CITY OF SURPRISE
Regular City Council Meeting
16000 N. Civic Center Plaza
Surprise, AZ 85374
Tuesday, January 21, 2025 @ 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

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

1.	Citywide	Consideration and action pertaining to selection of a Vice Mayor in accordance with City Code Sec. 2-41 and directing the City Clerk to administer the Oath of Office.	Kristi Passarelli City Clerk
2.	Internal	Consideration and action to Appoint Sean Mattson as Chair for the Public Safety Retirement Commission Board - Police & Fire (PSPRS).	Kristi Passarelli City Clerk

G. Regular City Council Meeting Agenda

CONSENT AGENDA:

3.	Internal	Consideration and action to approve the January 7, 2025 Regular City Council Meeting Minutes; and January 14th, 2025 Special Council Meeting Minutes.	Kristi Passarelli City Clerk
4.	District 6	Consideration and action pertaining to approval of a grant agreement with the U.S. Department of Energy, accepting funding to support an LED light replacement project, approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $178,200, and amending the Fiscal Year 2025 Contract Awarding Authority List; Resolution #2025-16.	Holly Osborn Parks and Recreation
5.	Citywide	Consideration and action pertaining to authorizing acceptance of a grant award from the Arizona Department of Public Safety (DPS), approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $110,800 for expenses related to reducing human trafficking, and amending the Fiscal Year 2025 Contract Awarding Authority list by creating #25121; Resolution #2025-08.	Benny Pina Police

6.	Citywide	Consideration and action pertaining to authorizing acceptance of an Intergovernmental Agreement with the Arizona Department of Public Safety (DPS), approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $125,000 for recruitment and retention expenses and amending the Fiscal Year 2025 Contract Awarding Authority List by creating #25122; Resolution #2025-13.	Benny Pina Police
7.	Citywide	Consideration and action authorizing the City Manager to execute an Intergovernmental Agreement with the Arizona Department of Transportation for the Waddell Road Intelligent Transportation System enhancements. Resolution 2025-15.	Eric Boyles Transportation
8.	Citywide	Consideration and action pertaining to acceptance of the City's Arizona Lottery Fund (ALF) allotment for FY2025 in the amount of $364,134; Resolution #2025-17.	Eric Boyles Transportation
9.	Citywide	Consideration and action pertaining to approval of the Impact Grant Agreement with Sprouts Healthy Communities Foundation, accepting funding for the Surprise Community & Resource Center, approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $450,000, approval of a Fiscal Year 2025 Contract Awarding Authority List amendment, and approval of the addition of one full-time equivalent position; Resolution #2025-06.	Seth Dyson Human Svcs and Comm Vitality

REGULAR AGENDA ITEM - PUBLIC HEARING:

REGULAR AGENDA ITEM - NON-PUBLIC HEARING:

10.	Citywide	Consideration and action pertaining to approval of the 2025 Legislative Agenda.	Jodi Tas City Manager Office
11.	Citywide	Presentation and discussion pertaining to FY2024 and FY2025 City Auditor Department reports.	Carol Holley City Auditor
12.	Citywide	Consideration and action pertaining to the authorization of the assignment of the Circle City Water Company, LLC Central Arizona Project Municipal and Industrial Water Entitlement to the City of Surprise thereby terminating the Circle City Water Company, LLC Central Arizona Project Water Service Subcontract, Resolution 2025-12.	Michael Boule Water Resource Management
13.	Citywide	Consideration and action pertaining to the authorization of Amendment No. 1 to Subcontract No. 07-XX-30-W0505 among the United States, the Central Arizona Water Conservation District and the City of Surprise, Resolution 2025-11.	Michael Boule Water Resource Management
14.	Internal	Consideration and action to approve an Addendum to the Real Estate Purchase Contract with Deer Valley & 185th Avenue II, LLC, an Arizona Limited Liability Company, for approximately 27 acres of property located near 185th Avenue & Deer Valley Road.	Brenden Espie Fire - Medical

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

15.	Internal	Consideration and action to recess into executive session for discussion and consultation with the City's attorneys to consider its position and receive legal advice pertaining to current litigation pursuant to A.R.S. §§ 38-431.03 and 04.	Legal

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, January 16th, 2025 @ 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 CLERK@SURPRISEAZ.GOV, BY NO LATER THAN 24 HOURS IN ADVANCE OF THE REGULAR SCHEDULED MEETING TIME.

SURPRISE
ARIZONA

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
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: January 21, 2025
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: January 21, 2025
Submitting Department: City Clerk
Staff Recommendations:

Contact Person: Kristi Passarelli, City Clerk
District: Citywide

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

Agenda Wording:

Consideration and action pertaining to selection of a Vice Mayor in accordance with City Code Sec. 2-41 and directing the City Clerk to administer the Oath of Office.

Motion:

Background:

- **Sec. 2-41. - Vice-mayor; selection and role.**

(a) *Eligibility.* Any council member, other than the mayor, may serve as vice-mayor, whether or not the member has served as vice-mayor previously.
(b) *Selection.*
(1) Not later than January 30th of each year, the city council shall select one of its members, other than the mayor, to serve as vice-mayor. The member selected as vice-mayor will serve as such until the member resigns the office, vacates council, or is replaced by another member as vice-mayor.
(2) Any council member may nominate any council member, including him/herself, to serve as the vice-mayor. All nominations must occur prior to voting. The council must vote by written ballot. The candidate receiving a majority of the votes cast will serve as vice-mayor. In the event that no candidate receives a majority of votes cast, the two candidates receiving the highest number of votes will be considered in a run-off vote. Voting must be repeated until a vice-mayor is selected. The meeting may not adjourn or recess until a vice-mayor is selected.
(c) *[Absence or inability to perform duties.]* The vice-mayor will perform the duties of the mayor in the absence or inability of the mayor to perform his or her duties. In the absence or inability of the vice-mayor to perform the duties of the mayor, the most senior council member will perform the duties of mayor/vice-mayor. Seniority is determined by the then current number of consecutive years the member has served on the council.
(Ord. No. 2013-09, § 2(Exh. A), 11-12-13)

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:
FTE Impact:

ATTACHMENTS:

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
Submitting Department: City Clerk
Staff Recommendations:

Contact Person: Kristi Passarelli, City Clerk
District: Internal

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

Agenda Wording:
Consideration and action to Appoint Sean Mattson as Chair for the Public Safety Retirement Commission Board - Police & Fire (PSPRS).

Motion:

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:
FTE Impact:

ATTACHMENTS:

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
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 January 7, 2025 Regular City Council Meeting Minutes; and January 14th, 2025 Special Council Meeting Minutes.

Motion:
I move to approve the January 7, 2025 Regular City Council Meeting Minutes; and January 14th, 2025 Special Council Meeting Minutes.

Background:

Objective Analysis:

Policy Compliant:

Financial Impact:

Budget Impact:
FTE Impact:

ATTACHMENTS:
1. 010725 Regular City Council Meeting Minutes

CITY OF SURPRISE
Regular City Council Meeting
16000 N. Civic Center Plaza
Surprise, AZ 85374
Tuesday, January 7, 2025 @ 6:00 PM
COUNCIL CHAMBERS

A. Call To Order

Mayor Sartor called the Regular Council Meeting of January 7th, 2025 to order at 6:00 p.m., located at Surprise City Hall, 16000 N. Civic Center Plaza, Surprise, AZ. 85374.

1. Invocation

Ray Grimm, led in the invocation.

B. Roll Call

In attendance with Mayor Sartor were Vice Mayor Nick Haney, Council members Chris Judd, Earle Greenberg, Patrick Duffy, and Johnny Melton. Councilmember Jack Hastings was excused.

C. Pledge of Allegiance

Mayor Sartor led in the Pledge of Allegiance.

D. Proclamation and Community Acknowledgements

E. City Manager Report

2. City Manager sub-text

3. Reports

City Manager Bob Wigenroth, presented Joann Estfan. Joann introduced the Youth Council Member, Annaleisa Dixon.

F. City Clerk Report

4. Reports

1. The City Clerk will administer the Oath of Office for the newly elected Mayor and Councilmembers as follows: Mayor Kevin Sartor; Councilmember Earle Greenberg (District 2); Councilmember Johnny Melton (District 4); and Re-Elected Councilmember Patrick Duffy (District 3).

City Clerk, Kristi Passarelli, swore in Councilmember Earle Greenberg, Councilmember Greenberg, thanked everyone for their support.

Kristi swore in Councilmember Patrick Duffy, Councilmember Duffy, thanked everyone for their support.

Kristi swore in Councilmember Johnny Melton, Councilmember Melton, thanked everyone for their support.

Kristi swore in Mayor Kevin Sartor, Mayor Sartor, thanked everyone for their support.

G. Regular City Council Meeting Agenda

5. CONSENT AGENDA:

Motion: To Approve
Initiated By: Nick Haney

Seconded By: Chris Judd

Yes: Patrick Duffy, Chris Judd, Nick Haney, Kevin Sartor, Johnny Melton, Earle Greenberg
No: None
Abstain: None

Vote Result: Passed

2. Consideration and action to approve the December 17, 2024 Regular City Council Meeting Minutes.

3. Consideration and action enlarging an existing lighting improvement district known as City of Surprise, Arizona, SU-AutoshowWest3212 pursuant to A.R.S. § 48-616 for the purpose of purchasing facilities and energy for lighting the public streets; Resolution #2025-02.

4. Consideration and action pertaining to the conditional acceptance and maintenance of certain streets and public utility improvements at Graham Ranch Estates Rural Subdivision (Tierra Buena Improvements), generally located at the northeast corner of West Tierra Buena Lane and North Reems Road; Resolution # 2025-04.

5. Consideration and action pertaining to approval of an amendment to the Intergovernmental Agreement with Maricopa County, an amendment to the Fiscal Year 2025 Contract Award Authority List, and approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $207,400 to facilitate temporary shelter and housing services; Resolution #2025-07.

6. Consideration and action pertaining to approval of the Final Plat entitled, "Visara – Phase 1 Replat" and dated October 11, 2024, a property generally located north of Jomax Road and east of 163rd Avenue; Case# FS24-0497.

7. Consideration and action pertaining to approval of the Final Plat entitled, "Hudson Estates" and dated October 11, 2024, a property located at the southwest corner of Williams Road and 223rd Avenue; Case FS24-0690**.**

8. Consideration and action pertaining to acceptance of a Temporary Drainage Easement from 163rd & Happy Valley LLC along 163rd Avenue and Happy Valley Road.

9. Consideration and action pertaining to acceptance of a Special Warranty Deed for dedication of rights-of-way from 163rd & Happy Valley LLC for right of way along 163rd Avenue at Happy Valley Road.

10. Consideration and action pertaining to acceptance of a Drainage Easement from Honor Health along 163rd Avenue and south of Pat Tillman Boulevard.

11. Consideration and action pertaining to acceptance of a Quit Claim Deed for dedication of rights-of-way from Honor Health along 163rd Avenue south of Pat Tillman Boulevard.

12. Consideration and action pertaining to approval of the Corrected Final Plat entitled, “Southwest Gas OPS Center” and dated October 01, 2024, a site generally located on the southwest corner of Deer Valley Road and Grand Avenue; Case FS24-0102.

6. REGULAR AGENDA ITEM - PUBLIC HEARING:

13. Consideration and action pertaining to a recommendation to the Arizona Department of Liquor Licenses and Control (DLLC) on Application No. 310915, requested by Andrea Dahlman Lewkowitz, for Torchy's Tacos for Series 12 Liquor License. Torchy's Tacos is located at 16430 W Waddell Rd, AZ 85388.

Motion: To Approve
Initiated By: Patrick Duffy
Seconded By: Chris Judd

Yes: Patrick Duffy, Chris Judd, Nick Haney, Kevin Sartor, Johnny Melton, Earle Greenberg
No: None
Abstain: None

Vote Result: Passed

14. Consideration and action pertaining to a recommendation to the Arizona Department of Liquor Licenses and Control (DLLC) on Application No. 310636, requested by Amy S Nations, for Blue Sushi Sake Grill for Series 12 Liquor License. Blue Sushi Sake Grill is located at 13442 N Prasada Parkway, AZ 85388.

Motion: To Approve
Initiated By: Patrick Duffy
Seconded By: Nick Haney

Yes: Patrick Duffy, Chris Judd, Nick Haney, Kevin Sartor, Johnny Melton, Earle Greenberg
No: None
Abstain: None

Vote Result: Passed

7. REGULAR AGENDA ITEM - NON-PUBLIC HEARING:

15. Consideration and action directing the recording of the blank petition for annexation of approximately 5.41 acres generally located south of the Central Arizona Project and west of the future 251st alignment, for the project known as Surprise 295; Resolution #2025-01.

Chris Sexton, came to present this item. She talked about Vicinity Map, Annexation Map, and Annexation Steps.

Vice-Mayor Haney, asked about the location of the project. He asked if this was an annexation and not a rezone? Chris said that it was.

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

Yes: Patrick Duffy, Chris Judd, Nick Haney, Kevin Sartor, Johnny Melton, Earle Greenberg
No: None
Abstain: None

Vote Result: Passed

H. Call To The Public

Alex Christ, a Surprise Resident, came to talk about the new year.

I. Other Business and Future Agenda Items

Mayor Sartor requested a transportation update around the Asante area.

J. City Council Reports

Councilmember Judd, talked about the Maverick's gold tournament. He talked about his hopes for the new council.

Councilmember Melton, paid respects to Councilmember Remley.

Vice-Mayor Haney, paid respect to Councilmember Remley as well. He also talked about the support shown for everyone on council.

Councilmember Duffy, congratulated Mayor Sartor and the rest of the council, and other legislators.

Councilmember Greenberg, didn't have anything.

Mayor Sartor, talked about the upcoming MLK celebration at Willow Canyon Highschool. He also talked about the Mayor's Literacy Challenge.

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: Chris Judd
Seconded By: Nick Haney

Yes: Patrick Duffy, Chris Judd, Nick Haney, Kevin Sartor, Johnny Melton, Earle Greenberg
No: None
Abstain: None

Vote Result: Passed

Meeting Adjourned at 6:37 PM

____

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, January 7, 2025.**

Kristi Passarelli, City Clerk

CITY OF SURPRISE
Regular City Council Meeting

SURPRISE
ARIZONA

Council Meeting Date: January 21, 2025

Contact Person: Holly Osborn, DIRECTOR-PARKS & REC

Submitting Department: Parks and Recreation

District: District 6

Staff Recommendations: None

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

Agenda Wording:

Consideration and action pertaining to approval of a grant agreement with the U.S. Department of Energy, accepting funding to support an LED light replacement project, approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $178,200, and amending the Fiscal Year 2025 Contract Awarding Authority List; Resolution #2025-16.

Motion:

I move to approve Resolution #2025-16.

Background:

The Parks & Recreation Department has been awarded a grant in the amount of $178,140 from the U.S. Department of Energy for an LED light replacement project through the Energy Efficiency and Conservation Block Grant Program. The Department will utilize the grant funds to replace the current ballfield lights at Marley Park with LED light fixtures. There are 13 poles with 90 fixtures that will be replaced at Marley Park. The existing lights are 145.8 KW; the new LED lights will be 26 KW resulting in energy reduction and savings.

Objective Analysis:

The estimated cost reduction for energy and maintenance costs to replace the light fixtures with LED is approximately 40-85%. In addition, the new light fixtures will reduce spill light and glare by approximately 50% positively impacting the community surrounding the ballfields and the environment.

Policy Compliant:

This item is compliant with City and Council policy.

Financial Impact:

This is a one-time grant in the amount of $178,140 with no match requirement. The project cost is approximately $486,000. The grant funds will be utilized for a portion of the project and the remaining amount of the project is currently budgeted in the department’s Asset Replacement Fund.

Budget Impact:

Approval of this item will move budget in the amount of $178,200 from General Contingency to the Grants Fund to Project G54180. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

FTE Impact:

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

ATTACHMENTS:

1. Department of Energy EECBG Voucher Preapproval – Surprise
2. Individual Application_ IA-0000001092
3. Res 2025-16 Dept Energy EECBG Voucher Program

From:	EECBG Vouchers
To:	Amanda Correia; Christine Frederickson
Subject:	Department of Energy EECBG Voucher Preapproval – Surprise
Date:	Thursday, September 26, 2024 9:42:58 AM
Attachments:	Post-Installation User Guide.pdf FARC 6.17.24.pdf

*****The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.*****

Congratulations! The U.S. Department of Energy has approved your Energy Efficiency and Conservation Block Grant (EECBG) Program Equipment Rebate Voucher application. **This email serves as the official notice that you may now proceed with equipment purchase and installation.**

Next steps:

- Start your project! For information, please refer to the EECBG Voucher Handbook and the EECBG Program website.
- Please review the attached Federal Assistance Reporting Checklist (FARC) for details on required reporting. (Note: The highlighted reports may or may not apply to your project.)
    - For more information, please see DOE's Equipment Voucher Reporting webinar recording and slides.
- Per the Handbook: "Following application approval, eligible entities have up to two years to use their EECBG Program voucher funds with the option to request a no-cost extension."
- Once your entire project is complete and all costs paid, see the attached Post-Installation User Guide for instructions on requesting voucher reimbursement.

If you need additional assistance or have any questions, please get in touch with us at this email address (EECBGVouchers@icf.com) and reference your application number below:

Application Number: IA-0000001092

Thank you,

EECBG Rebate & Portal Administrator
ICF – Supporting DOE's Energy Efficiency and Conservation Block Grant (EECBG) Program
Email: EECBGVouchers@icf.com
Portal: https://doerebates.my.site.com/eecbgvouchers

vouchers/s/about-the-program) Submit Application My Applications (/eecbgvouchers/s/my-applications)

Individual Application

Applied Date	Account	Application Status	RecordType Name
8/16/2024, 12:27 PM	Surpris...	Project In-Progress	Equipment Rebates Application

Record Detail (?Tabset-3a4af=1) Related List (?Tabset-3a4af=2) Reporting (?Tabset-3a4af=D07bb) LCPtracker Registration (?Tabset-3a4af=370a6) Annual

Individual Application

Application ID
IA-0000001092

Application Status
Project In-Progress

Account
Surprise (/eecbgvouchers/s/detail/001Ph00000A5gqXIAR)

Category
Rebates

Contact
Christine Frederickson (/eecbgvouchers/s/detail/003Ph000008XeF3IAK)

Total Line Items
1

Application Number
EECEQ-01092

Planning to team with other entities?
No

Project Information

Sectors served
K-12 Schools;Local Government;Low/Limited Income;Non-Profits;Residential

How the project serves DACs
While the project itself is not located in a Disadvantaged Community tract, the ballfields serve as a central location in Surprise for the approximately 3,500 youth who participate in the City of Surprise Parks & Recreation baseball and softball recreational leagues. The leagues are subsidized by the City to offer an affordable sports opportunity for both residents and non-resident youth. The City also offers a scholarship program for those needing financial assistance with recreation league fees.

Other Project Sector

One to Two Sentence Summary
The City of Surprise will be retrofitting the ballfield lights at Marley Park with LED fixtures. The ballfields at Marley Park are primarily utilized for the City of Surprise youth sports recreational baseball and softball leagues. In addition to improving the energy efficiency of the lights utilized to support the youth sports recreational leagues, the new light fixtures will reduce spill light and glare by 50% or more reducing impact on the environment and the community surrounding the ballfields.

Eligible Activities
Energy Efficiency Retrofit Grants for Government Agencies and Non-profits

Serves disadvantaged communities (DACs)?
Yes

Budget Information

EECBG Program Formula Allocation Amount
$178,140.00

Total Voucher Estimate
$178,140.00

Using multiple EECBG recipients formula?
No

Total Teaming EECBG Formula Allocation

Program Metrics and Compliance Requirements

Program Metrics
Retrofits;Equipment Purchased

Davis-Bacon Assurance Letter SIgned by
Christine Frederickson

Other Program Metric

Davis-Bacon Assurance Letter Signed Date
4/15/2024

Applicable NEPA SOW

NEPA SOW 2

Terms and Conditions

Terms And Conditions Signed By
Christine Frederickson

Terms And Conditions Signed Date
8/16/2024

Application Milestones

Applied Date
8/16/2024, 12:27 PM

Approved Date

Financial Report (SF-425)

Financial Report Submitted Date

One Time Location Report

One Time Location Report Submitted Date

Annual Historic Preservation Report

Annual Historic Report Completed?

Annual Historic Report Year

Annual Historic Report Submitted Date

NEPA Report

NEPA SOW1 submission?

NEPA Report Submitted Date

Davis Bacon Act Report

Comply DBA Standards?

DBA Report Submitted Date

Semi-Annual Davis Bacon Act (DBA) Report

Semi Annual DBA Type

Semi Annual DBA Submitted Date

Single Audit Report

Expend 75000 or more?

Upload Single Audit Copy?

Single Audit Report Submitted Date

RESOLUTION # 2025-16

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA AUTHORIZING THE CITY TO ACCEPT A GRANT AWARD FROM THE UNITED STATES DEPARTMENT OF ENERGY AND AMEND THE FISCAL YEAR 2025 BUDGET BY MOVING BUDGET AUTHORITY IN THE AMOUNT OF $178,200 FROM GENERAL CONTINGENCY TO THE GRANTS FUND, PROJECT G54180 FOR AN LED LIGHT REPLACEMENT PROJECT AND AMENDING THE FISCAL YEAR 2025 CONTRACT AWARDING AUTHORITY LIST BY ADDING $178,200.

WHEREAS, the U.S. Department of Energy has awarded the City of Surprise Parks and Recreation Department a grant in the amount of $178,140 through the Energy Efficiency and Conservation Block Grant program;

WHEREAS, the Parks and Recreation Department desires to accept the grant award and utilize the funds to upgrade the field lights at Marley Park to energy efficient LED lights;

WHEREAS, the FY2025 budget, including the FY2025 Contract Awarding Authority List, was adopted by Surprise City Council Resolution #2024-94 on June 4, 2024;

WHEREAS, this action will necessitate a budget amendment; and

WHEREAS, the City of Surprise Administrative Policies requires the approval of the Mayor and Council for budget amendments of this nature.

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

Section 1. That the statements and schedules attached as *Exhibit A* and incorporated by reference are adopted, amending the budget of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

Section 2. That the statements and schedules attached as *Exhibit B* and incorporated by reference are adopted, amending the Fiscal Year 2025 Contract Awarding Authority List of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

Section 3. The City is hereby authorized to accept a grant in the amount of $178,140 from the U.S. Department of Energy. The award email from the U.S. Department of Energy to the City of Surprise, attached as *Exhibit C* and incorporated by reference, is approved.

Section 4. The City Manager, or his designee, is hereby authorized to execute and submit all documents and other necessary or desirable instruments in connection with said agreement.

APPROVED AND ADOPTED this _____day of ____________, 2025.

Kevin D. Sartor, Mayor

Attest:

Approved as to form:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney

RESOLUTION # 2025-16
Exhibit A

1. Appropriation - The allocation below represents a movement of budget in the amount of $178,200 from General Contingency to the Grants Fund to project #G54180 To accept a grant from the U.S. Department of Energy to replace the sports field lights at Marley Park with LED lights. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

Fund	Department	Project/Category	Rev/ Exp	Current Budget	Increase/ (Decrease)	Amended Budget
Grants	Parks and Recreation	#G54180 FY25 EECBG Voucher	E	-	178,200	178,200
Grants	Parks and Recreation	#G54180 FY25 EECBG Voucher	R	-	178,200	178,200
Contingency	General Operations	Contingency	E	83,711,400	(178,200)	83,533,200
Contingency	General Operations	Other	R	78,616,700	(178,200)	78,438,500
			Expense Total	**83,711,400**	**-**	**83,711,400**
			Revenue Total	**78,616,700**	**-**	**78,616,700**

Resolution No. 2025-16
RFLS #9765
Rev 11/24

RESOLUTION # 2025-16
Exhibit B

1. Contract Awarding Authority List – Council to approve adding an item on the Fiscal Year 2025 Contract Awarding Authority List for the FY25 EECBG Voucher Grant in the amount of $178,200 for LED Light replacements.

Reference #	Project Number	Description	Current Amount	Increase/ (Decrease)	Amended Amount
25279	G54180	FY25 EECBG Voucher	$0	$178,200	$178,200

Resolution No. 2025-16
RFLS #9765
Rev 11/24

RESOLUTION # 2025-16
Exhibit C

AWARD EMAIL FROM THE U.S. DEPARTMENT OF ENERGY
TO THE CITY OF SURPRISE

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
Submitting Department: Police
Staff Recommendations:

Contact Person: Benny Pina, POLICE CHIEF
District: Citywide

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

Agenda Wording:

Consideration and action pertaining to authorizing acceptance of a grant award from the Arizona Department of Public Safety (DPS), approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $110,800 for expenses related to reducing human trafficking, and amending the Fiscal Year 2025 Contract Awarding Authority list by creating #25121; Resolution #2025-08.

Motion:

I move to approve Resolution #2025-08.

Background:

The Surprise Police Department has been conditionally approved for $110,715 in overtime, travel/training, operational supplies and technology equipment funding via HB2897 – Anti-Human Trafficking Grant Fund from DPS to cover expenses to reduce human trafficking within the State of Arizona.

Objective Analysis:

Acceptance of this funding will provide reimbursement of overtime, travel/training, operational supplies and technology equipment expenses to the Surprise Police Department to be used reduce human trafficking within the State of Arizona.

Policy Compliant:

This action is consistent with City and Council Policy.

Financial Impact:

Acceptance of this one-time funding will be used solely for overtime, travel/training, operational supplies and technology equipment expenses incurred as a result of the Police Department's efforts to reduce human trafficking within the State of Arizona. There is no city-match requirement; however, all employee related expenses associated with this overtime will be absorbed by the Police Department's current operating budget.

