



CITY OF SURPRISE
Regular City Council Meeting
16000 N. Civic Center Plaza
Surprise, AZ 85374
Tuesday, October 1, 2024 @ 6:00 PM
COUNCIL CHAMBERS

A. Call To Order

Any prayer or invocation that may be offered before the start of the Regular Council Meeting is a voluntary offering by a private resident of Surprise; has not been previously reviewed or approved by City Council or City staff; should not be considered an endorsement of any particular religion by the City or its officials, as the beliefs, viewpoint, and content are personal to the speaker; and no participation by any person in attendance is required. A list of volunteers is maintained by the office of the City Clerk and interested persons should contact the Clerk's Office for further information.

B. Roll Call

C. Pledge of Allegiance

D. Proclamation and Community Acknowledgements

Domestic Violence Awareness Month

E. City Manager Report

The City Manager may present a brief summary of current events, including recognition of community members, employees, and programs, pursuant to A.R.S. § 38-431.02(K). The City Council will not discuss or take action on any matter within the City Manager Report.

F. City Clerk Report

G. Regular City Council Meeting Agenda

CONSENT AGENDA:

- | | | | |
|----|------------|---|---------------------------------|
| 1. | Internal | Consideration and action to approve the September 17, 2024 Regular City Council Meeting Minutes, and Work Session Minutes. | Kristi Passarelli
City Clerk |
| 2. | District 3 | Consideration and action pertaining to the conditional acceptance and maintenance of certain streets and public utility improvements at Toll at Prasada, Unit Q - Phase 3 - SF, generally located at the northwest corner of West Peoria Road and North Cotton Lane; Resolution #2024-141. | Kristin Tytler
Public Works |
| 3. | District 3 | Consideration and action pertaining to the conditional acceptance and maintenance of certain streets and public utility improvements at Toll at Prasada, Unit I – Phase 3 Final Re-Plat, generally located at the northwest corner of West Peoria Road and North Cotton Lane; Resolution #2024-142. | Kristin Tytler
Public Works |
| 4. | Citywide | Consideration and action pertaining to the approval and grant of a Wired Telecommunications License and Right of Way Use Agreement with Accipiter Communications, Inc. d/b/a Zona Communication and Wyyerd Fiber; Resolution #2024-156. | Kristin Tytler
Public Works |

REGULAR AGENDA ITEM - PUBLIC HEARING:

- | | | | |
|----|------------|---|-----------------|
| 5. | District 5 | Consideration and action pertaining to a rezone from Rural Residential (RR) to Light Industrial (I-1) for | Trever Fleetham |
|----|------------|---|-----------------|

- | | | | |
|---|------------|--|--|
| | | approximately 0.65 acres generally located west of Litchfield Road and north of Waddell Road; Ordinance # 2024-31. | Community Development |
| 6. | District 1 | Presentation, discussion, and public hearing pertaining to the Nobella Annexation, Case FS24-0548. | Trever Fleetham
Community Development |
|
REGULAR AGENDA ITEM - NON-PUBLIC HEARING: | | | |
| 7. | Citywide | Consideration and action pertaining to approval of an amendment to the Surprise Municipal Code, Chapter 38 <i>Parks & Recreation</i> , Article II. <i>Public Conduct in Parks</i> , pertaining to definitions, hours of operations, rules of conduct, enforcement, and dogs and dog parks; Ordinance #2024-34. | Holly Osborn
Parks and Recreation |
| 8. | Citywide | Consideration and action pertaining to approval of a Memorandum of Understanding between the City of Surprise and the Flood Control District of Maricopa County establishing the intent of the parties to develop areas of the McMicken Dam area for recreational and open space uses. | City Manager Office |
| 9. | Citywide | Presentation and discussion regarding the Southwest Valley Chamber of Commerce; its mission, services, and the potential of partnering with the City of Surprise in the future. | City Manager Office |

H. Call To The Public

INSTRUCTIONS: In order to address the City Council, you will need to fill out a Call to the Public Form available at the front counter, and then turn it in to the City Clerk before the meeting begins. You may also [fill out the Call to the Public form online](#). If submitting form electronically, please submit to City Clerk at least one hour before the meeting start time.

Note: A.R.S. 38-431.01(H)- During this time members of the public may address City Council only on issues within the jurisdiction of the City Council which are not an item on the agenda. At the conclusion of the open call, City Council may respond to criticism, may ask staff to review the matter or may ask that the matter be put on a future agenda. No discussion or action shall take place on any item raised.

Approval of items on the Consent Agenda – all items with an asterisk (*) are considered to be routine matters and will be enacted by one motion and one roll call vote to the City Council. There will be no separate discussion on these items unless a Councilmember requests, in which event the item will be removed from the consent agenda and considered in its normal sequence on the agenda.

Please be aware that Council Members may not discuss or respond to matters raised during call to the public that are not specifically identified on the agenda. Council Members may however, in their discretion, discuss or respond to relevant matters raised during a noticed public hearing or agenda item.

- I. Other Business and Future Agenda Items
- J. City Council Reports
- K. Executive Session

For information Purposes; Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, but for only the following purposes:

- discussion or consideration of personnel matters (A.R.S. §38-431.03 (A)(1));
- discussion or consideration of records exempt by law from public inspection (A.R.S. §38-401.03 (A)(2));
- discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03 (A)(3));
- discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid or resolve litigation (A.R.S. §38-431.03 (a)(4));
- discussion or consultation with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03 (A)(5)); or
- discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town. A.R.S. §38-401.03 (A)(6)).
- discussing or consulting with designated representatives of the city in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03 (A)(7)).

Confidentiality Requirements Pursuant to A.R.S. §38-431.03(C)(D): Any person receiving executive session information pursuant to A.R.S. §38-431.02 shall not disclose that information except to the Attorney General or County Attorney by agreement of the City Council, or as otherwise ordered by a court of competent jurisdiction.

The council may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3).

L. Adjournment

KRISTI PASSARELLI, CITY CLERK

POSTED: Thursday, September 26, 2024 @ 10:00 AM

SPECIAL NOTE: PERSONS WITH SPECIAL ACCESSIBILITY NEEDS, INCLUDING LARGE PRINT MATERIALS OR INTERPRETER, SHOULD CONTACT THE CITY CLERK'S OFFICE @ 623.222.1200 OR TTY 623.222.1002, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.



CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: City Clerk
Staff Recommendations:

Contact Person:
District: Internal

Consent: No	Regular: No	Public Hearing: No	Report/Discussion: No
-------------	-------------	--------------------	-----------------------

Agenda Wording:

Invocation

Motion:

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:



CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: City Manager Office
Staff Recommendations:

Contact Person:
District: Citywide

Consent: No Regular: No Public Hearing: No Report/Discussion: No

Agenda Wording:

Domestic Violence Awareness Month

Motion:

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

There is no anticipated financial impact related to this item.

Budget Impact:

There is no anticipated budget impact related to this item.

FTE Impact:

This item does not have an impact on current staff levels.

ATTACHMENTS:



CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department:
Staff Recommendations:

Contact Person:
District: Citywide

Consent: No Regular: No Public Hearing: No Report/Discussion: No

Agenda Wording:
City Manager sub-text

Motion:

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:



CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: City Clerk
Staff Recommendations:

Contact Person: Kristi Passarelli, City Clerk
District: Internal

Consent: Yes	Regular: No	Public Hearing: No	Report/Discussion: No
--------------	-------------	--------------------	-----------------------

Agenda Wording:

Consideration and action to approve the September 17, 2024 Regular City Council Meeting Minutes, and Work Session Minutes.

Motion:

I move to approve the September 17, 2024 Regular City Council Meeting, and Work Session Minutes.

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:

FTE Impact:

ATTACHMENTS:

1. 091724 Work Session Minutes
 2. 091724 Regular Meeting Minutes
-



CITY OF SURPRISE
City Council Work Session
16000 N. Civic Center Plaza
Surprise, AZ 85374
Tuesday, September 17, 2024 @ 4:00 PM
COUNCIL CHAMBERS

A. Call To Order

Mayor Hall called the Regular Council Work Session of September 17, 2024 to order at 4:00 p.m., located at Surprise City Hall, 16000 N. Civic Center Plaza, Surprise, AZ. 85374.

B. Roll Call

In attendance with Mayor Hall were Vice Mayor Nick Haney, Council members Chris Judd, Alyson Cline, Patrick Duffy, Ken Remley and Jack Hastings.

C. Pledge of Allegiance

Mayor Hall led the Pledge of Allegiance.

D. Proclamation and Community Acknowledgements

E. City Manager Report

City Manager, Bob Wigenroth presented Shelby Fenwik to introduce Youth Council.

Annaleisa Dixon, Shadowridge Highschool
Braedan Aftanski, Paradise Honors

1. City Manager sub-text

F. City Clerk Report

G. Regular City Council Work Session Agenda

1. CONSENT AGENDA:

2. REGULAR AGENDA ITEM - PUBLIC HEARING:

3. REGULAR AGENDA ITEM - NON-PUBLIC HEARING:

1. Presentation and discussion pertaining to the FY2024 Financial Status Report through June 2024.

Chief Financial Officer, Andrea Davis, came to present this item. She talked about Source Category Examples, and FY24 General Fund sources.

Councilmember Remley, asked about the estimates and if they were put down conservatively? And the difference between the actual this year to last year? Andrea said they trended close to 1%. Councilmember Remley talked about substantial growth and the cost of living and retail sales tax. He asked what was going on exactly? Andrea said there's a difference between estimates to actuals. Councilmember Remley talked about the actual cost of expenses and inflation rates. Andre said they city is seeing more revenue but stressed the estimates versus reality.

Councilmember Hastings, asked about factoring in receiving more money in revenue and if it would have impacted the earlier decision for the tax increase? Andrea the decisions would have been the same and the excess is only one time. He asked if there was a healthy percentage for reoccurring expenses? Andrea talked about the funds being charged differently. She said the city is always getting permit revenue, but it is one time. Councilmember Hastings asked when the

estimates were made? Andrea said it was in January.

Councilmember Cline, asked about the decreases haven't occurred yet? Andrea said that was correct, and the reductions haven't happened yet.

Councilmember Remley, talked about putting together the budget and the estimate needing to be made. He talked about the impact the estimates have and how impressive it was to be within 1%.

Andrea continued to talk about: General Fund Uses, Personnel Savings, Supplies, Services, Capital, and Transfers Out.

2. Presentation and discussion pertaining to business license discounts for veteran-owned businesses.

Andrea Davis, returned to talk about this item. She talked about the Purpose of Licensing, and Business License Fees.

Councilmember Remley, said they needed to add DD14 to verify Veteran Status.

Vice-Mayor Haney, talked about how the item was brought forth. He talked about the state already waiving the fee? Andrea said they do. Vice-Mayor said he would like to do that and asked what kind of ongoing fee could be applied? He asked for everyone else's feedback.

Councilmember Judd, said he is not a huge fan of business license fees. He would prefer it be applied to everyone not just veterans and asked about a grant process for veterans?

Councilmember Hastings, said he would like to see lowered for veterans. He talked about First-Responders and offering it to them as well? He asked about the financial impact on the city?

Councilmember Cline, said she would like the fee reduced for everyone. She would like to track women and minority owned businesses as well. She talked about vendor outreach to those types of businesses.

Andrea said that business license are applied to all businesses regardless of size and putting a limiter on it what would the measurement be? She wanted to make council mindful of the considerations. Councilmember Cline talked about existing standards, and exploring options. She talked about figuring out the revenue generated now.

Councilmember Remley, asked about who gets a business license? Andrea said it was anybody. Councilmember Remley talked about minors and having them exempt from needing a business license. He further talked about the popularity of the city for Veterans to retire in. He would prefer having veterans filing a license but not paying for one.

Councilmember Duffy, said he would prefer to see the cuts given to everyone. Andrea talked about keeping track of businesses.

Councilmember Judd, asked if the City could waive the fee based on the size of the company? Andrea said it goes back to how do you prove it? He talked about doing something small fees instead. Andrea said it would have to be an amount to justify the fee. He talked about waiving initial fees then charging ongoing. He asked what would they use for the criteria? Andrea said they could gather more information for a decision in the future. Councilmember Judd asked about creating a grant for the fees.

Mayor Hall, suggested tabling the item for now. Vice-Mayor Haney talked about his original intent, and that he appreciated the dialogue.

City Attorney, Wingo, said it would be best to bring the item back.

Councilmember Remley, talked about ideas to research.

3. Presentation and discussion regarding additional transportation emergency access points for District 1.

Transportation Director, Eric Boyles; and Armando Lopez, CIP manager came to present this item. They talked about District 1 Access Points, History of the item, What's Next, Traffic Signals, and Road Widening, Access Points Overview and the Challenges there, Parameters.

Armando talked about the Access Points, Limitations, and Alternate Route Ideas. He went on about two ideas in the North namely Dove Valley Road, and 167th Ave. The next area he wanted to talk about was Patt Tillman, and Jomax Road Alternatives. Eric talked about anything having to connect to the 60 wouldn't help. Armando talked about another alternative at Lone Mountain Road. He also talked about Deer Valley Road idea. He said the final option would be a Jomax Road connection.

Eric talked about the next steps. He talked about MAG doing a study about these locations. He also talked about development coming in. He also talked about continuing to evaluate and see which option is most viable.

Mayor Hall asked about the Deer Valley and 219th and if it was already looked at? Eric said it was recently approved.

Councilmember Cline, asked how long the MAG study is expected to be? Eric said they had their first meeting and hoped within the next 6-8 months. She asked if there is an opportunity for Community residents to give input? Eric said they do on their website. She asked about including the survey on her newsletter? and how much of the area isn't within Surprise.

Mayor Hall, asked about El Mirage Road? Eric said it was moving along but it is not within the City's control.

Vice-Mayor Haney, thanked staff for their efforts. He talked about community input and how important it is. He asked about access to North Copper Canyon? Eric said that it would provide additional access. Eric said that developers are bringing the connections with them. Vice-Mayor Haney asked how Public Safety assets are coming through for emergencies? Chief Espie, talked about the previous event that had happened. He talked about repositioning assets as needed. He talked about battalion chiefs having autonomy to move on their own. Vice-Mayor Haney asked about mutual aid agreements? Chief Espie talked about the details for that. Vice-Mayor Haney talked about long term solutions versus short term solutions that can be implemented to give emergency relief.

Councilmember Remley, talked about developers coming into the City and if the City could annex on its' own? and how if its important enough to take action to save human life.

Mayor Hall suggested doing the maps to show the beneficiary as well.

4. Presentation and discussion regarding an update on the City's water resources.

Water Director, Michael Boule, and Water Resource Manager, Amy Peterson came to present this item. Amy talked about the Colorado River Update, Regional Water Policy Update, including legislative updates. Amy talked about designation of assured water, Mayor Hall asked if HOA's were included? Amy said it would and that they would be responsible for replenishing their water use.

Amy went on to talk about Regional Water Policy Update. Mayor Hall asked if Multi-Family don't have to bring assured water supply? Michael said it was correct. Amy talked about the Annual Storage & Recovery Strategies. Mayor Hall asked if the recharge figures were projected or real?

Amy said they were real. She went on to talk about the Water Resources Roundtable Update, Water Conservation Update, Qualified Water Efficient Landscaper. Michael talked about the Resiliency Planning, and Municipal Code Changes.

5. Presentation and discussion pertaining to an update of the Parks and Recreation Department.

Parks and Recreation Director, Holly Osborn, came to present this item. She talked about Placer AI, Youth Sports Growth, Data for the Future, and New Opportunities. She explained Placer AI, Top 5 Parks and Rec Facilities, Facts, Daily/Monthly Visits, Summary of Trends, Youth Sports Trends, New Field Impact on Sports, Flag Football Sports Trends, Opportunity for New Park, and Prioritized CIP List - Parks.

Councilmember Duffy, talked about the opportunity for the new park.

Councilmember Remley, asked who owned the land? Holly said the school district owns it and wanted to possibly partner with them.

Councilmember Hastings, said he thought it was a good idea to look into the land.

Vice-Mayor Haney, said he like the technology being used and the proposals.

Councilmember Judd, asked about asset replacement and how a new park would impact them? Holly said they would do improvements when they can when they have funding. Councilmember Judd talked about programmable parks and asked what gives more bang for the buck? Whether its ditching old parks or building new ones? Holly said they were passive parks that don't have sports leagues. She said the new park would give more for the investment.

Mayor Hall talked about avoiding old mistakes and taking care of existing parks. He said he would prefer to do both. Holly said they would look into it. Mayor Hall asked when the fields park was open? Holly said it was open after 4 and on the weekends.

H. Other Business and Future Agenda Items

I. City Council Reports

J. Executive Session

1. Executive Session Items

2. Executive Disclaimer - Part 1

3. Executive Disclaimer - Part 2

4. Executive Disclaimer - Part 3

K. Adjournment

Motion: To Adjourn

Initiated By: Aly Cline

Seconded By: Jack Hastings

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

Meeting Adjourned at 5:58 P.M.

Skip Hall, Mayor

ATTEST:

Kristi Passarelli, City Clerk

CERTIFICATION:

I, Kristi Passarelli, City Clerk for the City of Surprise, Maricopa County, Arizona, do hereby verify that these are the true and correct minutes of the Regular City Council Meeting of **Tuesday, September 17, 2024.**

Kristi Passarelli, City Clerk



CITY OF SURPRISE
Regular City Council Meeting
16000 N. Civic Center Plaza
Surprise, AZ 85374
Tuesday, September 17, 2024 @ 6:00 PM
COUNCIL CHAMBERS

A. Call To Order

Mayor Hall called the Regular Council Meeting of September 17, 2024 to order at 6:19 p.m., located at Surprise City Hall, 16000 N. Civic Center Plaza, Surprise, AZ. 85374.

1. Invocation

Yvonne Valenzuela, gave an invocation.

B. Roll Call

In attendance with Mayor Hall were Vice Mayor Nick Haney, Council members Chris Judd, Alyson Cline, Patrick Duffy, Ken Remley and Jack Hastings.

C. Pledge of Allegiance

Willow Canyon High School, led the Pledge of Allegiance.

D. Proclamation and Community Acknowledgements

Mayor Hall proclaimed it was Constitution Week and presented the proclamation to the Surprise City Youth Council.

E. City Manager Report

City Manager, Bob Wigenroth, introduced Shelby Fenwick who acknowledged Willow Canyon Student Council.

2. City Manager sub-text

3. Reports

F. City Clerk Report

4. Reports

City Clerk, Kristi Passarelli, came to introduce the appointment considerations.

1. Consideration and action to Appoint Katherine Dunphy to the Arts & Cultural Advisory Commission, term expiration June 30, 2027.

Motion: To Appoint

Initiated By: Nick Haney

Seconded By: Aly Cline

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

2. Consideration and action to Appoint Steve Wallgren to the Arts & Cultural Advisory Commission, term expiration June 30, 2029.

Motion: To Appoint

Initiated By: Aly Cline

Seconded By: Patrick Duffy

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

3. Consideration and action to Appoint Heavenly Clegg to the Audit Committee, term expiration June 30, 2025.

Motion: To Appoint

Initiated By: Aly Cline

Seconded By: Nick Haney

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

4. Consideration and action to Appoint Desiree Van Loon to the Library Advisory Commission, term expiration June 30, 2027.

Motion: To Appoint

Initiated By: Aly Cline

Seconded By: Nick Haney

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

5. Consideration and action to Appoint Danielle Sterbinsky to the Personnel Appeals Board, term expiration June 30, 2029.

Motion: To Appoint

Initiated By: Aly Cline

Seconded By: Nick Haney

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

- G. Regular City Council Meeting Agenda

5. CONSENT AGENDA:

Motion: To Approve

Initiated By: Jack Hastings

Seconded By: Ken Remley

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

6. Consideration and action to approve the September 3, 2024 Regular City Council Meeting Minutes, and Executive Session Minutes.

7. Consideration and action to approve City Council Meeting Dates for 2025.

8. Consideration and action pertaining to the conditional acceptance and maintenance of certain streets and public utility improvements at Frys Asante, generally located at the northwest corner of West Pat Tillman Boulevard and North 163rd Avenue; Resolution #2024-123.
9. Consideration and action pertaining to the conditional acceptance and maintenance of certain streets and public utility improvements at Carefree Covered RV Storage, generally located at the southeast corner of West Deer Valley Road and North 185th Avenue; Resolution #2024-125.
10. Consideration and action declaring its intent and enlarging an existing lighting improvement district known as City of Surprise, Arizona, SU-AsantePar4.5 pursuant to A.R.S. § 48-616 for the purpose of purchasing facilities and energy for lighting the public streets; Resolution #2024-71.
11. Consideration and action pertaining to the approval of an amendment to the Intergovernmental Agreement with Maricopa County and amending the Fiscal Year 2025 budget by moving budget in the amount of \$195,700 for 2024 HOME Program Funds; Resolution #2024-139.
12. Consideration and action pertaining to approval of a services agreement with A New Leaf, Inc, to provide the Volunteer Income Tax Assistance Program in the City of Surprise; Resolution #2024-146.
13. Consideration and action pertaining to approval of the Final Plat entitled, “Egly 227th Ave Project” and dated July 16, 2024 , a property located east of 227th Avenue and approximately 1,300 feet north of Pinnacle Peak Road; Case FS24-054.
14. Consideration and action pertaining to granting an Utility Easement to APS for service at the Fire Station and Community Pool at Cactus and Perryville Roads.
15. Consideration and action pertaining to approval of the Final Plat entitled, “Old Fire Station 304 Site” and dated August 27, 2024, a property generally located at the southwest corner of Happy Valley Road and 163rd Avenue; Case FS24-1189.
6. REGULAR AGENDA ITEM - PUBLIC HEARING:
16. Consideration and action regarding a Zoning Text Amendment (ZTA) to the Surprise Land Development Ordinance (LDO) to allow Smoking Lounges to operate outdoor patio areas as part of their business operations; Ordinance # 2024-29.

Trever Fleetham, came to present this item. He talked about the Background, Request for subsection changes, Summary, Outreach, P&Z Meeting discussions, Smoke-Free Arizona Act, and Recommendation.

Susan Draper, a Surprise Resident, came to voice her concerns about the Ordinance.

Yvonne Valenzuela, a Surprise Resident, came to voice her concerns about the Ordinance.

Councilmember Remley, asked why the ordinance was being changed? Trever said it was the request by the applicant, and that they want an outdoor patio with their smoking lounge? Councilmember Remley asked if this already existed? Trever said that for a smoking lounge it is different. He asked if any establishment could have outdoor smoking? Trever said it was

restricted by our city code. Councilmember Remley asked about compliance with state law? He said the P&Z said they suggested further research. He asked why it was being brought up if it was further researched. Councilmember Remley asked about the 20 feet from the doorway and why this says 50 feet? Mayor Hall said it had to do with loitering.

Mayor Hall asked if they would come back with a plan for smoke mitigation? Lloyd said they would do that and bring them back to P&Z.

Councilmember Judd, asked about second hand smoke and how it could be controlled, and the impact of high winds? Tom Galvin, on behalf of the applicant came along with the applicant. Mitchel Fox, the applicant, said that smoke disappears after 8 feet, and explained how the filtration system works and the distance of the building from anything else. He talked about second-hand smoke being an adult choice. He said they circulate the air 14 times per hour at the facility.

They gave a presentation about the purpose of the request, Smoke-Free Arizona Act, Smoke Mitigation Plan, Aligning Ordinances. Mayor Hall noted the proximity of other businesses at the other locations.

Councilmember Judd asked about how many people will be employed at the location? Mitch said 15. He talked about the quality of the job.

Councilmember Hastings, talked about healthy lifestyles. He talked about making Surprise a destination. Mitch said it would be a premier, high-end bar.

Vice-Mayor Haney, asked if the filtration system would be outside too? Mitch said it would be. Vice-Mayor Haney asked if other businesses do that? Mitch said they don't. Vice-Mayor Haney asked where it was located? Mitch said it was a free standing building at Wadell and Litchfield. Vice-Mayor Haney talked about his concerns for a healthy lifestyle.

Councilmember Duffy, talked about the location. Mitch talked about the nearby businesses.

Councilmember Remley, talked about having freedom of lifestyles. He said he was concerned about whose going to own the place after Mitch is done? He said he would want something in the ordinance that is more specific and in writing. Lloyd said the applicant has to use a conditional use permit. He said that the other businesses would have the requirement for ventilation as well. Tom said they stand by the product they put forth and how they work with staff.

Councilmember Cline, talked keeping an eye out for citizens, but remaining cautious about lengthening the process.

Motion: To Approve
Initiated By: Chris Judd
Seconded By: Jack Hastings

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney
No: None
Abstain: None

Vote Result: Passed

7. REGULAR AGENDA ITEM - NON-PUBLIC HEARING:

17. Consideration and action pertaining to an amendment to Surprise Municipal Code by adopting Chapter 54, Article IV, Division 2, Sections 54-116 through 124, relating to towing from private property; Ordinance #2024-22.

Chief Pena, introduce Commander DeSanti to present this item. She talked about Private Property Towing, Purpose of the Ordinance, Arizona Revised Statue, Current Issues, Proposed Signage, New Ordinance, and Summary.

Councilmember Judd, asked how will the ordinance stop the predatory action? Commander DeSanti said it couldnt stop it but it would help. Councilmember Judd asked what would happen? DeSanti said there would be civil remedies. Councilmember Judd asked if getting the vehicle back? DeSanti said they could not hold a vehicle ransom.

Mayor Hall, asked if there was a need for more tow companies? DeSanti said there isnt.

Vice-Mayor Haney, asked about the Fountain Hills situation? Commander DeSanti said it would appear to be a predatory action. He asked if the officer saw this situation to bring it up? Commander DeSanti said it was. Vice-Mayor Haney said he was concerned about groups that look at ordinances looking for loopholes. He said he wanted to reevaluate it to protect the residents.

Attorney Wingo, said that his office evaluated the proposed ordinance. He said the penalty could be a criminal misdemeanor.

Motion: To Approve
Initiated By: Chris Judd
Seconded By: Nick Haney

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney
No: None
Abstain: None

Vote Result: Passed

18. Consideration and action pertaining to repealing Rule 2(e) of Appendix B., *Rules for the Public at Council Meetings*, of the *City of Surprise Policies & Procedures Manual*.

City Attorney, Robert Wingo, came to present this item.

Motion: To Approve
Initiated By: Jack Hastings
Seconded By: Chris Judd

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney
No: None
Abstain: None

Vote Result: Passed

- H. Call To The Public
- I. Other Business and Future Agenda Items
- J. City Council Reports

Councilmember Cline had nothing to report.

Councilmember Duffy, thanked Erik for his help at the meet and greet.

Vice-Mayor Haney talked about his upcoming meeting at Asante Library. He recognized two members of his community who passed away.

Councilmember Judd, he talked about his upcoming community meeting at the Tap House

Councilmember Hastings had nothing to report.

Councilmember Remley, talked about the resource center ribbon cutting and its growth and ability to help the community.

Mayor Hall talked about Fiesta Grande coming up on October 5th.

K. Executive Session

8. Executive Session Items

9. Executive Disclaimer - Part 1

10. Executive Disclaimer - Part 2

11. Executive Disclaimer - Part 3

L. Adjournment

Motion: To Adjourn

Initiated By: Aly Cline

Seconded By: Nick Haney

Yes: Aly Cline, Jack Hastings, Ken Remley, Patrick Duffy, Skip Hall, Chris Judd, Nick Haney

No: None

Abstain: None

Vote Result: Passed

Meeting Adjourned at 7:34 P.M.

Skip Hall, Mayor

ATTEST:

Kristi Passarelli, City Clerk

CERTIFICATION:

I, Kristi Passarelli, City Clerk for the City of Surprise, Maricopa County, Arizona, do hereby verify that these are the true and correct minutes of the Regular City Council Meeting of **Tuesday, September 17, 2024.**

Kristi Passarelli, City Clerk



CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: Public Works
Staff Recommendations:

Contact Person: Kristin Tytler, Department Director
District: District 3

Consent: Yes	Regular: No	Public Hearing: No	Report/Discussion: No
--------------	-------------	--------------------	-----------------------

Agenda Wording:

Consideration and action pertaining to the conditional acceptance and maintenance of certain streets and public utility improvements at Toll at Prasada, Unit Q - Phase 3 - SF, generally located at the northwest corner of West Peoria Road and North Cotton Lane; Resolution #2024-141.

Motion:

I move to approve Resolution #2024-141.

Background:

The Public Works Department conducted the final inspection of the public improvements for Toll at Prasada, Unit Q - Phase 3 - SF on or about August 15, 2024, totaling approximately 419 LF and determined that the infrastructure was compliant and acceptable to the city. The infrastructure includes wastewater lines. Domestic water lines are located within the Epcor Water jurisdiction.

Objective Analysis:

The improvements to this property provide sewer lines to convey wastewater from the property to the city's public system. This action will accept the required infrastructure. The domestic water serving the property is within Epcor Water's jurisdiction.

Policy Compliant:

The City Code generally requires development to install public infrastructure required to serve the development. Upon completion and acceptance of such infrastructure, the infrastructure becomes the property of the City. Acceptance of this infrastructure will officially transfer ownership and future maintenance to the City.

Financial Impact:

Acceptance of sewer infrastructure increases the city's asset base and adds to future maintenance commitments. The total acceptance value of the infrastructure included with this item is \$174,942.12.

Budget Impact:

Funding for the infrastructure maintenance now and in the future will be supported from the city's Wastewater Operations Funds. The anticipated incremental additional maintenance expense associated

with the acceptance of these infrastructure items will be incorporated into future years' budgets.

FTE Impact:

This item does not have an impact on current staff levels.

ATTACHMENTS:

1. 01_Resolution 2024-141 - Infra Accept_CAO Toll Prasada Unit Q Ph 3
 2. 02_Notice of Completion Toll Prasada Unit Q Ph 3
 3. 03_Inspector Project Sign Off Form Toll Prasada Unit Q Ph 3
 4. 04_Linear Foot Verifiaction Toll Prasada Unit Q Ph 3
-

RESOLUTION # 2024-141

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, TO CONDITIONALLY ACCEPT THE PUBLIC IMPROVEMENTS AT TOLL AT PRASADA, UNIT Q - PHASE 3 - SF, GENERALLY LOCATED AT THE NORTHWEST CORNER OF WEST PEORIA ROAD AND NORTH COTTON LANE.

WHEREAS, the Mayor and City Council ("Council") of the City of Surprise approved a final re-plat entitled "Final Re-Plat Toll at Prasada, Unit Q - Phase 3 - SF" on April 18, 2023;

WHEREAS, as a condition of the preliminary plat, approval of the final plat, and in compliance with the City Code, Toll Prasada LLC, the developer of Toll at Prasada, Unit Q - Phase 3 - SF (the "Developer"), installed certain public improvements, namely sewer lines. The sewer lines are collectively referred to as "Public Improvements";

WHEREAS, pursuant to Surprise Municipal Code ("SMC") Chapter 108, Article III, Section 108-3.5, the Developer shall maintain all Public Improvements for a period of two years, beginning from the date of conditional acceptance of said improvements by the Council ("Conditional Acceptance");

WHEREAS, the Developer dedicated to the City the Public Improvements generally located at the northwest corner of West Peoria Road and North Cotton Lane;

WHEREAS, on or about August 15, 2024, the City of Surprise Public Works Department completed an inspection of the Public Improvements described in this resolution and found the improvements to be in substantial compliance with the approved plans and specifications;

WHEREAS, the City of Surprise acknowledges that the Developer's two-year warranty period will begin upon the Council's conditional acceptance of the Public Improvements; and

WHEREAS, after the conclusion of the Developer's two-year warranty period, the City of Surprise will complete a final acceptance inspection, and upon clearance, will accept the Public Improvements, release the warranty assurance, and begin maintenance of the Public Improvements.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Surprise, Arizona, as follows.

Section 1. The City of Surprise conditionally accepts the Public Improvements generally located as depicted on the map attached as Exhibit A and listed on Exhibit B.

Section 2. Upon clearance and final acceptance of the Public Improvements at

the conclusion of the two-year warranty period, the City will release the warranty and begin maintenance of the Public Improvements.

APPROVED AND ADOPTED this _____ day of _____, 2024.

Skip Hall, Mayor

Attest:

Approved as to form only:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney

EXHIBIT A

Map of Infrastructure

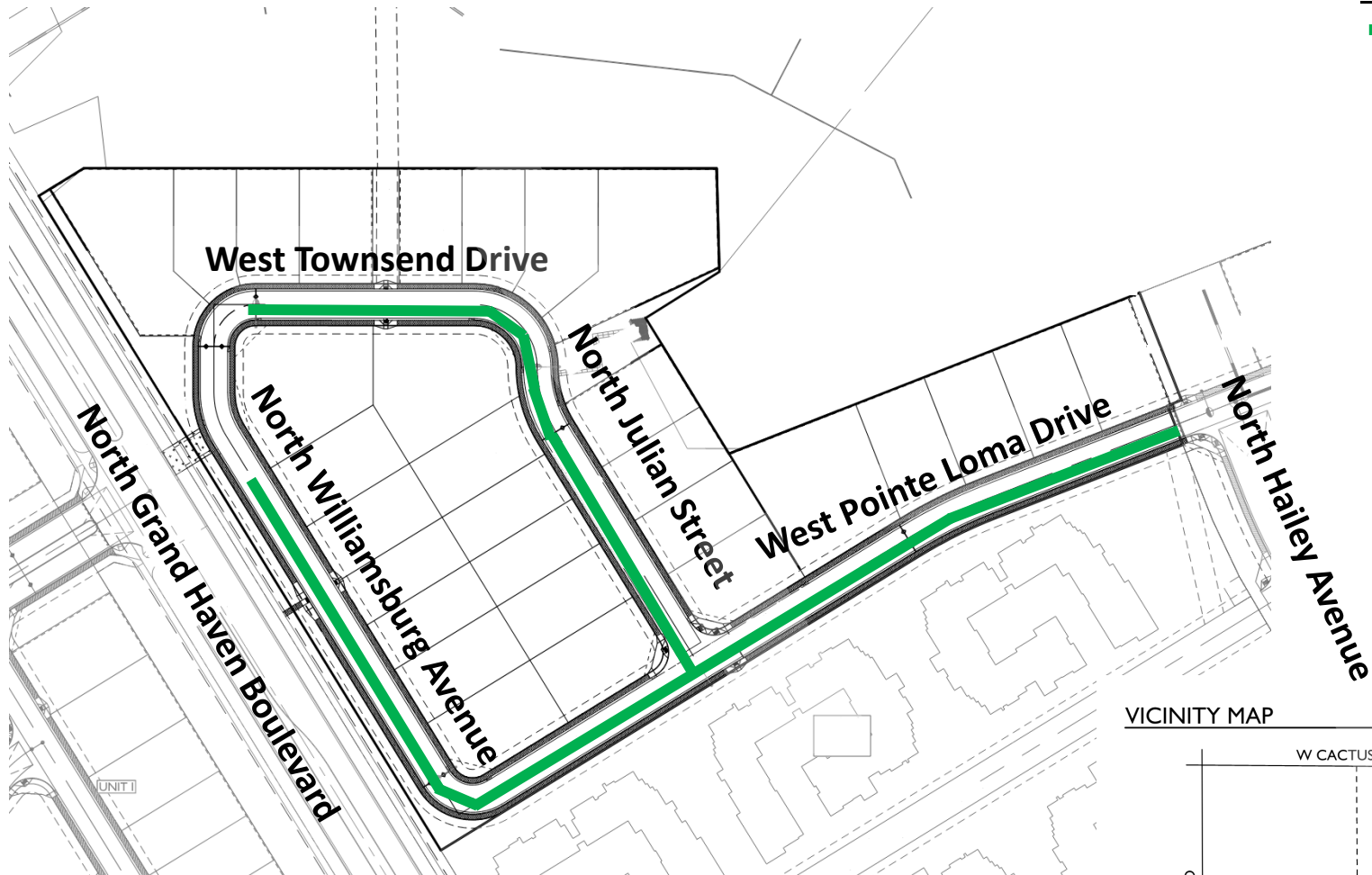
EXHIBIT A

Toll at Prasada, Unit Q - Phase 3 - SF

INFRASTRUCTURE TO

BE ACCEPTED:

SEWER



VICINITY MAP

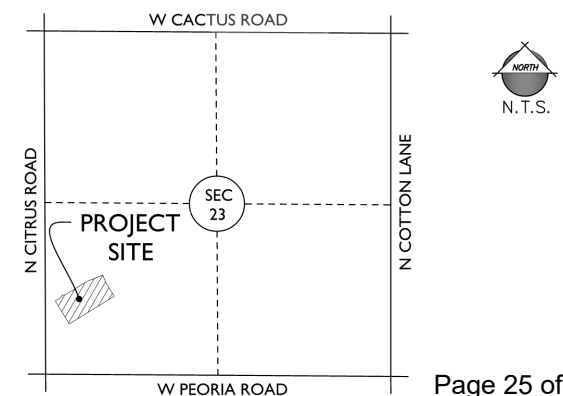


EXHIBIT B

List and Cost of Improvements



EXHIBIT B

ENGINEERING DIVISION
PUBLIC WORKS
CITY OF SURPRISE
16000 N. CIVIC CENTER PLAZA
SURPRISE, AZ 85374
T. 623-222-6150

Memorandum

To: City of Surprise City Council
From: Public Works – Engineering Services
Date: 08/20/2024
Re: Toll at Prasada, Unit Q - Phase 3 - SF

The public improvements for the above project have been completed and are tentatively scheduled for conditional acceptance by Council. The amounts for the infrastructure have been provided by a third party and not the City of Surprise. The following are the infrastructure improvements included with this acceptance and the corresponding valuation that the City will be accepting:

City Sewer	\$174,942.12
Total	\$174,942.12

August 15, 2024

Toll Brothers
8767 E. Via de Ventura #275
Scottsdale, AZ 85258

**RE: NOTICE OF COMPLETION AND COUNCIL ACTION REQUIREMENT FOR TOLL AT PRASADA UNIT Q
PHASE 3 FINAL PLAT– FS22-0974**

The City of Surprise Public Works Department has completed the inspection of the public utility improvements for the above referenced project. These improvements are in substantial compliance with the approved plans and specifications. Council action is required prior to conditional acceptance and the official beginning of the warranty period. The time frame for Council action is approximately 90 days after the following items have been submitted:

- A copy of all lien releases or a title report
- Actual construction cost for related civil permits issued
- Warranty assurance in a format acceptable by the City*

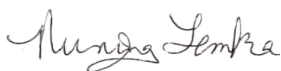
*For the Warranty Assurance, a notice of the required assurance amount and acceptable formats will be sent via email once actual construction costs have been submitted by the applicant.

The warranty period starts upon council acceptance for a period of two (2) years; please ensure warranty assurance will not expire prior to this date. The applicant will be notified of the council date as soon as it is scheduled and the warranty financial assurance is required to be submitted to the city 10 calendar days prior to the council date. If a warranty financial assurance is not received within 10 calendar days, council action and start of the warranty period will be delayed, at a minimum, an additional two (2) weeks.

A letter of conditional acceptance and notification that the warranty period has begun will be forwarded upon the completion of council acceptance. Also, a request to release the associated completion assurance will be made; notification will be sent when assurance document is available for pick up.

If you have any questions or concerns, you can reach me at 623-222-6148 or at nuning.lemka@surpriseaz.gov.

Sincerely,



Nuning Lemka, P.E.
City Engineer

cc: Ravi Sharma, PW Engineering Manager
Eric Boyles, Transportation Director
Amanda Correia, Finance Senior Accountant
Tracy Mills, IT Technical Services Manager
Monroe Colter, WRM Infrastructure Manager

Robert Fields, PW Field Engineering Supervisor
Erick Martin, Finance Assistant Director
Michael Boule, Water Resource Management Director
Jacob Moreno, Streets Manager
Anthony Dudley, WRM Water Manager



PROJECT SIGN OFF FORM
PUBLIC WORKS - ENGINEERING SERVICES, INSPECTIONS

Date Submitted: 8/15/24 ☐ Commercial ☐ Commercial w/Offsite ☒ Residential

☒ COMPLETION ACCEPTANCE (End of Construction) ☐ FINAL ACCEPTANCE (End of Warranty)

6/7/24 Date of Punch-List Walk 7/16/24 Date Punch-List Completed

Case Number: FS22-0974

Project Name: Toll Brothers Prasada Unit Q Phase 3

Project Developer/Builder: (Name/Email, Address)

Toll Brothers

Permit No: <u>E23P-0216</u>	Permit Type: <u>City Sewer</u>
Permit No: <u>E23P-0214</u>	Permit Type: <u>Grading</u>
Permit No: <u>E23P-0213</u>	Permit Type: <u>Private Concrete</u>
Permit No: <u>E23P-0215</u>	Permit Type: <u>Private Paving</u>
Permit No: <u>E23P-0219</u>	Permit Type: <u>Private water</u>
Permit No: <u>E23P-0218</u>	Permit Type: <u>Signing</u>
Permit No: <u>E22P-1817</u>	Permit Type: <u>Swppp</u>
Permit No: _____	Permit Type: _____
Permit No: _____	Permit Type: _____
Permit No: _____	Permit Type: _____

Additional Comments:

SUPPORTING DOCUMENTATION REQUIRED:

- | | |
|--|---|
| ☒ Copy of Punch List | ☒ AOC |
| ☒ Final Certification Letter from Engineer of Record | ☒ Asphalt Concrete Ticket w/ Name of Contractor |
| ☒ Complete Geotechnical Testing Packet | ☒ As built Documents (PDF copy) |
| ☒ Sewer Pressure Testing Results | ☒ Updated asbuilt CAD files |
| ☒ Sewer Manhole Vacuum Testing Certification | ☐ Fireline Sign-off (commercial) |
| ☒ Sewer Manhole Insecticide Certification | |
| ☒ Sewer Videos with Operators Notes (inc. re-videos) | |

Other _____ (Specify)

APPROVAL:

Civil Inspector: 

Digitally signed by Rob Fields
DN: cn=Rob Fields, o, ou, email=Robert.Fields@surpriseaz.gov, c=US
Date: 2024.08.15 06:17:19 -07'00'

Civil Engineering Supervisor: _____

Date: 8/15/24

Date: _____

9

HORIZONTAL WATER LINE DEFLECTION PER EPCOR MANUFACTURER
STANDARDS

5 EA

18

INSTALL 6" DIP CL 350 PER EPCOR STANDARD DETAIL 100-3

47 LF

SEWER NOTES

1A

8" PVC (SDR 35) SEWER LINE. TRENCH BACKFILL PER MAG STD DTL
200-1

419 LF

2A

4' DIA SEWER MANHOLE MAG STD DTL S 420-1. 24" FRAME & COVER.
PER COS STD DTL 7-01

1 EA

2B

5' DIA SEWER MANHOLE MAG STD DTL S 420-1. 30" FRAME & COVER
PER COS STD DTL 7-01; MANHOLE TO BE LINED WITH CITY APPROVED
PRODUCT

1 EA

2C

4' DIA SEWER MANHOLE MAG STD DTL S 420-1. 24" WATERTIGHT

2 EA



CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: Public Works
Staff Recommendations:

Contact Person: Kristin Tytler, Department Director
District: District 3

Consent: Yes	Regular: No	Public Hearing: No	Report/Discussion: No
--------------	-------------	--------------------	-----------------------

Agenda Wording:

Consideration and action pertaining to the conditional acceptance and maintenance of certain streets and public utility improvements at Toll at Prasada, Unit I – Phase 3 Final Re-Plat, generally located at the northwest corner of West Peoria Road and North Cotton Lane; Resolution #2024-142.

Motion:

I move to approve Resolution #2024-142.

Background:

The Public Works Department conducted the final inspection of the public improvements for Toll at Prasada, Unit I- Phase 3 Final Re-Plat on or about May 9, 2024, totaling approximately 3,954 LF and determined that the infrastructure was compliant and acceptable to the city. The infrastructure includes wastewater lines. Domestic water lines are located within the Epcor Water jurisdiction.

Objective Analysis:

The improvements to this property provide sewer lines to convey wastewater from the property to the city's public system. This action will accept the required infrastructure. The domestic water serving the property is within Epcor Water's jurisdiction.

Policy Compliant:

The City Code generally requires development to install public infrastructure required to serve the development. Upon completion and acceptance of such infrastructure, the infrastructure becomes the property of the City. Acceptance of this infrastructure will officially transfer ownership and future maintenance to the City.

Financial Impact:

Acceptance of sewer infrastructure increases the city's asset base and adds to future maintenance commitments. The total acceptance value of the infrastructure included with this item is \$299,290.25.

Budget Impact:

Funding for the infrastructure maintenance now and in the future will be supported by the city's Wastewater Operations Funds. The anticipated incremental additional maintenance expense associated

with the acceptance of these infrastructure items will be incorporated into future years' budgets.

FTE Impact:

This item does not have an impact on current staff levels.

ATTACHMENTS:

1. 01_Resolution 2024-142 - Infra Accept_CAO Toll Prasada Unit I
 2. 02_Notice of Completion Toll at Prasada Unit I
 3. 03_Inspector Project Sign Off Form Toll at Prasada Unit I
 4. 04_Linear Foot Verifiaction Toll at Prasada Unit I
-

RESOLUTION # 2024-142

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, TO CONDITIONALLY ACCEPT THE PUBLIC IMPROVEMENTS AT TOLL AT PRASADA, UNIT I - PHASE 3 FINAL RE-PLAT, GENERALLY LOCATED AT THE NORTHWEST CORNER OF WEST PEORIA ROAD AND NORTH COTTON LANE.

WHEREAS, the Mayor and City Council ("Council") of the City of Surprise approved a final re-plat entitled "Final Re-Plat Toll at Prasada, Unit I - Phase 3" on February 1, 2022;

WHEREAS, as a condition of the preliminary plat, approval of the final plat, and in compliance with the City Code, Toll Prasada LLC, the developer of Toll at Prasada, Unit I - Phase 3 (the "Developer"), installed certain public improvements, namely sewer lines. The sewer lines are collectively referred to as "Public Improvements";

WHEREAS, pursuant to Surprise Municipal Code ("SMC") Chapter 108, Article III, Section 108-3.5, the Developer shall maintain all Public Improvements for a period of two years, beginning from the date of conditional acceptance of said improvements by the Council ("Conditional Acceptance");

WHEREAS, the Developer dedicated to the City the Public Improvements generally located at the northwest corner of West Peoria Road and North Cotton Lane;

WHEREAS, on or about May 9, 2024, the City of Surprise Public Works Department completed an inspection of the Public Improvements described in this resolution and found the improvements to be in substantial compliance with the approved plans and specifications;

WHEREAS, the City of Surprise acknowledges that the Developer's two-year warranty period will begin upon the Council's conditional acceptance of the Public Improvements; and

WHEREAS, after the conclusion of the Developer's two-year warranty period, the City of Surprise will complete a final acceptance inspection, and upon clearance, will accept the Public Improvements, release the warranty assurance, and begin maintenance of the Public Improvements.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Surprise, Arizona, as follows.

Section 1. The City of Surprise conditionally accepts the Public Improvements generally located as depicted on the map attached as Exhibit A and listed on Exhibit B.

Section 2. Upon clearance and final acceptance of the Public Improvements at the conclusion of the two-year warranty period, the City will release the warranty and begin maintenance of the Public Improvements.

APPROVED AND ADOPTED this _____ day of _____, 2024.

Skip Hall, Mayor

Attest:

Approved as to form only:

Kristi Passarelli, City Clerk

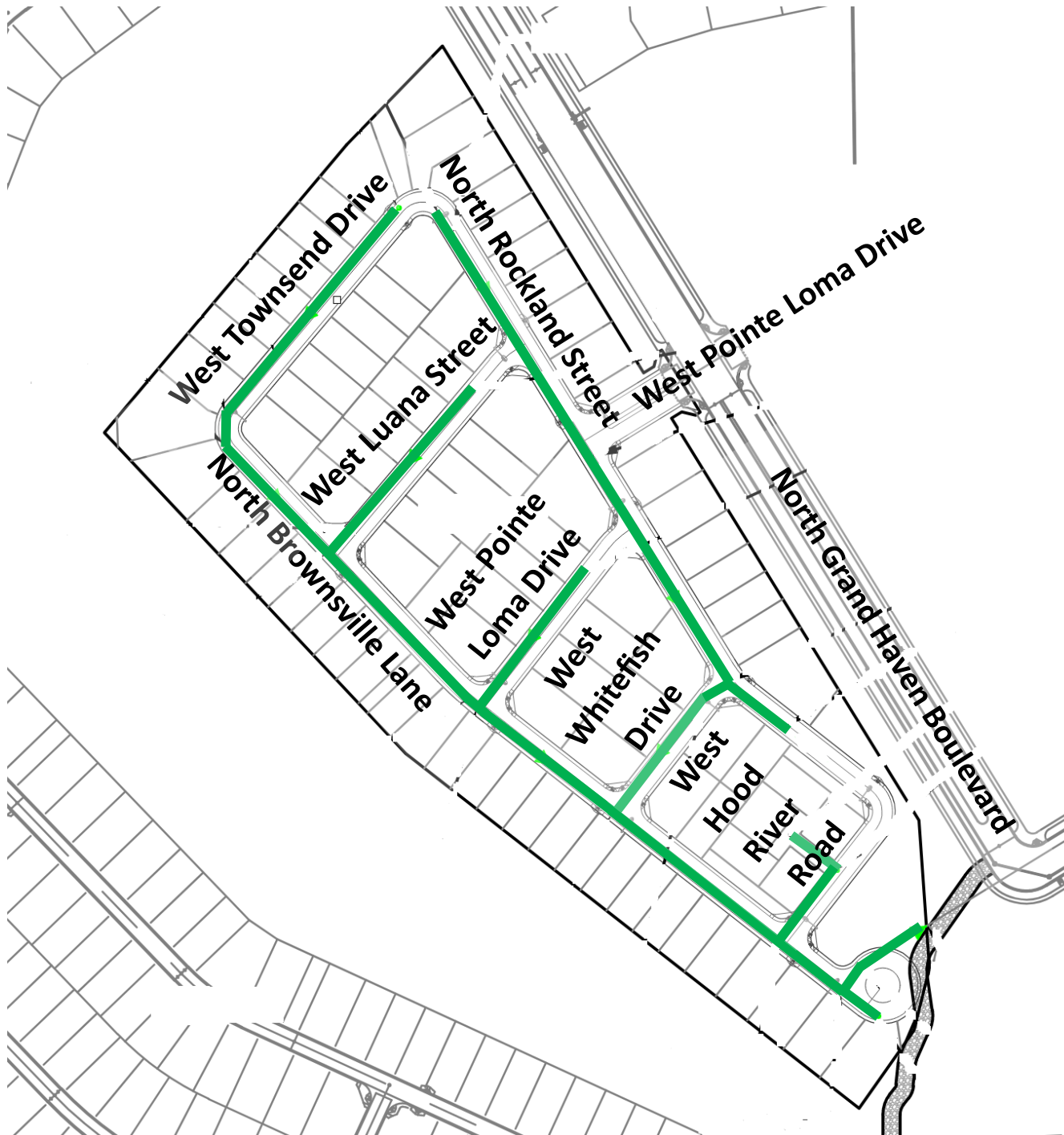
Robert Wingo, City Attorney

EXHIBIT A

Map of Infrastructure

EXHIBIT A

Toll at Prasada, Unit I - Phase 3 Final Re-Plat



**INFRASTRUCTURE TO
BE ACCEPTED:**
— SEWER

VICINITY MAP

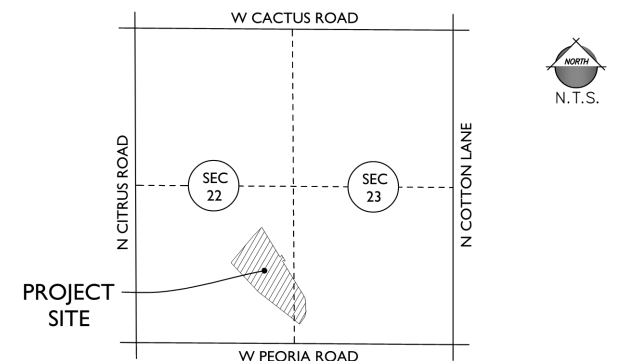


EXHIBIT B

List and Cost of Improvements



EXHIBIT B

ENGINEERING DIVISION
PUBLIC WORKS
CITY OF SURPRISE
16000 N. CIVIC CENTER PLAZA
SURPRISE, AZ 85374
T. 623-222-6150

Memorandum

To: City of Surprise City Council
From: Public Works – Engineering Services
Date: 08/20/2024
Re: Toll at Prasada, Unit I - Phase 3 Final Re-Plat

The public improvements for the above project have been completed and are tentatively scheduled for conditional acceptance by Council. The amounts for the infrastructure have been provided by a third party and not the City of Surprise. The following are the infrastructure improvements included with this acceptance and the corresponding valuation that the City will be accepting:

City Sewer	\$299,290.25
Total	\$299,290.25

May 30, 2024

Toll Brothers
8767 E. Via de Ventura
Suite 390
Scottsdale, AZ 85258

**RE: NOTICE OF COMPLETION AND COUNCIL ACTION REQUIREMENT FOR TOLL AT PRASADA UNIT I
– FINAL PLAT– FS21-791**

The City of Surprise Public Works Department has completed the inspection of the public utility improvements for the above referenced project. These improvements are in substantial compliance with the approved plans and specifications. Council action is required prior to conditional acceptance and the official beginning of the warranty period. The time frame for Council action is approximately 90 days after the following items have been submitted:

- A copy of all lien releases or a title report
- Actual construction cost for related civil permits issued
- Warranty assurance in a format acceptable by the City*

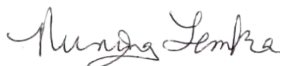
*For the Warranty Assurance, a notice of the required assurance amount and acceptable formats will be sent via email once actual construction costs have been submitted by the applicant.

The warranty period starts upon council acceptance for a period of two (2) years; please ensure warranty assurance will not expire prior to this date. The applicant will be notified of the council date as soon as it is scheduled and the warranty financial assurance is required to be submitted to the city 10 calendar days prior to the council date. If a warranty financial assurance is not received within 10 calendar days, council action and start of the warranty period will be delayed, at a minimum, an additional two (2) weeks.

A letter of conditional acceptance and notification that the warranty period has begun will be forwarded upon the completion of council acceptance. Also, a request to release the associated completion assurance will be made; notification will be sent when assurance document is available for pick up.

If you have any questions or concerns, you can reach me at 623-222-6148 or at nuning.lemka@surpriseaz.gov.

Sincerely,



Nuning Lemka, P.E.
City Engineer

cc: Ravi Sharma, PW Engineering Manager
Eric Boyles, Transportation Director
Amanda Correia, Finance Senior Accountant
Tracy Mills, IT

Robert Fields, PW Field Engineering Supervisor
Erick Martin, Finance
Michael Boule, Water Resource Management Director



PROJECT SIGN OFF FORM
PUBLIC WORKS - ENGINEERING SERVICES, INSPECTIONS

Date Submitted: 5/6/24 _____ ☐ Commercial ☐ Commercial w/Offsite ☒ Residential

☒ COMPLETION ACCEPTANCE (End of Construction) ☐ FINAL ACCEPTANCE (End of Warranty)

2/12/24 Date of Punch-List Walk 3/28/24 Date Punch-List Completed

Case Number: FS21-791

Project Name: Toll at Prasada Unit I

Project Developer/Builder: (Name/Email, Address)

Toll Brothers

8767 E Via De Ventura Suite 390 Scottsdale AZ 85258

Permit No: <u>E21P-1468</u>	Permit Type: <u>Private Water</u>
Permit No: <u>E21P-1470</u>	Permit Type: <u>Signage and Striping</u>
Permit No: <u>E21P-1471</u>	Permit Type: <u>City Sewer</u>
Permit No: <u>E21P-1472</u>	Permit Type: <u>Private Paving</u>
Permit No: <u>E21P-1469</u>	Permit Type: <u>Grading</u>
Permit No: <u>E21P-1474</u>	Permit Type: <u>Storm Drain</u>
Permit No: <u>E21P-1473</u>	Permit Type: <u>Private Water</u>
Permit No: <u>E21P-1312</u>	Permit Type: <u>SWPPP</u>
Permit No: _____	Permit Type: _____
Permit No: _____	Permit Type: _____

Additional Comments:

SUPPORTING DOCUMENTATION REQUIRED:

- | | |
|--|---|
| ☒ Copy of Punch List | ☒ AOC |
| ☒ Final Certification Letter from Engineer of Record | ☒ Asphalt Concrete Ticket w/ Name of Contractor |
| ☒ Complete Geotechnical Testing Packet | ☒ As built Documents (PDF copy) |
| ☒ Sewer Pressure Testing Results | ☒ Updated asbuilt CAD files |
| ☒ Sewer Manhole Vacuum Testing Certification | ☐ Fireline Sign-off (commercial) |
| ☐ Sewer Manhole Insecticide Certification | |
| ☐ Sewer Videos with Operators Notes (inc. re-videos) | |

Other _____ (Specify)

APPROVAL:

Civil Inspector: _____

James Marichalar

Digitally signed by Rob Fields

DN: cn=Rob Fields, o, ou, email=Robert.Fields@surpriseaz.gov, c=US

Date: 2024.05.09 07:22:03 -07'00'

Civil Engineering Supervisor: _____

Date: 5/6/24

Date: _____

20

INSTALL 8" DIP (4' MIN. COVER) MEGALUG RESTRAINED
PER MAG. STD. DET. 303-2; P.E. WRAPPED PER MAG
SEC. 610.6 & EPCOR STD. DET. 350-1 & 100-3

270 LF

SEWER NOTES

1A

8" PVC (SDR 35) SEWER LINE. TRENCH BACKFILL PER
MAG STD DTL 200-1

3954 LF

1

1B

6" PVC (SDR 35) SEWER LINE. TRENCH BACKFILL PER
MAG STD DTL 200-1

119 LF

2A

4' DIA SEWER MANHOLE MAG STD DTLS 420-1. 24" FRAME

15 EA



CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: Public Works
Staff Recommendations:

Contact Person: Kristin Tytler, Department Director
District: Citywide

Consent: Yes	Regular: No	Public Hearing: No	Report/Discussion: No
--------------	-------------	--------------------	-----------------------

Agenda Wording:

Consideration and action pertaining to the approval and grant of a Wired Telecommunications License and Right of Way Use Agreement with Accipiter Communications, Inc. d/b/a Zona Communication and Wyverd Fiber; Resolution #2024-156.

Motion:

I move to approve Resolution #2024-156.

Background:

Accipiter Communications, Inc. d/b/a Zona Communication and Wyverd Fiber is an incumbent local exchange carrier (ILEC) that intends on installing, operating, maintaining, and repairing fiber-to-the-premise networks and fiber-based services to homes, residences, and government agencies (such as municipal facilities, schools, and police and fire departments), including telephony services, internet/broadband services, and end-to-end fiber-based services, but does not intend on providing enterprise/wholesale customer segments (non-residential or non-government customers).

Objective Analysis:

The primary benefit of this agreement to the City is receipt of revenue provided for in the agreement, including an annual linear foot fee, permit and review fees, violation fees, damage fees, and a transaction privilege tax where applicable.

Policy Compliant:

This agreement is compliant with City and Council policy and state law governing licensing of municipal rights-of-way.

Financial Impact:

Through this Wired Telecommunications License and Right-of-Way Use Agreement, the City anticipates a potential positive financial impact through the collection of review and permitting fees, determined upon submission of plans and documentation.

The City also anticipates revenue from the annual assessment of a \$.89 per linear foot fee, which is derived from a portion of real estate value and is consistent with other jurisdictions' applied calculations.

This fee is also consistent with the City's other agreements with telecommunications licensees. Due to the nature of this applicant's business model and proposed use of the right-of-way, this \$.89 linear foot fee will be capped at 5% gross revenues.

Budget Impact:

There is no anticipated budget impact related to this item.

FTE Impact:

This item does not have an impact on current staff levels.

ATTACHMENTS:

1. 24.09.16 Res 2024-156 Accipiter Communications Wired Telecom ROW License
 2. Accipiter - City of Surprise ROW agreement (9-19-24) wyverd signature
-

RESOLUTION # 2024-156

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING A WIRED TELECOMMUNICATIONS LICENSE AND RIGHT OF WAY USE AGREEMENT BETWEEN THE CITY OF SURPRISE AND ACCIPITER COMMUNICATIONS, INC. D/B/A ZONA COMMUNICATION AND WYYERD FIBER.

WHEREAS, the City owns the public street and alley right-of-way and public utility easements within the boundaries of the City of Surprise;

WHEREAS, Accipiter Communications, Inc. D/B/A Zona Communication and Wyyerd Fiber (collectively, "Accipiter") wishes to use the City's rights-of-way to install fiber optic cables and conduit infrastructure for expansion of Accipiter's network in Surprise;

WHEREAS, Accipiter is an Incumbent Local Exchange Carrier (ILEC) and intends only to install, operate, maintain, and repair fiber-to-the-premise networks and fiber-based services to homes, residences, and government agencies (including municipal facilities, schools, and police and fire departments), including telephony services, internet/broadband services, and end-to-end fiber-based services, but does not intend to provide enterprise/wholesale customer segments (non-residential or non-governmental customers); and

WHEREAS, the City wishes to license portions of its rights-of-way to Accipiter and the City shall receive development review and permit fees, transaction privilege tax fees, a right-of-way use fee, and the option to offset the right-of-way use fee with an in-kind provision by Accipiter.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Surprise, Arizona, as follows.

Section 1. The Wired Telecommunications License and Right-of-Way Use Agreement ("License") between the City of Surprise and Accipiter Communications, Inc. D/B/A Zona Communication and Wyyerd Fiber, attached hereto as Exhibit "A," is hereby approved.

Section 2. The Mayor is hereby directed to execute the License on behalf of the City of Surprise and other documents necessary to effectuate the intent of this Resolution.

APPROVED AND ADOPTED this ____ day of _____, 2024.

Skip Hall, Mayor

Attest:

Approved as to form:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney

WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT

This Wired Telecommunications License and Right-of-Way Use Agreement ("Agreement") is entered into this ____ day of October, 2024 by and between the City of Surprise, an Arizona municipal corporation ("City") and Accipiter Communications, Inc d/b/a Zona Communication and Wyyerd Fiber, a Nevada corporation ("Licensee").

RECITALS

WHEREAS, City owns public street and alley right-of-way and public utility easements within the boundaries of the City of Surprise;

WHEREAS, Licensee has obtained from the Arizona Corporation Commission ("ACC") a Certificate of Convenience and Necessity ("CC&N") Decision No. 59346, dated October 11, 1995, as amended by Decision No. 67574 (February 15, 2005), Decision No. 67675 (March 9, 2005) and Decision No. 70641 (December 17, 2008) (collectively, the "Certificate");

WHEREAS, Licensee desires the ability to install, operate, maintain and repair cable containing bundles of multiple optical fibers, within the right-of-way for the purpose of providing telecommunication services, as authorized by the Arizona Corporation Commission, subject to the requirements of this Agreement;

WHEREAS, City is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation, repair, and maintenance of telecommunication facilities within the City's boundaries pursuant to the Surprise Municipal Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to, A.R.S. §§ 9-581, 9-582, and 9-583), by the City's police powers, its authority over City's public right-of-way, and its other governmental powers and authority;

WHEREAS, City desires to reserve rights to construct, use, and allow others to construct and use all manner of additional improvements in the right-of-way, while granting Licensee a license to install, operate, maintain and repair Fiber Optic Cable within the City's right-of-way;

WHEREAS, Licensee agrees to provide and maintain accurate maps showing the location of all Fiber Optic Cable owned or used by Licensee in the City right-of-way, and to comply with such other mapping requirements as City may establish from time to time;

WHEREAS, Licensee will secure the appropriate licenses, encroachments and other permits required by the City for the placement of its Conduit Systems, Fiber Optic Networks, and related facilities within City right of way;

WHEREAS, Licensee has agreed to comply with public property use requirements that City has and may establish from time to time.

NOW THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the City hereby grants to Licensee a telecommunication license and permission to use the public right-of-way pursuant to the terms and conditions set forth herein.

DEFINITIONS

Cable Services shall have the same meaning as defined in Chapter 50 of the Surprise City Code, herein incorporated by this reference, and in A.R.S. § 9-581. Cable Services is not a Telecommunications Service.

Conduit means pipes made of varying materials designed to protect buried Fiber Optic Cables.

Conduit System means any combination of Conduits, ducts, inner-ducts, manholes, and hand holes – all joined to form an integrated whole.

Dark Fiber means Fiber Optic Cables that have not been connected to transmission equipment or otherwise part of a Fiber Optic Network. Dark Fiber sales and leasing is not a Telecommunications Service.

Facilities means the plant, equipment, and property used in the provision of communication and Telecommunication Services and not owned by the City, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW.

Fiber Optic Cable means a cable containing bundles of optical fibers used to carry optical signals. Fiber Optic Cables may be part of a Fiber Optic Network.

Fiber Optic Network means a communication system consisting of an optical transmitter used to convert an electrical signal into an optical signal to send into an optical fiber, Fiber Optic Cables routed through conduits and buildings, amplifiers, and an optical receiver to recover the signal as an electrical signal. A Fiber Optic Network contains Fiber Optic Cables and is used for the purpose of Telecommunications Services.

Right-of-Way ("ROW") means the roads, streets, highways, and alleys and all other dedicated public rights-of-way and public utility easements of the City.

Telecommunications means the transmission of information, between or among points specified by a user, of the user's choosing, without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, or the sale or leasing of Dark Fiber for transmission purposes.

Telecommunications Services means the offering of Telecommunications for a fee directly to the public or to such users as to be effectively available directly to the public. Telecommunications Services does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, the sale or leasing of Dark Fiber for transmission purposes, or the sale or leasing of Conduit.

AGREEMENT

1. LICENSE; TERM

- 1.1. **License; Route.** The City hereby grants to Licensee a non-exclusive, revocable license to use the designated portion of the ROW ("Route") subject to and conditioned upon Licensee's full, timely, complete, and faithful performance of all obligations required under

this Agreement. Such use of the Route will be for the sole purpose of operating and maintaining a wired network as described in this Agreement. The Route will be occupied by Licensee's Conduit System, Fiber Optic Network, plant, equipment, and property used in the provision of communication and Telecommunication Services, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW (collectively, the "Licensee's Facilities") and is as described in **Exhibit A**, herein incorporated by this reference. Licensee may request modification or expansion of the Route by submitting all required permits for construction to the City. Any modifications or expansions to the Route shall be governed by the terms and conditions of this Agreement and must be approved in writing by the City in its sole discretion. Any modifications or expansions shall become part of the Route. Licensee shall not use any portion of the ROW that is abandoned by the City or removed from the City's legal boundaries or for any purpose other than that expressly stated this Agreement.

- 1.2. Term; Effective Date. This Agreement is effective the date the last party signs ("Effective Date") and shall remain in effect for five (5) years from the Effective Date ("Term"), unless sooner terminated. No provision of this Agreement may be construed to grant any automatic extension, renewal, or replacement thereof.
 - 1.2.1. Holdover. If Licensee's Facilities remain in the Route, and Licensee continues to use such Licensee's Facilities beyond the expiration of the Term, the Agreement shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed sixty (60) days beyond the expiration of the Term, and no permits will be issued to Licensee by the City until a new license agreement has been approved by the City Council.
 - 1.2.2. Failure by Licensee to have a valid license to use the Route or other ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the City to Licensee. If, however, Licensee has timely filed its application and is in active negotiations with the City prior to the expiration of the Agreement, the City may, in its discretion, grant, extend, or take no action on permits issued to Licensee prior to the expiration of the Agreement.
- 1.3. Renewal. The parties may extend the Term of this Agreement for up to three (3) additional five (5) year periods upon the mutual written consent of both parties. Such renewal must be made within one-hundred eighty (180) days prior to the termination of the initial Term of the Agreement. Licensee understands that the City may adopt future code amendments or fee schedules relating to use of the ROW which may become applicable to this Agreement upon its initial or subsequent renewal. Licensee acknowledges the right of the City to adopt and implement such lawful code amendments and/or fee schedules.
- 1.4. Amendments. This Agreement may not be amended without the written approval of both parties, except as described herein.
- 1.5. No Real Property Interest. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Route is limited to the license rights created by this Agreement, which creates a revocable (subject to the terms and provisions herein), non-exclusive license in the Route. The City

and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the Route or any portion of the ROW. Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Route. Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the Route or Licensee's use thereof.

- 1.6. "AS-IS" Condition. Licensee is responsible for the study and inspection of the Route to be used pursuant to this Agreement and for determining the fitness for use intended by Licensee. The City expressly disclaims all warranties of merchantability or fitness for a particular purpose or absence of hazardous conditions associated with the Route and the ROW. Licensee accepts the Route and ROW in "AS-IS" condition, without representation or warranty of any kind by the City, its officers, agents, or employees, and subject to all applicable laws governing the use of the Route for the permitted uses allowed by this Agreement.
- 1.7. Mapping Requirement. Licensee shall maintain as-built drawings of Licensee's Facilities located within the Route and furnish a copy to the City using as-builts in pdf and AutoCAD. Upon completion of new or relocation construction of Licensee's Facilities in the Route, Licensee shall create and maintain precise, up-to-date maps of any of Licensee's Facilities and the Route using as-builts in pdf and AutoCAD and will make this information available to the City.
- 1.8. Dark Fiber. To the extent Licensee occupies the ROW with empty Conduit and/or Dark Fiber and/or uses the ROW to provide services other than the Telecommunication Services as defined by A.R.S. § 9-581, such use or occupation of the ROW is subject to the terms and conditions of this Agreement and any applicable fees, permits, and laws.
- 1.9. Cable System. If Licensee obtains or seeks federal, state, or local approval to provide Cable Services over Licensee's Facilities within the City, this Agreement shall remain in effect according to its terms, and Licensee shall continue to pay any fee required by this Agreement, regardless of any legal or regulatory provisions, permits or other processes or rules that might now or hereafter provide otherwise. This Agreement does not allow Licensee to provide one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmission within the City that may be subject to a cable television license or franchise within the City's boundaries.
 - 1.9.1. Licensee shall not use Licensee's Facilities to provide Cable Services, cable television, or for open video service without the proper formal authorization by the City in separate agreements.
 - 1.9.2. Licensee may enter into User Contracts, as defined in Section 3.8, to allow third-parties to use Licensee's Facilities for Cable Services, cable television, or for open video service only if the third-party has already entered into the proper agreements with the City that allows the third-party to conduct such activities.

2. USE OF THE ROW; PERMITS

- 2.1. Maintenance of Licensee's Facilities. Licensee shall be solely responsible for all maintenance, repair, and provision of all utilities for Licensee's Facilities under this Agreement. Licensee shall at all times repair and maintain Licensee's Facilities and the Route at Licensee's sole expense in a sound, clean, safe manner, meeting or exceeding the best industry practices.
- 2.2. Liability for Licensee's Work. For purposes of this Agreement, whenever work is done in the ROW or adjacent to the ROW as part of any work Licensee is performing in the ROW, Licensee agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all persons, firms, partnerships, corporations, associations or other organization, or a combination of any of them, including any subcontractor hired and/ or used by Licensee, that performs services or provides goods relating to this Agreement and that the obligations of this Agreement are imposed on both Licensee and any of Licensee's contractors (and any subcontractors used thereunder), who will be considered Licensee's representatives and for whom Licensee will be responsible.
- 2.3. Licensee shall ensure that Licensee and its employees, agents, contractors, and representatives comply with all ROW use requirements, including, but not limited to, the following:
- 2.3.1. Licensee shall ensure that Licensee's Facilities are constructed, installed, operated, repaired, and/or maintained in accordance with the Surprise City Code and established practices with respect to the ROW, including, but not limited to, obtaining the proper permits prior to commencing any work and following all terms and conditions of such permits.
- 2.3.2. Licensee's use of the ROW shall be according to plans approved by the City Engineer, provided that such approval of plans shall not be unreasonably withheld or delayed.
- 2.3.3. Licensee's Facilities to be constructed, installed, operated, maintained, upgraded, and/or removed shall be located or relocated as to interfere as little as possible with traffic or other authorized uses within the ROW. Any phases of construction and/or installation relating to traffic control, backfilling, compaction, paving, and/or location or relocation of Licensee's Facilities shall be subject to regulation by the City Engineer.
- 2.3.4. Provided such guidelines complies with State and Federal law, the City may issue reasonable policy guidelines to all Telecommunications Services licensees/permittees to establish procedures for determining how to control the issuance of engineering permits to multiple licensees/permittees for the same one-mile segments of the ROW. Licensee agrees to cooperate with the City in establishing such policies with procedures established by the City Manager or their designee to coordinate the issuance of multiple engineering permits in the same one-mile segments of the ROW.
- 2.3.5. Licensee and its employees, agents, contractors, and representatives are subject to the City's exercise of its police, regulatory, and other powers as the City now has or may later obtain, and a license or other agreement may not waive application of the same. The City shall have continuing jurisdiction and supervision over any facilities located within or on the ROW, including, but not limited to,

Licensee's Facilities. Daily administrative, supervisory, and enforcement responsibilities are hereby delegated and entrusted to the City Manager or their designee to interpret, administer, and enforce the provisions of this Agreement.

- 2.4. Licensee acknowledges that the City and Licensee have established a phasing plan under which Licensee will deploy its Conduit and Fiber Optic Cable facilities within the City's rights-of-way. Such plan is intended to minimize the impact of Conduit and Fiber Optic Cable installations, maintenance, restoration, and repairs on the safety, health, comfort, quiet, and good order of the citizens, businesses, and others who use those rights-of-ways impacted by the project by developing segments of the project to be completed in sequence as set forth in this Agreement, as well as mitigating the inconvenience to the public.
- 2.5. Permits before Construction/Installation. Licensee may not install, construct, locate, or attach any Licensee's Facilities to any property within the City, including the ROW, until Licensee has applied for and received approval for permits from the City Engineer. Licensee shall be solely responsible for any and all acts, errors, omissions, and negligence of Licensee's contractors (and any subcontractors used thereunder) who are involved in the design, installation, construction, maintenance, repair, location, relocation, and/or any other activity involving Licensee's Facilities subject to this Agreement. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with all provisions of the Surprise City Code, including, but not limited to, off-site construction regarding streets and sidewalks and other applicable City and/or Maricopa County regulations. All rights hereunder are granted under the express condition that the City shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Licensee's use of the ROW as may be deemed best for the public interest, safety, or welfare, to the same extent that such restrictions and limitations are applied to all non-governmental occupants/users of the ROW.
- 2.6. Permit Quantity. In order to facilitate plan review, approval, inspections and issuance of permits in accordance with the City's published review time frames, the City and Licensee have agreed that no more than six (6) ROW permits (excluding those permits for backbone laterals, small business and enterprise customer extensions or drops, and open trench construction) may be applied for by Licensee per month and no more than six (6) ROW permits may be "open" at any one time. If the amount of "open" permits exceeds six (6) in any given month the Licensee shall not submit and the City will not accept any additional permit submittals until such time the "open" permits exceeding the agreed upon amount is cured. "Open Permits" are those permits which have not been finalized by City staff and with such finalization occurring post restoration as defined in this Agreement.
- 2.7. Third Party Plan Review and Inspections. The implementation of this Agreement shall be in accordance with the permit process of the City. Subject to the City's prior written approval, independent consultants and advisors may be retained by the City at its sole discretion if requested by the Licensee, and if approved by the City. If requested and approved by the City, in addition to the City's standard fee, Licensee shall pay all costs incurred by the City for any private, independent consultants and advisors retained by the City, at Licensee's request and City's approval, for assistance in the permit process. Any such consultants and advisors utilized shall take instruction from, be controlled by, and be responsible to the City, not Licensee.

- 2.8. Details/Specifications for Permits. Licensee shall submit all applicable permit applications together with the details, plans, and specifications for City review and approval, and pay all applicable application, review, and inspection fees, prior to any and all construction work to be performed pursuant to this Agreement.
- 2.9. Stipulations. Licensee and its contractors shall abide by all stipulations of all licenses and permits issued.
- 2.10. Permits for Relocation. If Licensee desires to change the location of any portion of Licensee's Facilities from the initial permit application(s), Licensee shall apply for and obtain approval for an amendment to the permit prior to installation or construction, which approval shall not be unreasonably withheld or delayed.
- 2.11. Criteria for Approval. The City will approve or deny applications based on the availability of space at the location(s) sought by Licensee, safety, and other considerations in accordance with the Surprise City Code, the City's practice, applicable ROW construction regulations, and other applicable laws.
- 2.12. Construction Standards. Any of Licensee's Facilities placed in the ROW shall be constructed using industry standard boring and trenching construction methods. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. Licensee and/or its contractors shall install any new Conduit and access points (e.g. manholes, pull boxes) using industry standard practices and in full compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, the City's supplements to MAG, and the City's Engineering Development Standards ("EDS"). In addition to the foregoing, Licensee and its subcontractors shall comply with the City of Surprise *Pre-Construction Check List*, which is incorporated by reference and will be provided upon request to Licensee or its subcontractor(s).
- 2.12.1. Aerial Facilities. In accordance with the EDS, Licensee may place Fiber Optic Cables above ground along the Route where there are existing aerial/aboveground facilities. If such existing aerial/aboveground facilities are subsequently relocated underground, Licensee shall relocate its then-existing aerial/aboveground Fiber Optic Cables underground in those locations and locate any new Fiber Optic Cables underground in those locations.
- 2.13. Written Approval for Changes. Licensee shall obtain written approval from the City Engineer or their designee if Licensee desires to change any components of any Licensee's Facilities, which shall not be unreasonably withheld, delayed, or denied.
- 2.14. Work Restrictions/Requirements. Licensee shall comply with and ensure that its contractors comply with the City of Surprise Temporary Work Zone Traffic Management Policy ("Surprise Work Policy"), as amended from time to time, herein incorporated by this reference. All of Licensee's work under this Agreement shall follow the Surprise Work Policy, which includes, but is not limited to, defined road types, allowable hours of work and holiday/event restrictions, and other work requirements and restrictions. The City will provide the Surprise Work Policy as requested and may be found on the City of Surprise website.

- 2.15. Right to Inspect. The City shall have the right, but not the obligation, to inspect all construction and/or installation work performed subject to the provisions of this Agreement and to make such tests as the City deems necessary to meet the City's standards, the Surprise Work Policy, the MAG Uniform Standard Specifications and Standard Details for Public Works Construction, and any and all applicable City supplements thereto.
- 2.16. Common Installations. Licensee shall reasonably coordinate the installation of Licensee's Facilities with other utilities and the City to accommodate opportunities for common installation. Nothing herein shall require Licensee to incur any material additional expense to accommodate common installations.
- 2.17. Boring; Street Openings. Although the exact placement and location of Licensee's Facilities shall be determined by the City through the permitting process, Licensee has expressed its intent and the City has expressed its desire to have such Licensee's Facilities installed outside of the paved street area whenever such location is feasible and reasonable. If Licensee intends to place Licensee's Facilities by directional boring under such streets when feasible and reasonable, said bore profiles based on vacuum pothole information shall be part of the engineered plans to be submitted to the City. Arterial streets shall not be bored, unless approved by the City Engineer in writing. In the event that a street opening in the pavement cannot be avoided, Licensee agrees to pay a fee in accordance with the City's Development Services Fee Schedule, as amended, and the Surprise City Code. A bore log must be signed by the City's applicable Civil Inspector, or their designee, prior to any bore.
- 2.18. Dedicated Personnel. Licensee shall provide and identify a representative (e.g. project manager) who shall be the contact person for the City during any construction periods.
- 2.19. Adjacent Property-Owners. Licensee shall provide written notice to adjacent property-owners, or other individuals or entities having lawful control of adjoining property, of any activity by Licensee that may interfere with access to said property during all construction activities or other operations, except to the extent that this requirement of maintain access is waived in writing by the adjacent property-owner or other individual or entity having lawful control of such adjoining property. Licensee shall use its commercially best efforts to notify such adjacent property owners at least forty-eight (48) hours prior to work that will impact them. If an emergency requires activity without such written notice, Licensee shall use commercially reasonable efforts to provide timely actual notice to the adjacent property-owner or other individual or entity having lawful control of such adjoining property. Upon request, Licensee shall promptly provide the City with the documentation of such permission from such affected property owner.
- 2.20. Opening/Alteration. Whenever Licensee or Licensee's contractors (and any subcontractors used thereunder) shall cause any opening or alteration to be made for any purpose in any public streets or public places the opening or alteration shall be completed and restored with due diligence within seven (7) business days following completion of Licensee's work which necessitated such opening or alteration, weather permitting. Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Licensee or Licensee's contractors (and any subcontractors used thereunder) to a condition substantially comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

- 2.21. Restoration. After any work, installation, repair, maintenance, replacement, or relocation work performed in the Route, Licensee shall restore all disturbed areas of the Route, affected ROW, and any affected surrounding property to the same condition or better that existed immediately prior to the commencement of the installation, repair, maintenance, replacement or relocation work. Such restoration includes, but is not limited to, repairing and/or replacing to the City's standards, rules, and policies (as amended from time to time) all pavement, sidewalks, curbs, landscaping, or other City improvements that may be disturbed or damaged by Licensee's activities or work under this Agreement. Restoration shall be completed within fifteen (15) business days from the last day of infrastructure placement/construction completion, per permit.
- 2.22. Clean; Removal of Debris. Licensee and/or its contractors shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site, the Route, and the ROW in a safe, neat, and clean condition.
- 2.23. Safety. Licensee and its contractors shall be solely and completely responsible for the conditions of any job site, including safety of all individuals (including employees) and property, during performance of the work. This requirement shall apply continuously and is not limited to normal working hours. The safety provisions herein shall conform to all applicable federal (including OSHA), state, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the stricter requirement shall be followed. Licensee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Licensee from compliance with these provisions.
- 2.24. Traffic Control. Licensee shall comply with the following traffic control requirements:
- 2.24.1. Licensee's traffic control shall comply with the City of Surprise Temporary Work Zone Traffic Management Policy, herein incorporated by this reference. Licensee shall follow the guidelines contained in the latest editions of the Manual on Uniform Traffic Control Devices ("MUTCD"), herein incorporated by this reference, and the City of Phoenix Traffic Barricade Manual, herein incorporated by this reference. Licensee shall additionally comply with any special provisions herein.
- 2.24.2. At the time of the pre-construction conference, Licensee shall designate an individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to ensure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazards and accidents. Any entity wishing to obtain a permit to place, maintain, and/or remove temporary traffic control within the City of Surprise shall obtain an annual traffic control permit from the City per the City of Surprise Temporary Work Zone Traffic Management Policy. At the same time, the City shall designate a representative who will be responsible for ensuring that all traffic control and traffic control alterations are implemented per the traffic control specifications as defined in the approved traffic control plan.
- 2.24.3. Licensee shall have the full responsibility and liability for traffic control for a project. Licensee shall submit a traffic control plan ("Traffic Control Plan") to Traffic Engineering for approval – five (5) business days prior to beginning work under this Agreement. The Traffic Control Plan shall include all motor vehicles, bicyclists,

and pedestrians. Licensee shall not begin construction until the Traffic Control Plan is approved by the City. An approved Traffic Control Plan shall be maintained onsite during all phases of construction; otherwise, construction will cease until the Traffic Control Plan is approved. During construction it may be necessary to alter traffic control as approved by Traffic Engineering. Alterations to traffic control shall be in accordance with City of Surprise Temporary Work Zone Traffic Management Policy, the latest edition of the MUTCD, or the latest edition of the City of Phoenix Traffic Control Manual. The most restrictive manual shall apply. Licensee shall pay any and all applicable barricade fees.

2.24.4. In the event Licensee or Licensee's contractors (and any subcontractors used thereunder) damages any traffic signal equipment, traffic signal conduit, loop detectors, and/or circuits, Licensee shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the City. Any damage repaired by the City will be billed to Licensee at cost.

2.24.5. Licensee shall notify all adjacent and/or affected residents and/or businesses in advance of any street, alley, sidewalk, and driveway closures per the Temporary Work Zone Traffic Management Policy so that they can make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.

2.24.6. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Traffic Engineering.

2.25. Blue Stake. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 and participate as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Licensee's Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days. A copy of the agreement or proof of membership shall be filed with the City Engineer. Notwithstanding the foregoing, the City and Licensee may enter into an agreement to extend such 2-day response time, subject to the terms of this Agreement.

2.26. Compliance with Laws. Licensee shall comply with all applicable laws as amended from time to time, including but not limited to, the Surprise City Code, Arizona law, and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for Licensee to comply with any law or regulation of the Federal Communications Commission ("FCC") or the ACC) to engage in the business activities anticipated by this Agreement, Licensee shall comply with such laws or regulations. Provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.

3. NON-EXCLUSIVITY; THIRD-PARTY CONTRACTS

3.1. Non-Exclusive. This Agreement is non-exclusive and nothing herein shall prevent the City from granting like or similar privileges to any other individual or entity.

- 3.2. City's Control of ROW. Any and all rights granted to Licensee shall be subject to the prior and continuing right of the City to use and manage the ROW exclusively or concurrently with any individuals and/or entities and to manage the City's own conduit, fiber optic cables, or facilities. Any and all rights granted to Licensee shall be subject to all deeds, easements, dedications, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey, create, or vest any real property interest in land to Licensee, including any fee or leasehold interest, easement, or any franchise rights. The City shall have full authority to regulate, on a non-discriminatory basis, use of the Route and the ROW and to resolve competing demands and preferences regarding use of the Route and the ROW and to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, the City may take any or all of the following into account in regulating use of the Route and the ROW:
- 3.2.1. All timing, public, operational, financial, and other factors affecting existing and future proposals, needs, and plans for Competing Activities, as defined in Section 3.6;
 - 3.2.2. All other factors the city may consider relevant, whether or not mentioned in this Agreement; and/or
 - 3.2.3. Differing regulatory regimes and/or laws applicable to claimed rights, public benefits, community needs, and all other factors relating to Competing Activities, as defined in Section 3.6.
- 3.3. Accommodate City's Activities. Nothing in this Agreement shall be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining its facilities and/or the ROW, and for that purpose to require Licensee, at no expense to the City, to remove, relocate, or abandon in place Licensee's Facilities in order to accommodate the activities of the City. The City shall not be liable for lost revenues sustained by Licensee, however caused, because of damage, modification, alteration, or destruction of Licensee's Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of City facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.
- 3.4. City's Rights. There is hereby reserved to the City every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful ordinance or law, and Licensee by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the City in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of the City.
- 3.5. Interference with Communications Operations. Licensee shall not install, operate, or allow the use of any equipment, methodology, or technology that may or would interfere with the optimum effective use or operation of the City's existing or future fire, emergency, or other communications equipment, methodology, or technology. Licensee shall be responsible to ensure compliance with this requirement by all persons using the Route through or under Licensee. If such interference should occur, Licensee shall immediately

discontinue using the equipment, methodology, or technology that causes the interference until Licensee takes corrective measures to alter the Route

- 3.6. Competing Activities. Licensee accepts the risk that there may exist, now or in the future, all manner of work and improvements upon the ROW ("Competing Activities"). Competing Activities include, but are not limited to, laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, or realigning, whether above, upon, or below the surface of the ROW and whether occasioned by the existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land, (i) all manner of streets, sidewalks, alleys, trails, ways, and traffic control devices of every description, (ii) all manner of other transportation facilities and their appurtenances, (iii) all manners of pipes, wires, cables, conduits, sewers, storm drains, pumps, valves, switches, conductors, connectors, poles, supports, access points and guys of every description, (iv) all manner of other utility facilities and their appurtenances, (v) all manner of canals, drains, bridges, underpasses, culverts and other encroachments of every description and all manner of other facilities and their appurtenances, and (vi) all other uses of the ROW that the City may permit from time to time.
- 3.7. Subordinate Rights. Any right or privilege claimed pursuant to this Agreement by Licensee for any use of the ROW shall be subordinate to: (i) any prior or subsequent lawful occupancy or use thereof by the City or any other governmental entity; (ii) any prior lawful occupancy or use thereof by any other individual or entity; and (iii) any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with the property rights established independent of this Agreement. Licensee shall not obstruct, impede, disrupt, or interfere with or prevent any Competing Activities or any person or entity that has prior or subsequent rights to use the Route and/or ROW.
- 3.8. Third-Party Contracts. Licensee may enter into contracts with third-parties ("ROW Users") in the ordinary course of Licensee's business for use of Licensee's Facilities within the Route, subject to this Agreement. Such contracts ("User Contracts") are subject to all terms and conditions of this Agreement, including, but not limited to, the following:
- 3.8.1. No ROW User shall transmit data over Licensee's Fiber Optic Network, use Licensee's Facilities, or use the Route for any purpose, except under a User Contract with Licensee;
- 3.8.2. ROW Users shall not perform any construction, maintenance, repair, or any other work in the ROW, unless a ROW Users has a separate agreement with the City to do so; and
- 3.8.3. Identities of ROW Users shall be disclosed to the City, upon reasonable request, but will be deemed confidential if consistent with Arizona public records laws.
- 3.9. Disruption by Others. The City and its officials, agents, employees, or contractors shall not be liable to Licensee or its customers, the ROW Users, or other contractors for any service disruption or for any other harm caused to them or the Route due to Competing Activities.
- 3.10. Compliance with Agreement. Licensee shall cause all persons and/or entities using the ROW through or under Licensee or this Agreement to comply with all terms and conditions

of this Agreement. Licensee is responsible for any and all violations of this Agreement by persons and/or entities using the ROW through or under Licensee or this Agreement.

4. **FEES**

4.1. **City's Right of Fair and Reasonable Compensation.** By entering into this Agreement, neither party waives any current or future rights reserved under the law or the Telecommunications Act of 1996, including, but not limited to, those rights pursuant to Section 253(c) that reserve the City's right to manage the ROW and to require fair, non-discriminatory and reasonable compensation from Licensee for use of the ROW.

4.2. **Licensee's Payments.** Licensee shall pay to the City each of the following separate and cumulative amounts (collectively, the "**Fee Payment**"):

4.2.1. An amount (the "**Annual Fee Payment**") based on Licensee's use of the Route to provide interstate telecommunications services as such services are defined by A.R.S. § 9-583(C)(2), for any leasing/licensing of fiber to third-parties, the placement or leasing/licensing of empty conduit, the placement or leasing/licensing of any dark fiber, and/or as otherwise described in section 4.3. For the avoidance of doubt, this Annual Fee Payment shall only apply to that portion of Licensee's fiber optic network or Route that carries interstate traffic between and among Licensee's interstate points of presence exclusive of Licensee's fiber optic network or Route used by the local network and the portion of the interstate network that carries intrastate calls.

4.2.2. An amount (the "**Permit Fee Payment**") based on Licensee's permit review and other costs as set out below.

4.2.3. An amount (the "**Violation Fee Payment**") based on certain breaches by Licensee of this Agreement as set out below.

4.2.4. An amount (the "**Transaction Privilege Tax**") based on any qualifying services under the Surprise Tax Code.

4.2.5. All applicable fees as set forth in the City of Surprise Citywide Fee Schedule, as amended and adopted by the Surprise City Council, which is hereby incorporated by reference. (The Citywide Fee Schedule may be found on the City's website, under the Finance Department page. The current link to the Finance Department page containing the Citywide Fee Schedule may be found at: <https://surpriseaz.gov/240/Finance>.) For the avoidance of doubt, construction permit fees shall fall under the "Community Development, Civil Engineering Permit and Inspections, City Jurisdiction or Service Area – Private Utility" category in the Fee Schedule.

4.2.6. All other amounts required by this Agreement.

4.3. **Annual Fee Payment Amount.** The amount of the Annual Fee Payment shall be eighty-nine cents (\$0.89) per linear foot of trench in the ROW.

4.3.1. On annual anniversary of the Effective Date, Licensee will report to the City the amount of linear feet of trench permitted and installed in the ROW or on other City-

owned property. The Annual Fee Payment for the coming year is calculated by multiplying the current annual per linear foot fee, as adjusted by annual CPI under section 4.6 for the year of payment, by the linear footage of trench permitted or installed in the ROW or on other City-owned property. The City must receive the Annual Fee Payment before the City will issue any new encroachment permits for additional facilities or equipment in the ROW or other City-owned property.

- 4.3.2. The Annual Fee Payment shall be adjusted annually as set forth in this Section. Commencing on the first anniversary of the Commencement Date (being the start of Year 2), and during the Term on each anniversary thereafter, the adjusted fee payment amount shall be the Annual Fee Payment established for the immediately preceding Year as increased by the percentage increase, if any, in the CPI-U (as defined below) from the Base Year 1st Half (as defined below) to the Current Year 1st Half (as defined below). The "CPI-U" means the Consumer Price Index, All Items, for All Urban Consumer, Phoenix Area, published by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"). The period from January to June immediately preceding the then-current anniversary of the Commencement Date shall be the "Current Year 1st Half," and the period from January to June for the year before that shall be "Base Year 1st Half." (For example, if the Commencement Date were September 1, 2017 and the increase in the Annual Fee Payment were being calculated for the Year beginning September 1, 2018, then the increase would be the increase in the CPI-U from 1st Half 2017 to 1st Half 2018). In no event may the adjusted fee be less than the Annual Fee Payment for the prior year. If the Bureau ceases publishing the Consumer Price Index, or materially changes the method of its computation or other features thereof, the City shall substitute therefore a comparable index that is reasonably acceptable to both parties and is based upon changes in the cost of living or purchasing power of the consumer dollar published by any governmental agency, responsible financial periodical, trade association, or educational institution. For example, which shall be used only as an example:

Linear Foot Fee

YEAR	1st Half CPI-U		2017 Fee		2018 Adjusted Fee	% of change
2018	137.828	X	0.89	=	0.92	3.9%
2017	132.653					

- 4.3.3. In the event Licensee cancels or returns a permit and does not construct or install the Licensee's Facilities approved by such a permit, the refundable portion of the fees Licensee previously paid for the respective permit may be applied as a credit to a future Annual Fee Payment or may be refunded to Licensee by the City.
- 4.4. Appropriate Taxes. Licensee shall pay any applicable city, county and state transaction privilege and use taxes. Such taxes are in addition to any non-tax amounts owed by Licensee pursuant to this Section.
- 4.5. Permit Fee Payment Amount. Licensee shall pay all applicable construction permit fees, including, but not limited to, charges for encroachment permit applications, issuance, inspection, testing, plan review, and any other fees adopted by the City and applicable to persons doing work or encroaching in the ROW. A general list of such fees may found in the City's Citywide Fee Schedule, as incorporated in Section 4.2.5.

- 4.6. Adjustments. All fixed dollar amounts stated in this Agreement shall be automatically adjusted upward annually on July 1st. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), Phoenix Area, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each adjusted amount shall be calculated as described in Section 4.3.2. This computation is expressed by the following formula:

$$\frac{\text{Current Year 1st Half}}{\text{Base Year 1st Half}} \times \text{Current Amount} = \text{Adjusted Fee}$$

provided, that in no event shall any amount be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, the City shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate, subject to adjustment when the actual figures become known. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by the City in the City's reasonable discretion. Any delayed adjustment shall be effective retroactively. For example, which shall be used only as an example:

Fee for Failure to properly restore public ROW

YEAR	1st Half CPI-U		2017 Fee		2018 Adjusted Fee	% of change
2018	137.828	x	600.00	=	623.41	3.9%
2017	132.653					

- 4.7. Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.
- 4.8. Fee Payment Schedule. Except as specifically provided elsewhere for Violation Fee Payment, Licensee shall pay all Fee Payment on the following schedule:
- 4.8.1. Licensee shall pay Annual Fee Payment by the anniversary date of each year of this Agreement.
- 4.8.2. Licensee shall pay Permit Fee Payment at the times and in the amounts specified by the City's normal processes for permitting, including, but not limited to, construction permits, encroachments, issuances, inspections, testing, plan review, and other processes applicable to persons doing work or encroaching in the ROW.
- 4.8.3. All other Fee Payment shall be payable quarterly in arrears on the last calendar day of the first month of the next calendar quarter. For example, the Violation Fee Payment for the first calendar quarter of a year shall be payable on or before April 30.
- 4.9. Fee Payment Amount Report. Each installment of Fee Payment by Licensee, other than Permit Fee Payment, shall include a report showing the manner in which each component of the Fee Payment was calculated. The report shall summarize the transactions giving rise to the License Fee Payment.

4.10. Damage Fees. Licensee shall pay all reasonable costs associated with any damage caused by Licensee or its subcontractors, employees, or agents to the ROW or other public property.

4.11. Violation Fee Payment. During the Term of this Agreement, the City may suffer certain money damages in the form of administrative cost and inconvenience, disharmony among Competing Activities, and general inconvenience in ROW use by the City, Competing Activities, and the public as a result of an uncured violation of this Agreement by Licensee ("Inconvenience Costs"). Assessing the actual damages for these Inconvenience Costs may be impracticable to determine. In lieu of paying the actual damages for these Inconvenience Costs, the City may assess Violation Fee Payments against Licensee to cover the damages that caused the Inconvenience Costs and is as described in Section 4.11.1. The Violation Fee Payments will be assessed with the processes described in Section 4.11.2. The Violation Fee Payments are only intended to remedy the Inconvenience Costs that the City suffers. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this Agreement or limit in any way the City's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for such breach. For example, Licensee's obligation to pay Violation Fee Payment does not in any way detract from Licensee's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Licensee's obligation to pay Violation Fee Payment. Provided however, that if the City determines to exercise any other legal or equitable remedy provided by this Agreement or otherwise, City may not, in addition to such remedy, assess a Violation Fee Payment. Except for any failure to properly restore the public ROW under 4.11.1.1, or other violation of this Agreement by Licensee that in the City's sole determination may impact the health, safety, or welfare of the public, City shall use reasonable efforts to notify Licensee of any violation of this Agreement and permit Licensee an opportunity to cure such violation in accordance with the applicable cure period in this Agreement or as otherwise agreed by City.

4.11.1. The Violation Fee Payments per calendar day or part thereof are as follows:

4.11.1.1. The amount of Six Hundred Dollars (\$600.00) per calendar day for Licensee's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) calendar days after the City's notice to correct such defects except where such curative efforts by Licensee are precluded by a force majeure event. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the ROW or correct the violation.

4.11.1.2. Following a ten (10) day notice to cure, the amount of Two Hundred Fifty Dollars (\$250.00) per calendar day for each failure to make Licensee's books and records available as required by this Agreement.

4.11.1.3. The amount of Five Thousand Dollars (\$5,000.00) for any unauthorized partial or total assignment of this Agreement.

4.11.1.4. The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Licensee in violation of this Agreement that causes Inconvenience Costs and that is not cured after three (3) calendar days' notice.

4.11.2. Process for assessment of a Violation Fee Payment:

4.11.2.1. If the City determines that Licensee is liable for Violation Fee Payment, then the City shall issue to Licensee a notice of the City's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.

4.11.2.2. Licensee shall pay the Violation Fee Payment within ten (10) calendar days after the City's notice. The following shall apply for any Violation Fee Payment:

4.11.2.3. Licensee shall have thirty (30) calendar days after the notice to pay the Violation Fee Payment or give Licensor notice contesting the assertion of noncompliance.

4.11.2.4. If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment.

4.11.3. Except as may be expressly stated in this Section 4, no cure period applies to the accrual of Violation Fee Payment.

4.11.4. Licensee may elect to draw upon the letter of credit to collect the Violation Fee Payment

4.12. Deadlines for Annual Fees. For any annual payment(s) owed, Licensee shall make such payment(s) to the City within ten (10) business days of the Effective Date and by the anniversary of the Effective Date for the duration of the Term.

4.13. Late Fees. Licensee agrees that if it fails to pay any amounts owed to the City by the time prescribed for payment, Licensee shall pay interest on the amounts owed at the rate of one percent (1%) per month.

4.14. Requirement of Insurance, Performance Bond, and Letter of Credit. Prior to any work being performed in the ROW, Licensee shall secure all performance bond requirements in this Agreement and provide the City with all insurance requirements prior to the commencement of any work, including, but not limited to, all certificates of insurance required by this Agreement.

4.15. Performance Bond.

4.15.1. Prior to receiving any permit to construct, install, maintain or perform any work on public property, Licensee shall cause to be filed and maintain until completion of the construction, a faithful performance bond in favor of City in the sum of One Hundred Thousand Dollars (\$100,000.00) or 125% of the amount of the construction costs (whichever is greater) to guarantee that Licensee shall observe, fulfill and perform each and every term of this Agreement. In case of any breach of any condition of this Agreement, any amount of the sum of the bond, up to the whole thereof, may be forfeited to compensate the City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Licensee, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters. The City and Licensee agree that the process and

procedure for drawing upon, curing, and replenishing the performance bond shall be the same as set forth below for the security fund.

- 4.15.2. If Licensee has completed the above construction and wants the bond released, the City will need to inspect and approve the construction prior to such release. However, a performance bond will be required for each subsequent or additional construction project and/or work on public property.

4.16. Letter of Credit.

- 4.16.1. Prior to applying for any permit to construct, install, maintain or perform any work in the ROW which requires a construction permit from the City pursuant to applicable Surprise Municipal Codes, Licensee shall provide either a cash deposit into a suitable interest-bearing account, established by the City, or a domestic irrevocable standby letter of credit, in the sum of not less than Fifty Thousand Dollars (\$50,000.00) as security for the faithful performance by it of all the provisions of this Agreement, and compliance with all orders, permits and directions of any agency of the City having jurisdiction over its acts or defaults under the Agreement and license issued pursuant thereto, and the payment by the Licensee of any claims, liens and taxes due the City which arise by reason of the construction, operation or maintenance of the Fiber Optic Network (the "security fund"). The City shall have the full power of withdrawal of funds from the account or letter of credit except that all interest accrued shall be payable to the Licensee on demand. No withdrawals shall be made from the security fund without the prior written approval of the City Engineer and ten (10) days' prior written notice of intent to withdraw to Licensee.
- 4.16.2. Within twenty (20) days after notice to Licensee that any amount has been withdrawn by the City from the security fund, Licensee shall deposit a sum of money or present to the City an additional irrevocable letter of credit sufficient to restore such security fund account to the original amount.
- 4.16.3. If Licensee fails, within ten (10) business days of a notice of intent to draw on the security fund, to either dispute the notice in writing; or pay the City any taxes or fees due and unpaid; or fails to repay to City, within such ten (10) business days of such notice, any damages, costs or expenses which City shall be compelled to pay by reason of any act or default of Licensee in connection with this Agreement; or fails, within thirty (30) days of such notice of failure by the City to dispute the notice in writing, or comply with any provision of this Agreement which the City reasonably determines can be remedied by an expenditure of funds from the security fund, the City may immediately withdraw the amount thereof from the security fund. Upon such withdrawal, the City shall notify Licensee of the amounts and date thereof.
- 4.16.4. The rights reserved to the City, with respect to the security fund, are in addition to all other rights of the City whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right City may have.
- 4.16.5. Licensee shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the Agreement or upon

termination of the Agreement at an earlier date, provided that there is then no outstanding default on the part of the Licensee. Any funds that the City erroneously or wrongfully withdraws shall be returned to Licensee, within thirty (30) business days of such a determination.

- 4.17. In Kind. This Agreement does not currently require any in-kind payment to City by Licensee. However, if Licensee has not paid any fees required under Section 4, the Parties may agree in writing to new in-kind payments to offset any fees not paid by Licensee to the extent permitted by law. This subsection imposes no obligation on the City to agree to offset any fees in this Agreement or in any future agreement.
- 4.18. Audits. The City shall have the right to audit or otherwise inspect any and all customer contracts, subleases, sublicenses, or otherwise subcontracts, including without limitation, all ROW User agreements with Licensee, to the extent reasonably necessary to confirm compliance with this Agreement, including proper payment of all fees under this Section 4. The City may conduct such audits as often as reasonably necessary in order to justify the necessary payments, but no less than one (1) time per annual term, beginning on the Effective Date.

5. RELOCATION

- 5.1. Licensee shall relocate, at no expense to the City, any of Licensee's Facilities, or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose or any City or other governmental project whenever directed to do so by City. Such relocations shall be accomplished in accordance with the directions from City and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. Within ninety (90) days after service of notice by the City, Licensee shall remove the designated portions of Licensee's Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the ninety-day period, Licensee shall take reasonable steps to remove Licensee's Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the City.
- 5.2. Licensee agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating, or reconstructing any portion of Licensee's Facilities on public property or ROW. Notwithstanding the foregoing, the City understands and acknowledges there may be instances when Licensee is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of Licensee's Facilities. Licensee will maintain any annual permits required by the City for such maintenance and emergency repairs. Licensee will notify the City before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.
- 5.3. If the City needs to perform any part of the necessary relocation or removal work that has not been done within the time required by the City, it shall be entitled to seek payment for such actual relocation costs by drawing upon the letter of credit or security fund required by this Agreement pursuant to Section 4.16 or the performance bond pursuant to Section 4.15.

- 5.4. The City has no obligation to relocate or otherwise move Licensee's Facilities, any City-owned facilities, Conduit, or Fiber Optic Cables, ROW Users' Facilities, or any other Facilities of persons or entities lawfully using the ROW. The City shall require that third parties be responsible for relocation work of Licensee's prior existing Licensee Facilities in the ROW not necessitated by the City.
- 5.5. Any relocation work performed by Licensee or its contractors shall be subject to and comply with this Agreement.

6. DAMAGE TO PUBLIC PROPERTY

- 6.1. In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of Licensee's Facilities is required or permitted hereunder, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any ROW or public property or any public improvement that may be located thereon, therein, or thereunder, however such damage or disturbance was caused, Licensee, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. If Licensee does not repair the damage or disturbance as just described, then City shall have the option, upon ten (10) business days' prior written notice to Licensee, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the actual costs incurred by the City at City's standard rates.
- 6.2. Notwithstanding the notice provision above, in the event of a public emergency, the City shall have the right to immediately perform, without prior written notice to Licensee, such reasonable and necessary work on behalf of Licensee to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the City Engineer. The City shall provide written notice to Licensee of the repairs as soon as practicable after the work has begun. Licensee agrees that any damage to City fiber, conduit, or other property must be replaced or repaired and restored with new or like-new materials. If the City needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs and/or relocation and/or removal costs from Licensee and may draw upon the performance bond and/or letter or credit or security fund required by this Agreement in full or partial satisfaction of such costs, if payment is not made by Licensee as required by Section 6.3 below.
- 6.3. Upon the receipt of a demand for payment by the City, Licensee shall, within thirty (30) days, reimburse the City for such costs.
- 6.4. For any pavement cuts by Licensee, Licensee agrees to restore the pavement.
- 6.5. In addition to the foregoing, if an incident occurs, such as damage to a private utility line or a resident's private property, Licensee (or its subcontractor, if applicable) shall immediately notify the City's Inspector(s). If such incident occurs, Licensee (or its subcontractor, if applicable) shall ensure that a bilingual (Spanish-English) Licensee representative is on site or will be on site immediately following the incident.

- 6.6. Failure to make repairs in accordance with this section may result in the City withholding new permits until such repairs are made to the satisfaction of the City.

7. PENALTIES FOR VIOLATION OF TERMS

- 7.1. The City's Remedies. The City may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other City permits and authorizations until Licensee complies with the terms of this Agreement or any applicable law. Such City remedies are cumulative and may be pursued in the alternative. The City's remedies set forth in this Agreement are not exclusive. Except as otherwise set forth in this Agreement, Election of one remedy by the City, including assessment of liquidated damages, does not preclude the use of other remedies.
- 7.2. Licensee's Remedies. Licensee sole remedy for any breach or threatened breach of this Agreement by the City shall be an action for equitable or injunctive relief.

8. TERMINATION

- 8.1. The City Manager has the authority to terminate, subject to Licensee's right to notice and cure where provided, this Agreement.
- 8.2. Nonbinding Arbitration Procedures. Pursuant to Ariz. Rev. Stat. § 9-582(A)(3), the parties shall submit to nonbinding outside arbitration to attempt to resolve disputes over recovery of reasonable, proportionate, and attributable costs of certain fees set forth in A.R.S., Title 9, Chapter 5, Article 7. Per A.R.S. § 9-582(A)(3), the parties specifically agree to comply with the City Public Works Department's procedure entitled *Arbitration Procedure for Telecommunications Fee Disputes under A.R.S. § 9-582(A)(3)*, which is hereby incorporated by reference and will be provided to Licensee upon request.
- 8.3. Immediate Termination. The City may terminate this Agreement upon thirty (30) days' notice and Licensee's failure to remedy any of the following to the reasonable satisfaction of the City:
- 8.3.1. Licensee ceases doing business in the City;
 - 8.3.2. If Licensee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's or such other person's property shall be made for the benefit of creditors or if Licensee or such other person dies or is not regularly paying its debts as they come due (collectively a "Licensee Insolvency");
 - 8.3.3. Licensee fails to keep the Certificate in effect following any right of appeal or due process of the ACC;
 - 8.3.4. Licensee fails to maintain any insurance required by this Agreement;
- 8.4. Cure of Defect; Termination. The following instances are defects in performance by Licensee shall be deemed instances of "Default" by Licensee:

- 8.4.1. Licensee fails to comply with the material terms and conditions of this Agreement or applicable law, including, but not limited to, failing to maintain any insurance, security fund, or performance bond;
 - 8.4.2. Licensee fails to make payments to the City in the amounts and at the times specified in this Agreement;
 - 8.4.3. Licensee fails to comply with the Surprise Work Policy and any other construction, design, or other related requirement under this Agreement;
 - 8.4.4. Licensee fails to construct in the designated, approved path of the Route;
 - 8.4.5. Licensee fails to provide the current, accurate as-built plans and maps showing the Route, including all of Licensee's Facilities in the Route; and
 - 8.4.6. Licensee fails to obtain or maintain the required licenses, permits, or other approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.
- 8.5. Curing Default. The City may terminate this Agreement if Licensee does not cure the defect in performance, as listed as Section 8.3 as instances of Default, within sixty (60) days (or such longer period of time as the City determines is reasonably necessary to cure) following the City's written notice of Licensee's defective performance. Upon the occurrence of Default or at any time thereafter, the City may do any of the following:
- 8.5.1. Pay or perform for Licensee's account, in Licensee's name, and at Licensee's expense, any and all payments or performances required to be paid or performed by Licensee;
 - 8.5.2. Require an additional security deposit adequate in the City's sole discretion to protect the City and the ROW in light of Licensee's history of performance under this Agreement;
 - 8.5.3. Abate at Licensee's expense any violation of this Agreement; and/or
 - 8.5.4. Be excused without any liability to Licensee from further performance of any and all obligations under this Agreement.
- 8.6. No Need to Cure. The City will not need to provide Licensee with a cure period prior to termination if the City finds the defect in performance is due to intentional misconduct, a violation of law, or is part of a pattern of repeated and persistent violations where Licensee has already had notice and an opportunity to cure.
- 8.7. Licensee's Termination. Licensee may terminate this Agreement by providing the City with ninety (90) days' written notice and only upon making arrangements satisfactory with the City Engineer to remove all Licensee's above ground Licensee's Facilities from public property and the ROW, unless the City Engineer agrees in writing to allow Licensee to abandon part or all of Licensee's Facilities in place. If the City Engineer agrees to allow Licensee to abandon Licensee's Facilities in place, the ownership of such Licensee's Facilities, including everything permitted by City to be abandoned in place, shall transfer to City and Licensee shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.

- 8.8. Restoring the Route. Upon termination or revocation of this Agreement, Licensee shall cease using the Route. Licensee shall return the Route and any affected portions of the ROW or surrounding property affected by Licensee's Facilities and/or work to the same condition or better condition prior to the commencement of this Agreement, reasonable wear and tear excepted. Licensee shall remove all of Licensee's Facilities if requested by the City upon termination of this Agreement and/or revocation of the license granted herein, including, but not limited to, all above ground and subsurface portions of Licensee's Facilities.

9. GOVERNING LAW

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance, without giving effect to its principles of conflicts of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the federal or state courts located within or within the jurisdiction of Maricopa County, Arizona.

10. COMPLIANCE WITH LAWS

- 10.1. Compliance with A.R.S. § 38-511. Pursuant to A.R.S. § 38-511, the City may cancel this Agreement within three (3) years after execution of the Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect an employee of or a consultant to Licensee with respect to the subject matter of this Agreement. The cancellation shall be effective when Licensee receives written notice of the cancellation, unless the notice specifies a later time.
- 10.2. The Parties shall comply with all federal, state and local laws, codes, rules and regulations.
- 10.3. Compliance with A.R.S. § 35-393.01. Licensee hereby certifies that it does not, and will not, participate in during the term of this Agreement, a boycott of Israel in accordance with Arizona Revised Statute §35-393.01. Licensee hereby agrees to indemnify and hold harmless the City, its agents and employees from any claims or causes of action relating to the City's action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the City in defending such an action.
- 10.4. Compliance with Federal Immigration Laws and Regulations. Licensee warrants that it complies with all federal immigration laws and regulations that relate to its employees and that it complies with A.R.S. § 23-214(A). Licensee acknowledges that pursuant to A.R.S. § 41-4401, a breach of this warranty is a material breach of this Agreement subject to penalties up to and including termination of this Agreement, and that the City retains the legal right to inspect the papers of any employee who works on the Agreement to ensure compliance with this warranty.

11. INDEMNIFICATION

- 11.1. Licensee acknowledges that it has liability for any and all of Licensee's Facilities installed in the public ROW and in the Route, its use and/or occupation of the ROW and the Route, for any work that is done in or adjacent to the ROW and/or the Route, for any loss or liability incurred by reason of any Toxic Substance (as defined in section 19) on or affecting

the portion of the ROW and/or the Route used that is attributable to or caused by Licensee and/or its contractor(s), the failure to comply with the request for information and laws pertaining to public records (as further described in section 20.9), and for its exercise of its rights under this Agreement directly or through its contractor(s), except for the intentional or solely negligent acts on the part of the City or its agents. To the fullest extent permitted by law, Licensee, shall defend, indemnify and hold harmless the City, and its officials, boards, commissions, agents, contractors, subcontractors, or employees, individually and collectively, from and against any and all losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including but not limited to, reasonable attorney's fees incurred through all appeals ("Claims") arising out of or alleged to have resulted from or materially related to: (i) the acts, errors, mistakes, or omissions of Licensee, its employees, representatives, or any tier of contractors and/or subcontractors or any other person for whose acts, errors, mistakes, and/or omissions Licensee may be legally liable; (ii) for any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW and/or the Route used that is attributable to or caused by Licensee and/or its contractor(s); (iii) the failure to comply with the request for information and laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments assessed against the City; and/or (iv) the City entering into this Agreement, or the acts or omissions of the City or its officials, boards, commissions, agents, contractors, subcontractors, or employees acting pursuant to or in furtherance of this Agreement. This defense and indemnification requirement includes any Claims or amounts arising or recovered under worker's compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of Licensee, its agents, employees or representatives to fulfill Licensee's obligations under this Agreement, whether resolution of the above Claim(s) proceeds to judgment or not. The provisions of this Section shall survive termination of this Agreement. This Section applies even if the party seeking damages makes a claim against the City or brings a claim against the City based on vicarious liability or non-delegable duty.

11.1.1. In the event that a notice of claim is served on the City or litigation is commenced against the City for which Licensee has a duty to indemnify and defend the City pursuant to this Agreement, the City must tender the defense of the litigation to Licensee. Licensee shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Licensee (and, where such terms directly obligate or affect the City, acceptable to the City). City may retain counsel to assist in the defense, at City's sole cost and expense. Licensee must consult with the City while conducting its defense of the City and must keep the Surprise City Attorney's Office informed of the status and progress of all litigation involving the City that has been tendered to Licensee or its insurance carrier.

11.1.2. The parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the City and provide copies of all accident reports, incident reports, statements or other documents that are relevant to the claims, demands or lawsuits or which may lead to the discovery of relevant materials or information, in the possession of the other party, its employees, representatives, contractors, and/or others.

11.2. Subject to any privilege and/or confidentiality legal protections, both parties agree to make their employees, representatives, and contractors available to the other party to gather any relevant information relating to an incident from which any claim, demand, or lawsuit arises.

- 11.3. It is the purpose of this Section to provide maximum indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by Licensee against any and all claims, demands or lawsuits. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose either from City's sole negligence or intentional acts or that the City was comparatively at fault for the damages. Only in this event may Licensee then commence an action against the City for damages related to that portion judicially determined to be City's fault.
- 11.4. The provisions of this Section shall not be dependent or conditioned upon the validity of this Agreement, but shall be and remain a binding right and obligation of the City and Licensee, even if part or all of this Agreement is declared null and void in a legal or administrative proceeding. It is the intent of Licensee and the City upon the effective date of this Agreement that this Section serves as any such declaration and shall be a binding obligation of and inure to the benefit of Licensee and the City and their respective successors and assigns, if any.
- 11.5. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.
- 11.6. As a condition to City's executing this Agreement, Licensee specifically agrees that to the extent any provision of this Section is not fully enforceable against Licensee for any reason whatsoever, this Section shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

12. INSURANCE

- 12.1. Limits of Insurance. Licensee shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain commercial general liability insurance against claims for bodily injury (including death) or property damage, products/completed operations and personal and advertising injury, which insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of Licensee or its officers, agents, representatives, or employees during all times that this Agreement is in effect. Limits may be attained by a combination of primary and umbrella liability coverage. Licensee shall maintain limits no less than those stated herein for each type of insurance.
- 12.2. General Requirements. Licensee's insurance of the types and amounts required in this Section shall be from companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized or permitted to do business in the State of Arizona.
- 12.2.1. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the City, constitute a material breach of this Agreement and may result in termination of this Agreement.
- 12.2.2. The insurance coverage, except workers' compensation and employer's liability, and professional liability, required by this Agreement, shall include the City, its agents, representatives, directors, officials, and employees, as additional insureds as their interest may appear, and shall specify that insurance afforded Licensee

shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by the City or its employees shall not contribute to the coverages provided by Licensee. This provision and the inclusion of the City as an additional insured shall not be construed as giving rise to responsibility or liability of the City for applicable deductible amounts under such policy(ies).

- 12.2.3. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) for workers' compensation against the City, its representatives, officers, directors, officials and employees for any claims arising out of Licensee's acts, errors, mistakes, omissions, work or service.
- 12.2.4. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of Licensee who shall be solely responsible for the deductible and/or self-insured retention.
- 12.2.5. Upon receipt of notice from its insurer(s), Licensee shall use commercially reasonable efforts to provide the City with thirty (30) days' prior written notice of cancelation of any policy required herein.
- 12.2.6. Upon request, Licensee shall furnish separate certificates and additional insured endorsements for each of Licensee's contractors (and any subcontractors used thereunder). All coverages for Licensee's contractors (and any subcontractors used thereunder) shall be subject to the same limits as required for Licensee.
- 12.2.7. The City reserves the right to periodically review said insurance limits to ensure coverage is based on market and risk requirements throughout the effective term of this Agreement.

12.3. Proof of Insurance – Certificates of Insurance.

- 12.3.1. Upon execution of this Agreement, Licensee shall furnish to the City Certificates of Insurance issued by Licensee's agent or broker, as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates. Such Certificate(s) shall include the blanket additional insured endorsement including the City as an Additional Insured pursuant to Section 12.2.2 and shall be attached as Exhibit C to this Agreement.
- 12.3.2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City five (5) business days prior to the expiration date.
- 12.3.3. All Certificates of Insurance shall identify the policies in effect on behalf of Licensee, their policy period(s), and limits of liability required herein. Coverage shown on the Certificate of Insurance must coincide with the requirements in this Agreement. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance carrier or agent. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this Agreement shall be sent to:

City of Surprise
Attn: Risk Manager
16000 N. Civic Center Plaza
Surprise, AZ 85374

With copy to:
City of Surprise
Attn: City Engineer
16000 N. Civic Center Plaza
Surprise, AZ 85374

- 12.3.4. The City reserves the right to review, within at least ten (10) business days, certified copies of any or all of the herein required insurance policies and/or endorsements. Such policies shall be made available for review in Maricopa County, Arizona. The City shall not be obligated, however, to review same or to advise Licensee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Licensee from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Licensee's obligations under this Agreement.
- 12.4. Required Coverage. Such insurance shall protect Licensee from claims set forth below that may arise out of or result from the operations of Licensee under this Agreement and for which Licensee may be legally liable, whether such operations be by Licensee or by anyone directly employed by Licensee. Coverage under the policy will be at least as broad as ISO forms or equivalent thereof, including but not limited to: severability of interest and waiver of subrogation clauses; claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees; claims for damages insured by usual personal and advertising injury liability coverage; claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; and claims involving contractual liability applicable to Licensee's obligations under the indemnification Section herein.
- 12.5. Commercial General Liability – Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written in the amount of \$2,000,000 limits per occurrence and \$6,000,000 general aggregate in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the ISO Additional Insured form, and shall include coverage for Licensee's completed operations and products.
- 12.6. Worker's Compensation and Employer's Liability. Licensee shall maintain Worker's Compensation insurance in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance with a limit of \$1 million for each accident, \$1 million disease coverage for each employee, and \$1 million disease policy limit.
- 12.7. Automobile Liability. If Licensee owns and/or operates vehicles in Arizona, Licensee shall maintain Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1 million each accident covering all owned, hired, and non-owned vehicles assigned to or used in performance of Licensee's work. Any combination between automobile liability and excess/umbrella liability amounting to a minimum of \$5 million per occurrence in coverage will be acceptable. Coverage shall be at least as broad as ISO policy form or equivalent.
- 12.8. The City reserves the right to require additional insurance coverages and/or increase any minimum coverages herein at any time with written notice to Licensee.

13. LIMITATION OF LIABILITY

- 13.1. The City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operations of Licensee's Fiber Optic Network or the provision of services, or for any damages arising out of or materially related to Licensee's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the City its officers, agents, elected or appointed officials, employees, departments, boards and commissions.
- 13.2. Licensee also agrees that it shall have no recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the City because of the enforcement of this Agreement.
- 13.3. Licensee shall assume the risk of, and hereby relinquishes any claim against the City in connection with any final, non-appealable determination by a court of competent jurisdiction that the City lacked the current statutory authority under Arizona law to issue this Agreement.

14. WARRANTY

- 14.1. The issuance of a license, permit or other authorization by the City is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.
- 14.2. LICENSEE ACKNOWLEDGES AND AGREES THAT CITY DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS ROW OR THE PREMISES SURROUNDING THE SAME, AND LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY THE ROW SUBJECT TO THE PROVISIONS OF THIS AGREEMENT.

15. SURVIVAL OF LIABILITY

All obligations of Licensee and the City hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement.

16. PUBLIC EMERGENCY

- 16.1. The City shall have the right, because of a public emergency, to sever, disrupt, relocate, remove, tear out, dig-up or otherwise damage and/or destroy Licensee's Facilities of without any prior notice to Licensee, if the action is deemed reasonably necessary by the City. In such event, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), or Licensee's customers for any harm so caused to them or Licensee's Facilities. To the extent possible under the circumstances, City will consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical under the circumstances damage to and disruption of operation of the Fiber Optic Networks. City shall inform Licensee of any actions taken. Licensee shall be responsible for repair at its sole expense of any of Licensee's Facilities damaged pursuant to any such action taken by City related to the public emergency.

- 16.2. If any of Licensee's Facilities or activities present any immediate hazard or impediment to the public, to the City, to other City improvements or activities within or outside of the Route, or to City's ability to safely and conveniently operate the ROW or perform City's utility, public safety, and/or other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with the City's request to secure the route area, and otherwise cooperate with the City at no expense to the City to remove any such hazard or impediment.
- 16.3. In the event of a public emergency, neither the City nor any agent, contractor or employee of the City shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), Licensee's customers, or other third parties for any harm so caused to them by the reasonable actions of the City or its agents, contractors or employees in reasonably responding to such public emergency. Where possible, the City will consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or Licensee's Facilities involved.

17. NOTICE

- 17.1. All notices, which shall or may be given pursuant to this Agreement, shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, addressed as follows:

THE CITY

City of Surprise
Attn: City Engineer
16000 N. Civic Center Plaza
Surprise, AZ 85374
Phone: (623) 222-6150

LICENSEE

Accipiter Communications, Inc
Attn: Legal
1601 29th St., Ste 1292 (PMB 1042)
Boulder, CO 80301
Phone: (303) 725-8815

With copy to:

Surprise City Attorney's Office
Attn: City Attorney
16000 N. Civic Center Plaza
Surprise, AZ 85374
Phone: (623) 222-1120
Fax: (623)-222-1101

With copy to:

Accipiter Communications, Inc.
Attn: Finance
1601 29th St., Ste 1292 (PMB 1042)
Boulder, CO 80301
Phone: (303) 236-7299
Email: tim.gentry@wyverd.com

- 17.2. Notices shall be deemed sufficiently given and served upon the other party the first business day after deposit if sent by private delivery systems and the fifth business day after deposit in U.S. Mail.
- 17.3. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above. Licensee shall notify the City within ten (10) business days of any change in mailing address.

18. TRANSFERABILITY OF LICENSE

- 18.1. This Agreement is personal to Licensee and therefore the rights, privileges and license granted herein shall not be sold, sublet, assigned, conveyed or otherwise transferred, nor

shall any of the rights or privileges herein granted or authorized be leased, assigned, sold, conveyed or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except Licensee, either by act of Licensee or operation of law, without the express written consent of the City, which consent shall not be unreasonably withheld or delayed. Prior to any proposed transfer of any kind becoming final, Licensee shall seek the consent of the City to the proposed transfer. Approval by the City to a transfer does not constitute a waiver or release of any of the rights of the City under the Surprise Municipal Code or this Agreement, whether arising before or after the date of transfer.

- 18.2. The assignee or transferee as approved by the City shall be equally subject to all the obligations and privileges of this Agreement, including any amendments, which will remain in full effect, as if the assignee or transferee were the original Licensee.
- 18.3. Nothing in this Section shall be deemed to prohibit a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of the Licensee through a default of the Licensee in loan obligations, the lender may assume the rights and obligations of the Licensee. The lender may not transfer or change control of the Agreement without submitting the change to the City for consent under this Section. If the lender does continue operation on any basis at any time, it shall be subject to all provisions of the Agreement. No later than three (3) years after assumption of control by the lender, the lender shall apply to the City for the right to continue assumption of control or to transfer the Agreement. Application by the lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the City Council and approval shall not be unreasonably denied or delayed. A "lender" as discussed herein does not include a Licensee, person or corporation or other entity that operates cable television systems or telecommunications systems as a principal or important business. This Section is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the Agreement without City Council review and approval.
- 18.4. Any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this Agreement. The City may, in its sole discretion and in addition to all other lawful remedies available to the City under this Agreement or otherwise, and in any combination, terminate this Agreement, collect any fees owed from Licensee and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive the City's consent. Notwithstanding, the above, transfer or assignment to Provider's financially viable parent, subsidiary, successor, or affiliate under common control, shall not require consent and shall be effective upon written notice to the City.

19. HAZARDOUS SUBSTANCES

- 19.1. Licensee's and its contractors' activities upon or about the ROW shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act 42 U.S.C. §§ 9601, et. seq., the Arizona

Hazardous Waste Management Act, A.R.S. §§ 49-901, et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq., or any other federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

19.1.1. Licensee and/or its contractors shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

19.1.1.1. Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the ROW. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery; or

19.1.1.2. Electric backup batteries.

19.1.2. Licensee and/or its contractors shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by the City.

19.1.3. Licensee and/or its contractors shall not use the ROW in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environment Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this Agreement.

19.1.4. Licensee and/or its contractors shall immediately notify the City of any Toxic Substance at any time discovered or existing upon the ROW. Licensee is not responsible for Toxic Substances that may exist at the ROW if Licensee's contractors (and any subcontractors used thereunder) and/or any other persons using the ROW under this Agreement did not do any of the following:

19.1.4.1. Participate in the Toxic Substance coming to the ROW;

19.1.4.2. Fail to immediately report the Toxic Substance to the City;

19.1.4.3. Knowingly participate in spreading or otherwise disturbing the Toxic Substance; or

19.1.4.4. Knowingly exacerbate the effects of the Toxic Substance or the difficulty or cost of dealing with the Toxic Substance.

19.1.5. Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic Substances containing materials.

19.1.6. Within twenty-four (24) hours after any violation by Licensee and/or by its contractors of this Agreement pertaining to Toxic Substances, Licensee shall give the City notice reporting such violation.

19.1.7. Licensee shall be available to staff employees of any City department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of Licensee's Facilities. The City may contact by telephone the network control center operator at the following phone number 866-236-2824 regarding such problems or complaints, and may use that number in order to reach Licensee at any time for any emergency matter. Licensee shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. Licensee shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence. In addition, Licensee will immediately notify the City if there is a change in the telephone number listed in this Section.

20. MISCELLANEOUS

20.1. Complete Agreement. This Agreement, including all Exhibits which are attached, are hereby incorporated into this Agreement and all of which constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral. This Agreement cannot be modified or amended except in writing signed by both parties.

20.2. Validity. Licensee shall acknowledge that as a condition of acceptance of this Agreement, Licensee was required to be represented throughout the negotiations of the Agreement by its own attorneys and Licensee had the opportunity to consult with its own attorneys about its rights and obligations regarding this Agreement. Licensee has reviewed City's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, Licensee acknowledges and accepts the right and authority of the City to execute this Agreement and to enforce the terms herein.

20.3. Partial Invalidity. If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable, or preempted. Parties agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the City did not have the authority to issue a license to Licensee under A.R.S. § 9-581 to § 9-583, as amended or succeeded, then this Agreement shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this Agreement except for conditions relating to the term of the Agreement and the right of termination. If this Agreement shall be considered a revocable permit as provided herein, Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided therein.

20.4. Time of Essence. Time is of the essence in each and every provision of this Agreement.

- 20.5. Severability. If any provision of this Agreement shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, the invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement and the parties may agree in writing to amend this Agreement to address such invalid or unenforceable provisions; however, if the parties disagree as to the validity or enforceability of such provisions, the Agreement will not be affected to the extent of such disagreement until a court of competent jurisdiction determines otherwise or the parties later agree in writing. In the event either party seeks such judicial declaration or interpretation of any provision herein, neither party will be liable for the other party's attorney's fees, regardless of which party is deemed the successful party.
- 20.6. Headings. The headings contained herein are for convenience only and not intended to define or limit the scope of any provision of this Agreement.
- 20.7. No Partnership. Each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other under this Agreement.
- 20.8. No third-Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. The City shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.
- 20.9. Public Records. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, Licensee acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, Licensee understands that disclosure of some or all of the items subject to this Agreement may be required by law. In the event the City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Licensee, the City agrees to provide Licensee with notice of that request. Within ten (10) days of such notice (which shall reference the 10-day requirement), Licensee must inform the City in writing of any objection by Licensee to the disclosure of the requested information. Failure by Licensee to object timely will waive Licensee's ability to object under this section and will waive any remedy against the City for disclosure. In the event Licensee objects to disclosure within the time specified, Licensee agrees to handle all aspects related to the request including properly communicating with the requestor and timely responding with information. This provision will survive the termination of this Agreement.
- 20.10. Force Majeure. With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon Licensee, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God; war; terrorist attack; civil disturbance, strike or other labor unrest; plague; pandemics; epidemics; quarantine orders or directives by a governmental entity; outbreaks of infectious disease or other public health crisis, including without limitation, quarantine or other employee restrictions; or other events, the occurrence of which was not reasonably foreseeable by Licensee and is beyond its reasonable control.

20.10.1. Government Directives. Any delay or nonperformance of any provision of or obligation under this Agreement caused by a federal, state, and/or local directive, order, or similar requirement, including without limitation, the COVID-19 pandemic and related quarantine orders, shall not constitute a breach of this Agreement or any portion thereof, provided that one party has provided the other party with at least seventy-two (72) hours' written notice of such delay or nonperformance.

20.11. Attorneys' Fees. Except as described herein, in the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party is entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will accrue on the commencement of such action and will be enforced whether or not such action is prosecuted through judgment.

20.12. Non-Waiver. Licensee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date the last party signs.

City of Surprise
An Arizona municipal corporation

Licensee

By: _____
Skip Hall, Mayor

By: _____

Date: _____

Print Name: Travis Nance

ATTEST:

Title: COO

By: _____
Sherry Aguilar, City Clerk

Date: 9/19/24

APPROVED AS TO FORM:

By: _____
City Attorney's Office

EXHIBIT A – The Route

DRAFT



CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024

Contact Person: Trever Fleetham, PLANNER
SENIOR

Submitting Department: Community Development District: District 5

Staff Recommendations:

Consent: No

Regular: No

Public Hearing: Yes

Report/Discussion: No

Agenda Wording:

Consideration and action pertaining to a rezone from Rural Residential (RR) to Light Industrial (I-1) for approximately 0.65 acres generally located west of Litchfield Road and north of Waddell Road; Ordinance # 2024-31.

Motion:

I move to approve Ordinance #2024-31.

Background:

The City is requesting to rezone approximately 28,320 sq. ft. (0.65 acres), generally located west and north of the northwest corner of Waddell Road and Litchfield Road, from RR to I-1. The request aims to address setback issues discovered during the associated Site Plan review, case FS23-0172. If the rezone is approved, a Parcel Assemblage will also be done for the three (3) subject parcels of that case, 501-17-025E, 501-17-025H (20' wide strip), and 501-17-025J (5' wide strip), to combine them into one (1) parcel with the same zoning designation.

Objective Analysis:

The requested rezone will allow for the associated parcels to be assembled and address setback issues with the related Site Plan.

Policy Compliant:

The Property is located within the Neighborhood Character Area of the Surprise General Plan 2035. The requested rezone from Rural Residential (RR) to Light Industrial (I-1) would typically not be considered compliant with the Neighborhood Character Area. However, the purpose of the request is to provide consistency with the primary parcel of the overall development, which has been zoned I-1 since before the adoption of the Surprise General Plan 2035.

Financial Impact:

While this item does not have an immediate or direct financial impact, ongoing development activity in the city will inevitably have a future financial impact as additional resources are needed to provide city services.

Budget Impact:

There is no anticipated budget impact related to this item.

FTE Impact:

This item does not have an impact on current staffing levels.

ATTACHMENTS:

1. 00 - FS24-1017 Head Right Rezone - Staff Report 100124 CC (1)
 2. 01 - FS24-1017 Head Right Rezone - Vicinity Map
 3. 02 - FS24-1017 Head Right Rezone - Existing Zoning Map
 4. 03 - FS24-1017 Head Right Rezone - Proposed Zoning Map
 5. 04 - FS24-1017 Head Right Rezone - Narrative Rezone Document
 6. 05 - FS24-1017 Head Right Rezone - Citizen Participation Report_Redacted
 7. 06 - FS24-1017 Head Right Rezone - Affidavit of Site Posting
 8. 07 - FS24-1017 Head Right Rezone - Ordinance(1)
 9. FS24-1017 Head Right Rezone- Powerpoint
-

Case: **FS24-1017**

Project Name: Head Right Rezone

Council District: 5 – Palm

Meeting Date: **October 1, 2024**

Planner: Trever Fleetham, AICP

Owner: Henry & Patricia Conklin

Applicant: City of Surprise

Request: Rezone from Rural Residential (RR) to Light Industrial (I-1).

Site Location: Generally located west of Litchfield Road and north of Waddell Road.

Site Size: 0.65 acres (approx.)

General Plan Conformance: The proposal is consistent with the Surprise General Plan 2035.

Support/Opposition: See attached Citizen Participation Report

Commission

Recommendation: The Planning & Zoning Commission considered this item on September 19, 2024, and recommended that the City Council approve this rezone.

30
31
32
33
34
35
36
37
38
39
40

41
42

43
44

45
46

47
48
49
50

51
52

53
54
55
56
57
58
59
60
61

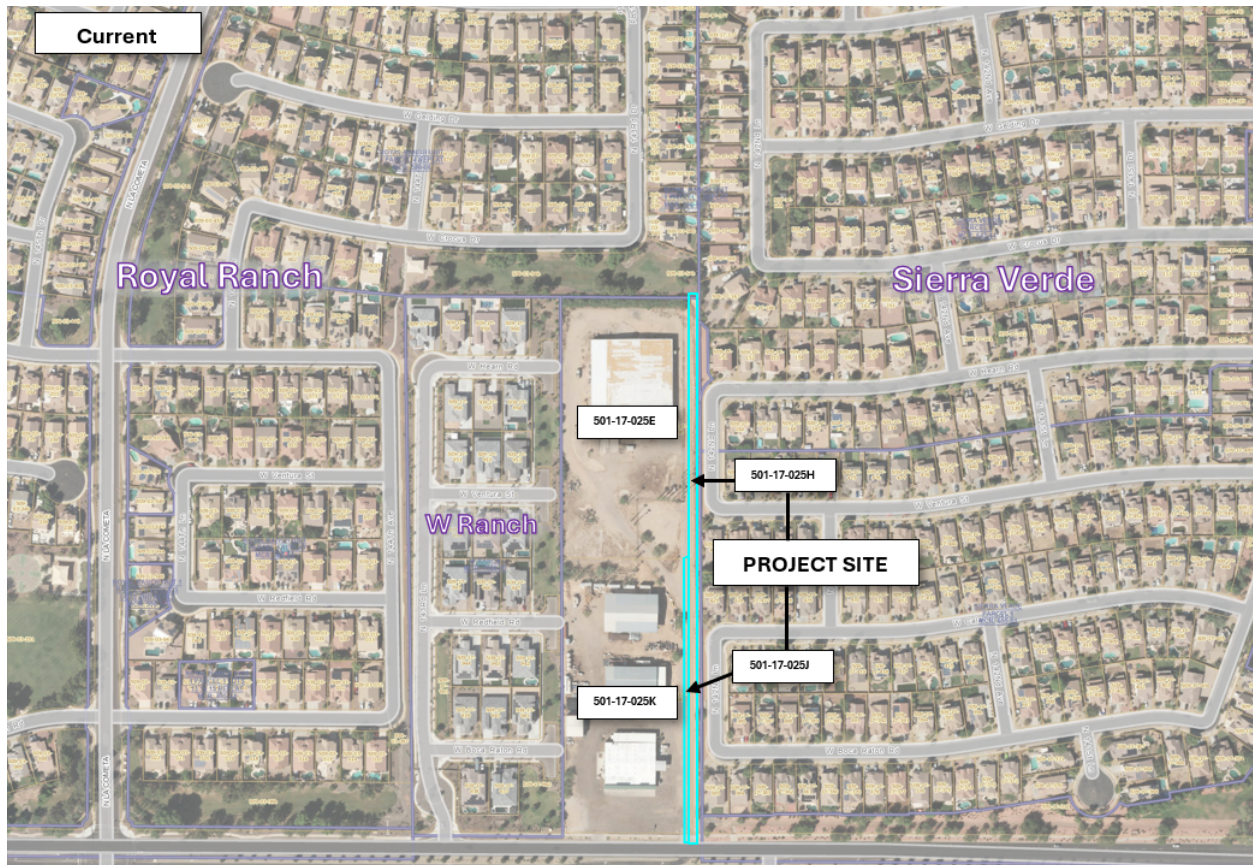
Background:

Neighborhood Meeting Summary:

The meeting was advertised pursuant to the requirements of the LDO, including legal ads, site postings, and property owner mailers. See the attached Citizen Participation Report for a detailed summary of the meeting.

Analysis and Discussion:

The subject property includes parcels 501-17-025H and 501-17-025J, which are 20-foot wide and 5-foot wide (respectively) sliver parcels. These two parcels are primarily utilized for access and utilities and are under the same ownership as the adjacent parcel 501-17-025E. The three parcels are part of a development proposal for Head Right Brewery, the Site Plan for which is being reviewed under case FS24-0172.



The City is requesting to rezone parcel 501-17-025H (20' wide strip), a 25,100 sq. ft. (0.58 acre) original lot zoned RR, and 501-17-025J (5' wide strip), an approximately 3,220 sq. ft. (0.07 acre) strip informally split off of 501-17-025K (Dale's Town and Country) through the County, zoned RR, from RR to I-1. In totality, the request would rezone approximately 28,320 sq. ft. (0.65 acres), generally located west and north of the northwest corner of Waddell Road and Litchfield Road, from RR to I-1.

The request aims to address setback issues discovered during the associated Site Plan review, case FS24-0172. If the rezone is approved, a Parcel Assemblage will also be done for the three (3) subject parcels of that case, 501-17-025E, 501-17-025H (20' wide strip), and 501-17-025J (5' wide strip), to combine them into one (1) parcel. This could not be completed unless the properties involved all share the same zoning designation.

83 The existing and proposed zonings are shown below.
84

Existing Zoning



I-1	PAD (Royal Ranch)	PAD (Sierra Verde)
RR/I-1	RR	PAD (Sierra Verde)
RR	PAD (Marley Park)	PAD (Sierra Verde)

Proposed Zoning



Access

The subject parcels provide access to the Head Right Brewery site, 501-17-025E, from Waddell Road.

Utility and Services Table:

Electric:	APS
Water:	City of Surprise
Wastewater:	City of Surprise
Refuse:	City of Surprise
Natural Gas:	Southwest Gas
Schools:	Dysart Unified School District

Conformance with Adopted Plans:

The Property is located within the Neighborhood Character Area of the Surprise General Plan 2035. The requested rezone from Rural Residential (RR) to Light Industrial (I-1) would typically not be considered compliant with the Neighborhood Character Area. However, the purpose of the request is to provide consistency with the primary parcel of the overall development, which has been zoned I-1 since before the adoption of the Surprise General Plan 2035.

Summary:

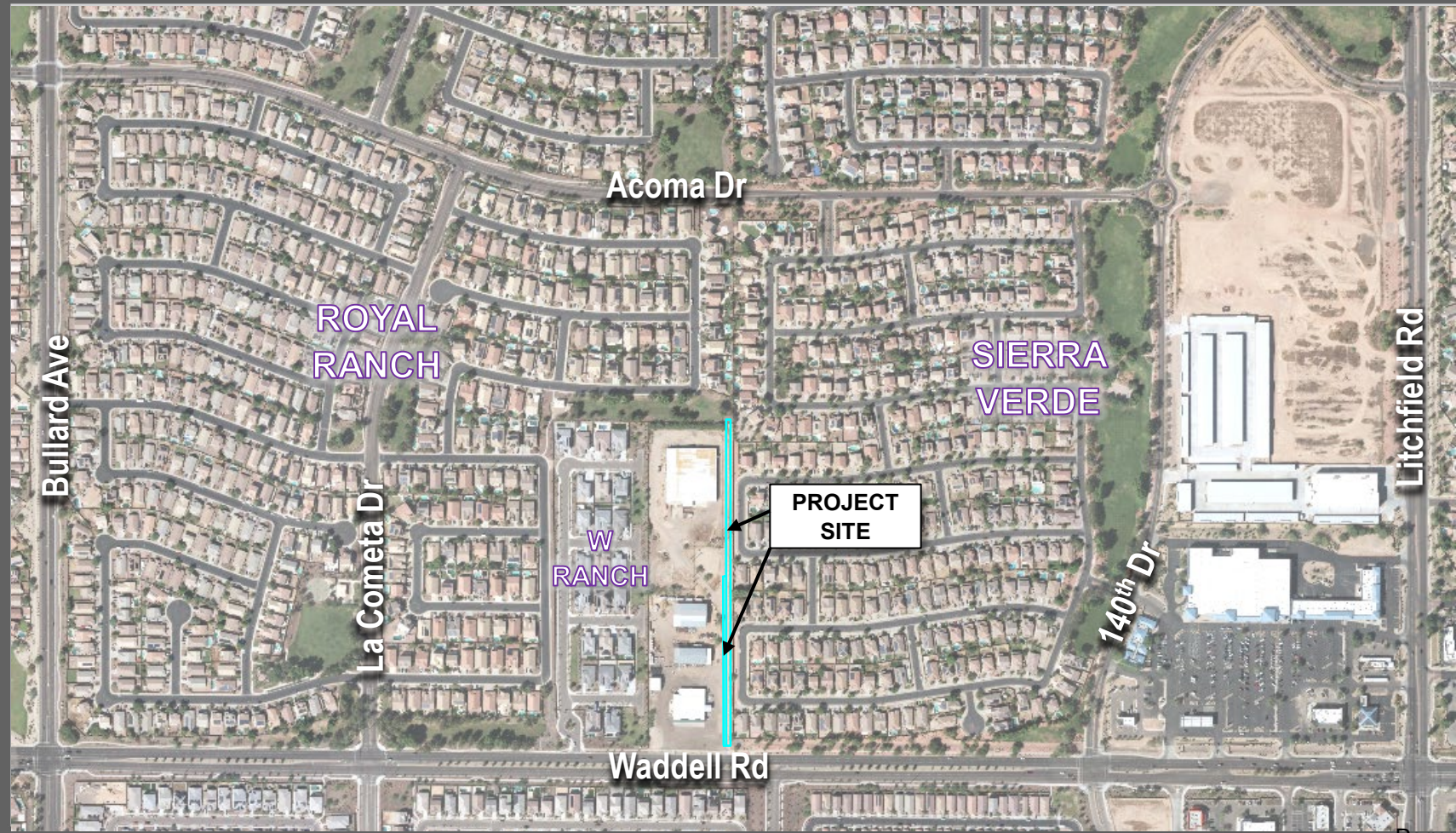
The proposed rezone from Rural Residential (RR) to Light Industrial (I-1) will address setback issues for the associated Site Plan and allow the parcels included in the Head Right Brewery development to be assembled via a Parcel Assemblage.

Commission Recommendation:

The Planning & Zoning Commission considered this item on September 19, 2024, and recommended that City Council approve this rezone.

Attachments:

- 01 Vicinity Map
- 02 Existing Zoning Map
- 03 Proposed Zoning Map
- 04 Narrative
- 05 Citizen Participation Report
- 06 Affidavit of Site Posting
- 07 Ordinance
- PPT



VICINITY MAP



EXISTING ZONING MAP



PROPOSED ZONING MAP

Project Narrative

Head Right Rezone

FS24-1017

NWC Waddell Rd & 142nd Ln
APN: 501-17-025H & 501-17-025J

Prepared Date:
August 1, 2024

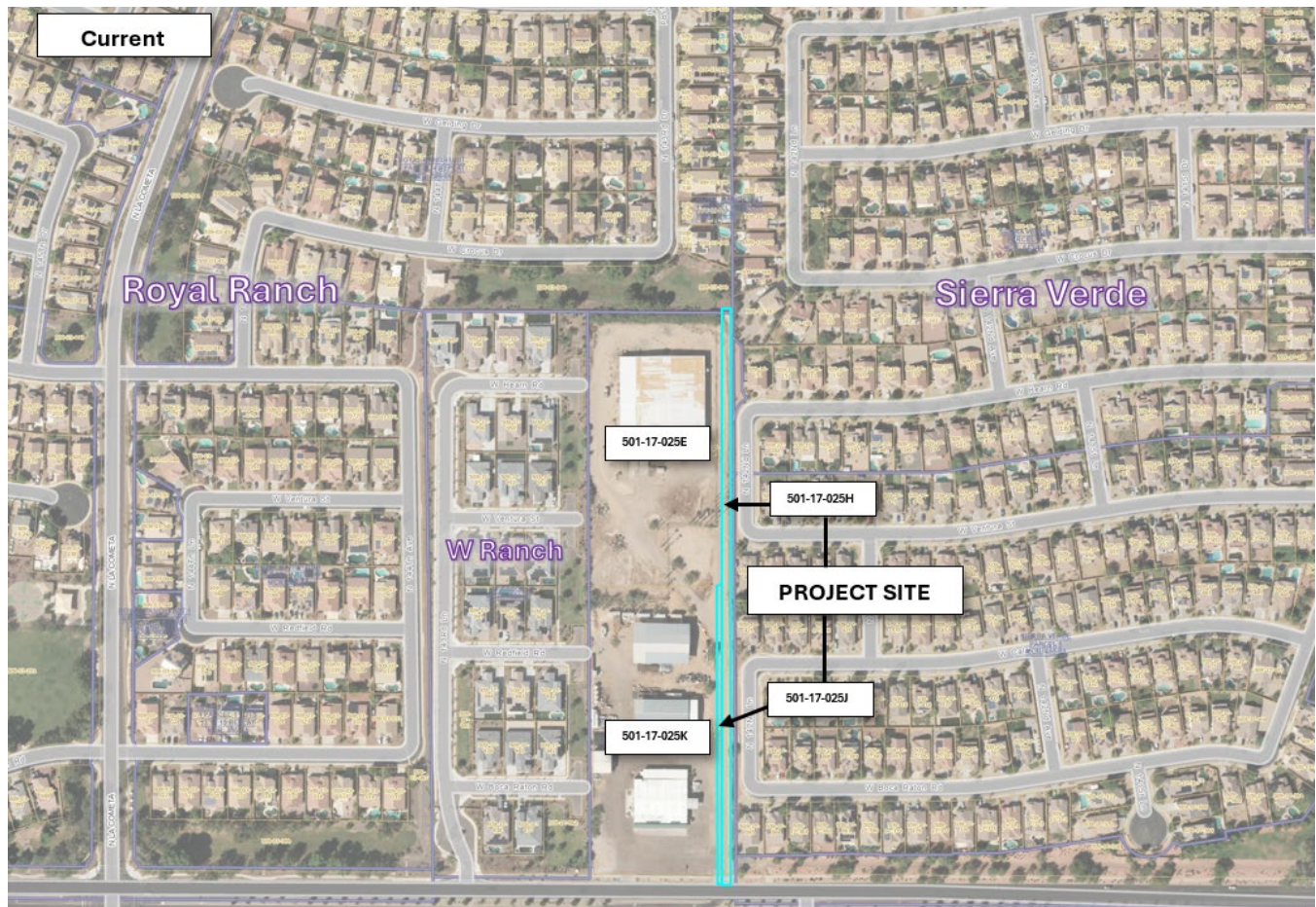
Prepared By:
City of Surprise
Community Development Department
16000 N. Civic Center Plaza
Surprise, AZ 85374
Phone: 623-222-3000
Email: trever.fleetham@surpriseaz.gov

Purpose

The purpose of this application is to seek the rezone of approximately 0.65 acres generally located west of Litchfield Road and north of Waddell Road. The project site is currently zoned Rural Residential (RR). The City is requesting the zoning be changed to Light Industrial (I-1) to match the zoning of the adjacent, associated parcel.

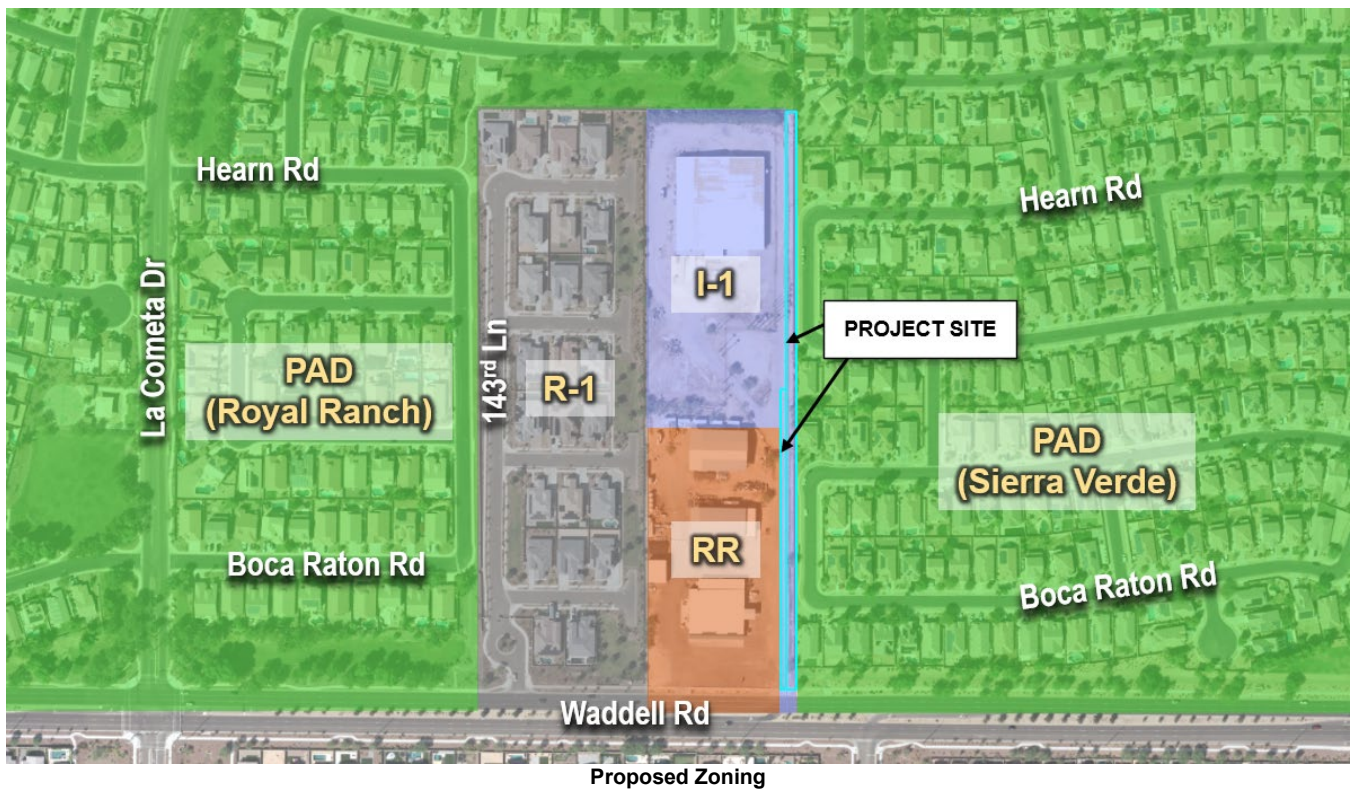
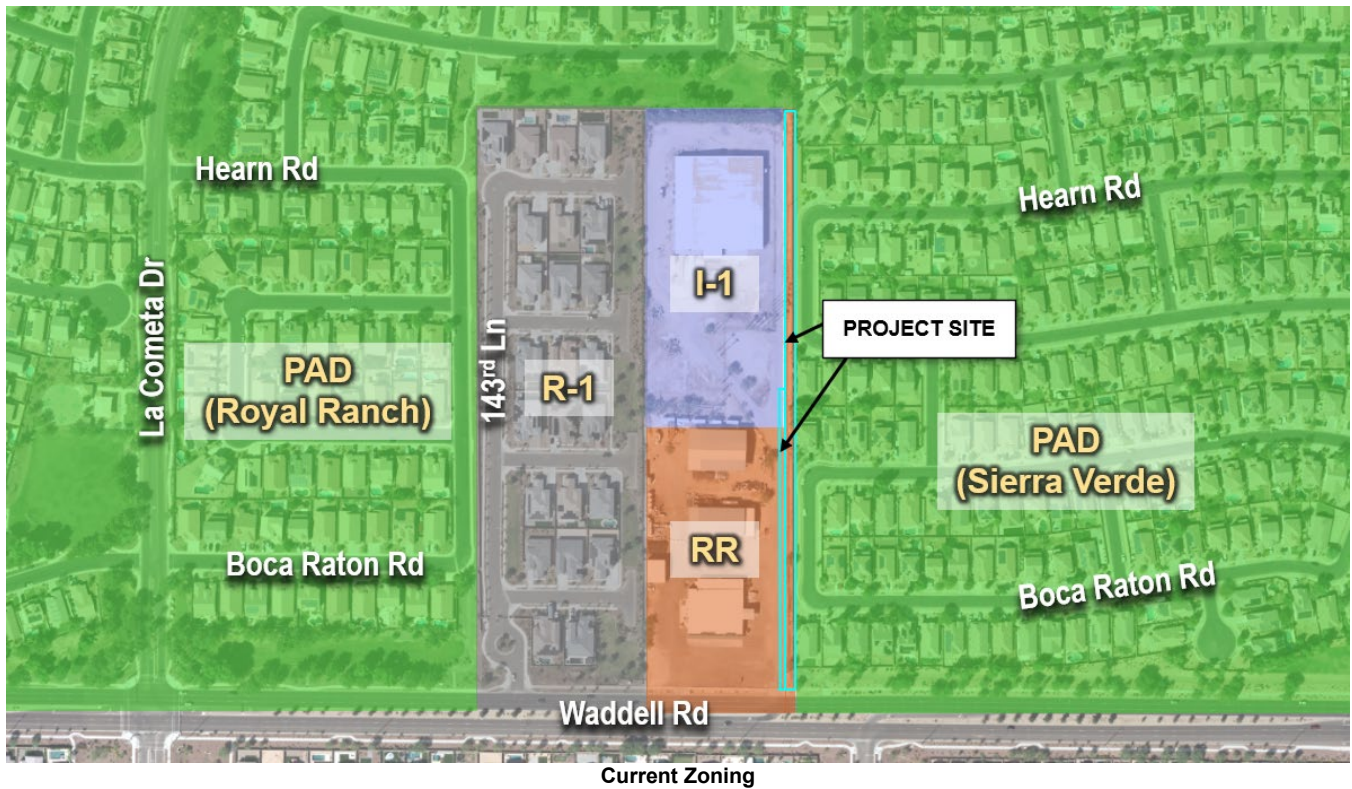
Project Overview

The subject property includes parcels 501-17-025H and 501-17-025J, which are 20-foot wide and 5-foot wide (respectively) sliver parcels. These two parcels are primarily utilized for access and utilities and are under the same ownership as the adjacent parcel 501-17-025E. The three parcels are part of a development proposal for Head Right Brewery, the Site Plan for which is being reviewed under case FS23-0172.



Request

The City is requesting to rezone parcel 501-17-025H (20' wide strip), a 25,100 sq. ft. (0.58 acre) original lot zoned RR, and 501-17-025J (5' wide strip), an approximately 3,220 sq. ft. (0.07 acre) strip informally split off of 501-17-025K (Dale's Town and Country) through the County, zoned RR, from RR to I-1. In totality, the request would rezone approximately 28,320 sq. ft. (0.65 acres), generally located west and north of the northwest corner of Waddell Road and Litchfield Road, from RR to I-1.



The request aims to address setback issues discovered during the associated Site Plan review, case FS23-0172. If the rezone is approved, a Parcel Assemblage will also be done for the three (3) subject

parcels of that case, 501-17-025E, 501-17-025H (20' wide strip), and 501-17-025J (5' wide strip), to combine them into one (1) parcel. This could not be completed unless the properties involved all share the same zoning designation.

General Plan

The Property is located within the Neighborhood Character Area of the Surprise General Plan 2035. The requested rezone from Rural Residential (RR) to Light Industrial (I-1) would typically not be considered compliant with the Neighborhood Character Area. However, the purpose of the request is to provide consistency with the primary parcel of the overall development, which has been zoned I-1 since before the adoption of the Surprise General Plan 2035.



Citizen Participation Report

FS24-1017 Head Right Rezone

August 30, 2024

PROJECT DESCRIPTION

The City is requesting to rezone approximately 28,320 sq. ft. (0.65 acres), generally located west and north of the northwest corner of Waddell Road and Litchfield Road, from RR to I-1. The request aims to address setback issues discovered during the associated Site Plan review, case FS24-0172. If the rezone is approved, a Parcel Assemblage will also be done for the three (3) subject parcels of that case, 501-17-025E, 501-17-025H (20' wide strip), and 501-17-025J (5' wide strip), to combine them into one (1) parcel with the same zoning designation.

ADVERTISING

The meeting was advertised pursuant to the requirements of the Land Development Ordinance (LDO) and state statute. Legal advertisements were published in the Surprise Independent on Wednesday, August 7, 2024, and the Daily Independent on Friday, August 9, 2024, and published on the City website. Mailers were sent to the property owners within 300 feet of the subject parcels on August 13, 2024. The site was also posted on August 14, 2024.

MEETING DESCRIPTION & ATTENDANCE

The meeting was held at City Hall in the Community Room on August 29, 2024, at 6 p.m. There were three (3) members of the public in attendance.

FEEDBACK

Staff provided an overview presentation of the proposed rezone and fielded minimal questions from the attendees. Those in attendance did not provide any specific feedback or opposition to the proposal.



Neighborhood Meeting – Sign In Sheet

	Name	Address	Email
1	Danella & Gary Fogg		
2	DAWE DEA		
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			

AFFIDAVIT OF POSTING

Case Number FS24-1017
Project Name: HEAD RIGHT BREWERY REZONE
Project Location: 14020 N. 143RD AVE.
Date Site Posted: 8/14/24

In order to assist in providing adequate notice to interested parties, the applicant for any type of public hearing shall erect two (2) signs providing notice of the date, time, and place of the scheduled hearing(s). These signs must be erected not less than fifteen (15) calendar days prior to the date of the first hearing. The signs shall also include the description of the request as contained on the formal development application. The size and format of this sign shall meet requirements established by the city (see example).

Such notice shall be clearly legible and placed at a prominent location on the site, generally adjacent and perpendicular to the public right-of-way. It shall be the responsibility of the applicant to erect and to maintain the sign on the subject property, as well as the information on the sign, until final disposition of the case.

I confirm that the site has been posted as required, for the case noted above. Photographs of the site posting, and any subsequent changes/updates made to the sign, have also been submitted.

[Signature]
Owner/Applicant Signature

8/14/24
Date

This instrument was acknowledged before me this 14th day of August,
2024 by Trever Fleetham

Lari Beth Kirkendall
Notary Public

My Commission Expires: 10/8/2027



Notice of Public Hearing City of Surprise

Neighborhood Meeting
Date: August 29, 2024
Time: 6:00 p.m.

Location: Surprise City Hall
Community Room
16000 N. Civic Center Plz
Surprise, AZ 85374

Planning and Zoning
Date: September 19, 2024
Time: 6:00 p.m.

Location: Surprise City Hall
Council Chambers
16000 N. Civic Center Plz
Surprise, AZ 85374

City Council
Date: October 1, 2024
Time: 6:00 p.m.

Location: Surprise City Hall
Council Chambers
16000 N. Civic Center Plz
Surprise, AZ 85374

A rezone of approximately 0.65 acres generally located
west of Litchfield Road and north of Waddell Road from
Rural Residential (RR) to Light Industrial (I-1).

Case # FS24-1017



For more information, call: 623 - 222 - 3011
Surpriseaz.gov

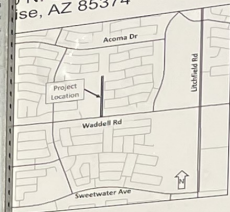
Sorensen & Black
32-256-933
39,400 sq. ft.
ON 4.9 ACRES

Notice of Public Hearing City of Surprise

Neighborhood Meeting
Date: August 29, 2024
Time: 6:00 p.m.
Location: Surprise City Hall
Council Chambers
16000 N. Civic Center Plz
Surprise, AZ 85374

Planning and Zoning
Date: September 19, 2024
Time: 6:00 p.m.
Location: Surprise City Hall
Council Chambers
16000 N. Civic Center Plz
Surprise, AZ 85374

City Council
Date: October 1, 2024
Time: 6:00 p.m.
Location: Surprise City Hall
Council Chambers
16000 N. Civic Center Plz
Surprise, AZ 85374



A rezone of approximately 0.65 acres generally located west of Litchfield Road and north of Waddell Road from Rural Residential (RR) to Light Industrial (I-1).

Case # FS24-1017

For more information, call: 623 - 222 - 0111
Surpriseaz.gov

PREMIUM DOG FOOD
AND
GROOMING

FARMER'S MARKET
SUNDAYS 8-12

ORDINANCE # 2024-31

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING A REZONE FROM RURAL RESIDENTIAL (RR) TO LIGHT INDUSTRIAL (I-1) FOR APPROXIMATELY 0.65 ACRES GENERALLY LOCATED WEST OF LITCHFIELD ROAD AND NORTH OF WADDELL ROAD.

WHEREAS, this Ordinance was properly noticed for public hearing, and the necessary hearings and opportunity for public input were completed;

WHEREAS, the subject site is located west of Litchfield Road and north of Waddell Road;

WHEREAS, the subject site is approximately 0.65 acres and is currently zoned Rural Residential (RR);

WHEREAS, the proposed use of the subject site requires modification of the applicable zoning regulations;

WHEREAS, the proposed Rezone to Light Industrial (I-1) satisfies the requirements set forth in Section 106-7 of the City of Surprise Land Development Ordinance;

WHEREAS, this Rezone is in harmony with the purposes and intent of the zoning ordinance and the Surprise General Plan; and

WHEREAS, on September 19, 2024, the Planning and Zoning Commission recommended approval of the subject zoning request.

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

Section 1. Rezoning. The parcel legally described on Exhibit A and depicted on Exhibit B is rezoned from Rural Residential (RR) to Light Industrial (I-1) subject to the following stipulations:

- a. Development and use of the site shall be consistent with the rezone narrative entitled "Head Right Rezone," received August 1, 2024.
- b. Non-compliance with the stipulations of approval of this case will be treated as a violation in accordance with the applicable provisions of the Surprise Municipal Code.

Section 2. *Amendment of Zoning Map.* The City of Surprise zoning map is herewith amended to reflect the change in districts referred to in Section 1 above.

Section 3. *Codification.* This Ordinance is not of a general nature and shall not be codified.

Section 4. *Repeal of Conflicting Ordinances.* All ordinances or parts of ordinances in conflict with the provisions of this ordinance or any part of the code adopted herein by reference are hereby repealed, upon the effective date of this Ordinance.

Section 5. *Severability.* If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 6. *Effective Date.* This ordinance shall become effective at the time and in the manner prescribed by law.

PASSED AND ADOPTED this _____ day of _____ 2024.

Skip Hall, Mayor

Attest:

Approved as to form:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "A"

DESCRIPTION

REZONE FROM RURAL RESIDENTIAL (RR) TO LIGHT INDUSTRIAL (I-1)

Portions of the Southwest Quarter of Section 9, Township 3 North, Range 1 West of the Gila and Salt River Meridian, City of Surprise, Maricopa County, Arizona described as follows;

SPECIAL WARRANTY DEED 2023-0101489 M.C.R.
PARCEL 1

The east 5 feet of the following described property:
The south 709 feet of the west 307.20 feet of the east half of the southeast quarter of the southwest quarter of Section 9, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.
Except that portion conveyed to the City of Surprise in that Quit Claim Deed recorded as Instrument 2003-1321235 records of said County.

Containing 3,220 sq. ft. or 0.074 acres, more or less.

WARRANTY DEED 1995-0561171 M.C.R.
PARCEL 2

The East 20 feet of the East half of the Southeast quarter of the Southwest quarter of Section 9, Township 3 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.
Except that portion conveyed to the City of Surprise in that Quit Claim Deed recorded as Instrument 2022-0841510 records of said County.

Containing 25,130 sq. ft. or 0.577 acres, more or less.

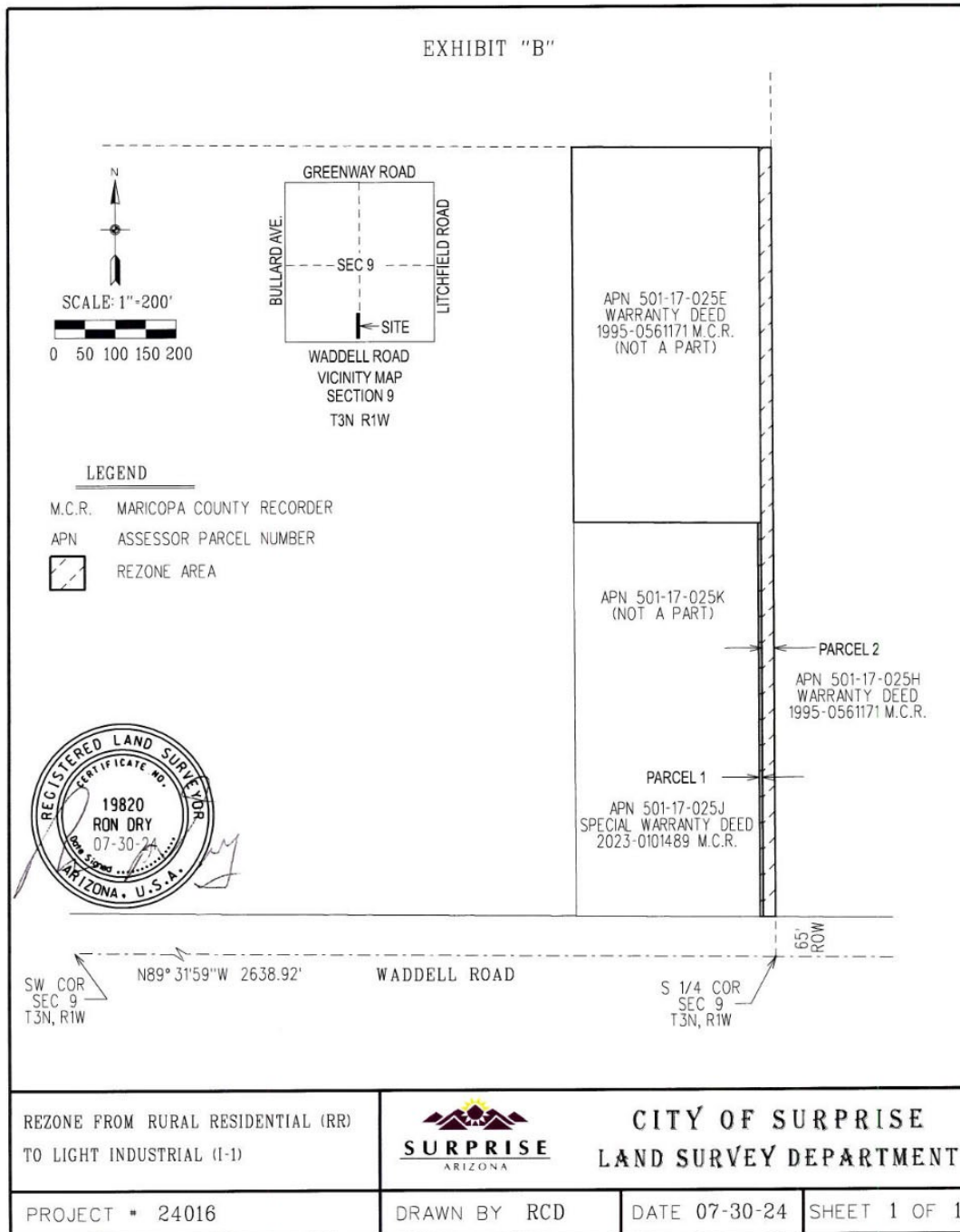
Attached is EXHIBIT "B" and by this reference is made a part hereof.

End of description



EXHIBIT B

DEPICTION OF THE PROPERTY



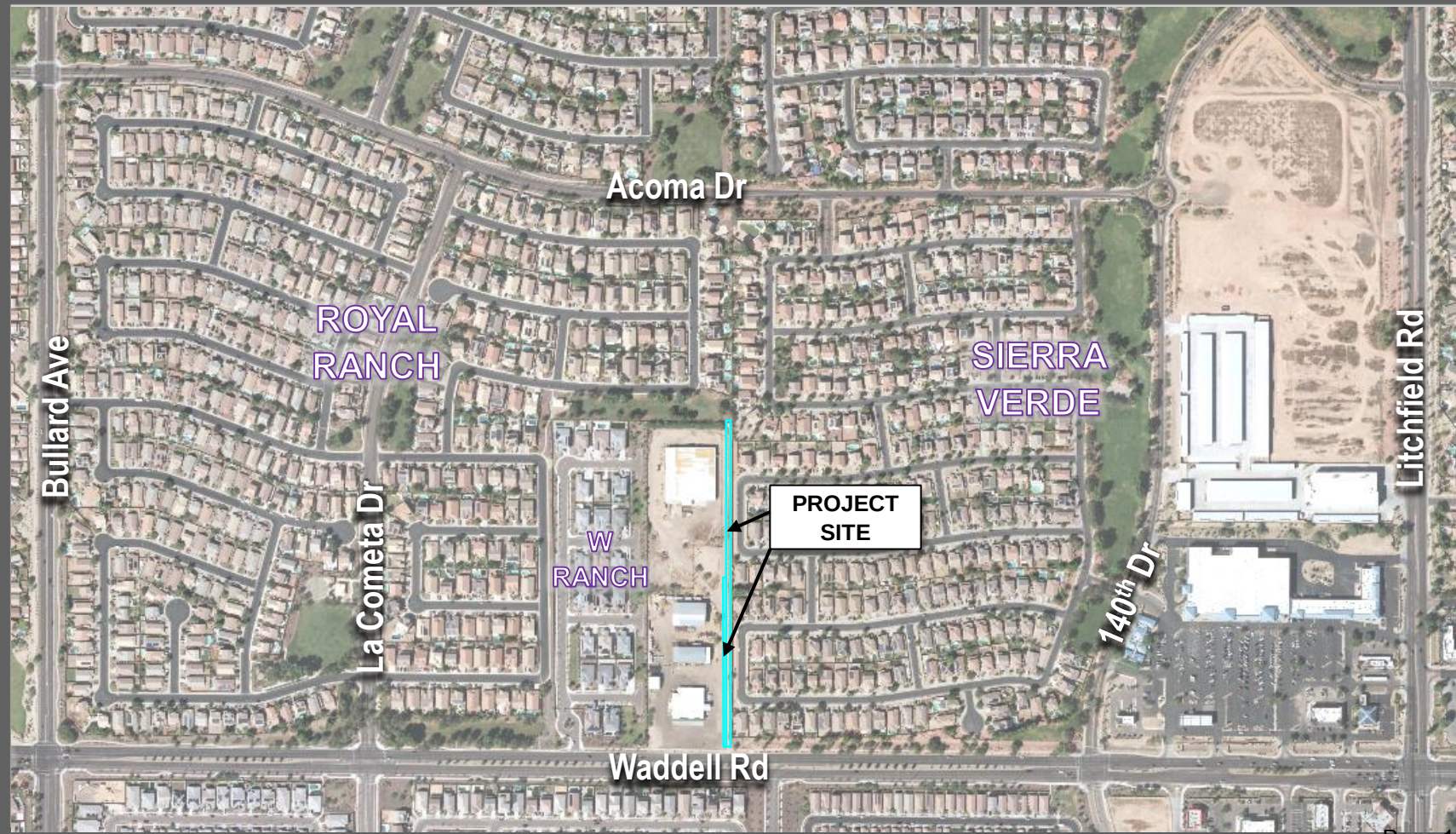
Ordinance No. 2024-31
 RFLS # 9638
 Rev 08/24



FS24-1017

Head Right Rezone

City Council
October 1, 2024



VICINITY MAP



VICINITY MAP



EXISTING ZONING MAP

- Neighborhood
- Employment

PROJECT SITE

GENERAL PLAN LAND USE



PROPOSED ZONING MAP



OUTREACH

Neighborhood Outreach Meeting:

- Date: August 29, 2024 at 6 p.m.
 - Location: Surprise City Hall, Community Room
16000 N. Civic Center Plz
Surprise, AZ 85374
 - Attendance: 3
 - No concerns regarding the subject case
- 



RECOMMENDATION

As of the writing of this staff report, the Planning & Zoning Commission has not yet provided a recommendation. This item is scheduled to be heard by the Commission on September 19, 2024. Their recommendation will be incorporated into the presentation to the City Council.



SURPRISE
ARIZONA

QUESTIONS OR COMMENTS?

Thank You





STIPULATIONS

- a. Development and use of the site shall be consistent with the rezone narrative entitled “Head Right Rezone”, prepared by City Staff dated August 1, 2024.
- b. Non-compliance with the stipulations of approval of this case will be treated as a violation in accordance with the applicable provisions of the Surprise Municipal Code.





CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024

Contact Person: Trever Fleetham, PLANNER
SENIOR

Submitting Department: Community Development District: District 1

Staff Recommendations:

Consent: No	Regular: No	Public Hearing: Yes	Report/Discussion: No
-------------	-------------	---------------------	-----------------------

Agenda Wording:

Presentation, discussion, and public hearing pertaining to the Nobella Annexation, Case FS24-0548.

Motion:

Public hearing only; no action.

Background:

Berry Riddell, LLC, applicant, on behalf of Hawks AZ Land, LLC, property owner, seek annexation of undeveloped land generally located on Jomax Road, east of 163rd Avenue. The annexation proposal includes parcels 503-52-023J, 503-52-023H, 503-52-023G, and a portion of 503-52-018E, encompassing approximately 1.9 acres of unincorporated land. The subject properties are currently zoned Maricopa County Rural-43. If annexed, the property will assume the similar zoning district of Rural Residential (RR) as outlined in the Land Development Ordinance (LDO).

The blank petition was recorded with the Maricopa County Recorder's Office on September 6, 2024. Per the Arizona Revised Statutes (ARS) signatures of property owners may not be collected until 30 days after the recording of the blank petition and a public hearing must be held within the last ten days of the 30-day waiting period. Once the public hearing is held and the 30-day waiting period has expired, state statute requires that an excess of 50% of the landowners' and assessed valuation for all real and personal property sign the petition in order to validate the petition. The statute allows up to one year to obtain the signatures.

Objective Analysis:

Annexation of the property into the City of Surprise would facilitate the development of Jomax Road in conjunction with the Nobella development. The subject area is proposed to be dedicated as right-of-way to the City of Surprise under a separate case for a Map of Dedication. In accordance with Arizona Revised Statutes §9-471(A)(3), a public hearing is required to be held after filing a blank petition within the last ten days of the thirty-day waiting period.

Policy Compliant:

No action is being taken at this time. However, if the City Council moves forward to annex property into

the City limits the annexation would be deemed policy compliant by expanding the range of influence of the City.

Financial Impact:

At this time, there are no financial impacts associated with this item. If the City Council moves forward to annex property into the City limits there could be financial impacts to the City to provide services to an area that the City did not provide services in the past. If the area is annexed, that could result in future development fees, sales and property taxes.

Budget Impact:

At this time, there are no budget impacts associated with this item. If the City Council moves forward to annex property into the City limits there could be minor budget impacts to the City to provide services to an area that the City did not provide services in the past. If the area is annexed, that could result in future development fees, sales and property taxes.

FTE Impact:

At this time, there would be no additional FTEs associated with this item. If the City Council moves forward to annex property into the City limits, staff does not believe any future FTEs would be needed based on the potential annexation.

ATTACHMENTS:

1. 00 - FS24-0548 Nobella Annexation - Blank Petition - Staff Report
 2. 01 - FS24-0548 Nobella Annexation - Recorded Blank Petition
 3. 02 - FS24-0548 Nobella Annexation - Vicinity Map
 4. FS24-0548 Nobella Annexation - Blank Petition Presentation
-

ANNEXATION

REPORT TO THE CITY COUNCIL

Case: FS24-0548

Project Name: Nobella Annexation – Blank Petition

Council District: 1 - Acacia

City Council Date: October 1, 2024

Planner: Trever Fleetham, Planning Manager

Owner: Hawks AZ Land, LLC

Applicant: Berry Riddell, LLC

Request: Annexation Public Hearing

Site Location: Generally located on Jomax Road, east of 163rd Avenue

Site Size: 1.9 acres (approx.)

General Plan

Conformance: The proposal is consistent with the Surprise General Plan 2040

Actions: No Action at the time. City Council public hearing to discuss the annexation proposal.

Project Description:

Berry Riddell, LLC, applicant, on behalf of Hawks AZ Land, LLC, property owner, seek annexation of undeveloped land generally located on Jomax Road, east of 163rd Avenue. The annexation proposal includes parcels 503-52-023J, 503-52-023H, 503-52-023G, and a portion of 503-52-018E, encompassing approximately 1.9 acres of unincorporated land. The subject properties are currently zoned Maricopa County Rural-43. If annexed, the property will assume the similar zoning district of Rural Residential (RR) as outlined in the Land Development Ordinance (LDO).

Arizona Revised Statutes require the filling of a blank annexation petition. The blank petition relating to the subject property was recorded with the Maricopa County Recorder's Office on September 6, 2024 (see attached). Arizona Revised Statutes also require that no signatures be obtained during a 30-day waiting period immediately

43 following the filing of the blank petition, and that a public hearing must be held during the
44 last 10 days of the 30-day waiting period. This requirement is met as the public hearing
45 is being held on day 25 of the 30-day waiting period. Once the public hearing is held and
46 the 30-day waiting period has ended, signatures may be collected. State statute further
47 requires that a petition in writing be signed by the owners of one-half or more in value of
48 the real and personal property and more than one-half of the persons owning real and
49 personal property that would be subject to taxation by the city in the event of annexation,
50 as shown by the last assessment of the property. State statute allows up to one year
51 following the end of the 30-day period to obtain the required number of signatures.
52

53 **Summary:**

54
55 The proposed annexation includes approximately 1.9 acres and requires signatures from
56 representatives of one (1) property owner after the Arizona Revised Statute's required
57 30-day waiting period that concludes 30 days after the recordation of the blank petition.
58 Upon receiving those signatures, the Nobella Annexation will be eligible for annexation
59 by the City of Surprise. The signed petition must be presented and considered by City
60 Council within one (1) year.
61

62 The parcels to be annexed complies with all requirements for size, shape, and contiguity
63 set forth in the Arizona annexation statutes.
64

65 **Attachments:**

66 01 Recorded Blank Petition

67 02 Vicinity Map

68 PPT
69
70
71
72
73
74
75
76
77
78
79

Recording requested by:

AffidavitAnnJom-5-1-1--
Hoyp

City of Surprise
City Clerk's Office
16000 N Civic Center Plaza
Surprise, Arizona 85374

Affidavit Regarding Annexation

Jomax Right-of-Way

AFFIDAVIT REGARDING ANNEXATION

Personally appears before me, Lloyd Abrams, who, first being duly sworn, deposes and says as follows:

1. I make this affidavit of my own personal knowledge.
2. I am the duly appointed Community Development Director of the City of Surprise, Arizona and I am qualified to make this affidavit on behalf of and for the City.
3. I have made a diligent search of the records of the Office of the Clerk of the City of Surprise and of the Office of the Maricopa County Recorder for any annexation filing which might involve territory sought to be annexed in the City of Surprise Annexation Petition, which is filed herewith, with exhibits, in the Office of the Maricopa County Recorder.
4. I hereby affirm, pursuant to A.R.S. §9-471(A)(6), that no part of the territory associated with **Surprise Case #FS24-0548** for which the attached Annexation Petition is filed is already subject to an earlier filing for annexation.

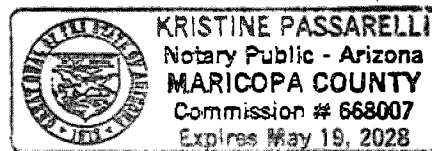
FURTHER AFFIANT SAYETH NOT.



(Lloyd Abrams, Surprise Community Development Director)

SWORN TO AND SUBSCRIBED before me
this 6th day of September 2024


Notary Public for the State of Arizona



My commission expires: May 19, 2028

ANNEXATION PETITION**TO THE HONORABLE MAYOR AND COUNCIL OF THE CITY OF
SURPRISE, ARIZONA:**

We, the undersigned, the owners of one-half or more of the real and personal property that also represents one-half or more of the value of the real and personal property that would be subject to taxation by the City of Surprise in the event of annexation within the territory proposed to be annexed, which is hereafter described, said territory being contiguous to the corporate limits of the City of Surprise, with the exterior boundaries of the territory proposed to be annexed shown on the map attached hereto, marked "Exhibit "B" and made a part hereof, request the City of Surprise to annex the following described territory, provided that the requirements of A.R.S. §9-471, and amendments thereto are fully observed.

The description of the territory proposed to be annexed as part of the Surprise Case #FS24-0548, not already within the present limits of the City of Surprise and located in Maricopa County, Arizona, is as described and attached hereto, marked Exhibit "A" and made part thereof:

DATE	NAME OF PROPERTY OWNER	MAILING ADDRESS	PHONE NO	PARCEL NUMBER OR LEGAL DESCRIPTION

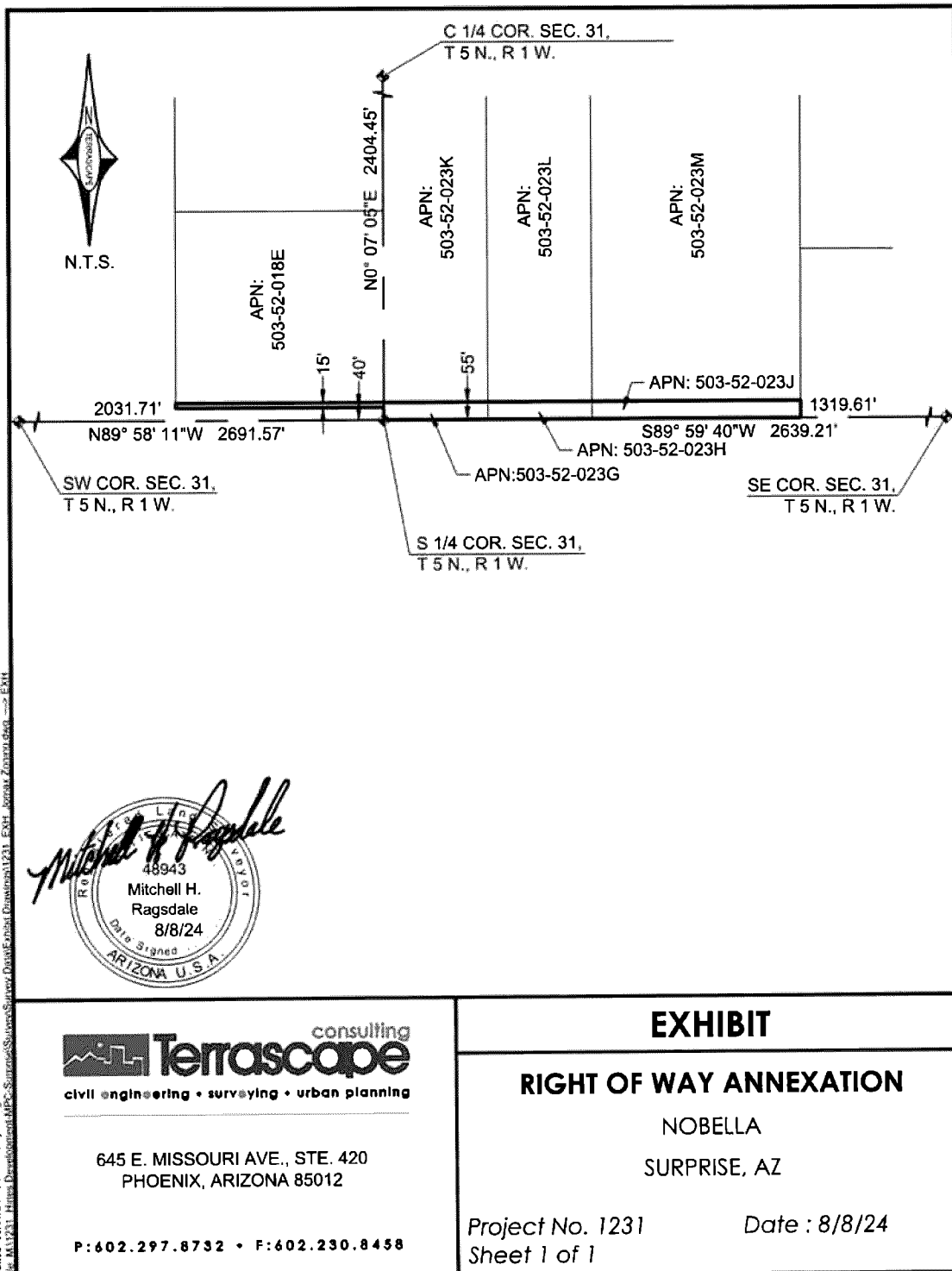
**Legal Description
for
Jomax Right-of-Way
Annexation**

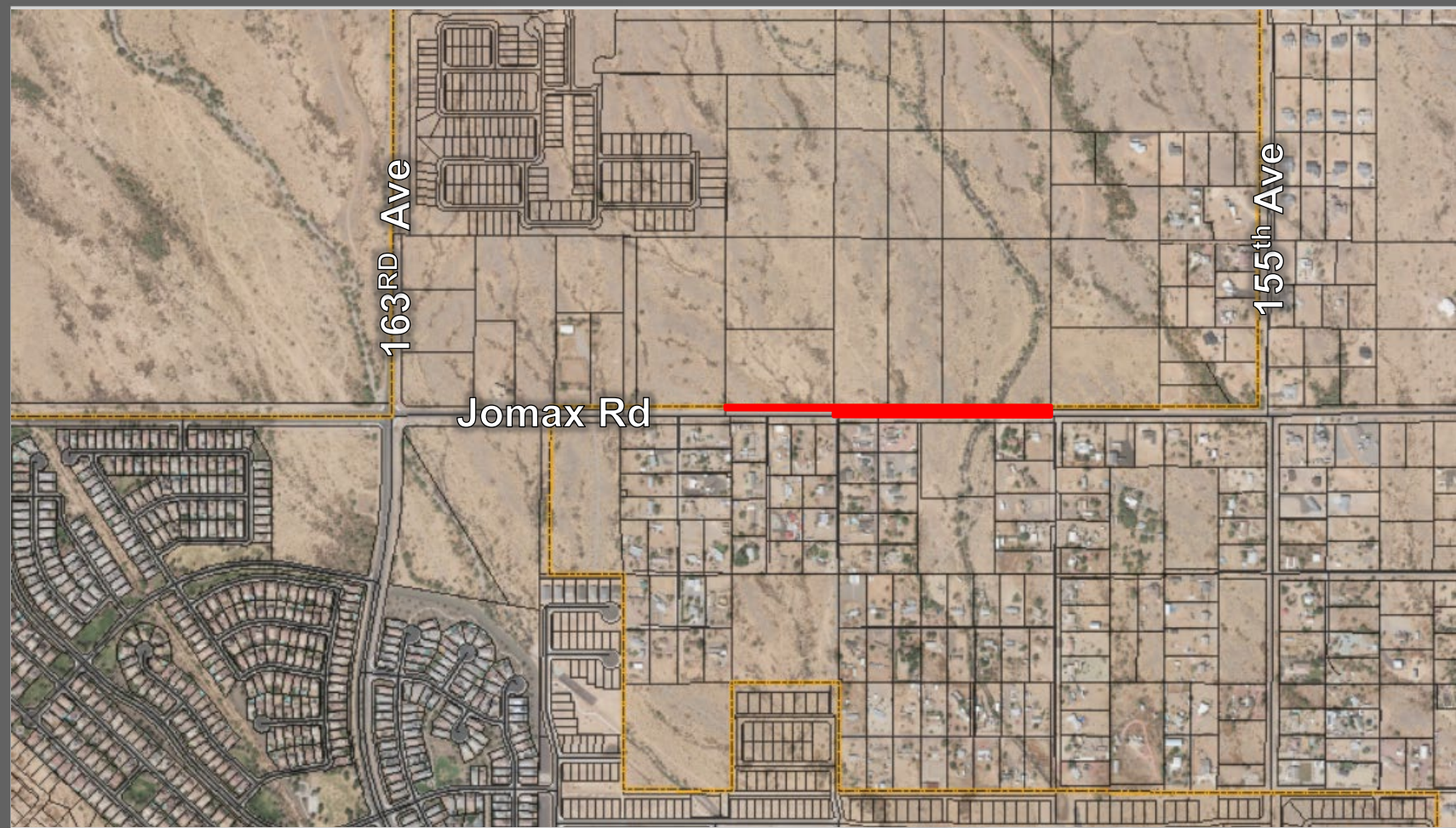
Located in South half of Section 31, Township 5 North, Range 1 West, Gila and Salt River Meridian, Maricopa County, Arizona;

The North 15.00 feet of the south 55.00 feet of the Southeast Quarter of the Southeast Quarter of the Southwest Quarter and;

The South 55.00 feet of the Southwest Quarter of the Southeast Quarter.







163RD Ave

155th Ave

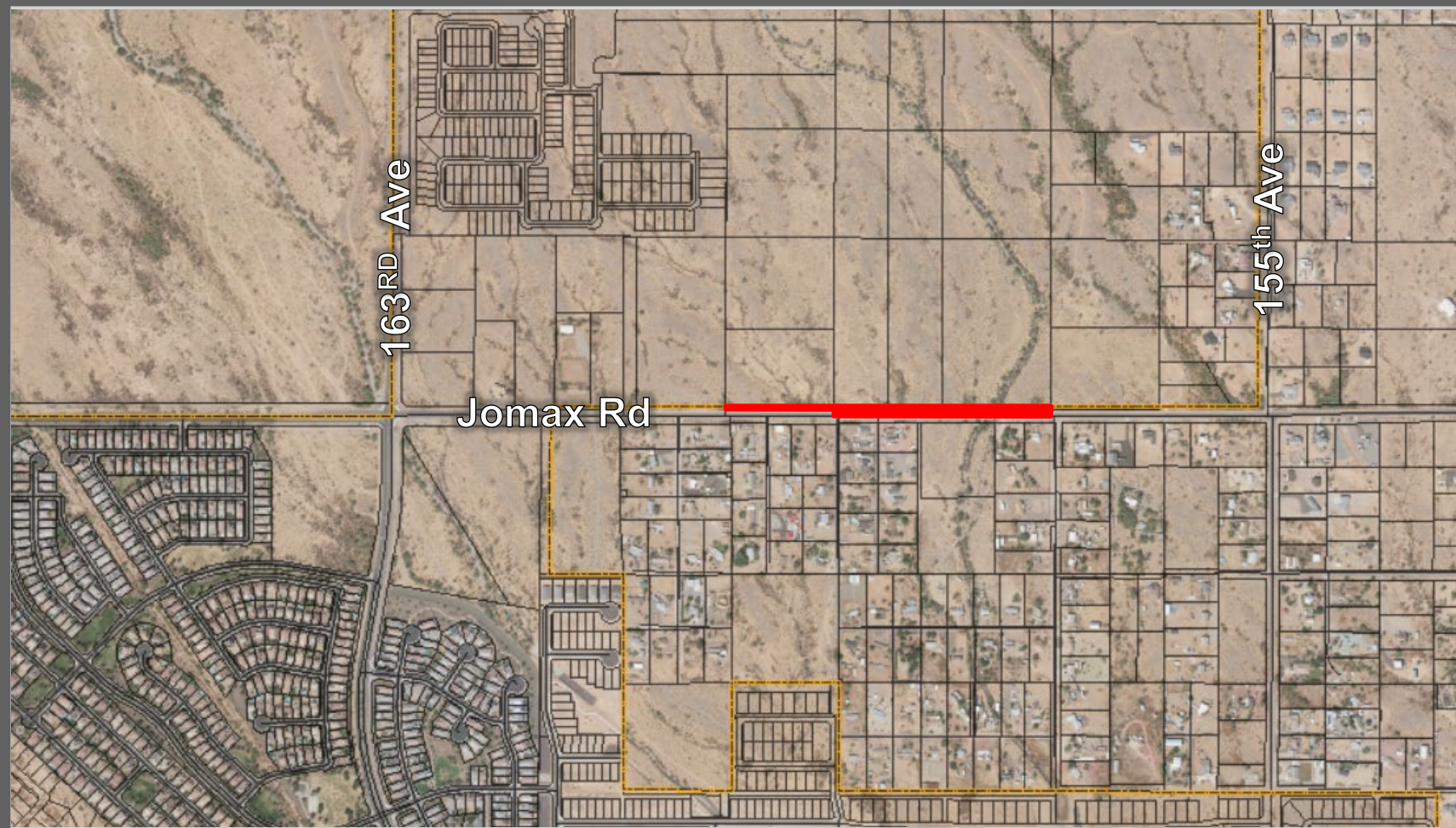
Jomax Rd

FS24-0548 VICINITY MAP



FS24-0548
Nobella
Annexation

City Council
October 1, 2024

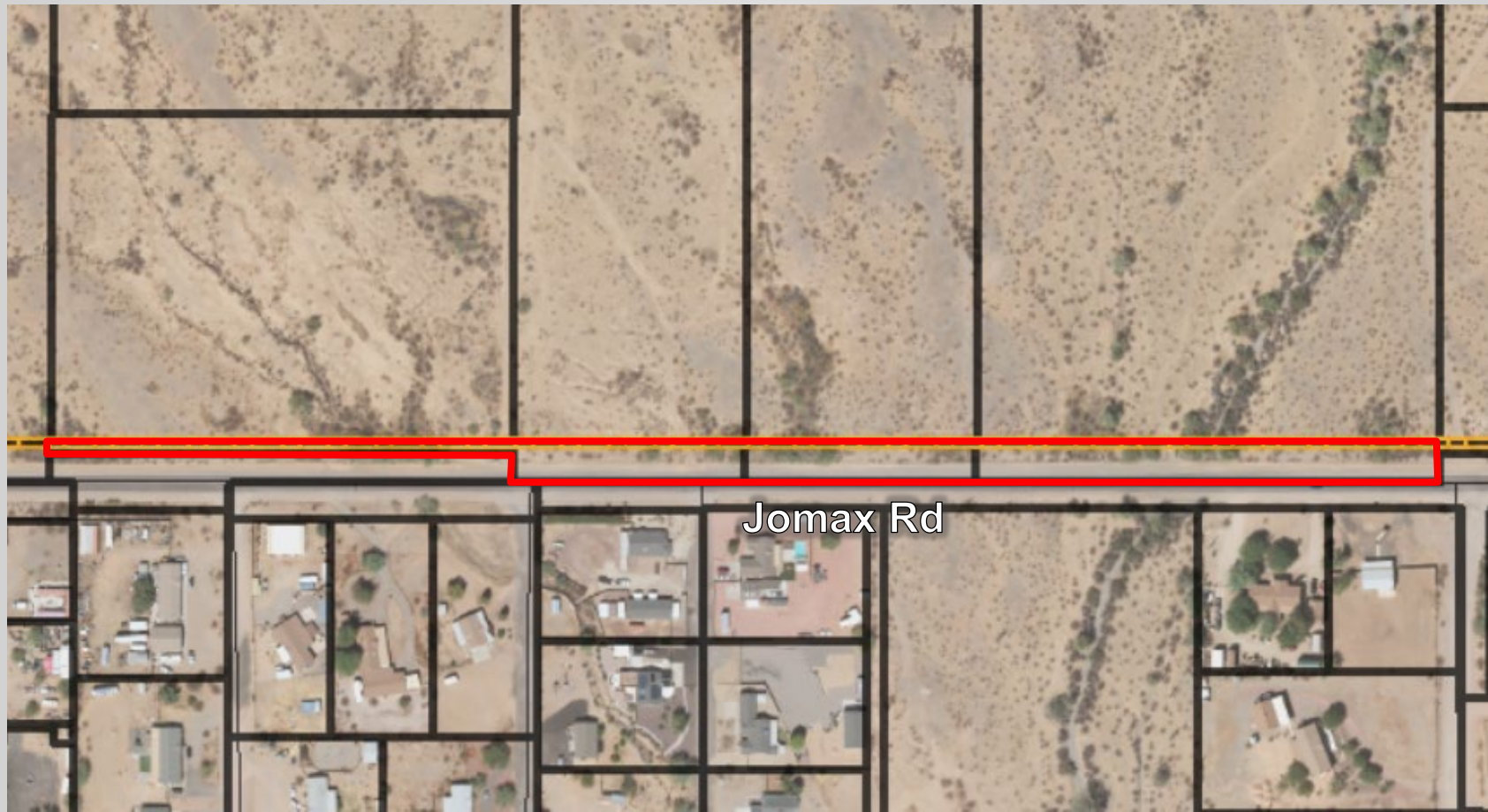


163RD Ave

155th Ave

Jomax Rd

FS24-0548 VICINITY MAP



Jomax Rd

AREA TO BE ANNEXED

Annexation Steps

Resolution for the Intent to Annex:

- City Council meeting – September 3, 2024

File Blank Petition:

- Begins 30-day waiting period
- Reach out to County Assessor and Dept of Revenue
- September 6, 2024 – Petition filed

Public Hearing:

- City Council holds public hearing to discuss the annexation ← **Tonight**

Obtain signatures on annexation petitions

- Applicant has 1 year to complete petition

Public Hearing:

- City Council holds public hearing for final annexation ordinance



SURPRISE
ARIZONA

QUESTIONS OR COMMENTS?

Thank You





CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024

Contact Person: Holly Osborn, DIRECTOR-
PARKS & REC

Submitting Department: Parks and Recreation

District: Citywide

Staff Recommendations:

Consent: No

Regular: Yes

Public Hearing: No

Report/Discussion: No

Agenda Wording:

Consideration and action pertaining to approval of an amendment to the Surprise Municipal Code, Chapter 38 *Parks & Recreation*, Article II. *Public Conduct in Parks*, pertaining to definitions, hours of operations, rules of conduct, enforcement, and dogs and dog parks; Ordinance #2024-34.

Motion:

I move to approve Ordinance #2024-34.

Background:

Chapter 38 of the Surprise Municipal Code addresses Parks and Recreation, outlining regulations for public conduct in parks. The chapter aims to ensure that public parks are safe, accessible, and enjoyable for all community members. It establishes guidelines to promote respectful behavior and protect park resources.

Key Provisions

1. **Conduct Regulations:** The code includes rules against behaviors such as vandalism, littering, and noise disturbances. These provisions help maintain a pleasant environment for visitors.
2. **Facility Use:** It may specify how parks and recreational facilities can be used, including rules for reservations, permitted activities, and hours of operation.
3. **Safety and Health Guidelines:** There are likely guidelines related to health and safety, including the prohibition of dangerous activities and the requirement for users to adhere to local health regulations.
4. **Enforcement and Penalties:** The chapter likely outlines the enforcement mechanisms for violations, including potential fines or trespassing from park facilities.
5. **Accessibility:** Ensuring that parks are accessible to all individuals, including those with disabilities, is probably emphasized to promote inclusivity.

Community Impact

The regulations are designed to foster a sense of community and ensure that parks remain safe and enjoyable for everyone. By outlining clear expectations for conduct, the chapter helps prevent conflicts and promote positive interactions among visitors.

Objective Analysis:

Chapter 38 of the Surprise Municipal Code plays a crucial role in governing public conduct in parks, aiming to protect community resources while promoting a safe and enjoyable environment. Its effectiveness will depend on community awareness and engagement, as well as the ability to enforce its provisions fairly.

As we continue to grow as a city, adjustments are needed to clarify language, expand definitions, and allow for enforcement of violations of codes to include trespassing. The city has expanded beyond parks, and we have included several facilities as well as parking lots to be included under this section. We have expanded on posted rules at parks for the safety and well-being of park goers. In addition, we have updated the park hours to follow the city noise ordinance times.

Policy Compliant:

These amendments are compliant with City policy and within the legal authority provided by Arizona state law.

Financial Impact:

There is no Financial impact.

Budget Impact:

There is no Budget impact.

FTE Impact:

There is no FTE impact.

ATTACHMENTS:

1. Chapter 38 ordinance amendment
 2. Chapter_38__PARKS_AND_RECREATION(rww final) (004)
 3. 24.09.18 Ord. Amendment Chapter 38 (004)
-



Ordinance Update

Parks and Recreation Department, October 1, 2024

WHY IS AN UPDATE NEEDED?

- Improve clarity and education on specific codes
- Revision of existing definitions to better reflect current practices and enhance understanding
- Adapting as the city grows
 - Park Rangers

PROPOSED AMENDMENT. SEC. 10-21.

Why is the amendment needed?

- Correction, posted park rules have been 10:00 p.m., code has listed 10:30 p.m.

Sec. 10-21- Hours of operation, access restricted; violation

It shall be a violation of this article for any person other than a peace officer or designated park ranger to be in any park during the hours the park is closed. The city manager may establish hours for each park, which shall be posted at all parks. Unless otherwise established by the city manager, parks shall be closed from ~~10:30 p.m.~~ 10:00 p.m. to 6:00 a.m. The city manager or director may extend the hours of operation of any park for such events as they determine to be appropriate.

PROPOSED AMENDMENTS SEC. 38-28.

- Why is the amendment needed?
 - Additional language
 - Director of Parks and Recreation to create and adopt park/facility rules
 - Penalties/Violations changes and adding Temporary Suspension of Use, Trespass and Appeal Process.

Sec. 38-28. Enforcement; violation

(a) The director and/or designee may create and adopt rules, regulations, policies and procedures that implement and enforce ordinances contained in this chapter, provided that such rules, regulations, policies and procedures are consistent with this chapter and with all ordinances adopted by the City Council. The director and/or designee may create and adopt other rules, regulations, policies and procedures to promote the safety and welfare of visitors to all City park and recreational areas and facilities and associated parking areas.

PROPOSED AMENDMENT SEC. 38-32.

- Why is the amendment needed?
 - Additional language for distinction on requirements, rules, and leashes.
 - Waiver of liability language added

Sec. 38.32- Dogs and animals in the parks

(10) Fail to comply with any posted rule or regulation which has been established by the Parks and Recreation Department to regulate the use of any dog park including, but not limited to, the separation of designated dog park areas by size, weight, and/or temperament of the dog.

(d) The presence of a dog in a dog park or any other park area, facility, or open space shall constitute a waiver of liability on the part of the City of Surprise by the person owning, controlling, or otherwise in possession of the dog, as well as an agreement by that person to protect, indemnify, defend and hold harmless the City of Surprise for any and all liability and/or damages alleged to have been or adjudicated to have been caused by the actions or presence of a dog including, but not limited to, property damage or personal injury.



SURPRISE
ARIZONA

QUESTIONS OR COMMENTS?

Thank You

Chapter 38 PARKS AND RECREATION

ARTICLE II. PUBLIC CONDUCT IN PARKS¹

Sec. 38-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animals means and includes cats, dogs, horses, any fowl or birds and any living creatures within the jurisdiction of the park and recreation area.

City manager means the city manager or his designee.

City manager designee means the director of the parks and recreation department.

Crossing means any crossing whether marked by a pavement or otherwise; the extension to any sidewalk space across any intersecting drive, street or highway.

Curb means any boundary of any street, road, avenue, boulevard, or drive, whether or not marked by a curb.

Director means the director of the parks and recreation department, or his designee.

Dog park means an enclosed area of a city park which has been designated by the city as a dog exercise area where dogs may be permitted to be off-leash.

Food means any items intended for human consumption as defined by rules and regulations adopted by the state department of revenue, pursuant to A.R.S. § 42-5106.

In-line skates means shoes or boots that have attached to their soles a row of wheels that are used for gliding with alternate movement of the legs on a surface other than ice. Commonly referred to as rollerblades.

Park and recreation area means any ~~neighborhood parks~~ (including, but not limited to, dog parks and skate parks), community park, regional park, playgrounds, splashpads, public open spaces, multi-use, hiking or biking trails, or swimming pool or aquatics facilities, recreational facilities, athletic courts (including, but not limited to, tennis, pickleball and basketball courts), and sports fields, whether enclosed or open in which the City has an interest in property and which are ~~is~~ open to the public for either active or passive recreation. ~~Park and recreation area does not include any park, field, or facility located within the Surprise Recreation Campus.~~

Park attendant means any person employed by the city to perform duties or tasks within the park and recreation areas, including, but not limited to, park rangers.

Path means any footpath, walk, or any path maintained for pedestrians.

Pedestrian means a person afoot or persons requiring wheelchairs.

¹State law reference(s)—Park rangers, A.R.S. § 9-500.03.

Permit means any written license issued by or under the authority of the parks and recreation department or other approving governing agency pursuant to section 38-30 permitting a special event or activity on park and recreation area facilities.

Person means any natural person, corporation, company, association, joint stock association, firm or co-partnership. The term "person" is not limited to city residents unless specified otherwise in this Code.

Stopping or standing means, when prohibited, any cessation of movement of a vehicle occupied or not, except when necessary to avoid conflict with pedestrians or other vehicles.

~~Surprise Recreation Campus is located east and west of Bullard Avenue, between Greenway Road and Paradise Lane, including its premises and grounds, which is approximately 210 acres.~~

Vehicle means any conveyance (except baby carriages/motorized wheelchairs) including motor vehicles, trailers of all types, campers, tricycles, bicycles, scooters, motorized or not, sleds, sleighs, pushcarts, or vehicles propelled by other than muscular power. A "pushcart" means any device which is on wheels, is propelled solely by human power and is specifically designed for the sale of or for storage and preservation of food or goods for a short time. A "vehicle" also includes any horse or horse-drawn conveyance.

(Code 2007, § 12.08.010; Ord. No. 2019-14, § 1, 6-18-19)

Sec. 38-21. Hours of operation; access restricted; violations.

- (a) It shall be a violation of this article for any person other than a peace officer or designated park ranger to be in any park during the hours the park is closed. The city manager may establish hours for each park, which shall be posted at all parks. Unless otherwise established by the city manager, parks shall be closed from ~~10:30~~ 10:00 p.m. to 6:00 a.m. The city manager or director may extend the hours of operation of any park for such events as they determine to be appropriate.
- (b) The public works director, the parks and recreation director, and city engineer are authorized to post appropriate signage, set appropriate speed limits and install appropriate devices to restrict access into parks during closing hours.
- (c) The city manager may direct that a park be closed for a temporary period where a situation exists that the public health and safety require that the premises be closed. A copy of the closure order shall be posted at the entrance to the park. In addition, in emergency circumstances involving public health and safety, any peace officer, park ranger, park attendant or the director shall have the authority to temporarily close all or any portion of a park and recreation area.
- (d) Violation of this section, other than subsection (c) of this section, shall be a civil violation.
- (e) Violations of subsection (c) of this section shall be a class 1 misdemeanor.
- (f) Upon conviction, the municipal court shall order restitution to be paid by the violator to the city for all costs arising from the violation and the enforcement of this section. Restitution shall be actual cost.

(Code 2007, § 12.08.030; Ord. No. 2019-14, § 2, 6-18-19)

Sec. 38-24. General rules of conduct; violations.

- (a) It shall be unlawful for any person in a public park or recreation area to:

-
- (1) Mark, deface, disfigure, injure, tamper with or displace or remove any buildings, bridges, tables, benches, fireplaces, barbeque grills, railings, pavings or paving materials, water lines or other public utilities or parts or appurtenances thereof, signs, notices or placards, whether temporary or permanent, monuments, stakes, posts, or other boundary markers, or other structures or equipment, facilities or park property or appurtenances whatsoever, either real or personal.
 - (2) Fail to cooperate in maintaining restrooms and washrooms in a neat and sanitary condition. No person over the age of seven years of age shall use the restrooms and washrooms designated for the opposite sex.
 - (3) Dig or remove any soil, rock, sand, stones, trees, shrubs or plants or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency.
 - (4) Construct or erect any building or structure of whatever kind, whether permanent or temporary, or run or string any public service utility into, upon, or across such lands, except on special written permit issued by the parks and recreation department and approved by the city engineer.
 - (5) Damage, cut, carve, mark, transplant or remove any plant, or injure the bark, or pick flowers or seeds of any tree or plant, dig in or otherwise disturb grass areas, or in any other way injure the natural beauty or usefulness of any area.
 - (6) Climb any tree or walk; climb, stand or sit upon monuments, vases, planters, fountains, railings, fences or upon any other property not designated or customarily used for such purpose.
 - (7) Attach any rope or cable or other contrivance to any tree, fence, railing, bridge, bench, or other structure.
 - (8) Throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream or other body of water in or adjacent to any park or any tributary, stream, storm sewer, or drain flowing into such water, any substance, matter or thing, liquid or solid, which will or may result in the pollution of said waters.
 - (9) Take into, carry through, or put into any park, any rubbish, refuse, garbage or other material. Such refuse and rubbish shall be deposited in receptacles so provided. Where receptacles are not provided, all such rubbish or waste shall be carried away from the park by the person responsible for its presence, and properly disposed of elsewhere.
 - (10) Cause or permit to run at large any animal.
 - (11) Tie or hitch an animal to any tree or plant.
 - (12) Hunt, molest, harm, frighten, kill, trap, pursue, chase, tease, shoot or throw missiles at any animal, wildlife, reptile or bird; nor shall any person remove or have in his possession the young of any wild animal, or the eggs or nest, or young of any reptile or bird.
 - (13) Exception to the provisions of subsection (12) of this section is made in that snakes known to be deadly poisonous may be killed on sight.
 - (14) Walk a dog or a cat without a leash, said leash to be no longer than six feet, but for a designated dog park area where dogs may be off-leash subject to the laws and rules governing dog parks.
 - (15) Walk any other domestic animal than a dog or cat without a leash, said leash to be no longer than six feet.
 - (16) Bring a horse into a park or ride a horse except on designated bridle and multi-use trails; horses shall be thoroughly broken and properly restrained, and ridden with due care.
 - (17) No person shall permit their horse, donkey or mule to be unattended or to graze in a park.

-
- (18) No person shall hitch their horse, donkey or mule to any rock, vegetation, fence or other improvement in a city park, except for such improvements as are intended to be used for such purpose.
 - (19) Use a sound amplification system in any park, except as provided by this article.
 - (20) Use restroom facilities or city pools for personal bathing except as required or needed for city programs.

(b) Violation of this section shall be a civil violation.

(Code 2007, § 12.08.060; Ord. No. 2019-14, § 3, 6-18-19)

Sec. 38-28. Enforcement; violations.

(a) The director and/or designee may create and adopt rules, regulations, policies and procedures that implement and enforce ordinances contained in this chapter, provided that such rules, regulations, policies and procedures are consistent with this chapter and with all ordinances adopted by the City Council. The director and/or designee may create and adopt other rules, regulations, policies and procedures to promote the safety and welfare of visitors to all City parks and recreational areas and facilities and associated parking areas.

(ab) The director shall have the authority to revoke a permit issued under this article upon a finding of violation of any rule, ordinance, or condition of the permit or upon good cause shown. A permit holder who has a permit revoked shall not be entitled to a refund by the city of any fees paid.

(bc) The police department and parks and recreation department shall, in connection with their duties imposed by law, diligently enforce the provisions of this article.

(ed) Any peace officer, park ranger, or the director shall have the authority to order any person acting in violation of this article to leave the park or recreation area and seize and confiscate any property, thing or device possessed in a park and recreation facility in violation of this chapter.

(de) Any peace officer or park ranger shall have the authority to issue a citation for a violation of this chapter and it shall be unlawful for any person to fail to follow the clear and direct orders of a peace officer or park ranger enforcing park rules or maintaining the peace. The city manager, or designee, shall approve the wording of all park rules prior to the rules being posted.

(ef) Violation of an order issued under this section shall be a class 1 misdemeanor, except that the charge may be reduced to a civil violation in the event the person has no prior violations of this chapter within the preceding 12 months.

(g) Penalty. If the charge is reduced to a civil violation, it shall be subject to the civil penalties set forth in Chapter 2, Article VI of this Code.

(h) Temporary Suspension From Use.

(1) In addition to any penalties imposed pursuant to this chapter, a peace officer, park ranger or the director and/or designee may prohibit and trespass any person from future use of city park and recreation area including, but not limited to, the Surprise Recreation Center, if the peace officer, park ranger or the director or designee determines that the person has committed a serious violation, or repeated violations, of any provisions of this chapter or of any rule or regulation adopted pursuant to the chapter. The length of any such trespass shall not exceed twelve (12) months. Upon being issued, the person shall sign the form acknowledging receipt of the notice of trespass.

(2) Appeal.

(a) A written appeal of a notice of trespass, asking for a hearing, may be filed with the Parks and Recreation director or designee within five (5) calendar days from receipt of the notice.

(b) A hearing on the trespass appeal will be held by the director or designee within thirty (30) days of receipt of the written appeal. The hearing may be held in person or by telephone following notice of the hearing date and time. Within ten (10) calendar days after the hearing, the director or designee will render a written decision, which may be to keep the trespass in effect, shorten the length of trespass, or repeal the notice of trespass altogether. The decision will be sent to the person who was trespassed. Such decision will be a final administrative decision.

(c) The trespass will remain in effect and may be enforced by the City during the period of any appeal and hearing.

Sec. 38-32. Dogs and animals in the parks.

(a) While in a park, it shall be a violation of this article for a person to:

- (1) Fail to keep their animal under control at all times. When not in a dog park, an animal shall either be restrained in a kennel or restrained on a leash not to exceed six feet in length. Dogs may run "off-leash" in designated dog park areas only.
- (2) Fail to have their dog on a leash when entering or leaving the dog park.
- (3) Fail to clean up after and properly dispose of their animal's excrement in a receptacle.
- (4) Allow an animal to cause injury or damage to the park, personal property, or persons.
- (5) Fail to render aid if their animal has injured any person.
- (6) With the exception of a service animal or prior written permission of the director, allow their animal to be present on a sports field, recreational field or other place where animals are prohibited by a written posted notice.
- (7) Possess a dog that is not currently licensed.
- (8) Possess a dog that is not wearing its license tags.
- (9) Possess more than three animals at one time.
- (10) Fail to comply with any posted rule or regulation which has been established by the Parks and Recreation Department to regulate the use of any dog park including, but not limited to, the separation of designated dog park areas by size, weight, and/or temperament of the dog.

(b) It shall be a violation of this article for a person while in a dog park to:

- (1) Possess an animal other than a dog.
- (2) Reserved.
- (3) Possess a dog younger than four months old.
- (4) Possess a dog in heat.
- (5) Possess a dog with a communicable disease.

-
- (6) Fail to maintain direct supervision of a child under 13 years of age in the person's custody.
 - (7) Fail to immediately leash and remove a dog exhibiting aggressive behavior.
 - (8) Possess dog treats or dog food.
 - (9) Possess food.
 - (10) Smoke or vape.
- (c) A service animal shall be under the control of its owner or custodian at all times.

ORDINANCE # 2024-34

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AMENDING CHAPTER 38 PARKS AND RECREATION, ARTICLE II. PUBLIC CONDUCT IN PARKS, SECTION 38-19, DEFINITIONS., SECTION 38-21, HOURS OF OPERATION; ACCESS RESTRICTED; VIOLATIONS., SECTION 38-24, GENERAL RULES OF CONDUCT; VIOLATIONS., SECTION 38-28, ENFORCEMENT; VIOLATIONS., AND SECTION 38-32, DOGS AND ANIMALS IN THE PARKS; INCLUDING SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND REPEALING CONFLICTING ORDINANCES.

WHEREAS, Surprise Municipal Code Section 1-5 authorizes the City Council to amend the Code;

WHEREAS, the Mayor and Council seek to clarify, update and improve consistency of the existing language in the Surprise Municipal Code Chapter 38; and

WHEREAS, Parks and Recreation desires to clarify the Parks and Recreation's Director's ability to create and adopt rules, regulations, policies and procedures to both implement and enforce Ordinances contained in Chapter 38 and to promote the safety and welfare of visitors to all city park and recreational areas and facilities and associated parking areas; and

WHEREAS, Parks and Recreation desires to clarify the definition of what falls under parks and recreation areas; and

WHEREAS, Parks and Recreation desires to amend the hours of operation; and

WHEREAS, Parks and Recreation desires to amend the ordinances to clarify where dogs may be off-leash on City property, and clarify and expand the provisions of the Code governing the use of dog parks and the responsibility of dog owners for their dogs' conduct while on City property;

WHEREAS, the Surprise Municipal Code is currently silent regarding Parks and Recreation's ability to prohibit and trespass a person from the future use of a city park and recreation area if the person is determined to have committed a serious violation, or repeated violations, of any provisions of Chapter 38 or of any rule or regulation adopted pursuant to Chapter 38; and

WHEREAS, Parks and Recreation desires to include a provision in Chapter 38 to include the possibility of a violation of an order issued pursuant to this Chapter be reduced to a civil violation; and

WHEREAS, the Surprise Municipal Code is currently silent regarding the appeal process for a trespass violation issued by Parks and Recreation pursuant to the provisions of Chapter 38, Parks and Recreation desires to include provisions for appealing a notice of trespass;

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

Section 1. Chapter 38, Article II, Section 38-19, Definitions. of the Surprise Municipal Code is hereby amended as described on attached Exhibit A, and incorporated by this reference.

Section 2. Chapter 38, Article II, Section 38-21, Hours of operation; access restricted; violations. of the Surprise Municipal Code is hereby amended as described on attached Exhibit A, and incorporated by this reference.

Section 3. Chapter 38, Article II, Section 38-24, General rules of conduct; violations. of the Surprise Municipal Code is hereby amended as described on attached Exhibit A, and incorporated by this reference.

Section 4. Chapter 38, Article II, Section 38-28, Enforcement; violations. of the Surprise Municipal Code is hereby amended as described on attached Exhibit A, and incorporated by this reference.

Section 5. Chapter 38, Article II, Section 38-32, Dogs and animals in the parks. of the Surprise Municipal Code is hereby amended as described on attached Exhibit A, and incorporated by this reference.

Section 6. All ordinances, resolutions or codes in conflict with the provisions of this Ordinance or Code adopted by this Ordinance are repealed.

Section 7. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of these amendments to the municipal code adopted herein is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision will not be read to affect the validity of the remaining portions thereof.

Section 8. This ordinance will become effective at the time and manner prescribed by law.

PASSED AND ADOPTED this _____ day of _____, 2024.

Skip Hall, Mayor

Attest:

Approved as to form:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney



CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: City Manager Office
Staff Recommendations:

Contact Person:
District: Citywide

Consent: No	Regular: Yes	Public Hearing: No	Report/Discussion: No
-------------	--------------	--------------------	-----------------------

Agenda Wording:

Consideration and action pertaining to approval of a Memorandum of Understanding between the City of Surprise and the Flood Control District of Maricopa County establishing the intent of the parties to develop areas of the McMicken Dam area for recreational and open space uses.

Motion:

I move to approve the Memorandum of Understanding between the City of Surprise and the Flood Control District of Maricopa County.

Background:

The City of Surprise is considering this Memorandum of Understanding (MOU) with the Flood Control District of Maricopa County for the recreational and open space use of the McMicken Dam Impoundment Area and Outlet Channel. The plans for the impoundment are primarily for open space preservation with an opportunity for a park south of Sun Valley Parkway in the first phase.

Objective Analysis:

The MOU will serve as the framework for a future Intergovernmental Agreement (IGA). The future IGA will provide city residents with natural open space and an opportunity for a regional park. The IGA will require additional staffing upon execution.

Policy Compliant:

This item is policy compliant and is consistent with the goals of open space creation within the Surprise Parks and Recreation Master Plan and the newly adopted General Plan 2040.

Financial Impact:

This item will have no current financial impact. The forthcoming IGA will have details on operational costs. Initial estimates for annual maintenance are between \$200,000 and \$300,000.

Budget Impact:

The MOU will have no current budget impact. The forthcoming IGA will outline anticipated budget impacts starting in FY26.

FTE Impact:

The MOU does not currently impact the FTE count for the City. The forthcoming IGA will outline anticipated staffing impacts. The current estimate is 2-2.5 FTE.

ATTACHMENTS:

1. McMicken Dam MOU
 2. 2024 FCD McMicken Dam MOU
-



Memorandum of Understanding:

City of Surprise and the Flood Control District (FCD) of Maricopa County

October 1, 2024

McMicken Dam - Overview

- City and County partnership
 - Approximately 2,500 acres
 - City to assume responsibility for maintenance
 - County allows joint use of lands for open space preservation and a future park





2040 General Plan

- Preserving open space areas in and around Surprise is an area of community consensus. Many Surprise residents value the city's close access to nature and recreation as well as maintaining proper habitat protection for the native plants and animals.

2023 City Council Strategic Plan

- Strategy 4.3: Respect Nature by Protecting Critical Wildlife Corridors
- Strategy 4.7: Provide a Connected Park Experience Through the Development of an Overall Park System Framework
- Strategy 4.8: Pursue Opportunities to Create New Parks and Open Space



Parks and Recreation Master Plan

- Parks and Recreation Master Plan
 - “Establish a Memorandum of Understanding with County agencies to secure and promote open space agreements for recreation and conservation easements”
 - Add approximately 800 acres of open space, natural lands, and wildlife corridors

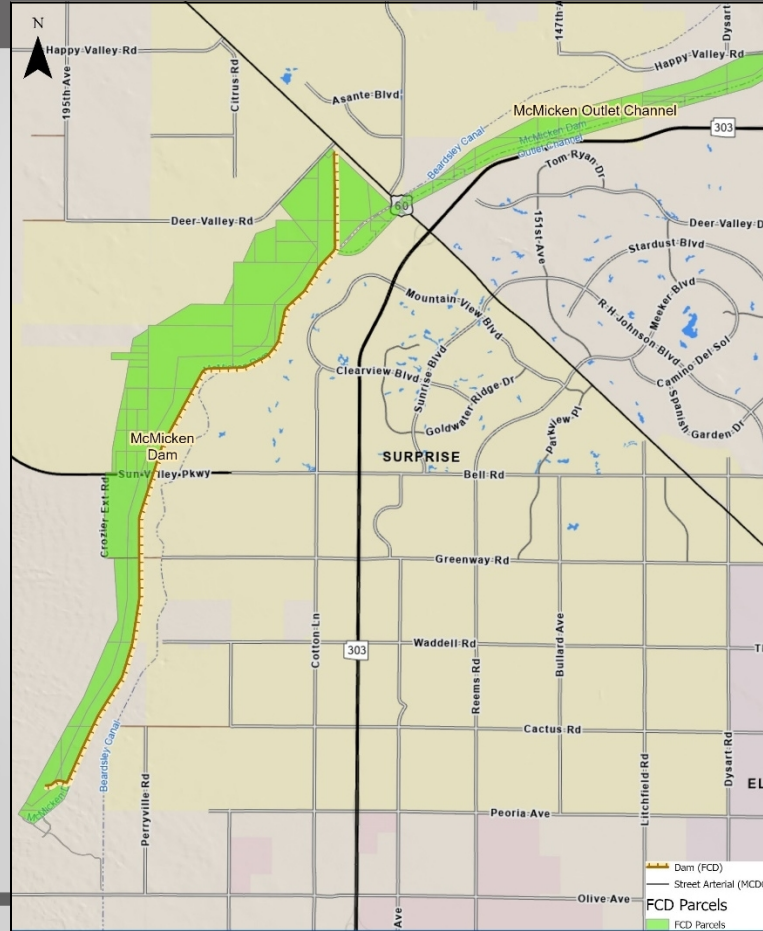


Background and Timeline

- May 21 – McMicken Dam Concept – Work Session
- MOU to be approved by City Council and FCD
 - Serves as the framework for a forthcoming Intergovernmental Agreement (IGA)
 - MOU includes Impoundment Area Development Restrictions and Guidelines
 - Next Step – Maricopa County Board of Supervisors
 - October 23rd, 2024
 - IGA – Early 2025

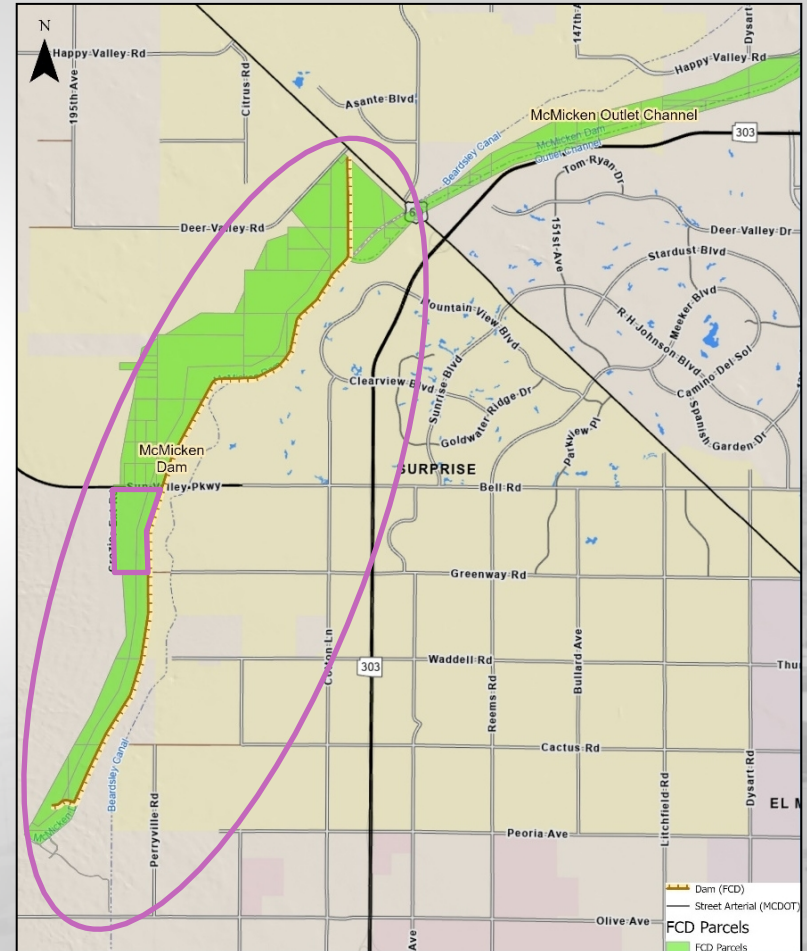
Geographic Scope of the MOU

+/- 2,500 acres



Phasing

- Phase 1: Peoria Avenue to Grand Avenue
 - Mainly open space preservation
 - Opportunity for park facilities between Sun Valley Parkway and Greenway Rd
 - Initial IGA to cover this area



Phasing

- Phase 2: East of Grand Avenue
 - Natural open space
 - Amendment to original IGA



Phasing

- Phase 3: Post-Spillway Construction – Park Opportunity
 - Active park facilities at Grand and Deer Valley Road
 - Amendment to original IGA
 - 8-10+ years



Opportunities for Open Space

- Dual purpose concept of using flood control lands for flood management and community amenities. Increases quality of life for Surprise residents by providing adequate open space and recreational opportunities.
 - Passive Recreation
 - Minimal Impact to Natural Land
 - Trailheads and Trail Pathways (flood channels providing scenic paths for pedestrian/bicycle/equestrian while serving as flood control buffers)
 - 90% of land use



Open Space Amenities

- BMX Track – Clay or dirt
- Disc Golf Course
- Ramadas / Restrooms at Trailhead
- Archery Range
- Animal Corridor
- Bird watching



Programmable Park



Programmable Park Amenities

50 -100 acres of Park may include some of the features

- Playgrounds
- Racquet Sports Courts
- Multi-purpose fields
- Sports Fields with lighting
- Basketball Court
- Softball / Baseball Field
- Park Maintenance Facility
- Storage Area
- Restroom / Concessions
- Pond
- Walking paths
- Ramadas
- Parking
- Roadways



Paloma Park in Peoria, AZ



Next Steps

- Intergovernmental Agreement with the Flood Control District of Maricopa County – Phase One
 - Identify specific uses for open spaces and parks
 - Early 2025
- Upon execution of IGA
 - Takeover of maintenance
 - Park planning



SURPRISE
ARIZONA

QUESTIONS OR COMMENTS?

Thank You

MEMORANDUM OF UNDERSTANDING

between

THE CITY OF SURPRISE

and the

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

for the

RECREATIONAL AND OPEN SPACE USE

of the

McMICKEN DAM IMPOUNDMENT AREA AND OUTLET CHANNEL

MOU FCD 2024U004

Agenda Item _____

This Memorandum of Understanding FCD 2024U004 (MOU) is entered into by and between the City of Surprise, a municipal corporation, acting by and through its City Council and City Manager, hereinafter called SURPRISE, and the Flood Control District of Maricopa County, a political subdivision of the State of Arizona, acting by and through its Board of Directors, hereinafter called the DISTRICT. SURPRISE and the DISTRICT may hereinafter individually be called a PARTNER, or collectively called the PARTNERS.

This MOU shall become effective as of the date it has been executed by all parties.

STATUTORY AUTHORIZATION

1. The DISTRICT is empowered by Arizona Revised Statutes (A.R.S.) Section 48-3603, as revised, to enter into this MOU and has authorized the undersigned to execute this MOU on behalf of the DISTRICT.
2. SURPRISE is empowered by A.R.S. Section 9-494 to establish public parks, which is the general topic summarily contained within this MOUs and has authorized the undersigned to execute this MOU on behalf of SURPRISE.

BACKGROUND

3. The U.S. Army Corps of Engineers constructed the McMicken Dam and associated works ("Dam") in 1954 to protect Luke Air Force Base, the Litchfield Park Naval Air Facility, and agricultural activities in the area from flooding. The Dam also provides flood protection for critical public facilities, infrastructure and properties located downstream, including significant portions of the cities of Surprise and El Mirage, Sun City, and unincorporated Maricopa County.
4. The DISTRICT operates and maintains the Dam and is the owner of the lands upon which the Dam structures are built and areas of flood water collection upstream of the Dam.
5. SURPRISE has requested to develop and use portions of the McMicken Dam Impoundment Area and Outlet Channel property depicted on Exhibit "A" ("PROJECT AREA"), attached hereto, for active and passive recreational facilities and open space ("PROJECT"). The PROJECT has been studied, developed, and adopted as part of the Surprise Parks and Recreation Master Plan and the Surprise General Plan.

6. The DISTRICT supports public agency multi-use of DISTRICT property for a public purpose where consistent with the flood control function of the property.

PURPOSE OF THE MOU

7. This MOU identifies only the mutual interest and intent of the PARTNERS for the implementation of the PROJECT activities within the PROJECT AREA and is not binding on, or enforceable against, the PARTNERS.

TERMS OF MOU

8. The PROJECT includes the development within and use of the PROJECT AREA for active and passive recreational facilities and open space. All development and uses proposed by SURPRISE will require an Intergovernmental Agreement (“IGA”) between the PARTNERS for the purpose of defining all respective responsibilities regarding the PROJECT.

- 8.1 SURPRISE anticipates phasing implementation of the PROJECT – requiring IGA(s) for each of the phases – as follows:

Phase 1

- Active Park Facilities between Sun Valley Parkway and Greenway Road
- Natural Open Space between Grand Avenue and Peoria Avenue

Phase 2

- Natural Open Space east of Grand Avenue

Phase 3

- Active Park Facilities west of Grand Avenue and the McMicken Dam Emergency Spillway

9. The primary function of the Dam impoundment area and outlet channel is flood water collection and conveyance. The term “impoundment area” is defined as the area upstream of the Dam subject to abrupt flood water collection and sediment accumulation at any time without warning. All development and uses within the impoundment area and outlet channel are subject to risk of flooding and associated impacts. Implementation of the PROJECT must not compromise the flood control benefits or structure of the Dam nor increase the DISTRICT’s operation and maintenance costs.
10. The DISTRICT has developed McMicken Dam Impoundment Area Development Restrictions and Guidelines, Exhibit “B” (“Guidelines”), for development and uses within the Dam impoundment area and outlet channel and may revise the Guidelines from time to time. The Guidelines will be used as general direction for appropriate and acceptable PROJECT development and uses within the PROJECT AREA.
11. With future PROJECT IGA(s) the DISTRICT intends to grant to SURPRISE a no-cost Non-Exclusive Use Easement over the PROJECT AREA.
12. The costs associated with implementation of the PROJECT shall be borne by SURPRISE and may not increase the Dam maintenance and operation cost to the DISTRICT.
13. SURPRISE will be the lead for all aspects of implementation of the PROJECT, including design, construction, permitting, public involvement, operation, and maintenance.

14. The PROJECT will accommodate the Maricopa Trail, managed by the Maricopa County Parks and Recreation Department, within the PROJECT AREA.
15. SURPRISE will be responsible for the operation and maintenance of the PROJECT recreation and open space uses of the PROJECT AREA. This includes the management of public uses and removal of trash, illegal dumping, and graffiti within the PROJECT AREA. This also includes the removal of debris and sediment within the PROJECT AREA, unless the DISTRICT identifies that it impacts the flood control function of the Dam.
16. The DISTRICT will maintain the flood control function of the PROJECT AREA including removal of debris and sediment accumulation determined by the DISTRICT to impact the flood control function of the Dam.
17. Any property owned by the DISTRICT within the PROJECT AREA that is identified as excess to the DISTRICT's needs, now or in the future, may be declared excess and disposed of by the DISTRICT per appropriate statutes. The DISTRICT will work with SURPRISE to identify these areas and avoid incompatible PROJECT development or uses of property that the DISTRICT may identify as excess in the future.
18. This MOU shall expire ten (10) years from the effective date.
19. The PARTNERS acknowledge and understand that this document is not binding on, or enforceable against, the PARTNERS, the Board of Directors of the District, the Board of Supervisors of Maricopa County, or the SURPRISE City Council.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
A Political Subdivision of the State of Arizona

Recommended by:

Paul Baughman, P.E., CFM
Chief Engineer & General Manager

Date

Approved and Accepted:

By: _____
Chairman, Board of Directors Date

Attest:

By: _____
Clerk of the Board Date

CITY OF SURPRISE
A Municipal Corporation,

Skip Hall, Mayor

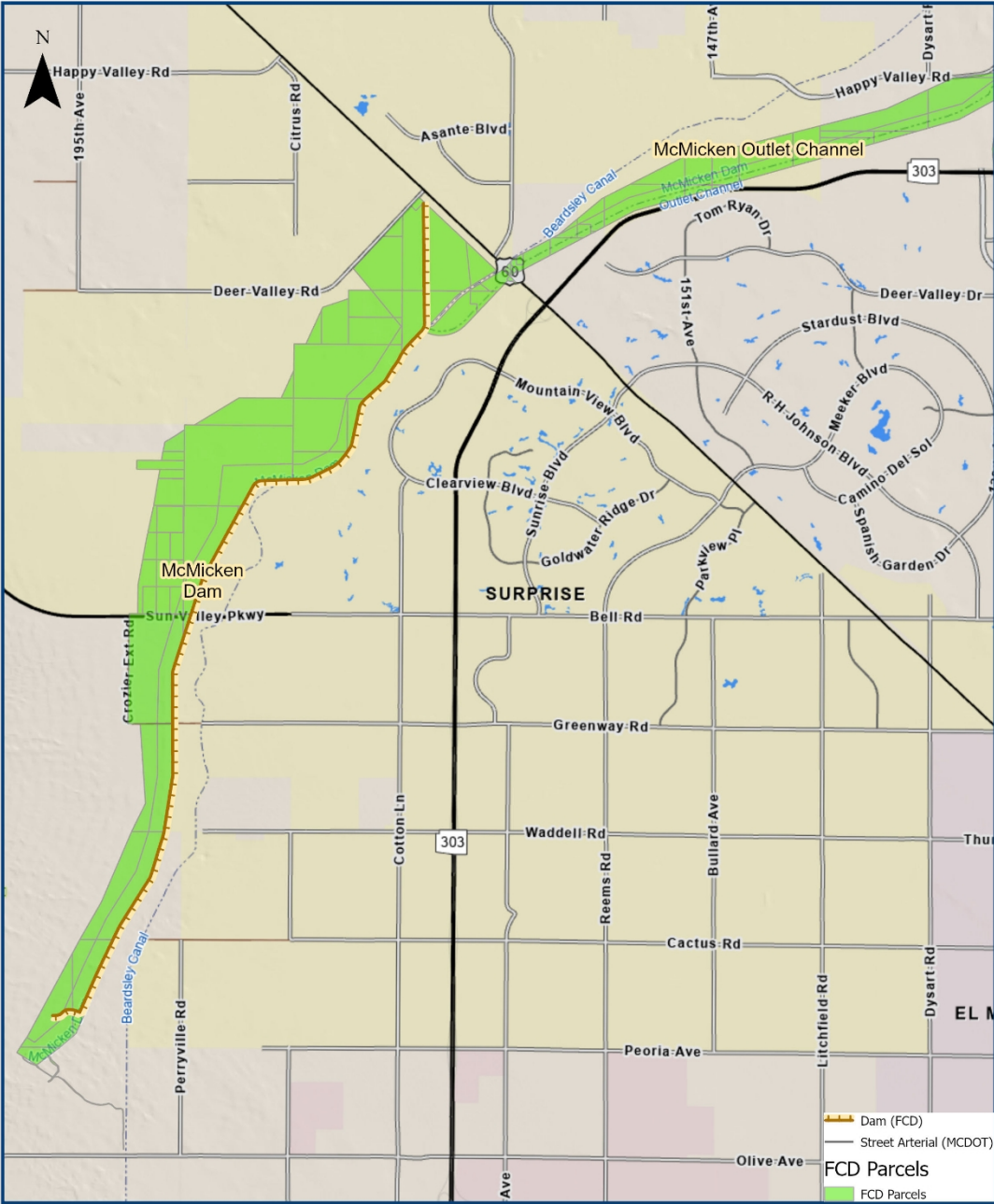
By: _____
Date

Attest:

By: _____
City Clerk Date

By: _____
City Attorney Date

IGA FCD 2024U004
EXHIBIT “A”
PROJECT AREA



IGA FCD 2024U004
EXHIBIT "B"
MCMICKEN DAM IMPOUNDMENT AREA
DEVELOPMENT RESTRICTIONS AND GUIDELINES

July 26, 2024

McMicken Dam Background

These guidelines and restriction apply to the post dam rehab condition.

McMicken Dam is an earthen embankment dam 9.0 miles long with a maximum height of 39.3 feet. The dam will be raised up to about 1.5 feet as part of the overall dam rehab. The dam was originally constructed by the U.S Army Corps of Engineers (USACE) in 1954 and 1955 to protect Luke Air Force Base, the Litchfield Park Naval Air Facility, and agricultural lands in the area from flooding. In the 1970's the dam was removed from service by the USACE due to dam safety concerns by removal of two segments of the dam embankment. In the early 1980's, the dam segments were replaced and a central drain was installed in the dam to prevent dam failure due to embankment cracking. In order to mitigate a significant risk to the dam posed by earth fissures, the south end of the dam was replaced by the District with a flood control channel in 2005, and a basin and a new end of the dam was constructed of soil-cement.

The McMicken Dam impoundment area covers approximately 2,500 acres. The drainage area of the dam is 245-square miles. The dams flood storage capacity is 20,450 acre-feet. The dam impounds storm water from the Trilby and Iona Washes as well as numerous smaller washes. The dams Principal Outlet (PO) drains the dams impoundment during and after flood event by safety discharging floodwaters into the McMicken Outlet Channel. A new Principal Outlet and will be constructed as part of dam rehab. Also the McMicken Dam Outlet channel from the dam to Grand Ave will be reconstructed as part of dam rehab. The PO will have a design discharge capacity of 4,450 cfs when the dam is full to the emergency spillway crest elevation. After rehab the dam will have a 1,900 foot long reinforced concrete emergency spillway located near the north end of the dam. The emergency spillway's full discharge capacity will be about 81,000 cfs.

Overall rehabilitation of McMicken Dam is in now progress and will be performed in five design and construction phases (see attached sketch). Phase 1 is currently in construction and Phase 2 is in design. Design and construction of Phases 3, 4 and 5 will follow at later dates. These guidelines and restriction apply to the post dam rehab condition.

Additional background information and physical data on the dam is available at the District.

Impoundment Area Restrictions and Guidelines

General

The following should be fully understood by all proposing development and planning activities and other uses within the McMicken Dam impoundment area:

- The primary function of McMicken Dam impoundment area is flood detention. The impoundment area is subject to significant flood impoundments at any time. As such, all facilities and activities within the limits of the impoundment area are subject to risk of flooding and associated impacts due to impounded water and/or local runoff from streams and watercourses. The District assumes no responsibility for damages to said facilities or loss of use (including cancellation of events).
- All proposed facilities, activities and uses within the McMicken Dam impoundment area must not adversely impact the safe and proper operation of McMicken Dam Project (Project) for the existing Project or for the future Dam Rehabilitation Project as determined by the District and the Arizona Department of Water Resources (ADWR - state regulatory agency for the dam).
- The nature of the configuration and function of the flood impoundment area are such that the McMicken Dam Project creates several unique risks to facilities and activities within the impoundment area, such as:
 - Flood depth – Flood depths up to 8 feet above the crest of the new emergency spillway could occur. The crest elevation of the new emergency spillway will be Elevation 1352.5 ft NGVD 88.
 - Sedimentation – Significant sedimentation can occur at any elevation within the impoundment area.
 - Probability of Flooding – The probability of the impoundment reaching any given elevation is unknown. (Reference next bullet item)
 - Flood pool elevations are provided in Table 1 for various single event flood events. These elevations represent the estimated elevations the impoundment would reach for a single-storm rainfall/runoff event occurring on the McMicken Dam watershed with the flood impoundment pool empty at the start of the event. The impoundment pool elevations vary along the length of the dam. That is the reason two elevations are listed in the table for each flood event. The top elevations listed for each is the flood pool elevation at the north end of the dam and the lower number is the flood pool elevation at the south end of the dam. Flood pool elevations at two additional locations along the dam are available from the District.

**Table 1: McMicken Dam Flood Inflow Events
Impoundment Pool Elevations**

Event Frequency (Annual Chance Exceedance)	Impoundment Elevations
Probable Maximum Flood (Flood Frequency Unknown)	1357.4 ft to 1359.3 ft
500-year	1353.3 ft to 1353.0 ft
200-year	1351.9 ft to 1352.5 ft
100-year	1349.9 ft to 1352.2 ft

- Note that the District currently uses NAVD 88 for all dam surveys, dam rehab design, dam monitoring and within the Emergency Action Plan (EAP). Proposed developments within the impoundment area should also use vertical datum NAVD 88. Note that elevations shown on the original as-built drawings for the dam are in an earlier datum. The District will provide technical assistance as requested when converting to the current datum, NAVD 88.
- Due to the time required to drawdown the reservoir at McMicken Dam and the potential for reservoir “building” effects resulting from sequential storms in any given period of time, the probability of the reservoir reaching a given elevation is greater than when only a single storm is considered. The probability of a sequential storm event reaching a certain impoundment elevation in a flood control dam impoundment is very difficult to estimate due to the number of potential flood event scenarios that would need to be considered and analyzed. The District has not studied this issue at McMicken Dam and cannot provide risk information in this regard, suffice to warn that it is a unique possibly unknowable risk aspect of flooding risk when developing facilities and planning activities and uses and within a flood impoundment area.
- Flood impoundments are anticipated during rainfall/runoff events essentially creating a temporary muddy lake which will to varying degrees adversely impact facilities and activities within the impoundment area. The dam does **not** have gates or controls that can be utilized to mitigate the effect of flood impoundments on facilities and activities located within the impoundment area.
- Those planning development and activities within the McMicken Dam impoundment area should be aware of and must follow development restrictions and guidelines. Additional restrictions and/or requirements with other agencies may apply. In order to best understand the various requirements of developing within the impoundment area, including obtaining a District ROW Use permit it is advised that a meeting with District Dam Safety and ROW personnel be arranged very early in the development planning process before formal start of the ROW Use Permit Process.
- All development plans and uses must be reviewed for approval through the District’s ROW Use permit process.

- Floodplain Use Permits are required where applicable issued by the Flood Control District of Maricopa County.
- All development plans and uses must be reviewed and approved by the City of Surprise Development Services Department pertaining to planning and zoning, building codes, and by Maricopa County Planning and Development for areas located within unincorporated County.
- Activities disturbing the ground or vegetation including, but not limited to, geotechnical investigations, clearing and grubbing, and excavation may be subject to environmental and cultural regulations and permits. Compliance with all applicable federal, state, and local environmental and cultural regulations is required as a condition of any Right of Way permit granted by the Flood Control District of Maricopa County. It is the responsibility of the Permittee to verify and obtain all required permits. Protecting the environment helps ensure property owned and maintained by the Flood Control District of Maricopa County retains its property value, aesthetic beauty, recreational opportunities, and the biodiversity needed for a functioning desert ecosystem.
- Under the Section 408 permit process, all environmental work must comply with the National Environmental Policy Act (NEPA) and is subject to the review of the USACE Los Angeles District.
- All USACE requirements pertaining to project impacts within “Waters of the U.S.” must be complied with as applicable per Section 401/404 of the Clean Water Act. Section 401/404 permits are subject to review and approval by the USACE Los Angeles District, Phoenix Area Office.
- Environmental requirements, such as air and water quality pertaining to the generation of dust and storm water discharges, are subject to compliance under the Clean Air Act (42 USC 7401 et seq) and Section 402 of the Clean Water Act, respectively, and are subject to review and approval by the Maricopa County Air Quality Division and the Arizona Department of Environmental Quality.
- Environmental requirements also include the protection of wildlife and associated habitat which are protected under such laws as the Migratory Bird Treaty Act (16 USC 715-715s) during the nesting season (February through August), the Endangered Species Act (ESA) as amended (16 USC 1531 et seq), and any State wildlife protection laws shall be complied with prior to any project impacts. The preservation of wildlife habitat is essential to the sustenance of the desert ecosystem and protection of these resources during construction is critical. This is further benefitted by the retention of aesthetic and open space values in the design of the project.
- All construction and other excavation activities must comply with OSHA.
- Any condition or activity determined by the District on a case by case basis as creating a public safety hazard of any kind will be prohibited or otherwise mitigated with concurrence by the District.
- In the interest of public safety, all should be aware of and participate in the McMicken Dam Emergency Action Plan (EAP). A copy of the McMicken Dam EAP shall be kept on site at all facilities within the impoundment area which include a building. The District may also provide a copy of the McMicken Dam EAP to be kept on site during activities.

- Any development or activity within the impoundment area shall have an EAP that includes an Emergency Evacuation Plan (EEP), and that plan shall be coordinated with the District's EAP for McMicken Dam. The District will review the development/activity-specific EAP prior to ROW permit approval. The development/activity EAP shall include 24/7 contact information and backup contact information. The EAP must clearly specify the responsibilities of the owner to ensure that effective and timely action is taken if an emergency at the dam occurs. The EEP shall include a figure showing evacuation routes. The EAP specific to a development shall be kept on site if there is a building to store it in. The EAP specific to an activity shall be available on site during the activity.
- An EEP to evacuate people from the impoundment area in a rainfall/runoff/impoundment event will be required for all uses of facilities and recreational and other activities within the impoundment area. The District retains the right to **require** an evacuation from all areas of the impoundment area for which it has land rights based on conditions and circumstances. At the conclusion of an emergency event, an "all clear" notice for the impoundment area will be given, but it is not the District's responsibility to inspect facilities within the impoundment area owned by others.

Proposed Earthwork within the McMicken Dam Impoundment Area

- There must be no net loss in storage volume within the impoundment area and no loss of storage volume below the elevation of the emergency spillway crest (i.e., cut/fill balance). The volume of some structures or portions thereof may also count as a net loss in storage when calculating the cut/fill balance; this determination will be made on a case-by-case basis based on proposed conditions. In certain circumstances such as proposed roadway surfacing, the District may allow some minor loss of storage volume up to 500 cubic yards (approx. 0.3 acre-feet) depending on the specifics involved.
- Any proposed excavation or material removal operation from within the impoundment area greater than 1,600 cubic yards is **prohibited** unless it can be shown (to the satisfaction of the District and ADWR) no adverse impact to the safety and proper operation of the McMicken Dam Project through detailed engineering investigations and analysis and/or through design and construction.

Proposed Utilities

- Buried utilities must be designed not to "float" during any impoundment event.
- Sewer line manholes must be sealed.
- The use of septic and septic systems is prohibited below the emergency spillway crest elevation.
- Utility shut off valves/switches are to be included as appropriate.
- Towers for wireless communications are prohibited within the impoundment area.

- Solid waste shall not be stored anywhere on District property. Roll-off dumpsters are prohibited. Trash receptacles and front loader dumpsters are typically acceptable as long as they are strategically placed and secured to ensure proper function and safe operation of the dam, emergency spillway, and/or principal outlet during flood impoundments. Trash receptacles will be evaluated on a case-by-case basis.
- Proposed utility penetrations over, under, or through McMicken Dam are prohibited below the elevation of the emergency spillway crest elevation. Proposed utility crossings above the emergency spillway crest elevation must comply with District guidelines for utility crossings at dams and will require approval by the District and ADWR. Certain utilities are prohibited (Reference District Utility Penetration Guidelines). An ADWR permit to construct will be required. For dam safety reasons, the typical order of preference for utilities crossing, where and if/when permitted, is (1) over, (2) under, and (3) through the dam or appurtenant structure. It should be noted that embankment penetrations such as utilities increase the potential for seepage related issues with the dam and, as such, shall be avoided to the extent reasonably possible. Embankment penetrations will also draw increased scrutiny from the reviewing agencies.

Proposed Structures

- No inhabited structures are permitted below the emergency spillway crest elevation.
- No permanent structures are permitted below the 100-year pool level.
- Below the 100-year pool, passive recreation is generally acceptable provided there is no interference or potential interference with dam management activities. Any such activity is subject to review and approval under the District ROW Use Permit Process. Depending on specifics of proposed facilities plans a USACOE (Regulatory Division) 404 Permit may be required.
- Must provide a means to physically close recreational facilities to prevent unauthorized access during an anticipated or actual impoundment event.
- Structures and facilities are to be designed such that flood impoundments at structures and facilities do not result in debris that would impact proper function and safe operation of the dam, emergency spillway and/or principal outlet.
- Portable structures that have the potential to float shall be prohibited unless shown to be adequately secured for impoundments.

Fuel Storage

- Storage of flammable liquids is prohibited within the McMicken Dam impoundment area.
- Use of portable propane tanks shall be prohibited unless shown to be adequately controlled to prevent safety issues such as tanks being carried toward the dam by flood waters during flood impoundments.

Proposed Wells

- Production water wells are strictly prohibited on all District McMicken Dam Project property due to potential for adverse impacts to the Project.

- Small water wells of very low capacity and very low annual groundwater withdrawal volume may be allowed by the District on a case by case basis and subject to water rights and all permitting by others.

Proposed Water Impoundments

- Proposed water impoundments shall not decrease the McMicken Dam flood storage volume or increase flood water surface elevation.
- Proposed water impoundments (i.e., ponds or lakes) shall be considered as a net loss in storage and must be offset by a storage gain as needed.
- All proposed water impoundments must be designed to mitigate infiltration (i.e. a liner will be required).
- Any water impoundment greater than 10 acre-feet proposed within the impoundment area is **prohibited** unless it can be shown (to the satisfaction of the District) through detailed engineering investigations and analysis and/or through design and construction mitigation and long-term monitoring to not have a potential for adverse impact(s) on McMicken Dam or any other element of the Project. Any proposed significant water impoundment (as determined by the District) will also require a Failure Modes and Effects Analysis Study (FMEA) or a Risk Assessment Study.
- A monitoring well will be required to track infiltration/saturation and to detect the potential release of contaminants from the lake. The specific requirements will be determined on a case by case basis.
- The use of fertilizer containing phosphate, nitrogen, or other minerals that cause algae and other water quality issues in a water impoundment is prohibited.

Proposed Groundwater Recharge Facilities

- Ground water recharge facilities will be strictly prohibited within zones along the McMicken Dam Project identified as “potential earth fissure risk zones”.
- Any proposed groundwater recharge facilities outside of such zones will be considered on a case by case but will require rigorous engineering hydrogeologic analysis to show no potential for saturation of the McMicken Dam foundation over time due to the recharge facilities. Monitoring features will be to be required to be designed and constructed into the recharge facility as needed to also assure to no dam foundation saturation over time due to the recharge facility. Such studies and design measures can be expected to be extensive and costly.

Activities

- Proposed activities within the impoundment area will typically require a Special Use Permit (SUP) from the District. Activities or other uses may be denied or cancelled at any time if, for any reason, the District judges the specific location, time, weather, or fire risk, etc. to be unacceptable from a safety and security standpoint.
- The dam, emergency spillway, and appurtenant structures will be off limits for all activities unless specifically coordinated and approved by the District.

- Overnight camping will not be permitted below the 50-year impoundment level. Specific proposed locations for camping must be reviewed and approved by the District.



CITY OF SURPRISE Regular City Council Meeting

Council Meeting Date: October 1, 2024
Submitting Department: City Manager Office
Staff Recommendations: None

Contact Person:
District: Citywide

Consent: No	Regular: Yes	Public Hearing: No	Report/Discussion: No
-------------	--------------	--------------------	-----------------------

Agenda Wording:

Presentation and discussion regarding the Southwest Valley Chamber of Commerce; its mission, services, and the potential of partnering with the City of Surprise in the future.

Motion:

For informational and discussion purposes only.

Background:

The Southwest Valley Chamber of Commerce (SVCC) enhance services and support both small and large companies in the communities they serve. Their focus is on providing valuable resources to members, including free workshops on topics such as accessing capital, marketing strategies, social media, accounting, and other essential business skills.

Objective Analysis:

CEO Campos will present an overview of SVCC including the wide range of services that they perform in the communities they serve. Mr. Campos will be available to answer question from the City Council.

Policy Compliant:

This item is within policy

Financial Impact:

None.

Budget Impact:

None.

FTE Impact:

N/A

ATTACHMENTS:
