullest extent permitted by law, the Concessionaire shall defend, indemnify and hold harmless the City, its agents, officer, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work, services, or professional services of the Concessionaire, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services the Concessionaire may be legally liable in the performance of this Agreement. Concessionaire's duty to hold harmless and indemnify the City, its agents, officers, officials and employees shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting from, caused by any acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Agreement by Concessionaire or any employee of the Concessionaire or any other person (not the City) for whose acts, errors, mistakes, omissions, work, or services the Concessionaire may be legally liable. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph. This provision shall survive the term of this Agreement.

35. Unauthorized Firearms & Explosives

No person conducting business on City property is to carry a firearm or explosive of any type. Any City bidder, Concessionaire or Sub-contractor is to honor this requirement at all times and failure to honor this requirement will result in agreement cancellation. This requirement also applies to persons who maintain a concealed weapon's permit. In addition to agreement cancellation anyone carrying a firearm or explosive device will be subject to police and legal action.

36. Whole Agreement

This Agreement represents the parties' whole Agreement. There are no other promises, terms, conditions or obligations, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

37. No Assignment

No right or interest in this Agreement shall be assigned by Concessionaire and no delegation of any duty of Concessionaire shall be made without prior written permission of the City.

38. Notices

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provision collectively called "Notices"), shall be in writing and shall be hand delivered or sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

City of Tempe Procurement Office
Attn: Lisa Goodman
PO Box 5002
Tempe, Arizona 85280

Rgon Enterprises, Inc.
Attn: Richard Gonzales
PO Box 1921
Litchfield Park, Arizona 85340

Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder.

39. **No Waiver**
No breach of default hereunder shall be deemed to have been waived by the City, except by written instrument to that effect signed by an authorized agent of the City. No waiver of any such breach or default shall operate as a waiver of any other succeeding or preceding breach or default or as a waiver of that breach or default after demand by the City for strict performance of this Agreement. Acceptance of partial or delinquent payments or performance shall not constitute the waiver of any right of the City. Acceptance by the City for any materials shall not bind the City to accept remaining materials, future shipments or deprive the City of the right to return materials already accepted. Acceptance by the City of delinquent or late delivery shall not constitute a waiver of a later claim for damages and/or bind the City for future or subsequent deliveries.
40. **Ownership of Documents**
All work products (electronically or manually generated) including but not limited to plans, specifications, cost estimates, tracings, studies, design analyses, original mylar drawings, computer aided drafting and design (CADD) file diskettes which reflect all final drawings, and other related products which are prepared in the performance of this Agreement are the property of the City and are to be delivered to the City before the final payment is made to the Consultant. The City shall retain ownership of these original drawing, however, if approved in writing by the City, the Consultant may retain the original drawings and supply the City with reproducible mylar.
41. **Provisions By Law**
Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement will forthwith be physically amended to make such insertion or correction.
42. **Relationship of Parties**
It is clearly understood that each party to this Agreement will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other party. The Concessionaire is an independent contractor and shall be solely responsible for any unemployment or disability insurance payments, or any social security, income tax or other withholdings, deductions or payments that may be required by federal, state or local law with respect to any compensation paid to the Concessionaire. An employee or agent of one party shall not be an employee or agent of the other party for any purpose whatsoever.
43. **Nondiscrimination**
The parties agree to comply with all applicable state and federal laws, rules, regulation and executive orders governing equal employment opportunity, immigration, nondiscrimination, including the Americans with Disabilities Act, and affirmative action.
44. **Rights and Remedies**
No provisions of this Agreement shall be construed, expressly or by implication, as a waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of Agreement. The failure of the City to insist upon strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement, or by law, shall not release the Concessionaire from any responsibilities or obligations imposed by the Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Agreement.
45. **Conflict of Interest**
This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.
46. **Agreement Modifications**
This Agreement may only be modified by a written Agreement modification issued by the City Procurement Office and counter-signed by the Concessionaire. Concessionaire is not authorized to modify any portion of this Agreement without the written approval of the City Procurement Office and issuance of an official modification notice.

47. **Force Majeure**

- A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under the Agreement only in the event that and to the extent that such party's performance of the Agreement is prevented by reason of force majeure. Force majeure means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy, war, riots, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, failures or refusal to act by government authority, and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- B. Force majeure shall not include the following occurrences:
- i) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.
 - ii) Late performance by a Sub-contractor.
- C. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of the commencement thereof and shall specify the causes of such delay in the notice. Such notice shall be hand delivered or sent via certified mail and shall make a specific reference to this clause, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing by hand delivery or certified mail when it has done so. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with the Agreement.

48. **Gratuities**

The City may elect to terminate any resultant Agreement, if it is found that gratuities in any form were offered or given by the Concessionaire or agent thereof, to any employee of the City with a view toward securing an order, securing favorable treatment with respect to awarding, amending or making of any determinations with respect to performing such order. In event the Agreement is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from Concessionaire the amount of gratuity.

49. **Arbitration**

Notice is provided of Sections 12-1518 and 12-133. Arizona Revised Statutes.

50. **Dispute Resolution**

This Agreement is subject to arbitration to the extent required by law. If arbitration is not required by law, the City and the Concessionaire agree to negotiate with each other in good faith to resolve any disputes arising out of the Agreement. In the event of any legal action or proceeding arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred with said fees and costs to be included in any judgment rendered.

51. **Concessionaire's Records**

To the extent required by Section 35-214, Arizona Revised Statutes, Concessionaire agrees to retain all records relating to this Agreement. Concessionaire agrees to make those records available at all reasonable times for inspection and audit by the Auditor of the City of Tempe during the term of this Agreement and for a period of five (5) years after the completion of this Agreement.

52. Certification

Concessionaire certifies the following:

- A. In accordance with A.R.S. 35-393, et seq, the Concessionaire hereby certifies that it does not have scrutinized business operations in Iran or Sudan.
- B. The City is an equal opportunity, affirmative action employer. Concessionaire hereby covenants that it shall not discriminate unlawfully against any employee or applicant for employment, nor shall it deny the benefits of this Agreement, to any person on the basis of race, color, national origin, physical or mental disability, age, sex or veteran status. Concessionaire agrees and covenants that it will comply in all respects with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Rehabilitation Act, Arizona Executive Order No. 99-4, and all other applicable state and federal statutes governing equal opportunity.
- C. The Concessionaire expressly warrants that it has and will continue to comply in all respects with Arizona law concerning employment practices and working conditions, pursuant to A.R.S. § 23-211, et seq., and all laws, regulations, requirements and duties relating thereto. Concessionaire further warrants that to the extent permitted by law, it will fully indemnify the City for any and all losses arising from or relating to any violation thereof.
- D. Concessionaire agrees and covenants that it will comply with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction insofar as the performance of the work and services pursuant to the Agreement, and all applicable safety and employment laws, rules and regulations, including but not limited to, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Concessionaire acknowledges that a breach of this warranty is a material breach of this Agreement and Concessionaire is subject to penalties for violation(s) of this provision, including termination of this Agreement. The City retains the right to inspect the documents of any and all contractors, Sub-contractors and sub-Sub-contractors performing work and/or services relating to the Agreement to ensure compliance with this warranty. Any and all costs associated with City inspection are the sole responsibility of the Concessionaire. Concessionaire hereby agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, this the 27 day of October, 2010.

CITY OF TEMPE

By  _____
Central Services Administrator

CONCESSIONAIRE

By  _____
Rgon Enterprises, Inc. *President*

EXHIBIT A

Ken McDonald Golf Course Restaurant Equipment List (Revised 9/17/10)

All of the equipment listed below are owned by the City and will transfer to the successful firm.

As these items become obsolete, damaged or inoperable, the Concessionaire may be responsible for replacing these items and become the sole owner of the new items. The City-owned items will be salvaged by the City.

<u>Item Description</u>	<u>Manufacturer</u>	<u>Model Number</u>	<u>Serial Number</u>
Fly Fan	Mars Kitchen	360	74PE360-L 36C
Deep Fryer #1	Frymaster	H14SD	8907NA0005
Deep Fryer #2	Frymaster	H14SD	8907NA0006
Bunwarmer	Toastmaster	3C81D	A378797875

All other items on the initial Exhibit have been replaced (purchased anew) by the concessionaire and can be found on the Bogie's Clubhouse Equipment List under Exhibit D.

EXHIBIT A

Ken McDonald Golf Course Restaurant Equipment List Continued (Revised 9/17/10)

All of the items listed below are owned by the City and will convey to successful firm for use during contract engagement.

<u>Item Description</u>	<u>Manufacturer</u>	<u>Model Number</u>	<u>Serial Number</u>
Refrigerator #3 (walk-in)	Norlake	50	7404224
Refrigerator #5 (walk-in cooler)	Kolpak Outdoor	AH7511AC	8F9997268, R-12
Freezer #2 (walk-in freezer)	Kolpak Outdoor	ABA24907XT	AV1955RT-037 R-502
Ice Machine #1	Kold Draft Outdoor Ice Machines	GB644W	R-404A
Ice Machine #2	Kold Draft Inside Ice Machines	GT551WK	600476
Exhaust Fan #1 (on roof)			
Exhaust Fan #2 (in ceiling)			
Make up Air Unit (on roof)			
Heater/AC (on roof)	Carrier	50PQ012510	50PQ500644
Air Handler	Carrier	4082024300BV	5288A09732
Evaporative Cooler (on roof)	Master Cool	P710401A With electric heat	
Heater (office unit)			
Hot Water Heater (replaced within the last 2 years)			
Electrical breakers and wiring in walls and attic			
Water lines			
Wiring, water, and Freon lines in attic			
Doors, hinges, locks, gates, cages, and fences			
Alarm system			
Emergency "Exit" signs			

EXHIBIT A

Equipment and Supplies Owned by Ken McDonald Restaurant Concessionaire

ITEM	AMOUNT	BRAND	SERIAL	PRICE	TOTAL
APPLIANCES					
microwave (commercial)	1	AMANA	11047514EG	300	300
microwave (std)	1	KENMORE	509TA00980	100	100
grill	1	WELLS	G23 III40	2300	2300
oven & grill, 6 burners	1	GARLAND	mod#623715874 ser#B11140	2000	2000
slicer	1	HOBART	512 #37-034868	750	750
automatic dishwasher	1	American Dish Service	ProClean AF3D #43820	5000	5000
dishable with sink, "L" shape table refrigerator reach-in	1			1500	1500
	1	COLDTECH	J2SRR-21B #RR21-03 03014	3000	3000
refrigerator sandwich box 2 door salad top	1	BEVERAGE AIR	modST48-12 ser#5400289	2000	2000
frigidaire freezer	1	FRIGIDAIRE		200	200
toasters	2	CUISINART	CPT-140	25	50
vegetable chopper/grinder	1	DEAN	mod.#21,ser.#12709	50	50
propane movable grill	1	Professional		300	300
Soup warmer	1		modW-2,ser#8912-5641	20	20
# 10 can opener	1			10	10
beer cooler	1	True Beverage		1750	1750
Casio cash register	2	Casio	#DL2416	50	100
Magic Chef small refrigerator				100	0
GE chest freezer				100	0
time clock	1	AMANO	PIX-10	100	100
fire safe lock with drop slot	1			100	100

19630
4200
800

replacement value

requires class 12 liquor license

Club CAR beverage cart
Mobile Mini for storing cart

EXHIBIT A

Equipment and Supplies Owned by Ken McDonald Restaurant Concessionaire

ITEM	AMOUNT	BRAND	SERIAL	PRICE	TOTAL
Shelving/work tables etc					
large lock cage (liquor)	1			425	425
3 compartment sink	1			1750	1750
microwave shelf	1			125	125
welded pan shelf	1			161	161
shelves	18			135	2430
can shelving wall shelves	5			65	325
work tables stainless steel	7			200	1400
deep soullery sink	3			490	1470
speed carts	1			100	100
three step step-stools	3			80	240
mopping combo pack	1			50	50
three shelf utility cart	1			100	100
two wheel hand held truck	1			40	40
jelly packet racks	7			35	245
storage racks	19			225	4275
vaccum	1		Dyson	150	150
			Shelving tables replacement		13286
POTS & PANS					
28 gallon storage boxes	2			40	80
1/6 pans	20	RUBBERMAID		7	140
1/5 pans	23	RUBBERMAID		10	230
lids for pans	45			5	215
sheet pans lids	14			22	308
sheet pans	25			15	375
continental chating dishes	5			50	250
pizza pans	10			5	50
1/2 sheet pan	1			9	9
hotel pans 2"	8			25	200
4"	3			25	75
1/2 4" hotel pan	4			15	60
8"x3" heavy duty turner	1			26	26
dough cutter 6"x 3"	2			14	28
serving spoons	8			12	96

EXHIBIT A

Equipment and Supplies Owned by Ken McDonald Restaurant Concessionaire

ITEM	AMOUNT	BRAND	SERIAL	PRICE	TOTAL
ladle	10			9	90
wisk	3			4	12
scrapping spatula	20			12	240
utility pail	1			20	20
33 gallon trash cans	2			42	84
55 gallon trash cans	2			6	12
silver tongs	8			18	144
scales weight	2			115	230
5 gallon beverage containers/warmer	2			106	212
garnish dispenser	2			32	64
Sani Safe washer	1			30	30
heavy duty shelf liners	2			5	10
ice scoops lg 8.5 oz	2			16	32
bat scoops	4			7	28
ice cream scoops	2			9	18
Klean Pails 10qt	4			10	40
dish racks	5			25	125
silverware holder	1			5	5
food weights	2			12	24
metal bowls	17			9	153
plates 9" round	60			1	60
oval plates	21			2	42
plates 21"	5			1	5
salsa bowls	69			1	69
ramicans 3oz white	43			1	43
beer pitchers	21			5	105
pint glasses	146			1	146
collins glasses	50			1	50
mini collins 5oz	29			1	29
wine glasses	130			4	\$20
small beer pitchers	4			4	16
jigger	2			3	6
shot glasses	37			1	37
meat tenderizer	1			8	8

EXHIBIT A

Equipment and Supplies Owned by Ken McDonald Restaurant Concessionaire

ITEM	AMOUNT	BRAND	SERIAL	PRICE	TOTAL
pot fork	1			6	6
sifter	1			12	12
square space saving containers	4			11	44
can opener	1			109	109
can opener base	1			48	48
4 quart round storage containers	10	RUBBERMAID		5	50
plastic food storage box 6" deep 8.5gallon	2			40	80
plastic food storage box 9" deep 12.5gallon	2			30	60
coffee pots	11			5	55
plastic food storage box 6" deep 8.5gallon	7			34	238
clear	9			75	675
store and pour containers w lids and spoons	4			12	48
cup cake pans	4			27	108
saute pans	4			7	28
sauce pans deep	4			11	55
dish tubs	5			14	42
aluminum scoops 5-8 oz	3			12	24
strainers	2			3	3
salt and pepper shaker	1			50	50
anti slip mat	1			4	4
pizza cutter	2			3	6
peeler	3			115	345
blenders	1			175	175
heat lamp	1			100	100
14" hand sink	1			100	100
file cabinet	2			70	140
speed rails	2			6	12
bar aide	1			14	14
bar drain pan	1		replacement value		7486

EXHIBIT A

Equipment and Supplies Owned by Ken McDonald Restaurant Concessionaire

ITEM	AMOUNT	BRAND	SERIAL	PRICE	TOTAL
FURNITURE					
tables	22			100	2200
chairs	62			25	1550
bar stools	11			100	1100
panio tables	3			1200	3600
picnic table	1			50	50
TV's (1 large, 2 small)	3				1000
banquet tables	4			50	50
			replacement value		9550

Staff Summary Report

City Council Meeting Date: 11/04/2010

Agenda Item Number:

SUBJECT: This is the introduction and first public hearing to adopt an ordinance authorizing the conveyance of certain real property owned by the City to Farmer Arts, LLC, and authorizing the Mayor to execute the requisite documents. Farmer Arts LLC and the City of Tempe are parties to a Development and Disposition Agreement (C2007-98) that allows the conveyance of City property to Farmer Arts LLC. The second public hearing is scheduled for November 18, 2010.

DOCUMENT NAME: 20101104cdaws02 TEMPE PACKING SITE - FIFTH AND FARMER (0403-02-09) Ordinance No. 2010.39

COMMENTS: The second amendment to the Development and Disposition authorizes the sale of all or part of the parcel of land bounded by University Drive on the south, Farmer Avenue on the west, 5th Street on the north, and 35 feet west of the Union Pacific railroad tracks on the east. Developer has initially requested a conveyance of two of the 4 parcels located within Parcel 1.

PREPARED BY: Alex Smith, Technology Development Specialist (350-2708)

REVIEWED BY: Lisa Collins, Deputy Community Development Director (350-8989)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (858-2187)

DEPARTMENT REVIEW BY: Chris Anaradian, Community Development Director (858-2204)

FISCAL NOTE: The City will receive \$25,000 and various public amenities described in the Development Agreement (enhanced streetscape and linear park). The Developer is required to pay all costs, expenses and fees associated with the opening and closing of Escrow and be responsible for the perpetual maintenance of all public amenities

RECOMMENDATION: Adopt Ordinance No. 2010.39

ADDITIONAL INFO: The developer plans to build 56 affordable senior housing units on development parcel 3 and complete the linear park on development parcels 3 and 4.

ORDINANCE NO. 2010.39

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE CONVEYANCE OF CITY-OWNED PROPERTY LOCATED AT 5TH STREET AND FARMER AVENUE.

WHEREAS the City and Farmer Arts, LLC (“Developer”), are parties to that certain Development and Disposition Agreement dated May 31, 2007, as amended (the "Development Agreement"), with respect to the development of certain real property owned by the City, and described in the Development Agreement (the "Property");

WHEREAS Developer has requested that City convey a portion of the Property to Developer in accordance with the Development Agreement;

WHEREAS, Developer has represented to City that all conditions required to be satisfied by Developer prior to the conveyance have been or will be satisfied prior to the conveyance.

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

Section 1: That the conveyance of Development Parcels 3 and 4 identified on Exhibit A hereto is hereby approved subject to compliance with the terms and conditions of the Development Agreement, and the Mayor is authorized to execute such documents as are necessary to consummate the conveyance, including without limitation a deed in the form specified in the Development Agreement.

Section 2: Pursuant to City Charter, Section 2.12, this ordinance will be effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2010.

MAYOR

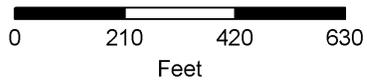
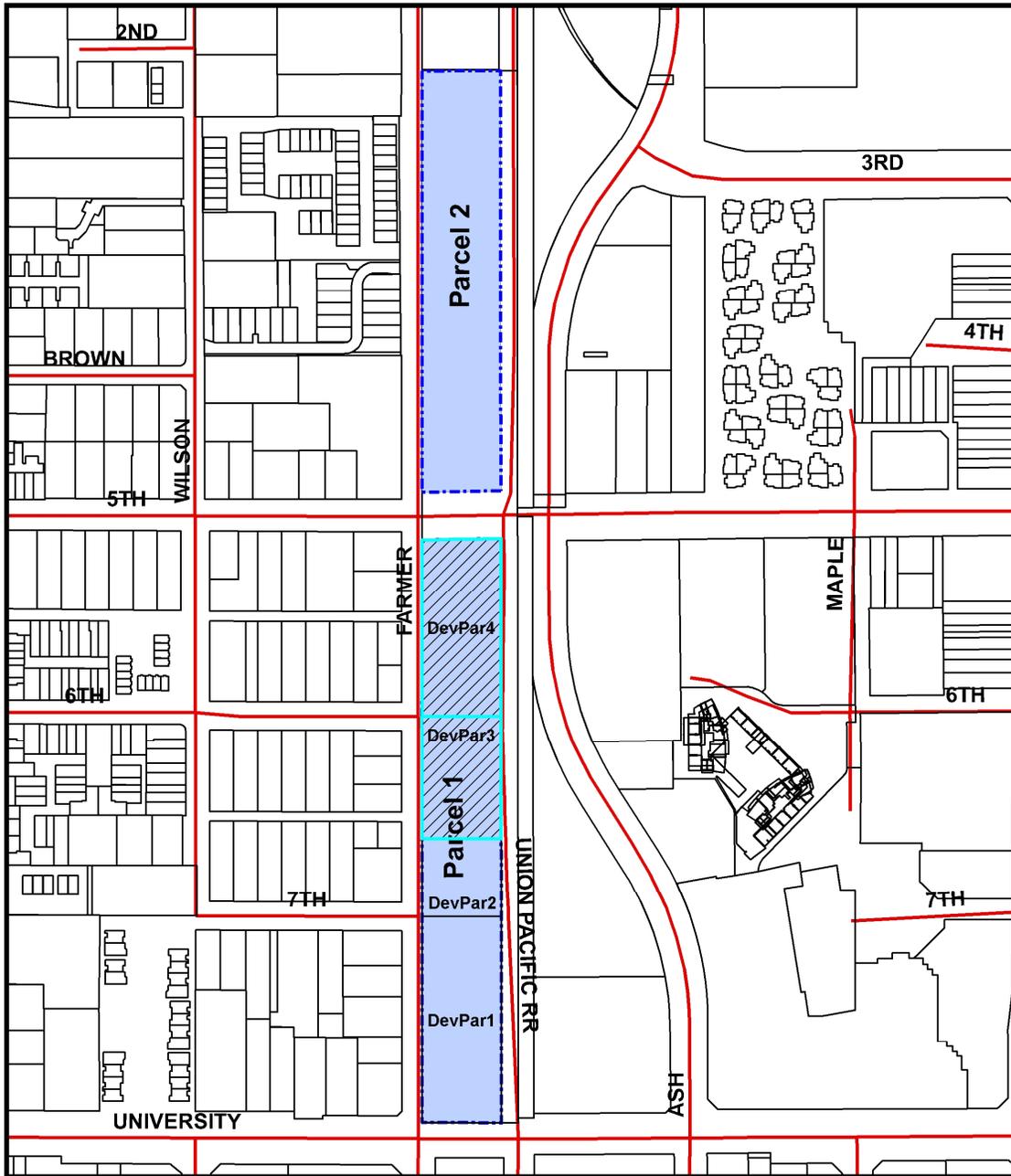
ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit 'A'
Map of Parcel to be conveyed



 Parcels to be conveyed



Staff Summary Report

City Council Meeting Date: 11/4/10

Agenda Item Number: 5D1

SUBJECT: This is the second and final public hearing to approve an ordinance authorizing the mayor to execute agreements to terminate the Lease with, and convey property to CH Realty III/Hayden Ferry I, L.L.C..

DOCUMENT NAME: 20101104cd02 RIO SALADO MASTER PLAN (112-07-03) Ordinance No. 2010.41

COMMENTS: N/A

PREPARED BY: Chris Messer, Principal Planner (350-8562)

REVIEWED BY: Lisa Collins, Community Development Deputy Director, (350-8989)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (350-2187)

DEPARTMENT REVIEW BY: Chris Anaradian, Community Development Director (858-2204)

FISCAL NOTE: The property will be deeded back to CH Realty III/Hayden Ferry I, L.L.C at a cost of \$10.00. Once the property is placed on the property tax rolls, it is estimated that the City's portion of the annual property taxes, based on current property tax rates, will total approximately \$36,000 in primary taxes and \$86,000 in secondary taxes.

RECOMMENDATION: Staff recommends approval for Ordinance 2010.41

ADDITIONAL INFO: On October 14, 2002 Hayden Ferry Lakeside LLC conveyed to the City and leased back the property where the current phase one, 8 story, Hayden Ferry Lakeside office building is located. The conveyance of property and the Lease were for the purpose of providing the owners with an 8-year tax abatement, which ended October 14, 2010. Hayden Ferry Lakeside, LLC then assigned the lease to CH Realty III/Hayden Ferry I, L.L.C.. At the end of the abatement period, the City is required to re-convey the property. With this action, the process will begin to transfer the property back to the owners and return the property to the property tax rolls.

To effectuate this transaction, staff has prepared an Agreement to Convey Premises and Notice of Lease Termination, and a Quit Claim Deed. Once executed, these documents will be recorded in Maricopa County and the property will be placed on the property tax rolls effective with the recordation

ORDINANCE NO. 2010.41

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE SUCH DOCUMENTS AS ARE NECESSARY TO TRANSFER OWNERSHIP OF PROPERTY TO CH REALTY III/HAYDEN FERRY I, L.L.C., SUCCESSOR TO HAYDEN FERRY LAKESIDE, LLC AND TERMINATE A LEASE THEREBY ALLOWING THE PROPERTY TO BE RETURNED TO THE TAX ROLLS.

WHEREAS, CH Realty III/Hayden Ferry I, L.L.C.'s predecessor-in-interest, Hayden Ferry Lakeside, LLC ("Owner") deeded certain property to the City of Tempe pursuant to that certain Quit-Claim Deed, dated October 14, 2002, recorded as Document No. 2002-1188870 in the records of Maricopa County, Arizona Recorder; and

WHEREAS, after the conveyance, the City of Tempe and the Owner entered that certain Lease dated October 14, 2002 (the "Lease"); and

WHEREAS, a Memorandum of Lease dated October 14, 2002 was recorded as Document No. 2002-1188871 of the records of the Maricopa County, Arizona Recorder (the "Memorandum"), to provide notice of the existence of the Lease; and

WHEREAS, the Lease term expires October 14, 2010, and the parties desire to provide for re-conveyance of the property to Owner so that it may be returned to the real property tax rolls.

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

Section 1. The Mayor is authorized to execute such documents as are necessary to evidence termination of the Lease and reconvey the property to Owner, including without limitation, an Agreement to Convey Premises, Notice of Lease Termination, and Quit Claim Deed in substantially the forms of such documents attached hereto as *Exhibit A*.

Section 2. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

{Signature follows}

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF
TEMPE, ARIZONA, this _____ day of _____, 2010.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A
of Ordinance No. 2010.40

**AGREEMENT TO CONVEY PREMISES
AND ACKNOWLEDGEMENT OF LEASE TERMINATION**

THIS AGREEMENT TO CONVEY PREMISES AND ACKNOWLEDGEMENT OF LEASE TERMINATION (“Agreement”) is made and entered into to be effective _____, 2010 (the “Effective Date”) by and among THE CITY OF TEMPE, an Arizona municipal corporation (“Landlord”), and CH Realty III/Hayden Ferry I, L.L.C., successor to Hayden Ferry Lakeside, LLC (“Tenant”) and is as follows:

WITNESSETH:

WHEREAS, Tenant deeded certain real property to the City of Tempe pursuant to that Quit-Claim Deed, dated October 14, 2002, and recorded as Document No. 2002-1188870 of the records of Maricopa County, Arizona Recorder; and

WHEREAS, after the conveyance, Landlord and Tenant entered that certain Lease, dated October 14, 2002 (the “Lease”), covering the real property conveyed to the City, and described on Exhibit A to the Lease and which is further described on Exhibit A attached hereto and incorporated herein by reference (the “Premises”); and

WHEREAS, a Memorandum of Lease, dated October 14, 2002, was recorded as Document No. 2002-1188871 of the records of the Maricopa County, Arizona Recorder (the “Memorandum”) to provide notice of the existence of the Lease; and

WHEREAS, the term of the Lease has expired and the parties desire for Landlord to reconvey the Premises to Tenant, subject to the conditions and in accordance with the terms and provisions of this Agreement as provided below.

NOW, THEREFORE, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree as follows:

1. Conveyance of Premises and Termination of Lease. Subject to approval of this Agreement by the Tempe City Council at a formal City Council meeting, Landlord shall execute and deliver to Tenant a Quit Claim Deed re-conveying title to the Premises to Tenant in the form attached hereto as Exhibit B (the “Deed”) and the Notice of Termination of Lease in the form attached hereto as Exhibit C (the “Termination”).

2. Closing Procedures. Upon receipt of Tempe City Council approval, Landlord shall deliver its original signature counterparts to the Deed and the Termination

to Tenant. Tenant shall cause the recordation of the Deed and the Termination within ten (10) business days thereafter. Tenant shall pay all costs, expenses and fees associated with the re-conveyance, including without limitation all recording fees.

3. Acknowledgement of Lease Termination Date. Landlord and Tenant acknowledge and agree that the term of the Lease expires October 14, 2010.

4. General Provisions.

A. Attorneys Fees and Costs. In the event of any suit instituted by either party against the other in any way connected with this Agreement, the parties agree that the successful party in any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit, such attorneys' fees and costs to be fixed by the court.

B. Entire Agreement. This Agreement along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant with respect to the subject matter hereof and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to this Agreement or the subject matter hereof are merged in or revoked by this Agreement.

C. Binding Effect; Choice of Law. All of the provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of Arizona.

D. Waiver of Jury Trial. Each party irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or in connection with this Agreement or any matter arising hereunder.

E. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered, delivered by a recognized overnight courier service or mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Landlord: City of Tempe
City Attorney's Office
P. O. Box 5002
21 East Sixth Street, Suite 201
Tempe, Arizona 85280
Attention: City Attorney

If to Tenants:
Arden Realty, Inc.

7373 North Scottsdale Road, Suite D250
Scottsdale, Arizona 85253

and to:

Richard E. Chambliss
Broening, Oberg, Woods & Wilson, P.C.
P.O. Box 20527
Phoenix, Arizona 85036

or to such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communications hereunder shall be the date of personal delivery, the date of delivery by overnight courier or 72 hours after the postmark on the certified or registered mail, as the case may be.

F. Waiver. No covenant, term or condition or the breach thereof shall be waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

G. Counterparts; Facsimile Signatures. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. It is further acknowledged and agreed that scanned and/or facsimile copies will be acceptable in place of originals.

H. Exhibits. The exhibits described herein and attached to this Agreement are incorporated in this Agreement by this reference.

5. No Conveyance or Encumbrance by Landlord. Landlord represents and warrants that it has not transferred, conveyed or encumbered the Premises or its interest in the Lease in any manner except as permitted in the Lease and that Landlord has not entered into any agreements or contracts regarding the Premises other than as requested or approved by Tenant.

6. Premises on Tax Rolls. Tenant acknowledges that the Premises shall be returned to the real property tax rolls for the 2010 tax year, effective on the date on which the Deed is recorded, and all subsequent tax years. Therefore, there will be no further taxation of the Premises after the recordation of the Deed under the Government Property Lease Excise Tax, A.R.S. §42-6201, et seq.

7. Assignment of rights. Landlord hereby assigns to Tenant all of Landlord's rights, title and interest, if any, in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to which the Landlord is a party and which are assignable by Landlord.

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

{Signature pages follow}

LANDLORD:

THE CITY OF TEMPE, an Arizona
municipal corporation

By: _____

Hugh Hallman.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by Hugh Hallman the Mayor of The City of Tempe, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

Notary Seal:

TENANT:

CH Realty III/Hayden Ferry I, L.L.C., successor to
Hayden Ferry Lakeside, LLC

By: CH Realty III/Hayden Ferry I, L.L.C., a
Delaware limited liability company

By: Arden Realty Limited Partnership,
a Maryland limited partnership

Its: Sole Member and Manager

By: Arden Realty, Inc.,
a Maryland corporation

Its: Sole General Partner

By: _____

Name: _____

Title: _____

STATE OF New York)
) ss.
County of New York)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2010 by _____ in his/her capacity as
_____ for CH Realty III/Hayden Ferry I, L.L.C..

Notary Public

Notary Seal:

Exhibit "A" the "Premises"

LEGAL DESCRIPTION: PARCEL B-1

A parcel of land located in the Northwest Quarter of Section 15, Township 1 North, Range 4 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a 5/8 inch rebar found at the center of said Section 15, from which a 5/8 inch rebar located at the West quarter corner of said Section 15 bears South 89°03'17" East, a distance of 2,629.85 feet:

THENCE North 00°11'25" East, along the East line of said Northwest quarter, a distance of 863.51 feet;

THENCE North 84°59'09" West, a distance of 735.58 feet to the Northeast corner of that parcel of land described in Exhibit "A" of recording no. 2001-0154530, records of Maricopa County, Arizona;

THENCE South 87°35'41" West a distance of 145.04 feet to the POINT OF BEGINNING;

THENCE South 04°04'15" East a distance of 160.08 feet;

THENCE South 83°48'10" West a distance of 61.07 feet;

THENCE South 06°54'21" East a distance of 14.36 feet to a point on the arc of a non-tangent curve concave to the Southeast, a radial line of said curve through said point having a bearing of North 07°04'26" West;

THENCE Southwesterly along the arc of said curve, to the left, having a radius of 591.97 feet, with a chord of South 67°00'02" West 324.86 feet, and a central angle of 31°51'03" for an arc distance of 329.08 feet to a non-tangent line;

THENCE North 37°36'51" West a distance of 77.83 feet;

THENCE North 52°23'09" East a distance of 28.00 feet;

THENCE North 37°36'51" West a distance of 45.00 feet;

THENCE North 52°23'09" East a distance of 36.58 feet;

THENCE North 00°32'58" West a distance of 68.80 feet to a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 04°06'19" West;

THENCE Easterly and Northerly along the arc of said curve, to the left, having a radius of 63.68 feet, with a chord of North 43°26'00" East 98.52 feet, and a central angle of 101°20'39" for an arc distance of 112.64 feet to a non-tangent line;

THENCE North $82^{\circ}41'46''$ East a distance of 206.39 feet;

THENCE North $87^{\circ}35'41''$ East a distance of 98.76 feet to the POINT OF BEGINNING.

Containing 1.7304 acres or 75,377 square feet, more or less.

Exhibit B
The “Deed”

WHEN RECORDED, RETURN TO:

City of Tempe Basket

EXEMPT from the
requirement for an
Affidavit per
A.R.S. § 11-1134(A)(3)

QUIT CLAIM DEED

For consideration of Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the undersigned, **CITY OF TEMPE**, an Arizona municipal corporation (“**Grantor**”), does hereby convey, remise, release, sell and quit-claim to CH Realty III/Hayden Ferry I, L.L.C., that certain real property described on *Exhibit A* attached hereto, including all improvements thereon and all appurtenances and privileges thereto (the “**Property**”).

Dated _____, 2010.

THE CITY OF TEMPE, an Arizona
municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by _____ the _____ of **THE CITY OF TEMPE**, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

My Commission Expires:

EXHIBIT "A" of the "Deed"

LEGAL DESCRIPTION: PARCEL B-1

A parcel of land located in the Northwest Quarter of Section 15, Township 1 North, Range 4 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a 5/8 inch rebar found at the center of said Section 15, from which a 5/8 inch rebar located at the West quarter corner of said Section 15 bears South 89°03'17" East, a distance of 2,629.85 feet:

THENCE North 00°11'25" East, along the East line of said Northwest quarter, a distance of 863.51 feet;

THENCE North 84°59'09" West, a distance of 735.58 feet to the Northeast corner of that parcel of land described in Exhibit "A" of recording no. 2001-0154530, records of Maricopa County, Arizona;

THENCE South 87°35'41" West a distance of 145.04 feet to the POINT OF BEGINNING;

THENCE South 04°04'15" East a distance of 160.08 feet;

THENCE South 83°48'10" West a distance of 61.07 feet;

THENCE South 06°54'21" East a distance of 14.36 feet to a point on the arc of a non-tangent curve concave to the Southeast, a radial line of said curve through said point having a bearing of North 07°04'26" West;

THENCE Southwesterly along the arc of said curve, to the left, having a radius of 591.97 feet, with a chord of South 67°00'02" West 324.86 feet, and a central angle of 31°51'03" for an arc distance of 329.08 feet to a non-tangent line;

THENCE North 37°36'51" West a distance of 77.83 feet;

THENCE North 52°23'09" East a distance of 28.00 feet;

THENCE North 37°36'51" West a distance of 45.00 feet;

THENCE North 52°23'09" East a distance of 36.58 feet;

THENCE North 00°32'58" West a distance of 68.80 feet to a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 04°06'19" West;

THENCE Easterly and Northerly along the arc of said curve, to the left, having a radius of 63.68 feet, with a chord of North 43°26'00" East 98.52 feet, and a central angle of 101°20'39" for an arc distance of 112.64 feet to a non-tangent line;

THENCE North 82°41'46" East a distance of 206.39 feet;

THENCE North 87°35'41" East a distance of 98.76 feet to the POINT OF BEGINNING.

Containing 1.7304 acres or 75,377 square feet, more or less.

Exhibit C
the “Termination”

**WHEN RECORDED, RETURN TO:
City of Tempe Basket**

NOTICE OF TERMINATION OF LEASE

THIS MUTUAL TERMINATION OF LEASE (this “Termination”) is made and entered into to be effective _____, 2010 by and between **THE CITY OF TEMPE**, an Arizona municipal corporation (“Landlord”), and CH Realty III/Hayden Ferry I, L.L.C., successor to Hayden Ferry Lakeside, LLC (“Tenant”) and is as follows:

W I T N E S S E T H:

WHEREAS, the Landlord,, and Tenants previously executed that certain Lease, dated October 14, 2002 (the “Lease”), and that certain Memorandum of Lease, dated October 14, 2002, was recorded as Document No. 2002-1188871 of the records of the Maricopa County, Arizona Recorder (the “Memorandum”) with respect to the real property described therein (the “Premises”); and

WHEREAS, simultaneously with to execution of this Termination, Landlord has conveyed the Premises to Tenants and, therefore, the parties desire to terminate the Lease and the Memorandum and give constructive notice thereof to all parties dealing with the Premises.

NOW, THEREFORE, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereby agree that the Lease and the Memorandum are terminated effective October 14, 2010, and shall be of no further force or effect. The parties shall have no further obligations or liability whatsoever arising under the Lease, except that all liability and indemnification provisions of the Lease relating to periods prior to the termination date and which survive termination of the Lease by the terms thereof shall fully apply notwithstanding the termination of the Lease. Landlord hereby fully and absolutely releases and disclaims any and all right, title or interest in the Premises. From and after the effective date of this Termination, the Premises shall be owned by Tenants free from any effect of the Lease and the Memorandum.

This Termination shall be governed by the laws of the State of Arizona. Each party and the person signing for each party represents and warrants to the other that it has the full right, ability and power to enter into this Termination, and each party will indemnify and hold harmless the other from and against any and all liability, losses, costs, damages, claims, expenses and attorneys' fees of any kind incurred as a consequence or result of the breach by the representing party of the representation and warranty contained in this Termination. This Termination may be signed in counterparts, which when taken together shall constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the parties have executed this Termination to be effective as of the date set forth above.

LANDLORD:

THE CITY OF TEMPE, an Arizona municipal corporation

By: _____

Name: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010 by _____ the _____ of The City of Tempe, an Arizona municipal corporation, for and on behalf of said City.

Notary Public

My Commission Expires:

TENANT:

CH Realty III/Hayden Ferry I, L.L.C., successor to
Hayden Ferry Lakeside, LLC

By: CH Realty III/Hayden Ferry I, L.L.C., a
Delaware limited liability company

By: Arden Realty Limited Partnership,
a Maryland limited partnership
Its: Sole Member and Manager

By: Arden Realty, Inc.,
a Maryland corporation
Its: Sole General Partner

By: _____

Name: _____

Title: _____

STATE OF New York)
) ss.
County of New York)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2010 by _____ in his/her capacity as
_____ for CH Realty III/Hayden Ferry I, L.L.C..

Notary Public

Notary Seal:

Staff Summary Report



Council Meeting Date: 11/4/10

Agenda Item Number:

SUBJECT: This is the second and final public hearing to amend Chapter 2, Article V, Division 5 of the Tempe City Code relating to the composition and duties of the Tempe Aviation Commission.

DOCUMENT NAME: 20101021pwcb01 TCC CH2 CITY CODE ADMINISTRATION (0503-02)
Ordinance No. 2010.36

COMMENTS: The proposed ordinance amends the City Code by reducing the membership of the Tempe Aviation Commission from 13 to 11 members and broadening the subject area of the Commission from the impacts of aircraft noise to all impacts of aircraft and airport operations on Tempe residents.

PREPARED BY: Oddvar Tveit, Environmental Specialist (350-8300)

REVIEWED BY: Jeff Kulaga, Assistant City Manager (350-8844)
Don Hawkes, Deputy Public Works Director (350-2660)

LEGAL REVIEW BY: Andrew Ching, City Attorney (350-8575)

DEPARTMENT REVIEW BY: Don Bessler, Public Works Director (350-8205)

FISCAL NOTE: No effect

RECOMMENDATION: Adopt Ordinance No. 2010.36

ADDITIONAL INFO: The proposed changes were recommended by the Tempe Aviation Commission and supported by the Council Committee responsible for transportation. At the Issue Review Session on April 22, 2010, the City Council requested that this item be forwarded to a formal Council meeting for consideration. The proposed ordinance maintains a broad appointment base for the Commission from all areas of the City affected by airport operations, and will enable the appointed members to more effectively address and make recommendations concerning aircraft noise and other airport impacts on Tempe residents.

ORDINANCE NO. 2010.36

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 2, ARTICLE V, DIVISION 5, OF THE TEMPE CITY CODE RELATING TO THE AVIATION COMMISSION BY AMENDING SECTIONS 2-215 AND 2-220 RELATING TO ITS ESTABLISHMENT, COMPOSITION AND POWERS AND DUTIES .

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Section 2-215 of the Tempe City Code is hereby amended to read as follows:

Sec. 2-215. Established; composition.

(a) There is hereby established the Tempe aviation commission to be composed of ~~thirteen (13)~~ ELEVEN (11) members.

(b) In addition to the terms of office as specified in § 2-182 of this article, terms shall be staggered so that the term of no more than five (5) members shall conclude in any given year.

(c) There shall be commission members from neighborhoods located in ~~the LDN 65 noise contour and from other noise impacted~~ geographic areas throughout the community THAT ARE IMPACTED BY AIRCRAFT OPERATIONS INCLUDING AREAS WITHIN THE LDN 65 NOISE CONTOUR FOR THE PHOENIX SKY HARBOR INTERNATIONAL AIRPORT.

(d) The city manager or his designee shall serve the aviation commission in an advisory capacity.

Section 2. That Section 2-220 of the Tempe City code is hereby amended to read as follows:

Sec. 2-220. Powers and duties.

The aviation commission shall have the following powers and duties:

- (1) To advise the mayor and city council and assist city departments regarding the impacts of aircraft ~~noise on Tempe residents~~ AND AIRPORT OPERATIONS on Tempe residents;
- (2) To advise the mayor and city council and assist city departments in the monitoring, implementation and enforcement of agreements made between the City of Phoenix and THE CITY OF Tempe concerning the operations of Sky Harbor INTERNATIONAL Airport;
- (3) To advise the mayor and city council and assist city departments in studies conducted of ~~Sky Harbor Airport and its~~ LOCAL AIRPORTS AND THEIR DEVELOPMENT, WITH REGARD TO POTENTIAL impacts on Tempe RESIDENTS; AND
- (4) To advise the mayor and city council and assist city departments on land use measures that could mitigate the impact of aircraft ~~noise~~ AND AIRPORT OPERATIONS.
- (5) ~~To the extent feasible, to review all relevant documents prior to adoption by the city council; and~~
- (6) ~~To advise the mayor and city council and assist city departments on any topic the commission feels is appropriate regarding aircraft noise and related matters in Tempe.~~

Section 3. Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2010.

MAYOR

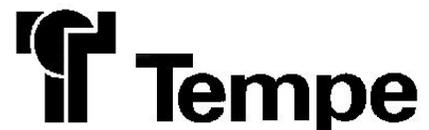
ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Staff Summary Report



Council Meeting Date: 11/4/2010

Agenda Item Number: _____

SUBJECT: Request approval of a resolution to accept grant funding from the State of Arizona – Department of Homeland Security under the Urban Area Security Initiative to fund training for the Terrorism Liaison Officer.

DOCUMENT NAME: 20101104pdmk01 POLICE DEPARTMENT ADMIN (0606-02) Resolution No. 2010.126

COMMENTS: The grant award totals \$4,000.

PREPARED BY: Miyoung Kim, Sr. Budget and Finance Analyst, EXT. 8358

REVIEWED BY: Paul Bentley, Fiscal & Research Administrator, EXT. 6204

LEGAL REVIEW BY: Bill Amato, Police Legal Advisor, EXT. 8610

DEPARTMENT REVIEW BY: Tom Ryff, Chief of Police, EXT. 8214

FISCAL NOTE: No fiscal impact to the general fund.

RECOMMENDATION: Approve Resolution No. 2010.126.

ADDITIONAL INFO: Terrorism Liaison Officers perform threat and vulnerability assessments; maintain information on sites; provide support and command advisory functions at critical incidents; evaluate and apply emerging threat intelligence; and develop defense procedures and protocols. This funding will provide continued training to perform assigned duties effectively and efficiently.

RESOLUTION NO. 2010.126

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, APPROVING THE REQUEST OF THE TEMPE POLICE DEPARTMENT TO ACCEPT GRANT FUNDING FROM THE STATE OF ARIZONA, DEPARTMENT OF HOMELAND SECURITY UNDER THE URBAN AREA SECURITY INITIATIVE AND AUTHORIZING THE CHIEF OF POLICE OR HIS DESIGNEE TO ACT AS AGENT OF THE CITY OF TEMPE FOR ALL NEGOTIATIONS AND NECESSARY INSTRUMENTS.

WHEREAS, the City of Tempe, at the recommendation of the Police Department, will accept grant funding from the State of Arizona; and

WHEREAS, this project is for the benefit of all citizens of Tempe; and

WHEREAS, the project is compatible with the laws of the United States of America, Arizona and the City of Tempe.

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, HEREBY:

1. Grants approval of the request to accept grant funding from the State of Arizona, Department of Homeland Security under the Urban Area Security Initiative, in the amount of \$4,000; and
2. Gives authority to the Tempe Chief of Police or his designee, to act as agent of the City of Tempe to conduct all negotiations, execute and submit all documents, including but not limited to applications, agreements, amendments, billing statements, and any other necessary or desirable instruments in connection with such funding.

PASSED, ADOPTED, AND APPROVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2010.

Hugh Hallman, MAYOR

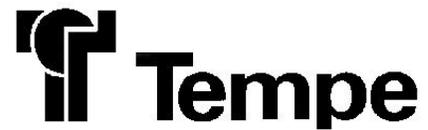
ATTEST:

Brigitta Kuiper, City Clerk

APPROVED AS TO FORM:

Andrew Ching, City Attorney

Staff Summary Report



City Council Meeting Date: 11/04/2010

Agenda Item Number:

SUBJECT: Request approval of a resolution authorizing the Mayor to execute the second Amendment to the Development and Disposition Agreement between Farmer Arts, LLC and the City of Tempe.

DOCUMENT NAME: 20101104cdaws01 TEMPE PACKING SITE - FIFTH AND FARMER (0403-02-09) Resolution No. 2010.142

COMMENTS: The second amendment to the Agreement further details the Public Amenities associated with the Project (i.e. Enhanced Streetscape and Linear Park), allows for the purchase of smaller Development Parcels, allocates the amount of Public Amenities on each Parcel, expands the requirements for transfer of the property, reduces the amount of the tax rebate and provides for 100 underground parking stalls on Parcel 2.

PREPARED BY: Alex Smith, Technology Development Specialist (350-2708)

REVIEWED BY: Lisa Collins, Deputy Community Development Director (350-8989)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (858-2187)

DEPARTMENT REVIEW BY: Chris Anaradian, Community Development Director (858-2204)

FISCAL NOTE: The City will receive \$50,000, a 16,000 square-foot library shell, linear park, streetscape improvements and 20 parking stalls valued at \$20,000 each for the balance of the land value and Government Property Lease Excise Tax Abatements. In the event a portion of the project is included in the Arizona Department of Housing's Low Income Housing Tax Credits program, the City will contribute \$400,000 in the form of Federal HOME and CDBG funds to that portion of the project. An interest rate of 4% per year will be charged on all deferred fees. The Developer shall pay all Escrow costs and maintain all Public Amenities at no cost to City in perpetuity.

RECOMMENDATION: Adopt resolution No. 2010.142

ADDITIONAL INFO: This amendment provides revised terms and conditions in general conformance with previous direction to staff while enabling the current entitlement and permitting process for a first phase project on Parcel 1 to continue.

RESOLUTION NO. 2010.142

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMPE AUTHORIZING THE MAYOR TO EXECUTE THE SECOND AMENDMENT TO THE DEVELOPMENT AND DISPOSITION AGREEMENT (C2007-98) WITH FARMER ARTS. LLC.

WHEREAS, the City and Farmer Arts, LLC., are parties to that certain Development and Disposition Agreement dated May 31, 2007 and recorded June 25, 2007 as Document No. 2007-0727441, Official Records of Maricopa County, Arizona (the "Development Agreement"), with respect to the development of certain real property owned by the City, and described in the Development Agreement (the "Property").

WHEREAS, Farmer Arts, LLC has requested that City amend the Development Agreement in certain respects.

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

That the Mayor is authorized to execute the Second Amendment to Development and Disposition Agreement [C2007-98], in substantially the form on file with the City Clerk's office.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2010.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

WHEN RECORDED, RETURN TO:

City of Tempe Basket

**SECOND AMENDMENT TO
DEVELOPMENT AND DISPOSITION AGREEMENT
(Fifth and Farmer)**

Resolution No. 2010.142
C2007-98

THIS AMENDMENT TO DEVELOPMENT AND DISPOSITION AGREEMENT (this “**Agreement**”) is made and entered into as of the ____ day of _____, 2010, by and among the CITY OF TEMPE, an Arizona municipal corporation (“**City**”), FARMER ARTS, LLC, an Arizona limited liability company (“**Developer**”).

R E C I T A L S

A. City issued a Request for Proposals (RFP No. 06-130) (the “RFP”) for the disposition and development of that certain City-owned real property legally described in Exhibit “A” attached hereto and depicted on that Parcel Map attached hereto as Exhibit “B”, containing approximately seven and seven tenths (7.7) gross acres of land area (the “Property”).

B. Developer was the successful respondent, having proposed to redevelop the Property as a mixed-use project, including market-rate and affordable dwelling units, and retail and office components, and City and Developer executed a Development and Disposition Agreement dated May 31, 2007 [c2007-98], as amended by a First Amendment dated November 19, 2009 (the “DDA”).

C. The Property has unique development constraints and challenges, including but not limited to the Property’s narrow, linear shape; the adjacent railroad tracks, rail spur and rail easement; the 230 kV power lines and fiber optics easement running along the Property’s eastern boundary; 5th Street bisecting the Property and creating the two Parcels; the irrigation easement that bisects Parcel 2; the existing structures and the possible existence of historical substructures; and the on-going traffic and parking constraints associated with its urban location that may impact, impede or delay the constructions process.

D. City and Developer now desire to amend the DDA in certain respects. This Agreement is a development agreement pursuant to the provisions of A.R.S. §9-500.05.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

A G R E E M E N T

1. Section 1 of the Development Agreement is hereby amended in its entirety to read as follows:

1. **Definitions.** The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise.

1.1 **“Business Day”** shall mean any day other than a Saturday or Sunday or legal holiday in the State of Arizona. Unless specifically referred to as a “business day”, all days contemplated by this Agreement shall mean calendar days.

1.2 **“Certificate of Occupancy”** shall mean a final written acceptance of a completed and inspected building, structure or improvement located within the Project issued by the City Community Development Department or the City Public Works Department. The City will issue a separate Certificate of Occupancy as Developer completes construction of each building, structure or improvement located within the Project, to be further defined or phased in the PAD, in conformance with this Agreement, the Schedule of Performance and inspection by the City.

1.3 **“City”** shall mean the City of Tempe, Arizona, an Arizona municipal corporation, and any successor public body or entity.

1.4 **“Closing Date”** shall mean the date or dates set for City’s conveyance of title to any portion of the Property to Developer and the performance of all conditions (except those conditions expressly required to be performed earlier) relating thereto.

1.5 **“Developer”** shall mean Farmer Arts, LLC, an Arizona limited liability company, and its permitted successors and assigns.

1.6 **“Development Parcel”** shall mean an individual parcel of real property within the Property, whether created by a separate PAD, by lot split, by condominium declaration or through other means of real property subdivision reasonably approved by the City.

1.7 **“Escrow Agent”** shall mean Lawyer’s Title of Arizona, Inc. Attention: Tiah Brooks.

1.8 **“Improvements”** shall mean all public and private improvements that may be constructed from time to time on the Property, including without limitation, all buildings, structures, libraries, road improvements, driveways, parking structures, parking facilities or surface parking lots, pedestrian parkways, enhanced streetscapes, walls, landscaping and other improvements of any type or kind, or any alteration of the natural terrain to be made or built by Developer pursuant to the terms of this Agreement.

1.9 “**Issuance Date**” shall mean the date on which a Certificate of Occupancy is issued by the City for any building, structure or improvement, or portion or phase thereof, located within the Project.

1.10 “**PAD**” shall mean the planned area developments [PAD07020 and PAD07024] which were approved by the City with respect to the Project on November 8, 2007 [DS071056], which provides for development of a single building or structure or a group of buildings or structures within different parcels or phases of development of the Project, and sets forth the specific uses, densities, features or other development matters with respect to the Property. For the purposes of this agreement, the amended PAD’s which have been approved by the City shall supersede any previously approved PAD.

1.11 “**Parcel 1**” shall mean that certain parcel of land within the Property bounded by University Drive on the south, Farmer Avenue on the west, 5th Street on the north, and 35 feet west of the Union Pacific railroad tracks on the east as depicted in Exhibit “B”. Parcel 1 may hereafter be divided into multiple Development Parcels as contemplated in Section 2.8.1 below.

1.12 “**Parcel 2**” shall mean that certain parcel of land within the Property bounded by 5th Street on the south, Farmer Avenue on the west, the south boundary line of Lot 31E, of "State Plat 12 Amended", a subdivision recorded in Book 69 of Maps, Page 38, Maricopa County Recorder and the easterly prolongation thereof to the east boundary on the north, and 35 feet west of the Union Pacific railroad tracks on the east as depicted in Exhibit B.

1.13 “**Parties**” and “**Party**” shall collectively mean City and Developer as the parties to this Agreement or each of the parties individually, as the context may require.

1.14 “**Project**” shall mean the overall development of the Property or portions thereof for residential, commercial and public uses together with appurtenant parking in general conformance with the PAD.

1.15 “**Property**” shall mean that certain real property referred to in Recital A and legally described in Exhibit A and depicted on the Parcel Map attached as Exhibit B and which has been further divided and described herein as Parcel 1 and Parcel 2.

1.16 “**Public Amenities**” shall mean the following items having an aggregate value of not less than \$6,150,000 determined in accordance with Section 2.10: (a) 16,000 square feet of interior gross floor area (finished to the gray shell standards specified in Exhibit F) which shall be conveyed to City for use as a public library or for such other use agreed upon by Developer and City, (b) a pedestrian parkway containing those elements identified on Exhibit F for public use along the eastern boundary of the Property, (c) an enhanced streetscape in the areas detailed in Exhibit F and containing those elements more conceptually depicted in Exhibit ‘F’; (d) 20 parking spaces of the 100 parking spaces Developer is required to construct on Parcel 2, as further described in Section 3.4 hereof; and (e) perpetual maintenance of items (b), (c) and (d) above, at the

same level as originally constructed. Developer shall have the right to assign the maintenance obligation for Parcel 1 and Parcel 2 to a single owner association with City's prior approval as permitted by Section 10.1.

1.17 “**Schedule of Performance**” shall mean the schedule of performance attached hereto as Exhibit C.

1.18 “**Affordable Housing**” shall mean housing for those households with incomes insufficient to afford market-rate housing in the communities where they work. For the purposes of this Agreement, Affordable Housing shall be defined as rental and for-sale housing targeted to households that are between 60% and 120% of the Average Median Income (AMI) for the Project site as defined by the US Department of Housing and Urban Development as adjusted annually. Affordable Housing will incorporate a plan for maintaining the sustainability for the targeted AMI levels stated above for a minimum period of fifteen (15) years but not less than the period required by applicable federal and state laws.

2. The introductory paragraph of Section 2 of the Development Agreement is hereby amended in its entirety to read as follows:

2. **Conveyance of Property.** The following provisions shall apply with respect to the City's conveyance of all or any portion of the Property to Developer:

3. The last three sentences of Section 2.1 of the Development Agreement are hereby deleted and replaced in their entirety with the following sentence:

Developer shall pay all costs, expenses and fees associated with the opening and closing of Escrow, including without limitation, the cost of any title insurance coverage it desires to obtain, and also shall pay the cost of all endorsements to any such policy.

4. Section 2.2 of the Development Agreement is hereby amended in its entirety to read as follows:

2.2 Consideration. The Purchase Price for the Property shall be \$6,200,000 (the “**Purchase Price**”). Parcel 1 of the Property has been, or is currently being, subdivided into multiple Development Parcels, and the Purchase Price (and the Public Amenities Purchase Price) has been allocated among the Development Parcels in the manner specified in Schedule 2.10. The Purchase Price shall be paid in full in cash by Developer at each Closing; provided, however, that at each Closing, Developer shall receive a credit against the Purchase Price for each Development Parcel in an amount equal to the estimated cost of constructing the corresponding Public Amenities applicable to each such Development Parcel but not more than the amounts stated in Schedule 2.10.

At each Closing Developer shall execute, acknowledge and cause to be recorded a first priority deed of trust encumbering the Development Parcel being acquired at such Closing, in a form acceptable to City (the “**Deed of Trust**”). The Deed of Trust shall

secure, and shall be released upon the satisfaction of (i) Developer's obligation to complete the Public Amenities for the Development Parcel against which the Deed of Trust is recorded, as evidenced by the acceptance of such completed Public Amenities by City, or (ii) the repayment to the City of the amount of the credit applied to the Development Parcel sought to be released. Developer shall have the right to record a separate junior deed of trust against any Development Parcel to secure Developer's construction financing, and City agrees to subordinate the Deed of Trust to a deed of trust or other encumbrance securing the construction loan provided that the lender providing the construction financing agrees to deposit the funds necessary to complete the Public Amenities in an escrow account for the benefit of the City at no cost to City or otherwise assures City that such funds will be made available for completion of the Public Amenities at no cost to City, or the Developer, in lieu of a Deed of Trust, provides City with a letter of credit or a payment bond in the amount of the credit provided to Developer. City shall have no obligation to subordinate the lien created under the Deed of Trust to any monetary lien or encumbrance. The Deed of Trust shall be evidenced by a lender's policy of title insurance insuring that such Deed of Trust lien is a first priority; Developer shall pay costs of such policy along with the other closing costs.

5. The penultimate sentence of Section 2.3.1 of the Development Agreement is hereby amended in its entirety to read as follows:

If City does not respond or if City's response does not state an intention to fully remove each item to which Developer has objected, then Developer shall deliver to City and Title Company within five (5) days after Developer receives City's response (or five (5) days after City has failed to respond), a written notice stating Developer's election either to (a) to terminate the Agreement, or (b) to waive Developer's objections and proceed with the transaction, subject to Section 2.8, Section 2.9 and Section 2.10 herein. Failure by Developer to make a timely election shall constitute an election to waive Developer's objections and proceed with the transaction, subject to Section 2.8, Section 2.9 and Section 2.10 herein.

6. Section 2.5 of the Development Agreement is hereby amended in its entirety to read as follows:

2.5 Ownership and Maintenance of Parcels Prior to Conveyances. Prior to the conveyance of the Property to Developer, City shall be entitled to receive all rents and other income from the Property and shall bear all costs of maintenance and ownership. City shall retain the right to lease, pledge or encumber any part of the Property not yet conveyed to Developer provided that any such lease shall be terminated by City as of the Closing Date, and provided further, that any encumbrance shall not unreasonably interfere with Developer's ability to proceed with development of the Property in conformance with the PAD.

2.5.1 Notwithstanding the foregoing, the City agrees to seek consent from Developer, which shall not be unreasonably withheld, prior to approving any

permanent encumbrance on the Property which affects the use of such property, including, but not limited to: access restrictions and utility easements. Developer shall have five (5) business days after receipt of a written request for consent from City in which to notify City in writing of any objection and the basis therefore; Developer's failure to respond to City's notice within the five-day period shall be deemed to constitute Developer's consent, and City may proceed with such action without further notice and without liability to Developer. City further agrees to grant Developer use of the property for construction staging, sales trailer, and construction access for temporary remediation or other predevelopment activities without additional fee, pursuant to a temporary right of entry agreement (in substantially the form of Exhibit G hereto). City further agrees to allow predevelopment and construction signage without additional fee, on construction trailer(s) and construction fencing, subject to customary approval and in conformance with the City's Zoning and Development Code.

7. Section 2.7 of the Development Agreement is hereby amended in its entirety to read as follows:

2.7 Close of Escrow. The Closing Date for any portion of the Property shall be such date as Developer may designate; provided that such Closing Date occurs within the time periods specified in the Schedule of Performance, and provided further that City shall not be required to convey any portion of the Property to Developer unless and until City has (a) received reasonably satisfactory evidence that Developer has obtained construction financing for the Improvements and Public Amenities to be constructed on that portion of the Property to be conveyed, which evidence may include a commitment letter from a financial institution or other lender with the demonstrated financial capacity to fund the committed amount, or (b) issued construction permits for construction of the Improvements and Public Amenities to be constructed on the portion of the Property to be conveyed to Developer. In no event shall the Closing occur prior to satisfaction of the conditions precedent set forth in Sections 2.8, 2.9 and 2.10, respectively, unless expressly waived in writing by the party for whose benefit the condition exists. The Closing shall take place at the office of the Escrow Agent. At or prior to the Closing, the parties hereto shall execute and deliver such documents and perform such acts as are provided for herein, or as are necessary, to consummate the conveyance to Developer. On the Closing Date the City shall execute and deliver a Special Warranty Deed for the appropriate portion of the Property, in substantially the form attached hereto as Exhibit "D".

8. Section 2.8 of the Development Agreement is hereby amended in its entirety to read as follows:

2.8 Conditions Precedent to Closing of Parcel 1. In addition to any other conditions imposed by this Agreement, the Parties hereby acknowledge and agree that the obligations of the Parties to consummate and Close on the conveyance of any portion of Parcel 1 shall be subject to and conditioned upon the satisfaction of the following conditions precedent:

2.8.1 Developer has prepared at its sole cost and expense, a revised plat of the Property dividing Parcel 1 into four (4) Development Parcels similar to those depicted on Exhibit B hereto. The revised plat shall be recorded at Developer's sole cost and expense after execution and recordation of this Agreement; and

2.8.2 City's termination of any existing leases on the Property and the satisfaction of any conditions subsequent to those leases; and

2.8.2 Developer must close on Development Parcels 3 and 4 and Tract A of Parcel 1, at the same time;

2.8.3 Developer shall not then be in an Default under this Agreement; and

2.8.4 Developer shall have prepared covenants, conditions and restrictions (CCR's) and/or other appropriate project governing documents that provide for the ongoing maintenance of the Public Amenities in a form acceptable to the City, acceptance of which shall not be unreasonably withheld.

9. Section 2.9 of the Development Agreement is hereby amended in its entirety to read as follows:

2.9 Conditions Precedent to Closing of Parcel 2. The Parties hereby acknowledge and agree that the obligations of the Parties to consummate the conveyance of Parcel 2 shall be subject to and conditioned upon the satisfaction of the following conditions precedent:

2.9.1 Developer shall not be in Default under this Agreement;

2.9.2 The approved PAD for Parcel 2 provides for the ability to build 100 underground parking spaces. City requires that Developer provide not less than 100 underground parking spaces in the approved PAD for Parcel 2; provided that with the prior written consent of the City (as evidenced by an amendment of this Agreement executed by City and Developer), which consent may be granted or withheld in City's unfettered discretion, the 100 parking spaces may be relocated to another Development Parcel for which the Developer is submitting a Development Plan Review for consideration by the City. The transfer of parking spaces to an approved location shall be considered temporary until a Certificate of Occupancy is issued for an Improvement on the Development Parcel where the parking spaces have been relocated. Each subsequent phase of the Project submitted for Development Plan Review shall take into account the prior allocation and reallocation of the parking spaces.

2.9.3 Termination of any existing leases on the Property and the satisfaction of any conditions subsequent to those leases; and

2.9.4 The Developer shall have commenced construction of the initial phase or Improvement on Parcel 1 of the Property and be diligently pursuing such construction.

10. Section 2.10 of the Development Agreement is hereby amended in its entirety to read as follows:

2.10 City's Purchase of Public Amenities. City has agreed to purchase the Public Amenities actually constructed by Developer. The parties hereby agree that the Purchase Price to be paid by the City to Developer for the Public Amenities shall be equal to the actual cost of constructing such Public Amenities, but not more than \$6,150,000; estimates of such costs are set forth in Schedule 2.10 attached hereto (the "**Public Amenities Purchase Price**"). At Developer's option, the Public Amenities Purchase Price shall be applied against the Purchase Price for the Property, and if the Property is divided into Development Parcels, then the Public Amenities Purchase Price shall be allocated among the Development Parcels in accordance with Schedule 2.10. Developer shall maintain in perpetuity all Public Amenities to the originally constructed standard at no cost to City, such maintenance obligations to be more fully described in a maintenance agreement between City and Developer, or in the CCR's referenced in Section 2.8.4; provided, however, that Developer may assign such maintenance obligations to an owners' association created for the ongoing maintenance and governance of the Project. The City and Developer hereby also acknowledge and agree that Developer is not required to incur construction costs in excess of \$6,150,000 for the Public Amenities ("**Costs**"). A budget detailing the estimated Costs has been prepared by Developer and accepted by City, and is encompassed in Schedule 2.10 attached hereto. The estimated Costs include those anticipated direct costs of the Public Amenities, as well as allocable indirect costs, and any City charges for permits associated with the Public Amenities actually paid by Developer, and which Developer's lender allows to be paid or reimbursed from construction loan proceeds, all as determined in accordance with generally accepted accounting principles applicable to construction projects of similar size and scope.

11. Section 3.1 of the Development Agreement is hereby amended in its entirety to read as follows:

3.1 Rezoning; PAD. Developer has completed the rezoning of the Property and City has approved a PAD for each Parcel.

12. Section 3.3 of the Development Agreement is hereby amended in its entirety to read as follows:

3.3 Phasing of Development. The City hereby acknowledges that the development of the Property contemplates that the Project Improvements will be planned, constructed and completed in phases on separate Development Parcels.

13. Section 3.4 of the Development Agreement is hereby amended in its entirety to read as follows:

3.4 Parking. The City hereby waives the required public parking associated with the library component of the Project. As part of the Public Amenities Developer shall execute and deliver to City a deed or bill of sale conveying to City title to, or if title to such spaces cannot be separately conveyed, the perpetual right to use, 20 full size parking spaces within the 100 spaces to be constructed by Developer on Parcel 2 in accordance with Section 2.9.2, which conveyance shall be made at no cost to City and for which City shall not be obligated to pay any assessments for maintenance or other operating costs pursuant to any covenants, conditions or restrictions affecting such spaces or otherwise, it being the intent of the parties that the 20 parking spaces shall become part of the Public Amenities which Developer is obligated to maintain. The parties agree that it is in the best interests of the Project that the parking requirement for any Affordable Housing provided within the Project shall be equal to one space for each dwelling unit and one bicycle rack for every 4 dwelling units.

14. Section 3.5 of the Development Agreement is hereby amended in its entirety to read as follows:

3.5 Railroad Quiet Zone. The City agrees to use reasonable efforts to install the infrastructure required to activate the approved Quiet Zone area adjacent to the Project prior to completion of the improvements on Development Parcel 3; provided that City shall not be responsible for delays caused by third parties.

15. Section 3.6 of the Development Agreement is hereby amended in its entirety to read as follows:

3.6 Certificate of Occupancy. Promptly after substantial completion of the construction of any Improvements on a Development Parcel within the Property in accordance with the PAD for such Development Parcel, City shall furnish to Developer a Certificate of Occupancy in accordance with City's standard procedures. Upon issuance of the Certificate of Occupancy, Developer may record the Certificate of Occupancy in the Office of the Maricopa County Recorder.

16. The penultimate sentence of Section 3.7 of the Development Agreement is hereby amended in its entirety to read as follows:

The initial representative for the City ("City Representative") shall be Alex Smith, or his designee, and the initial representative for the Developer ("Developer Representative") shall be Todd Marshall, or his designee.

17. Section 4.2 of the Development Agreement is hereby amended and restated in its entirety to read as follows:

4.2 Reimbursement Amount. The City agrees to pay to Developer an aggregate amount equal to \$1,700,000, from the Construction Sales Taxes and the Sales Taxes generated and received by the City from the Project (the "Reimbursement Amount"), in accordance with the terms of this **Section 4**. The City's obligation to make the payments described in this **Section 4** shall terminate at the end of the Reimbursement Period

18. Section 5 of the Development Agreement is hereby amended in its entirety to read as follows:

5. Fee, Basis and Deferral.

5.1 Fee Basis. All City fees and permits imposed with respect to the Project, including, but not limited to, planning and building plan check fees, excavating and grading fees, engineering fees, and building permit fees, including, without limitation, mechanical, electrical and plumbing permit fees, paid by Developer prior to January 1, 2013 shall be capped at the rates or charges in effect as of May 31, 2007 (herein, the "Capped Rate"). In the case of a reduced fee or deferred fee as defined herein, the basis for the reduction shall be based on the Capped Rate. All fees and other payments to City on and after January 1, 2013 for any purpose relating to the Project, or any phase thereof, including those items listed above, shall be at the rates and amounts in effect at the time paid; Developer shall not be entitled to prepay all or any portion of any such fees.

5.2 Deferral of Sewer, Water and Residential Unit Development Fees. In addition to the foregoing fee waivers, the City hereby agrees to defer payment of all potable water and sanitary sewer fees (the "Deferred Development Fees"), including commercial and landscape meters, until such time as the 15th day after a Certificate of Occupancy is issued relative to the Improvement or phase that is served by such meter. In the case of individual for-sale residential units, the deferred sewer and water fees shall be paid to the City out of escrow at the closing of the sale of each individual unit to a third party purchaser. The Deferred Development Fees shall bear interest at the rate of 4% per annum, compounded daily, from the date such fees would otherwise have been paid until the date all Deferred Development Fees are paid in full, with interest, compounded as aforesaid. Any amounts (including, without limitation, the Deferred Development Fees and interest accrued thereon, together with any charges, costs and fees paid by City as a result of such default) not paid when due shall bear interest at the rate of 10% per annum, compounded daily, from the date due until paid in full. As required by Section 9-463.05 of the Arizona Revised Statutes, as amended, all Deferred Development Fees shall be secured by a first priority deed of trust lien on the Property, which deed of trust shall be in such form as City may require; provided that Developer shall have the

option of providing a cash bond, letter of credit or surety bond in the amount of the Deferred Development Fees.

19. Section 6 of the Development Agreement is hereby amended in its entirety to read as follows:

6. Housing Matters.

6.1 Contribution of HOME and/or CDBG Funds. If Developer is successful in securing an allocation of Low Income Housing Tax Credits (LIHTC) for this Project through the Arizona Department of Housing, the City hereby agrees to contribute \$400,000 in either U.S. Department of Housing and Urban Development HOME funds (the “HOME Funds”) or Community Development Block Grant funds to the Project for the purpose of contributing toward the financing of affordable housing pursuant to the Developer’s successful application for LIHTC. Any contribution of HOME/CDBG funds is contingent upon the Project and the particular use of those funds meeting all Federal requirements related to such funds.

20. The second sentence of Section 7 of the Development Agreement is hereby amended in its entirety to read as follows:

Notwithstanding the foregoing, Developer shall be responsible for an annual in-lieu payment to City (for transmission to the Tempe Union High School District and the Tempe Elementary School District No. 3), during the abatement period in an amount equal to the lesser of: (a) that portion of the property tax which would have otherwise been payable by such portion of the Project but for the abatement and which would have been remitted to the School Districts, or (b) \$10,000 for each of the five Development Parcels

21. Section 10 of the Development Agreement is hereby amended in its entirety to read as follows:

10. City’s Indemnification of Developer.

City shall assume all incidents of ownership of the Public Amenities (other than maintenance obligations which shall be performed by Developer at its sole cost and expense) when title or easement to same is transferred to City of record, and will thereafter indemnify and hold Developer harmless for any liability arising out of the public’s use of the Public Amenities after the date of transfer and not caused by the negligence or willful misconduct of Developer, its agents, invitees, employees or other persons for whose acts, errors, mistakes, omissions, work, services or professional services Developer may be legally liable. The foregoing indemnity shall not extend to any warranty claim or any claim relating to the design and/or construction of the Public Amenities or their operation prior to conveyance to City.

22. Section 11 of the Development Agreement is hereby amended in its entirety to read as follows:

11. Default; Alternative Dispute Resolution.

11.1 Default. It shall be a 'Default' hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of the failure.

11.2 Additional Developer Defaults. In addition to the foregoing, it shall be a Default hereunder if:

11.2.1 Developer sells, assigns, conveys, alienates or otherwise transfers this Agreement or the Property, or any part thereof or any interest therein, in any manner, whether voluntarily or involuntarily, without the prior written approval of the City, which approval shall not be unreasonably withheld provided that the party to whom the Developer proposes to convey the Property has demonstrated the financial capacity to perform its obligations under this Agreement; or

11.2.2 any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization, insolvency or readjustment of debts is filed by or against Developer or its assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; or Developer makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; or a custodian, as defined by the Bankruptcy Code, takes charge of any property of a partner; or garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, and such issuance is not bonded against within ninety (90) days; (c) any change in control of Developer (including a change in those persons who are its managers, or controlling members, partners or shareholders), its merger or consolidation (whether in one transaction or in a series of transactions) with or into any other entity, the sale, lease, transfer or other disposition of all or a substantial part of its assets, including any sale and leaseback transaction without the prior written consent of City (which consent may be granted or withheld in City's unfettered discretion); (d) there is a material default or material breach of any representation, warranty or covenant, or there is a material false statement or material omission, by Developer under this Agreement or any document delivered or information provided to City in connection herewith; or (e) the dissolution or termination of existence of Developer.

Due to the unique ownership structure employed to facilitate the Low Income Housing Tax Credits used to finance the project proposed for Development Parcel 3, Developer may, without City's prior written consent, transfer ownership of Development Parcel 3 of Parcel 1 to 6th and Farmer, LLC in a single transaction or a

series of related transactions in which no consideration is paid to Developer, provided Developer submits to City reasonably satisfactory evidence that such entity is a tax credit investor.

Without City's prior written consent, Developer may, transfer or convey that portion of the Property on which the Public Amenities are to be constructed (including, but not limited to, Tract A of the approved Plat, any subsequently approved common area tracts, and/or any undivided condominium interests) to an owner's association created to own, maintain and/or govern the Project so long as City reviews and approves the covenants, conditions and restrictions applicable to any such entity, and such covenants, conditions and restrictions absolutely obligate the association to maintain the Public Amenities in accordance with the terms of this Agreement and any other agreement between City and Developer applicable to such Public Amenities.

11.4 Mediation. After the occurrence of an Event of Default, the parties hereby agree that there shall be a ninety (90) day moratorium on litigation during which time the parties shall attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the Commercial Mediation Rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the parties involved in the dispute. In the event the parties involved in the dispute cannot agree upon the selection of a mediator within ten (10) days, then, within five (5) days thereafter, such parties shall request the presiding judge of the Superior Court of Maricopa County, Arizona to 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 parties involved in the dispute. The mediator shall not have the right to award punitive damages. The results of the mediation shall be nonbinding and any party involved in the dispute shall have the right to initiate litigation to enforce the terms and conditions of this Agreement upon the latter of the conclusion of the mediation or ninety (90) days after the Event of Default.

11.5 Developer's Remedies. If the City is in default under this Agreement and the parties do not resolve the City's default pursuant to the nonbinding mediation process described above, then Developer shall have the right to terminate this Agreement immediately upon written notice to the City and to pursue all other legal and equitable remedies which the Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain damages and the right to self-help.

11.6 City's Remedies. If the Developer is in default under this Agreement and the parties do not resolve the Developer's default pursuant to the nonbinding mediation process described above, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity. In addition, if this Agreement is terminated the City shall have all rights and remedies provided in the Deed of Trust as to that portion of the Property that is subject to the Deed of Trust. If City terminates this Agreement,

Developer shall have no further rights to develop the Property pursuant to this Development Agreement and shall have no further right to any incentives or other benefits provided for herein.

Notwithstanding the foregoing, if at the time the Development Agreement is terminated, there exist any fully executed Government Property Leases as to any Parcels or Development Parcels which have satisfied the requirements for Public Amenities, including but not limited to the release of the Deed of Trust, and if Developer is then in compliance with all maintenance requirements, then any such GPLET Leases shall remain in effect for the remaining term of such lease.

11.8 Rights and Remedies Applicable to Section 11.2.1. Notwithstanding anything to the contrary, the limitations on transferability set forth in Sections 11.2.1 and 11.2.2(c) shall expire as to each Development Parcel upon the date that on which a Certificate of Occupancy is issued for any Improvements on the Property which Improvements substantially conform to the PAD(as applicable to each Development Parcel, a “**Limitation Period**”). Those limitations are designed to reflect the fact that the assistance provided in this Agreement is personal to Developer, and not intended for the benefit of any other person, including any subsequent owner of the Property. In the event of a breach of Section 11.2.1 during the applicable Limitation Period, then City shall be entitled, as City’s sole and exclusive remedy for such breach, to receive liquidated damages in an amount equal to the positive difference, if any, between (i) the total monetary consideration paid or to be paid by the transferee to Developer in connection with the transfer of a Development Parcel or any rights in this Agreement in violation of Section 11.2.1, minus (ii) an amount equal to 118% of the Purchase Price paid by Developer to City for such Development Parcel pursuant to this Agreement. Developer acknowledges and agrees that City’s damages in the event of such a breach of Section 11.2.1 would be difficult, if not impossible, to calculate and that the liquidated damages called for above represent a reasonable and good faith estimate of such damages.

23. Exhibits ‘B’, ‘C’ and ‘F’ of Development Agreement are hereby amended in their entirety and replaced with those Exhibits attached hereto.

24. Except as amended hereby the Development Agreement shall remain in full force and effect.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned have caused this Amendment to Development and Disposition Agreement to be executed as of the day and year first above written.

ATTEST:

CITY OF TEMPE, an Arizona municipal corporation

City Clerk

By _____
Hugh L. Hallman, Mayor

APPROVED AS TO FORM:

City Attorney

FARMER ARTS, LLC, an Arizona limited liability company

By _____

Name _____

Title _____

List of Exhibits

Exhibit “B”	Map of Parcel 1 and Parcel 2
Exhibit “C”	Schedule of Performance
Exhibit “F”	Map and Depiction of Public Amenities
Schedule 2.10	

Exhibit "B"
Map of Parcel 1 and 2

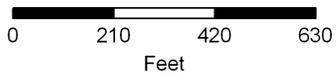
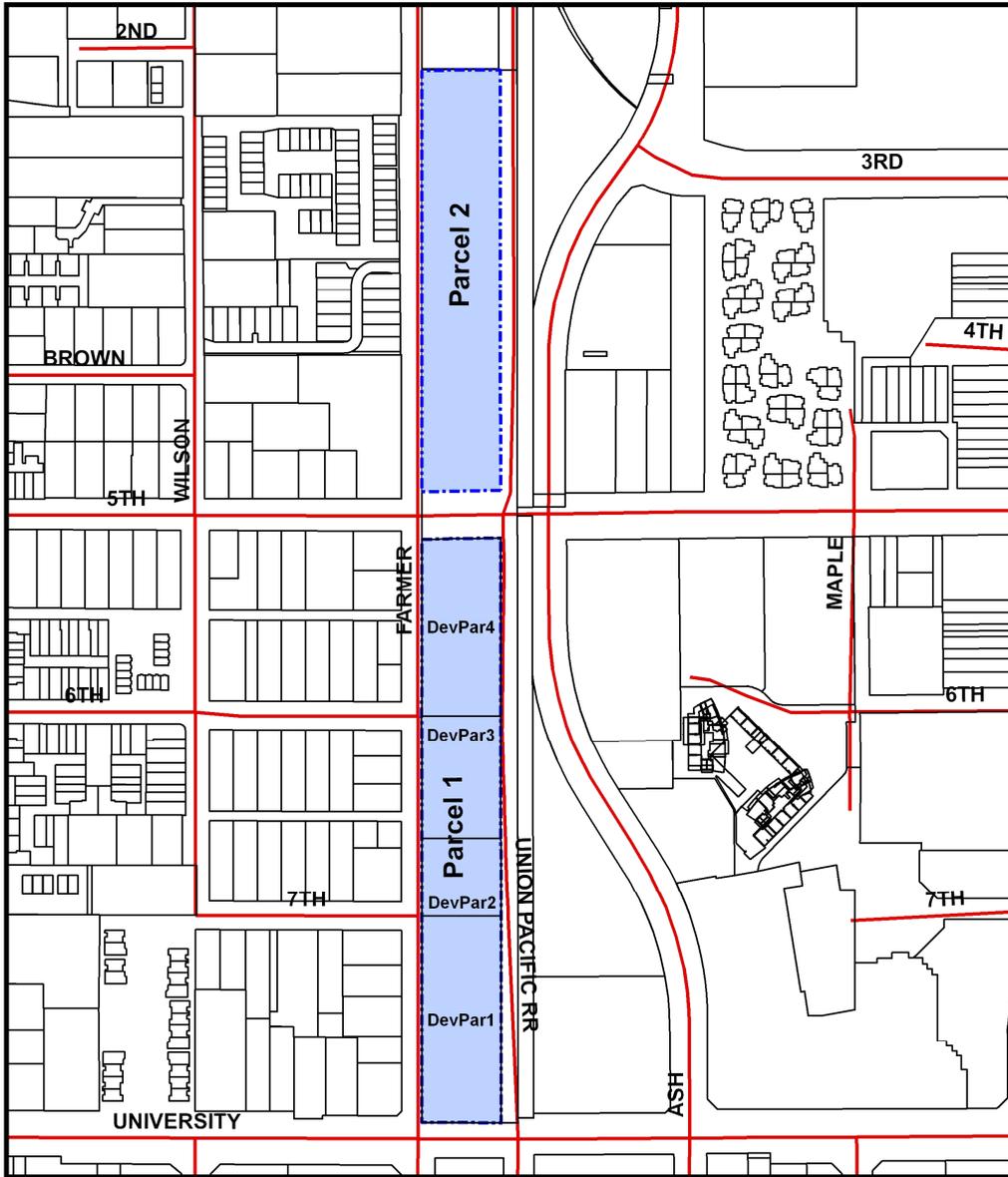


Exhibit "C"
Schedule of Performance

- 1. Closing Date for all Development Parcels of Parcel 1 must occur on or before January 29, 2016**
- 2. Closing Date for Parcel 2 must occur on or before January 29, 2018**
- 3. Commence Construction of the Improvements on each Development Parcel within 180 days after City's issuance of building permits for the Improvements to be constructed thereon.**

Exhibit “F”
1 of 4
Depiction of Public Amenities

Library

The Library at Farmer Arts District is physically and programmatically integrated into the proposed residential building at the NEC of Farmer Avenue and University Drive. This location serves four distinct neighborhoods that meet at this intersection. The library promotes life-long learning to serve knowledge seekers of all ages. The development program is +/-16,000 sf of interior gross floor area including a mezzanine overlook creating a compact yet dramatic urban learning space. The design and development of the library includes a Gray Shell, as defined below and a public plaza. The Furniture, Fixture and Equipment package is not assumed or provided.

The term “Gray Shell” shall mean and include the building structure, envelope, circulation, public spaces, physical plant support spaces, and site improvements associated with the Library. Specifically:

- Site improvements adequate to comply with life safety, and zoning including: ground cover, planting, irrigation systems, sidewalks, lighting, signage, fences, screens, and buffer zones.
- Building structure including; foundation, beams, columns, floor slabs, and roof structure.
- Building envelope including; insulated exterior walls, exterior glazing, and roof.
- Building standard finished ceiling and ambient lighting.
- Common corridor stud walls, if any, including gypsum wall board on public sides.
- Common areas including; entrance vestibule, lobby, fire egress stairways and corridors, mechanical, electrical switchgear and communication equipment rooms, and elevator shafts and equipment room.
- Public toilets.
- Electrical and mechanical systems including; heating, ventilation and air conditioning systems, building automation system, and emergency generator.
- Combination fire standpipe/sprinkler system and central alarm system.
- Building utility distribution system including; potable domestic water, sanitary and storm drain systems, sanitary vent, electrical power distribution panels and circuit breakers in an electrical closet, designated connection point to the central fire alarm system, and a distribution backboard within a wire closet. All services provide for connections to the tenant functions.

Pedestrian Pathway

Providing the dedicated north/south public access way of 15 to 20 feet on average. The linear park serves as a boardwalk connecting the four neighborhoods to important City amenities and resources. The design provides for an accessible path compliant with ADA standards, shade, park furnishings and appropriate lighting. Upon completion, an access easement or dedication will be provided to the City ensuring continued enjoyment for future generations.

Streetscape

The current industrial streetscape that is Farmer Avenue has been redefined to include an integrated pedestrian oriented sidewalk and a design that establishing the vision for tree lined streets, appropriate lighting and vibrant urban neighborhood uses.

Exhibit "F"
2 of 4
Map of Public Amenities

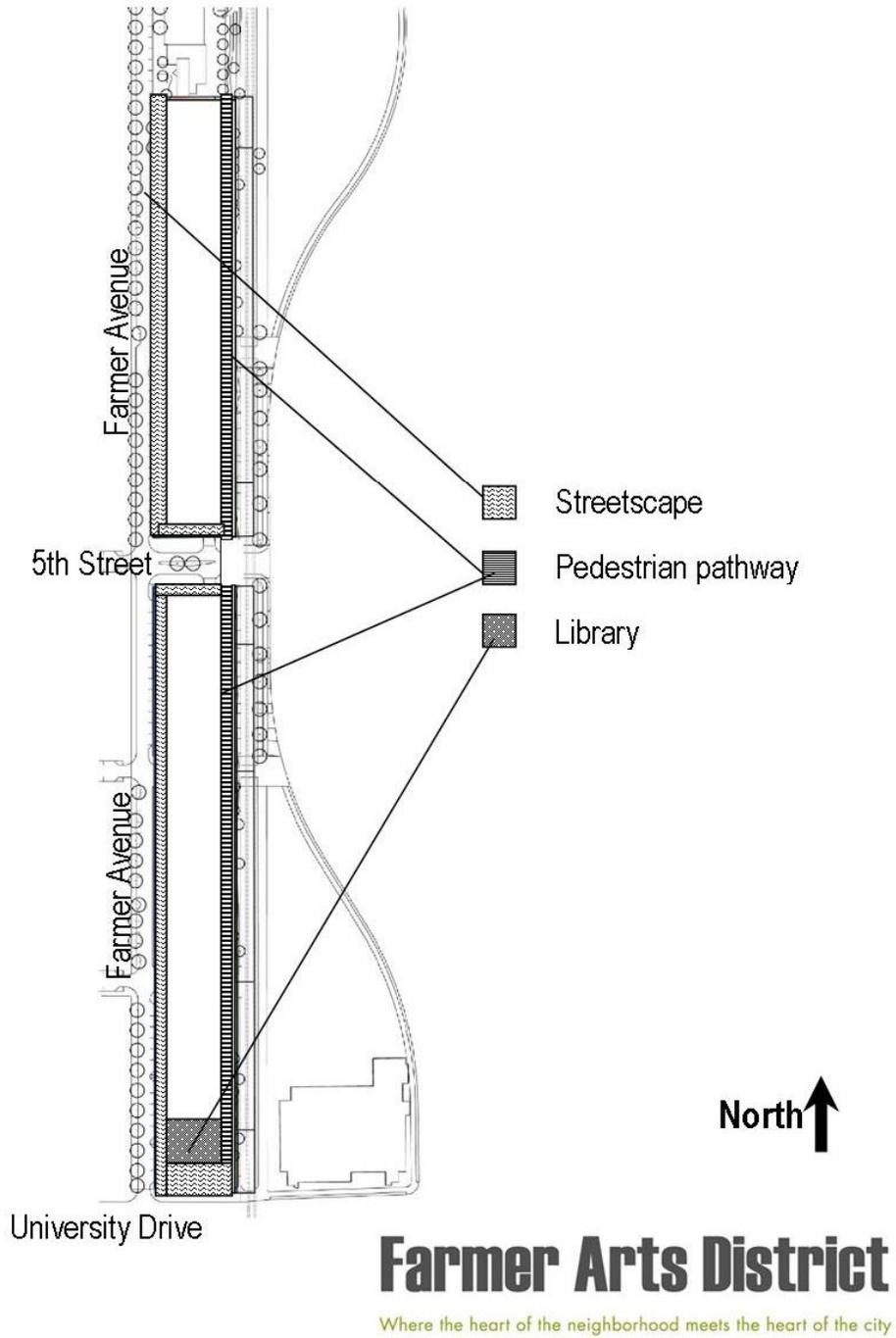
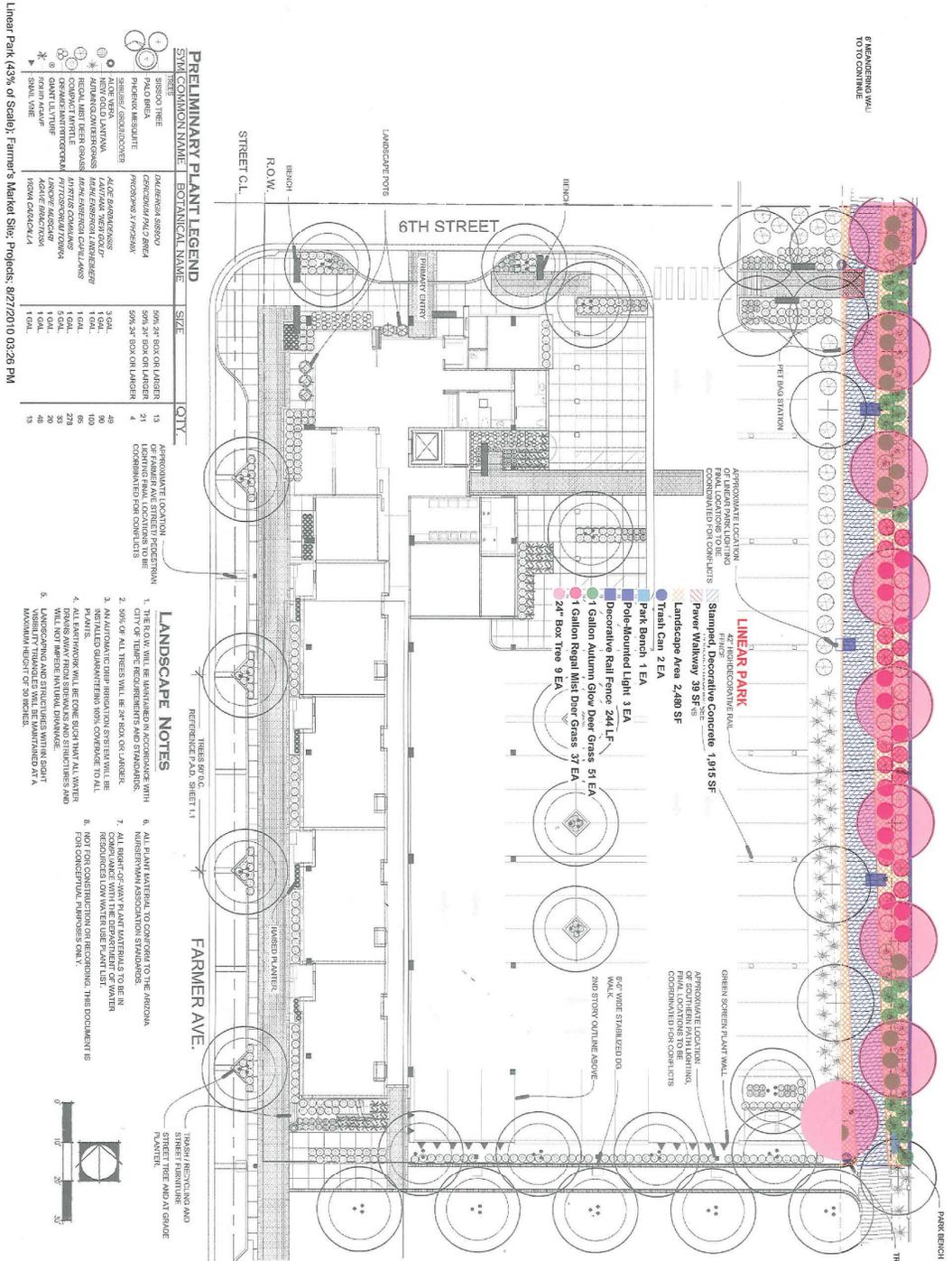


Exhibit "F"

4 of 4

Pedestrian Pathway Detail



PRELIMINARY PLANT LEGEND

SYMBOL	COMMON NAME	BOTANICAL NAME	SIZE	QTY	APPROXIMATE LOCATION
(Symbol)	DOGWOOD	DOGWOOD	60% 24\"/>		

- LANDSCAPE NOTES**
1. THE GROUND SHALL BE MAINTAINED AT AN ELEVATION OF 1.0' ABOVE FINISH GRADE.
 2. 50% OF ALL TREES WILL BE 24\"/>

CONCEPTUAL
LANDSCAPE
PLAN

A Senior Housing Development at:
Farmer Arts District
Where the heart of the neighborhood meets the heart of the city

6th & Farmer, LLC - 688 West First Street, Suite 1B, Tempe Arizona 85281

YOLKER
UrbanDevelopmentPartners
SHENKINSADAMS

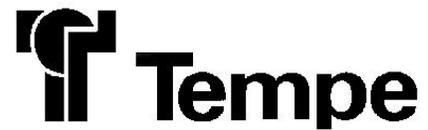
Schedule 2.10

Development Parcel ("DP")	Plat	Purchase Price	Public Amenities	Public Amenities Purchase Price
Parcel 1				
DP1	Lot 1	\$ 3,144,562	Library Enhanced Streetscape Pedestrian Pathway	\$ 3,144,562
DP2	Lot 2	\$ 197,419	Enhanced Streetscape Pedestrian Pathway	\$ 197,419
DP3	Lot 3 Tract A	\$ 300,658	Enhanced Streetscape Pedestrian Pathway	\$ 275,658
DP4	Lot 4	\$ 525,518	Enhanced Streetscape Pedestrian Pathway	\$ 525,518
Parcel 2				
		\$ 1,544,638	Enhanced Streetscape Pedestrian Pathway Parking (\$400,000)	\$ 1,519,638
		\$ 487,205	Amenities Perpetual O/M	\$ 487,205
	Total	\$ 6,200,000		\$ 6,150,000

Conveyance notes:

- 1 DP3 (Lot 3 along with Tract A) to be conveyed in initial closing. Public Amenities will be constructed on Lot 2 (Enhanced Streetscape \$126,751) and Lot 4 (Pedestrian Pathway \$149,661) concurrent with the construction of Public Amenities on Lot 3.
- 2 Cash to be paid at Closing of DP3 and Parcel 2

Staff Summary Report



City Council Meeting Date: 11/04/2010

Agenda Item Number: 5E3

SUBJECT: Request adoption of a resolution authorizing the approval of the Tempe South Corridor Study Recommendations

DOCUMENT NAME: 20101104cdjism01 TRANSPORTATION PLANNING (1101-01) Resolution No. 2010.141

COMMENTS: This resolution reaffirms the unanimous direction provided at the October 21, 2010 IRS Council meeting to advance the Tempe South Study recommendations forward to the next stage of project development. This resolution is the initial step to adopt the project into the Regional Transportation Plan through Maricopa Association of Governments and provides an initial basis for the future commitment to fund operations of the system in connection with application to the Federal Transit Administration for capital funding. Staff will develop potential funding sources to review with Council prior to application to the Federal Transit Administration in the spring 2011.

PREPARED BY: Jyme Sue McLaren, Interim Community Development Manager (350-8803)

REVIEWED BY: Lisa Collins, Deputy Community Development Director (350-8989)
Carlos De Leon, Interim Deputy Public Works Director (350-8527)

LEGAL REVIEW BY: Cynthia McCoy, Assistant City Attorney (858-2187)

DEPARTMENT REVIEW BY: Chris Anaradian, Community Development Director (858-2204)
Don Bessler, Public Works Director (350-8205)

FISCAL NOTE: This memorialization of Council direction provided at the October 21, 2010 IRS Council meeting will advance the Tempe South Corridor Study recommendations into the next phase of project development, and, in connection with the City of Tempe's application to the Federal Transit Administration in the Spring of 2011, and provides that the City of Tempe will be responsible for funding the operation of the system beginning in FY 2016/17 if an FTA application is submitted. Staff will develop potential funding sources to review with Council prior to application to the Federal Transit Administration in the spring 2011.

RECOMMENDATION: Approve Resolution No. 2010.141 as submitted

ATTACHMENTS: Exhibit 1: Mill Avenue Streetcar Alignment Recommendation
Exhibit 2: Mill-Ash One-Way Loop Downtown Alignment Recommendation

RESOLUTION NO.2010.141

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF TEMPE, AUTHORIZING THE APPROVAL OF THE TEMPE SOUTH CORRIDOR STUDY RECOMMENDATIONS, AND ADVANCING THE PROJECT TO THE NEXT PHASE OF PROJECT DEVELOPMENT.

WHEREAS, the City of Tempe, Valley METRO (“METRO”) and Maricopa Association of Governments (“MAG”) have worked collaboratively to evaluate technology and alignment recommendations for an approximate 2-mile high capacity transit corridor; and

WHEREAS, the Tempe South Corridor Study recommendations have concluded the advancement of a 2.6 mile streetcar along the Mill Avenue corridor, as defined in Exhibit 1 and 2;

WHEREAS, the City of Tempe, in connection with the application to the Federal Transit Administration for capital funding and completion of a definitive financial plan for funding operations that must be adopted by the Tempe City Council to qualify for such capital funding, the Tempe City Council agrees to provide funding for the operations of the streetcar project in fiscal year 2016/17 if an application is made for capital funding to the Federal Transit Administration.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AS FOLLOWS:

Section 1. That the Tempe City Council endorses the recommendation to advance the 2.6-mile streetcar along the Mill Avenue corridor into the next phase of project development.

Section 2. That, in connection with the application to the Federal Transit Administration for capital funding and completion of a definitive financial plan for funding operations that must be adopted by the Tempe City Council to qualify for such capital funding, the Tempe City Council agrees to provide funding for the operations of the streetcar project in fiscal year 2016/17 if an application is made for capital funding to the Federal Transit Administration .

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2010

Signature page follows.

RESOLUTION NO. 2010.141

Hugh L. Hallman, Mayor

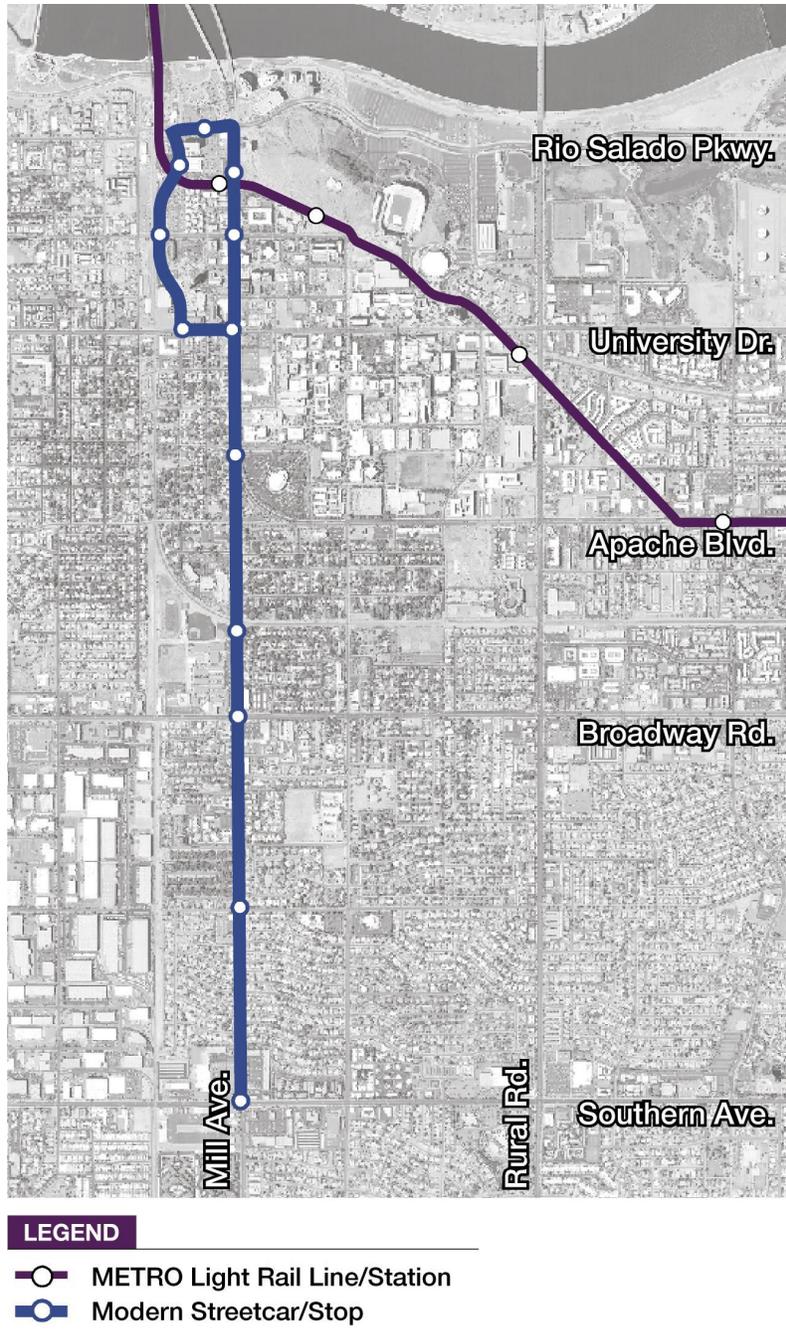
ATTEST:

City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibit 1 Mill Avenue Streetcar Alignment Recommendation



Note: Modern Streetcar stops are subject to further technical analysis and refinement during the next phase of study and may change as a result of future study effort

Exhibit 2

Mill-Ash One-Way Loop

Downtown Alignment Recommendation