Budget Impact:

The FY2025 adopted budget did not include appropriations for revenue and expenses related to the

FFY2025 HB2897 – Anti-Human Trafficking Grant. Acceptance of this grant will require an amendment to the Fiscal Year 2025 budget by moving budget authority of $110,800 from General Contingency to project G31121 in the Grants Fund and amending the Fiscal Year 2025 Contract Awarding Authority list by creating #25121. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

FTE Impact:

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

ATTACHMENTS:

1. AHT FY25 Award Letter- Surprise PD
2. AHT Agreement- Surprise PD
3. 01.21.25 Res 2025-08 FY25 DPS Anti Human Trafficking_Final

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ARIZONA DEPARTMENT OF PUBLIC SAFETY

2102 WEST ENCANTO BLVD. P.O. BOX 6638 PHOENIX, ARIZONA 85005-6638 (602) 223-2000

"Courteous Vigilance"

KATIE HOBBS
Governor

JEFFREY GLOVER
Director

November 13, 2024

Benny Piña, Chief of Police
Surprise Police Department
14250 S. Statler Plz 103
Surprise, AZ 85374

RE: HB2897 – Anti-Human Trafficking Grant Fund
Conditional Award Amount: **$110,715.00**

Dear Chief Piña:

Congratulations, on behalf of the Arizona Department of Public Safety, the Surprise Police Department application for financial assistance submitted under the Fiscal Year (FY) 2025 Anti-Human Trafficking (AHT) Grant, has been conditionally approved in the amount of **$110,715.**

Before you request and receive any of the funds awarded to you, you must establish acceptance of the award by reviewing and signing the established grant agreement which will be provided via separate notification from DPS. Final awards will be processed once the State of Arizona receives the grant agreement finalized by both parties.

All expenditures made with grant funding must adhere to all state regulations and requirements. Also, each grant award will be monitored for fiscal compliance through desk monitoring and potential site monitoring visits.

If you have any questions, please email grants@azdps.gov. We look forward to working with you and your staff in the coming year.

Sincerely,

Jeffrey Glover, Colonel
Director

DPS Contract #________________

AGREEMENT REGARDING ANTI-HUMAN TRAFFICKING

This Agreement is entered into between the State of Arizona through the Department of Public Safety, hereinafter referred to as "DPS", and the City of Surprise through the Surprise Police Department, hereinafter referred to as "SPD".

The purpose of this Agreement shall be to enhance law enforcement services and programs that reduce human trafficking within the state as allowed in HB2897 through the cooperative efforts of the parties to this Agreement.

DPS is authorized and empowered to enter into this Agreement pursuant to A.R.S. §41-1713 B.3.

Now, in consideration of the mutual promises set forth herein, the parties to this Agreement hereby agree to the following terms and conditions:

I. PARTICIPATION

This agreement provides Fiscal Year 2025 (July 1, 2024, through June 30, 2025) Anti-Human Trafficking funding up to $110,715.00 to provide personnel, training, travel, and equipment for the Surprise Police Department.

Quarterly, the SPD will report statistical activity and progress for agreed upon performance measures. Additionally, ongoing information exchange and intelligence sharing will occur between SPD and DPS.

II. REIMBURSEMENT

DPS agrees to reimburse SPD to fund overtime expenses up to $55,000. Travel and training expenses will be reimbursed up to $39, 475. Four laptops and handcuffs will be reimbursed up to $16,240.

Evidence of expenditures shall be provided by June 30 or as soon as practicable, for the fiscal year just ended. Quarterly statistical reports shall be provided on the same schedule as the expenditure information.

III. NON-AVAILABILITY OF FUNDS

Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages because of termination under this paragraph.

IV. NON-DISCRIMINATION

The Parties shall comply with Executive Order 2023-001, which mandates that all persons, regardless of race, color, religion, sex, age national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

V. INDEMNIFICATION

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

VI. RECORDKEEPING

All records regarding the Agreement, including officers' time accounting logs, must be retained for five (5) years in compliance with A.R.S. §35-214, entitled Inspection and Audit of Contract Provisions.

VII. FEES

In no event shall either party charge the other for any administrative fees for any work performed pursuant to the Agreement.

VIII. ARBITRATION

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

IX. EFFECTIVE DATE/DURATION

The terms of this agreement shall become effective upon the date the last signature is obtained, shall be retroactive to July 1, 2024, and shall expire on June 30, 2025. If funds are not allocated to support this agreement, DPS will provide written notice to SPD notifying them of termination of funding and cancellation of the Agreement.

X. CANCELLATION

All parties are hereby put on notice that this Agreement is subject to cancellation by the Governor for conflicts of interest pursuant to A.R.S. §38-511.

XI. TERMINATION
Either party may terminate the Agreement for convenience or cause upon thirty (30) days written notice to the other party. Upon termination, DPS shall pay all outstanding amounts up through the time upon which the termination becomes effective. All property shall be returned to the owning party upon termination.

Any notice required to be given under the Agreement will be provided by mail to:

Phil L. Case, Budget Officer
Arizona Department of Public Safety
P. O. Box 6638, Mail Drop 1330
Phoenix, Arizona 85005-6638

Benny Piña, Chief of Police
Surprise Police Department
14250 S. Statler Plaza 103
Surprise, AZ 85374

XII. VALIDITY
This document contains the entire agreement between the parties and may not be modified, amended, altered or extended except through a written amendment signed by both parties. If any portion of this agreement is held to be invalid, the remaining provisions shall not be affected.

The parties hereto have caused this Agreement to be executed by the proper officers and officials.

STATE OF ARIZONA

By: ____ Date: ____________________
Jeffrey Glover, Colonel
Director

CITY OF SURPRISE

By: ____ Date: ____________________
(Insert Authorized Rep)

ATTEST:

By: ____ Date: ____________________
(Remove if not necessary)

RESOLUTION # 2025-08

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE ARIZONA DEPARTMENT OF PUBLIC SAFETY FOR AN ANTI-HUMAN TRAFFICKING GRANT, AMENDING THE FISCAL YEAR 2025 BUDGET BY MOVING BUDGET AUTHORITY OF $110,800 FROM GENERAL CONTINGENCY TO PROJECT G31121 WITHIN THE GRANTS FUND AND AMENDING THE FISCAL YEAR 2025 CONTRACT AWARDING AUTHORITY LIST BY ADDING $110,800 TO CAAL #25121.

WHEREAS, the Surprise Police Department submitted an application for financial assistance under the Fiscal Year (FY) 2025 Anti-Human Trafficking (AHT) Grant through the Arizona Department of Public Safety (DPS);

WHEREAS, DPS has conditionally approved an amount of $110,715 for overtime, travel/training, operational supplies and technology equipment expenses incurred to reduce human trafficking within the State of Arizona;

WHEREAS, the City and the Police Department desire to accept this grant agreement;

WHEREAS, the FY2025 budget, including the FY2025 Contract Awarding Authority List, was adopted by Council Resolution #2024-94 on June 4, 2024;

WHEREAS, this action will necessitate a budget amendment;

WHEREAS, the City of Surprise Administrative Policies requires the approval of the Mayor and Council for budget amendments of this nature; and

WHEREAS, the City of Surprise Procurement Code §2-338 (d) requires the authority of the Mayor and Council when the cost to the city is greater than $50,000.

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

Section 1. That the statements and schedules attached as *Exhibit A* and incorporated by reference are adopted, amending the budget of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

Section 2. That the statements and schedules attached as *Exhibit B* and incorporated by reference are adopted, amending the Fiscal Year 2025 Contract

Awarding Authority List of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

Section 3. The Agreement between the City of Surprise and the Arizona Department of Public Safety, attached as *Exhibit C*, is approved.

Section 4. The City Manager, or his designee, is hereby authorized to execute and submit all documents and other necessary or desirable instruments in connection with said agreement.

APPROVED AND ADOPTED this _____day of __________, 2025.

____
Kevin D. Sartor, Mayor

Attest:

____
Kristi Passarelli, City Clerk

Approved as to form:

____
Robert Wingo, City Attorney

RESOLUTION # 2025-08
Exhibit A

1. Appropriation - This allocation below represents a movement of budget authority in the amount of $110,800 from General Contingency to project G31121 in the Grants Fund to cover projected expenditures for overtime, travel/training, operational supplies and technology equipment to be used to reduce human trafficking in the State of Arizona. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

Fund	Department	Project/Category	Rev/ Exp	Current Budget	Increase/ (Decrease)	Amended Budget
Grants	Police	#G31121 FY25 Anti-Human Trafficking Grant	E	-	110,800	110,800
Grants	Police	#G31121 FY25 Anti-Human Trafficking Grant	R	-	110,800	110,800
Contingency	General Operations	Contingency	E	83,711,400	(110,800)	83,600,600
Contingency	General Operations	Other	R	78,616,700	(110,800)	78,505,900
			Expense Total	**83,711,400**	**-**	**83,711,400**
			Revenue Total	**78,616,700**	**-**	**78,616,700**

RESOLUTION # 2025-08
Exhibit B

1. Contract Awarding Authority List – Council approved $110,800 for the purpose of overtime, travel/training, operational supplies and technology equipment expenses incurred to reduce human trafficking within the State of Arizona to be included on the Fiscal Year 2025 Contract Awarding Authority List.

Reference #	Description	Current Amount	Increase/ (Decrease)	Amended Amount
25121	G31121 FY25 Anti-Human Trafficking Grant	$0.00	$110,800	$110,800

RESOLUTION # 2025-08
Exhibit C

AGREEMENT TO ACCEPT FUNDING BETWEEN

THE CITY OF SURPRISE AND THE ARIZONA DEPARTMENT OF PUBLIC SAFETY (DPS)

(BEGINS ON THE NEXT PAGE)

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
Submitting Department: Police
Staff Recommendations:

Contact Person: Benny Pina, POLICE CHIEF
District: Citywide

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

Agenda Wording:

Consideration and action pertaining to authorizing acceptance of an Intergovernmental Agreement with the Arizona Department of Public Safety (DPS), approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $125,000 for recruitment and retention expenses and amending the Fiscal Year 2025 Contract Awarding Authority List by creating #25122; Resolution #2025-13.

Motion:

I move to approve Resolution #2025-13.

Background:

The Surprise Police Department has been conditionally approved for $125,000 in funding via HB2897 – Law Enforcement Retention Initiatives Funding from DPS to cover expenses to be used for recruitment, retention services and online software.

Objective Analysis:

Acceptance of this funding will provide reimbursement of recruitment, retention services and online software to the Surprise Police Department to be used for a recruitment audit, leadership boot camp and officer performance coaching.

Policy Compliant:

This action is consistent with City and Council Policy.

Financial Impact:

Acceptance of this one-time funding of $125,000 will be used solely for recruitment, retention services and online software expenses. There is no city-match requirement.

Budget Impact:

The FY2025 adopted budget did not include appropriations for revenue and expenses related to the FFY2025 HB2897 – Law Enforcement Retention Initiatives Funding. Acceptance of this funding will require an amendment to the Fiscal Year 2025 budget by moving budget authority of $125,000 from General Contingency to project G31460 in the Grants Fund and amending the Fiscal Year 2025 Contract Awarding Authority List by creating #25122. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

FTE Impact:

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

ATTACHMENTS:

1. Retention Initiatives ISA - Surprise
2. Res 2025-13 FY25 DPS Retention Initiative_Finallegal123124

DPS Contract #_________________

AGREEMENT
REGARDING
LAW ENFORCEMENT RETENTION INITIATIVES FUNDING

This Agreement is entered into between the State of Arizona through the Department of Public Safety, hereinafter referred to as "DPS", and the City of Surprise, Arizona, hereinafter referred to as "the City".

The purpose of this Agreement shall be to accomplish the provisions of Laws 2024, Chapter 209, Section 9 regarding funding for "Law enforcement retention initiatives".

DPS is authorized and empowered to enter into this Agreement pursuant to A.R.S. §41-1713 B.3. Both parties are authorized and empowered to enter into this Agreement pursuant to A.R.S. §11-952.

Now, in consideration of the mutual promises set forth herein, the parties to this Agreement hereby agree to the following terms and conditions:

I. PARTICIPATION
DPS agrees to transfer $125,000.00 to the City, upon execution of the Agreement. Pursuant to Laws 2024, Chapter 209, Section 9, the City shall utilize such funds for recruitment and retention services and software from a vendor that:

1. Offers performance coaching services facilitated by qualified coaches who have been trained or vetted by current or former instructors of the Federal Bureau of Investigation National Academy.

2. Provides accessible coaching services through an online platform, which offers a wide array of coaching options and subject areas for law enforcement professionals.

3. Includes analytics to measure the impacts of recruitment and retention services, including assessments of individual officer or employee performance.

4. Offers a comprehensive recruitment audit and training program designed specifically for agency recruiters.

5. Provides software or technology solutions to support a variety of recruitment and retention activities within law enforcement agencies.

II. NON-AVAILABILITY OF FUNDS
Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages because of termination under this paragraph.

III. NON-DISCRIMINATION

The Parties shall comply with Executive Order 2023-001, which mandates that all persons, regardless of race, color, religion, sex, age national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

IV. INDEMNIFICATION

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

V. RECORDKEEPING

All records regarding the Agreement, including procurement and financial records, must be retained for five (5) years after the termination of the agreement in compliance with A.R.S. §35-214, entitled Inspection and Audit of Contract Provisions.

VI. FEES

In no event shall either party charge the other for any administrative fees for any work performed pursuant to the Agreement.

VII. ARBITRATION

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

VIII. EFFECTIVE DATE/DURATION

The terms of this agreement shall become effective upon the date the last signature is obtained, shall be retroactive to July 1, 2024, and shall expire on June 30, 2025 or upon full expenditure of the funds, whichever comes last. If funds are not allocated to support this agreement, DPS will provide written notice to the City notifying them of termination of funding and cancellation of the Agreement.

IX. CANCELLATION

All parties are hereby put on notice that this Agreement is subject to cancellation by the Governor for conflicts of interest pursuant to A.R.S. §38-511.

X. TERMINATION

Either party may terminate the Agreement for convenience or cause upon thirty (30) days written notice to the other party. Upon termination, DPS shall pay all outstanding amounts up through the time upon which the termination becomes effective. Any notice required to be given under the Agreement will be provided by mail or e-mail to:

DPS Budget Office
Arizona Department of Public Safety
P. O. Box 6638, Mail Drop 1330
Phoenix, Arizona 85005-6638
Grants@azdps.gov

City of Surprise
14250 W. Statler Plaza
Surprise, Arizona 85374
Benny.Pina@surpriseaz.gov

XI. VALIDITY

This document contains the entire agreement between the parties and may not be modified, amended, altered or extended except through a written amendment signed by both parties. If any portion of this agreement is held to be invalid, the remaining provisions shall not be affected.

The parties hereto have caused this Agreement to be executed by the proper officers and officials.

STATE OF ARIZONA

By: ____ Date: _____________

Jeffrey Glover, Colonel
Director

CITY OF SURPRISE

By:____ Date: _______________

Benny Piña
Police Chief

RESOLUTION # 2025-13

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH THE ARIZONA DEPARTMENT OF PUBLIC SAFETY FOR LAW ENFORCEMENT RETENTION INITIATIVES FUNDING, AMENDING THE FISCAL YEAR 2025 BUDGET BY MOVING BUDGET AUTHORITY OF $125,000 FROM GENERAL CONTINGENCY TO PROJECT G31460 WITHIN THE GRANTS FUND AND AMENDING THE FISCAL YEAR 2025 CONTRACT AWARDING AUTHORITY LIST BY ADDING $125,000 TO CAAL #25122.

WHEREAS, the City of Surprise Government Relations Program on behalf of the Police Department submitted an application for financial assistance under House Bill 2897 Law Enforcement Retention Initiatives through the Arizona Department of Public Safety (DPS);

WHEREAS, DPS has conditionally approved an amount of $125,000 to cover expenses to be used for recruitment, retention services and online software.

WHEREAS, the City and the Police Department desire to accept this agreement;

WHEREAS, the FY2025 budget, including the FY2025 Contract Awarding Authority List, was adopted by Council Resolution #2024-94 on June 4, 2024;

WHEREAS, this action will necessitate a budget amendment;

WHEREAS, the City of Surprise Administrative Policies requires the approval of the Mayor and Council for budget amendments of this nature; and

WHEREAS, the City of Surprise Procurement Code §2-338 (d) requires the authority of the Mayor and Council when the cost to the city is greater than $50,000.

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

Section 1. That the statements and schedules attached as *Exhibit A* and incorporated by reference are adopted, amending the budget of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

Section 2. That the statements and schedules attached as *Exhibit B* and incorporated by reference are adopted, amending the Fiscal Year 2025 Contract Awarding Authority List of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

<u>Section 3.</u> The Agreement between the City of Surprise and the Arizona Department of Public Safety, attached as *Exhibit C*, is approved.

<u>Section 4.</u> The City Manager, or his designee, is hereby authorized to execute and submit all documents and other necessary or desirable instruments in connection with said agreement.

APPROVED AND ADOPTED this _____day of __________, 2025.

____
Kevin D. Sartor, Mayor

Attest:	Approved as to form:
_________________________________	_________________________________
Kristi Passarelli, City Clerk	Robert Wingo, City Attorney

RESOLUTION # 2025-13
Exhibit A

1. Appropriation - This allocation below represents a movement of budget authority in the amount of $125,000 from General Contingency to project G31460 in the Grants Fund to cover projected expenditures for recruitment, retention and online software to be used to assist the Department with its recruitment and retention activities. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

Fund	Department	Project/Category	Rev/ Exp	Current Budget	Increase/ (Decrease)	Amended Budget
Grants	Police	#G31460 FY25 Law Enforcement Retention	E	-	125,000	125,000
Grants	Police	#G31460 FY25 Law Enforcement Retention	R	-	125,000	125,000
Contingency	General Operations	Contingency	E	83,711,400	(125,000)	83,586,400
Contingency	General Operations	Other	R	78,616,700	(125,000)	78,491,700
			Expense Total	**83,711,400**	**-**	**83,711,400**
			Revenue Total	**78,616,700**	**-**	**78,616,700**

Resolution #2025-13
RFLS #9786

RESOLUTION # 2025-13
Exhibit B

1. Contract Awarding Authority List – Council approved $125,000 for the purpose of law enforcement retention initiative expenses incurred for recruitment, retention and online software to be included on the Fiscal Year 2025 Contract Awarding Authority List.

Reference #	Description	Current Amount	Increase/ (Decrease)	Amended Amount
25122	G31460 FY25 Law Enforcement Retention	$0.00	$125,000	$125,000

RESOLUTION # 2025-13
Exhibit C

AGREEMENT REGARDING LAW ENFORCEMENT RETENTION INITIATIVES FUNDING BETWEEN

THE CITY OF SURPRISE AND THE ARIZONA DEPARTMENT OF PUBLIC SAFETY (DPS)

(BEGINS ON THE NEXT PAGE)

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025

Submitting Department: Transportation

Staff Recommendations:

Contact Person: Eric Boyles, Director - Transportation

District: Citywide

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

Agenda Wording:

Consideration and action authorizing the City Manager to execute an Intergovernmental Agreement with the Arizona Department of Transportation for the Waddell Road Intelligent Transportation System enhancements. Resolution 2025-15.

Motion:

I move to approve resolution 2025-15.

Background:

The project will utilize Federal Congestion Mitigation and Air Quality (CMAQ) funding; therefore the project is being administered by ADOT. This project will install new conduit, pull boxes, and fiber optic cabling along Waddell Road from Litchfield Road to Bullard Avenue. Once this project is complete it will allow the City's Traffic Management Center to more effectively manage the traffic along Waddell Rd. The City is required to fund the design, pay ADOT for their administration costs, and fund 5.7% of the construction costs.

Objective Analysis:

The objective of these Intelligent Transportation System enhancements along the Waddell Rd. corridor is to more efficiently move, manage and control traffic for the safety of the traveling public.

Policy Compliant:

This action is compliant with City and Council Policy.

Financial Impact:

The City of Surprise has secured Congestion Mitigation and Air Quality (CMAQ) funding for the construction costs associated with this project. The CMAQ funding will cover 94.3% of the construction costs. The remaining 5.7% will be funded by the CIP Project. There is also a $30,000 ADOT administration fee paid by the City of Surprise. Please see details below:

Federal-aid funds @ 94.3% (capped)	$511,923.00
Project Management & Design Review Cost	$30,000.00

City's match @ 5.7%	<u>$30,943.00</u>
Estimated TOTAL Project Cost	**$572,866.00**

Summary:

Total Estimated City Funds	**$60,943.00**
Total Federal Funds	**$511,923.00**

Budget Impact:

The design for this project is currently budgeted in P65370 Waddell Road Fiber Optic Connection within the FY25 Capital Improvement Budget. This action will add the funding for the ADOT Project Management & Design Review Costs.

FTE Impact:

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

ATTACHMENTS:

1. 25.01.07 Res 2025-15 IGA ADOT ITS Equip_v2.HJW
2. 09.09.24-To Entity Review-24-9699-DRAFT (002)

RESOLUTION # 2025-15

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA THROUGH ITS ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) FOR INSTALLATION OF NEW CONDUIT, PULL BOXES AND FIBER OPTIC CABLING ALONG WADDELL ROAD FROM LITCHFIELD ROAD TO BULLARD AVENUE AND AMENDING THE FISCAL YEAR 2025 BUDGET BY MOVING BUDGET AUTHORITY OF $61,000 FROM GENERAL FUND CONTINGENCY TO PROJECT P65370 WADDELL ROAD FIBER OPTIC CONNECTION TO COVER THE MATCH AND ADOT PROJECT MANAGEMENT & DESIGN REVIEW COSTS AND AMENDING THE FISCAL YEAR 2025 CONTRACT AWARDING AUTHORITY LIST BY INCREASING THE WADDELL ROAD FIBER OPTIC CONNECTION ITEM TO $162,000.

WHEREAS, pursuant to Arizona Revised Statute §11-951, *et seq.,* the City of Surprise has the authority to enter into intergovernmental agreement with other governmental entities for the purposes set forth within;

WHEREAS, the City was awarded a grant through the Maricopa Association of Governments for the Waddell Road Fiber Optic Connection Project;

WHEREAS, the City and the State (the “Parties”) desire to enter into an intergovernmental agreement in order to facilitate the installation of new conduit, pull boxes and fiber optic cabling along Waddell Road from Litchfield Road to Bullard Avenue; and

WHEREAS, the intergovernmental agreement contemplated hereunder will require the City to administer the design of the project and the State will advertise, bid and award the project to a qualified contractor, and administer the construction thereof.

WHEREAS, the FY2025 budget was adopted including carryforward funding for design for P65370 Waddell Road Fiber Optic Connection;

WHEREAS, to execute the IGA with ADOT, the city must provide funding for the required local match and ADOT Project Management & Design Review Costs in the amount of $61,000;

WHEREAS, the FY2025 budget including the FY2025 Contract Awarding Authority List was adopted by Surprise City Council Resolution #2024-94;

WHEREAS, this action will necessitate a budget amendment;

WHEREAS, the City of Surprise Administrative Policies require the approval of the Mayor and Council for budget amendments of this nature; and

WHEREAS, the City of Surprise Procurement Code §2-338 (d) requires the authority of the Mayor and Council when the cost to the city is greater than $50,000.

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

Section 1. The Intergovernmental Agreement between the City of Surprise and the State of Arizona through its Department of Transportation, attached as Exhibit A, is approved.

Section 2. That the statements and schedules attached as *Exhibit B* and incorporated by reference are adopted, amending the budget of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

Section 3. That the statements and schedules attached as *Exhibit C* and incorporated by reference are adopted, amending the Fiscal Year 2025 Contract Awarding Authority List of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

Section 4. The City Manager, or his designee, is hereby authorized to execute and submit all documents and other necessary or desirable instruments in connection with said agreement.

APPROVED AND ADOPTED this _____day of ____________, 2025.

____
Kevin D. Sartor, Mayor

Attest:

____
Kristi Passarelli, City Clerk

Approved as to form:

____
Robert Wingo, City Attorney

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF SURPRISE AND THE STATE OF ARIZONA THROUGH ITS
DEPARTMENT OF TRANSPORTATION (ADOT)

Resolution No. 2025-15
RFLS #9670
Rev 01/25

RESOLUTION # 2025-15
Exhibit B

1. Appropriation - The allocation listed below represents a movement of budget authority in the amount of $61,000 from the General Fund Contingency to Project P65370 Waddell Road Fiber Optic Connection. This will cover the match and ADOT project management and design review costs to complete one mile of ITS conduit and fiber optic cable along Waddell Road between Litchfield Road and Bullard Avenue. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

Fund	Department	Project/Category	Rev/ Exp	Current Budget	Increase/ (Decrease)	Amended Budget
Contingency	General Operations	Contingency	E	83,711,400	(61,000)	83,650,400
General Capital Projects Fund	Transportation	#P65370 Waddell Road Fiber Optic Connection	E	91,100	61,000	152,100
			Expense Total	**83,802,500**	**-**	**83,802,500**
			Revenue Total	**-**	**-**	**-**

Resolution No. 2025-15
RFLS #9670
Rev 01/25

RESOLUTION # 2025-25
Exhibit C

1. Contract Awarding Authority List – Council approved $101,000 for the purpose of designing the Waddell Road Fiber Optic Connection Project included on the Fiscal Year 2025 Contract Awarding Authority List. This amount was based on the carryforward amount for design identified in the Fiscal Year 2024 Budget. The additional amount will cover the match and ADOT project management and design review costs to complete one mile of ITS conduit and fiber optic cable along Waddell Road between Litchfield Road and Bullard Avenue.

Reference #	Description	Current Amount	Increase/ (Decrease)	Amended Amount
25333	Waddell Road Fiber Optic Connection	$101,000	$61,000	$162,000

ADOT CAR No.: IGA 24-0009699-I
AG Contract No.: P0012024001481
Project Location/Name: Waddell Rd; Litchfield Rd - Bullard Ave
Type of Work: Conduit, Pull Boxes & Fiber Optic Cable
Federal-aid No.: CMAQ-SUR-0(237)T
ADOT Project No.: T0588 01D/01C
TIP/STIP No.: SUR25-260C & SUR25-260D1
CFDA No.: 20.205 - Highway Planning and Construction
Budget Source Item No.:

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SURPRISE

THIS AGREEMENT ("Agreement") is entered into this date ______________________________, pursuant to the Arizona Revised Statutes ("A.R.S.") §§ 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State" or "ADOT") and the CITY OF SURPRISE, acting by and through its MAYOR and CITY COUNCIL (the "City" or "Local Agency"). The State and the Local Agency are each individually referred to as a "Party" and are collectively referred to as the "Parties."

I. RECITALS

1. The State is empowered by A.R.S. § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Local Agency is empowered by A.R.S. § 48-572 to enter into this Agreement and has by resolution, if required, a copy of which is attached and made a part of, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Local Agency.

3. The work proposed under this Agreement consists of the installation of new conduit, pull boxes, and fiber optic cabling along Waddell Road from Litchfield Road to Bullard Avenue within the City of Surprise, (the "Project"). The Project also includes fiber optic connections to existing traffic signal cabinets and the installation of Ethernet switches. The Project cost, shown in Exhibit A, is estimated at $572,866, which includes federal aid and the Local Agency's match. The Local Agency will administer the design at their own cost, and the State will advertise, bid and award, and administer the construction of the Project.

4. The interest of the State in this Project is the acquisition of federal funds for the use and benefit of the Local Agency and authorization of such federal funds for the Project pursuant to federal law and regulations. The State shall be the designated agent for the Local Agency for the Project, if the Project is approved by Federal Highway Administration (FHWA) and funds for the Project are available.

5. The foregoing Recitals and Exhibit A shall be incorporated into this Agreement.

In consideration of the mutual terms expressed herein, the Parties agree as follows:

II. SCOPE OF WORK

1. The Parties agree:

    a. The Project will be completed, accepted, and paid for in accordance with the requirements of the Project plans and specifications.

    b. The final cost estimate may exceed the initial estimate identified in Exhibit A, and in such case, the Local Agency is responsible for and agrees to pay, the difference prior to bid advertisement.

    c. The final Project amount may exceed the initial estimate(s) identified in Exhibit A, and in such case, the Local Agency is responsible for, and agrees to pay, any and all actual costs exceeding the initial estimate. If the final Project amount is less than the initial estimate, the difference between the final bid amount and the initial estimate will be de-obligated or otherwise released from the Project and returned to the Maricopa Association of Governments. The Local Agency acknowledges it remains responsible for actual costs and agrees to pay according to the terms of this Agreement.

    d. The Local Agency and ADOT will each separately file a Notice of Intent (NOI) under the Construction General Permit (CGP) with the Arizona Department of Environmental Quality (ADEQ) before construction begins, if applicable to the Project.

2. The State will:

    a. Execute this Agreement, and if the Project is approved by FHWA and funds for the Project are available, be the Local Agency's designated agent for the Project.

    b. After this Agreement is executed, and prior to performing or authorizing any work on the Project, invoice the Local Agency for the Local Agency's share of the initial Project Development Administration (PDA) costs, estimated at $30,000. If PDA costs exceed the estimate during the development of design, notify the Local Agency, obtain concurrence prior to continuing with the development of design, and invoice as determined by ADOT and the Local Agency for additional costs to complete PDA for the Project. After the Project costs are finalized invoice or reimburse the Local Agency for the difference between actual costs and the amount the Local Agency has paid for PDA.

c. After receipt of the PDA costs, review design plans, specifications, cost estimates and other such documents required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds; provide design review comments to the Local Agency as appropriate.

d. After review of design and prior to bid advertisement, invoice the Local Agency for the actual PDA costs, as applicable, and the Local Agency's share of the Project construction costs, estimated at $30,943. After the Project costs for construction are finalized, the State will either invoice or reimburse the Local Agency for the difference between estimated and actual costs. De-obligate or otherwise release any remaining federal funds from the scoping/design phase of the Project.

e. After receipt of the actual PDA costs, if applicable, and the Local Agency's estimated share of the Project construction costs, including the difference between the final and the initial construction cost estimates, if applicable, submit all required documentation to FHWA with the recommendation that the maximum federal funds programmed for construction of this Project be approved. Should costs exceed the maximum federal funds available, it is understood and agreed that the Local Agency will be responsible for any overage.

f. After receipt of FHWA authorization, proceed to advertise for, receive and open bids, award and enter into a contract with the firm for the construction of the Project. If the bid amounts exceed the construction cost estimate, obtain the Local Agency's concurrence and invoice the Local Agency for the difference between the construction cost estimate and the bid amount prior to awarding the contract.

g. Notify the Local Agency of completion and final acceptance of the Project. At such time, file a Notice of Termination (NOT) with ADEQ transferring CGP responsibilities to the Local Agency, and provide a copy to the Local Agency indicating that the State's maintenance responsibility of the Project is terminated, as applicable.

h. Notify the Local Agency of completion and final acceptance of the Project; coordinate with the Local Agency and turn over full responsibility of the Project improvements.

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

3. The Local Agency will:

a. Designate the State as the Local Agency's authorized agent for the Project.

b. Within 30 days of receipt of an invoice from the State, pay the initial PDA costs, estimated at $30,000. Agree to be responsible for actual PDA costs, if during the development of design, PDA costs exceed the initial estimate. Be responsible for the difference between the estimated and actual PDA and design costs of the Project.

c. Prepare and provide design plans, specifications, cost estimates and other such documents required for the construction bidding and construction of the Project, including scoping/design plans and documents required by FHWA to qualify projects for and to receive federal funds; incorporate design review comments from the State, as appropriate.

d. Enter into an agreement with the design consultant which states that the design consultant will provide professional post-design services as required and requested throughout and at completion of the construction phase of the Project. After final acceptance of the Project, provide an electronic version of the record drawings to the ADOT Project Manager.

e. After completion of design, within 30 days of receipt of an invoice from the State and prior to bid advertisement, pay to the State any outstanding PDA costs, the Local Agency's share of the Project construction costs, estimated at $30,943, and if applicable, the difference between the final and initial construction cost estimates. Be responsible for and pay the difference between the estimated construction cost and Project bid amount prior to award. After Project completion, be responsible for and pay any outstanding Project costs, within 30 days of receipt of an invoice.

f. Be responsible for all costs incurred in performing and accomplishing the work as set forth under this Agreement, that are not covered by federal funding. Should costs be deemed ineligible or exceed the maximum federal funds available, it is understood and agreed that the Local Agency is responsible for these costs; payment for these costs shall be made within 30 days of receipt of an invoice from the State.

g. Certify that all necessary rights of way have been or will be acquired prior to advertisement for bid and also certify that all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the Project area, shall be removed from the proposed right of way, or will be removed prior to the start of construction, in accordance with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended; 49 CFR 24.102 Basic Acquisition Policies; 49 CFR 24.4 Assurances, Monitoring and Corrective Action, parts (a) & (b) and ADOT Right of Way Procedures Manual: 8.02 Responsibilities, 8.03 Prime Functions, 9.06 Monitoring Process and 9.07 Certification of Compliance. Coordinate with the appropriate State's Right of Way personnel during any right of way process performed by the Local Agency, if applicable.

h. As applicable, the Local Agency shall certify that it has adequate resources to discharge the Local Agency's real property related responsibilities and ensures that its Title 23-funded projects are carried out using the FHWA approved and certified ADOT Right of Way Procedures Manual and that it will comply with current FHWA requirements whether or not the requirements are included in the FHWA approved ADOT Right of Way Procedures Manual (23 CFR 710.201). Additionally the Local Agency shall certify that all real estate related activities requiring licensure are performed by licensed individuals as defined by the Arizona Department of Real Estate (A.R.S. §§ 32-2121 & 32-2122).

i. Not permit or allow any encroachments on or private use of the right of way, except those authorized by permit. In the event of any unauthorized encroachment or improper use, the Local Agency shall take all necessary steps to remove or prevent any such encroachment or use. Provide a copy of encroachment permits issued within the Project limits to the State.

j. Automatically grant to the State, by execution of this Agreement, its agents and/or contractors, without cost, the temporary right to enter the Local Agency's rights of way, as required, to conduct any and all construction and preconstruction related activities for the Project, on, to and over said Local Agency's rights of way. This temporary right will expire with completion of the Project.

k. Investigate and document utilities within the Project limits; submit findings to ADOT determining prior rights or no prior rights; approve a location within the final right of way to re-establish the prior rights location for those utilities with prior rights.

l. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase Project costs. Be responsible for the cost of any Local Agency requested changes to the scope of work of the Project, such changes will require State and FHWA approval. Be responsible for any contractor claims for additional compensation caused by Project delay attributable to the Local Agency. Payment for these costs will be made to the State within 30 days of receipt of an invoice from the State.

m. After notification of final acceptance by the State, assume and maintain full responsibility of the Project, including Storm Water Pollution Prevention Plans (SWPPP) inspections, maintenance, and required documentation, until final stabilization is reached. Provide the NOI number to the State and the Contractor, accept CGP responsibilities at time of transfer, and file a NOT with ADEQ when final stabilization is reached, as applicable.

n. After completion and final acceptance of the Project, agree to maintain and assume full responsibility of the Project and all Project components.

III. MISCELLANEOUS PROVISIONS

1. Effective Date. This Agreement shall become effective upon signing and dating of all Parties.

2. Amendments. Any change or modification to the Project will only occur with the mutual written consent of both Parties.

3. Duration. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. Any and all obligations of maintenance hereunder shall remain perpetual and shall survive any termination hereof and the assignment or assumption of this Agreement or the Project by another competent jurisdiction or entity.

4. Cancellation. This Agreement may be canceled at any time up to 30 days before the award of the Project contract, so long as the cancelling Party provides at least 30 days' prior written notice to the other Party. It is understood and agreed that, in the event the Local Agency terminates this Agreement, the Local Agency shall be responsible for all costs incurred by the State up to the time of termination. It is further understood and agreed that in the event the Local Agency terminates this Agreement, the State shall in no way be obligated to complete or maintain the Project.

5. Indemnification. The Local Agency shall indemnify, defend, and hold harmless the State, any of its departments, agencies, boards, commissions, officers or employees (collectively referred to in this paragraph as the "State") from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including reasonable attorneys' fees and/or litigation expenses (collectively referred to in this paragraph as the "Claims"), which may be brought or made against or incurred by the State on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of the Local Agency, its employees, officers, directors, agents, representatives, or contractors, their employees, agents, or representatives in connection with or incident to the performance of this Agreement. The Local Agency's obligations under this paragraph shall not extend to any Claims to the extent caused by the negligence of the State, except the obligation does apply to any negligence of the Local Agency which may be legally imputed to the State by virtue of the State's ownership or possession of land. The Local Agency's obligations under this paragraph shall survive the termination of this Agreement.

6. Third-Party Indemnification. The State shall include Section 107.13 of the 2021 version of the Arizona Department of Transportation Standard Specifications for Road and Bridge Construction, incorporated into this Agreement by reference, in the State's contract with any and all contractors, of which the Local Agency shall be specifically named as a third-party beneficiary. This provision may not be amended without the approval of the Local Agency.

7. Programmed Federal Funds. The cost of scoping, design, construction and construction engineering work under this Agreement is to be covered by the federal funds programmed for this Project, up to the maximum available. The Local Agency acknowledges that actual Project costs may exceed the maximum available amount of federal funds, or that certain costs may not be accepted by FHWA as eligible for federal funds. Therefore, the Local Agency agrees to pay the difference between actual costs of the Project and the federal funds received.

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

9. Indirect Costs. The cost of the Project under this Agreement includes indirect costs approved by FHWA, as applicable.

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

11. Governing Law. This Agreement shall be governed by and construed in accordance with Arizona laws.

12. Conflicts of Interest. This Agreement may be canceled in accordance with A.R.S. § 38-511.

13. Inspection and Audit. The Local Agency shall retain all books, accounts, reports, files and other records relating to this Agreement which shall be subject at all reasonable times to inspection and audit by the State for five years after completion of the Project. Such records shall be produced by the Local Agency, electronically or at the State office as set forth in this Agreement, at the request of ADOT.

14. Title VI. The Local Agency acknowledges and will comply with Title VI of the Civil Rights Act Of 1964.

15. Non-Discrimination. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 2009-09, as amended by Executive Order 2023-01, issued by the Governor of the State of Arizona and incorporated in this Agreement by reference regarding "Non-Discrimination."

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

17. Arbitration. In the event of any controversy, which may arise out of this Agreement, the Parties agree to abide by arbitration as is set forth for public works contracts if required by A.R.S. § 12-1518.

18. E-Verify. The Parties shall comply with the applicable requirements of A.R.S. § 41-4401.

19. Contractor Certifications. The Parties shall certify that all contractors comply with the applicable requirements of A.R.S. §§ 35-393.01 and 35-394.

20. Other Applicable Laws. The Parties shall comply with all applicable laws, rules, regulations and ordinances, as may be amended.

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

For Agreement Administration:

Arizona Department of Transportation
Joint Project Agreement Group
205 S. 17th Avenue, Mail Drop 637E
Phoenix, AZ 85007
JPABranch@azdot.gov

City of Surprise
Attn: Albert Garcia
14250 W. Statler Plaza
Surprise, AZ 85374-7474
623.222.1733
Albert.Garcia@surpriseaz.gov

For Project Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
PMG@azdot.gov

City of Surprise
Attn: Albert Garcia
14250 W. Statler Plaza
Surprise, AZ 85374-7474
623.222.1733
Albert.Garcia@surpriseaz.gov

For Financial Administration:

Arizona Department of Transportation
Project Management Group
205 S. 17th Avenue, Mail Drop 614E
Phoenix, AZ 85007
PMG@azdot.gov

City of Surprise
Attn: Albert Garcia
14250 W. Statler Plaza
Surprise, AZ 85374-7474
623.222.1733
Albert.Garcia@surpriseaz.gov

22. Revisions to Contacts. Any revisions to the names and addresses above may be updated administratively by either Party and shall be in writing.

23. Legal Counsel Approval. In accordance with A.R.S. § 11-952 (D), the written determination of each Party's legal counsel providing that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form is set forth below.

24. Electronic Signatures. This Agreement may be signed in an electronic format including DocuSign.

Remainder of this page is intentionally left blank.

(Signatures begin on the next page)

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective upon the full completion of signing and dating by all Parties to this Agreement.

CITY OF SURPRISE

By ____Date______________

KEVIN D. SARTOR
Mayor

ATTEST:

By ____Date______________

KRISTI PASSARELLI
City Clerk

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its Department of Transportation, and the City of Surprise, an agreement among public agencies which, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. § 48-572 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

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

By ____Date_______________

City Attorney

ARIZONA DEPARTMENT OF TRANSPORTATION

By ____Date_______________
STEVE BOSCHEN, PE
Infrastructure Delivery and Operations Division
Division Director

By ____Date_______________
GREG BYRES
Deputy Director for Transportation/State Engineer

This Agreement between public agencies, the State of Arizona and the City of Surprise, has been reviewed pursuant to A.R.S. §§ 11-951 through 11-954 and A.R.S. § 28-401, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona. No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

By ____Date_______________
Assistant Attorney General

EXHIBIT A

Cost Estimate

T0588 01D/01C

The Project costs are estimated as follows:

ADOT Project Development Administration (PDA) Cost:

Local Agency's costs @ 100%	$ 30,000
Construction:*	
Federal-aid funds @ 94.3%	$ 511,923
Local Agency's match @ 5.7%	30,943
Subtotal – Construction	**$ 542,866**
Estimated TOTAL Project Cost	**$ 572,866**
Total Estimated Local Agency Funds	**$ 60,943**
Total Federal Funds	**$ 511,923**

* (Includes 15% construction engineering (CE) and administration cost (this percentage is subject to change, any change will require concurrence from the Local Agency) and 5% Project contingencies)

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025	Contact Person: Eric Boyles, Director - Transportation
Submitting Department: Transportation	District: Citywide
Staff Recommendations:	

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

Agenda Wording:
Consideration and action pertaining to acceptance of the City's Arizona Lottery Fund (ALF) allotment for FY2025 in the amount of $364,134; Resolution #2025-17.

Motion:
I move to approve Resolution #2025-17

Background:
Arizona Lottery Fund (ALF) is judicially mandated funding currently derived from Powerball lottery revenues to provide public transportation funding opportunities in Maricopa County. An allocation of $11,200,000 has been made available for FY2025 distribution. The City of Surprise's eligible portion is $364,134. The program was made "transit use only" so the funds can only be used for public transit or special needs transportation, sponsored by a local government. There is no local match requirement associated with ALF funds; other funds are called out in the application to highlight the City's contribution to transit services. This year's application is for the City contracted WeRIDE Microtransit Program, the Regional Paratransit service, and the City's RideChoice services. These state funds will be used to meet the City Council Strategic Planning Transportation goals. After submission of the application for funding, the City will receive the requested funds in the amount of $364,134. The proposed resolution authorizes the application and acceptance of the funds upon receipt.

Objective Analysis:
Arizona Lottery Funds allow the City to leverage General Fund dollars to other City priorities without jeopardizing transit service to the Surprise residents on average in the amount of $360,000 annually. By not accepting these funds, and if the City wanted to maintain the current level of service in its transit programs, the City would have to increase its General Fund obligations on average an additional $360,000.

Policy Compliant:
This action is consistent with Council Strategic Plan goal identifying funding sources for the transportation system.

Financial Impact:
The approval of this item will allow the City to formally receive ALF funding in the amount of $364,134 for FY2025 to support public transportation services.

Budget Impact:
The FY2025 budget was adopted including revenue and expense allocations of $366,300 within the Arizona Lottery Fund for transit services.

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

ATTACHMENTS:
1. FY2025 ALF Application_signed
2. 25.01.07 Arizona Lottery Fund Resolution 2025-17_BAC

ALF GRANT APPLICATION FOR
FISCAL YEAR 2024-25

SECTION I: APPLICANT INFORMATION

Applicant: City of Surprise
Contact: Kristen Taylor

Address: 16000 N. Civic Center Plaza
Surprise, AZ 85374
Phone: 623-222-6021
Fax:

e-mail address: kristen.taylor@surpriseaz.gov

SECTION II: FUNDING REQUEST

Project Funding Summary (include funding from all project applications)

a.	Total all ALF Being Requested for Transit Projects (from Project Forms)	$	364,134
b.	Total Other Funds included in the Projects (from Project Forms)	$	1,826,700
c.	Grand Total all Funds	$	2,190,834

SECTION III: PRIOR YEAR ALF PROJECT STATUS

Funding is available for two years unless an extension is requested. Funding that is not spent within two years is subject to possible redistribution through the annual distribution process to other jurisdictions.

1. Have ALF distributions received by your jurisdiction on or before June 30, 2024 been expended?
   Yes ____X_____ No _________
2. If the funds have been expended, were they spent on the projects as indicated in prior applications?
   Yes ____X_____ No _________
3. If the funds described above have not been expended, what is your ALF fund balance?
   $ 0.00
4. If the answer to lines 1 or 2 are no, provide a brief description of why the funds were not expended or were not expended on projects originally submitted in an application and explain when the funds are planned to be expended.

Authorized chief financial officer signature:

DocuSigned by:
Andrea Davis
E2E4EE750061449...

Date: 1/7/2025 | 13:40 PM MST

CFO/Deputy City Manager
Title

Authorized jurisdictional signature**:

Signed by:
Bob Wingenroth
C8B99B0184594BA...

Date: 1/7/2025 | 13:43 PM MST

City Manager
Title

****Signatory should be city, town or county manager or program director.**

ALF GRANT APPLICATION FOR FISCAL YEAR 2024-25

SECTION I: APPLICANT INFORMATION

Applicant: City of Surprise Contact: Kristen Taylor

SECTION II: PROJECT REQUEST(S)

1. **Transit Project**

a. Project Title: City of Surprise Transit Operations

b. Project Location: City of Surprise

c. Project Description: The City of Surprise plans to use all ALF funds to help with bus operations in the City of Surprise. Surprise currently operates WeRIDE Microtransit along with Paratransit and Ridechoice Programs.

Additional project information may be attached.

d. ALF funding requested (also include on line 2a) $ 364,134

e. Other Funds included in the Project (include on line 2b on page 1) $ 1,826,700

f. Total Project Cost $ 2,190,834

g. Type of Project: ☐ Planning ☐ Capital ☒ Operations ☐ Other ______

h. Is the project included in the Regional Transportation Plan? (Yes or No) Yes

i. Is the project included in the TIP or UPWP? (Yes or No) Yes

2. **Transit Project**

a. Project Title: ______

b. Project Location: ______

c. Project Description: ______

Additional project information may be attached.

d. ALF funding requested (also include on page 1 line 2a) $ ______

e. Other Funds included in the Project (include on line 2b on page 1) $ ______

f. Total Project Cost $ ______

g. Type of Project: ☐ Planning ☐ Capital ☐ Operations ☐ Other ______

h. Is the project included in the Regional Transportation Plan? (Yes or No) ______

i. Is the project included in the TIP or UPWP? (Yes or No) ______

RESOLUTION # 2025-17

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ACCEPT AN ALLOCATION OF ARIZONA LOTTERY FUNDS FROM THE REGIONAL PUBLIC TRANSPORTATION AUTHORITY IN THE AMOUNT OF $364,134.

WHEREAS, the Regional Public Transportation Authority ("RPTA") is awarding funding for local transit projects relating to all aspects of transit services;

WHEREAS, upon application, the Arizona State Legislature has authorized an allocation of Arizona Lottery Funds ("ALF") to the City of Surprise to fund transit activities in the amount of $364,134;

WHEREAS, the FY2025 budget, including the FY2025 Contract Awarding Authority List, was adopted by Council Resolution # 2024-94 on June 4, 2024;

WHEREAS, the FY2025 adopted budget includes revenue and expense allocations of $364,134 within the City's ALF fund for transit services;

WHEREAS, the Council desires to accept the ALF allocation in the amount of Three Hundred Sixty-Four Thousand One Hundred Thirty-Four Dollars ($364,134);

WHEREAS, this is the same amount RPTA awarded to the City for FY2024 and will not necessitate a budget amendment; and

WHEREAS, the City of Surprise Administrative Policies requires the approval of the Mayor and Council for acceptance of these funds.

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

Section 1. The City of Surprise hereby authorizes the City Manager or his designee to accept ALF award for FY2025 and receive funds in the amount of $364,134 from the Regional Public Transit Authority.

Signatures on Following Page

APPROVED AND ADOPTED this _____day of ___________, 2025.

____

Kevin D. Sartor, Mayor

Attest:

Approved as to form:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
Submitting Department: Human Svcs and Comm Vitality
Staff Recommendations:

Contact Person: Seth Dyson, DIRECTOR - HSCV
District: Citywide

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

Agenda Wording:
Consideration and action pertaining to approval of the Impact Grant Agreement with Sprouts Healthy Communities Foundation, accepting funding for the Surprise Community & Resource Center, approval of a Fiscal Year 2025 budget amendment moving budget in the amount of $450,000, approval of a Fiscal Year 2025 Contract Awarding Authority List amendment, and approval of the addition of one full-time equivalent position; Resolution #2025-06.

Motion:
I move to approve Resolution #2025-06.

Background:
The City of Surprise, through its Human Service & Community Vitality (HSCV) Department, applied for an Impact Grant from the Sprouts Healthy Communities Foundation. The funding requested will be used to support programs that will be offered at the new Surprise Community & Resource Center (SCRC) over the course of three years.

The Impact Grant provides a total amount of $450,000 which will be distributed at $150,000 per year for three years. As part of the grant partnership, Sprouts Healthy Communities Foundation will have naming rights for the SCRC Dining Hall for a ten-year period.

Objective Analysis:
The Surprise Community & Resource Center will be home to Senior Center programs, Resource Center programs, and Hollyhock Library programs. This action will allow the HSCV Department to expand current programming to the residents of Surprise as well as allow for new programs in the future.

Policy Compliant:
This item is compliant with City and Council Policy.

Financial Impact:
This one-time grant award provides a total amount of $450,000 which will be distributed at $150,000 a year for three years. This funding is to support one full-time equivalent (FTE) position to the HSCV

Department and programming at the Surprise Community & Resource Center. The FTE will be funded 100% by the grant for the first year (calendar year 2025) and 50% the second year (calendar year 2026). Per agreement with Finance, the department will request to have the position funded by the General Fund for any unfunded portion and 100% after the second calendar year. There is no city match requirement.

Budget Impact:

This action requires a movement of budget authority in the amount of $450,000 from General Contingency to project G51800 in the Grants Fund to cover projected expenditures associated with the Sprouts Healthy Communities Impact Grant. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

FTE Impact:

This item will allow the addition of one full-time equivalent position in the HSCV Department.

ATTACHMENTS:

1. Res 2025-06 Sprouts Impact Grant
2. EXECUTED_Impact_Grant_Agreement-Combined-FINAL

RESOLUTION # 2025-06

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA APPROVING AN IMPACT GRANT AGREEMENT BETWEEN THE CITY OF SURPRISE AND SPROUTS HEALTHY COMMUNITIES FOUNDATION, ACCEPTING GRANT FUNDING, AMENDING THE FISCAL YEAR 2025 BUDGET BY MOVING BUDGET AUTHORITY OF $450,000 FROM GENERAL CONTINGENCY TO PROJECT G51800 IN THE GRANTS FUND; AMENDING THE CONTRACT AWARDING AUTHORITY LIST BY ADDING THE SPROUTS HEALTHY FOUNDATIONS GRANT, G51800, IN THE AMOUNT OF $450,000 FOR GRANT PURCHASES, AND THE ADDITION OF ONE FULL-TIME EQUIVALENT POSITION IN THE HUMAN SERVICE AND COMMUNITY VITALITY DEPARTMENT.

WHEREAS, the City of Surprise, through its Human Service & Community Vitality Department, applied for an Impact Grant from Sprouts Healthy Communities Foundation;

WHEREAS, the City desires to enter into an Impact Grant Agreement with Sprouts Healthy Communities Foundation in order to receive a grant totaling $450,000 to support the Surprise Community & Resource Center;

WHEREAS, the grant provides $150,000 per year for three years and in turn, Sprouts Healthy Communities Foundation will have naming rights for the dining hall at the Surprise Community & Resource Center for a period of ten years following approval of this Resolution;

WHEREAS, the creation of this program will require the addition of one full-time equivalent position to the Human Services and Community Vitality Department;

WHEREAS, the FY2025 budget, including the FY2025 Contract Awarding Authority List, was adopted by Council Resolution #2024-94 on June 4, 2024;

WHEREAS, this action will necessitate a budget amendment;

WHEREAS, the City of Surprise Administrative Policies requires the approval of the Mayor and Council for budget amendments of this nature; and,

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

<u>Section 1.</u> That the statements and schedules attached as ***Exhibit A*** and incorporated by reference are adopted, amending the budget of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

<u>Section 2.</u> That the statements and schedules attached as ***Exhibit B*** and incorporated by reference are adopted, amending the Fiscal Year 2025 Contract Awarding Authority List of the City of Surprise, Arizona for the fiscal year July 1, 2024, through June 30, 2025.

<u>Section 3.</u> The City is hereby authorized to accept a grant in the amount of $450,000 from Sprouts Healthy Communities Foundation. Further, the Impact Grant Agreement detailing the terms and conditions of grant acceptance, attached as ***Exhibit C***, is hereby approved.

<u>Section 3.</u> The City Manager, or his designee, is hereby authorized to execute and submit all documents and other necessary or desirable instruments in connection with said agreement.

APPROVED AND ADOPTED this _____day of ___________, 2025.

____
Kevin D. Sartor, Mayor

Attest:

____
Kristi Passarelli, City Clerk

Approved as to form:

____
Robert Wingo, City Attorney

RESOLUTION 2025-06
EXHIBIT A

1. Appropriation - The allocations below represent the moving of budget authority in the amount of $450,000 from General Contingency to project G51800 in the Grants Fund to cover projected expenditures associated with the Sprouts Healthy Communities Foundation Impact Grant. This action represents a transfer of spending authority and does not increase or decrease the total adopted citywide expenditure budget.

Fund	Department	Project/Category	Rev/ Exp	Current Budget	Increase/ (Decrease)	Amended Budget
Grants	Human Svcs and Comm Vitality	#G51800 Sprouts Grant	E	-	450,000	450,000
Grants	Human Svcs and Comm Vitality	#G51800 Sprouts Grant	R	-	450,000	450,000
Contingency	General Operations	Contingency	E	83,711,400	(450,000)	83,261,400
Contingency	General Operations	Other	R	78,616,700	(450,000)	78,166,700
			Expense Total	**83,711,400**	**-**	**83,711,400**
			Revenue Total	**78,616,700**	**-**	**78,616,700**

2. Full-Time Equivalent (FTE) - The expansion of the Surprise Community & Resource Center requires the addition of one (1) new FTE.

Fund	Department	Current FTEs	Increase/ (Decrease)	Amended FTEs
General Fund	Human Svcs and Comm Vitality	27.5	1	28.5

Resolution No. 2025-06
RFLS #9722
Rev 11/24

RESOLUTION 2025-06
EXHIBIT B

1. Contract Awarding Authority List – Council to approve adding an item on the Fiscal Year 2025 Contract Awarding Authority List for the Sprouts Healthy Communities Impact Grant in the amount of $450,000 for grant purchases.

Reference #	Project Number	Description	Current Amount	Increase/ (Decrease)	Amended Amount
25236	G51800	Sprouts Impact Grant	$0	$450,000	$450,000

Resolution No. 2025-06
RFLS #9722
Rev 11/24

RESOLUTION 2025-06
EXHIBIT C

Impact Grant Agreement

SPROUTS HEALTHY COMMUNITIES FOUNDATION

IMPACT GRANT AGREEMENT

Grantee Name: City of Surprise (**"Grantee"**)

Grant Amount: $450,000 (**"Grant"**)

Project/Program Title: Surprise Community & Resource Center (**"Project"** or **"Program"**)

Period of Grant: December 1, 2024 – December 1, 2027 (**"Period of Grant"**)

Payment Schedule:

Year of Grant Agreement	Calendar Year	Payment Amount	Payment Due Date
Year 1	2025	$150,000	December 15, 2024
Year 2	2026	$150,000	December 15, 2025
Year 3	2027	$150,000	December 15, 2026

This Impact Grant Agreement (the "Agreement") by and between the Grantee named above and The Sprouts Healthy Communities Foundation (the "Foundation"), a Delaware nonprofit corporation organized and operated for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, as amended (the "Code") is effective as of the date of Grantee's signature set forth below (the "Effective Date") and sets forth the terms and conditions governing the Foundation's award of the Grant set forth above to the Grantee.

In consideration of the mutual promises contained herein, the parties agree as follows:

1. Representations. Grantee hereby represents and warrants that as of the Effective Date:; (c) Grantee maintains all licenses and permits necessary for its operations; (d) Grantee is in compliance with all applicable federal, state and local laws or regulations to which Grantee is subject; and (e) Grantee's signatory below is duly authorized to enter this Agreement on Grantee's behalf. Grantee agrees to notify the Foundation immediately of any change in these representations and will provide any documentation reasonably requested by the Foundation to support these representations from time to time. Grantee further covenants not to engage in any activity that jeopardizes the Foundation's qualification as a tax-exempt organization under the Code.

2. Sprouts Healthy Community Foundation will receive:

   I. Naming rights to the dining hall of the new City of Surprise Multigenerational Community & Resource Center located at 12641 W. Santa Fe Drive, Surprise, AZ 85378.

   II. A formal press release announcing the City of Surprise Human Service & Community Vitality Department and Sprouts Healthy Community Foundation partnership and investment.

   III. A special kick-off event and announcement of this Sprouts Healthy Community Foundation partnership with city officials and guests on a date to be determined by both parties.

   IV. Logo placement on the City of Surprise Community & Resource Center webpage: https://surpriseaz.gov/1167/Surprise-Community-and-Resource-Center

   V. Logo placement on city purchased banners which will be added to the construction fencing beginning in January, 2025 and remain displayed until fencing comes down.

   VI. Logo or organization mention on any flyers or press releases that involved programming out of the dining hall (when applicable).

3. Expenditure of Funds. This Grant is made solely for the Project or Program set forth above (as further Exhibit A) and Grant funds may not be expended for any other purpose without the Foundation's prior written approval. Grantee may not expend Grant funds for any political or lobbying activity or otherwise utilize the Grant for any activity or purpose not contemplated under this Agreement and the Project or Program. Funds will be disbursed to Grantee subsequent to the Foundation's receipt of a copy of this Agreement signed by Grantee in accordance with the Payment Schedule set forth above.

4. Return of Funds. The Grant must be expended by Grantee within three (3) years of the date this agreement is executed. Any portion of the Grant not expended during such Period of Grant shall be promptly returned to the Foundation, unless the Foundation approves an extension request from the Grantee, which it may do in its sole discretion. The Foundation may terminate this Agreement and/or withhold, discontinue, modify or require a total or partial return of the Grant, and Grant funds shall be promptly returned to the Foundation upon request in the event: (a) the Foundation determines that Grantee has breached this Agreement; (b) Grantee fails to comply with any law or regulation to which Grantee is subject; (c) the Foundation is not satisfied with Grantee's progress toward the achievement of the Project or Program set forth above; or (d) Grantee engages in any activity detrimental to the Foundation, as determined in the sole discretion of the Foundation.

5. Reporting. Grantee is required to keep a record of all receipts and expenditures relating to this Grant and to provide the Foundation with a written report (in a format provided by the Foundation) summarizing the Project or Program annually until all funds have been expended. The Foundation may also require, and Grantee shall provide upon request, interim reports, describing its progress in achieving the purposes of the Grant. Grantee also agrees to provide any other information or documentation and allow access to its personnel, representatives, books and records as reasonably requested by the Foundation from time to time, including, without limitation, Grantee's annual report or financial statements.

6. No Guarantee of Future Funding. Grantee acknowledges that the receipt of this Grant does not imply a commitment on behalf of the Foundation to continue any future funding beyond the terms of this Agreement.

7. Publicity. Grantee hereby allows the Foundation to review and approve any proposed publicity concerning this Grant prior to its release, and it may not be made publicly available until the Foundation approves. Grantee hereby grants to the Foundation the perpetual right and license to publish, display or transmit Grantee's name, logo or other trademarks via all forms of media for purposes of publicizing the Grant or the Foundation's activities without royalty or other compensation to Grantee. Grantee shall have an opportunity to review all proposed publications, displays, transmissions, or otherwise that involves the use of the Grantee's name, logo, or other trademarks. The Foundation may objectively identify the Grantee as a grantee of the funds identified hereunder, however any objective identification must not be presented or framed as an endorsement.

8. Indemnification. Grantee covenants to indemnify, defend and hold harmless the Foundation from any liability, loss, cost, expense, injury, damage or other expense that may be incurred by the Foundation or claimed by any third party against the Foundation as a result of or relating to the Foundation's funding of the Project or Program or any action or non-action taken in connection with the Grant.

9. General. This Agreement is the entire agreement of the parties with respect to this subject matter, and supersedes all prior agreements or discussions between the parties with respect thereto. Any action related to this Agreement shall be governed by the substantive laws of the State of Arizona, without regard to conflicts of laws principles. The State and Federal courts located in Maricopa County, Arizona, shall have sole jurisdiction over any dispute arising hereunder, and the parties hereby consent to the personal jurisdiction of such courts. This Agreement is subject to cancellation pursuant to Ariz. Rev. Stat. § 38-511. Neither this Agreement, nor any rights hereunder, may be assigned by operation of law or otherwise without the prior written permission of the other party. Any purported assignment or modification without such permission shall be void. This Agreement may be executed via facsimile or original document image via email, each of which shall be deemed an original, and in several

counterparts, all of which shall constitute one and the same instrument; provided, however, this Agreement shall not be binding on either party until executed by both parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their respective and duly authorized representatives as of the date set forth below.

Grantee Name: **City of Surprise**
(Include full legal entity name)

By: DocuSigned by: Seth Dyson 1F6914D987B3496...

Name: Seth Dyson

Title: Director Human Service & Community Vitality

Date: 1/14/2025 | 09:53 AM MST

Organization Address:

16000 N. Civic Center Plaza

Surprise, AZ 85374-7470

APPROVED AS TO FORM:

Signed by: Hobie Wingard A12F9D7EBE7A43B...

City Attorney's Office

Sprouts Healthy Communities Foundation

By: DocuSigned by: Lyndsey Waugh 28B4EBFB013046C...

Name: Lyndsey Waugh

Title: Executive Director

SPROUTS
HEALTHY COMMUNITIES
FOUNDATION

Sprouts Healthy Communities Foundation
2024 Impact Grant Application

Introduction & Grant Purpose: The Sprouts Healthy Communities Foundation was founded in 2015 to drive lasting change in the health of our communities. By supporting programs nationwide that broaden access to healthy foods and nutrition education, the Foundation empowers individuals, especially children, to live healthier lives.

Through multi-year investments in our Impact Partners, our Foundation aims to create systems change, increasing healthy food access and nutrition education in communities deserving of additional resources.

Eligibility Requirements: The Impact Grant program is available to 501(c)(3) nonprofit organizations that operate in communities near Sprouts Farmers Market stores. Programs must address one or more of the following areas: 1) Nutrition and Healthy Food Education 2) Nutrition and Healthy Food Access 3) Healthy Lifestyle and Behaviors.

Funding: Amounts and payment schedules will be determined collaboratively between the Sprouts Healthy Communities Foundation and the grantee, based on the scope of the grant.

Reporting: Grant recipients will be required to provide an interim report summarizing how the dollars were used, the number of individuals impacted, etc., annually, following the receipt of grant funds and a final report at the conclusion of the grant period. Photos, testimonials and other examples of how the grant has helped the organization advance its mission are also appreciated.

Contact Us: Please send any questions or concerns regarding the Impact Grant program to Lyndsey Waugh at lyndseywaugh@sprouts.com. You may also copy grants@sprouts.com.

SPROUTS™
HEALTHY COMMUNITIES
FOUNDATION

Sprouts Healthy Communities Foundation
2024 Impact Grant Application

Organization Information

Organization Information
Legal Name: Surprise Community & Resource Center
Street Address: 16000 N. Civic Center Plaza16000 N. Civic Center Plaza
City: City of Surprise
State: AZAZ
Zip: 85374
Phone Number: 6232221620
Tax ID: 86-600779686-6007796
Website Address: www.surpriseaz.gov

Executive Director/CEO
Name: Seth Dyson
Title: Human Service & Community Vitality Department
Email: seth.dyson@surpriseaz.gov
Phone: 6232221620

Contact Person for this Proposal
Name: Seth Dyson
Title: Human Service & Community Vitality Director
Email: seth.dyson@surpriseaz.gov
Phone: 6232221620

Who is responsible for ensuring the outcomes stated in this grant?
Name: Lord Garcillano
Title: Community Center Supervisor
Email: lord.garcillano@surpriseaz.gov
Phone: 623-222-1625

Program Description & Goals

1. **Organization Mission:** Describe your organization's mission and its current programs, activities and accomplishments.

The Surprise Community & Resource Center will allow for people of all ages to expand their knowledge, literacy and understanding of resources through the following programs and services:

* Head Start - Through a partnership with Maricopa County, three Head Start Classrooms will be added to the Center. We will have an infant room, a toddler room and a regular (3-5 yr/old) classroom. This will be the first time in our city's history that we will have an infant and regular head start program available. One block away, we have a Migrant Head Start program operated by Chicanos Por La Causa.

* Afterschool Program/Summer Youth Program - Through a partnership with Dysart Community Center (DCC), our current after-school and summer youth programs will be able to expand, with the

possibility of having up to 250 youth in the summer. DCC offers homework and tutoring assistance, STEAM activities, games, swim lessons and other exceptional educational opportunities for youth ages 5-17.

* Early Childhood Literacy/Parent Education - Through a grant from First Things First, the Community & Resource Center will be able to expand the number of our early literacy programs designed for youth ages 0-5. From intentional play groups to bringing in the Phoenix Zoo to learn about the animals, these programs are a way to help children and their parents learn social and educational skills. Developmental screenings and resource referrals for parents and grandparents will continue to be offered.

* Hollyhock Library Programs - Hollyhock Library will be moving and expanding into the new Community & Resource Center and will be able to triple their programming since they will have space to do so. Since the City of Surprise has moved our libraries in house, programs and offerings have more than doubled and visitors to Hollyhock and the two other branches have risen. The library plans to utilize the classrooms in the new Center for more youth, teen and adult programming.

* Adult/Senior Programs - The City of Surprise Senior Services programs and partners offer many educational offerings, info sessions and classes. These include but are not limited to fall prevention, cooking, historical and cultural presentations, creative arts, and general health and wellness classes. Our department also convenes a City Academy to give the public an overview of where Surprise has been, where we are today and what the future could look like. We also convene HOA classes since around 86% of Surprise residents live in a HOA.

* Resources - One of the main reasons the City of Surprise is building out the new Community & Resource Center is to ensure the resilience of our individuals and families. Part of the issue is knowing where to find resources. By expanding our programs and partnerships, we will be building a stronger, more resilient safety net for residents of the northwest valley.

2. **Organization History:** As related to this grant proposal, please share your community and organization's history.

Beginning with the prehistoric Hohokam and followed by a very diverse population of farmers, ranchers, U.S. 60 highway and railroad workers, the Surprise community has a rich history of supporting the region as good neighbors. This campus is a block from the U.S. 60 and Greenway Road intersection, which is the border of the communities of Surprise and El Mirage. Thirty-eight thousand vehicles currently pass the site on Grand Avenue daily. The project site is located in the 'Original Square Mile' of the community of Surprise and is a designated qualified census tract. The square mile was purchased in 1938 by Flora Mae Statler who is credited for founding the community and giving it the special name, saying she'd be "'surprised' if the town ever amounted to much." In 2023, the City of Surprise was proud to help

support the founding of the Original Town Site (OTS) Stakeholders Committee, a group of leaders from the original square mile of Surprise wanting to reestablish and grow community and neighborhood connection. Their work resulted in bringing back Founders Day to the OTS in April, 2024 with the full support of the city. City staff and partners are well connected to the neighborhood and are eager to open up new space for additional neighborhood gatherings and services.

3. **Funding Request**: Please list total and annual amounts.

Year of Grant Agreement	Calendar Year	Requested Amount
Y1	2025 2025	$150,000.00

Y2	2026 2026	$150,000.00
Y3	2027 2027	$150,000.00
	TOTAL	450000

4. **Project/Program:** List the name of the Project/Program for which you would be using the Impact Grant funds.
Surprise needs help in filling the gaps in our region. In a fast-growing community where the demand for services is on the rise, we have run out of physical space to accommodate program needs. Our new 32,800 square foot center (scheduled to open at the end of 2025) will co-locate the existing Hollyhock Library, Senior Center, Resource Center and a small community policing office, as well as bring in three Head Start classrooms, community classrooms and office space for many existing and future service partners (thirty-seven partners as of now with plans to grow). The social determinant of health (SDOH) that we are targeting with these funds include education, nutrition, social inclusion, literacy and early childhood education, and the general resource navigation and connection to services. Our conservative estimates will allow us to serve 20,000 (unduplicated) people and receive over 50,000 (duplicated) visits to the new center in the first year of operation.

   Funding will support the expansion of nutrition and healthy food programs. Currently our after-school program, WIC and senior service program offers nutritional classes and education, but with the Sprouts
funding we are looking at adding classes and possibly launching a food distribution program monthly through the new center.

   We firmly believe that healthy neighborhoods and communities and ones that are well connected. We've seen social isolation grow in all ages, but especially through our older residents. Our new Community & Resource Center project is partially designed with this in mind, creating space for social, recreational and educational programs. A major challenge in Surprise is the lack of meeting and gathering spaces. While the city tries to catch up with its growth and need for additional facilities, we are proud that this new Center will have an intentional focus on bringing people together of all ages. We are so excited to have Head Start children at the center during the same time we schedule our adult/senior programming. We already offer intergenerational programming, but we can't wait to see this expand.

   Getting people to the center will be a main focus so they can connect socially and receive services. Transportation has been identified by many in our community as a major issue, and in the past couple years Surprise has implemented a Micro Transit program called We Ride and the Resource Center now has a Crisis Assistance Program which helps with gas cards. The city now also offers FREE Rides to those coming to and from the Resource Center if they let us know they need assistance.

   Finally, our new center should be a place full of hope and laughter. Yes, many will come to us facing hardships and crisis, but by our team and partners striving to be the best servant leaders possible, we know our culture of hope and resilience will move with us to the new Center. This approach will allow us the freedom to bring in music, art and other social and recreational opportunities that are intentionally designed to serve the neighborhood and beyond. We already know a couple bands in the neighborhood that we want to invite in to do shows and the Original Town Site Stakeholders Committee is already looking to plan events in the Sprouts Dining Hall!

5. **Clients/Population Served:** Describe the population your organization serves.
All in need for assistance, especially those who are low-income are welcome to access the Surprise Community & Resource Center.

   There are 225,847 residents in the Surprise service area which includes El Mirage, Sun City, Sun City West, Wittman, and Waddell. Surprise demonstrates an impressive 10.6% growth rate since

2020. The Surprise service area is faced with serving varied populations, including affluent residents in Surprise and landlocked residents in El Mirage characterized by a great level of need. There is also a large age gap in service area populations, as Sun City and Sun City West are older adult communities. The City of Surprise covers a large geographic expanse including rural areas with populations that are hard to reach.

Our current (conservative estimate) projections based on our Resource Center and Senior Center FY24 reports estimate 15,000 unduplicated visits per year. We also estimate accommodating 50,000 duplicated visitors per year (conservative estimate). In fiscal year 2024, our Resource Center team helped over 16,300 individuals, a thirty-seven percent increase from the previous year. In the same year, the Resource Center distributed 718 food boxes, a number we anticipate growing as more services and partners will be housed under one roof.

The Surprise Community & Resource Center will expand health, wellness, workforce development, housing, homelessness, benefit assistance, senior services, after-school youth programs, summer youth programs and library services. The facility is located in the lowest-income neighborhood and will help serve the rapidly growing Northwest region. This facility is a long-term community investment into economic resiliency and neighborhood revitalization of the Original Townsite.

The Surprise Community and Resource Center will provide additional safe programmable space to serve all ages, but specifically seniors and adults with disabilities, through our adult, youth, Head Start programs, library patrons, community groups and clubs, no-profit organizations, and support groups for some of our region's most vulnerable populations. The public facility would better respond to pandemic operational needs and heighten opportunities for prevention and mitigation programs and services.

6. **Individuals Impacted:** How many individuals will be served by your Project/Program during the grant period?
   50000

7. **Program Detail:** Describe the program proposal in detail. Tell us the goals of the project and how they align with your mission; describe the activities you will undertake; specify the resources (personnel, partnerships, funding, time, etc.) that will be used; and provide a timeline of events, as appropriate.

* Cooking & meal prep class - The center will be doubling in kitchen size, providing the opportunity to expand service and programs. This will allow our current senior meal prep classes to expand. We plan to extend these programs to all of our clients, especially our youth. With these funds, we can partner with professional services to help facilitate cooking classes, meal prep programs, and farmers markets.

* Expansion of senior meal nutrition education programs - The funding will help expand our senior meal nutrition to accommodate the anticipated growth of visitors. With all of our current services coming under one roof, our center will become the hub for much needed services, bringing in a diverse and robust clients utilizing the center. In addition, our new center will be located directly across from a new 99 unit low-income senior housing facility.

* Nutrition literacy for all ages, especially around youth programs- Through a partnership with Dysart Community Center (DCC), our current after-school and summer youth programs will be able to expand, with the possibility of having up to 250 youth in the summer. Funding will allow for expansion of nutrition programs for our local youth such as health food choices, meal preps, and cooking classes. We envision partnering with professional dieticians to provide support and education to all our youth ages 5-17.

* Gardening Classes - Hollyhock Library will be moving and expanding into the new Community &

Resource Center and will be able to triple their programming since they will have space to do so. Since the City of Surprise has moved our libraries in house, programs and offerings have more than doubled and visitors to Hollyhock and the two other branches have risen. The library plans to utilize the classrooms in the new Center for more youth, teen and adult programming.

* Collaboration with the Surprise Community Garden - The Surprise Community Garden provides opportunities for members of the community to work together, growing healthy food while learning from

each other. The Surprise Community Garden, opened in 2012, is a Community For All Ages (CFAA) program led by Benevilla in partnership with the City of Surprise and Rio Salado College. The garden is located on the Benevilla campus at the Hellen & John M. Jacobs Independence Plaza, 16752 N. Greasewood Street near the Surprise Bicentennial Park. This garden serves as an important space for area residents, children, and local organizations to learn about growing food in a desert environment. Individuals and groups can rent their own garden plot to grow produce for themselves or to donate to local food banks. The garden provides the opportunity to learn how to grow fresh and wholesome food while connecting with people of all ages and backgrounds.

Results & Outcomes this Partnership will Produce

1. **Moving the Needle:** Where is your organization positioned to "move the needle" as it relates to children's health, nutrition education and/or fresh food access?
   We firmly believe that the Surprise Community & Resource Center is the perfect vessel to help lead the way as proven by our current successes of our programs, services, and partnerships. Our new 32,800 square foot center (scheduled to open at the end of 2025) will co-locate the existing Hollyhock Library, Senior Center, Resource Center and a small community policing office, as well as bring in three Head Start classrooms, community classrooms and office space for many existing and future service partners (thirty-seven partners as of now with plans to grow). The Community & Resource Center will become a one-stop shop for wrap around services to clients ages zero and up! All in need for assistance, especially those who are low-income are welcome to access the Surprise Community & Resource Center.

   The Human Service & Community Vitality (HS&CV) Department houses the Surprise Resource Center, a one stop shop for human services. Through strategic partnerships with community-based organizations, the center offers services consisting of Veteran services; employment services; homeless services; AHCCS, TANF, SNAP, and Affordable Care Act application and enrollment; VITA tax assistance; parent education; WIC nutritional services; domestic violence services; emergency food box program; summer meals for youth, Medicare counseling; and the Community Action Program (CAP). With continued growth in partnerships with community-based organizations and services provided in the Surprise Resource Center, there has been an overwhelming escalation in the number of phone calls, requests, and walk-ins involving assistance. Last fiscal year, the center served 8,142 individuals. The HS&CV Department also houses the Senior Center which currently serves active members from 15 cities: Sun City West, Sun City, El Mirage, Wittmann, Waddell, Peoria, Litchfield Park, Buckeye, Youngtown, Phoenix, Glendale, Black Canyon City, Avondale, and Ajo.

   The new facility will also support individuals/families participating in programs offered by the Surprise Hollyhock Library, Surprise Police Department, Head Start, and DCC after-school program which are all
   housed in the new Regional Community Resource Center.

2. **Results:** What results will you achieve by the end of the grant period? How will you measure the impact of your Project/Program?
   Program success will be measured by attendance and survey feedback. Actively engaging with participants to be sure we are meeting their needs will be vital to the success of the program.

The results we plan on achieving are:

* Hire a Community Center Coordinator and General Service Worker to create, expand, support and grow new and existing health and wellness programs.

• Expand nutritional programming for all ages. Offering bi-monthly nutrition classes for afterschool program and senior service programs. This expansion doubles our nutrition education programs for seniors and is a new program offering to our youth populations.

•Host Farmers Markets to increase access to fresh fruits and vegetables. Markets to be held quarterly in the evening or on weekends to allow working families to attend.

• Monthly Cooking/Meal Prep class with a registered dietician or professional chef.

• Community Garden classes with the Surprise Community Garden.

•Expand St. Mary's food box distribution to include the Commodity Supplemental Food Program (CSFP) in addition to our existing program, The Emergency Food Assistance Program (TEFAP). In FY2024 there was an annual distribution of 718 from our Resource Center, which was an 11% increase over the prior year. With a more centralized location and larger facility we expect to see a 10% increase year over year.

• Weekly food distribution through St. Mary's Grocery Rescue Program. St. Mary's Food Bank's Grocery Rescue Program enables grocery, convenience and drug stores, and other retail outlets to donate their food products directly to agencies for community distribution. This program encourages retailers to divert their food from landfills and reduce food waste. Product type may vary but may include deli, dairy, produce, bakery, dry, meat and canned items.

3. **Similar Programs:** Which other organizations in the local community provide similar services to your Project/Program's services? What differentiates your Project/Program or organization from the other organizations you identified? How do you prevent duplicating services?
The City of Surprise Human Service & Community Vitality department strives to partner and support local initiatives first. This means if there is a similar program in the region or community that can be expanded upon, the team would start there to see what we can do together. An example of this is creating a food pantry. We don't believe we need to do this because St. Mary's Food Bank is right down the street and is excellent at what they do. We will continue our partnership with them for an emergency food box program, which offers non-perishable food once a month to individuals and families in need. We offer this program to save people a trip to another location.

Other programs in our region include:

*Banner Olive Branch - Sun City Senior Center, Food Pantry and Home Delivered Meals. In Surprise we partner with Banner Olive Branch as our food vendor for our daily congregate meal program at our Senior Center and refer residents to their home delivered meal program.

*City of Surprise Cooking Classes - Our Parks and Recreation department offers a few cooking classes per year for a fee. Our intent is to work with them to expand these offerings to the new Community Center, offer scholarships so costs are not a barrier and to expand the number of classes.

*Food Box Programs - We will continue to refer residents to the following organizations who have supplemental food box programs if they are in need of additional food: Dysart Community Center, Reveal

Vinyard, St. Vincent de Paul St. Clare of Assisi, St. Vincent de Paul Our Lady of Lourdes, St. Vincent de Paul Prince of Peace in partnership with Santa Teresita Catholic Church, Cross Church, Radiant Community Services, the Salvation Army and Valley View Food Bank.

*Hot Meals - Lunch is served Monday-Friday at Santa Teresita in El Mirage by St. Vincent de Paul. The Salvation Army serves breakfast for a donation Mondays and Thursdays of each week.

*Home Delivered Meals - Banner Olive Branch and Meals of Joy offer regional residents home delivered meal options from low to moderate costs.

There are very few cooking, meal prep and nutrition classes at no cost to the general public. What is currently offered is through our existing, limited programs. We are so excited to expand and bring in new programming to our region!

4. **Sustainability:** How will your organization sustain the Project/Program after the grant period?
The City of Surprise is working hard to create new programs to support the many social determinants of health to keep and make our regional community stronger and more resilient. Our goal is to continue to
partner with organizations who share the same mission to improve the lives of thousands in our region. The City of Surprise seeks funding from Sprouts Healthy Communities Foundation and others to establish and grow services in a time where resources are limited. Our goal is to always keep the programs and services that are benefiting the community. We will do this through strong partnerships with the community and investors along with increased support from the City of Surprise general funds.

A successful example of this is our Volunteer Income Tax Assistance (VITA) program operated by A New Leaf. We knew that many people struggled to file their taxes each year, and changes to the tax codes seem to be an annual occurrence. Some social benefitted programs have turned into tax rebates that people needed to apply for. Struggling with the complexities of understanding which tax benefits they may be eligible for, many left thousands of dollars on the table, unbeknownst to them. VITA started as a way to help families seek the money that they are eligible for through their taxes, especially the Earned Income Tax Credit. Through the VITA program and the many volunteer assisters, thousands of dollars come back to local communities each year and into the pockets of people who need them the most, especially our most vulnerable. Last year in Surprise alone the VITA program saw over one million dollars returned to the local area! A New Leaf is the operator of the program and was at the mercy of apply for the small City of Surprise Community Outreach Grant program each year to maintain service. The City Council saw this program as high value and decided to fund it without having A New Leaf apply each year for a grant program to sustain it.

Our long-term goal is to continue to increase the investment of the City of Surprise into all programs of the new Community & Resource Center.

Partner Visibility & Activation Timeline

1. **Partner Visibility:** If selected as a grant recipient, please indicate how the Sprouts Healthy Communities Foundation would be recognized as a partner and promoted (i.e. social media, program materials, donor events, press release, etc.).
The City of Surprise believes the naming of the Multigenerational Resource Center's Kitchen and Dining Hall would appropriately demonstrate the close relationship between Sprouts Healthy Communities
Foundation/Sprouts Farmers Markets and the City of Surprise. Sprouts' generous support in this case would allow for the City's maximum naming period of 10 years. This naming opportunity is a clear demonstration of Sprouts' commitment to the citizens of Surprise and provides a public display of the Company's efforts to give back to their communities.

The celebration of the naming of the Center's Kitchen and Dining Hall includes press release(s) and PR efforts announcing the partnership and surrounding the groundbreaking; construction site wrapper with naming and branding; ribbon cutting and grand opening; etc. All releases, flyers, brochures, media related to the building and/or programs under the building's umbrella will include Sprouts branding marks, etc.

Recognition would include display on the City's website (under News & Announcements), social media recognition (with more than 28,000 followers on FaceBook, X (formerly Twitter), Instagram and Threads, and news releases (to 11 major Phoenix metro news outlets including AZ Family (3TV and CBS 5), The Arizona Republic, The Surprise Independent, etc.)

2. **Activation Timeline**: Please outline a proposed activation timeline.
The City of Surprise has recently completed the design and dry utilities phase of the new Community & Resource Center project. Currently the construction Invitation For Bids (IFB) was awarded to Danson Construction. Our plan is to have a groundbreaking ceremony in January 2025 to celebrate the next phase. We would be honored to have Sprouts as a partner and speaker at the groundbreaking!

The new center is scheduled to be completed between in spring, 2026. We intend to utilize Sprouts Healthy Communities Foundation funding over the ten-year naming rights period, offering programming starting in 2026. Bringing funding in now could get us started with new programs in our current facilities, but our main desire is to invest and leverage programmatic funding for a longer duration.

Year 1 – 2025 calendar year. Farmer's Market/Food Co-op at the Senior Center to be held on a Saturday for access to those working families. Quarterly for year 1 then move to every other month on year two and three. Expand nutrition education to Seniors and youth. We will increase "lunch and learn's" classes each month. We will also offer separate nutrition classes held in the multiple classrooms. Work with Parks and Recreation Department to bring the cooking and meal prep classes to the Senior Center to focus/ draw more from the Original Town Site.

Year 2 – 2026 Center opens – Sprouts logo placement finalized in Dining Hall. Total of two (2) logos, one on either side of the partition.

Quarterly Farmer's Market/ Food Co-op held in the new Surprise Community & Resource Center campus.
Cooking/meal prep classes will be held monthly.
Nutrition classes will be offered bi-monthly with after-school program youth. Classes include nutrition
education, meal prep, and healthy eating habits.
Monthly gardening classes with the Surprise Community Garden.

Year 3 – 2027
Farmer's market/Food Co-op will be held every other month.
Bi-weekly senior meal nutrition education programs for seniors.
Bi-weekly nutrition literacy programs for youth.
Nutrition classes will be offered bi-monthly with after-school program youth. Classes include nutrition
education, meal prep, and healthy eating habits.
Monthly gardening classes with Surprise Community Garden.
Partner with Dysart School District's Culinary Program. Culinary program students and staff will prepare
meal and mentor future youth interested in the field.

Program Budget

Docusign Envelope ID: DC709734-765E-47D4-B67A-3C5ABE2F357D

Project/Program Budget Information

1. What is the total annual Project/Program budget for the years in which grant funds will be used?
   $150,000.00
   $150,000.00
2. Please list the organization's total annual operating budget for fiscal year 2024.
   $3,000,000.00

3. Please submit your Program/Project Budget and Organizational Budget using the Sprouts Healthy Communities Foundation Budget Template (provided).

Other Thoughts/Ideas You'd Like to Share?

The City of Surprise Human Service & Community Vitality department invites Sprouts Healthy Communities Foundation staff and board members into a strategic partnership to explore ways our organizations can collaborate on innovative programs and solutions. In our research and in speaking with Sprouts Foundation executives, there are a lot of great things happening around the country that Sprouts is investing in. We are always open to project and program ideas, pilot projects and initiatives to create healthier communities. If funding is granted, we know that (conservative estimate) we can help serve over 50,000 individuals over the course of the grant period.

We'd like Sprouts to know they have a flexible partner in the City of Surprise. We are blessed to have the full support of our community and civic leaders to innovate. Flexibility and government sometimes do not go hand in hand, and so we understand the tremendous opportunity that we have been given and we do not want to waste this opportunity. We would be honored to try new things with Sprouts to see if ideas and programs could be scalable and duplicated in other areas. We'd like to thank Sprouts for the opportunity to submit this grant and collaborate.

Additional Information Checklist

Submission Requirements: Please include ALL of Required Attachments with your application.

Required Attachments

- A current IRS determination letter verifying 501(c)(3) status
- A current W-9
- IRS 990 for your organization's most recently completed fiscal year
- Audited financial statements for your organization's most recently completed fiscal year. If the audit for the most recently completed fiscal year is still being prepared, please provide unaudited financials for the most recently completed fiscal year with an estimated date of receipt of the audited statement.
- Organization's most current revenue/expense statement
- Board Membership list with names and affiliations
- Organization's logo(s) for marketing and communications purposes
- Optional Documents: You may also provide Letters of Support, documents and photos if they are relevant to your Project/Program and necessary for the Foundation to review as it considers your application.

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025

Submitting Department: City Manager Office

Staff Recommendations:

Contact Person: Jodi Tas, MNGMNT ANALYST - SR

District: Citywide

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

Agenda Wording:
Consideration and action pertaining to approval of the 2025 Legislative Agenda.

Motion:
I move to approve the 2025 legislative agenda as presented.

Background:
The Legislative Agenda defines the city's legislative priorities and core values each legislative session and provides direction to Government Relations staff to ensure the city is actively engaging on issues at the US and State Capitols that reflect the priorities and mission of the Surprise City Council.

Objective Analysis:
The Legislative Agenda ensures that the Surprise City Council's priorities remain heard and to advocate for the city's and residents' best interests. Items include maintaining Surprise's quality of life; preserving local funding and local control; opposing pre-emption; advocating for transportation funding and projects for Surprise and our region; protecting local authority as it pertains to land-use planning; supporting, preserving and enhancing public safety's ability to do their jobs effectively; supporting efforts to enhance our economic competitiveness; protecting Surprise's investment in safe, reliable and sustainable water; and protecting the mission of Luke AFB.

Policy Compliant:
This item is within city policy.

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:

1. 2025 Legislative Agenda

SURPRISE
ARIZONA

2025 Legislative Agenda & 2024 Legislative Session Recap

First Regular Session of the 57th Arizona Legislature

LEGISLATIVE COMPOSITION

- Surprise has three legislative districts.
  - LD 25
    - Senator Tim Dunn
    - House Majority Leader Michael Carbone
    - Representative Nick Kupper
  - LD 28
    - Senate Majority WHIP Frank Carroll
    - Representative David Livingston
    - Representative Beverly Pingerelli

LEGISLATIVE COMPOSITION

- LD 29
  - Senate Majority Leader Janae Shamp
  - Speaker Steve Montenegro
  - Representative James Taylor
- Surprise has 2 congressional districts
  - CD 8
    - Congressman Abe Hamadeh
  - CD 9
    - Congressman Paul Gosar
- US Senators
  - Senator Mark Kelly
  - Senator Ruben Gallego

2024 LEGISLATIVE SESSION RECAP

- In 2024, the Arizona State Legislature convened on January 8th, 2024 and adjourned on Saturday, June 15, 2024.
- Arizona was one of 11 states with a divided government.
- Republicans held a majority in both chambers
  - 16-14 in the Senate
  - 31-29 in the House
- During the course of session, there were 1,663 bills introduced.
  - 330 of those bills were sent to Governor Katie Hobbs for consideration.
  - She signed 258 of the bills into law and vetoed 73.

PURPOSE OF LEGISLATIVE AGENDA

- To define the City's legislative priorities and core values for the 2025 state legislative session.
- To provide direction to Government Relations to ensure the City is actively engaging on issues at the U.S. and State Capitols that reflect the priorities and mission of the Surprise City Council.

2025 LEGISLATIVE AGENDA

- Maintain Surprise's Quality of Life
  - Protect attributes that make Surprise a desirable community for families and business alike.
    - Examples include efficient transportation, public safety, safe neighborhoods, open space, and economic prosperity.
  - Support responsible and manageable growth.
  - Support tourism measures and policies that help maintain Arizona as a destination.

2025 LEGISLATIVE AGENDA

- Preserve Local Funding
  - Protect existing funding sources that bring revenue to the City of Surprise which support the quality of life for our residents.
  - Common examples include our portion of state shared income tax, state transaction privilege tax, vehicle license tax and Highway User Revenue Fund (HURF) monies.

2025 LEGISLATIVE AGENDA

- Support local decision-making authority.
  - Oppose Pre-emption of Local Authority
  - The community trusts their local elected officials to protect public health, safety and their quality of life. Any efforts to weaken or eliminate local control and decision-making authority through pre-emption or mandates will be opposed.

2025 LEGISLATIVE AGENDA

- Transportation
  - Continue to seek support to expand our transportation infrastructure in our high growth areas.
  - Support regionally coordinated transportation planning.
  - Continue to engage regional, state and federal partners to ensure our residents have reliable and efficient transportation options and out of our city.
  - Oppose efforts that limit local control in the transportation decision-making process.

2025 LEGISLATIVE AGENDA

- Transportation, cont’d
  - Support federal and state funding for statewide, regional and local transportation and infrastructure projects.
  - Work collaboratively with our federal, state, regional and other local delegations to secure grant funding for our most impactful infrastructure needs.

2025 LEGISLATIVE AGENDA

- Land Use Planning
  - Protect local authority in land use planning.
  - Support efforts that promote orderly, responsible and sustainable growth.
  - Oppose efforts that impede growth management.
  - Focus on policies that ensure growth pays for itself.
  - Maintain consistency between local code and state law.

2025 LEGISLATIVE AGENDA

- Public Safety
  - Preserve and enhance the ability of local government to strategically plan for and respond to emergencies.
  - Support legislation that enhances public safety services while maintaining vigilance with the protection of individual rights.

2025 LEGISLATIVE AGENDA

- Economic Development
  - Support efforts that maintain and enhance our economic competitiveness.
  - Support diversification of economic development tools.
  - Protect local authority on development projects.
  - Support incentives and other mechanisms that would contribute to high quality private sector growth and job creation.

2025 LEGISLATIVE AGENDA

- Water and Sustainability
  - Collaborate with regional and local partners to support legislation that encourages practical water efficiency and conservation measures.
  - Protect surface water and uphold the principles of the Groundwater Management Act.
  - Protect Surprise's investment in safe and reliable water resources and wastewater services.
  - Ensure that Surprise is able to supply assured, safe and sustainable water to our residents.

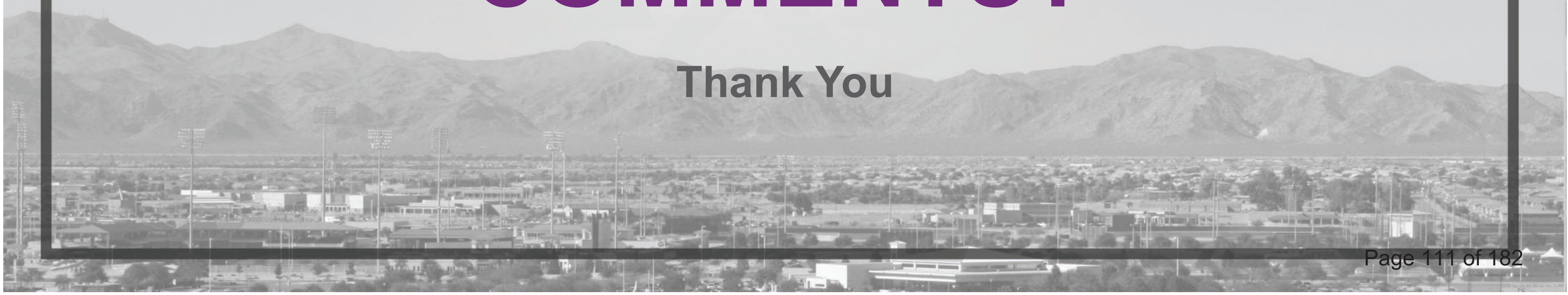
2025 LEGISLATIVE AGENDA

- Protect Mission of Luke Air Force Base
  - Advocate for the long-term mission and viability of Luke AFB through local and regional community support as well as any level of advocacy to protect the base.
- Neighborhoods
  - Support policies that strengthen the quality of life in our neighborhoods.

SURPRISE
ARIZONA

QUESTIONS OR COMMENTS?

Thank You



CITY OF SURPRISE
Regular City Council Meeting

SURPRISE
ARIZONA

Council Meeting Date: January 21, 2025
Submitting Department: City Auditor
Staff Recommendations:

Contact Person: Carol Holley
District: Citywide

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

Agenda Wording:
Presentation and discussion pertaining to FY2024 and FY2025 City Auditor Department reports.

Motion:
Informational only

Background:
This item has been placed on the agenda to discuss the results of work performed as part of the FY2024 and FY2025 Annual Audit Plan approved by the City of Surprise Audit Committee.

Objective Analysis:
The mission of the City Audit Committee is to provide advice to the city council in respect to fulfilling its oversight responsibilities regarding the integrity of the city's annual comprehensive financial statements and to assist and advise the city auditor and city council on matters relating to the city's compliance with legal and regulatory requirements, systems of internal controls, management of citywide risk environment and the performance of internal and external auditors. This discussion will lend itself to the oversight and advisory components of the mission statement. City staff does not anticipate any negative impacts at this time.

Policy Compliant:
Sec. 2-304 (c) (6-8) of the Surprise Municipal Code directs the Audit Committee to: In coordination with the city auditor, review significant audit findings and monitor responses thereto; provide independent review and oversight of the internal and external auditor including any audits either performs, and evaluate internal and external audits for performance and compliance with accepted professional standards.

Financial Impact:
N/A - Informational only

Budget Impact:
N/A - Informational only
FTE Impact:

N/A - Informational only

ATTACHMENTS:

CITY OF SURPRISE
Regular City Council Meeting

SURPRISE
ARIZONA

Council Meeting Date: January 21, 2025
Submitting Department: Water Resource Management
Staff Recommendations:

Contact Person: Michael Boule, Director
District: Citywide

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

Agenda Wording:

Consideration and action pertaining to the authorization of the assignment of the Circle City Water Company, LLC Central Arizona Project Municipal and Industrial Water Entitlement to the City of Surprise thereby terminating the Circle City Water Company, LLC Central Arizona Project Water Service Subcontract, Resolution 2025-12.

Motion:

I move to approve Resolution 2025-12.

Background:

In 2008, 2016, and 2022, the City Council adopted the Integrated Water Master Plan, which identified Circle City Water (CCWC) as a potential resource to expand the City's water portfolio. CCWC is a small water system located in the northern part of Surprise's planning area, holding a Central Arizona Project (CAP) Municipal and Industrial (M&I) subcontract. This CAP allocation would raise the City's annual entitlement to Colorado River water from 10,249 acre-feet to 14,181 acre-feet, helping to meet future water demands.

On November 7, 2017, the City Council passed Resolution 2017-138, authorizing the pursuit of voter approval to acquire CCWC. In a citywide vote held on May 15, 2018, 80% of eligible voters in Surprise approved the purchase of CCWC.

On March 5, 2019, Surprise and Circle City entered into a Settlement Agreement for Stipulated Condemnation, agreeing to seek a final judgment and order of condemnation.

The Assignment and Termination agreement will transfer Circle City's full annual CAP M&I entitlement of 3,932 acre-feet to Surprise, increasing the City's total annual CAP M&I entitlement from 10,249 acre-feet to 14,181 acre-feet, and will terminate the Circle City Water Service Subcontract.

This agreement has been approved by the State of Arizona, the Central Arizona Water Conservation District, and the United States Department of the Interior.

Objective Analysis:

A primary goal of the Water Resource Management Department is to grow the City's water portfolio. There are limited supplies of renewable water sources available, the Colorado River is the City's primary source. Through this action, the City take one more step forward in the process of acquiring Circle City Water Co. and consequently grow its ongoing right to CO River water. Other options for resources include the purchase of water credits which are only a one-time access to water or the lease or purchase of other renewable sources through exchanges which are more costly at the present time.

Policy Compliant:

This Council Item complies with the Water Acquisition Policy adopted by Council in 2015 and updated in 2018.

Financial Impact:

The financial impacts associated with the Circle City acquisition, including the CAP entitlement costs, were anticipated in the 2024 Utility Rate Study.

Budget Impact:

The financial impacts associated with the Circle City acquisition, including the CAP entitlement costs, were anticipated in the 2024 Utility Rate Study. The packages associated with the CAP entitlement costs will be brought forward in the Fiscal Year 2026 budget packages.

FTE Impact:

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

ATTACHMENTS:

1. 24.12.30 Assignment & termintion agreement res 25-12
2. Circle City Assignment to Surprise 07-XX-30-W0463 11-27 Blackline

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RESOLUTION # 2025-12

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING THE ASSIGNMENT AND TERMINATION AGREEMENT PERTAINING TO CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL WATER SUBCONTRACTS BETWEEN CIRCLE CITY WATER COMPANY, LLC, AND THE CITY OF SURPRISE.

WHEREAS, On March 29, 2007, the United States of America (the “United States”), acting through the Secretary of the Interior, the Central Arizona Water Conservation District (“CAWCD”), and Circle City Water Company LLC entered into Subcontract No. 07-XX-30-W0463, providing for the maximum annual delivery of 3,932 acre-feet of Central Arizona Project municipal and industrial water;

WHEREAS, On August 29, 2018, Surprise initiated a condemnation action against Circle City seeking to acquire its assets, including the Circle City Water Service Subcontract, titled *City of Surprise v. Circle City Water Co., L.L.C., et al*, in the Maricopa County Superior Court of the State of Arizona, Case No. CV2018-011038;

WHEREAS, The Maricopa County Superior Court of the State of Arizona entered a Form of Judgment, retaining jurisdiction for purposes of entering a Final Order of Condemnation, which it will do upon the occurrence of certain events, including the judicial validation by the Maricopa County Superior Court of a new or amended Central Arizona Project water subcontract pursuant to A.R.S. §§ 48-3731 to 48-3734;

WHEREAS, In order to finalize the condemnation, the parties must enter into an assignment and termination agreement transferring Circle City's entire annual entitlement to CAP M&I water of 3,932 acre-feet, thereby increasing Surprise’s annual entitlement to CAP M&I water from 10,249 acre-feet to 14,181 acre-feet, and terminating the Circle City Water Service Subcontract.

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

Section 1. The Assignment of Circle City Water Company, LLC Central Arizona Project Municipal and Industrial Water Entitlement Under Water Service Subcontract No. 07-XX-30-W0463 to the City of Surprise Central Arizona Project Water Service Subcontract No. 07-XX-30-W0505, and Termination of Circle City Water Company, LLC, Central Arizona Project Water Service Subcontract No. 07-XX-30-W0463 between Circle City Water Company, LLC, and the City of Surprise, attached as Exhibit A, is approved.

APPROVED AND ADOPTED this _____day of ____________, 2025.

Kevin D. Sartor, Mayor

Attest:

Approved as to form:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney

Resolution No. 2025-12
RFLS #9853
Rev 06/23

EXHIBIT A

Assignment of Circle City Water Company, LLC Central Arizona Project Municipal and Industrial Water Entitlement Under Water Service Subcontract No. 07-XX-30-W0463 to the City of Surprise Central Arizona Project Water Service Subcontract No. 07-XX-30-W0505, and Termination of Circle City Water Company, LLC, Central Arizona Project Water Service Subcontract No. 07-XX-30-W0463

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

ASSIGNMENT OF CIRCLE CITY WATER COMPANY, LLC CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL WATER ENTITLEMENT UNDER WATER SERVICE SUBCONTRACT NO. 07-XX-30-W0463 TO CITY OF SURPRISE CENTRAL ARIZONA PROJECT WATER SERVICE SUBCONTRACT NO. 07-XX-30-W0505,
AND TERMINATION OF CIRCLE CITY WATER COMPANY, LLC, CENTRAL ARIZONA PROJECT WATER SERVICE SUBCONTRACT NO. 07-XX-30-W0463

CENTRAL ARIZONA PROJECT

1. PREAMBLE: THIS ASSIGNMENT AND TERMINATION (“Assignment and Termination”) is made and entered into this ____ day of ______________, 2024, by and between Circle City Water Company, LLC, an Arizona limited liability company ("**Circle City**"), and the City of Surprise, an Arizona municipal corporation ("**Surprise**").

2. EXPLANATORY RECITALS:

2.1 On March 29, 2007, the United States of America (the “United States”), acting through the Secretary of the Interior, the Central Arizona Water Conservation District (“CAWCD”), and Circle City entered into a “Subcontract among the United States, the Central Arizona Water Conservation District, and Circle City Water Company, Providing for Water Service, Central Arizona Project” (the “Circle City Water Service Subcontract”), Subcontract No. 07-XX-30-W0463, providing for the maximum annual delivery of 3,932 acre-feet of Central Arizona Project (“CAP”) municipal and industrial (“M&I”) water.

2.2 On July 13, 2007, the United States, acting through the Secretary of the Interior, CAWCD, and Surprise entered into a "Subcontract among the United States, the Central Arizona Water Conservation District, and the City of Surprise, Providing for Water Service, Central Arizona Project" (the "Surprise Water Service Subcontract"), Subcontract No. 07-XX-30-W0505, for the maximum annual delivery of 10,249 acre-feet of CAP M&I water.

2.3 On August 29, 2018, Surprise initiated a condemnation action against Circle City seeking to acquire its assets, including the Circle City Water Service Subcontract, titled *City of Surprise v. Circle City Water Co., L.L.C., et al*, in the Maricopa County Superior Court of the State of Arizona, Case No. CV2018-011038.

2.4 On March 5, 2019, Surprise and Circle City entered into a Settlement Agreement for Stipulated Condemnation, agreeing to seek the entry of a stipulated final judgment in condemnation and final order of condemnation.

2.5 On July 20, 2022, the Maricopa County Superior Court of the State of Arizona entered a Form of Judgment in Case No. CV2018-011038. The court retained jurisdiction for purposes of entering a Final Order of Condemnation, which it shall do after, and only after, both: (a) the deadline for appeal of the Judgment passes, or mandate returns to the court after appeal; and (b) Circle City and Surprise conclude all activities necessary to their requesting a Final Order of Condemnation under the parties' Settlement Agreement for Stipulated Condemnation, including judicial validation by the Maricopa County Superior Court of a new or amended Central Arizona Project water subcontract pursuant to A.R.S. §§ 48-3731 to 48-3734. Following an appeal, the Arizona Court of Appeals affirmed in *City of Surprise v. Circle City Water Co., L.L.C., et al*, No. 1 CA-CV 22-0532 (Ariz. Ct. App. Sept. 21, 2023).

2.6 The Arizona Department of Water Resources by letter dated October 30, 2023, recommended that the Secretary of Interior approve the assignment of Circle City's annual entitlement to CAP M&I water of 3,932 acre-feet to Surprise for use within special planning areas encompassing Circle City's current service areas.

2.7 This Assignment and Termination will transfer Circle City's entire annual entitlement to CAP M&I water of 3,932 acre-feet, thereby increasing Surprise's annual entitlement to CAP M&I water from 10,249 acre-feet to 14,181 acre-feet, and terminate the Circle City Water Service Subcontract.

2.8 Article 6.7 of the Circle City Water Service Subcontract provides that the provisions of the subcontract shall apply to and bind the successors and assigns of the parties to the subcontract, but that no assignment or transfer of the subcontract or any part or interest therein shall be valid until approved by the United States.

NOW THEREFORE, in consideration of the mutual covenants herein contained, it is agreed as follows:

3. ASSIGNMENT AND TERMINATION:

3.1 Circle City hereby assigns to Surprise all of its rights, interests, and obligations in the Circle City Water Service Subcontract No. 07-XX-30-W0463 including the entitlement to 3,932 acre-feet annually of CAP M&I water.

3.2 Surprise has read this Assignment and Termination, knows the contents and requirements thereof, and accepts all rights, interests, and obligations of Circle City under the Circle City Water Service Subcontract, including the entitlement of 3,932 acre-feet annually of CAP M&I water, including without limitation the obligation to pay any and all amounts due under CAWCD's Policy Regarding the Relinquishment and Transfer of CAP M&I Subcontract Allocations with respect to the 3,932 acre-feet annually of CAP M&I water assigned.

3.3 Surprise agrees to execute an amendment to the Surprise Water Service Subcontract thereby increasing its annual CAP M&I water entitlement from 10,249 acre-feet to 14,181 acre-feet.

3.4 Circle City agrees that the Circle City Water Subcontract is terminated upon the effective date of this Assignment and Termination, and relinquishes all of its rights, interests and obligations to the entire 3,932 acre-foot CAP M&I entitlement under the Circle City Water Subcontract.

4. <u>EFFECTIVE DATE OF THIS ASSIGNMENT AND TERMINATION</u>:

4.1 This Assignment and Termination shall be effective as of the date the last of all of the following events has occurred:

4.1.1 This Assignment and Termination has been fully executed by all parties.

4.1.2 CAWCD and the United States, acting through the Secretary of the Interior, have both approved this Assignment and Termination, which shall be evidenced by the signatures of their respective representatives on the attached approval.

4.1.3 Surprise has paid CAWCD all payments due under CAWCD's Policy Regarding the Relinquishment and Transfer of CAP M&I Subcontract Allocations.

4.1.4 Surprise, CAWCD, and the United States, acting through the Secretary of the Interior, have executed and amended the Surprise Water Service Subcontract, as described in Section 3 of this Assignment and Termination.

4.1.5 The amended Surprise Water Service Subcontract has been validated in accordance with A.R.S. § 48-3731.

5. Notwithstanding Section 4 of this Assignment and Termination, for purposes of Surprise's required payment of CAP M&I capital charges, the Assignment and Termination shall be considered effective upon its execution by Circle City and Surprise.

6. Upon this Assignment and Termination becoming effective, the Circle City Water Service Subcontract shall be terminated and have no further force and effect.

7. The parties have complied with A.R.S. § 45-107(D).

8. This Assignment and Termination may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Termination of Contract No. 07-XX-30-W0463, the day and year first above-written.

(Signatures follow)

CIRCLE CITY WATER

COMPANY, LLC

Attest: ___________________________

Title: ____________________________

By: ___________________________

Title: _________________________

(*Signatures follow)*

CITY OF SURPRISE

Attest: ___________________________ By: ___________________________

Title: ____________________________ Title: __________________________

Approved as to form:

____

(*Signatures follow)*

APPROVAL

Pursuant to Article 6.7 of the Circle City Water Service Subcontract No. 07-XX-30-W0463, this “Assignment of Circle City Water Company, LLC Central Arizona Project Municipal and Industrial Water Entitlement under Water Service Subcontract No. 07-XX-30-W0463 to City of Surprise Central Arizona Project Water Service Subcontract No. 07-XX-30-W0505, and Termination of Circle City Water Company, LLC, Central Arizona Project Water Service Subcontract No. 07-XX-30-W0463” is hereby approved.

THE UNITED STATES OF AMERICA

By: ___________________________
Regional Director
Lower Colorado Region
Bureau of Reclamation

(*Signatures follow)*

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest: ___________________________
Secretary

By: ___________________________
President

CITY OF SURPRISE
Regular City Council Meeting

SURPRISE
ARIZONA

Council Meeting Date: January 21, 2025
Submitting Department: Water Resource Management
Staff Recommendations:

Contact Person: Michael Boule, Director
District: Citywide

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

Agenda Wording:

Consideration and action pertaining to the authorization of Amendment No. 1 to Subcontract No. 07-XX-30-W0505 among the United States, the Central Arizona Water Conservation District and the City of Surprise, Resolution 2025-11.

Motion:

I move to approve Resolution 2025-11.

Background:

In 2008, 2016, and 2022, the City Council adopted the Integrated Water Master Plan, which identified Circle City Water (CCWC) as a potential resource for expanding the City's water portfolio. CCWC is a small water system located in the northern part of Surprise's planning area, holding a Central Arizona Project (CAP) Municipal and Industrial (M&I) subcontract. This CAP allocation would increase the City's annual entitlement to Colorado River water from 10,249 acre-feet to 14,181 acre-feet, supporting the City's ability to meet future water demands.

On November 7, 2017, the City Council passed Resolution 2017-138, authorizing the City to seek voter approval for acquiring CCWC. In a citywide vote held on May 15, 2018, 80% of eligible voters in Surprise approved the purchase.

On March 5, 2019, the City of Surprise and Circle City entered into a Settlement Agreement for Stipulated Condemnation, agreeing to pursue a final judgment and order of condemnation.

The purpose of Amendment No. 1 is to add 3,932 acre-feet of CAP M&I water entitlement previously held by Circle City to the Surprise Water Service Subcontract, increasing Surprise's total entitlement to 14,181 acre-feet.

This amendment has been approved by the State of Arizona, the Central Arizona Water Conservation District, and the United States, acting through the Secretary of the Interior.

Objective Analysis:

A primary goal of the Water Resource Management Department is to grow the City's water portfolio. There are limited supplies of renewable water sources available, the Colorado River is the City's primary source. Through this action, the City takes one more step forward in the process of acquiring Circle City Water Co. and consequently grow its ongoing right to CO River water. Other options for resources include the purchase of water credits which are only a one-time access to water or the lease or purchase of other renewable sources through exchanges which are more costly at the present time.

Policy Compliant:

This Council Item complies with the Water Acquisition Policy adopted by Council in 2015 and updated in 2018.

Financial Impact:

The financial impacts associated with the Circle City acquisition, including the CAP entitlement costs, were anticipated in the 2024 Utility Rate Study.

Budget Impact:

The financial impacts associated with the Circle City acquisition, including the CAP entitlement costs, were anticipated in the 2024 Utility Rate Study. The packages associated with the CAP entitlement costs will be brought forward in the Fiscal Year 2026 budget packages.

FTE Impact:

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

ATTACHMENTS:

1. 24.12.30 Amentment No 1 res 25-11
2. Surprise Amendment No 1 to 07-XX-30-W0505 11-22 Blackline

RESOLUTION # 2025-11

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, APPROVING AMENDMENT NO.1 TO SUBCONTRACT NO. 07-XX-30-W0505 AMONG THE UNITED STATES, THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT, AND THE CITY OF SURPRISE.

WHEREAS, On March 29, 2007, the United States of America (the "United States"), acting through the Secretary of the Interior, the Central Arizona Water Conservation District ("CAWCD"), and Circle City Water Company LLC entered into Subcontract No. 07-XX-30-W0463, providing for the maximum annual delivery of 3,932 acre-feet of Central Arizona Project municipal and industrial water;

WHEREAS, On August 29, 2018, Surprise initiated a condemnation action against Circle City seeking to acquire its assets, including the Circle City Water Service Subcontract, titled *City of Surprise v. Circle City Water Co., L.L.C., et al*, in the Maricopa County Superior Court of the State of Arizona, Case No. CV2018-011038;

WHEREAS, Pursuant to said condemnation action, Settlement Agreement for Stipulated Condemnation dated March 5, 2019, and entry of a Form of Judgment on July 20, 2022, Circle City agreed to assign its entire entitlement to an annual maximum delivery of 3,932 acre-feet of CAP M&I water to Surprise and Surprise agreed to assume all obligations to provide water service to special planning areas encompassing Circle City's current service areas; and

WHEREAS, The purpose of this Amendment No. 1 to Subcontract No. 07-XX-30-W0505 is to add the 3,932 acre-feet of Central Arizona Project M&I water entitlement previously held by Circle City to the Surprise Water Service Subcontract.

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

Section 1. Amendment No. 1 to Subcontract No. 07-XX-30-W0505 Among the United States, The Central Arizona Water Conservation District, and The City of Surprise, attached as Exhibit A, is approved.

Section 2. The City Manager, or his designee, is hereby authorized to execute and submit all documents and other necessary or desirable instruments in connection with said agreement.

APPROVED AND ADOPTED this _____day of ____________, 2025.

____
Kevin D. Sartor, Mayor

Attest:

____
Kristi Passarelli, City Clerk

Approved as to form:

____
Robert Wingo, City Attorney

Resolution No. 2025-11
RFLS #9853
Rev 06/23

EXHIBIT A

Amendment No. 1 to Subcontract No. 07-XX-30-W0505 Among the United States, The Central Arizona Water Conservation District, and The City of Surprise

Subcontract No. 07-XX-30-W0505
Amendment No. 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

AMENDMENT NO. 1 TO SUBCONTRACT NO. 07-XX-30-W0505
AMONG THE UNITED STATES,
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
AND THE CITY OF SURPRISE

CENTRAL ARIZONA PROJECT

1. PREAMBLE: THIS AMENDMENT NO. 1 to Subcontract No. 07-XX-30-W0505 (hereinafter referred to as "Amendment No. 1") is entered into and effective this ___ day of _______, 2024, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), as amended, the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws", among the UNITED STATES OF AMERICA, hereinafter referred to as the "United States" or "Contracting Officer" acting through the Secretary of the Interior, the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, hereinafter referred to as "Contractor", a water conservation district organized under the laws of Arizona, with its principal place of business in Phoenix, Arizona, and the CITY OF SURPRISE, hereinafter referred to as the "Subcontractor", with its principal place of business in Surprise, Arizona. The United States, the Contractor, and the Subcontractor are hereinafter collectively referred to as the "Parties", and individually as "Party."

WITNESSETH, THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, the United States and the Contractor entered into Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, hereinafter referred to as the "Repayment Contract" and by this reference made a part hereof, whereby the Contractor agrees to repay the United States the reimbursable costs of the Central Arizona Project ("CAP") allocated to the Contractor;

2.2 WHEREAS, the Parties entered into a "Subcontract Among the United States, the Central Arizona Water Conservation District, and the City of Surprise, Providing for Water Service, Central Arizona Project" (the "Surprise Water Service Subcontract"), Subcontract No. 07-XX-30-W0505, dated July 13, 2007, providing for the annual delivery of 10,249 acre-feet of CAP municipal and industrial ("M&I") water;

2.3 WHEREAS, the United States, the Contractor, and Circle City Water Company, LLC ("Circle City") entered into a "Subcontract Among the United States, the Central Arizona Water Conservation District, and Circle City Water Company Providing for Water Service, Central Arizona Project" (the "Circle City Water Service Subcontract"), Subcontract No. 07-XX-30-W0463, dated March 29, 2007, providing for the annual delivery of 3,932 acre-feet of CAP M&I water;

2.4 WHEREAS, pursuant to a condemnation action titled *City of Surprise v. Circle City Water Co., L.L.C., et al*, in the Maricopa County Superior Court of the State of Arizona, Case No. CV2018-011038 (filed Aug. 29, 2018), Settlement Agreement for Stipulated Condemnation dated March 5, 2019, entry of a Form of Judgment on July 20, 2022, and conclusion of an appeal in *City of Surprise v. Circle City Water Co., L.L.C., et al*, No. 1 CA-CV 22-0532 (Ariz. Ct.

App. Sept. 21, 2023), Circle City agreed to assign its entire entitlement to an annual maximum delivery of 3,932 acre-feet of CAP M&I water to Surprise. Surprise agreed to assume all obligations to provide water service to special planning areas encompassing Circle City's current service areas. Accordingly, the Parties desire to transfer 3,932 acre-feet of CAP M&I water previously held by Circle City to the Surprise Water Service Subcontract;

2.5 WHEREAS, the purpose of this Amendment No. 1 is to add the 3,932 acre-feet of CAP M&I water entitlement previously held by Circle City to the Surprise Water Service Subcontract. The United States, the Contractor, and Circle City are simultaneously terminating Circle City's Water Service Subcontract;

2.6 WHEREAS, the Assignment and Termination and this Amendment No. 1 together: 1) increases Subcontractor's entitlement from 10,249 acre-feet per year to 14,181 acre-feet of CAP M&I water under the Surprise Water Service Subcontract No. 07-XX-30-W0505; and 2) terminates Circle City's entitlement to 3,932 acre-feet of CAP M&I water and the Circle City Water Service Subcontract No. 07-XX-30-W0463;

2.7 WHEREAS, a copy of this Amendment No. 1 has been provided to the Arizona Department of Water Resources for review as provided in A.R.S. § 45-107(D) and its comments, if any, were incorporated.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

3. AMENDMENT NO. 1:

3.1. Entitlement to Project M&I Water. Subarticle 4.12(a) of the Surprise Water Service Subcontract is hereby amended to read as follows:

"(a) The Subcontractor is entitled to take a maximum of 14,181 acre-feet of Project Water for M&I uses including but not limited to underground storage."

3.2. M&I Water Service Charges. Subarticle 5.2(a) of the Surprise Water Service Subcontract is hereby amended to read as follows:

"(a) Subject to the provisions of Article 5.4 hereof and in addition to the OM&R payments required in Article 5.1 hereof, the Subcontractor shall, in advance of the delivery of Project M&I Water by the United States or the Operating Agency, make payment to the Contractor in equal semiannual installments of an M&I Water service capital charge based on a maximum entitlement of 14,181 acre-feet per year multiplied by the rate established by the Contractor for that year."

4. CONFIRMATION: The Subcontractor shall promptly seek a final decree of the proper court of the State of Arizona approving and confirming this Amendment No. 1 and decreeing and adjudging it to be lawful, valid, and binding on the Subcontractor. The Subcontractor shall furnish to the United States and the Contractor a certified copy of such decree and of all pertinent supporting records. This Amendment No. 1 shall not be binding on the United States, the Contractor, or the Subcontractor until such final decree has been entered.

5. TERM: This Amendment No. 1 shall not become effective until all of the following conditions have occurred:

(a) This Amendment No. 1 has been fully executed by all parties.

(b) The Central Arizona Water Conservation District and the United States, acting through the Secretary of the Interior, have both approved the Assignment and Termination in writing.

(c) The Subcontractor has paid the Contractor all payments due including for relinquishment and transfer of the CAP M&I entitlement.

6. Notwithstanding Section 5 of this Amendment No. 1, for purposes of Surprise's required payment of CAP M&I capital charges, this Amendment No. 1 shall be considered effective upon its execution by Surprise.

7. OTHER PROVISIONS UNAFFECTED: Except as amended herein, all terms, conditions, and provisions of the Surprise Water Service Subcontract No. 07-XX-30-W0505, dated July 13, 2007, as amended shall remain unchanged and in full force and effect.

8. AMENDED SUBCONTRACT DRAFTING CONSIDERATIONS: Sections 1 through 6 of this Amendment No. 1 have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Amendment No. 1 pertains, and no one Party shall be considered to have drafted the stated sections.

9. COUNTERPARTS: This Amendment No. 1 may be executed in multiple counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to Subcontract No. 07-XX-30-W0505, the day and year first above-written.

(Signatures follow)

CITY OF SURPRISE
A municipal corporation

ATTEST:

______________________________ By:______________________________

Secretary Bob Wingenroth, City Manager

APPROVED AS TO FORM:
Robert Wingo, City Attorney

By: ___________________________

Name: ________________________

Title: _________________________

CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Attest:__________________________ By:____________________________

Karen Cesare, Secretary — Terry Goddard, President

(Signatures follow)

THE UNITED STATES OF AMERICA

By:____________________________
Jacklynn L. Gould, P.E.
Regional Director
Lower Colorado Basin Region
Bureau of Reclamation

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
Submitting Department: Fire - Medical
Staff Recommendations:

Contact Person: Brenden Espie, FIRE CHIEF
District: Internal

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

Agenda Wording:

Consideration and action to approve an Addendum to the Real Estate Purchase Contract with Deer Valley & 185th Avenue II, LLC, an Arizona Limited Liability Company, for approximately 27 acres of property located near 185th Avenue & Deer Valley Road.

Motion:

I move to approve the addendum to the purchase contract for 27 acres of property located near 185th Avenue & Deer Valley Road.

Background:

The addendum will remove all references to “Option Agreement”, “Transmission Easement”, “T.C.E”, “Easement Amendment” and “Option Assignment” from the Purchase agreement that was approved during the December 3, 2024, Council Meeting. This addendum will also modify the “Feasibility Period” and the “Close of Escrow” to be on or before February 7, 2025. All other terms and conditions will remain the same.

Objective Analysis:

The acquisition of this parcel will help meet the future needs of the City's public safety departments, ultimately ensuring the protection of residents in this rapidly growing area.

Policy Compliant:

This request is compliant with all city policies.

Financial Impact:

All activity related to the ongoing development of the City of Surprise has an economic and fiscal impact on the city and the region. The purchase price will be $5,000,000 plus closing costs.

Budget Impact:

The purchase of this land was approved in the FY25 budget under project P34200. No new funds are required to complete this transaction.

FTE Impact:

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

ATTACHMENTS:

1. Executed Purchase Agreement
2. Amendment 1 (Executed)
3. 2nd Amendment Easement Removal COE Change

REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

THIS REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS ("**Agreement**") is entered into effective December 5, 2024, 2024 ("**Effective Date**"), by and between **Deer Valley & 185th Avenue II, LLC**, an Arizona limited liability **company** ("**Seller**"), and City of Surprise, AZ, a political subdivision of the State of Arizona, and/or Permitted Assignee ("**Buyer**", with Seller and Buyer sometimes referred to herein individually as a "**Party**" and collectively as "**Parties**").

WITNESSETH:

In consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, the Parties agree as follows:

1. **Property to be Conveyed.** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, on the terms and conditions set forth in this Agreement: (a) that real property described on **Exhibit A** attached hereto, together with all easements, rights-of-way, appurtenances and other rights and benefits appurtenant thereto ("**Real Property**"); and (b) all of Seller's right, title and interest, if any, in and to the following to the extent relating to the Real Property (collectively, "**Personal Property**", with the Real Property and Personal Property sometimes referred to herein as the "**Property**"): (1) the Property Materials (as herein defined); (2) all licenses, permits and entitlements; (3) all maps, plans, specifications and reports; (4) all transferable warranties, indemnities and guaranties from third parties; and (5) all other governmental documents, permits and approvals.

2. **Purchase Price.**

A. **Purchase Price.** The purchase price ("**Purchase Price**") for the Property shall be $5,000,000, payable by Buyer as follows:

(1) $100,000 as Buyer's initial earnest money deposit ("**Earnest Money Deposit**"), to be deposited with Escrow Agent within ten (10) days following mutual execution of, and as a condition to formation of, this Agreement;

(2) The remainder (after application of the Earnest Money Deposit) to be deposited with Escrow Agent on or before the Closing.

B. **Payments and Deposits.** Payments by Buyer shall be in cash, wired or other immediately available funds available at Phoenix, Arizona. Escrow Agent is hereby instructed to deposit all payments by Buyer (when and as received, and subject to disbursement thereof pursuant to this Agreement) in a federally-insured money market or similar interest-bearing account titled for this Escrow (*i.e.*, segregated from Escrow Agent's general funds as well as the funds and deposits attributable to Escrow Agent's other escrows) and subject to immediate withdrawal (without premium or penalty). If the Escrow closes, the Earnest Money Deposit shall be credited against the Purchase Price at the Closing. If Closing does not occur, then Escrow

Agent shall deliver the Earnest Money Deposit to the party entitled to receive or retain the Earnest Money Deposit pursuant to operation of this Agreement.

3. **The Escrow**. Buyer and Seller shall, upon execution of this Agreement, open an escrow for the transaction evidenced by this Agreement ("**Escrow**") with Commonwealth Land Title Insurance Company, c/o Tonya Lively, Escrow Officer ("**Escrow Agent**"). The Escrow shall be deemed opened ("**Opening Date**") when a fully executed copy or original of this Agreement (which may be in electronic format) is deposited with the Escrow Agent; provided, if the Earnest Money Deposit is not timely delivered to Escrow Agent within ten (10) days thereafter, then this Agreement shall be deemed null and void and any Earnest Money Deposit paid by Buyer shall be returned to Buyer. If Escrow Agent is not the same entity as the Title Insurer (as herein defined), Escrow Agent shall cause an insured closing letter issued by Title Insurer to be provided to each of Seller and Buyer within three (3) days following the Opening Date. This Agreement shall constitute escrow instructions to the Escrow Agent; provided: (a) Seller and Buyer shall each execute any additional instructions reasonably requested by Escrow Agent; and (b) in the event of any conflict between the provisions of any such instructions and this Agreement, this Agreement shall control. The Escrow Agent shall give Seller and Buyer written notice of the Opening Date promptly following opening of Escrow.

4. **Property Materials**. Seller has previously made available to Buyer, and Buyer acknowledges receipt of, those documents included on that electronic download site accessed via the link described on **Exhibit B** attached hereto ("**Property Materials**"). Buyer acknowledges: (1) the Property Materials have been produced by others and are being delivered **"AS IS"**, without representation or warranty, express or implied, by Seller; and (2) Buyer shall rely upon its own independent investigations and shall not have any claim against Seller for any errors or omissions in the Property Materials. Provisions of this Section 4 shall survive Closing.

5. **Contingencies**. The obligations of Buyer under this Agreement are expressly contingent upon satisfaction or waiver of the following contingencies:

A. **Status of Title**. Escrow Agent shall cause Commonwealth Land Title Insurance Company ("**Title Insurer**") to issue and deliver to Buyer, within ten (10) days following the Opening Date, a commitment for title insurance (extended owner's coverage) with respect to the Real Property, together with copies of all Schedule B Exception and Requirement documents referenced therein ("**Commitment**"). Buyer shall, within sixty (60) days following the Opening Date ("**Objection Period**"), give Seller and Escrow Agent written notice of any objection of Buyer ("**Objection**") to any such matters affecting title to the Property ("**Objection Notice**"). In the event Buyer fails to provide said timely Objection, Buyer shall be deemed to have approved all matters affecting title to the Real Property disclosed by the Commitment. If Buyer timely gives an Objection Notice, Seller may, within five (5) days following Buyer's Objection Notice ("**Seller Response Period**"), notify Buyer and Escrow Agent of its willingness to attempt to cure such Objection ("**Objection Response**"). If Seller gives an Objection Response indicating Seller will attempt to cure the Objection (including the manner of Seller's proposed cure), then Seller will be obligated to cure such Objection at or prior to Closing in the manner set forth in the Objection Response. If Seller gives an Objection Response indicating it will not attempt to cure such Objection, or does not timely give an Objection Response, Seller will not be obligated to cure such Objection, and Buyer shall have ten (10) days following receipt of Seller's Objection Response to terminate this Agreement by providing written notice of said termination to the Escrow Agent and Seller. ("**Buyer Termination Period**"). In the event Buyer fails to timely terminate this Agreement, Buyer will be deemed to have waived such Objection, and Buyer will be deemed to have approved the involved title exception. Except to the extent set forth in an Objection Response, if any, Seller shall have no obligation to cure any Objection. Notwithstanding the foregoing, Seller shall, at or prior to Closing, release the Real Property from the encumbrance of, and Buyer shall not be required to issue an Objection Notice with respect to, any deeds of trust or other monetary liens or encumbrances created by or through Seller ("**Existing Encumbrances**"). The same procedure as set forth above shall apply to any new title exceptions set forth in an amended Commitment ("**Amended Commitment**"), except that: (1) the Objection period shall be five (5) days following receipt of the Amended Commitment, the Seller Response Period shall be three (3) days and the Buyer Termination Period shall be eight (8) days; (2) to the extent an Amended Commitment: (a) deletes any exceptions or requirements from the initial Commitment or any prior Amended Commitment; (b) reflects updates for real estate taxes or similar matters; (c) reflects new exceptions expressly contemplated by this Agreement; or (d) references matters created by or through Buyer; Buyer shall be deemed to have approved such matters and shall not have any Objection rights with respect thereto; and (3) Buyer shall not have any right to terminate this Agreement following expiration of the Feasibility Period for any matters disclosed by any survey (including any survey obtained by Buyer), all of which shall be deemed Permitted Exceptions unless and to the extent Seller agrees to cure same in an Objection Response. All title exceptions set forth in any Commitment or Amended Commitment so approved or deemed approved, or with objection thereto so waived, by Buyer are referred to as "**Permitted Exceptions**". In addition, Buyer agrees and acknowledges that Seller has entered (or may enter) into an option agreement (the "**Option Agreement**") pursuant to which Seller will grant an option to a potential landowner in the area to purchase an eighty (80) foot wide easement for an electric transmission line ("**Transmission Easement**") and a temporary one hundred and fifty (150) foot wide temporary construction easement ("**T.C.E.**") over and through the Property in the locations generally shown on **Exhibit F** attached hereto. Seller will provide copies of the final versions of the Option Agreement and Transmission Easement to Buyer no later than ten (10) business days prior to expiration of the Feasibility Period and keep Buyer reasonably apprised of the status of the Option Agreement and Transmission Easement. Buyer shall deliver written notice of the approval of the Option Agreement and Transmission Easement on or prior to the expiration of the Feasibility Period and the Parties shall amend this Agreement accordingly to memorialize the foregoing (the **Easement Amendment**") and to approve a form of assignment for the Option Agreement and/or the Transmission Easement as applicable (the "**Option Assignment**"). If the Parties fail to enter into the Easement Amendment on or prior to the expiration of the Feasibility Period, then this Agreement shall terminate and the provisions of Section 5B below shall apply. Seller shall not make any material modifications to the Option Agreement and/or Transmission Easement after the expiration of the Feasibility Period without first obtaining the prior written approval of Buyer, not to be unreasonably, withheld, conditioned, or delayed. If the Option Agreement is exercised and the Transmission Easement is recorded prior to the Closing, then Seller shall provide a credit to the Purchase Price in favor of Buyer in the amount of the purchase price for the Transmission Easement as disclosed in the Option Agreement. If the Option Agreement has not yet been exercised as of the Closing, then Seller shall assign, and Buyer shall assume, all of Seller's right, title, obligations, liabilities, and interest, including, without limitation, the right to receive the Option Agreement purchase price, in and to the Option Agreement, to Buyer at the Closing pursuant to a form of assignment and assumption reasonably acceptable to Seller and Buyer and memorialized via an amendment to this Agreement prior to the expiration of the Feasibility Period. In the event Buyer approves the Option Agreement and the Transmission Easement as drafted between Seller and the potential landowner, any recorded memoranda thereof shall be deemed Permitted Exceptions. The provisions of this Section shall survive the Closing.

B. **Feasibility**. Buyer shall have until a date ninety (90) days following the Opening Date ("**Feasibility Period**") to investigate and determine whether the Property is suitable for Buyer's purposes, including, without limitation: the Property Materials; Survey; access; availability of water, sewer, and other utilities and services; zoning; environmental condition; financing, economic feasibility; existence and effect of electrical, agricultural, improvement, or other districts or associations; future installments or obligations relating to assessments and improvements liens; and any restrictions or other matters concerning the Property (collectively, "**Feasibility Matters**"). If the Feasibility Matters are acceptable to Buyer (in Buyer's sole and absolute discretion), then Buyer shall deliver written notice of approval thereof ("**Approval Notice**") to Escrow Agent (with copy to Seller) at or prior to expiration of the Feasibility Period. If Buyer deems any of the Feasibility Matters to be unacceptable, then Buyer may elect to terminate this Agreement by written notice of termination to Seller and Escrow Agent at or prior to expiration of the Feasibility Period. If Buyer fails to timely so deliver the Approval Notice, then Buyer shall be deemed to have elected to terminate this Agreement and the Escrow. Upon Buyer's delivery of the Approval Notice pursuant to this Section 5B, the Earnest Money Deposit shall be non-refundable to Buyer, except upon Seller's default or as otherwise expressly provided in this Agreement.

In the event of timely termination of this Agreement pursuant to this Section 5, then: (1) Escrow Agent shall deliver the Earnest Money Deposit to Buyer; (2) neither Seller nor Buyer shall have any further obligation or responsibility to perform hereunder except for those rights and obligations which this Agreement expressly provides survive termination of this Agreement ("**Surviving Obligations**"); and (3) Buyer shall deliver to Seller: (a) all original Property Materials delivered by Seller to Buyer; and (b) to the extent not previously delivered to Seller, any other reports, maps, surveys, studies or other materials generated by Buyer (without warranty by Buyer but with authorization to the providing contractor for Seller to use same), with respect to the Property, excluding, however, any internal or similar proprietary documents or materials prepared or generated by Buyer (with Buyer's obligations under this Subparagraph (3) being a part of the "**Materials Delivery Obligation**", as herein defined, and to survive any termination of this Agreement). The contingencies set forth in Sections 5A and 5B are for the sole benefit of and may be waived at any time by Buyer (provided this Agreement has not previously been terminated) in writing to Seller and Escrow Agent. Upon satisfaction or waiver of all contingencies set forth in Section 5, the Earnest Money Deposit shall thereafter be non-refundable to Buyer except in the event of Seller's default under, or as otherwise expressly provided in, this Agreement.

6. **Seller's Representations and Warranties and Covenants.** Seller represents and warrants, with the intention for Buyer to rely on said representations and warranties, that:

A. **Authority**. Seller has full power and authority to enter into and perform this Agreement in accordance with its terms.

B. **Non-Violation.** Neither the execution of, nor performance by Seller of any provision of, this Agreement breaches or violates any law, agreement or other arrangement by which Seller is bound.

C. **Ownership.** Seller is the owner of the Real Property.

D. **Affiliates.** Certain affiliates of Seller are or may be licensed salespersons or brokers within the State of Arizona or other states.

The foregoing representations and warranties are made as of the Opening Date and, subject to Section 7, as of the Closing Date and shall survive the Closing for a period of twelve (12) months, with Seller's liability thereunder to expire to the extent Buyer has not instituted and served a lawsuit against Seller thereon within twelve (12) months following Closing. The term "to Seller's actual knowledge" or equivalent, as used herein, means the actual (not constructive or imputed) knowledge of Seller, without any investigation or inquiry or any duty to investigate or inquire.

7. **Survival of Representations and Warranties.** With respect to any representations or warranties in this Agreement by Seller ("**Seller's Representations**"): (a) Seller shall promptly notify Buyer of any change therein (a "**Change**") promptly upon Seller becoming aware of any such Change; and (b) Seller shall not have any liability to Buyer, whether prior to, at, or following Closing, for any Change which has been disclosed, in writing to, or which becomes known to, Buyer prior to Closing except to the extent such Change: (1) is or was caused directly or indirectly by Seller; and (2) materially and/or adversely affects the Property or Buyer's decision to acquire, own and/or develop the Property. Whether such Change materially and/or adversely affects the Property or Buyer's decision to acquire, own, and/or develop the Property is a decision to be made by Buyer, within Buyer's reasonable discretion.

8. **Buyer's Representations and Warranties.** Buyer represents and warrants (with the understanding that Seller is relying on such representations and warranties) that:

A. **Authority.** Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms.

B. **Non-Violation.** Neither execution of, nor performance by Buyer of any provision of, this Agreement breaches or violates any law, agreement or other arrangement by which Buyer is bound.

The foregoing representations and warranties are made as of the Opening Date and the Closing Date, and shall survive the Closing.

9. **DISCLAIMER AND RELEASE.**

A. EXCEPT AS EXPRESSLY SET FORTH IN OR REQUIRED BY THIS AGREEMENT OR IN ANY DOCUMENT OR AGREEMENT DELIVERED

PURSUANT TO THIS AGREEMENT, SELLER HAS NOT MADE, AND DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING OR RELATING TO THE CONDITION, AREA, SUITABILITY FOR ANY PARTICULAR PURPOSE, SUSCEPTIBILITY TO FLOODING, VALUE, MARKETABILITY, ZONING, USE AND OCCUPANCY RESTRICTIONS, THE PRESENCE OF STORAGE TANKS ABOVE OR BELOW THE SURFACE OF THE GROUND, OPERATION, COMPLIANCE WITH ENVIRONMENTAL LAWS AND LAWS RELATING TO HAZARDOUS SUBSTANCES AND TOXIC WASTES AND LEGAL REQUIREMENTS OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PROPERTY. BUYER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN ANY DOCUMENT OR AGREEMENT DELIVERED PURSUANT TO THIS AGREEMENT, NO SUCH REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, HAVE BEEN MADE. FURTHER, BUYER AGREES TO TAKE THE PROPERTY "AS IS" AND IN SO AGREEING, BUYER ACKNOWLEDGES AND REPRESENTS THAT IT SHALL INSPECT THE PROPERTY AND MAKE SUCH INVESTIGATION AS IT DEEMS APPROPRIATE INTO THE CONDITION AFFECTING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE CONDITIONS DESCRIBED ABOVE.

B. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN THIS AGREEMENT, AS A PART OF BUYER'S AGREEMENT TO PURCHASE AND ACCEPT THE PROPERTY "AS-IS WHERE-IS," AND NOT AS A LIMITATION ON SUCH AGREEMENT, BUYER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS BUYER MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE PROPERTY OR ANY OF THE MATTERS REFERRED TO IN <u>SECTION 9A</u> ABOVE (COLLECTIVELY, "<u>PROPERTY CONDITION</u>"). SUCH WAIVER IS ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY, AND INCLUDES, BUT IS NOT LIMITED TO, A WAIVER OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS, AND CLAIMS, LIABILITIES, DEMANDS OR CAUSES OF ACTION OF EVERY KIND AND TYPE, WHETHER STATUTORY, CONTRACTUAL OR UNDER TORT PRINCIPLES, AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS WHICH MIGHT HAVE BEEN DISCOVERABLE, CLAIMS REGARDING DEFECTS WHICH WERE NOT OR ARE NOT DISCOVERABLE, PRODUCT LIABILITY CLAIMS, PRODUCT LIABILITY TYPE CLAIMS, ALL OTHER EXTANT OR LATER CREATED OR CONCEIVED OF STRICT LIABILITY OR STRICT LIABILITY TYPE CLAIMS AND RIGHTS, AND ANY CLAIMS UNDER CERCLA. EFFECTIVE UPON THE CLOSING DATE, AND TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER HEREBY RELEASES, DISCHARGES AND FOREVER ACQUITS SELLER, ITS SUCCESSORS AND ASSIGNS, AND ITS EMPLOYEES, AGENTS AND INDEPENDENT CONTRACTORS AND THE SUCCESSOR OF EACH AND EVERY ONE OF THEM FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND

EXPENSES WHICH BUYER MAY SUFFER OR INCUR RELATING TO THE PROPERTY CONDITIONS OR ANY OTHER ASPECT OF THE PROPERTY. AS PART OF THE PROVISIONS OF THIS SECTION 9, BUT NOT AS A LIMITATION THEREON, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND BUYER HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAW, RULES OR REGULATIONS.

IN THIS CONNECTION AND TO THE EXTENT PERMITTED BY LAW, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS THAT BUYER REALIZES AND ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO IT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND BUYER FURTHER AGREES, REPRESENTS AND WARRANTS THAT THE WAIVERS AND RELEASES HEREIN HAVE BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND THAT BUYER NEVERTHELESS HEREBY INTENDS TO RELEASE, DISCHARGE AND ACQUIT SELLER FROM ANY SUCH UNKNOWN CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH MIGHT IN ANY WAY BE INCLUDED IN THE WAIVERS AND MATTERS RELEASED AS SET FORTH IN THIS SECTION 9. THE PROVISIONS OF THIS SECTION 9 ARE MATERIAL AND INCLUDED AS A MATERIAL PORTION OF THE CONSIDERATION GIVEN TO SELLER BY BUYER IN EXCHANGE FOR SELLER'S PERFORMANCE HEREUNDER.

C. SELLER HAS GIVEN BUYER MATERIAL CONCESSIONS REGARDING THIS TRANSACTION IN EXCHANGE FOR BUYER AGREEING TO THE PROVISIONS OF THIS SECTION 9. THE TERMS AND PROVISIONS OF THIS SECTION 9 SHALL SURVIVE THE CLOSING PROVIDED FOR HEREIN OR THE TERMINATION OF THIS AGREEMENT FOR ANY REASON. SELLER AND BUYER HAVE EACH INITIALED THIS SECTION 9 TO FURTHER INDICATE THEIR AWARENESS AND ACCEPTANCE OF EACH AND EVERY PROVISION HEREOF.

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10. **Closing.** The closing and transfer of title (herein referred to as the "**Close of Escrow**" or the "**Closing**") shall, contingent upon the satisfaction of the terms and contingencies set forth herein, take place at the offices of the Escrow Agent on or before a date as elected by Buyer in writing delivered to Seller with not less than thirty (30) days' prior written notice (the "**Closing Date**") but in no event later than ninety (90) days following the expiration of the

Feasibility Period (the "**Outside Closing Date**"). If the Closing does not occur by the Outside Closing Date for any reason other than Seller default, then this Agreement will be deemed automatically terminated, the Earnest Money Deposit will be delivered to Seller, and neither Seller nor Buyer will have any further rights or obligations hereunder except for any obligations that expressly survive termination.

11. **Closing Procedure**. At the Closing:

(a) The Seller shall execute and deliver to Escrow Agent the following (completed as to conform to the transaction evidenced by this Agreement, including: dating as of Closing, names, signature blocks and acknowledgements for the Parties, legal description of the Real Property, and reference to this Agreement): (1) a Special Warranty Deed for recordation at Closing, in the form attached hereto as **Exhibit C** ("**Deed**"), (2) the Assignment of Intangibles, in the form attached hereto as **Exhibit D** ("**Assignment of Intangibles**"); (3) the Option Assignment as set forth in the Easement Amendment; and (4) a nonforeign affidavit or certificate in Escrow Agent's customary form;

(b) Buyer shall execute and deliver to Escrow Agent the Assignment of Intangibles and the Option Assignment;

(c) Seller and Buyer shall each: (1) execute and deliver to Escrow Agent (or authorize Escrow Agent to execute, as their agent) an Affidavit of Property Value for this transaction completed as required by Arizona law ("**Affidavit of Value**"); and (2) provide to Escrow Agent appropriate evidence of authority to enter into, execute and perform each and all of their respective obligations under or pursuant to this Agreement and the documents executed in connection herewith; and

(d) Escrow Agent shall: (1) record the Deed and Affidavit of Value in the Recorder's office in the County where the Real Property is located; (2) cause Title Insurer to issue the Title Policy (as herein defined) effective as of Closing, and deliver the original thereof to Buyer within fourteen (14) days following Closing; (3) deliver originals of the Assignment of Intangibles to Buyer (with copies to Seller); and (4) prepare and deliver to Seller and Buyer a final Settlement Statement, and copies (or originals where available and appropriate) of all documents processed through the Escrow.

12. **Title Insurance**. At the Closing and as a condition to complete Closing, Title Insurer shall be committed to issue to Buyer its standard coverage owner's policy of title insurance ("**Title Policy**"), in the amount of the Purchase Price, insuring the title to the Real Property in Buyer, subject only to the Permitted Exceptions and the printed exceptions normally contained in Title Insurer's customary and current form of such policy. Seller shall, at Closing, pay the premium for the Title Policy allocable to standard coverage insurance in the amount of the Purchase Price, with Buyer to pay any additional premium cost and satisfy any additional requirements attributable to any additional "extended" coverage or endorsements requested by Buyer as a part of the Title Policy ("**Upgraded Coverage**"); provided: (a) Buyer will be obligated to satisfy any additional requirements and pay any additional premium cost for Upgraded Coverage; (b) except for Seller's delivery of a Commercial Owner's Affidavit in the form of

Exhibit E attached hereto ("**Owner's Affidavit**"), Seller shall not have any obligation with respect to any Upgraded Coverage; and (c) obtaining Upgraded Coverage shall not in any way be a condition to Buyer's obligations under this Agreement or Closing.

13. **Closing Costs, Proration of Taxes, Etc.** At the Closing:

A. **Escrow and Related Costs.** All recording costs and Escrow Agent's Escrow charges shall be paid one-half by each of Seller and Buyer.

B. **Title Premium.** Seller and Buyer shall pay the portions of the premium for the Title Policy as provided in Section 12 above.

C. **Taxes.** Real estate taxes, assessments, improvement districts or similar matters ("**Taxes**" and "**Assessments**"), property owners' association assessments (if any) and any irrigation assessments shall be prorated as of the Closing (as of 12:01 a.m. on the date of Closing), based upon the latest available information; provided, that: (1) if actual Taxes or Assessments for the assessment period in which Closing occurs differ from the figure on which the proration was based, then either Seller or Buyer shall have the right, by notice to the other, to re-prorate Taxes or Assessments based on the actual Taxes or Assessments figures (by appropriate adjusting payment to be made within ten (10) days following such notice);

The provisions of this Section 13 shall survive Closing.

14. **Inspection.** Seller hereby grants to Buyer and its employees, permittees, consultants, contractors, subcontractors, designees, representatives, and agents, the right to enter upon the Real Property for the purpose of conducting inspections, reviews, environmental assessments examinations, and similar tests and inspections (the "**Inspection Activities**"); provided, that: (a) Inspection Activities shall be carried out in manner not interfering with the activities of Seller or its tenants or licensees (if any) on the Real Property; (b) Inspection Activities involving invasive procedures (including soils borings) shall be carried out only after advance notice to Seller; (c) all Inspection Activities shall be carried out at Buyer's sole cost and expense; and (d) prior to any entry upon the Real Property by any of Buyer or Buyer's consultants, engineers, agents or other designees ("**Buyer Entry Parties**"), Buyer shall: (1) cause to be procured and thereafter maintained, through the close of escrow, commercial general liability insurance with a combined single limit of not less than $1,000,000 and workmen's compensation insurance (coverage to be primary and on a per occurrence, and not claims made, basis) with respect to the Real Property covering all such actions of Buyer Entry Parties; (2) cause Seller to be named as an additional insured on such policy through the close of escrow; and (3) provide reasonable evidence of such insurance coverage to Seller (including Certificate of Insurance). Buyer hereby agrees: (i) to indemnify and defend Seller against and hold Seller harmless for, from and against any claim, damage (personal or property), liability, cost (including reasonable court costs and attorneys' fees), loss or injury arising from any such Inspection Activities; and (ii) to reasonably restore the Real Property after completion of any and all Inspection Activities ("**Inspection Indemnity**"). Buyer shall deliver to Seller copies of all surveys, maps, environmental reports, soils reports or similar materials ("**Buyer Materials**") generated by or for Buyer for the Real Property promptly following Buyer's receipt thereof ("**Buyer Materials**

Delivery Obligation"), and cause any Buyer Materials to be certified in favor or Seller; provided: (A) Buyer makes no warranties with respect to any Buyer Materials, and (B) Buyer Materials shall not include any internal or similar proprietary documents prepared or generated by Buyer. The Inspection Indemnity and Buyer Materials Delivery Obligation shall survive any termination of this Agreement or the Closing.

15. **Risk of Loss; Condemnation**. Between the Effective Date and the Closing, the risk of ownership and loss of the Property shall belong to Seller except to the extent caused by Buyer. In the event of condemnation or other governmental taking including a conveyance in lieu of condemnation (each, a "**Condemnation Taking**") of, or damage ("**Damage**") to, all or any material portion of the Property prior to the Closing, then Seller shall give Buyer written notice thereof within ten (10) days after Seller receives written notice of the Condemnation Taking or written notice of, or first has actual knowledge of, a Damage, and Buyer shall then have the right, by written notice given to Seller and Escrow Agent given within ten (10) days after written notice from Seller of such event ("**Election Period**"), to terminate this Agreement, in which event Escrow Agent shall deliver the Earnest Money Deposit to Buyer, and neither Seller nor Buyer shall have any further obligation or responsibility to perform hereunder for Surviving Obligations. In the event Buyer does not so elect to terminate this Agreement, then: (a) the Closing shall occur without reduction in the Purchase Price (with the Deed and any other document to be delivered at Closing to be modified to reflect the effect of any Condemnation Taking or Damage); and (b) Seller shall at Closing assign to Buyer any and all remaining rights of Seller to any awards, compensation, insurance or other proceeds payable as a result of the Condemnation Taking or Damage. In the event Closing is scheduled to occur prior to expiration of the Election Period, the Closing shall be extended to the first Business Day following expiration of the Election Period.

16. **Expenses**. Whether or not the transaction contemplated by this Agreement shall be consummated, each party shall pay its own attorneys' fees, costs and expenses in connection with the preparation, delivery and consummation of this Agreement and the documents referred to herein and any amendments or supplements thereto.

17. **Default.**

A. **SELLER'S DEFAULT**. IF SELLER AT ANY TIME FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS AGREEMENT, INCLUDING ANY BREACH OF THE SELLER'S WARRANTIES, REPRESENTATIONS, AND/OR OBLIGATIONS, THEN BUYER MAY AS ITS SOLE RIGHT AND REMEDY EITHER: (I) TERMINATE THIS AGREEMENT BY GIVING WRITTEN NOTICE OF TERMINATION TO SELLER AND ESCROW AGENT, WHEREUPON ESCROW AGENT OR SELLER, AS THE CASE MAY BE, SHALL RETURN TO BUYER THE EARNEST MONEY DEPOSIT PAID, SELLER WILL REIMBURSE BUYER FOR BUYER'S OUT-OF-POCKET COSTS AND EXPENSES INCURRED IN CONNECTION WITH THIS TRANSACTION ("**OUT-OF-POCKET COSTS**") IN AN AMOUNT NOT TO EXCEED $100,000.00 WITHIN TWENTY (20) DAYS FOLLOWING RECEIPT OF SUCH NOTICE OF TERMINATION TOGETHER WITH REASONABLE INVOICES AND OTHER DOCUMENTATION FOR SUCH OUT-OF-POCKET COSTS, AND NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION OR RESPONSIBILITY TO THE

OTHER HEREUNDER EXCEPT FOR SURVIVING OBLIGATIONS; OR (II) BRING AN ACTION FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT PROVIDED SUCH ACTION IS FILED AND SELLER IS SERVED WITHIN SIXTY (60) DAYS FOLLOWING THE ALLEGED DEFAULT BY SELLER, AND BUYER, AS A PART OF AND PREDICATE TO BRINGING SUCH ACTION, TENDERS FULL PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT INTO THE COURT (INCLUDING DELIVERY OF ALL FUNDS AND DOCUMENTS REQUIRED FROM BUYER TO COMPLETE CLOSING); PROVIDED, IN THE EVENT BUYER BRINGS SUCH ACTION FOR SPECIFIC PERFORMANCE BUT IS PRECLUDED BY THE COURT FROM OBTAINING SPECIFIC PERFORMANCE DUE TO THE AFFIRMATIVE ACTION OF SELLER, BUYER MAY BRING AN ACTION FOR ACTUAL (AND IN ANY EVENT NOT PUNITIVE, SPECULATIVE OR CONJECTURAL) DAMAGES (INCLUDING OUT-OF-POCKET COSTS).

B. <u>BUYER'S DEFAULT</u>. IF BUYER AT ANY TIME FAILS TO COMPLY WITH ANY OF THE PROVISIONS OF THIS AGREEMENT TO BE PERFORMED BY BUYER HEREUNDER AT OR PRIOR TO CLOSING, THEN SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT AND THE ESCROW BY GIVING BUYER AND ESCROW AGENT WRITTEN NOTICE OF TERMINATION, IN WHICH EVENT ESCROW AGENT SHALL IMMEDIATELY PAY TO SELLER THE EARNEST MONEY DEPOSIT AS FULL LIQUIDATED DAMAGES OF SELLER; PROVIDED, THE FOREGOING LIMITATION SHALL NOT APPLY TO, BE IN LIEU OF OR CREDITED TO THE SURVIVING OBLIGATIONS OR OTHER PROVISIONS OF THIS AGREEMENT EXPRESSLY SURVIVING TERMINATION. THE PARTIES ACKNOWLEDGE THAT IT IS IMPOSSIBLE TO MORE PRECISELY ESTIMATE THE SPECIFIC DAMAGE WHICH WOULD BE SUFFERED BY SELLER IN THE EVENT OF A DEFAULT BY BUYER HEREUNDER, AND THEREFORE AGREES THAT SUCH FORFEITURE OF THE EARNEST MONEY DEPOSIT IS AN AGREED AND NEGOTIATED PROVISION FOR LIQUIDATED DAMAGES AND NOT A PENALTY. UPON RECEIPT BY SELLER OF THE FORFEITED EARNEST MONEY DEPOSIT AND EXCEPT AS PROVIDED ABOVE, NEITHER PARTY SHALL HAVE ANY FURTHER OBLIGATION OR RESPONSIBILITY TO THE OTHER HEREUNDER, EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH HEREIN.

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18. **<u>Brokerage</u>**. If and when Closing occurs, Seller shall pay a commission equal to three percent (3%) of the Purchase Price payable to Jones Lang LaSalle representing Buyer and a commission equal to three percent (3%) of the Purchase Price payable to Luke Land Realty, representing Seller ("**<u>Brokers</u>**"), both pursuant to separate agreement. If the sale contemplated by this Agreement is not consummated for any reason whatsoever (including Seller's or Buyer's default), then no commission shall be payable to Brokers. Notwithstanding anything to the contrary in this Agreement or any other agreement, the joinder or consent of Brokers shall

not be required to modify or cancel this Agreement. Broker shall not be deemed a third-party beneficiary of any agreement reached by Buyer and Seller and, if Seller or Buyer defaults under this Agreement, neither Seller nor Buyer shall be obligated to pay all or any portion of the commission, or all or any portion of the Earnest Money Deposit, to the Brokers. Buyer and Seller: (a) each represent and warrant to the other they have not dealt with any other broker, salesperson or finder in connection with the transaction evidenced by this Agreement ("**Brokerage Representation**"); and (b) shall each indemnify, defend and hold the other harmless for, from and against any loss, cost or expense, including, but not limited to, reasonable attorneys' fees and court costs, resulting from any claim for a fee or commission by any other broker, salesperson or finder claiming by or through the indemnifying party ("**Brokerage Indemnity**"). The Brokerage Representation and Brokerage Indemnity shall each survive the termination of this Agreement or the Closing.

19. **Notices.** Any notice provided for by this Agreement and any other notice or communication which either Party may wish to send to the other may be given by such Party or its counsel, and shall be in writing and shall be deemed delivered: (a) upon personal delivery; (b) two (2) Business Days following deposit in the United States mail, registered or certified, return receipt requested; or (c) one (1) Business Day following delivery to Federal Express or other similar overnight express delivery service in a properly sealed envelope and postage prepaid, in each event addressed to the party for whom such notice of communication is intended, at such party's address set forth below their signatures to this Agreement or at any other address provided in writing by such party to the other party by notice complying with this Section.

20. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective successors and assigns; provided, that: (a) either Seller or Buyer shall have the right to assign their interests under this Agreement to the extent required to complete an Exchange, as herein defined; (b) Seller shall not assign any of its interests or obligations under this Agreement except in connection with a transfer of the Property (subject to the Agreement) to an assignee together with an assignment and assumption by such assignee of all rights and obligations of Seller under this Agreement; (c) Buyer shall have the right, without Seller's consent, to assign its rights and obligations under this Agreement to an assignee directly or indirectly owned and controlled by, or under common control with, the initial named Buyer ("**Buyer Affiliate**"); and (d) any other assignment, other than to a Buyer Affiliate, by Buyer shall require the prior written approval of Seller, which may be withheld in Buyer's sole and absolute discretion. Any assignee of Buyer, as permitted by this Section, is sometimes referred to herein as a "**Permitted Assignee**".

21. **Confidentiality.** At all times prior to Closing, and to the extent permitted by law, each Party agrees to maintain the confidentiality of this Agreement, and not to disclose the terms hereof other than: (a) to such Party's officers, trustees, principals, employees, attorneys and contractors, lenders and prospective partners; or (b) as required by applicable law (including but not limited to compliance with legal process).

22. **Attorneys' Fees.** If any action shall be instituted by either of the Parties hereto for the enforcement of any of its rights or remedies in and under this Agreement (if allowed), the Party in whose favor judgment shall be rendered therein shall be entitled to recover from the

other Party all costs incurred by the prevailing party in said action, including reasonable attorneys' fees fixed by the court, and not by jury.

23. **Time for Performance.** Time is of the essence of this Agreement. Except as expressly provided for herein, the time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at midnight (Phoenix, Arizona time) on the last day of the applicable time period provided for herein. A "**Business Day**" shall mean any day other than a Saturday, Sunday or holiday recognized by the applicable local municipality in which the Real Property is located. If the time for performance under this Agreement occurs on a day other than a Business Day, the time for performing shall be extended to the next succeeding Business Day.

24. **Entire Agreement; No Oral Modification.** This Agreement constitutes the entire agreement between the Parties pertaining to the Property, and supersedes all prior or contemporaneous agreements and understandings of the Parties in connection therewith. No oral agreements or understandings between the Parties, and no oral modifications of this Agreement, shall be binding upon them.

25. **Headings; Counterparts.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

26. **Governing Law and Construction.** This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Arizona, whose courts shall have jurisdiction over any legal proceedings or actions arising out of this Agreement. This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement must be construed in accordance with their usual and customary meanings, and any ambiguous or conflicting terms or provisions should not be construed against either Party, regardless of which Party, or Party's agent, drafted the Agreement, term, or provision. Any provision of this Agreement that refers to the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation."

27. **Exchange.** Either Seller or Buyer ("**Accommodator**") shall cooperate with the other ("**Requesting Party**") in effectuating acquisition and disposition of the Property pursuant to a tax deferred exchange under Section 1031 of the Internal Revenue Code of 1986, as and if amended (an "Exchange"), subject to the following limitations:

A. The Requesting Party shall have the right to proceed with an Exchange at any time prior to the Closing Date upon giving the Accommodator advance notice of its desire to have Accommodator participate in the Exchange, together with each and all of the documents to be executed by Accommodator with respect to the Exchange.

B. Neither the Closing, nor consummation of any other aspect of this Agreement, shall in any way be predicated or conditioned on the Exchange or completion thereof.

C. Any documents to be executed by Accommodator in connection with an Exchange shall not cause Accommodator to incur any additional cost, expense or liability in any way or manner (irrespective of whether indemnified against by Requesting Party).

D. The Accommodator does not and shall make any representation or warranty to Requesting Party or any other third party, including state or federal tax authorities that the Exchange will qualify for any particular tax treatment.

E. The Requesting Party agrees to and hereby does indemnify and hold the Accommodator harmless for, from and against any and all liability, damages, or costs, including actual attorneys' fees, incurred or that may be incurred by Accommodator by virtue of Accommodator's participation in the Exchange (with the foregoing to survive Closing).

F. The Exchange shall not in any way limit, terminate or otherwise affect all or any of any party's rights or obligations, under this Agreement.

G. The Accommodator shall not incur any costs as a result of participation in an Exchange.

28. **Exhibits.** All **Exhibits** referenced herein and attached hereto are by this reference incorporated herein.

29. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof; and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

30. **Further Documentation.** The parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

31. **Fair Interpretation.** The parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the party who drafted a provision shall not be employed in interpreting this Agreement.

32. **Conflict of Interest.** This Agreement is subject to the terms of ARS § 38-511.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto being fully authorized have executed this Agreement to be effective as of the Effective Date.

SELLER:

Deer Valley & 185th Avenue II, LLC,
an Arizona limited liability company

By: Luke Land, Inc.,
an Arizona corporation
Its: Manager

DocuSigned by:
By: David Lewis
David F. Lewis, President

Address:

Deer Valley & 185th Avenue II, LLC
Attn: David F. Lewis
320 W. Lone Cactus Dr, Ste 12
Phoenix, AZ 85027
Telephone: 602.995.7575
Email: david@lukelandrealty.com

With a copy to:
Berens Blonstein PLC
7033 E. Greenway Parkway, Suite 210
Scottsdale, Arizona 85254
Attn: Matthew Berens and Chris Evanoff
Telephone: (480) 624-2777
Email: mberens@berensblonstein.com
cevanoff@berensblonstein.com

BUYER:
City of Surprise

Address:
16000 N Civic Center Plaza
Surprise AZ, 85374

Attn: Bob Wingenroth
Telephone: (623) 222-1100
Email: bob.wingenroth@surpriseaz.gov

Bob Wingenroth, Surprise City Manager

With a copy to:
Brenden Espie
Surprise Fire Medical Fire Chief
14250 W Statler Plaza, Suite 101
Surprise, Arizona 85374
Telephone: (623) 222-5000
Email: brenden.espie@surpriseaz.gov

ACCEPTANCE BY ESCROW AGENT

By execution hereof, **COMMONWEALTH LAND TITLE INSURANCE COMPANY** hereby accepts appointment as Escrow Agent in accordance with this Agreement and agrees to administer the Escrow in accordance with the provisions hereof.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

By: ____________________
Its: V.P. Escrow Operations

Address: Commonwealth Land Title Insurance Company
Attn: Tonya Lively, Escrow Officer
2390 E. Camelback Rd, Ste 230
Phoenix, Arizona 85016
Telephone: (480) 415-7346
Email: tlively@cltic.com

Date: December 5, 2024

List of Exhibits

A - Depiction of Real Property

B - Description of Property Materials

C - Form of Deed

D - Form of Assignment of Intangibles

E - Form of Owner's Affidavit

F - Transmission Line Easement

Exhibit A

Description of Real Property

[Exact legal description to be confirmed by Title Insurer]

Maricopa County APNs: 503-75-004M and 503-75-002C

Exhibit B

https://drive.google.com/drive/folders/1lQvGjG8-1fnZhmE1-wjl3YlxbOaoXW5D?usp=drive_link

Exhibit C

Form of Deed

WHEN RECORDED, RETURN TO:

____
____
____

(FOR RECORDING INFORMATION ONLY)

SPECIAL WARRANTY DEED

FOR TEN DOLLARS ($10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, **Insert Seller's Name]** ("**Grantor**"), does hereby sell and convey to **[Insert Buyer's Name]** ("**Grantee**"), the real property situated in ____________ Maricopa County, Arizona described on **Exhibit A** attached hereto and incorporated herein by this reference together with all rights, privileges and easements appurtenant thereto (the "**Property**").

The Grantor, for itself and its successors, hereby warrants title to the Property as against all acts of Grantor herein and none other, subject only to: (a) all matters of record; and (b) any matters which would be revealed by a proper inspection or survey of the Property.

DATED ____________________, 202_.

GRANTOR: **[Insert Seller's Signature Block]**

[Insert Acknowledgement for Seller]

Exhibit A
to Special Warranty Deed

Legal Description of Property

[Insert Legal Description of Real Property]

Exhibit D

Form of Assignment of Intangibles

ASSIGNMENT OF INTANGIBLES

THIS ASSIGNMENT OF INTANGIBLES ("Assignment") is made and entered into as of ____________________, 202_ by and between **[Insert Seller Name]** ("**Assignor**"), and **[Insert Buyer Name]** ("**Assignee**").

RECITALS:

A. Assignee is acquiring from Assignor that certain real property more particularly described on **Exhibit A** attached hereto ("**Property**"), pursuant to that certain Real Estate Purchase Agreement and Escrow Instructions dated **[Insert date of Agreement]**, as and if amended, between Assignor as "Seller" and Assignee as "Buyer" ("**Purchase Agreement**"). Initially capitalized terms used in this Assignment and not otherwise defined shall have the meaning given those terms in the Purchase Agreement.

B. Assignor desires to assign to Assignee all of its right, title and interest, if any, in and to the Personal Property ("**Assigned Interests**"), all upon the terms and conditions set forth herein.

NOW, THEREFORE, in reliance upon the foregoing Recitals, and in consideration of the mutual covenants set forth herein and in the Purchase Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Assignment**. Assignor hereby assigns, transfers and delivers to Assignee, and to Assignee's successors and assigns, all of Assignor's right, title and interest (if any) in and to the Assigned Interests, "AS IS", and without representation or warranty, express or implied, by Assignor.

2. **Acceptance**. Assignee hereby accepts the foregoing assignment of the Assigned Interests.

3. **Miscellaneous**. This Assignment: (a) shall be construed under and controlled by Arizona law; (b) shall bind and inure to the benefit of the successors and assigns of the parties hereto; and (c) may be executed in counterparts.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year first above written.

ASSIGNOR: **[Insert Buyer signature block]**

ASSIGNEE: **[Insert Buyer signature block]**

Exhibit A

To Assignment of Intangibles

Legal Description of Property

[Insert legal description for Real Property]

Exhibit E

Form of Commercial Owner's Affidavit

COMMONWELATH LAND TITLE INSURANCE COMPANY

Commercial Owner's Affidavit
(Escrow No. [Insert Escrow Number])

The undersigned affiant ("**Affiant**") first being sworn, deposes and says:

1. That Affiant is the owner of certain real property in the State of Arizona described on **Exhibit A** attached hereto and made a part hereof (the "**Property**"), which is the subject of Commonwealth Land Insurance Company ("**Title Insurer**") Escrow No. **[Insert Escrow Number]** (the "**Escrow**").

2. That Affiant provides this Affidavit to Title Insurer for use in connection with the Escrow and issuance of any policy of title insurance in connection therewith.

3. That: (a) Affiant is not a party to any agreement for any, and to Affiant's actual knowledge there are no: (i) construction, repairs, alterations, improvements made, ordered or contracted to be made on or to the Property; (ii) materials ordered for attachment to or use on the Property within the last 150 days which have not been paid for; or (iii) fixtures attached to the Property which have not been paid for in full; and (b) Affiant does not have any actual knowledge of any outstanding or disputed claims for any such work or item involving the Property, except:

   ____

   That the work of improvement, if any:
   [ ] Started on ______________________________
   [ ] Was completed on __________________________
   [ ] Will be completed on ________________________

4. That: (a) to Affiant's actual knowledge there has been no work done on the Property within the last 150 days; and (b) Affiant has not received actual notice of any work to be done, by the city in which the Property is located, or at its direction, including but not limited to the installation of water and sewer lines, or for improvements such as paving or repaving of streets or alleys, or the installation of curbs or sidewalks.

5. That Affiant is not a party to any, and to Affiant's actual knowledge there are no outstanding unrecorded leases or agreement affecting the Property. To Affiant's actual knowledge, except for matters as referenced in Schedule B Part Two of Title Insurer's Commitment for Title Insurance No. **[Insert Commitment Number]** dated **[Inert**

Commitment Date] as and if amended ("**Commitment**"), no one is in possession of or has access to the Property other than: **(enter N/A if such is true)**

[ ] the undersigned
[ ] tenants based on month-to-month rental agreements
[ ] lessees based on existing leases, copies of which are attached hereto
[ ] ____

6. That Affiant is not a party to any, and to Affiant's actual knowledge there are no, outstanding rights of first refusal or options to purchase all of any part of the Property except:

____
____

7. That: (a) to Affiant's actual knowledge, there are no unpaid real estate taxes or assessments except as shown on the current tax roll for the Property; and (b) Affiant has not received any supplemental tax bill which is unpaid.

8. That no actions in bankruptcy have been filed by or against the Affiant in any federal court or other court of competent jurisdiction.

9. That: (a) there are no matters pending against the Affiant that could give rise to a lien that would attach to the Property between the most recent effective date of the Commitment and the recording of the interest in the Property to be insured under the Escrow; and (b) other than matters of record as of the date hereof, Affiant has not and will not execute any instrument that would adversely affect the title of interest in the Property to be so insured.

10. That this Affidavit is given for the purpose of inducing Title Insurer and/or its agent to issue its policies of title insurance pursuant to the Escrow which may provide coverage as the matters listed above. Affiant acknowledges it has read the foregoing and fully understands the legal aspects of any misrepresentation and/or untrue statements made herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES APPEAR ON FOLLOWING PAGES]

DATED: ______________________, 20__.

AFFIANT: **[Insert Seller Signature block]**

[Insert Acknowledgement for Seller]

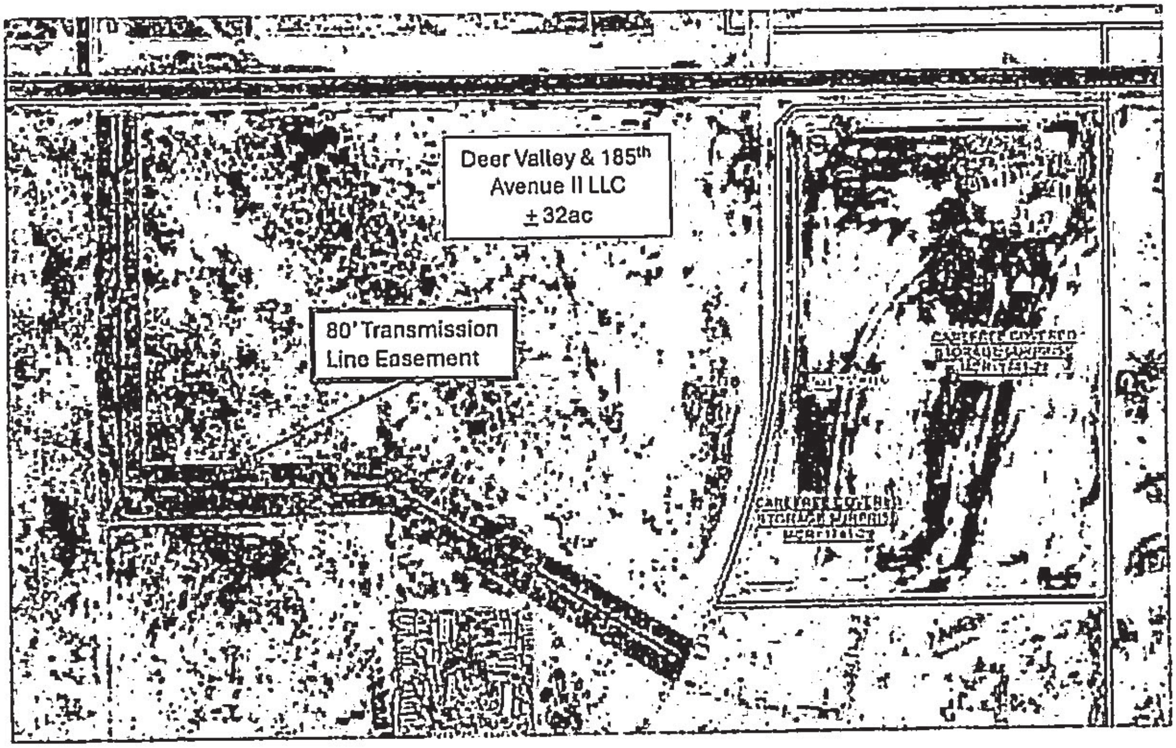
Exhibit A
To Commercial Owner's Affidavit

Legal Description of Property

[Insert legal description for Real Property]

Exhibit F

Transmission Line Easement



FIRST AMENDMENT TO
REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

This First Amendment of the Real Estate Purchase Agreement and Escrow Instructions ("**First Amendment**") is entered into between Deer Valley & 185th Avenue II, LLC, an Arizona limited liability company ("Seller"), and City of Surprise, AZ, a political subdivision of the State of Arizona, ("Buyer"), with Seller and Buyer sometimes referred to herein individually as a "Party" and collectively as "Parties")., and is dated effective as of December 12, 2024 (the "**First Amendment Date**").

Buyer and Seller are parties to that certain Real Estate Purchase Agreement and Escrow Instructions dated December 5, 2024 (the "**Original Agreement**").

Buyer and Seller wish to amend the Original Agreement for the sole purpose of modifying the City's signature block. All other terms and conditions in the Original Agreement remain in full force and effect.

Signatures on next page

SELLER:

Deer Valley & 185th Avenue II, LLC,
an Arizona limited liability company

By: Luke Land, Inc.,
an Arizona corporation
Its: Manager

By: DocuSigned by: David Lewis E99AE59FD3C9426...
David F. Lewis, President

Address:

Deer Valley & 185th Avenue II, LLC
Attn: David F. Lewis
320 W. Lone Cactus Dr, Ste 12
Phoenix, AZ 85027
Telephone: 602.995.7575
Email: david@lukelandrealty.com

With a copy to:

Berens Blonstein PLC
7033 E. Greenway Parkway, Suite 210
Scottsdale, Arizona 85254
Attn: Matthew Berens and Chris Evanoff
Telephone: (480) 624-2777
Email: mberens@berensblonstein.com
cevanoff@berensblonstein.com

BUYER:
City of Surprise

Address:
16000 N. Civic Center Plaza
Surprise AZ, 85374

Attn: Mayor Skip Hall
Telephone: (623) 222-1313
Email: Skip.Hall@surpriseaz.gov

Skip Hall, Mayor of the City of Surprise

With a copy to:
Brenden Espie
Surprise Fire Medical Fire Chief
14250 W. Statler Plaza, Suite 101
Surprise, Arizona 85374
Telephone: (623) 222-5000
Email: Brenden.Espie@surpriseaz.gov

With a copy to:
Robert Wingo
Surprise City Attorney
16000 N Civic Center Plaza
Surprise, Arizona 85374
Telephone: (623) 222-1120
Email: Robert.Wingo@surpriseaz.gov

SECOND AMENDMENT TO
REAL ESTATE PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

To: Commonwealth Land Title Insurance Company NCS

Re: Escrow No. 942401249 - Vacant Land, Surprise AZ

Previous terms, conditions, and instructions contained in that certain Real Estate Purchase Agreement and Escrow Instructions dated 12/05/24, as amended (the "Agreement"), are hereby amended in the following particulars only (the "Amendment") and such Amendment is effective as of the date of the last of the Parties' signatures below:

Section 5(A) Status of Title …. The Parties hereby agree that all references to "Option Agreement", "Transmission Easement", "T.C.E.", "Easement Amendment", and "Option Assignment" are hereby deleted in their entirety. In addition, Exhibit F to the Agreement is hereby deleted in its entirety. Section 5(A) shall now read as follows:

A. **Status of Title**. Escrow Agent shall cause Commonwealth Land Title Insurance Company ("**Title Insurer**") to issue and deliver to Buyer, within ten (10) days following the Opening Date, a commitment for title insurance (extended owner's coverage) with respect to the Real Property, together with copies of all Schedule B Exception and Requirement documents referenced therein ("**Commitment**"). Buyer shall, within sixty (60) days following the Opening Date ("**Objection Period**"), give Seller and Escrow Agent written notice of any objection of Buyer ("**Objection**") to any such matters affecting title to the Property ("**Objection Notice**"). In the event Buyer fails to provide said timely Objection, Buyer shall be deemed to have approved all matters affecting title to the Real Property disclosed by the Commitment. If Buyer timely gives an Objection Notice, Seller may, within five (5) days following Buyer's Objection Notice ("**Seller Response Period**"), notify Buyer and Escrow Agent of its willingness to attempt to cure such Objection ("**Objection Response**"). If Seller gives an Objection Response indicating Seller will attempt to cure the Objection (including the manner of Seller's proposed cure), then Seller will be obligated to cure such Objection at or prior to Closing in the manner set forth in the Objection Response. If Seller gives an Objection Response indicating it will not attempt to cure such Objection, or does not timely give an Objection Response, Seller will not be obligated to cure such Objection, and Buyer shall have ten (10) days following receipt of Seller's Objection Response to terminate this Agreement by providing written notice of said termination to the Escrow Agent and Seller. ("**Buyer Termination Period**"). In the event Buyer fails to timely terminate this Agreement, Buyer will be deemed to have waived such Objection, and Buyer will be deemed to have approved the involved title exception. Except to the extent set forth in an Objection Response, if any, Seller shall have no obligation to cure any Objection. Notwithstanding the foregoing, Seller shall, at or prior to Closing, release the Real Property from the encumbrance of, and Buyer shall not be required to issue an Objection Notice with respect to, any deeds of trust or other monetary liens or encumbrances created by or through Seller ("**Existing Encumbrances**"). The same procedure as set forth above shall apply to any new title exceptions set forth in an amended Commitment ("**Amended Commitment**"), except that: (1) the Objection period shall be five (5) days following receipt of the Amended Commitment, the Seller Response Period shall be three (3) days and the Buyer Termination Period shall be eight (8) days; (2) to the extent an Amended Commitment: (a) deletes any exceptions or requirements from the initial Commitment or any prior Amended Commitment; (b) reflects updates for real estate taxes or similar matters; (c) reflects new exceptions expressly contemplated by this Agreement; or (d) references matters created by or through Buyer; Buyer shall be deemed to have approved such matters and shall not have any Objection rights with respect thereto; and (3) Buyer shall not have any right to terminate this Agreement following expiration of the Feasibility Period for any matters disclosed by any survey (including any survey obtained by Buyer), all of which shall be deemed Permitted Exceptions unless and to the extent Seller agrees to cure same in an Objection Response. All title exceptions set forth in any Commitment or Amended Commitment so approved or deemed approved, or with objection thereto so waived, by Buyer are referred to as "**Permitted Exceptions**".

Section 5(B) Feasibility and Section 10 Closing …. Notwithstanding any provision of the Agreement to the contrary, the Parties agree that the expiration of the Feasibility Period and the Close of Escrow will both occur on or before February 7th, 2025, and if Closing does not occur on or before such date for any reason, other than a Seller default, this Agreement will be automatically terminated, the Deposit will be returned to Buyer, and the Parties will have no further obligations under the Agreement except those that expressly survive termination. Section 5(B) shall now read as follows:

B. Feasibility. The Parties agree that Buyer shall have until February 7th, 2025, ("**Feasibility Period**") to investigate and determine whether the Property is suitable for Buyer's purposes, including, without limitation: the Property Materials; Survey; access; availability of water, sewer, and other utilities and services; zoning; environmental condition; financing, economic feasibility; existence and effect of electrical, agricultural, improvement, or other districts or associations; future installments or obligations relating to assessments and improvements liens; and any restrictions or other matters concerning the Property (collectively, "**Feasibility Matters**"). The Parties further agree that the expiration of the Feasibility Period and the Close of Escrow will both occur on or before February 7th, 2025. If the Feasibility Matters are acceptable to Buyer (in Buyer's sole and absolute discretion), then Buyer shall deliver written notice of approval thereof ("Approval Notice") to Escrow Agent (with copy to Seller) at or prior to expiration of the Feasibility Period. If Buyer deems any of the Feasibility Matters to be unacceptable, then Buyer may elect to terminate this Agreement by written notice of termination to Seller and Escrow Agent at or prior to expiration of the Feasibility Period. If Buyer fails to timely so deliver the Approval Notice, then Buyer shall be deemed to have elected to terminate this Agreement and the Escrow. Upon Buyer's delivery of the Approval Notice pursuant to this Section 5B, the Earnest Money Deposit shall be non-refundable to Buyer, except upon Seller's default or as otherwise expressly provided in this Agreement.

In the event of timely termination of this Agreement pursuant to this Section 5, then: (1) Escrow Agent shall deliver the Earnest Money Deposit to Buyer; (2) neither Seller nor Buyer shall have any further obligation or responsibility to perform hereunder except for those rights and obligations which this Agreement expressly provides survive termination of this Agreement ("Surviving Obligations"); and (3) Buyer shall deliver to Seller: (a) all original Property Materials delivered by Seller to Buyer; and (b) to the extent not previously delivered to Seller, any other reports, maps, surveys, studies or other materials generated by Buyer (without warranty by Buyer but with authorization to the providing contractor for Seller to use same), with respect to the Property, excluding, however, any internal or similar proprietary documents or materials prepared or generated by Buyer (with Buyer's obligations under this Subparagraph (3) being a part of the "Materials Delivery Obligation", as herein defined, and to survive any termination of this Agreement). The contingencies set forth in Sections 5A and 5B are for the sole benefit of and may be waived at any time by Buyer (provided this Agreement has not previously been terminated) in writing to Seller and Escrow Agent. Upon satisfaction or waiver of all contingencies set forth in Section 5, the Earnest Money Deposit shall thereafter be non-refundable to Buyer except in the event of Seller's default under, or as otherwise expressly provided in, this Agreement.

All other terms and conditions of the Agreement will remain in effect. The Parties represent and warrant to each other that the individual signing this Amendment has the full authority and power to bind such Party to the terms and conditions of this Amendment. In the event of any conflict between this Amendment and the Agreement, this Amendment will control. All terms with capitalized letters will have the meanings ascribed to them in the Agreement unless otherwise defined in this Amendment.

Our signatures hereon designate our full approval thereof. This Amendment may be executed in counterpart and each counterpart so executed will constitute but one and the same original document. This Amendment may be executed by either or all Parties by electronic signature, and any such electronic signature shall be deemed an original signature and Escrow Agent is hereby authorized and instructed to rely thereon. This

Amendment may only be varied by a document, in writing, of even or subsequent date hereof, executed by the Parties.

Each of the undersigned states that they have read the foregoing amended instructions and understands and agrees to them.

BUYER:
City of Surprise,
a political subdivision of the State of Arizona

By: _____________________________

Name: Kevin Sartor, Mayor

Date: January ___, 2025

SELLER:
Deer Valley & 185th Avenue II, LLC,
an Arizona limited liabiltiy company

By: Luke Land, Inc.
an Arizona corporation
Its: Manager

By:___________________________
David F. Lewis, President

Date: January ___, 2025

CITY OF SURPRISE
Regular City Council Meeting

Council Meeting Date: January 21, 2025
Submitting Department: Legal
Staff Recommendations:

Contact Person:
District: Internal

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

Agenda Wording:
Consideration and action to recess into executive session for discussion and consultation with the City's attorneys to consider its position and receive legal advice pertaining to current litigation pursuant to A.R.S. §§ 38-431.03 and 04.

Motion:
I move to recess into executive session for the purpose noticed.

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: