



# City Council Study Session

Monday, February 6, 2023  
6:00 p.m.

Chandler City Council Chambers  
88 E. Chicago St., Chandler, AZ







## Our Vision

We are a world-class City that provides an exceptional quality of life.

## Our Brand

A safe, diverse, equitable and inclusive community that connects people, chooses innovation and inspires excellence.

## Our Goals

### City Council Strategic Policy Goals

1. Being the most connected City
2. Being a leader in trust and transparency
3. Maintaining fiscal sustainability
4. Attracting a range of private sector businesses
5. Fostering a contemporary culture that embraces unity
6. Being safe and beautiful

Pursuant to Resolution No. 4464 of the City of Chandler and to A.R.S. 38-431.02, notice is hereby given to the members of the Chandler City Council and to the general public that the Chandler City Council will hold a STUDY SESSION open to the public on Monday, February 6, 2023, immediately following the Public Housing Authority Commission meeting which begins at 6:00 p.m., in the Chandler City Council Chambers, 88 E. Chicago Street, Chandler, Arizona. One or more members of the Chandler City Council may attend this meeting by telephone.

Persons with disabilities may request a reasonable modification or communication aids and services by contacting the City Clerk's office at 480-782-2181 (711 via AZRS). Please make requests in advance as it affords the City time to accommodate the request.

Agendas are available in the Office of the City Clerk, 175 S. Arizona Avenue.





# Study Session Agenda

## City Council Strategic Framework Focus Areas: Legend



Economic Vitality



Mobility



Quality of Life



Innovation and Technology



Neighborhoods



General Governance

## Call to Order

## Roll Call

## Scheduled Public Appearances

1. Service Recognitions
2. Recognition – Valley Christian Cross Country Champions
3. Proclamation – Black History Month

## Consent Agenda

Items listed on the Consent Agenda may be enacted by one motion and one vote. If a discussion is required by members of the governing body, the item will be removed from the Consent Agenda for discussion and determination will be made if the item will be considered separately.



## City Clerk

### 1. Approval of Minutes

Move to approve the Council meeting minutes of the Work Session of January 23, 2023; the Study Session of January 23, 2023, and the Regular Meeting of January 26, 2023.






## Development Services


2. **Final Adoption of Ordinance No. 5024, Rezoning PLH22-0054 Game Show Battle Room, Located at the Southeast Corner of Ray Road and 56th Street**

Move City Council adopt Ordinance No. 5024 approving PLH22-0054 Game Show Battle Room, Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses within an existing commercial center, subject to the conditions as recommended by Planning and Zoning Commission.

Council Focus Area(s):  


3. **Final Adoption of Ordinance No. 5044, approving a request to amend Chapter 35 of the Chandler City Code related to regulating medical marijuana facilities, medical marijuana cultivation sites, and medical marijuana infusion food establishments. Proposed amendments include expanding hours of operation, increasing square-footage size limitations, and permitting the collocation of an ancillary medical marijuana facility with its affiliated onsite medical marijuana cultivation site and/or medical marijuana infusion food establishment when approved through a Conditional Use Permit, as recommended by Planning and Zoning Commission.**

Move City Council adopt Ordinance No. 5044, approving Zoning Code Amendment PLH22-0060 Medical Marijuana Code Amendment, as recommended by Planning and Zoning Commission.

Council Focus Area(s): 

4. **Resolution No. 5654, authorizing a license agreement between the Google Fiber Arizona, LLC, dba Google Fiber, and the City of Chandler for the Use of Public Property for the Establishment of a Class 5 Communications System**


Move City Council adopt Resolution No. 5654, authorizing the Mayor to execute the license agreement between Google Fiber Arizona, LLC, dba Google Fiber, and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to Establish a Class 5 Communications System, and authorizing the City Manager or designee to execute other documents as needed to give effect to the agreement.

Council Focus Area(s): 




5. **Use Permit, PLH22-0064 Horsepower Automotive Group - Propane Tank, 555 E. Queen Creek Road, Located at the Southwest Corner of Hamilton Street and Queen Creek Road**

Move City Council approve Use Permit PLH22-0064 Horsepower Automotive Group - Propane Tank, for the installation of two 1,000 gallon propane tanks, subject to the conditions recommended by Planning and Zoning Commission.

Council Focus Area(s): 

6. **Request to Continue Use Permit, PLH22-0005 Crown Castle Wireless, 2055 S. Stearman Drive, Located at the Southeast Corner of Germann Road and Stearman Drive, Approximately 1/4 mile West of Gilbert Road**

Move City Council continue Use Permit PLH22-0005 Crown Castle Wireless to the March 23, 2023, City Council meeting, as requested by the applicant.



Council Focus Area: 



## Facilities and Fleet

7. **Agreement No. FF3-910-4540, with kilowatt Engineering, Inc., dba kW Engineering, Inc., for the City Facility Energy Audit**

Move City Council approve Agreement No. FF3-910-4540, with kilowatt Engineering, Inc., dba kW Engineering, Inc., for the City Facility Energy Audit, in the amount of \$121,985.

Council Focus Area(s):  





# Information Technology


## 8. **Purchase of Proofpoint Network Security Software**

Move City Council approve the purchase of Proofpoint network security software, from SHI International, Inc., utilizing the Omnia Partners Contract No. 2018011-02, in an amount not to exceed \$222,711, for the period of one year, beginning April 11, 2023, through April 10, 2024.


Council Focus Area(s):  

## Informational

## 9. **Special Event Liquor Licenses and Temporary and Permanent Extensions of Liquor License Premises Administratively Approved**

Council Focus Area(s): 

## 10. **Study Session and Regular Minutes of December 7, 2022, Planning and Zoning Commission**

Council Focus Area(s): 

## Adjourn





**City Council Memorandum      City Clerk's Office    Memo No. N/A**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**From:** Dana DeLong, City Clerk  
**Subject:** Approval of Minutes

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**Proposed Motion:**

Move to approve the Council meeting minutes of the Work Session of January 23, 2023; the Study Session of January 23, 2023, and the Regular Meeting of January 26, 2023.

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**Attachments**

Minutes of the Work Session of January 23, 2023  
Minutes of the Study Session of January 23, 2023  
Minutes of the Regular Meeting of January 26, 2023

# Meeting Minutes

## City Council Work Session

January 23, 2023 | 4:30 p.m.  
Council Chambers Conference Room  
88 E. Chicago St., Chandler, AZ



### Call to Order

The meeting was called to order by Mayor Kevin Hartke at 4:30 p.m.

### Roll Call

#### Council Attendance

Mayor Kevin Hartke  
Vice Mayor Matt Orlando  
Councilmember OD Harris  
Councilmember Mark Stewart  
Councilmember Christine Ellis  
Councilmember Jane Poston, arrived at 4:39 p.m.  
Councilmember Angel Encinas

#### Appointee Attendance

Josh Wright, City Manager  
Kelly Schwab, City Attorney  
Dana DeLong, City Clerk

#### Staff in Attendance

Tadd Wille, Assistant City Manager  
Matthew Burdick, Communications & Public Affairs Director  
Ryan Peters, Strategic Initiatives Director  
Micah Miranda, Economic Development Director  
Melissa Quillard, Marketing & Communications Manager  
Tawn Kao, Assistant City Attorney  
Lauren Koll, Digital Content Creator  
Chris Camacho, President & CEO of Greater Phoenix Economic Council

### Discussion

1. Presentation and Discussion from the Economic Development Division and the Greater Phoenix Economic Council regarding Local and Regional Economic Development Activities



MAYOR HARTKE introduced Chris Camacho, President & CEO of Greater Phoenix Economic Council.

CHRIS CAMACHO said this time of year there are many events happening in Phoenix, and the job of GPEC is to tell the story of the greater Phoenix region. Mr. Camacho explained the goals and direction of GPEC.

MR. CAMACHO presented the following presentation.

- Chandler City Council
- Our Mission Our Values
  - To attract and grow quality businesses, and advocate for Greater Phoenix's competitiveness,
  - The GPEC way:
    - We are an inclusive, diverse family
    - We are change agents
    - We lead from the front
    - We promote intellectual curiosity
    - We remain on the edge
    - We are tenacious
    - We are agile and adapt to change
    - We are committed to selfless service

VICE MAYOR ORLANDO asked how GPEC works with cities and towns that are facing the dilemma of balancing housing versus maintaining an industrial base.

MR. CAMACHO said he will remark on that later.

MR. CAMACHO continued the following presentation.

- Business Development Update
- FY23 Quick Overview
- YTD FY23 Current Prospect Activity
- FY23 YTD Prospects by HQ Location
- FY22 & FY23 Chandler Locates
- GPEC & City of Chandler
- Chandler 5-Year Trend on Revenue Return
- Regional Results
- Regional Competitiveness
- Considerations for Arizona's Next Economy
  - Strengthen Arizona-Mexico border economy by capitalizing on reshoring/nearshoring trends and ongoing trade partnerships.
  - Advance career technical education, STEM, engineering pathways and industry led applied research

- Strengthen small and medium sized business (SMBs) that are drivers to Arizona's local economy as well as constitute regional supply chains
- Transportation infrastructure enables residents and businesses to participate in and contribute to growth of the economy
- Support startups grow in Arizona by enhancing the ecosystem
- Continue the strong history of water planning and conservation
- Capitalize on environmental resilience practices
- Economic development incentives can drive creation of quality jobs and advance toward achieving equitable and inclusive growth.
- Local Community Competitiveness
  - Highest and best land use/water planning
  - Workforce pipeline
  - Innovation and entrepreneurship
  - Capital improvement planning
- Greater Phoenix Greater Together

MR. CAMACHO added that there is no easy solution to housing. The current administration will address this through housing tax credits to low-income housing developers. One challenge is where low-income housing developments are placed. Multi-family should be planned for, along with workforce housing. There is a balance in finding a proactive solution to low-income housing.

VICE MAYOR ORLANDO commented that it is important that we have organizations that have successful reputations in having conversations with legislators to get them to consider city's viewpoints.

MR. CAMACHO said they are working on that as we speak.

VICE MAYOR ORLANDO thanked Mr. Camacho. It is good to hear this from third parties.

MICAH MIRANDA, Economic Development Director, said the Chandler team is working on legislative ideas to help multifamily and residential challenges from a redevelopment perspective as it relates to our goals. GPEC is very involved in having these conversations on what Chandler is looking to do.

MR. CAMACHO said they investigated differential retail strip centers across the valley to see massive potential and consequence if this were adopted, policy begins with legislators. This idea could give community local control and more freedom but dealing with the politics is a challenge.

MAYOR HARTKE said that the goal is to keep local control over water, housing, energy, local control, and transportation.



COUNCILMEMBER HARRIS asked about the opinion of legislators on current occupancy and food sales taxes, and how do the Arizona borders affect the economy of Chandler or Phoenix.

MR. CAMACHO said the real estate tax and the food tax will be talked through soon. The impact of the cuts to the communities in midsize to larger cities would be significant. There would be a significant reduction in public safety resources. Mr. Camacho said we do \$18 billion worth of trade with Mexico. The goal is to continue the positive relationship with Mexican markets and the North American market.

COUNCILMEMBER STEWART asked what was to come to maintain the great economy.

MR. CAMACHO said water is a big focus of many upcoming conversations. The use is mainly agricultural, how do we support agricultural use and industry growth. Drought does not just go away, addressing conservation and water use and reuse will be a focus. Another prediction is that there will be a point increase in unemployment. Tech companies that scaled up will scale down to optimize their position. There will probably be two more fed increases in 2023. The one change is that office real estate has been slow post-COVID, with companies' reevaluation of the use of office space. As the unemployment model shifts, you might see more people back in the office, while still providing flexibility. Water, energy, and labor are the focus of what is to come.

COUNCILMEMBER ELLIS thanked Mr. Camacho for the forecast and said that Chandler is in a good position of what is to come.

MR. CAMACHO said GPEC has a monthly meeting with Micah and other Economic Development directors to focus on future direction.

MAYOR HARTKE thanked Mr. Camacho for the presentation.

MR. MIRANDA presented the following presentation.

- Economic Development Update
- City Council Strategic Framework
  - In its 2021-23 Strategic Framework, City Council provided a roadmap of priorities to guide decision in the near term and beyond. The vision illustrated in the document emphasizes providing:
    - A high quality of life
    - Diverse job opportunities
    - Safe neighborhoods
- Economic Development's Role
  - Economic Development plays a critical role in achieving City Council's vision for Chandler. Simply put, it is a set of programs and policies to:
    - Create and retain jobs
    - Develop a stable tax base

- Wealth generation
- Economic Development Strategic Plan
  - Programs to help achieve City Council's desired outcomes for Chandler. Key components of the City's Economic Development strategy include:
    - Business Attraction
    - Business Climate Enhancement
    - Technology Entrepreneurship
    - Small Business Assistance
    - Infill & Redevelopment
    - Market Threat Assessments
    - Competitive Positioning
    - Tourism
    - Education & Talent
- Competition is Fierce
  - 195 Countries
  - 19,495 Cities/towns in the U.S.
  - 91 Cities/towns in AZ
- Business Attraction
  - Recruitment strategy focused on businesses in targeted industries.
  - Look for fit with local industry clusters, growth potential, high wage jobs.
- Business Attraction
  - Pursue leads that fit the City's target industries/technologies.
  - Target companies outside the region experiencing growth
  - Outreach to decision makers, site selectors and brokers.
  - Demonstrate the operational advantages of Chandler.
- Employment Base

COUNCILMEMBER STEWART asked what category education represents.

MR. MIRANDA said that education careers are in the 50% of other target industry clusters.

COUNCILMEMBER STEWART asked if education careers could be a target industry cluster.

MR. MIRANDA said that the strategic framework seeks higher education partners, which currently do not have much of a presence in Chandler.

VICE MAYOR ORLANDO asked about the presence of automotive technology careers in Chandler.

MR. MIRANDA said Chandler is not competitive in automotive manufacturing, as we do not have the building and land size for these types of projects. We focus on the engineering and research aspect of automotive technology.



MAYOR HARTKE said that the last area for industrial opportunities is south of the airport and asked what the largest area would be that we could condense for this use.

MR. MIRANDA said the largest area is the Birch family land south of the airport, where some infrastructure is being built out. Large undeveloped pieces have existing PDPs for standard tilt-up manufacturing spaces.

VICE MAYOR ORLANDO asked about aerospace and aviation.

MR. MIRANDA said that similarly the focus is in engineering and research.

MR. MIRANDA continued the presentation.

- Employment Base
  - Chandler has an innovation mindset and this is reflected in the companies located in our community. Ability to adapt to a changing global economy helps ensure long-term economic sustainability.

COUNCILMEMBER HARRIS asked about the east valley in comparison to Silicon Valley.

MR. MIRANDA said we are not outpacing Silicon Valley. There are clusters of innovation in the United States anchored by heavy engineering and science universities. ASU has been fantastic in growing the engineering program.

MR. MIRANDA continued the presentation.

- Employment Base

COUNCILMEMBER ENCINAS asked what industry clusters have changed due to the fluctuating market.

MR. MIRANDA answered that the areas with the most change are finance, insurance, and real estate. Those jobs are more transient. The number would likely not decrease, but there would not be large square foot projects in these areas. Projects related would be smaller in square footage.

MR. MIRANDA continued the presentation.

- Employment Base

COUNCILMEMBER HARRIS asked what is being done in mall development.

MR. MIRANDA said that the mall is still being maintained as the core retail destination. Office is on pause due to COVID, as businesses do not know what they want yet. The business community is not yet sure of the impact Scheels will have on the mall, it will change the dynamic of the mall significantly. The mall is back to pre-pandemic level at sales tax generations and foot count.

Macerich may wait to renew leases to see the effects of Scheels, it will generate lots of foot traffic through the mall.

MAYOR HARTKE asked when the Scheels opening date would be.

MR. MIRANDA said the expected date is September 30, 2023.

MR. MIRANDA continued the presentation.

- Employment Base
- Business Climate Enhancement
  - Goal: Foster a business climate that supports economic vitality
  - Existing businesses account for about 60% of new jobs nationally.
  - Build relationships
  - Resolve issues
  - Assist with expansions
  - Connect to resources
- Business Climate Enhancement
  - Proactive with key employers and those considered a flight risk
  - Serve as a point of contact for information on doing business in Chandler.

VICE MAYOR ORLANDO asked how the meetings are generated.

MR. MIRANDA said that staff will examine threats to businesses.

VICE MAYOR ORLANDO asked about the ombudsman calls.

MR. MIRANDA said there are four Economic Development staff members that will field ombudsman calls, the goal is to solve the businesses' particular issue: signage, parking, hiring needs.

VICE MAYOR ORLANDO asked how we solve the employment side.

MR. MIRANDA answered that through job fairs, networking, connecting with higher education providers. Everything is on a case-by-case basis.

MR. MIRANDA continued the presentation.

- Technology Entrepreneurship
  - Goal: Build an entrepreneurial ecosystem that attracts startups, encourages spin-offs, and helps companies scale in Chandler.
- Technology Entrepreneurship
  - Provide training and mentoring through Chandler Innovations incubator
  - Collaborate with ASU at the Chandler Innovation Center.



- Facilitate and increase access to early-stage funding for startups.
- Serve as a research tool for entrepreneurs evaluating Chandler
- Position Chandler as the epicenter of tech-based entrepreneurship
- Small Business Assistance
  - Goal: Create and manage programs that support local entrepreneurship and small business growth.
- Small Business Assistance
  - Publish Small Business Guide in English and Spanish each year
  - Encourage residents to shop local through I Choose Chandler campaign
  - Provide site selection services: customized demographics, identify building options, and coordinate Business Location Team meetings
  - Co-sponsor small business workshops and events.
  - Serve as a point of contact for questions regarding City processes.

COUNCILMEMBER ENCINAS asked about the balance of how often businesses approach us versus us approach businesses.

MR. MIRANDA said the City will initiate all of the time. Businesses approach us less.

VICE MAYOR ORLANDO asked how we measure success.

MR. MIRANDA said that the best way to measure is to see success of locates, people calling us and using us as a resource. Chandler is a trusted resource for these providers.

COUNCILMEMBER ELLIS commented that retention could also be a measure of success.

MR. MIRANDA agreed. Growth of small businesses is another measure. It is hard to quantify success in small businesses.

COUNCILMEMBER POSTON asked about tracking engagement.

MR. MIRANDA said that Economic Development tracks the number of calls, the number of BLTs completed, site selection.

MR. MIRANDA continued the presentation.

- Infill & Redevelopment
  - Goal: Revitalization and reuse of underutilized properties to support economic growth and neighborhood vitality.
  - Facilitate conversion of underutilized properties.  
Engage capable development partners.
  - Promote Adaptive Reuse Overlay District benefits.

- Advocate for state legislation to support redevelopment projects that create new housing.
- Competitive Positioning
  - Goal: Position Chandler as a top-of-mind location for targeted audiences
- Paid & Owned Media Strategies
  - Develop paid digital campaigns to highlight Chandler's key industries, community assets, and overall business climate.
  - Develop a content calendar to provide timely informational on Chandler's advantages for doing business (e.g., manufacturing theme during National Manufacturing Month).
  - Scale economic development newsletter with targeted lists and implementation of drip campaigns.
  - Optimize and update economic development specific content/webpages on [chandleraz.gov](http://chandleraz.gov).
- Paid & Owned Media Strategies
  - Economic Development does not broadcast to a general audience.
  - Our messaging is designed to reach business decision makers, site selectors, developers, and others who bring projects to Chandler.
- Tourism
  - Goal: Implement the Tourism Strategic Plan to increase visitor spending, recruit new meetings, and enhance Chandler's brand
- Tourism
  - COVID had a significant impact on tourism in FY 2019-20 and FY 2020-21.
  - Tourism market fully recovered in FY 2021-22, posting record numbers

VICE MAYOR ORLANDO asked if these are all rooms or just tourism rooms.

MR. MIRANDA answered that these numbers are all rooms.

VICE MAYOR ORLANDO asked how business travel is separated from tourism, if associated with an event or not.

MR. MIRANDA said we have our quantifiable rooms booked numbers. We can also track through specific campaigns, through Expedia and otherwise.

VICE MAYOR ORLANDO asked for that more specific report.

MR. MIRANDA continued the presentation.

- Education & Talent
  - Goal: Collaborate with educational partners to build the local talent pipeline.
    - UA programming in Chandler

- ASU at Chandler Innovation Center
  - CGCC job training programs
  - P-20 initiatives (e.g., cybersecurity)
  - CUSD
- The Impacts
- The Impacts
  - Business locates over the past three fiscal years and expected impacts:
- The Impacts
  - Winning projects is a numbers game:
- The Impacts
  - There are hundreds of potential projects in the pipeline.
  - Lead = evaluating many locations with no specific interest in Chandler.
  - Prospect = shortlisted Chandler among a group of location options.
- Commercial Real Estate
- Retail Real Estate Stats
- Industrial Real Estate Stats
- Office Real Estate Stats
- The Impacts
  - Product wins projects
- The Impacts
  - Balance: Chandler continues to add jobs as its population grows
- The Impacts
  - Chandler has maintained a very low unemployment rate
  - Unemployment rate stayed lower than county and state averages during COVID and rebounded to lowest rate in more than 10 years.
- The Impacts
  - Recognition: Chandler ranks among the top cities in the U.S.
- Stay Informed & Engaged
  - For Chandler business news and announcements, be sure to...
  - Read our monthly e-Newsletter
  - Follow us on LinkedIn/Twitter @chandlerecondev
  - Follow News & Events page, Economic Development blog and Council Memo Reports
- Strategic Direction
  - Workforce Development Partnerships
  - Enhanced Marketing & Web Optimization
  - Office Lead Generation and Occupancy
  - Capital formation for early-stage technology companies
  - Redevelopment
- City Council's Role
- Questions?

COUNCILMEMBER POSTON asked about the sublease market.

MR. MIRANDA said that we are fighting for every project. We are marketing more to companies that we want and have leads on. There is not substantial sublease activity anytime soon, and it is not a unique situation. We are pursuing office leads and following up on any leads. We have several projects in office and engineering to absorb square footage.

## Adjourn

The meeting was adjourned at 5:58 p.m.

ATTEST: \_\_\_\_\_  
City Clerk Mayor

Approval Date of Minutes: February 9, 2023

## Certification

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Work Session of the City Council of Chandler, Arizona, held on the 23rd day of January 2023. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this \_\_\_\_\_ day of February, 2023.

\_\_\_\_\_  
City Clerk



# Meeting Minutes

## City Council Study Session

January 23, 2023 | 6:00 p.m.  
Chandler City Council Chambers  
88 E. Chicago St., Chandler, AZ



### Call to Order

The meeting was called to order by Mayor Kevin Hartke at 6:06 p.m.

### Roll Call

#### Council Attendance

Mayor Kevin Hartke  
Vice Mayor Matt Orlando  
Councilmember OD Harris  
Councilmember Mark Stewart  
Councilmember Christine Ellis  
Councilmember Jane Poston  
Councilmember Angel Encinas

#### Appointee Attendance

Josh Wright, City Manager  
Kelly Schwab, City Attorney  
Dana DeLong, City Clerk

### Scheduled Public Appearances

MAYOR HARTKE invited Councilmember Stewart to join him for the recognitions.

#### 1. Service Recognitions

Catherine Dixon – 15 Years, Management Services  
Clarissa Martinez – 25 Years, Management Services  
Marta Parada – 25 Years, Building and Facilities  
Amanda Simington – 20 Years, Police

#### 2. Proclamation – Anti-Human Trafficking Month

MAYOR HARTKE called Gilbert Mayor Brigitte Peterson, Former Gilbert Councilmember Scott September, Pastor Mike Gowens with Bethel Church, Israel Nelson, Pastor Brad Davis, Eric Jones, Cal Whitaker and David Wright to accept.

COUNCILMEMBER STEWART expressed his pride in this organization and read the proclamation.

PASTOR MIKE GOWENS shared his gratitude for all the support from the city and invited all to come to their 5<sup>th</sup> Night of Hope Event on February 10, 2023.

### **3. Proclamation – National Teen Dating Violence Awareness Month**

MAYOR HARTKE invited Chief Duggan, Katie Cain, Victim Services Senior Program Manager, and Domestic Violence Commission Chair Chelsea Grieve.

COUNCILMEMBER ELLIS read the proclamation.

CHELSEA GRIEVE thanked Mayor and Council for their support. Ms. Grieve shared some recent accomplishments and positive impacts the Domestic Violence Commission have achieved.

MAYOR HARTKE mentioned two upcoming events: April 16, Field of Hope Event and the September Domestic Violence Awareness Breakfast.

### **4. Recognition – Basha Football Championship**

MAYOR HARTKE asked for Chris McDonald, Coaching Staff and Basha Football Team to accept.

COACH CHRIS MCDONALD showed his appreciation for the recognition and for his team.

JAMES DURAN expressed his gratitude and thanked his team.

### **5. Recognition – Chandler Film Festival**

MAYOR HARTKE invited Chandler International Film Festival Director and President Mitesh Patel and Betty Ramirez, Chandler International Film Festival Vice President to accept.

BETTY RAMIREZ thanked Chandler for all the support for the past 7 years and invited all to come to the next Film Festival January 21 – 29, 2023.

### **6. Recognition – FY2022-23 GFOA Distinguished Budget Presentation Award**

MAYOR HARTKE called up Dawn Lang and Budget Team to accept.

MATT DUNBAR, Budget & Policy Assistant Director expressed his pride for their team and was thankful for the recognition.

MAYOR HARTKE recognized and acknowledged the Mayor's Youth Commission members who were attending the meeting that evening.

## **Consent Agenda and Discussion**

Discussion was held on Items 2, 6, 13, 22, 24, 25, and 28.

## City Clerk

1. Approval of Minutes  
Move to approve the Council meeting minutes of the Regular Meeting of January 12, 2023 and the Special Meeting of January 12, 2023.

## Communications and Public Affairs

2. Agreement No. CAPA2-918-4421, Amendment No. 1, with Davidson Belluso, for Digital Marketing Services for Recruitment Campaigns  
Move the City Council approve Agreement No. CAPA2-918-4421, Amendment No. 1, with Davidson Belluso, for digital marketing services for recruitment campaigns, in an amount not to exceed \$381,000, for the period of one year, beginning March 1, 2023, through February 28, 2024.

COUNCILMEMBER ENCINAS asked how much would be allocated to the direct marketing and asked about the recruiting target market of Illinois.

MATT BURDICK, Communications Director, answered that this is an extension of a marketing agreement currently in place. The main goal is to expand exposure out of state and increase the number of applicants. The main effort is to expand the recruitment for the Police Department and mitigate some of the challenges they are facing. \$181,000 of the agreement is for the police department, \$153,000 of which is designated for the media budget. Multiple states will be targeted and a portion of the \$153,000 will target Illinois as based on what is suggested through previous marketing.

SEAN DUGGAN, POLICE CHIEF covered the open positions within the department and why the marketing is targeted in certain areas to be able to maximize new applicants. Competition is fierce across the valley and Chandler should be an employer of choice in policing.

COUNCILMEMBER ENCINAS asked to raise awareness about staffing challenges across the state currently and ensure that they receive the support they need.

## Community Services

3. Agreement No. CS9-956-3919, Amendment No. 2, for Library Materials and Related Services  
Move City Council approve Agreement No. CS9-956-3919, Amendment No. 2, with Baker & Taylor, LLC; Ingram Library Services, LLC; and Midwest Tape, LLC; for library materials and related services, in a combined amount not to exceed \$1,150,000, for a period of two years, November 1, 2022, through October 31, 2024.
4. Professional Services Agreement No. PR2205.202, with Logan Simpson Design, Inc., for Brooks Crossing Park Renovation Design Services

Move City Council award Professional Services Agreement No. PR2205.202 to Logan Simpson Design, Inc., for Brooks Crossing Park Renovation Design Services, in an amount not to exceed \$187,840.

### Development Services

5. Introduction and Tentative Adoption of Ordinance No. 5024 and Use Permit PLH22-0054 / PLH22-0059 Game Show Battle Room, 6909 West Ray Road, Generally Located at the Southeast Corner of Ray Road and 56th Street

#### Rezoning

Move City Council introduce and tentatively adopt Ordinance No. 5024 approving PLH22-0054 Game Show Battle Room, Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses within an existing commercial center, subject to the conditions as recommended by Planning and Zoning Commission.

#### Use Permit

Move City Council approve PLH22-0059 Game Show Battle Room, Use Permit for a Series 7 Beer and Wine Bar license, subject to the conditions as recommended by Planning and Zoning Commission.

6. Introduction and tentative adoption of Ordinance No. 5044, approving a request to amend Chapter 35 of the Chandler City Code related to regulating medical marijuana facilities, medical marijuana cultivation sites, and medical marijuana infusion food establishments. Proposed amendments include expanding hours of operation, increasing square-footage size limitations, and permitting the collocation of an ancillary medical marijuana facility with its affiliated onsite medical marijuana cultivation site and/or medical marijuana infusion food establishment when approved through a Conditional Use Permit, as recommended by Planning and Zoning Commission

Move City Council introduce and tentatively adopt Ordinance No. 5044, approving the citizen initiative Zoning Code Amendment PLH22-0060 Medical Marijuana Code Amendment, as recommended by Planning and Zoning Commission.

KEVIN MAYO, PLANNING ADMINISTRATOR explained the Proposed Code Amendment.

- The attached proposed Zoning Code Amendment contains the proposed changes to ARTICLE II.-DEFINITIONS, ARTICLE XXI.-TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, and ARTICLE XXII.-ADDITIONAL HEIGHT AND AREA REGULATIONS. The following is a summary of the proposed Code Amendment.
- Expand the size limitation for a Medical Marijuana Facility from not larger than 2,500 square feet to 5,000 square feet
- Expand the size limitation for a Medical Marijuana Cultivation Site from not larger than 3,000 square feet to 5,000 square feet



- Establish a size limitation for a Medical Marijuana Infusion Food Establishment of not larger than 5,000 square feet
- Amend the hours of operation for a Medical Marijuana Facility from 9:00 am - 10:00 pm to 7:00 am - 10:00 pm
- Permit the collocation of an ancillary Medical Marijuana Facility with its affiliated onsite Medical Marijuana Cultivation Site and/or Medical Marijuana Infusion Food Establishment subject to:
  - Conditional Use Permit required
  - Ancillary to the primary use, not larger than 2,500 square feet or 25% of the gross building square footage, whichever is less
  - Located within 1,320 feet of an arterial roadway
  - Shall have frontage and direct access from Public Right-Of-Way

COUNCILMEMBER ELLIS thanked Mr. Mayo for the clarification and asked for the applicant to present.

LINDSAY SCHUBE, GAMMAGE & BURNHAM LAW FIRM, 40 N. Central Ave., Phoenix, presented the following presentation.

- Text Amendment Regulations re: Marijuana Uses Chandler City Council January 23, 2023
- Sonoran Roots / Ponderosa Dispensary
  - Michael O'Brien and Jeremy Basha; Chandler residents
  - Member of Chandler Chamber
  - Civic Contributions:
    - Chandler Unified School District
    - ICAN (Afterschool Programs)
    - Save Second Base Pub Crawl (Breast Cancer Support)
    - State 48 Foundation Community action supporting non-profits
    - Ready Set Go Foundation (Support for veterans, women, and youth)
    - Chandler Compadres (East Valley children and families in need)
- Proposed Text Amendments:
  - Dispensaries may be operated by dual licensee
  - Allows dispensaries to open two hours earlier
  - Increases the allowable sizes of a dispensary
  - Allows a dispensary in I-1 and I-2 zoning districts with a Conditional Use Permit and performance standards
- Cleaning up the ordinance to be consistent with state law that dispensaries can be operated as dual use.
- Protected Uses Separation Requirements – NO CHANGE
- City of Chandler Protected Uses
- 1) Allow for Dispensary to be operated by dual licensee
  - Clean up item to conform to State Law
  - The Zoning Ordinance's definition of a dispensary that operates under a dual licensee

- Medical marijuana facility: The physical location from which a medical marijuana dispensary operates to acquire, possess, supply, sell, or dispense in any manner or form medical marijuana or related supplies and educational materials to cardholders, as that term is defined in A.R.S. Section 36-2801. A medical marijuana facility cannot serve as a medical marijuana cultivation site.
  - Under State law, municipalities/countries may not prohibit a dispensary operated by a dual licensee
- 2) Expand Hours of Operation for a dispensary from 9am to 10pm to 7am to 10pm
- 3) Increase the allowable size of dispensaries, cultivation, and infusion facilities
- 4) Allow a Dispensary in I-1 and I-2 Zoning Districts with a Conditional Use Permit
  - WITH additional Performance Standards:
    - Incidental to an existing cultivation site/infusion food establishment; and
    - Located within 1,320-feet of an Arterial Roadway; and
    - Located within 500-feet of a C-2 or C-3 District, or a PAD where C-2 or C-3 uses are permitted; and
    - Have frontage and access from public right-of-way.
  - Maximum size of 2,500 square feet, or 25% of the overall square footage of the building, whichever is less;
  - Comply with article XVIII of the Zoning Code (parking and loading regulations)
  - Obtain Zoning Clearance
- Allow a Dispensary in Industrial Zoning Districts
  - Other jurisdictions that permit dispensaries in industrial zoning districts:
    - Buckeye
    - Gilbert (with Use Permit)
    - Goodyear
    - Maricopa County
    - Mesa
    - Peoria (with Use Permit)
    - Phoenix (with Use Permit)
    - Queen Creek (with CUP)
    - Scottsdale (with CUP)
    - Surprise (with CUP)
    - Tempe
    - Tucson

#### THANK YOU

- Over 40 Letters of Support from the Public
- Staff recommendation for approval
- Unanimous recommendation from Planning & Zoning Commission

COUNCILMEMBER ELLIS thanked Ms. Schube for the presentation to the public and asked if the applicant would be returning with more to add later.

MS. SCHUBE explained the reason for so many text amendments in the marijuana space is due to the newness of it. Ms. Schube shared she may be back to ask for a Conditional Use Permit for a certain plot of land in the future if the ordinance is passed but couldn't see anything else at that time.

COUNCILMEMBER ELLIS thanked her for the presentation.

VICE MAYOR ORLANDO asked Mr. Mayo to explain what a citizen initiative is and why it is different than an applicant initiative.

MR. MAYO stated that many different types of applicants can seek a zoning code amendment, this one did not originate from staff or Council and was outside of the City.

VICE MAYOR ORLANDO expressed his concern for the wording as a citizen initiative because it seems like only one person is requesting the change. Vice Mayor Orlando suggested that legal have a look into it to prevent any misunderstandings in the future.

COUNCILMEMBER HARRIS asked for clarification on the text amendments for falling in line with the state practices and what voters have asked for.

KELLY SCHWAB, CITY ATTORNEY confirmed that was correct. The state allows some local control, the city cannot interfere with the sale, manufacture, and cultivation.

COUNCILMEMBER HARRIS confirmed that cities can't interfere but can regulate it.

7. Resolution No. 5657, Authorizing a License Agreement between the Gigapower, LLC, dba Gigapower, and the City of Chandler for the Use of Public Property for the Establishment of a Class 5 Communications System  
Move City Council adopt Resolution No. 5657, authorizing the Mayor to execute the license agreement between Gigapower, LLC, dba Gigapower, and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to Establish a Class 5 Communications System, and authorizing the City Manager or designee to execute other documents as needed to give effect to the agreement.
8. Preliminary Development Plan, PLH22-0039 Mountain View Estates, Located on the North Side of Riggs Road Approximately 1/4 Mile East of Lindsay Road  
Move City Council approve Preliminary Development Plan PLH22-0039 Mountain View Estates for housing product design to be constructed on a 16-lot single family subdivision, subject to the conditions as recommended by Planning and Zoning Commission.
9. Use Permit PLH22-0050 Maple House, 198 W. Boston Street, Located on the Northeast Corner of Boston and California Streets in Downtown Chandler

Move City Council approve Use Permit for a Series 7 Beer and Wine Bar License and Entertainment Use Permit to allow outdoor speakers and acoustic live entertainment, subject to the conditions recommended by Planning and Zoning Commission.

10. Entertainment Use Permit, PLH22-0040 Elliot's Steakhouse, Located at 81 W. Boston St, on the Southwest Corner of Arizona Ave and Boston Street  
Move City Council approve Entertainment Use Permit, PLH22-0049 Elliot's Steakhouse, for live indoor entertainment and indoor and outdoor speakers for background music, subject to the conditions recommended by Planning and Zoning Commission.

### **Economic Development**

11. Agreement No. ED2-918-4422, Amendment No. 1, with 2060 Digital, LLC, for Digital Marketing Services  
Move City Council approve Agreement No. ED2-918-4422, Amendment No. 1, with 2060 Digital, LLC, for digital marketing services, in an amount not to exceed \$500,000, for the period of one year, beginning March 1, 2023, through February 28, 2024.

### **Facilities and Fleet**

12. Purchase of Painting and Related Services  
Move City Council approve the purchase of painting and related services, from Ghaster Painting & Coatings, Inc., utilizing the City of Mesa Contract No. 2018165, increasing the spending limit by \$230,000, for a revised amount not to exceed \$330,000, for the existing term ending May 31, 2023.
13. Purchase of City Hall Cooling Tower Replacement Services  
Move City Council approve the purchase of City Hall cooling tower replacement services, from Sun Mechanical Contracting, Inc., utilizing the Mohave Educational Services Cooperative (MESC) Contract No. 19F-SMC-0904, in the amount of \$439,600, and authorize the City Manager to sign a linking agreement with Sun Mechanical Contracting, Inc.

VICE MAYOR ORLANDO asked why it is necessary to replace the cooling towers.

MIKE HOLLINGSWORTH, Facilities and Fleet Manager, explained that the cooling towers have a maximum 15-year lifespan. Current cooling towers are 13 years old, but they are an inadequate size for the location and are in poor condition.

VICE MAYOR ORLANDO asked if there was a warranty on the current towers.

MR. HOLLINGSWORTH answered that there was no warranty and that once they are replaced there would be a new warranty for any normal wear and tear.

### **Fire Department**

14. Agreement No. FD2-340-4440, with LN Curtis, Swift Group, Velocity Fire, and United Fire, for Fire Turnouts and Personal Protective Equipment (PPE)  
Move City Council approve Agreement No. FD2-340-4440, with LN Curtis, Swift Group, Velocity Fire, and United Fire, for fire turnouts and PPE, in an amount not to exceed \$850,000, for the period of one year, beginning February 1, 2023, through January 31, 2024.

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Move City Council approve the purchase of Cisco Smartnet, from Sentinel Technologies, Inc., utilizing the 1GPA Contract No. 22-02PV-18, in the amount of \$233,745.

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Move for recommendation to the State Department of Liquor Licenses and Control for approval of the State Liquor Job No. 213988, a Series 6, Bar Liquor License, for Patrick Roger Stratman, Agent, DTC Bar, LLC, DBA Val's, located at 118 W. Boston Street, and approval of the City of Chandler, Series 6, Bar Liquor License No. 304457.
18. New License Series 12, Restaurant Liquor License application for The Taco Spot, LLC, DBA The Taco Spot  
Move for recommendation to the State Department of Liquor Licenses and Control for approval of the State Liquor Job No. 220578, a Series 12, Restaurant Liquor License, for Jeffery Craig Miller, Agent, The Taco Spot, LLC, DBA The Taco Spot, located at 698 E. Chandler Boulevard, Suite B, and approval of the City of Chandler, Series 12, Restaurant Liquor License No. 202733.
19. New License Series 6, Bar Liquor License application for GTC Chandler, LLC, DBA Good Time Charli's  
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### Neighborhood Resources



20. Resolution No. 5664 Authorizing a Legal Services Retainer Agreement for Harvey Law, PLLC, to Assist in the Conversion of Public Housing Properties to Section 8 Project-Based Rental Assistance and Related Legal Matters  
Move City Council pass and adopt Resolution No. 5664 approving Legal Services Retainer Agreement for Harvey Law, PLLC, to Assist in the Conversion of Public Housing Properties to Section 8 Project-Based Rental Assistance and Related Legal Matters.

### Police Department

21. Resolution No. 5662 Authorizing an Intergovernmental Agreement Between the City of Chandler and the City of Phoenix, and Other Identified Cities, for the Award of the Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2022 in the Amount of \$43,233  
Move City Council pass and adopt Resolution No. 5662, authorizing an Intergovernmental Agreement (IGA) with the City of Phoenix, and other identified cities, for the award of the Edward Byrne Memorial Justice Assistance Grant (JAG) Program FY 2022 in the Amount of \$43,233; and authorizing the Mayor to execute the Agreement.
22. Resolution No. 5663 Authorizing an Intergovernmental Agreement for the Sharing of Law Enforcement Information  
Move City Council pass and adopt Resolution No. 5663 authorizing an Intergovernmental Agreement for the Sharing of Law Enforcement Information between the City of Chandler, Town of Gilbert, City of Mesa, City of Tempe and Town of Queen Creek, authorizing the Mayor to sign the Agreement, and appointing the Chief of Police to administer, execute, and submit all documents and any other necessary instruments in connection with said Agreement, including any such future extensions under the same terms and conditions not to exceed the duration of the original Agreement.

COUNCILMEMBER HARRIS asked how much money they were going to save in the ongoing process of switching software.

CHIEF DUGGAN shared that they expect to save about \$13,000. Currently they share the same records management system with Queen Creek, Gilbert, Mesa and Tempe. Prior to that they were all on different systems therefore to communicate with each other, they had to use a third-party software to share information. Now that they share the same platform, they no longer require third party software.

COUNCILMEMBER HARRIS mentioned that this would protect resident's privacy.

CHIEF DUGGAN confirmed that there wouldn't be a third party with access to the information since they are all on the one platform.

23. Professional Services Agreement No. PD2205.452, with Kitchell/CEM, Inc., for the Police Work Area and Storage Renovation Construction Management Services

Move City Council award Professional Services Agreement No. PD2205.452 to Kitchell/CEM, Inc., for the Police Work Area and Storage Renovation Construction Management Services, in an amount not to exceed \$142,940.

24. Project Agreement No. PD2205.401 with SDB, Inc., Pursuant to Job Order Contract No. JOC1912.401, for the Police Work Area and Storage Renovation  
Move City Council award Project Agreement No. PD2205.401 to SDB, Inc., Pursuant to Job Order Contract No. JOC1912.401, for the Police Work Area and Storage Renovation, in an amount not to exceed \$1,808,582.79.

COUNCILMEMBER STEWART explained that the amount of money seemed large, but it breaks down to about \$230 per square foot, at Chandler Police headquarters there is inadequate space for their needs. They have added a lot of staff and they need more room to accommodate them.

VICE MAYOR ORLANDO asked that the Chief share exactly what they are doing here

MR DUGGAN explained that in 2014 they conducted an assessment analysis that concluded they were short on space. They then had presented to Council several potential projects. Most of those projects have been completed. What was included in that list was the Downtown station, which was part of the citizen-approved bonds.

COUNCILMEMBER STEWART asked City Manager how we are tracking space and investment.

JOSH WRIGHT, CITY MANAGER responded that there was a space utilization study that was conducted previously. Some designs are an investment but several options will be presented for approval as part of budget recommendations in the near future.

25. Sole Source Purchase of Taser Conducted Energy Weapons (CEW)  
Move City Council approve the sole source purchase of Taser Conducted Energy Weapons (CEW), from Axon Enterprise, Inc., in the amount of \$1,023,556.94.

COUNCILMEMBER POSTON thanked the Chief for all the info he has provided and expressed that our officers should have the latest and best equipment to do their jobs.

26. Purchase of Police Bucket Truck  
Move City Council approve the purchase of a Police Bucket Truck, from Altec Industries, Inc., utilizing Sourcewell Contract No.062320-ALT, in the amount of \$152,936.

### **Public Works and Utilities**

27. Resolution No. 5642 Approving the Acquisition of a Water Line Easement on Lot 16 of Arden Park

Move City Council adopt Resolution No. 5642 approving the acquisition of a water line easement on lot 16 of Arden Park, at fair market value plus closing and escrow fees, in order to extend a water line from Beverly Place to the south side of Kingbird Drive; authorizing the City's Real Estate Administer to sign, on behalf of the City, the purchase agreement, and any other documents necessary to facilitate this acquisition.

28. Resolution No. 5643 Authorizing an Intergovernmental Agreement with the Arizona Water Banking Authority for Distribution of Long-Term Storage Credits for Firming Municipal and Industrial Priority Central Arizona Project Water

Move City Council pass and adopt Resolution No. 5643 authorizing an Intergovernmental Agreement with the Arizona Water Banking Authority for distribution of long-term storage credits for firming Municipal and Industrial (M&I) priority Central Arizona Project (CAP) Water.

VICE MAYOR ORLANDO stated that we receive credits for water and asked to explain this agreement.

JOHN KNUDSON, Public Works and Utilities Director, explained that the Arizona water banking authority was established in 1996 with a mission to store the unused portion of the Arizona's annual Colorado river entitlement. The credits that are gained when we store that water is to be used in drought. The Arizona Water Banking Authority participates in about 14 underground storage facilities in Maricopa County where the water is stored, and credits are accrued. With the Colorado River drought increasing in severity, this is the first time that the Water Banking Authority has had to put together a plan for the recovery of those credits for its participating members, which includes Chandler. The agreement is to solidify a procedure with the water bank so it can establish a distribution of credits for Chandler, which can be used in the case the Colorado River volumes are decreased in the future and then they would be able to be recovered through our own wells or partnerships with other well owners. This agreement is a way to reinforce supplies.

VICE MAYOR ORLANDO asked if there is an estimate of what our credits are.

MR. KNUDSON replied that they do have a system in place to keep track and that there is a tremendous volume of storage credits that have been accrued in Chandler's history. We are very prepared for drought and we have a tremendous aquifer beneath us and tremendous well fields to recover if necessary.

VICE MAYOR ORLANDO thanked Mr. Knudson for his explanation.

COUNCILMEMBER STEWART asked if Chandler would be able to sell water credits if another community needed water.

MS. SCHWAB responded that it was a difficult question to answer as it depends on the situation at the time. The city has worked very hard to build their water portfolio and we would want to protect that. There may be regional sharing requirements and legislation that would need to be considered based on the facts at the time.

COUNCILMEMBER STEWART asked if everyone could get a briefing on the current status of water and some talking points to share with the community.

29. Resolution No. 5655 Approving the Abandonment of Temporary Drainage Easements No Longer Needed for Public Use  
Move City Council pass and adopt Resolution No. 5655 approving the abandonment of temporary drainage easements no longer needed for public use located south of Germann Road at the southwest corner of Stearman Drive and Douglas Drive.
30. Professional Services Agreement No. WW2001.203, with HDR Engineering, Inc., for the Ocotillo Brine Reduction Facility Hydrochloric Acid Storage and Weak Acid Containment Mixing Improvements Design Services  
Move City Council award Professional Services Agreement No. WW2001.203, to HDR Engineering, Inc., for the Ocotillo Brine Reduction Facility Hydrochloric Acid Storage and Weak Acid Containment Mixing Improvements Design Services, in an amount not to exceed \$189,475.

## **Action Agenda**

31. Resolution No. 5661 Accepting the Annual Comprehensive Financial Report (ACFR) for the Fiscal Year ended June 30, 2022  
Move City Council pass and adopt Resolution No. 5661 accepting the Annual Comprehensive Financial Report (ACFR) and related financial audit reports submitted by Heinfeld, Meech & Co., P.C., for the fiscal year ended June 30, 2022, and demonstrating compliance with Arizona Revised Statutes (ARS) §9-481(H) and §41-1494.

## **Informational**

32. Special Event Liquor Licenses and Temporary and Permanent Extensions of Liquor License Premises Administratively Approved
33. Claims Report for the Quarter Ended December 31, 2022
34. Contracts and Agreements Administratively Approved for the Month of December, 2022

## **Adjourn**

The meeting was adjourned at 7:12 p.m.

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Approval Date of Minutes: February 9, 2023

## **Certification**

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the City Council of Chandler, Arizona, held on the 23rd day of January 2023. I further certify that the meeting was duly called and held and that a quorum was present.

DATED this \_\_\_\_\_ day of February, 2023.

\_\_\_\_\_  
City Clerk



# Meeting Minutes

## City Council Regular Meeting

January 26, 2023 | 6:00 p.m.  
Chandler City Council Chambers  
88 E. Chicago St., Chandler, AZ



### Call to Order

The meeting was called to order by Mayor Kevin Hartke at 6:00 p.m.

### Roll Call

#### Council Attendance

Mayor Kevin Hartke  
Vice Mayor Matt Orlando  
Councilmember OD Harris  
Councilmember Mark Stewart  
\*Councilmember Christine Ellis  
Councilmember Jane Poston  
Councilmember Angel Encinas

#### Appointee Attendance

Tadd Willie, Acting City Manager  
Kelly Schwab, City Attorney  
Dana DeLong, City Clerk

\*Councilmember Ellis attended telephonically.

### Invocation

The invocation was given by Pastor Tim Klontz, Family Bible Church

### Pledge of Allegiance

The Pledge of Allegiance was led by Councilmember Poston.

### Consent Agenda and Discussion

#### City Clerk

1. Approval of Minutes  
Move to approve the Council meeting minutes of the Regular Meeting of January 12, 2023 and the Special Meeting of January 12, 2023.

## Communications and Public Affairs

2. Agreement No. CAPA2-918-4421, Amendment No. 1, with Davidson Belluso, for Digital Marketing Services for Recruitment Campaigns  
Move the City Council approve Agreement No. CAPA2-918-4421, Amendment No. 1, with Davidson Belluso, for digital marketing services for recruitment campaigns, in an amount not to exceed \$381,000, for the period of one year, beginning March 1, 2023, through February 28, 2024.

## Community Services

3. Agreement No. CS9-956-3919, Amendment No. 2, for Library Materials and Related Services  
Move City Council approve Agreement No. CS9-956-3919, Amendment No. 2, with Baker & Taylor, LLC; Ingram Library Services, LLC; and Midwest Tape, LLC; for library materials and related services, in a combined amount not to exceed \$1,150,000, for a period of two years, November 1, 2022, through October 31, 2024.
4. Professional Services Agreement No. PR2205.202, with Logan Simpson Design, Inc., for Brooks Crossing Park Renovation Design Services  
Move City Council award Professional Services Agreement No. PR2205.202 to Logan Simpson Design, Inc., for Brooks Crossing Park Renovation Design Services, in an amount not to exceed \$187,840.

## Development Services

5. Introduction and Tentative Adoption of Ordinance No. 5024 and Use Permit PLH22-0054 / PLH22-0059 Game Show Battle Room, 6909 West Ray Road, Generally Located at the Southeast Corner of Ray Road and 56th Street  
Rezoning  
Move City Council introduce and tentatively adopt Ordinance No. 5024 approving PLH22-0054 Game Show Battle Room, Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses within an existing commercial center, subject to the conditions as recommended by Planning and Zoning Commission.  
  
Use Permit  
Move City Council approve PLH22-0059 Game Show Battle Room, Use Permit for a Series 7 Beer and Wine Bar license, subject to the conditions as recommended by Planning and Zoning Commission.
6. Introduction and tentative adoption of Ordinance No. 5044, approving a request to amend Chapter 35 of the Chandler City Code related to regulating medical marijuana facilities, medical marijuana cultivation sites, and medical marijuana infusion food establishments.

Proposed amendments include expanding hours of operation, increasing square-footage size limitations, and permitting the collocation of an ancillary medical marijuana facility with its affiliated onsite medical marijuana cultivation site and/or medical marijuana infusion food establishment when approved through a Conditional Use Permit, as recommended by Planning and Zoning Commission

Move City Council introduce and tentatively adopt Ordinance No. 5044, approving the citizen initiative Zoning Code Amendment PLH22-0060 Medical Marijuana Code Amendment, as recommended by Planning and Zoning Commission.

7. Resolution No. 5657, Authorizing a License Agreement between the Gigapower, LLC, dba Gigapower, and the City of Chandler for the Use of Public Property for the Establishment of a Class 5 Communications System

Move City Council adopt Resolution No. 5657, authorizing the Mayor to execute the license agreement between Gigapower, LLC, dba Gigapower, and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to Establish a Class 5 Communications System, and authorizing the City Manager or designee to execute other documents as needed to give effect to the agreement.

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Agreement, including any such future extensions under the same terms and conditions not to exceed the duration of the original Agreement.

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Move City Council approve the sole source purchase of Taser Conducted Energy Weapons (CEW), from Axon Enterprise, Inc., in the amount of \$1,023,556.94.
26. Purchase of Police Bucket Truck  
Move City Council approve the purchase of a Police Bucket Truck, from Altec Industries, Inc., utilizing Sourcewell Contract No.062320-ALT, in the amount of \$152,936.

### **Public Works and Utilities**

27. Resolution No. 5642 Approving the Acquisition of a Water Line Easement on Lot 16 of Arden Park  
Move City Council adopt Resolution No. 5642 approving the acquisition of a water line easement on lot 16 of Arden Park, at fair market value plus closing and escrow fees, in order to extend a water line from Beverly Place to the south side of Kingbird Drive; authorizing the City's Real Estate Administer to sign, on behalf of the City, the purchase agreement, and any other documents necessary to facilitate this acquisition.
28. Resolution No. 5643 Authorizing an Intergovernmental Agreement with the Arizona Water Banking Authority for Distribution of Long-Term Storage Credits for Firming Municipal and Industrial Priority Central Arizona Project Water  
Move City Council pass and adopt Resolution No. 5643 authorizing an Intergovernmental Agreement with the Arizona Water Banking Authority for distribution of long-term storage credits for firming Municipal and Industrial (M&I) priority Central Arizona Project (CAP) Water.

29. Resolution No. 5655 Approving the Abandonment of Temporary Drainage Easements No Longer Needed for Public Use  
Move City Council pass and adopt Resolution No. 5655 approving the abandonment of temporary drainage easements no longer needed for public use located south of Germann Road at the southwest corner of Stearman Drive and Douglas Drive.
30. Professional Services Agreement No. WW2001.203, with HDR Engineering, Inc., for the Ocotillo Brine Reduction Facility Hydrochloric Acid Storage and Weak Acid Containment Mixing Improvements Design Services  
Move City Council award Professional Services Agreement No. WW2001.203, to HDR Engineering, Inc., for the Ocotillo Brine Reduction Facility Hydrochloric Acid Storage and Weak Acid Containment Mixing Improvements Design Services, in an amount not to exceed \$189,475.

## **Consent Agenda Motion and Vote**

Councilmember Poston moved to approve the Consent Agenda of the January 26, 2023, Regular City Council Meeting; Seconded by Councilmember Encinas.

Motion carried unanimously (7-0).

## **Action Agenda and Discussion**

31. Resolution No. 5661 Accepting the Annual Comprehensive Financial Report (ACFR) for the Fiscal Year ended June 30, 2022  
Move City Council pass and adopt Resolution No. 5661 accepting the Annual Comprehensive Financial Report (ACFR) and related financial audit reports submitted by Heinfeld, Meech & Co., P.C., for the fiscal year ended June 30, 2022, and demonstrating compliance with Arizona Revised Statutes (ARS) §9-481(H) and §41-1494.

TADD WILLE, Assistant City Manager explained that the city is required by City charter, state statute, and federal law to issue an annual audited financial report. It is required to have the auditors report any annual audit results and any findings to the City Council during a regular meeting.

ROBERT STEELE, Accounting Senior Manager, introduced the item and thanked the auditors presenting.

COREY ARVIZU, Heinfeld Meech Audit and Consulting Partner, and JOSHUA JUMPER, Heinfeld Meech Audit Manager, presented the following presentation.

- Presentation of the City of Chandler Annual Financial Audit For the Fiscal Year Ended June 30, 2022 | Presented by Corey Arvizu, Partner & Joshua Jumper, Manager January 26, 2023



- Requirements
  - The City is required by City Charter and State Statute to issue an annual audited financial report, and federal law requires the City to undergo an annual single audit (A-133) of federal financial assistance.
  - Effective September 29, 2021, ARS §9-481(H), as amended by Laws 2021, Ch 427, §1, auditors must present audit results and any findings to the Council in a regular meeting without the use of a consent agenda within 90 days of audit completion.
  - ACFR posted online; at least 3 years reports
- Importance of the Audit
  - Verify management representations regarding finances
  - Demonstrate stewardship and accountability to:
    - Citizens
    - Governing body
    - Grantors
    - State agencies
    - Federal agencies
    - Bond holders
    - IRS
    - Creditors
  - Review compliance with certain laws and regulations
  - Governing body ultimately must ensure management fulfills its responsibility
- Audit Process
  - Engagement letter and initial planning of the audit began in April
  - Site visits in July, August, October, and November
  - Various audit procedures performed remotely between site visits
  - Audit reports issued in December & January
- Audit Related Reports Issued
  - Audit communication to those charged with governance
  - Annual Comprehensive Financial Report (ACFR)
  - Single Audit Reporting Package
    - Report on internal control for audit under *Government Auditing Standards*
    - Report in internal control and compliance for federal awards as required
  - Agreed-upon procedures report for ADEQ landfill requirements
  - Annual expenditure limitation report
- Key Items from FY 2021-22
  - Unmodified (clean) audit opinion dated December 16, 2022
  - No internal control deficiencies noted
  - COVID-19 related funding required significant attention and focus for audit team
    - Approximately \$25.8M spent in fiscal year 2022
  - Implementation of GASB 87 related to leases
- Other Important Communication

- Communication to those charged with governance provided by the audit firm at the completion of the audit also includes the following:
  - Engagement letter provided by the audit firm to management at the initiation of the audit
  - Management representation letter provided by management to the audit firm at the completion of the audit
- Questions? | Approval of Resolution 5661 demonstrates compliance with ARS §9-481(H) and ARS §41-1494.

MAYOR HARTKE thanked Mr. Arvizu and Mr. Jumper for the presentation.

VICE MAYOR ORLANDO asked about the normal length of conducting an audit.

MR. ARVIZU answered that the total time worked conducting this audit was 700 hours total.

VICE MAYOR ORLANDO asked if the initial analysis was completed before meeting with City staff.

MR. ARVIZU confirmed and said it depends on what the subject control is. Conducting an audit is an interactive process between City staff and the audit team.

VICE MAYOR ORLANDO asked if purchasing was investigated in the audit.

MR. ARVIZU said that procurement purchasing is part of the audit review procedures for federal requirements.

COUNCILMEMBER STEWART asked where the Annual Comprehensive Financial Report is posted.

DAWN LANG, Deputy City Manager / Chief Financial Officer, explained that the 2022 report can be found at <https://www.chandleraz.gov/government/departments/management-services/accounting>.

COUNCILMEMBER HARRIS asked to explain an unqualified opinion audit.

MR. ARVIZU explained that an unqualified or unmodified opinion result means that nothing was of note in the amounts reported in the financial statements that would be incorrect and are believed to be accurate. A modified opinion result would mean that there was something of concern in the financial statements.

COUNCILMEMBER HARRIS asked if Chandler received an unqualified or unmodified opinion.

MR. ARVIZU reported that Chandler received an unqualified or unmodified opinion for this audit.

MAYOR HARTKE thanked Mr. Arvizu and Mr. Jumper.

## **Action Agenda Motion and Vote**

Vice Mayor Orlando moved to approve the Action Agenda Item 31, Resolution No. 5661 accepting the Annual Comprehensive Financial Report (ACFR) for the fiscal year ending June 30, 2022, Seconded by Councilmember Ellis.

Motion carried unanimously (7-0).

## **Informational**

32. Special Event Liquor Licenses and Temporary and Permanent Extensions of Liquor License Premises Administratively Approved

33. Claims Report for the Quarter Ended December 31, 2022

34. Contracts and Agreements Administratively Approved for the Month of December, 2022

## **Unscheduled Public Appearances**

MAYOR HARTKE called for Unscheduled Public Appearances.

ANKIT SURA, 850 W. Oriole Way., shared a presentation on the housing situation in Chandler and how innovation can make our community affordable and resilient.

## **Current Events**

### **Mayor's Announcements**

MAYOR HARTKE thanked volunteers in the annual Point in Time count conducted January 24, 2022.

MAYOR HARTKE announced the Regional Unity Walk on Saturday, January 28, 2023 at Tempe Town Lake beginning at 4:30 p.m.

MAYOR HARTKE shared that the Chandler International Film Festival is ongoing until January 29, 2023.

MAYOR HARTKE shared that the city is proposing changes to its existing short-term rental ordinance, addressing the new state law that allows the city to license short term rental properties and establish criteria for maintaining licenses. We are looking for public input found in a survey online at [chandleraz.gov/shorttermrental](https://chandleraz.gov/shorttermrental).

### **Council's Announcements**





**City Council Memorandum      Development Services    Memo No. 23-002**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**Thru:** Joshua H. Wright, City Manager  
Andy Bass, Deputy City Manager  
Derek D. Horn, Development Services Director  
**From:** Darsy Omer, Associate Planner  
**Subject:** PLH22-0054 Game Show Battle Room  
Final Adoption of Ordinance No. 5024  
**Request:** Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses within an existing commercial center.  
**Location:** 6909 W Ray Rd, Suite 29, generally located on the southeast corner of Ray Road and 56th Street  
**Applicant:** John Dockendorf, Game Show Battle Rooms

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**Proposed Motion:**

Move City Council adopt Ordinance No. 5024 approving PLH22-0054 Game Show Battle Room, Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses within an existing commercial center, subject to the conditions as recommended by Planning and Zoning Commission.

**Background Data:**

- The subject site is currently zoned Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses.
- The General Plan calls the subject site out as Neighborhoods.
- In 1999, the commercial center was rezoned from PAD for C-1 Neighborhood Commercial type uses to PAD for a Montessori school in addition to C-1 uses.

**Surrounding Land Use Data:**

North	Ray Road, then a car wash and a residential neighborhood (Tempe)	South	PAD for Single-family residential
East	PAD for Single-family residential	West	56th Street, then PAD for commercial

### General Plan and Area Plan Designations:

	Existing	Proposed
General Plan	Neighborhoods	No Change

### Proposed Development

Building Square Footage	3,500 sq ft
Number of Employees	1 full-time, 15 part-time
Hours of Operation	10am-10pm
Days of Operation	Monday-Sunday

### Review and Recommendation

The subject site was approved for PAD zoning in 1994 for a commercial shopping center. In 1998, the City Council approved an amendment to the PAD zoning with Preliminary Development Plan to expand the commercial development. In 1999, another zoning amendment was brought before Council to rezone it from PAD commercial to PAD (commercial) for a Montessori school and a restaurant/bar within the developing shopping center, but due to a legal protest, the applicant requested withdrawal of the restaurant/bar use and solely proceeded with the Montessori school. This request is to amend the zoning from C-1 type uses to C-2 type uses, which allows for the conditional approval of bar uses through a Use Permit. Staff has not received any opposition to the request; one neighbor attended the neighborhood meeting in support of the use permit for the sale of beer and wine.

Game Show Battle Rooms is an interactive experience where a group of people can participate in a live, studio-quality game show experience in one of the two "arenas." Game Show Battle Rooms is a booking-only establishment, thus no walk-in customers are allowed. The applicant is requesting a rezoning from Planned Area Development (PAD) for C-1 Neighborhood Commercial uses to PAD for C-2 Community Commercial uses to allow for additional uses by right and via use permit, similar to other nearby commercial centers on arterial intersections.

The business will operate with a Series 7 liquor license through a Use Permit for the sales of beer and wine for onsite consumption while experiencing the game show. No live music or other forms of entertainment are proposed as part of this request. Staff finds the proposed Series 7 Beer and Wine Bar license is compatible with the surrounding land use.

Planning staff has reviewed the requests and finds they are consistent with the General Plan. Planning and Zoning Commission recommends approval of the rezoning to PAD for C-2-Community Commercial uses within an existing commercial center subject to conditions, and Use Permit approval to allow for a series 7 beer and wine bar license, subject to conditions.

### **Public / Neighborhood Notification**

- This request was noticed in accordance with the requirements of the Chandler Zoning Code.
- A neighborhood meeting sign was posted on the property and on social media via NextDoor.
- A neighborhood meeting was held November 9th, 2022, with one attending neighbor in support.
- As of the writing of this memo, Planning staff is not aware of any opposition to this request.

### **Planning and Zoning Commission Vote Report**

Planning and Zoning Commission meeting of December 7th, 2022.

Motion to Approve

In Favor: 6   Opposed: 0   Absent: 1 (Barichello)

### **Recommended Conditions of Approval**

**Ordinance No. 5024 was introduced and tentatively adopted on January 26th, 2023.**

Move City Council approve the Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses, subject to the following conditions:

1. Uses permitted shall be those permitted in the Community Commercial (C-2) zoning district.
2. Landscaping shall be in compliance with current Commercial Design Standards.
3. The site shall be maintained in a clean and orderly manner.



4. The landscaping in all open-spaces shall be maintained by the property owner or property owners' association, and shall be maintained at a level consistent with or better than at the time of planting.
5. The landscaping in all rights-of-way shall be maintained by the adjacent property owner or property owners' association.

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### **Attachments**

Ordinance No. 5024

Vicinity Maps

Narrative

Exhibits-PLH22-0054

Exhibits-PLH22-0059

## **ORDINANCE NO. 5024**

AN ORDINANCE OF THE CITY OF CHANDLER, ARIZONA, AMENDING THE ZONING CODE AND MAP ATTACHED THERETO, BY REZONING A PARCEL FROM PLANNED AREA DEVELOPMENT (PAD) FOR NEIGHBORHOOD COMMERCIAL (C-1) TO PLANNED AREA DEVELOPMENT (PAD) FOR COMMUNITY COMMERCIAL (C-2) IN CASE PLH22-0054 (GAME SHOW BATTLE ROOM) LOCATED AT THE SOUTHEAST CORNER OF 56<sup>TH</sup> STREET AND RAY RD WITHIN THE CORPORATE LIMITS OF THE CITY OF CHANDLER, ARIZONA; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; AND PROVIDING FOR PENALTIES.

WHEREAS, an application for rezoning certain property within the corporate limits of Chandler, Arizona, has been filed in accordance with Article XXVI of the Chandler Zoning Code; and

WHEREAS, the application has been published in a local newspaper with general circulation in the City of Chandler, giving fifteen (15) days' notice of the time, place, and date of public hearing; and

WHEREAS, a notice of such hearing was posted on the property at least seven (7) days prior to the public hearing; and

WHEREAS, the City Council has considered the probable impact of this ordinance on the cost to construct housing for sale or rent; and

WHEREAS, a public hearing was held by the Planning and Zoning Commission as required by the Zoning Code.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1.      Legal Description of Property:

### EXHIBIT 'A'

Said parcel is hereby rezoned from Planned Area Development (PAD) for Neighborhood Commercial (C-1) to Planned Area Development (PAD) for Community Commercial (C-2), subject to the following conditions:

1. Uses permitted shall be those permitted in the Community Commercial (C-2) zoning district.
2. Landscaping shall be in compliance with current Commercial Design Standards.

3. The site shall be maintained in a clean and orderly manner.
4. The landscaping in all open spaces shall be maintained by the property owner or property owners' association and shall be maintained at a level consistent with or better than at the time of planting.
5. Completion of the landscaping in all rights-of-way shall be maintained by the adjacent property owner or property owners' association.

Section 2. The Planning Division of the City of Chandler is hereby directed to enter such changes and amendments as may be necessary upon the Zoning Map of said Zoning Code in compliance with this Ordinance.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance, or any parts hereof, are hereby repealed.

Section 4. In any case, where any building, structure, or land is used in violation of this Ordinance, the Planning Division of the City of Chandler may institute an injunction or any other appropriate action in proceeding to prevent the use of such building, structure, or land.

Section 5. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then this entire ordinance is invalid and shall have no force or effect.

Section 6. A violation of this Ordinance shall be a Class 1 misdemeanor subject to the enforcement and penalty provisions set forth in Section 1-8.3 of the Chandler City Code. Each day a violation continues, or the failure to perform any act or duty required by this Ordinance or the Zoning Code, shall constitute a separate offense.

INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 5024 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2023, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY TA

Published:

**EXHIBIT “A” - ORDINANCE NO. 5024**

**Legal Description**

**PARCEL NO. 1**

LOT 2, FINAL PLAT OF CHANDLER CROSSING RETAIL CENTER, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 791 OF MAPS, PAGE 12.

**PARCEL NO. 2**

LOT 3, FINAL PLAT OF CHANDLER CROSSING RETAIL CENTER, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA. RECORDED IN BOOK 791 OF MAPS, PAGE 12.

**PARCEL NO. 3**

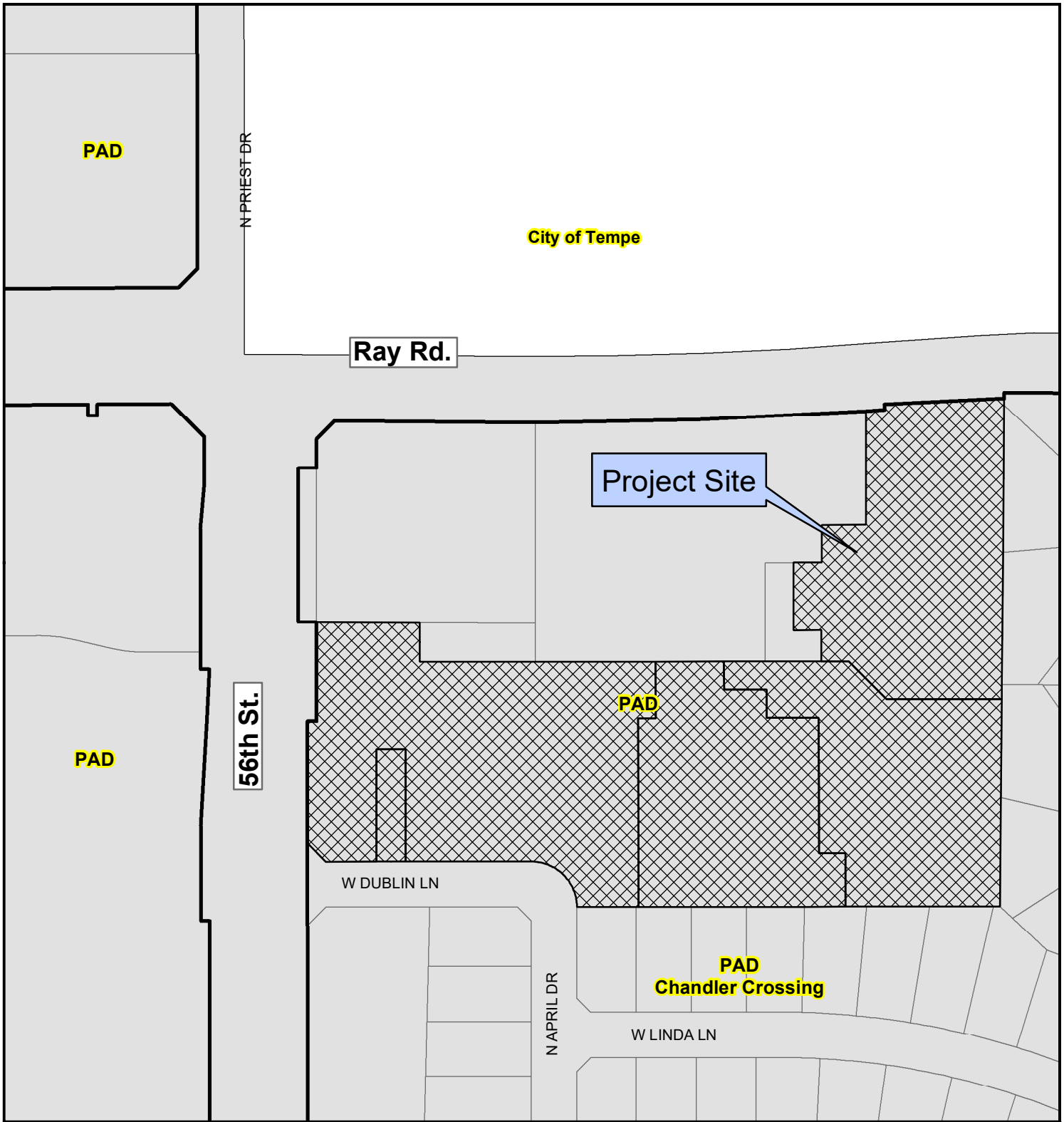
LOT 4, FINAL PLAT OF CHANDLER CROSSING RETAIL CENTER, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 791 OF MAPS, PAGE 12.

**PARCEL NO. 4**

LOT 5, FINAL PLAT OF CHANDLER CROSSING RETAIL CENTER, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 791 OF MAPS, PAGE 12.

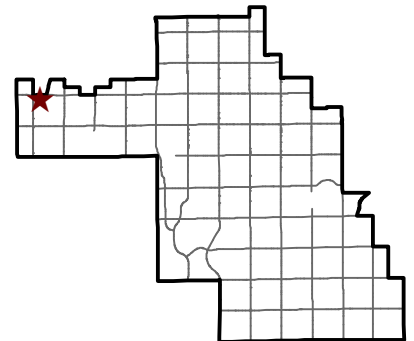
**PARCEL NO. 5**

TRACT A, FINAL PLAT OF CHANDLER CROSSING RETAIL CENTER, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 791 OF MAPS, PAGE 12.



**PLH22-0054/PLH22-0059 Game Show Battle Rooms**

**Proposed Project Details**  
6909 W. Ray Rd. Suite #29  
Request for rezoning from Commercial C-1  
to Community Commercial C-2 and a Use Permit  
for a Series 7 Beer and Wine Bar License



City of Chandler Planning Division  
[chandleraz.gov/planning](https://chandleraz.gov/planning)  
For more information visit:  
<https://gis.chandleraz.gov/planning>





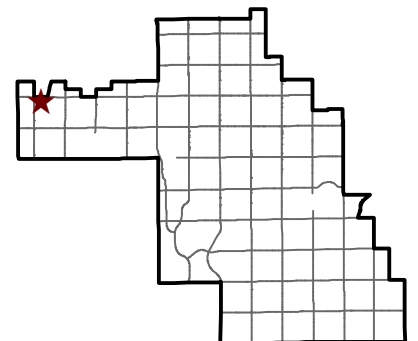
## PLH22-0054/PLH22-0059 Game Show Battle Rooms



### Proposed Project Details

6909 W. Ray Rd. Suite #29

Request for rezoning from Commercial C-1  
to Community Commercial C-2 and a Use Permit  
for a Series 7 Beer and Wine Bar License



City of Chandler Planning Division  
[chandleraz.gov/planning](https://chandleraz.gov/planning)  
 For more information visit:  
<https://gis.chandleraz.gov/planning>





Game Show Battle Rooms Phoenix  
6909 W Ray Rd  
Suite 29  
Chandler, AZ 85226

Re-Zoning Application Neighborhood Commercial (C-1) to Community Commercial (C-2)

#### Business Narrative

The center located at 6909 W Ray Rd, Chandler, AZ 85226 containing Gold Medal Swim School & Game Show Battle Rooms is going to re-zone from Neighborhood Commercial (C-1) to Community Commercial (C-2) in order for Game Show Battle Rooms to serve canned beer.

Game Show Battle Rooms Phoenix is an interactive group experience where you get to participate in a live studio quality game show experience. Our business model is by booking only and we do not accept walk-in customers or bookings. Our hours of operation are 10AM - 10PM every day, with the bulk of our business happening in the afternoons, evenings, & weekends.

We have 1 full time employee who is the General Manager along with 15 part time employees operating as game show hosts. Our space is roughly 3500 square feet and consists of 2 Game Show "Arena's" roughly 1000 square feet, a lobby, a storage room, & 2 bathrooms. All of this should be in the plans submitted as part of the application process. Our building shares with a swim school next door, which is owned by the landlord, M Squared LLC.

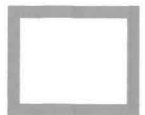
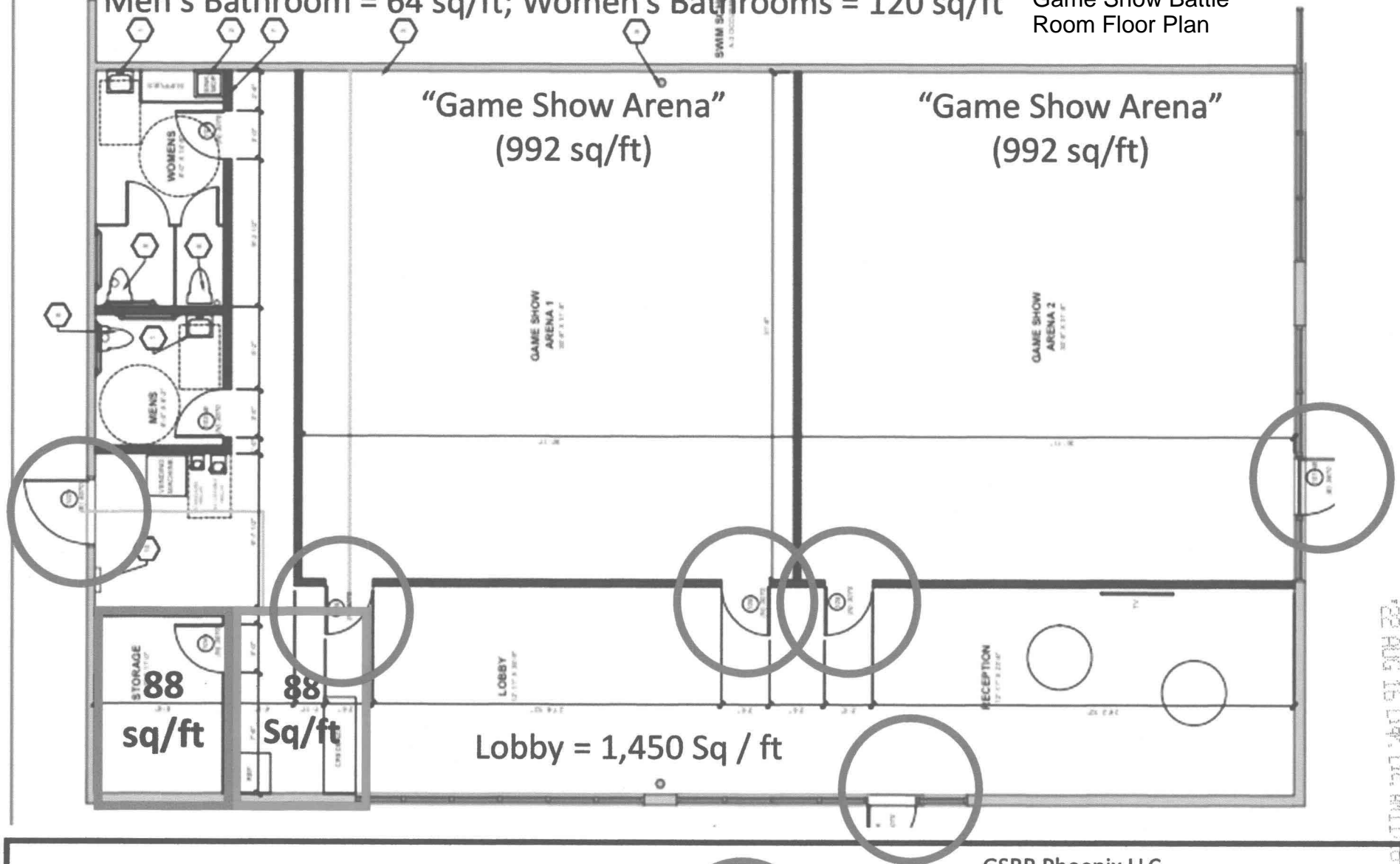
Our intent is to rezone so we can serve canned beer using the Series 7 Beer/Wine permit we acquired. Our customers are typically only on site for 90 minutes and we only serve canned beer. Our project numbers with the city of Chandler are PLH22-0054 and PLH22-0059. PLH22-0054 is for the rezoning, and PLH22-0059 is for the use permit.

John Dockendorf  
Owner  
320-420-1315



Men's Bathroom = 64 sq/ft; Women's Bathrooms = 120 sq/ft

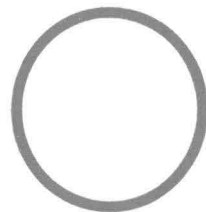
Game Show Battle  
Room Floor Plan



Serving  
Area



Beer  
Storage  
Area



Entrance  
/ Exits

GSBR Phoenix LLC  
Dba Game Show Battle Rooms Phoenix  
6909 W Ray Rd  
Suite 29  
Chandler, AZ 85226  
Total Sq/Ft = 3,447

**City Council Memorandum      Development Services      Memo No. 23-001FA**

**Date:** February 6, 2023  
**To:** Mayor and Council  
Joshua H. Wright, City Manager  
**Thru:** Andy Bass, Deputy City Manager  
Derek D. Horn, Development Services Director  
**From:** Kevin Mayo, Planning Administrator  
**Subject:** PLH22-0060 Medical Marijuana Code Amendment  
Final Adoption of Ordinance No. 5044

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**Proposed Motion:**

Move City Council adopt Ordinance No. 5044, approving Zoning Code Amendment PLH22-0060 Medical Marijuana Code Amendment, as recommended by Planning and Zoning Commission.

**Background/Discussion**

In 2010, voters passed Proposition 203, the Arizona Medical Marijuana Act, that legalized the use of medical marijuana and established regulations for its growth, cultivation, and dispensation, which are administered by the Arizona Department of Health Services (ADHS). The proposition did not preempt cities from enacting reasonable zoning regulations for medical marijuana uses. Thus, in 2011, Chandler amended the Zoning Code (Ordinance No. 4278) requiring Use Permit approval for medical marijuana facilities, cultivation sites and infusion food establishments, and adopting approval criteria, definitions, and procedures by which these uses may be considered in Chandler.

Subsequently, in 2017, the Zoning Code was amended by replacing the Use Permit approval process with an administrative zoning clearance review and approval process, more closely aligning Chandler's regulatory process with neighboring valley cities. As well, the one-year approval expiration was removed, and the ability to reduce the separation requirements was prohibited. In 2018, the Zoning Code was amended (Ordinance No. 4855) again to expand the hours of operation, and no longer prohibit off-site deliveries and sale of other merchandise.

Finally, in 2020, Arizona voters approved Proposition 207 (the Smart and Safe Act), which legalized the possession, cultivation, and dispensing of recreational marijuana and set forth state licensing requirements. These licensing requirements and additional regulations are administered by ADHS. The Arizona Department of Revenue additionally collects both standard transaction privilege tax (TPT) and a 16% excise tax on the retail sale of recreational marijuana.

The subject amendment was initiated by a request to modify the City Zoning Code by amending Article II.-Definitions, Article XXI.-Table of Permitted Uses For Nonresidential Districts, and Article XXII.- Additional Height and Area Regulations as they relate to regulating medical marijuana facilities, medical marijuana cultivation sites, and medical marijuana infusion food establishments. Proposed amendments include expanding hours of operation, increasing square-footage size limitations, and permitting the collocation of an ancillary medical marijuana facility with its affiliated onsite medical marijuana cultivation site and/or medical marijuana infusion food establishment when approved through a Conditional Use Permit.

### **Proposed Code Amendment**

The attached proposed Zoning Code Amendment contains the proposed changes to ARTICLE II.-DEFINITIONS, ARTICLE XXI.-TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, and ARTICLE XXII.-ADDITIONAL HEIGHT AND AREA REGULATIONS. The following is a summary of the proposed Code Amendment.

- Expand the size limitation for a Medical Marijuana Facility from not larger than 2,500 square feet to 5,000 square feet
- Expand the size limitation for a Medical Marijuana Cultivation Site from not larger than 3,000 square feet to 5,000 square feet
- Establish a size limitation for a Medical Marijuana Infusion Food Establishment of not larger than 5,000 square feet
- Amend the hours of operation for a Medical Marijuana Facility from 9:00 am - 10:00 pm to 7:00 am - 10:00 pm
- Permit the collocation of an ancillary Medical Marijuana Facility with its affiliated onsite Medical Marijuana Cultivation Site and/or Medical Marijuana Infusion Food Establishment subject to:
  - Conditional Use Permit required
  - Ancillary to the primary use, not larger than 2,500 square feet or 25% of the gross building square footage, whichever is less
  - Located within 1,320 feet of an arterial roadway
  - Shall have frontage and direct access from Public Right-Of-Way



## **Public Notification**

- This request was noticed in accordance with the requirements of the Chandler Zoning Code
- This request was noticed within the City's Social Media
- The public hearing schedule was posted on the City's website and advertised in the newspaper
- As of the writing of this memo, City staff is unaware of any opposition to this proposed Code Amendment

## **Planning and Zoning Commission Vote Report**

Planning and Zoning Commission meeting of December 7th, 2022.

Motion to Approve.

In Favor: 6    Opposed: 0    Absent: 1 (Barichello)

**Ordinance No. 5044 was Introduced and Tentatively Adopted on January 26th, 2023.**

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## **Attachments**

Ordinance No. 5044

## **ORDINANCE NO. 5044**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AMENDING ARTICLES II. DEFINITIONS, XXI. TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, AND XXII. ADDITIONAL HEIGHT AND AREA REGULATIONS OF CHAPTER 35 OF THE CITY CODE OF THE CITY OF CHANDLER, RELATING TO MARIJUANA DISPENSARIES.

WHEREAS, in accordance with A.R.S. 9-462 et seq., the legislative body may adopt by ordinance any change or amendment to the regulations and provisions set forth in the Chandler Zoning Code; and

WHEREAS, this amendment, including the draft text, has been published as an 1/8-page display ad in a local newspaper with general circulation in the City of Chandler, giving fifteen (15) days' notice of the time, date, and place of the public hearing; and

WHEREAS, a public hearing was held by the Planning and Zoning Commission as required by the Zoning Code, on December 7, 2022.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. That certain document known as the "2022 Amendments to Chandler City Code Chapter 35 for Marijuana Dispensaries," one paper copy and one electronic copy of which shall remain on file in the office of the City Clerk, a copy of which is attached to this ordinance as Exhibit A, is hereby declared to be a public record.

Section 2. That the Chandler City Code is hereby amended by adoption of the amendments contained in the document "2022 Amendments to Chandler City Code Chapter 35 for Marijuana Dispensaries."

Section 3. Providing for Repeal of Conflicting Ordinances.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance, or any parts hereof, are hereby repealed.

Section 4. Providing for Severability.

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



INTRODUCED AND TENTATIVELY APPROVED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 5044 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2023, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

TA

## EXHIBIT A

### 2022 Amendments to Chandler City Code Chapter 35 for Marijuana Dispensaries {Public Record for Ordinance No. 5044}

Chapter 35 of the Chandler City Code is hereby amended as follows (additions in ALL CAPS, deletions in ~~strikethrough~~):

#### **ARTICLE II. – DEFINITIONS**

##### **35-200. - Definitions.**

...

*Infusion food establishment:* A food processing or other food establishment of any type or size, not operated by a medical marijuana dispensary and not located at a medical marijuana facility or a medical marijuana cultivation site, **BUT MAY BE LOCATED ON THE SAME PREMISES OR WITHIN THE SAME BUILDING AS ITS AFFILIATED MEDICAL MARIJUANA FACILITY OR MEDICAL MARIJUANA CULTIVATION SITE OPERATING UNDER THE SAME ARIZONA DEPARTMENT OF HEALTH SERVICES APPROVED LICENSE AND UPON APPROVAL OF A USE PERMIT** and which is permitted under Arizona State Law to contract with and does provide to a medical marijuana dispensary edible food products infused with medical marijuana.

...

*Medical marijuana facility:* The physical location from which a medical marijuana dispensary operates to acquire, possess, supply, sell, or dispense in any manner or form medical marijuana or related supplies and educational materials to cardholders, as that term is defined in A.R.S. Section 36-2801. **A MEDICAL MARIJUANA FACILITY ALSO INCLUDES A RECREATIONAL MARIJUANA RETAIL ESTABLISHMENT THAT SELLS MARIJUANA AND MARIJUANA PRODUCTS TO ADULTS FOR NON-MEDICINAL RECREATIONAL USE PROVIDED THE RECREATIONAL MARIJUANA RETAIL ESTABLISHMENT OPERATES AT A SINGLE SHARED LOCATION WITH A MEDICAL MARIJUANA DISPENSARY. A medical marijuana facility cannot serve as a medical marijuana cultivation site, BUT MAY BE LOCATED ON THE SAME PREMISES OR WITHIN THE SAME BUILDING AS ITS AFFILIATED MEDICAL MARIJUANA CULTIVATION SITE AND/OR INFUSION FOOD ESTABLISHMENT OPERATING UNDER THE SAME ARIZONA DEPARTMENT OF HEALTH SERVICES APPROVED LICENSE AND UPON THE APPROVAL OF A USE PERMIT.**

*Medical marijuana cultivation site:* The physical location from which a medical marijuana dispensary operates to grow, cultivate, manufacture, infuse, or store medical marijuana, or from which it delivers, transfers, transports, or supplies medical marijuana to another medical marijuana facility or cultivation site. A medical marijuana cultivation site cannot serve as a medical marijuana facility, **BUT MAY BE LOCATED ON THE SAME PREMISES OR**

WITHIN THE SAME BUILDING AS ITS AFFILIATED MEDICAL MARIJUANA FACILITY OR INFUSION FOOD ESTABLISHMENT OPERATING UNDER THE SAME ARIZONA DEPARTMENT OF HEALTH SERVICES APPROVED LICENSE AND UPON APPROVAL OF A USE PERMIT.

...

## ARTICLE XXI. - TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS

### 35-2100. - Purpose.

#### TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS

Uses	Districts				
	C-1	C-2	C-3	I-1	I-2
Medical marijuana (see footnote #3 AND #4 at end of table)					
Facility <sup>3,4,5</sup>		X	X	UP	UP
Cultivation site <sup>3</sup>				X	X
Infusion food establishment <sup>3</sup>				X	X

#### Footnotes:

3) Medical marijuana facilities, medical marijuana cultivation sites and infusion food establishments shall be permitted in the specified districts only upon obtaining a zoning clearance OR USE PERMIT, AS REQUIRED BY SECTION 35-2100 TABLE OF PERMITTED USES FOR NONRESIDENTIAL USES, in accordance with section 35-2213 of this Code.

4) A MEDICAL MARIJUANA FACILITY LOCATED IN THE I-1 DISTRICT OR THE I-2 DISTRICT MUST BE INCIDENTAL TO A CULTIVATION SITE AND/OR INFUSION FOOD ESTABLISHMENT AND: (1) SHALL BE LOCATED WITHIN 1,320 FEET OF AN ARTERIAL ROADWAY MEASURED IN A STRAIGHT LINE FROM THE CLOSEST EXTERIOR WALL OF THE CULTIVATION SITE AND/OR INFUSION FOOD ESTABLISHMENT TO THE CENTERLINE OF THE ARTERIAL ROADWAY AND WITHIN 500 FEET OF THE C-2 OR C-3 DISTRICT, OR PAD DISTRICT WHERE C-2 OR C-3 USES ARE ALLOWED MEASURED IN A STRAIGHT LINE FROM THE NEAREST PROPERTY LINE OF THE MEDICAL MARIJUANA CULTIVATION SITE AND/OR INFUSION FOOD ESTABLISHMENT TO A ZONING DISTRICT BOUNDARY LINE; AND (2) SHALL HAVE FRONTAGE AND ACCESS FROM PUBLIC RIGHT-OF-WAY. A MEDICAL MARIJUANA FACILITY INCIDENTAL TO A MEDICAL MARIJUANA CULTIVATION SITE AND/OR INFUSION FOOD ESTABLISHMENT SHALL COMPLY WITH ARTICLE XVIII OF THIS CODE.

5) A MEDICAL MARIJUANA FACILITY LOCATED IN THE I-1 DISTRICT OR THE I-2 DISTRICT SHALL NOT EXCEED TWO THOUSAND FIVE HUNDRED (2,500) GROSS

SQUARE FEET OR TWENTY FIVE PERCENT (25%) OF THE GROSS BUILDING SQUARE-FOOTAGE, WHICHEVER IS LESS.

...

## ARTICLE XXII. – ADDITIONAL HEIGHT AND AREA REGULATIONS

...

### **35-2213. - Medical marijuana facility, medical marijuana cultivation site, and infusion food establishment.**

The operation of a medical marijuana facility, a medical marijuana cultivation site, or an infusion food establishment shall only be allowed in accordance with the provisions, procedures and standards set forth in this Section.

#### *1. Eligible Zoning Districts.*

- A. The operation of a medical marijuana facility is allowed only in a C-2 or C-3 District or in that portion of a PAD District where C-2 AND/or C-3 uses are allowed and only upon obtaining a zoning clearance for such use, OR IN AN I-1 OR I-2 DISTRICT OR IN A PORTION OF A PAD DISTRICT WHERE I-1 AND/OR I-2 USES ARE ALLOWED AND ONLY UPON OBTAINING A USE PERMIT AS REQUIRED BY SECTION 35-2100 TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, IN ACCORDANCE WITH SECTION 35-2213 OF THIS CODE.
- B. The operation of a medical marijuana cultivation site or an infusion food establishment is allowed only in an I-1 or I-2 District or in that portion of a PAD District where I-1 or I-2 uses are allowed and only upon obtaining a zoning clearance for such use.

2(A). ZONING CLEARANCE *Application*. IN ACCORDANCE WITH SECTION 35-2100—TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, ~~M~~medical marijuana facilities, medical marijuana cultivation sites and infusion food establishments shall submit a completed zoning clearance application with supplemental materials as required by the Planning Division. The application shall contain the following information:

- 1)~~A~~. The location of the premises at which the medical marijuana facility, the medical marijuana cultivation site, or infusion food establishment will be operated.
- 2)~~B~~. The identity of the medical marijuana dispensary that will operate the medical marijuana facility or the medical marijuana cultivation site, and, for an infusion food establishment, the identity of the operator of the establishment.

- 3)~~C~~. If the premises identified in the application is not owned by the medical marijuana dispensary making application for the zoning clearance, a written statement signed by the property owner authorizing the applicant to apply for the zoning clearance for the premises and consenting to the use being requested in the application.
- 4)~~D~~. A site plan for the property on which the premises is located showing lot dimensions with front, sides and rear setbacks, and, where applicable, its location within the larger development in which the property may be situated.
- 5)~~E~~. An accurate, to-scale, floor plan clearly showing the configuration of the premises and stating the total floor space of the premises or portion thereof to be used for the purpose for which the zoning clearance is requested. In addition to any other information, the floor plan shall specifically identify and provide as applicable: (i) the location of the enclosed, locked facility in which cultivation or storage of medical marijuana will take place; (ii) the total floor space for the enclosed, locked facility; (iii) the location within the premises where infusion will take place; (iv) all entrances and exits to and from the premises, indicating which such entrances are secured and which, if any, are not secured; (v) the location of any windows from which a member of the public can view activities occurring inside the premises; (vi) any additional security measures or devices to be installed in or upon the premises, including without limitation any on-site alarm system or security lighting; and (vii) additional protections, if any, against medical marijuana diversion and theft.
- 6)~~F~~. Other pertinent information as needed to determine compliance with the provisions of this Section (35-2213) as required by the Planning Division.

2(B)3. ZONING CLEARANCE *Approval Criteria*. The Zoning Administrator may approve a zoning clearance application to operate a medical marijuana facility, a medical marijuana cultivation site, or an infusion food establishment upon finding that the request complies with the following criteria:

- 1)~~A~~. The request is in conformance with the General Plan and its policies.
- 2)~~B~~. The request is in full conformance with the provisions of this Section (35-2213).
- 3)~~C~~. The request is in full compliance with Chapter 29 Building Regulations of the City Code, all development standards and other land use regulations stated in the Zoning Code or any other ordinance or code adopted by the City of Chandler.
- 4)~~D~~. The request will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.
- 5)~~E~~. The medical marijuana facility, a medical marijuana cultivation site, or an infusion food establishment:

- I)~~4~~) Is located in a permanent building and is not located in a temporary structure, trailer, cargo container, motor vehicle, or other similar non-permanent enclosure.
- II)~~2~~) Is not larger than FIVE THOUSAND (5,000)~~two thousand five hundred (2,500)~~ gross square feet for a medical marijuana facility; ~~and FIVE THOUSAND (5,000)three thousand (3,000)~~ gross square feet for a medical marijuana cultivation site; **AND FIVE THOUSAND (5,000) GROSS SQUARE FEET FOR AN INFUSION FOOD ESTABLISHMENT. The secure storage area does not exceed five hundred (500) square feet in a medical marijuana facility and one thousand (1,000) square feet in a medical cultivation site.**
- III)~~3~~) Does not have or operate drive-through facilities or take-out windows.
- IV)~~4~~) Will not emit dust, fumes, vapors or odors into the environment.
- V)~~5~~) Is operated only by a medical marijuana dispensary, DUAL LICENSE, or, in the case of an infusion food establishment, a person or entity authorized by State law to infuse edible food products, who does:
  - Ai. Comply with all registration and recordkeeping required by the City of Chandler, Maricopa County and Arizona Law.
  - Bi. Obtain, maintain and display a valid City of Chandler business registration or license as may be required by City Code.
  - Ciii. Prohibit consumption of medical marijuana on the premises.
  - Diiv. Not permit outdoor seating anywhere on the premises. Where the premises is located within a larger commercial or industrial development having walkways or other common area containing already existing outdoor seating required as a condition of the zoning for the development, then no new outdoor seating shall be located immediately adjacent to the premises.
  - Eiv. Allow annual fire inspections pursuant to the City of Chandler Code.
  - Fvi. Have operating hours not earlier than 7:00~~9:00~~-a.m. and not later than 10:00 p.m. **FOR A MEDICAL MARIJUANA FACILITY.**
- 6)~~F~~. Separation requirements. A medical marijuana facility or a medical marijuana cultivation site shall be located a minimum distance from the uses set forth in Table 2213.3~~(F)~~ 2213.2(B)(6) Separation Requirements. Measurements shall be

made in a straight line in any direction from the closest exterior wall of the medical marijuana facility or medical marijuana cultivation site to the nearest property line of any parcel containing uses identified in the table. No separation is required when a medical marijuana facility or a medical marijuana cultivation site is separated from another such facility or site by a freeway. The separation requirements set forth in Table ~~2213.3(F)~~ 2213.2(B)(6) shall not be reduced through a variance, Planned Area Development (PAD), or any other manner.

Table <del>2213.3(F)</del> 2213.2(B)(6) Separation Requirements	
Use or Use Classification	Separation Requirement (feet)
Another medical marijuana facility, <del>or</del> cultivation site, OR INFUSION FOOD ESTABLISHMENT *	5,280
Day care center, public or private	1,320
Public or private park	1,320
Place of worship	1,320
Charter school, public or private school or college	1,320
Residential zoning district boundary	1,320
Public library	1,320
Hospital, public or private	1,320

\* NO SEPARATION SHALL BE REQUIRED WHEN A MEDICAL MARIJUANA FACILITY AND ITS AFFILIATED MEDICAL MARIJUANA CULTIVATION SITE AND/OR INFUSION FOOD ESTABLISHMENT ARE LOCATED ON THE SAME PREMISES OR WITHIN THE SAME BUILDING.

2(C)4. *Issuance of zoning clearance.*

- 1)A. Approval of such a zoning clearance application shall not be construed as any endorsement by the City of the use or operation for which the zoning clearance has been requested by the applicant. The review time for said zoning clearance

application shall conform to the time frames adopted by the City as required by Arizona Revised Statutes which are posted on the City's website.

- 2)~~B~~. A zoning clearance issued under this Section (35-2213) shall be deemed void and to have automatically expired if the permitted use is not commenced by the zoning clearance holder or substantial construction has not taken place within nine (9) months after the date of approval.

2(D)~~5~~. *Nontransferability of zoning clearance.* A zoning clearance issued under this Section (35-2213) is not transferable to any other location or premises, nor is it valid for any other use or business associated with a medical marijuana dispensary that is not specifically identified in the zoning clearance.

2(E)~~6~~. *Zoning clearance denial and appeal process.*

- 1)~~A~~. The Zoning Administrator, upon finding that the information presented in a zoning clearance application for a medical marijuana facility, medical marijuana cultivation site, or an infusion food establishment does not comply with the requirements set forth in this Section (35-2213) shall issue a notice of denial that specifies the grounds therefore.
- 2)~~B~~. The applicant may appeal the Zoning Administrator's decision to deny the issuance of a zoning clearance to the Board of Adjustment pursuant to the appeal procedures provided under Section 35-2503 of this Zoning Code.

2(F)~~7~~. *Revocation or suspension of zoning clearance.*

- 1)~~A~~. The Zoning Administrator may suspend or revoke a zoning clearance upon finding:
  - I)~~1~~. Material noncompliance with the requirements prescribed in this Section (35-2213); and/or
  - II)~~2~~. Operation of the permitted use in such a manner as to cause a substantial detrimental impact on neighboring persons or property.
- 2)~~B~~. To suspend or revoke a zoning clearance, the Zoning Administrator shall deliver or mail by certified mail to the address indicated on the zoning clearance and, if different from application address, the address of the property subject to the zoning clearance, a written notice that the zoning clearance is suspended or revoked and which states the grounds therefore.
- 3)~~C~~. Upon written request received by the Zoning Administrator within ten (10) days of the date of the notice by the zoning clearance holder, or any person whose use of the subject property will be adversely affected by the suspension or revocation, the matter will be referred to the Board of Adjustment on an appeal pursuant to



the appeal procedures provided under Section 35-2503 of this Zoning Code. If an appeal is not received within ten (10) days of the notice, the suspension or revocation shall take effect on the eleventh day after the date of notice.

- 4)~~D~~. The decision of the Board of Adjustment may be appealed as provided in Section 35-2503 of this Zoning Code.

3(A). *USE PERMIT APPLICATION.* IN ACCORDANCE WITH SECTION 35-2100—TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, THE APPLICATION PROCEDURES FOR A USE PERMIT TO OPERATE A MEDICAL MARIJUANA FACILITY AT A SPECIFIED PREMISES SHALL BE THE SAME AS THE APPLICATION PROCEDURES STATED IN SECTION 35-305(1)(A) FOR GENERAL USE PERMITS, EXCEPT THAT IN ADDITION TO ANY OTHER REQUIRED SUBMITTALS, AN APPLICANT SHALL PROVIDE:

- 1) THE LOCATION OF THE PREMISES AT WHICH THE MEDICAL MARIJUANA FACILITY WILL BE OPERATED.
- 2) THE IDENTITY OF THE MEDICAL MARIJUANA DISPENSARY THAT WILL OPERATE THE MEDICAL MARIJUANA FACILITY.
- 3) IF THE PREMISES IDENTIFIED IN THE APPLICATION IS NOT OWNED BY THE MEDICAL MARIJUANA DISPENSARY MAKING THE APPLICATION FOR THE USE PERMIT, A WRITTEN STATEMENT SIGNED BY THE PROPERTY OWNER AUTHORIZING THE APPLICANT TO APPLY FOR THE USE PERMIT FOR THE PREMISES AND CONSENTING TO THE USE BEING REQUESTED IN THE APPLICATION.
- 4) A SITE PLAN FOR THE PROPERTY ON WHICH THE PREMISES IS LOCATED SHOWING LOT DIMENSIONS WITH FRONT, SIDE, AND REAR YARD SETBACKS, AND, WHERE APPLICABLE, ITS LOCATION WITHIN THE LARGER DEVELOPMENT IN WHICH THE PROPERTY MAY BE SITUATED.
- 5) AN ACCURATE TO-SCALE FLOOR PLAN CLEARLY SHOWING THE CONFIGURATION OF THE PREMISES AND STATING THE TOTAL FLOOR SPACE OF THE PREMISES OR PORTION THEREOF TO BE USED FOR THE PURPOSE FOR WHICH THE USE PERMIT IS REQUIRED. IN ADDITION TO ANY OTHER INFORMATION, THE FLOOR PLAN SHALL SPECIFICALLY IDENTIFY AND PROVIDE AS APPLICABLE: (I) THE LOCATION OF THE ENCLOSED LOCKED FACILITY IN WHICH STORAGE OF MEDICAL MARIJUANA WILL TAKE PLACE; (II) THE

TOTAL FLOOR SPACE FOR THE ENCLOSED, LOCKED FACILITY; (III) ALL ENTRANCES AND EXITS TO AND FROM THE PREMISES, INDICATING WHICH SUCH ENTRANCES ARE SECURED AND WHICH, IF ANY, ARE NOT SECURED; (IV) THE LOCATION OF ANY WINDOWS FROM WHICH A MEMBER OF THE PUBLIC CAN VIEW ACTIVITIES OCCURRING INSIDE THE PREMISES; (V) ANY ADDITIONAL SECURITY MEASURES OR DEVICES TO BE INSTALLED IN OR UPON THE PREMISES, INCLUDING WITHOUT LIMITATION ANY ON-SITE ALARM SYSTEM OR SECURITY LIGHTING; AND (VI) ADDITIONAL PROTECTIONS, IF ANY, AGAINST MEDICAL MARIJUANA DIVERSION AND THEFT.

3(B). *USE PERMIT REVIEW.* THE REVIEW AND APPROVAL OF AN APPLICATION FOR A USE PERMIT TO OPERATE A MEDICAL MARIJUANA FACILITY SHALL CONSIDER ALL RELEVANT LAND USE FACTORS, INCLUDING THOSE STATED IN SECTION 35-305(1)(B) FOR GENERAL USE PERMITS, AS WELL AS THE USE PERMIT CRITERIA AND LOCATION REQUIREMENTS STATED IN SECTIONS 35-2213.3(D) AND 35-2213.3(E).

3(C). *USE PERMIT APPROVAL.* AN APPLICATION FOR A USE PERMIT UNDER SUBSECTION 3(F) MAY BE APPROVED OR DENIED BY THE CITY COUNCIL BASED UPON THE FINDINGS SET FORTH IN SECTION 35-305(1)(B). APPROVAL OF SUCH A USE PERMIT APPLICATION SHALL NOT BE CONSTRUED AS ANY ENDORSEMENT BY THE CITY OF THE USE OR OPERATION FOR WHICH THE USE PERMIT HAS BEEN REQUESTED BY THE APPLICANT.

3(D). *USE PERMIT CRITERIA.* THE PREMISES IN OR UPON WHICH A MEDICAL MARIJUANA FACILITY IS OPERATED SHALL:

- 1) BE LOCATED IN A PERMANENT BUILDING AND SHALL NOT BE LOCATED IN A TEMPORARY STRUCTURE, TRAILER, CARGO CONTAINER, MOTOR VEHICLE, OR OTHER SIMILAR NON-PERMANENT ENCLOSURE.
- 2) NOT BE LARGER THAN TWO THOUSAND FIVE HUNDRED (2,500) GROSS SQUARE FEET OR TWENTY FIVE PERCENT (25%) OF THE GROSS BUILDING SQUARE-FOOTAGE, WHICHEVER IS LESS, FOR A MEDICAL MARIJUANA FACILITY.
- 3) BE OPERATED ONLY BY A MEDICAL MARIJUANA DISPENSARY WHICH MUST:
  - 1) COMPLY WITH ALL REGISTRATION AND RECORDKEEPING REQUIRED BY THE CITY OF CHANDLER, MARICOPA COUNTY, AND ARIZONA LAW.

- II) OBTAIN, MAINTAIN, AND DISPLAY A VALID CITY OF CHANDLER BUSINESS REGISTRATION OR LICENSE AS MAY BE REQUIRED BY CITY CODE.
- III) NOT HAVE OR OPERATE DRIVE THROUGH FACILITIES OR TAKE OUT WINDOWS.
- IV) NOT EMIT DUST, FUMES, VAPORS, OR ODORS INTO THE ENVIRONMENT.
- V) PROHIBIT CONSUMPTION OF MEDICAL MARIJUANA ON THE PREMISES.
- VI) NOT PERMIT OUTDOOR SEATING ANYWHERE ON THE PREMISES. WHERE THE PREMISES IS LOCATED WITHIN A LARGER COMMERCIAL OR INDUSTRIAL DEVELOPMENT HAVING WALKWAYS OR OTHER COMMON AREA CONTAINING ALREADY EXISTING OUTDOOR SEATING REQUIRED AS A CONDITION OF THE ZONING FOR THE DEVELOPMENT, THEN NO NEW OUTDOOR SEATING SHALL BE LOCATED IMMEDIATELY ADJACENT TO THE PREMISES.
- VII) ALLOW ANNUAL FIRE INSPECTIONS PURSUANT TO THE CITY OF CHANDLER CODE.
- VIII) HAVE OPERATING HOURS NOT EARLIER THAN 7:00 A.M. AND NOT LATER THAN 10:00 P.M.

3(E). *SEPARATION REQUIREMENT.* A MEDICAL MARIJUANA FACILITY SHALL BE LOCATED A MINIMUM DISTANCE FROM THE USES SET FORTH IN TABLE 2213.2(B)(6).

3(F). *ISSUANCE OF USE PERMIT.*

- 1. A USE PERMIT ISSUED UNDER THIS SUBSECTION SHALL BE VALID FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF CITY COUNCIL APPROVAL OF THE USE PERMIT APPLICATION, EXCEPT AS PROVIDED IN PARAGRAPH 3(F)(2) BELOW.
- 2. A USE PERMIT ISSUED UNDER THIS SUBSECTION 3(F) SHALL BE DEEMED VOID AND TO HAVE AUTOMATICALLY EXPIRED IF THE PERMITTED USE IS NOT COMMENCED BY THE PERMIT HOLDER OR

SUBSTANTIAL CONSTRUCTION HAS NOT TAKEN PLACE WITHIN NINE (9) MONTHS AFTER THE DATE OF CITY COUNCIL APPROVAL.

3. THE VALIDITY OF A USE PERMIT UNDER THIS SUBSECTION 3(F) IS FURTHER CONDITIONED UPON THE PERMIT HOLDER AND THE PERMITTED PREMISES BEING AT ALL TIMES IN COMPLIANCE WITH APPLICABLE CITY BUILDING CODES, DEVELOPMENT STANDARDS AND OTHER LAND USE REGULATIONS STATED IN THE ZONING CODE OR ANY OTHER ORDINANCE OR CODE ADOPTED BY THE CITY OF CHANDLER.

3(G). *NONTRANSFERABILITY OF USE PERMIT.* A USE PERMIT ISSUED UNDER THIS SUBSECTION IS NOT TRANSFERABLE TO ANY OTHER LOCATION OR PREMISES, NOR IS IT VALID FOR ANY OTHER USE OR BUSINESS ASSOCIATED WITH A MEDICAL MARIJUANA DISPENSARY THAT IS NOT SPECIFICALLY IDENTIFIED IN THE USE PERMIT.

3(H). *USE PERMIT RENEWAL:*

1. A USE PERMIT UNDER SUBSECTION 3(F) MAY BE RENEWED BY FILING AN APPLICATION FOR RENEWAL ON A FORM PROVIDED BY THE ZONING ADMINISTRATOR. THE APPLICATION FOR RENEWAL SHALL BE RECEIVED BY THE ZONING ADMINISTRATOR NOT LESS THAN SEVENTY (70) DAYS BEFORE THE EXPIRATION OF THE PERMIT. WHEN THE APPLICATION FOR RENEWAL IS RECEIVED LESS THAN SEVENTY (70) DAYS BEFORE THE EXPIRATION DATE, THE EXPIRATION OF THE USE PERMIT SHALL NOT BE DELAYED, POSTPONED OR OTHERWISE AFFECTED.
2. AN APPLICATION FOR RENEWAL SHALL BE CONSIDERED FOLLOWING THE SAME PROCEDURES AS AN ORIGINAL APPLICATION. THE APPLICATION FOR RENEWAL MAY BE DENIED FOR ANY REASON THAT AN ORIGINAL APPLICATION MAY BE DENIED OR REVOKED.
3. A MEDICAL MARIJUANA FACILITY LAWFULLY OPERATING IS NOT RENDERED IN VIOLATION OF THE DISTANCE REQUIREMENTS SET FORTH IN TABLE 2213.2(B)(6) IF, SUBSEQUENT TO THE INITIAL GRANTING OF THE USE PERMIT UNDER SUBSECTION 3(F), ANY OF THE USES IDENTIFIED IN TABLE 2213.2(B)(6) ARE CONSTRUCTED OR LOCATED WITHIN THE REQUIRED SEPARATION AREA. THIS PROVISION APPLIES ONLY TO THE RENEWAL OF A VALID USE PERMIT AND DOES NOT APPLY WHEN AN APPLICATION FOR A USE PERMIT IS SUBMITTED AFTER A USE PERMIT HAS EXPIRED OR HAS BEEN REVOKED.



**City Council Memorandum      Development Services      Memo No. DS23-004**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**Thru:** Joshua H. Wright, City Manager  
Andy Bass, Deputy City Manager  
Derek D. Horn, Development Services Director  
Louis Kneip, Development Engineering Manager  
Ryan Peters, Strategic Initiatives Director  
**From:** Dennis Aust, Telecommunications and Public Utility Service Manager  
**Subject:** Adoption of Resolution No. 5654, authorizing a license agreement between the Google Fiber Arizona, LLC, dba Google Fiber, and the City of Chandler for the Use of Public Property for the Establishment of a Class 5 Communications System.

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**Proposed Motion:**

Move City Council adopt Resolution No. 5654, authorizing the Mayor to execute the license agreement between Google Fiber Arizona, LLC, dba Google Fiber, and the City of Chandler for the Use of Facilities in the City's Rights-of-Way and Public Places to Establish a Class 5 Communications System, and authorizing the City Manager or designee to execute other documents as needed to give effect to the agreement.

**Background:**

Google Fiber has filed an application with the City to install, operate and maintain an underground fiber optic communications system that may only provide Class 5 non-telecommunications services (dark fiber/internet services). The agreement provides terms for Class 5 services and is similar to agreements the City has with other providers. This item is for a five-year nonexclusive agreement. Google Fiber's build plan includes building fiber-to-the-home infrastructure throughout the majority of City of Chandler neighborhoods within 5 years.

**Financial Implications:**

The City has received a \$3,000 application fee to cover the City's cost for the processing of this application. Fiber that is not exempted by federal or state law and is used for non-telecommunications services (Class 5) is subject to an annual \$2.46 per linear foot fee as prescribed by the City's Fee Schedule capped at a maximum of 2% of Google Fiber's gross revenues for services provided within the City of Chandler.

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### **Attachments**

Resolution 5654

Google Fiber License Agreement

**RESOLUTION NO. 5654**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, APPROVING A LICENSE TO GOOGLE FIBER ARIZONA, LLC, DOING BUSINESS AS GOOGLE FIBER, TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, AND USE THE PUBLIC RIGHTS OF WAY WITHIN THE CITY TO PROVIDE COMMUNICATIONS SERVICES AND FIBER OPTIC CABLE, INTERSTATE SERVICES, AND OTHER COMMUNICATION FACILITIES (COLLECTIVELY "COMMUNICATION SERVICES") (CLASS 5) AS APPROPRIATE.

WHEREAS, the City of Chandler believes that it is in the City's best interest to issue a License Agreement for such purpose.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, as follows:

Section 1. Approves the License Agreement between the City of Chandler and Google Fiber Arizona, LLC, doing business as Google Fiber, in the form attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2. Authorizes the Mayor of the City of Chandler to execute the Agreement on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this \_\_\_\_ day of February, 2023.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 5654 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_\_ day of February, 2023 and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



EXHIBIT "A"





**CITY OF CHANDLER COMMUNICATION SERVICES LICENSE (CLASS 5) ISSUED  
TO GOOGLE FIBER ARIZONA, LLC**

City of Chandler Document No. \_\_\_\_\_  
City Council Meeting Date: \_\_\_\_\_

**THIS LICENSE** ("License") is issued by the City of Chandler, an Arizona municipal corporation ("City") to Google Fiber Arizona, LLC, a limited liability company organized under the laws of the State of Arizona doing business as Google Fiber ("Licensee"). (The City and Licensee are each a "Party" and collectively the "Parties") effective \_\_\_\_\_ ("Effective Date").

**RECITALS**

- A. On or about August 12, 2022, Licensee applied to the City for permission to construct, install, operate, maintain, and use the Public Rights of Way within the City to provide broadband internet and voice over internet protocol services (collectively "Communication Services") as appropriate; and
- B. By the authority conferred by A.R.S., the Chandler City Charter, and Chandler City Code Chapter 46, the City is authorized to grant this License; and
- C. The City Council has authorized the Mayor or his designee to execute a license with Licensee to construct, install, operate, maintain, and use a System (defined hereinafter) in, along, under, over, and across certain Public Rights-of-Way within the City or on other City-owned property to provide Communication Services as appropriate.

**LICENSE**

**NOW, THEREFORE**, City hereby grants Licensee this License under the following terms and conditions:

**SECTION 1. DEFINITIONS**

For this License, unless the context otherwise requires, the following terms, phrases, words, and their derivatives have these meanings. When not inconsistent with the context, words in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. The terms, phrases, words, and their derivatives used in this License have the meanings given in Chapter 46 of the Chandler City Code as amended. If a conflict or ambiguity exists among the definitions in Arizona Revised Statutes, the Chandler City Code, and this License, the definitions in the following order prevail and control: (1) Arizona Revised Statutes; (2) Chandler City Code; (3) this License. Additional definitions for this License include:

"ACC" means the Arizona Corporation Commission.

"A.R.S." means Arizona Revised Statutes, as amended.

"Cable Services", "Cable System", "Video Services", and "Video Services Network" have the same meaning as defined in Chapter 46 of the Chandler City Code.

"City" means the City of Chandler, Arizona.

"City Council" means the Council of the City of Chandler.

"Commercial Mobile Radio Services" means two-way voice commercial mobile radio services as defined by the Federal Communications Commission in 47 United States Code § 157.

"Communications Services" means Licensee's provision of broadband internet and voice over internet protocol services using facilities in the Public Rights-of-Way.

"Day" means calendar day unless noted otherwise.

"Encroachment Permit" means the nonexclusive permission granted by the City to Licensee within the Public Rights-of-Way for the specific location of Licensee's System and includes fees (if any) for the specific location, and other terms and conditions in accordance with the City Code, applicable Rights-of-Way construction regulations, and other applicable law.

"Environmental Laws" means all federal, state, and local laws, ordinances, rules, regulations, statutes, and judicial decisions now or subsequently in effect, in any way relating to or regulating human health, or safety, or industrial hygiene, or environmental conditions, or protection of the environment, or prevention or cleanup of pollution or contamination of the air, soil, surface water, or ground water.

"FCC" means the Federal Communications Commission.

"Gross Revenue" means all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Licensee from its customers for broadband internet services that are provided to its customers through the System located at least in part on Public Property.

"Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Laws and the following substances: gasoline, kerosene, or other petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials.

"License" means this non-exclusive authorization granted by the City to construct, operate, maintain, reconstruct, repair, and remove the System.

"Licensee" means Google Fiber to which this License is granted.

"Licensor" means the City of Chandler, Arizona, a municipal corporation of the State of Arizona as represented by the City Council and acting through the City Manager or the City Manager's designee.

"Maximum Total Liability" has the meaning described in Section 10.

"Pre-existing Environmental Condition" means the presence, emission, disposal, discharge, or release of any Hazardous Substance at, in, on, under, or about the System, however caused, existing prior to the placement of the System within the Public Rights-of-Way, whether the nature and extent of such contamination is known or unknown at the time.

"Provider" means a broadband internet access service provider that constructs, installs, operates, or maintains communications facilities in the Public Rights-of-Way.

"Public Property" means Public Rights-of-Way within the City or other City-owned property.

"Public Rights-of-Way" means all roads, streets, alleys, and all other dedicated public rights-of-way and public utility easements located within the City's corporate boundaries.

"System" means Licensee's infrastructure and communications facilities and equipment including, but not limited to, conduit, fiber optic cables, splice cases, manholes, hand holes, and related and associated facilities installed in



the Public Rights-of-Way, and when specifically authorized by the City on other City-owned property, and which are used to provide Communication Services.

## SECTION 2. PERMISSION GRANTED

2.1. Grant. Subject to the provisions of this License, the Chandler City Charter, the Chandler City Code, and Arizona and federal law, the City grants to Licensee nonexclusive and revocable rights and nonexclusive and revocable privileges as set forth in this License to construct, install, operate, and maintain its System in the Public Rights-of-Way and on other City-owned property.

2.1.1 At any time during the term of this License, Licensee may apply to the City for encroachment permits that set forth the specific location of Licensee's System, fees (if any) for the specific location, and other terms and conditions. The City may approve, deny, or conditionally approve Licensee's encroachment permit application based on the following but not exclusive reasons: (i) availability of space at the location sought by Licensee; (ii) public health, safety, and welfare; and (iii) other considerations in accordance with the City Code, applicable construction regulations, and other applicable law.

2.1.2 Subject to the permission of the affected property owner, this License also authorizes Licensee to place its System on property owned by third parties, such as an electric utility company or other private property owners. Provided; however, the System installed or constructed by Licensee on the private property satisfies applicable Rights-of-Way Construction regulations and is installed underground in accordance with applicable law including Section 47-4 of the Chandler City Code. Upon request from the City, Licensee must promptly furnish to the City documentation of the third party's permission. By executing this License, the City does not waive any rights that City may have against any public utility or other third party to require such owners to obtain the City's prior approval for such uses of their property or facilities, or that revenues received by any public utility or other property owner from Licensee be included in the computation of the use fees owed by such parties to the City. Nothing contained in this paragraph or in this License authorizes Licensee to enter into an agreement with any third party that results in new aerial attachments or aerial overlash of existing plant whether owned or leased from a third party. Licensee's attachment of facilities or equipment must be accomplished through existing infrastructure, and which results in no aerial overlash of existing infrastructure.

2.1.3 No component or part of Licensee's System may be installed, constructed, located on, or attached to any property within the City until Licensee has applied for and received approval for an encroachment permit under Chapter 46 of the Chandler City Code. Additionally, Licensee must comply with all other provisions of the Chandler City Code including, but not limited to, Chapter 35 related to zoning, Chapter 47 related to off-site construction, and other applicable City regulations.

2.1.4 Any right or privilege claimed under this License by Licensee for any use in the Public Rights-of-Way and on other City-owned property is subordinate to any City prior or subsequent lawful occupancy or use or any other governmental entity and is subordinate to any prior easements. Provided; however, nothing in this License extinguishes or otherwise interferes with the Parties' property rights established independently of this License.

2.1.5 Nothing in this License will be construed to prevent the City from abandoning, altering, improving, repairing, or maintaining the City's facilities in the Public Rights-of-Way, and for any or more of such purposes or any other lawful purpose requiring Licensee, at Licensee's expense and no expense to the City, to remove, relocate, or abandon in place Licensee's System to accommodate the City's projects and activities. The City will not be liable for Licensee's lost revenues, however caused, due to any City activity or project in the Public Rights-of-Way, when such costs or lost revenues result from the construction, operation, or maintenance of City facilities and any other

lawful project or activity in the Public Rights-of-Way. Provided; however, the City's activities and projects that result in such costs or lost revenues to Licensee are conducted in accordance with applicable laws and regulations.

## 2.2 Description of the Services, System, and its Construction.

- 2.2.1 Licensee uses its System to provide Communication Services, including a high-speed fiber-to-the-home ("FTTH") network offering broadband internet to residential and commercial customers throughout the City of Chandler. Licensee represents and warrants that Licensee does not provide services that are considered multichannel video programming services, video services provided by an open video system, cable television, or video services.
- 2.2.2 Licensee acknowledges, represents, warrants, and agrees that: (i) if a CC&N or other authorization is required by law for certain services, Licensee agrees that it will not provide these services under this License until Licensee receives the proper authorization; (ii) if Licensee obtains a CC&N or other legal authorization during the term of this License, Licensee will furnish a copy of any legal authorization to City as provided in this License within 30 days of receipt; and (iii) Licensee will indemnify, defend, save, and hold harmless the City as provided in this License and assume all liability and risk for Licensee's failure to possess the proper legal authorization to provide some or all of the services under this License.
- 2.2.3 As part of Licensee's authorized System, Licensee may install empty conduit and dark fiber within the Public Rights-of-Way or on other City-owned property.
- 2.2.4 Licensee must obtain the proper and necessary encroachment permit before Licensee begins any work or construction in the Public Rights-of-Way or on other City-owned property.
- 2.2.5 Unless otherwise required by applicable law, Licensee's must install and construct Licensee's System underground by trenching or boring conduit along with surface mounted hand holes for access to the fiber for splicing. This license permits Licensee's construction of its System within the Public Rights-of-Way or on other City-owned property. It is the Parties' intent that the Parties will work to minimize inconvenience to Chandler residents other Public Rights-of-Way users. Before Licensee installs the System, Licensee must submit specifications for proposed manholes and pull boxes to the City for approval, which approval the City will not unreasonably delay or withhold. All work on Licensee's System must comply with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments as amended (hereinafter referred to as "MAG Specs"), the City supplements to MAG Specs, all lawful and reasonable requirements of the City Utility Manual and must follow and comply with industry best practices and standards. As required by City specifications, all of Licensee's conduits must be placed outside of the Public Rights-of-Way or on other City-owned property wherever and whenever possible except as otherwise allowed by Microtrenching (defined below) standards approved by the City. Provided; however, Licensee must build the System in accordance with plans approved by the City.
- 2.2.6 Any changes to the System must be approved in writing by the City Engineer's designee, which approval will not be unreasonably withheld or delayed.
- 2.2.7 Licensee shall retain an independent testing company, approved by City in its reasonable discretion without undue condition or delay, to test all materials that will be used to remediate City and third-party facilities, and which are subject to materials testing pursuant to MAG Specs and the City supplements to MAG Specs. All testing results must be sent to the City within 3 business days of Licensee's possession or knowledge of the results.



- 2.2.8 Licensee's installation of the System must be reasonably coordinated with other utilities and the City to accommodate opportunities for common installation along with Licensee's project as set forth in this License. In accordance with applicable law, all installations must be located underground and in conduit as reasonably approved by the City Engineer. Provided; however, nothing in this License requires Licensee to incur any material additional expense to accommodate common installations. The provisions relating to material additional expense in the foregoing sentence relate only to coordinated common installations and are not applicable to any other section of this License.
- 2.2.9 Licensee may install portions of the System in trenches that are more shallow or narrow than typically allowed by City standards and depth requirements (collectively "Microtrenching"). Licensee acknowledges, accepts, and agrees that the City will not be liable for any damage or harm caused by the City, its employees, officers, officials, agents, representatives, and contractors to any portion of Licensee's System installed using Microtrenching, unless such damage or harm was the result of the City's gross negligence. Licensee may use Microtrenching primarily in Public Rights-of-Way designated as "collector," "local" or "residential" streets. For Public Rights-of-Way designated as "arterial" streets, Licensee may use Microtrenching on a case-by-case as approved by the City Engineer.
- 2.3 Location of the System.
- 2.3.1 At the time of proposed construction, Licensee must submit an encroachment permit application(s) together with the details, plans, and specifications for the City's review and approval, and pay all applicable application, review, and inspection fees before all construction work is performed under the rights and privileges granted under this License. This work includes but is not limited to the installation, operation, maintenance, and location of all the System. The proposed locations of Licensee's planned installation of its System including related facilities or equipment is depicted on the map attached and made a part of this License as Exhibit A ("Service Area"). The System must be depicted more specifically on engineering drawings provided to the City as part of the encroachment permit process and must be updated annually on the anniversary date of this License in accordance with section 4.2.5. Proposed locations of the System that are part of any encroachment permit(s) must also be made a part of a general depiction of Licensee's System in Exhibit A and must be updated at the time of License renewal or amendment.
- 2.3.2 Although the exact placement and location of Licensee's System will be determined by the City through the Encroachment Permit process, Licensee has expressed its intent and the City has expressed its desire to have the System installed outside of the paved street areas whenever such location is feasible and reasonable except as is otherwise allowed by Microtrenching standards approved by the City. Further, it is the intent and desire of both Parties that when it is necessary for the System to intersect City streets or be placed under paved areas, Licensee must use directional boring, or Microtrenching pursuant to standards authorized by the City Engineer, unless a deviation is authorized by the City Engineer.
- 2.3.3 If Licensee desires to change the location of any of the System, including any related facilities or equipment, from the location depicted in initial encroachment permit application(s), Licensee must submit revised plans to apply for and obtain approval for an amendment to the encroachment permit prior to installation and construction of the facilities or equipment.

### SECTION 3. SCOPE

3.1 Licensing Requirements. This License satisfies the licensing requirements of, and is in accordance with, the provisions of Chapter 46 of the Chandler City Code.

3.2 Use of Licensee's System by Others. This License authorizes Licensee in its ordinary course of business: (i) to lease to or contract with others for use of all or part of the System, except to aerial overlash, attach to poles

and/or store aerial fiber for purposes of leasing or contracting with others for use of all or part of the system, and (ii) to sell dark fibers, conduit, or any other facilities that are parts of the System to others that have an agreement, franchise, or other licenses with the City to use the Public Rights-of-Way and on other City-owned property. Under this section, Licensee must first provide written notice to the City of the identity of the proposed user or purchaser and a description of the proposed use or sale arrangement. In the event the lease or agreement provides for the other entity to construct, install, operate, or maintain any of Licensee's System, no such arrangement may proceed until the other entity enters a License with the City for use of the Public Rights-of-Way.

3.2.1 Licensee may not allow third parties to use its System for any use that Licensee itself does not have the authority under this License.

3.2.2 Licensee may enter into agreements with unrelated third-party Communications Corporations in the ordinary course of business for the resale of Communications Services. Such Agreements ("User Contracts") are subject to all requirements and provisions of this License.

3.3 Co-location. Licensee's installation of the System must be reasonably coordinated with other utilities and the City to accommodate opportunities for common installation along with Licensee's project as set forth in this License. All installations must be in conduit as approved by the City Engineer.

3.4 Compliance with Laws. Licensee must comply with all applicable laws as amended from time to time including but not limited to, the Chandler City Code, the Chandler Charter, and Arizona and federal law in the exercise and performance of its rights and obligations under this License. If it is necessary for Licensee to comply with any law or regulation of the FCC or the Arizona Corporation Commission ("ACC") to engage in the business activities anticipated by this License, Licensee must comply with such laws or regulations as a condition precedent to exercising any rights granted by this License. Provided; however, if such law or regulation of the FCC or ACC enlarges or modifies any of the rights or duties granted by this License, the Parties agree to negotiate an amendment to this License in good faith if either Party believes such an amendment is necessary.

### 3.5 Reports.

3.5.1 Upon request, Licensee will provide to City copies of any non-confidential communications and reports submitted by Licensee to the FCC or any other federal or state regulatory commission or agency with jurisdiction into any matters that directly affect this License.

3.5.2 In addition to the reports required in Section 4.2.3 of this License, upon City's request, Licensee will provide City with reports as requested by the City to establish Licensee's compliance with the various requirements, fees, and other provisions of this License.

### 3.6 Non-Interference.

3.6.1 Licensee's System must be constructed, installed, operated, and maintained to interfere as little as possible with traffic or other authorized uses over, under, or through the Public Rights-of-Way and on other City-owned property. All phases of permitting, construction, traffic control, backfilling, compaction and paving, and the location or relocation of the System are subject to the City's jurisdiction as described in MAG, City supplements to MAG, and the City of Chandler Utility Manual. Licensee must keep accurate construction and installation records of the location of all its System and facilities, both aboveground and underground within the City and furnish them to City within thirty (30) days of installation. Licensee must furnish such information in an electronic format compatible with the then current City electronic format.

3.6.2 Licensee must locate and relocate, at its own expense, any facilities, equipment, or other encroachment installed or maintained in, on, or under the Public Rights-of-Way and on other City-owned Property as may be necessary to facilitate any public purpose or any City project or activity whenever directed to do so by City in writing on a non-discriminatory basis. Such relocations must



be accomplished in accordance with the directions from City including the City's construction schedule and made under the same terms and conditions as the initial installation allowed pursuant to this License and encroachment permit. Licensee must reimburse the City for any direct or indirect damages incurred by the City because of delays in locations or relocations as required by this paragraph if caused by Licensee's negligence, willful misconduct, or undue delay.

- 3.6.3 Licensee agrees to obtain permits as required by this License prior to removing, abandoning, relocating, or repair of any portion of its System in the Public Rights-of-Way and on other City-owned property. Notwithstanding the foregoing, City understands and acknowledges there may be instances when Licensee is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of the System. Licensee will maintain any annual permits required by the City for such repairs. Licensee will notify City, if practicable, before the repairs and will apply for and obtain the necessary permits the next business day after the repairs are initiated.

#### **SECTION 4. FEES, CHARGES, LETTER OF CREDIT, SECURITY FUND, DAMAGE TO THE PUBLIC RIGHTS-OF-WAY AND OTHER CITY-OWNED PROPERTY**

Licensee will be solely responsible for the payment of all fees and charges in connection with Licensee's performance under this License, including those set forth below.

4.1 Application Fee. Licensee must pay the City a fee in the amount of \$3,000.00 to process the application for this License before approval of this License is submitted to the City Council.

4.2 Annual Fee. Licensee must pay an annual fee to use the Public Rights-of-Way and other City-owned property under the terms and conditions of this License and as calculated under this section (collectively "Annual Fee").

- 4.2.1 The City will assess, and Licensee must pay, any Annual Fee in accordance with A.R.S. §§ 9-582-583. Licensee bears the burden to show Licensee's payment of any Annual Fee is not required under A.R.S. §§ 9-582-583. Licensee must pay all taxes on intrastate telecommunications services as provided by applicable law and Licensee must pay any Annual Fee as provided in this License for the portions of Licensee's System that are not excluded under A.R.S. §§ 9-582-583.
- 4.2.2 If Licensee's System carries interstate traffic between and among Licensee's interstate points of presence or leases its dark fiber to another carrier for purposes of carrying interstate traffic between and among that telecommunications corporation's interstate points of presence, Licensee must pay the lesser amount of: (i) \$2.46 (for calendar year 2022) per linear foot for trench located in the Public Rights-of-Way or on other City-owned property; or (ii) two percent (2%) of Gross Revenue for such use.
- 4.2.3 If Licensee's System carries interstate traffic between and among Licensee's interstate points of presence or leases its dark fiber to any entity not included in Section 4.2.2 of this License, Licensee must pay the lesser amount of: (i) \$2.46 (for calendar year 2022) per linear foot for trench located in the Public Rights-of-Way or on other City-owned property; or (ii) two percent (2%) of Gross Revenue for such use.
- 4.2.4 If Licensee places empty conduit in the Public Rights-of-Way or on other City-owned property for services other than those listed in Section 4.2.1, Licensee must pay the lesser amount of: (i) \$2.46 (for calendar year 2022) per linear foot for trench located in the Public Rights-of-Way or on other City-owned property; or (ii) two percent (2%) of Gross Revenue for such use.
- 4.2.5 On the annual anniversary of the Effective Date, Licensee will report to the City the amount of linear feet of trench, if any, or the amount of Gross Revenue, if any, subject to the Annual Fee under Sections 4.2.2, 4.2.3, or 4.2.4 permitted and installed in the Public Rights-of-Way or on



other City-owned property. The Annual Fee for the coming year will be adopted as part of the annual fee schedule adopted by the City Council. If the Annual Fee is based on the amount of linear feet of trench located in Public Rights-of-Way or on City-owned property, the Annual Fee is calculated by multiplying the current annual per linear foot fee, as adjusted by annual CPI under section 4.2.7 for the year of payment, by the linear footage of trench permitted or installed in the Public Rights-of-Way or on other City-owned property. If the Annual Fee is based on Gross Revenue, Licensee will report the amount of Gross Revenue generated during the twelve (12) consecutive months prior to the anniversary date of the Effective Date and multiply this amount by two percent (2%). The Licensee must pay, and the City must receive, any Annual Fee that is due before the City will issue any new encroachment permits for additional facilities or equipment in the Public Rights-of-Way or other City-owned property.

- 4.2.6 In the event Licensee cancels or returns a permit and does not construct or install the System approved by such a permit, the fees Licensee previously paid for the respective permit may be applied as a credit to a future Annual License Fee or may be refunded to Licensee by City.
- 4.2.7 When the Annual Fee is paid on a per linear foot of trench basis, the Annual Fee will be adjusted based on the percentage of change in the consumer price index ("CPI") for the previous twelve-month period. An increase in the Annual Fee paid on a per linear foot of trench is defined as the "Adjusted Fee." The Adjusted Fee does not apply to the Annual Fee calculated as a percentage of Gross Revenue, which percentage will remain the same for the entire term of this License as renewed from time to time. For purposes of this License, CPI is defined as the Western Region Consumer Price Index for All Urban Customers, All Items, as published by the Bureau of Labor Statistics (BLS), United States Department of Labor. Base period 1982-84 = 100. Adjusted Fees will be effective upon the next subsequent anniversary of the Effective Date. The change in CPI will be calculated based on the change in the CPI for the previous twelve-month period. In no event may the Adjusted Fee be less than the Annual Fee for the prior year when the Annual Fee is paid on a per linear foot of trench basis. The City will compute the Adjusted Fee as follows. The following example illustrates calculation of the change factor for a twelve-month period ending in January 2018.

CPI January 2018	258.638
CPI January 2017 (prior year)	250.814
Calculated change in CPI	$258.638/250.814$
Change in CPI	$1.031$ (rounded to nearest tenth) = 3.1%

If the BLS ceases publication of the specified CPI, City and Licensee may determine an agreeable inflation index that most clearly approximates the Western Region CPI for the remaining term of the License.

- 4.2.8 Licensee may identify and collect, as a separate item on the regular bill of any customer receiving the Communication Services that customer's pro rata amount of the Annual Fee.
- 4.3 License to Use City's Freeway Ducts and Conduit. If Licensee wishes to occupy one (1) four-inch (4") conduit owned by the City within the duct bank underneath a freeway located within the City and which City controls, Licensee must pay the City \$18,000 per year for the term of this License for this use, beginning on the year such conduit is reserved for Licensee's use. Licensee may use the conduit solely to install and operate the System authorized under the terms and conditions of this License. Licensee's payment for use of the duct is due on or before the Effective Date and each annual anniversary thereafter. Licensee's use of the City's Freeway conduit(s) must be reflected in Exhibit A, or otherwise be approved by the City in writing.
- 4.4 In Kind. This License does not currently require any in-kind payment to City by Licensee. City may, but is not obliged to, accept in-kind consideration in lieu of the Annual Fee if offered by Licensee. However, if Licensee has not paid any fees required under Section 4, the Parties may agree in writing to new in-kind payments to offset

to any fees not paid by Licensee. This subsection imposes no obligation on the City to agree to offset any fees in this License or in any future License.

4.5 Failure to Pay. Licensee agrees that if it fails to pay the Annual Fee owed to the City by the time prescribed for payment, Licensee must pay interest on the amounts owed, at the rate of one percent (1%) per month.

4.6 Invoice and Payment Information:

4.6.1 The City will send invoices for fees and charges under this License to Licensee at the following address:

Google Fiber

1600 Amphitheatre Parkway

Mountain View, CA 94043

Email: [googlefibernotices@google.com](mailto:googlefibernotices@google.com),

CC: [financehelp@google.com](mailto:financehelp@google.com), [legal-notices@google.com](mailto:legal-notices@google.com)

4.6.2 Licensee will send payment to the City under this License made payable to the "City of Chandler" at the following address:

City of Chandler

ATTN: Development Services

Mail Stop 403

P.O. Box 4008

Chandler, AZ 85244-4008

Phone: 480-782-3000

Email: [tuf@chandleraz.gov](mailto:tuf@chandleraz.gov)

4.7 Taxes. Licensee must obtain any required business/sales tax licenses and pay any applicable City, county, and state transaction privilege and use tax. The Annual Fee must not be an offset to the transaction privilege tax due and owing by Licensee.

4.8 Permit Fees and Construction Costs. In addition to the fees and taxes set forth herein above, Licensee must pay those fees and charges for encroachment permit applications, inspection, testing, plan review, pavement damage fees, and any other fees adopted by City and applicable to persons doing work in the Public Rights-of-Way or on other City-owned property. Additionally, if the City reasonably requires retaining outside inspectors or other persons to review and inspect Licensee's plans, specifications and construction of the System, Licensee must reimburse the City for its actual and documented costs incurred in connection therewith.

4.9 Letter of Credit or Cash Bond.

4.9.1 Amount; Purpose. Within thirty (30) Days after the Effective Date of this License, Licensee must deposit with the City one of the following: (i) an irrevocable letter of credit ("LOC") in the amount of \$50,000 ("LOC"); or (ii) a cash bond in the amount of \$50,000 ("Bond"). The form and substance of the LOC or Bond must be substantially similar to the form, terms, and conditions as attached in Exhibit "B". The LOC or Bond will be used to assure: (a) the faithful performance by Licensee of all provisions of this License; (b) compliance with all orders, permits, and directions of any City department having jurisdiction over Licensee's acts or defaults under this License; and (c) Licensee's payment of any penalties, liquidated damages, claims, liens, and taxes due to the City that arise by reason of the construction, operation, or maintenance of the System, including cost of removal or abandonment of any of Licensee's property. Licensee will not be required to replenish any draw down of the LOC or Bond during the term of this License, unless by mutual written agreement of the Parties.



- 4.9.2 Drawing on Letter of Credit. The LOC may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager certifying that Licensee has failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to the City with respect to the letter of credit are in addition to all other rights of the City, whether reserved by this License or authorized by law, and no action proceeding against a letter of credit will affect any other right the City may have.
- 4.9.3 Drawing on Cash Bond. The Bond may be drawn upon by the City by presentation of written notice to Licensee as provided in this License, signed by the City Engineer certifying that Licensee has failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to the City with respect to the Bond are in addition to all other rights of the City, whether reserved by this License or authorized by law, and no action proceeding against the Bond will affect any other right the City may have.
- 4.10 Damage to Public Property. Whenever the installation, removal, or relocation of any of Licensee's System is required or permitted under this License, and such installation, removal, or relocation causes damage to Public Rights of Way or other City-owned property, Licensee at its sole cost and expense must promptly repair and return Public Property in which the System components are located to a safe and satisfactory condition in accordance with applicable laws, with provisions in the City of Chandler Utility Manual and the Maricopa Association of Governments (hereinafter referred to as "MAG") and the City's supplements to MAG, reasonably satisfactory to the City Engineer. If Licensee does not repair the Public Property as just described in a reasonable amount of time, then City shall have the option, upon fifteen (15) days prior written notice to Licensee, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the actual documented costs incurred by the City at City's standard rates, plus an administrative fee of fifteen percent (15%). Upon the receipt of a demand for payment accompanied by explanation of cost and fees incurred by City, Licensee must, within forty-five (45) days, reimburse City for such costs. For any pavement cuts by Licensee, Licensee agrees to restore the pavement and to reimburse the City for all costs arising from the reduction in the service life of any public road, in accordance with the provisions of Chapter 46 of the Chandler City Code and the fees established by the City pursuant thereto. Licensee agrees to pay within forty-five (45) days from the date of issuance of an invoice and explanation of costs and fees from City.
- 4.11 Pre-payment of Fees and Costs. Licensee agrees to make payment to City in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) for Licensee's fees and costs under this License ("Pre-payment Amount"). The Pre-payment Amount will be invoiced by the City on the date Licensee receives its first permit under this License. Licensee will pay the invoice within forty-five (45) calendar days upon receipt. City will hold the Pre-payment Amount in an account to pay any Licensee's fees and costs incurred under this License until the Pre-payment Amount is exhausted. After the Pre-payment Amount is exhausted, City will send an invoice for Licensee's fees and costs, and Licensee will pay such invoice, as set forth in this License.

## **SECTION 5. TERM OF LICENSE**

The term of this License and duration of the rights, privileges, and authorizations granted hereunder will be for five (5) years from the Effective Date. The term will automatically renew for no more than three (3) additional five-year terms for a total term not to exceed twenty (20) years unless either Party provides the other Party with prior written notice of its intent not to renew no less than six (6) months prior to the end of the current term.

## **SECTION 6. ACCEPTANCE AND EFFECTIVE DATE**

6.1 Written Acceptance. Licensee's execution of this License constitutes Licensee's acceptance of the License as granted and Licensee's agreement to be bound by and to comply with and to do everything, which is required of

the Licensee by this License. Licensee's signature must be acknowledged before a notary public. This License is effective upon execution by both Parties.

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

## SECTION 7. INSURANCE, INDEMNITY, AND LIMITATION OF LIABILITY

7.1 Insurance Responsibility. During the entire term of this License, Licensee must insure its property and activities and must provide insurance and indemnification as follows. Licensee must procure and maintain, and must cause its contractors to procure and maintain as provided in Section 7.7 below, until all their respective obligations have been discharged, insurance against claims for injury to persons or damage to property that may arise from or in connection with Licensee's obligations under this License and Licensee's activities including, but not limited to, the installation, construction, relocation, removal, repair, operation, and maintenance of the System by Licensee, its agents, representatives, employees, or contractors. The insurance requirements herein are minimum requirements for this License and in no way limit the indemnity covenants contained in this License. The City in no way warrants that the minimum limits contained herein are sufficient to protect Licensee from liabilities that might arise out of this License by Licensee, its agents, representatives, employees or contractors, and Licensee is free to purchase such additional insurance as may be determined necessary.

7.2 Minimum Scope and Limits of Insurance: Licensee must provide coverage with limits of liability not less than those stated below.

### 7.2.1 Commercial General Liability – Occurrence Form

Said insurance must also include coverage for products completed operations, independent contractors, personal injury, property damage, and advertising injury.

Products – Completed Operations Aggregate	\$10,000,000
Each Occurrence	\$10,000,000

The policy must be endorsed to include the following additional insured language: "The City of Chandler, its agents, representatives, officers, directors, officials, employees, and volunteers must be named as an additional insured with respect to liability arising out of the activities performed by Licensee." This endorsement may not contain an exclusion or limitation of completed operations coverage as regards the additional insured except with respect to the stated aggregate limits of liability. The policy may not exclude the explosion/collapse/underground ("xcu") hazard.

### 7.2.2 Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of work under this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy must contain an "MCS-90" endorsement providing for clean-up of pollution conditions arising from transported product, if the work performed under the Agreement requires the transportation of any Hazardous Substances by motor vehicle. The policy must also be endorsed to include the following additional insured language: "The City of Chandler its agents, representatives, officers, directors, officials, employees, and volunteers must be named as an additional insured with respect to liability arising out of the activities performed by Licensee, including automobiles owned, leased, hired, or borrowed by Licensee".



### 7.2.3 Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

Policy must contain a waiver of subrogation against the City of Chandler.

### 7.2.4. Pollution Liability:

Per Occurrence	\$5,000,000
Annual Aggregate	\$5,000,000

The policy must be endorsed to include the following additional insured language: "The City of Chandler its agents, representatives, officers, directors, officials, employees, and volunteers must be named as an additional insured with respect to liability arising out of the activities performed by Licensee."

The policy must include coverage for: (a) cleanup of sudden or accidental pollution conditions arising from the System, as defined in the License; (b) cleanup of new conditions arising from Licensee's operations and use of Public Rights-of- Way or City-owned property under this License and third-party claims for on and off-site bodily injury and property damage.

Licensee warrants that any retroactive date under the policy must precede the Effective Date of this License; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this License is completed.

### 7.2.5. Tech E&O, Network Security and Privacy Liability Insurance (Cyber):

Per Loss	\$10,000,000
Annual Aggregate	\$10,000,000

(a) In the event that the professional liability insurance required by this License is written on a claims-made basis, Licensee warrants that any retroactive date under the policy will precede the Effective Date of this License; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the Effective Date of this License. If such insurance is maintained on an occurrence form basis, Licensee must maintain such insurance for an additional period of one (1) year following termination or expiration of this License. If such insurance is maintained on a claims-made basis, Licensee must maintain such insurance for an additional period of three (3) years following termination or expiration of this License. If Licensee contends that any of the insurance it maintains pursuant to other sections of this clause satisfies this requirement (or otherwise insures the risks described in this section), Licensee must provide proof of same.

(b) The insurance must provide coverage for the following risks: (i) Liability arising from theft, dissemination and / or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc. information) stored or transmitted in electronic form; (ii) Network security liability arising from the unauthorized access to, use of or tampering with the System including hacker attacks, inability of an authorized third party, to gain access to your services including denial of service, unless caused by a mechanical or electrical failure; (iii) Liability arising from the introduction

of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, the System, network or similar computer related property and the data, software, and programs thereon.

(c) The policy must provide a waiver of subrogation.

7.3 Additional Insurance Requirements: The policies must contain, or be endorsed to contain, the following provisions: Licensee's insurance coverage must be primary insurance and non-contributory with respect to the obligations that Licensee has undertaken under this License. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, volunteers, and employees, for losses arising from work performed by the Licensee under this License.

7.4 Notice of Cancellation: Each insurance policy required by the insurance provisions of this License must provide the required coverage and must not be canceled or materially changed except after thirty (30) days prior written notice has been given to the City. Such notice must be sent directly to the addresses listed below and must be sent by certified mail, return receipt requested:

City of Chandler  
Attention: Development Services Department  
P.O. Box 4008, Mail Stop 405  
Chandler, Arizona 85244-4008  
Phone: (480) 782-3000  
Email: tuf@chandleraz.gov

With a copy to: Office of the City Attorney  
Attention: Risk Management  
175 South Arizona Avenue  
P.O. Box 4008 Mail Stop 602  
Chandler, Arizona 85244-4008  
Phone: (480) 782-4640  
Fax: (480) 782-4652  
Email: legal.notices@chandleraz.gov

7.5 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Licensee from potential insurer insolvency.

7.6 Verification of Coverage: Licensee must furnish City with certificates of insurance (ACORD form or equivalent approved by City) as required by this License. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences. Each insurance policy required by this License must be in effect at or prior to commencement of work under this License and remain in effect for the duration of the License. Failure to maintain the insurance policies as required by this License or to provide evidence of renewal is a material breach of this License. All certificates required by this License must be sent directly to the City of Chandler Development Services Department with a copy to Risk Management as the addresses listed in Section 7.4. The License number and description are to be noted on the certificate of insurance. At City's request, Licensee must make certified copies of all insurance policies required by this Licensee available for City's review through a representative and at a location within Maricopa County, Arizona designated by Licensee.

7.7 Contractors: Licensee's certificate(s) must include all contractors as additional insureds under its policies or contractors must maintain separate insurance as determined by Licensee and contractors must name City of Chandler as an additional insured, however, contractor's limits of liability must not be less than \$1,000,000 per occurrence, \$2,000,000 aggregate.



7.8 Approval: Any modification or variation from the insurance requirements in this License must have prior approval from the Office of the City Attorney, whose decision will be final. Such action will not require a formal contract amendment but may be made by administrative action.

7.9 Indemnity. In addition to all other indemnities and other obligations hereunder, to the fullest extent permitted by law, throughout the term of this License or any and all permits and until all obligations and performances under or related to this License are satisfied and all matters described in this paragraph are completely resolved, Licensee and all other persons using, acting, working, or claiming through or for Licensee (if they or their subcontractor, employee, or other person or entity hired or directed by them participated in any way in causing the claim in question) must jointly and severally indemnify, defend, and hold harmless City and all other Additional Insureds for, from, and against any and all claims or harm related to Licensee's use of the Public Rights-of-Way or other City-owned property or the rights granted to Licensee with respect to the Public Rights-of-Way or City-owned property or Licensee's exercise of its rights under this License (the "Indemnity"). Without limitation, the Indemnity must include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use, financial harm, or other impairment), damages, losses, expenses, penalties, fines, or other matters (together with all reasonable attorney fees, court costs, and the cost of appellate proceedings and all other costs and expenses of litigation or resolving the claim) that may arise in any manner out of Licensee's use of the Public Rights-of-Way or other City-owned property pursuant to this License or any and all Permits, or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this License by Licensee, including without limitation any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents, or other persons upon or using the Public Rights-of-Way or other City-owned property or surrounding areas related to Licensee's exercise of its rights under this License, except to the extent caused by City or any other Additional Insured or anyone for whose mistakes, errors, omissions, or negligence City may be liable. Notwithstanding the foregoing, the Indemnity does not apply to: (i) Claims arising from the sole negligence or intentionally wrongful acts of City; or (ii) Claims that the law prohibits from being imposed upon the indemnitor.

7.9.1 Exclusions. Licensee's indemnity obligation will not apply to the extent the underlying allegation arises from or is related to the negligence or willful misconduct of City.

7.9.2 Conditions. Licensee's indemnity obligation is conditioned on the following: (a) City must promptly notify Licensee in writing of the third party legal proceeding and any allegation(s) that preceded the third party legal proceeding no later than fifteen (15) days after City became aware of the third party legal proceeding; (b) City must reasonably cooperate in the defense at Licensee's request; and (c) City must tender sole control of the indemnified portion of the third party legal proceeding, subject to the following: (i) City may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring City to admit liability, pay money, or take (or refrain from taking) any action, will require City's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

7.10 Risk of Loss. Licensee assumes the risk of all loss, damage or claims related to Licensee's use of the Public Rights-of-Way or other City-owned property, Licensee or third parties throughout the term of this License and the term(s) of all permits. Licensee must be responsible for all damage to its property and equipment related to this License unless caused by the negligence of the City or its agents or contractors.

7.11 Insurance to be Provided by Others. Licensee must cause its contractors or other persons occupying, working on or about, or using the Public rights-of-Way or City-owned property under this License to be covered by their own or Licensee's insurance as required by this License. The required policy limits for commercial general liability insurance provided by such persons must be \$1,000,000 for each occurrence, \$1,000,000 for products and completed operations annual aggregate, and \$2,000,000 general aggregate limit per policy year. This paragraph does not apply to persons who do not actually perform physical labor in the Public Rights-of-Way or on other City-owned property (such as Licensee's consulting design engineers).



7.12 Limitation of Liability. To the extent permitted by law, neither party will be liable to any third parties for any indirect, special, incidental, consequential, exemplary, or punitive damages arising out of or related to this License.

## **SECTION 8. TRANSFER OF LICENSE**

8.1 No Assignment Without Consent. This License and the related rights and privileges may not be assigned or otherwise transferred without the express written consent of the City by an ordinance or resolution passed by the Chandler City Council, which consent will not be unreasonably withheld or delayed. Any license that is assigned or otherwise transferred pursuant to this Section must be equally subject to all the obligations and privileges of this License including any amendments, which will remain in effect, as if the assigned License was the original License.

8.2 No Lease Without Consent. The License must not be sublet or assigned, nor must any of the related rights or privileges be leased, assigned, sold, or transferred, either in whole or in part, nor must title, either legal or equitable, or any right, or property interest pass to or vest in any person other than Licensee, by act of the Licensee or operation of law, without the written consent of City, which consent will not be unreasonably withheld or delayed. Prior to any proposed assignment becoming final, Licensee must seek the City's consent.

8.3 Notice to City. The approval of any change in ownership interest must include an assignment agreement signed by the assignee, Licensee, and City. Licensee must provide City a copy of the deed, license, mortgage, lease, or other written instrument evidencing such sale, transfer, or lease, certified, and sworn to as correct by the Licensee. Licensee must notify the City within 60 days of any change in mailing address.

8.4 Binding on Assignee. After assignment, this License, including any amendments, shall be binding on the assignee to the full extent that is binding upon Licensee.

8.5 Conditional Ownership. Nothing in this Section prohibits a pledge, hypothecation, mortgage, or similar instrument transferring conditional ownership of all or part of Licensee's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of Licensee, the lender may assume the rights and obligations of the Licensee. The Lender may not transfer or change control of the License without submitting the change to the City for approval. If the lender does continue operation on any basis at any time, the lender shall be subject to all provisions of the License. No later than three years after assumption of control by the lender, the lender must apply to the City for the right to continue assumption of control or to transfer the License. Application by the Lender for approval of assumption of control or transfer must be subject to consent by the Chandler City Council that may not be unreasonably denied or withheld. A "Lender" for the purposes of this License does not include a Licensee, person, or corporation, or other entities that operate cable television systems or fiber optics Communications systems as a principal or important business. This paragraph is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the License without City Council review and approval.

8.6 Assignment Exceptions. Notwithstanding the foregoing, prior consent will not be required for transfer to (1) any company which owns or controls, is owned or controlled by, or under common control with the Licensee; (2) to any successor in interest of Licensee's business operations in City in connection with any merger, acquisition, or similar transaction if Licensee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Agreement; or (3) to any purchaser of all or substantially all of Licensee's Network Facilities in City if the purchaser has the resources and ability to fulfill the obligations of this Agreement. Provided that, no such transfer will be valid unless:

8.6.1 The proposed transferee has read, accepts, and agrees to be bound by the terms of the License.

8.6.2 The proposed transferee assumes all obligations, liabilities, and responsibility pursuant to the License for the acts and omissions of Licensee, known and unknown, for all purposes, and agrees that the transfer will not permit it to take any position or exercise any right which Licensee could not have exercised; and

8.6.3 The transfer will not substantially diminish the financial resources available to the Licensee.

8.7 Transfer Description. After executing such transfer described in this Section, Licensee and the proposed transferee must submit to the City a description of the nature of the transfer and submit complete information regarding the effect of the transfer on the direct and indirect ownership and control of the Licensee. Licensee may be required to pay a new application fee of \$3,000 to cover the legal, administrative, and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer.

## **SECTION 9. NON-EXCLUSIVE RIGHTS**

9.1 Non-Exclusive Rights. This grant is not exclusive, and nothing herein contained may be construed to prevent City from granting other like or similar grants or privileges to any other person, firm, or corporation, or to deny to or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

9.2 Priority Rights. Any and all rights granted to Licensee under this License must be exercised at Licensee's sole cost and expense and are subject to the prior and continuing right of City to use all the Public Rights-of-Way and other City-owned property concurrently, with any other person or persons, and further will be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title that may affect the Public Rights-of-Way and on other City-owned property. Nothing in this License will be construed to grant, convey, create, or vest a perpetual real property interest in land to Licensee, including any fee or leasehold interest, easement, or any franchise rights.

## **SECTION 10. PUBLIC SAFETY**

10.1 Public Safety Violation. Licensee, its affiliates, agents, employees, contractors, successors, assigns, and representatives must comply with and perform each obligation required of Licensee as set forth in this License. Licensee's failure to cure a public safety event of default as described in this Section within five (5) business days from the date of notice from the City constitutes a public safety violation by Licensee.

10.2 Public Safety Events of Default. All agreements and permits issued to Licensee under this License are approved upon the condition that each of the following events will be deemed a "Public Safety Event of Default" for Licensee's failure to perform or satisfy the following material obligations:

10.2.1 Licensee's failure to comply with the traffic barricade manual or any other public health, safety, or welfare law or regulation authorized by or located in the Chandler City Code and that applies to Public Property.

10.2.2 Licensee's acts, errors, or omissions violate any term or condition of an encroachment permit issued to Licensee.

10.2.3 Licensee's failure to obtain the appropriate encroachment permit to perform work on Public Property.

10.3 City's Remedies for Licensee's Public Safety Violations. Upon the occurrence of any public safety violation or at any time thereafter, City may, at its option, exercise at Licensee's expense any or all or any combination of the following cumulative remedies in any order and repetitively at City's option: (i) revoke any or all encroachment permits due to Licensee's failure to cure a Public Safety Event of Default as set forth in Section 10.1. The City's revocation does not terminate Licensee's obligations arising during the time simultaneous with or prior to the revocation, and in no way terminates any of Licensee's liability related to any breach of this License; (ii) pay or perform, for Licensee's account, in Licensee's name, and at Licensee's expense, any or all payments or performances required to be paid or performed by Licensee (iii) abate at Licensee's expense any violation of the encroachment permit; (iv) notwithstanding anything under this License to the contrary, unilaterally and without Licensee's or any other person's consent or approval, draw upon, withdraw or otherwise realize upon or obtain the value of any letter of credit, escrowed funds, insurance policies, or other deposits, sureties, bonds, or other funds or security held by City or pledged or otherwise obligated to City by Licensee or by any third party (whether or not



specifically mentioned herein) and use the proceeds for any remedy permitted by this License; (v) assert, exercise, or otherwise pursue at Licensee's expense, up to the Public Safety Violation Maximum Total Liability (as defined below), any and all other rights or remedies, legal or equitable, to which City may be entitled, subject only to the limitation set out below on City's ability to collect money damages in light of the Violation Use Fee; and (vii) impose civil sanctions for public safety violations as provided in this License.

10.4 Violation Use Fee. In lieu of certain money damages (the "Inconvenience Costs") set out below, the following use fees apply to Licensee's public safety violation (the "Violation Fee Provisions"): (i) The Inconvenience Costs are the money damages that City suffers in the form of administrative cost and inconvenience, disharmony among competing users, and general inconvenience in the use of Public Rights-of-Way by City, competing users, and the public when Licensee fails to comply with the Violation Fee Provisions; and (ii) Licensee's failure to comply with Violation Fee Provisions will result in Inconvenience Costs in an amount that is and will be impracticable to determine. Therefore, the Parties have agreed that, in lieu of Licensee paying to City as damages the actual amount of the Inconvenience Costs for violating the Violation Fee Provisions, Licensee must pay the following Violation Use Fees. The City may elect to draw upon the letter of credit or cash bond (as appropriate) to collect the Violation Use Fee. For continuing violations within a 24-hour period, each calendar day is considered a separate period for purposes of recovery of violation use fees. The Violation Fee Provisions and the amount of the Violation Use Fee per day or part thereof are as follows:

Use fee per day	Violation Use Fee Description
\$600	Licensee's failure to properly restore Public Property within five (5) business days after notice, or timely perform work within five (5) business days after notice, or to correct related violations of specifications, code, ordinance, or standards within five (5) business days after notice.
\$500	Three or more public safety violations by Licensee within 90 consecutive days.
\$250	Licensee's failure to make Licensee's books and records available as required by this License or one or more public safety violations by Licensee within 30 consecutive days.

A Violation Use Fee is only intended to remedy inconvenience costs that City suffers because of Licensee's public safety violations. Licensee's payment of Violation Use Fee does not in any way excuse any breach by Licensee of this License or limit in any way City's rights and interests in any other legal or equitable remedy provided by this License or otherwise for such public safety violation. For example, Licensee's obligation to pay Violation Use Fee does not in any way satisfy Licensee's indemnity and insurance obligations under this License, which apply according to their terms in addition to Licensee's obligation to pay Violation Use Fee.

10.5 Enforcement of Violation Use Fees: Appeal. The City Manager is authorized to issue notices of violation of this License and may take those measures necessary to promote, preserve, and protect public health, safety, and welfare within the Public Rights-of-Way and City-owned property through Violation Use Fees. The City Manager will issue a warning for the first violation by a Licensee under this section. The City Manager will issue notice to the Licensee as listed in Section 14.16. If the City determines that Licensee is liable for a Violation Use Fee, the City will issue to Licensee a notice of City's assessment of a Violation Use Fee to Licensee as provided in Section 14.16. The notice will set forth the nature of the violation and the amount of the assessment. Licensee must pay the Violation Use Fee within ten days of the date of the City's notice or may appeal the notice of violation as provided in Chandler City Code § 1-7.

10.6 Public Safety Violations: Civil Sanctions. In addition to imposing a Violation Use Fee, the City Manager is authorized to issue notices of violation of this License, prosecute such violations as provided in Chandler City Code sec.1-8, and may take those measures necessary to promote, preserve, and protect public health, safety, and welfare within the Public Rights-of-Way and City-owned property. The City Manager will issue a warning for the first violation by a Licensee under this section. The City Manager will issue notice to the Licensee as listed in Section 14.16.



10.7 Failure to Pay Civil Sanction. Failure of a party to pay a civil sanction upon final adjudication of the civil action as provided by law may result in the automatic termination of this License and any such party may be prohibited from obtaining additional licenses or permits until all outstanding civil sanctions have been dismissed or paid in full.

10.8 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this License. No failure by City to demand any performance required of Licensee under this License, and no acceptance by City of any imperfect or partial performances under this License, will excuse such performance or impair in any way City's ability to insist, prospectively and retroactively, upon full compliance with these terms and conditions. No acceptance by City of payments or other performances hereunder will be deemed a compromise or settlement of any right City may have for additional, different, or further payments or performances as provided for in these terms and conditions. Any waiver by City of any breach of condition or covenant herein contained to be kept and performed by Licensee will not be deemed or considered as a continuing waiver and will not operate to bar or otherwise prevent City from declaring a default for any breach or succeeding or continuing breach either of the same condition or covenant or otherwise. No statement, bill, or notice by City or Licensee concerning payments or other performances due hereunder, or failure by City to demand any performance hereunder, will excuse Licensee from compliance with its obligations nor estop City (or otherwise impair City's ability) to, at any time, correct such notice and/or insist prospectively and retroactively upon full compliance with this License. No waiver of any description (including any waiver of this sentence or paragraph) will be effective against City unless made in writing by a duly authorized representative of City specifically identifying the particular provision being waived and specifically stating the scope of the waiver.

10.9 Reimbursement of City's Expenses. Licensee must pay to City within 45 days after City's demand all amounts expended or incurred by City in performing Licensee's obligations (upon Licensee's failure to perform the same after notice from City) together with interest thereon at the rate of 1% per annum from the date expended or incurred by City.

10.10 Maximum Liability Under Section 10. Licensee's maximum total liability ("Maximum Total Liability") for all costs and fees issued under this Section 10 will be \$50,000 during the term of this License; provided, however, this does not limit any of the other remedies the City may seek under the License.

## **SECTION 11. ABANDONMENT**

11.1 Abandonment; Removal of Facilities. In the event that the use of a substantial part of any of the System is discontinued for any reason for a continuous period of two (2) years for reasons other than Force Majeure, or in the event such System or property has been installed in any Public Rights-of-Way or other City-owned property without complying with the requirements of this License, or this License has terminated or been revoked, Licensee must promptly, upon being given 60 days' notice from the City, begin removal of the System and related appurtenances from the Public Rights-of-Way and other City-owned property other than such underground facilities which the City may permit to be abandoned in place. In the event of such removal, Licensee must promptly restore the Public Rights-of-Way and other City-owned property or other area from which such property has been removed to a condition satisfactory to the City subject to the City's customary practice to review upon request of Licensee. As a minimum, Licensee must restore the Public Rights-of-Way and other City-owned property to a condition as existed prior to the removal of the structure or property.

11.2 Permanent Abandonment. The System and any other property of Licensee remaining in the Public Rights-of-Way and other City-owned property without the consent of the City 180 days after the revocation of the License will be at the option of the City considered permanently abandoned. Any Licensee property permitted to be abandoned in place will be abandoned consistent with C.C.C. §§ 46-2.9, 46-8.12(K), the Utility Permit Manual, Transportation and Development Policy TDP-275, and any other applicable law.

## **SECTION 12. LICENSE REVOCATION, ALTERATION, SUSPENSION**



In addition to the remedies set forth in Section 10, the City may revoke, alter, or suspend this License as follows.

12.1 License Events of Default. In addition to the remedies listed in C.C.C. chapter 46 and subject to these terms and conditions, this License may, after City Council consideration, be revoked, altered, or suspended by the City as the City deems necessary for any of the following events of default following the cure period specified in Section 12.2: (i) Licensee's failure to maintain any faithful insurance coverage, or pay any fees or taxes due and owing as required under this License; (ii) Licensee's failure to comply with an applicable law, rule, or regulation related to the System, this License, or as required by the appropriate regulatory authority; (iii) fraud by Licensee, in its conduct or relations under this License; (iv) Licensee's willful or grossly negligent violation of this License; (v) Licensee's failure to comply with any federal, state, local, or administrative order, law, permit, regulation, or consent decree as such may apply to Licensee's activities and services as contemplated in this License; (vi) permanent or temporary suspension of Licensee's services for a period of 180 or greater consecutive calendar days by the United States or the State of Arizona for any authorizations legally required for Licensee to own, operate, maintain, or construct the System; (vii) If Licensee is the subject of a voluntary or involuntary bankruptcy, receivership, insolvency, or similar proceeding or if any assignment of any of Licensee's property is made for the benefit of creditors or if Licensee is not regularly paying its debts as they come due; (viii) If City incurs any liability, obligation, damage, cost, expense, or other claim of any description for which is not liable and for which Licensee is obligated pursuant to this License to indemnify, defend, and hold harmless the City, unless Licensee gives prompt statement or notice to City of Licensee's commitment to indemnify, defend, and hold City harmless against such claim and Licensee does in fact promptly commence and continue to indemnify, defend, and hold City harmless against such claim to the extent required under this License, unless Licensee believes in good faith that it is not obligated to indemnify, defend and hold the City harmless; and (ix) Licensee is found liable under Section 10 for five (5) public safety violations within a period of twelve (12) consecutive months.

12.2 Additional Cure Period. Due to the gravity of the license events of default listed in Section "12.1", Licensee is provided additional time (when compared to Section 10) to cure these events of default. If any of the foregoing events in Section "12.1" occur, Licensee must cure the default within 60 days after receipt of notice from the City. Licensee will be held in material breach under this Section "12": (i) if Licensee fails to cure the license event of default listed in Section "12.1" within 60 days after notice from the City; or (ii) if a license event of a default listed in Section "12.1" cannot be cured within 60 days after notice from the City and Licensee fails to begin and diligently pursue to cure the default.

12.3 City Determination; City Council Consideration. If Licensee is held in material breach as provided in Section "12.2", the City will notify Licensee as provided in Section 14.16 of the City's determination to terminate, postpone for a period, or proceed with the revocation, alteration, or suspension of this License. As part of this determination, the City will state the principal reasons that support the City's determination. Licensee may appeal the City's determination as provided in Chandler City Code sec. 1-7 within (10) ten business days from the date of the determination. If Licensee fails to timely appeal the City's determination or if Licensee's appeal fails, the City may proceed to terminate, postpone for a period, or proceed with the revocation, alteration, or suspension of this Agreement by presenting this matter to the Chandler City Council for consideration at the Council's next regularly scheduled Council meeting. The City will send a written statement of proposed action by certified U.S. mail, return receipt requested, to Licensee as provided in Section 14.16. The written statement of proposed action must include the date and time of the City Council meeting and the principal reasons for the proposed action. The City Council may take any final action the Council deems necessary and prudent related to this License. Licensee will retain all legal remedies should it choose to contest the City's proposed action.

12.4 Removal of Facilities. Upon revocation of this License, the City may declare a forfeiture, whereupon all rights and privileges of Licensee under this License will immediately be divested without a further act upon the part of Licensee, and Licensee must remove its structures or property from the Public Rights-of-Way and other City-owned property and restore the Public Rights-of-Way and other City-owned property to the condition as existed prior to the removal of the structure or property. Upon Licensee's failure to do so within six months of revocation, the City may perform the work and collect the City's cost from Licensee. At the City's option, Licensee may abandon structures or property in place as provided in this License. At a minimum, the Public Rights-of- Way and other City-owned property must be restored to a condition as existed before the removal of the structures or property.



### SECTION 13. EFFECT OF EXPIRATION, REVOCATION, OR TERMINATION OF LICENSE

13.1 Services. Upon expiration, revocation, or termination of this License for any reason, Licensee may enter good-faith negotiations with the City or other governmental authority for a period of 180 days from the date of expiration, revocation, or termination to obtain a license, permit, or other approval or agreement that may be lawfully required to allow Licensee to continue use of the Public Rights-of-Way and other City-owned property.

13.2 Holding Over. In any circumstance whereby Licensee continues to occupy the Public Rights-of-Way and other City-owned property after the expiration of this License, the Licensee's hold over operates as a renewal or extension of this License on a month-to-month basis that may be terminated at any time by the City upon 60 days' written notice to Licensee, or by Licensee upon 60 days' written notice to the City.

13.3 Termination by Licensee. Licensee may terminate this License for convenience upon one hundred eighty (180) days' written notice to City.

### SECTION 14. GENERAL CONDITIONS

14.1 License Administrator and Enforcement. In all matters of License administration, the City Manager has authority to determine Licensee's compliance with the terms and provisions of the License, and in the event of non-compliance, to exercise any or all the remedies included in this License.

14.2 Right of Inspection of Construction. The City may inspect all construction or installation work performed subject to the provisions of this License and to make such tests as it deems necessary to ensure compliance with the terms of this License and other pertinent provisions of law.

14.3 Right of Intervention. The City may intervene in any suit or proceeding related to or arising out of this License to which Licensee is party, and Licensee may not oppose such intervention by the City.

14.4 Public Records Acknowledgment. Notwithstanding any provision in this License, Licensee acknowledges and understands that the City is a political subdivision of the State of Arizona and is subject to the disclosure requirements of Arizona's Public Records Law (A.R.S. §§ 39-121 et seq.).

14.5 Permission of Property Owner Required. This License does not convey the right to install any part of Licensee's System on private property.

14.6 Compliance With Laws. Licensee must comply with all federal, state, and City ordinances, resolutions, rules, and regulations related to the rights and duties granted Licensee under this License.

14.7 Reserved.

14.8 Non-Enforcement by the City. Licensee will not be relieved of its obligation to comply with any of the provisions of this License by reason of the City's failure to insist upon or to seek compliance with any term and condition.

14.9 License Documents. Licensee must submit to the City the letter of credit and insurance certificates as required by the License within 90 days of the Effective Date. The License granted is not legally operative until all of Licensee's requirements in this Section are completed. In the event Licensee does not timely satisfy these, this License will be deemed null and void unless Licensee's period to comply is extended by the Council.

14.10 Survival of Warranties. Licensee's representations and warranties made as part of the grant of this License, or any permit issued under this License survive termination or revocation of this License.

14.11 Hazardous Substances. Licensee will, at its own cost, be responsible for proper investigation and management of all Hazardous Substances under its control, including Hazardous Substances Licensee uses, generates, or disposes of, and must comply with all Environmental Laws to carry out its obligations under this

License. In the event Licensee releases to the environment Hazardous Substances under its control, to the extent that a governmental agency with jurisdiction requires reporting, investigation, cleanup, or remedial measures to be taken, Licensee must, at its sole cost and expense, promptly undertake such required actions. If Licensee discovers a Pre-existing Environmental Condition, Licensee will immediately notify the City in writing as provided in Section 14.16.

14.12 Right of Cancellation. Licensee acknowledges that this License is subject to cancellation by the City under A.R.S. § 38-511.

14.13 Covenant Against Contingent Fees. Licensee warrants that no person has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and that no member of the City Council, or any employee of the City has any interest, financially or otherwise, in this License. For breach or violation of this warranty, the City has the right to annul this License without liability or at its discretion to deduct from the License price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

14.14 Independent Contractor. Any provision in this License that may appear to give the City the right to direct Licensee or Licensee the right to direct the City as to the details of accomplishing the work or to exercise a measure of control over the work means that the party will follow the wishes of the other party as to the results of the work only.

14.15 Jurisdiction; Governing Law; Venue. As a condition of the grant of this License, Licensee acknowledges and accepts that Licensee is subject to personal and subject matter jurisdiction of Arizona state courts. Arizona law governs this License, both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding to enforce this License must be instituted in a court located in Maricopa County, Arizona.

14.16 Delivery, Procedure of Notices and Communications. All notices, consent, or other communication under this License must be in writing and: (i) delivered in person; or (ii) sent by electronic mail and deposited in the United States mail, postage prepaid, certified mail, return receipt requested; or (iii) deposited with any commercial air courier or express service and addressed as follows:

To Licensee: Google Fiber  
1600 Amphitheatre Parkway 94043  
Email: [googlefibernotices@google.com](mailto:googlefibernotices@google.com);  
with a copy to [legal-notices@google.com](mailto:legal-notices@google.com)

To the City: City of Chandler  
Attention: Development Services Department  
P.O. Box 4008, Mail Stop 405  
Chandler, Arizona 85244-4008  
Phone: (480) 782-3000  
Email: [tuf@chandleraz.gov](mailto:tuf@chandleraz.gov)

With a copy to: Office of the City Attorney  
175 South Arizona Avenue  
P.O. Box 4008 Mail Stop 602  
Chandler, Arizona 85244-4008  
Phone: (480) 782-4640  
Fax: (480) 782-4652  
Email: [legal.notices@chandleraz.gov](mailto:legal.notices@chandleraz.gov)

Notice will be deemed received at the time it is personally served on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) calendar days after the notice is deposited in the United States mail as evidenced by the certified mail receipt. Any period stated in a notice will be computed from the time the notice is deemed received unless noted otherwise. Any party may change its mailing address, phone



number, email address or the person to receive notice by notifying the other party as provided in this Section. Notices sent by electronic mail must also be sent by certified mail to the recipient at the above address.

14.17 Organization/Employment Disclaimer. This License is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, agreement, or relationship, partnership, or formal business organization of any kind, and the rights and obligations of the Parties will be only those expressly set forth in this License.

14.18 Entire Agreement; Amendment; Waivers. This License, and the below listed exhibits which are incorporated herein by this reference and are attached and/or on file at the City and available for inspection, constitute the entire agreement between the City and Licensee with respect to the transactions contemplated therein and supersede all prior negotiations, communications, discussions, and correspondence, whether written or oral, concerning the subject matter hereof. No supplement, modification, or amendment of any term of this License will be deemed binding or effective unless executed in writing by the Parties. No waiver of any of the provisions of this License will be deemed, or will constitute, a waiver of any other provisions, whether similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless expressly executed in writing by the Party making the waiver.

Exhibit A – Service Area  
Exhibit B – Form Letter of Credit

14.19 Right of Parties. Nothing in this License, whether express or implied, is intended to confer any right or remedies under or by reason of this License on any persons other than the Parties to this License and their respective successors and permitted assigns, nor is anything in this License intended to relieve or discharge any obligation or liability of any person who is not a party to this License, nor will any provisions in this License give any persons not a party to this License any right of subrogation or action over or against any Party to this License.

14.20 Construction. This License is the result of negotiations between the Parties, none of whom has acted under any duress or compulsion, whether legal, economic, or otherwise. Accordingly, the terms and provisions of this License will be construed in accordance with their usual and customary meanings. The Parties hereby waive the application of any rule of law that otherwise would be applicable in connection with the construction of this License that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed License or any earlier draft of the same. Unless the context of this License otherwise clearly requires, references to the plural include the singular and the singular the plural. The words "hereof," "herein," "hereunder" and similar terms in this License refer to this License as a whole and not to any particular provision of this License. All references to "Sections" herein refer to the sections and paragraphs of this License unless specifically stated otherwise. The section and other headings contained in this License are inserted for convenience of reference only, and they neither form a part of this License nor are they to be used in the construction or interpretation of this License.

14.21 Severability. If any covenant, condition, term, or provision of this License is held to be illegal, or if the application of this License to any person or in any circumstances to any extent be judicially determined to be invalid or unenforceable, the remainder of this License or the application of such covenant, condition, term, or provision to persons or in circumstances other than those to which it is held invalid or unenforceable, must not be affected, and each covenant, term, and condition of this License is valid and enforceable to the fullest extent permitted by law.

14.22 Cooperation and Further Documentation. Each of the Parties agree to provide the other with such additional and other duly executed documents as are reasonably requested to fulfill the intent of this License.

14.23 Force Majeure. For the purpose of any of the provisions of this License, neither Licensee nor the City, as the case may be, will be considered in breach of or in default of their obligations under this License as a result of the enforced delay in performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to: acts of God, acts of the public enemy, acts of the Federal Government, acts of the Salt River Project, acts of Maricopa County, acts of the State of Arizona or any of its departments, acts of any railroad, fire, floods, epidemics, pandemics, strikes, lock outs, freight embargoes, and unusually severe weather; it being the purpose and intent of this provision that in the occurrence of any such



enforced delay, the time for performance of Licensee's and the City's obligations, as the case may be, will be extended for the period of the enforced delay, provided that the party seeking the benefit of this provision will have notified the other party in writing of the cause or causes, and requested an extension for the period of the enforced delay. If notice by the party claiming such extension is sent to the other party more than 30 days after commencement of the cause, the period of delay will be deemed to commence 30 days prior to the giving of such notice.

14.24 On-Call Assistance. Licensee must be available 24 hours a day, seven days a week to City staff of any City department with jurisdiction over Licensee's activities related to problems or complaints resulting from the installation, operation, maintenance, or removal of the System.

14.25 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any party who fails, or whose contractors fail, to comply with A.R.S. § 23-214(A). Therefore, Licensee and each contractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of this License and may be subject to penalties up to and including revocation of the License. City retains the legal right to inspect the papers of Licensee's or contractor's employees who provide services under this License to ensure that Licensee and its contractors comply with this warranty.

14.26 Lawful Presence Requirement. A.R.S. §§ 1-501-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

14.27 Written Acceptance. Licensee's execution of this License constitutes Licensee's acceptance of this License as granted and its agreement to be bound by and to comply with the terms and conditions of this License. Licensee's signature must be acknowledged by Licensee before a notary public.

14.28 Data Confidentiality and Data Security. As used in this License, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to Licensee as part of the terms and conditions of this License. Except as specifically provided in this License, the Parties must not divulge data to any third party without the other Party's prior written consent. These prohibitions do not apply to the following data: (i) data which was known to the receiving Party prior to the Effective Date; or (ii) data which was acquired by the receiving Party in its performance under this License and which was disclosed to the receiving Party by a third party, who to the best of the receiving Party's knowledge and belief, had the legal right to make such disclosure and the receiving Party is not otherwise required to hold such data in confidence; or (iii) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Parties are subject. Each Party assumes all liability to maintain the confidentiality of the data in its possession and agrees to compensate the other Party if any of the provisions of this Section are violated by the receiving Party, its employees, agents, or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court.

14.29 Reserved.

14.30 Public Emergency. City shall have the right, because of a public emergency, to sever, disrupt, dig-up or otherwise destroy facilities of Licensee without any prior notice to Licensee, if the action is deemed reasonably necessary by the City Manager, Fire Chief, Police Chief, City Street Transportation Director, Public Works Director or Water Services Director. A public emergency may be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the residents of the City or others caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc. Licensee will be notified by the City of the public emergency and the

action taken by the City as soon as reasonably possible. Licensee shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by City.

14.31 Blue Stake. Licensee must comply with A.R.S. §§ 40-360.21-360.32 by participating as a member of the Arizona Blue Stake Center with the necessary records and persons to provide location service of Licensee's facilities upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days. A copy of the License or proof of membership must be filed with the City.

14.32 Inspection and Audit of License Provisions. All books, accounts, reports, files, and other records related to or arising out of Licensee's payment obligations under this License (collectively "Records") are subject at all reasonable times to inspection and audit by the City including for three years after the expiration or termination of this License. Licensee must produce the Records at a mutually agreed to time and location within Maricopa County, Arizona.

14.33 Authority. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter, and bind such party to the commitments and obligations set forth herein.

**IN WITNESS WHEREOF**, the Parties duly execute and agree to be bound by this License as of the Effective Date.

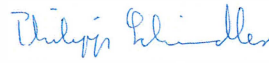
**CITY OF CHANDLER**, an Arizona municipal corporation

**GOOGLE FIBER ARIZONA, LLC**, an Arizona limited liability company, doing business as **GOOGLE FIBER**

\_\_\_\_\_  
Mayor

By: \_\_\_\_\_

\_\_\_\_\_  
Name

  
Philipp Schindler  
Authorized Signatory

2023.01.30

10:56:35 -08'00'

APPROVED AS TO FORM:

Title: \_\_\_\_\_

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



ATTEST:

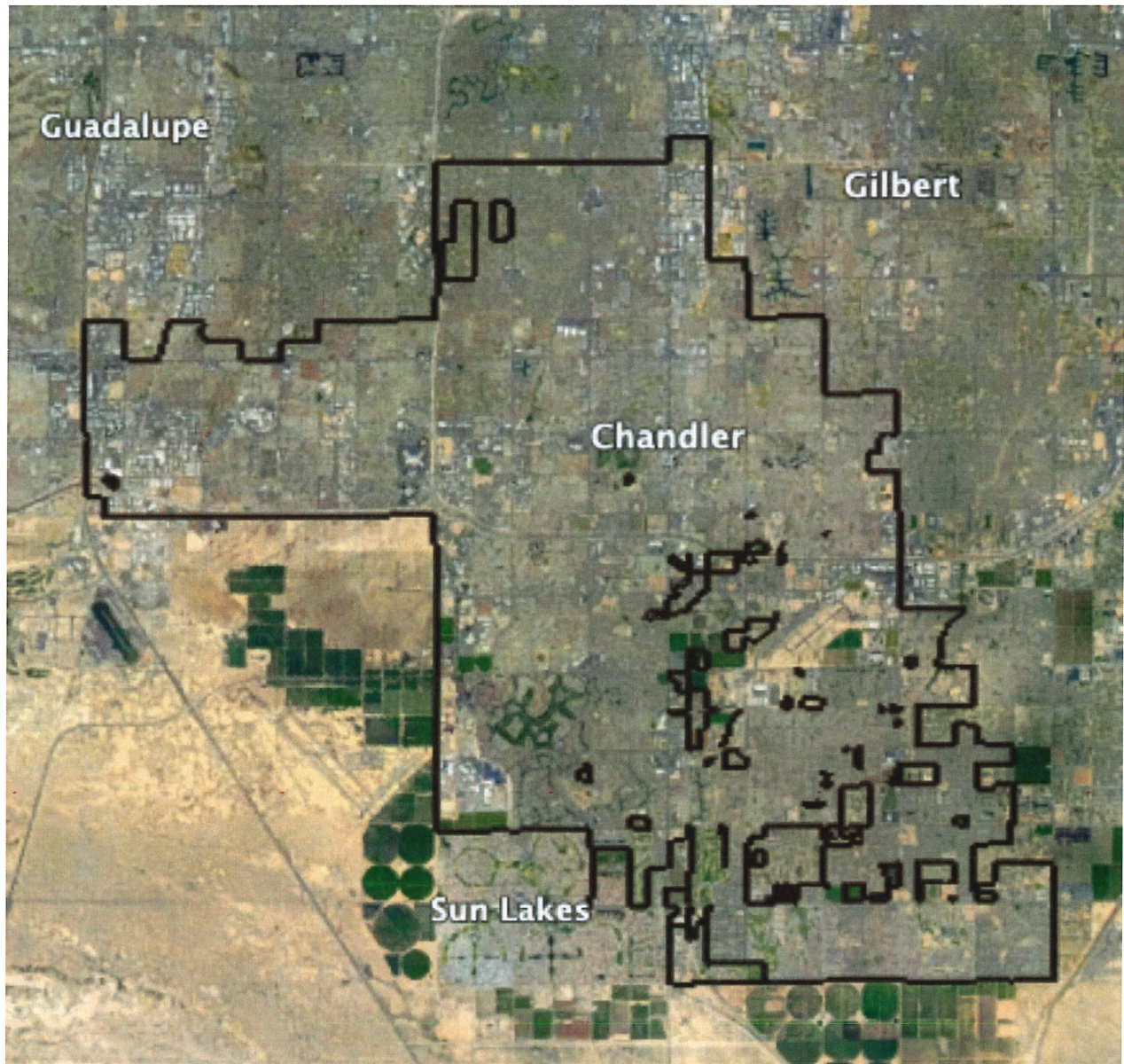
ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Name and Title



EXHIBIT A  
SERVICE AREA



**EXHIBIT B**  
**STANDARDS FOR LETTER OF CREDIT**

In addition to any other requirements imposed upon a letter of credit (the "Letter of Credit") issued pursuant to this License, the Letter of Credit shall meet and be governed by the following additional standards and requirements:

1. **Letter of Credit Requirements.** The Letter of Credit shall be printed on Bank Safety Paper. The following terms and no others shall be stated on the face of the Letter of Credit:

1.1 The Letter of Credit is clean, unconditional, irrevocable, independent, and standby.

1.2 The Letter of Credit is payable to City upon presentation of City's draft.

1.3 City may make partial draws upon the Letter of Credit.

1.4 The Letter of Credit is for payment solely upon presentation of a sight draft and a copy of the Letter of Credit.

1.5 Within ten (10) days after City's draft on the Letter of Credit is honored, City must make the original of the Letter of Credit available to the issuer in Maricopa County, Arizona upon which the issuer may endorse its payments.

1.6 The issuer specifies a telefax number, email address, and street address at which City may present drafts on the Letter of Credit.

1.7 The Letter of Credit is valid until a specified date.

1.8 The Letter of Credit will be automatically renewed for successive one (1) year periods, unless at least 30 days prior to expiration the issuer notifies City in writing, by either registered or certified mail, that issuer elects not to renew the Letter of Credit for the additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available by draft on or before the then current expiration date.

1.9 The Letter of Credit is otherwise subject to the most recent edition of the Uniform Customs and Practices for Documentary Credits, published by the International Chamber of Commerce including, but not limited to, International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590; ISP98 Model Government Standby (U.S.) Form 11.1 and annexes (2017)).

1.10 The Letter of Credit need not be transferable.

2. **Approved Forms.** The form of the Letter of Credit and of drafts upon the Letter of Credit shall be as follows:

2.1 Except as approved in writing by City's Development Services Department, the form of the Letter of Credit shall be in the form set out below.

2.2 Except as approved in writing by City's Development Services Department, the form of drafts upon the Letter of Credit shall be in the form set out below.

3. **Issuer Requirements.** The issuer of the Letter of Credit shall meet all of the following requirements:

3.1 The issuer shall be a federally insured financial institution with offices in Maricopa County, Arizona, at which drafts upon the Letter of Credit may be presented.

3.2 The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust Company satisfactory to City.

3.3 The issuer shall have a net worth of not less than \$1 billion.



**FORM OF LETTER OF CREDIT**  
**(ISP98 Model Government Standby (U.S.) Form 11.1)**

Date \_\_\_\_\_, 20\_\_\_\_  
Letter of Credit No.: \_\_\_\_\_  
Development Services Department  
City of Chandler  
P.O. Box 4008  
Mail Stop 405  
Chandler, AZ 85244-4008

Dear Sir or Madam:

Issuance. At the request and for the account of [*name and address of applicant*] ("Applicant"), we [*name and address of issuer at place of issuance*] ("Issuer") issue the irrevocable independent standby letter of credit number [*reference number*] ("Standby") in favor of [*name and address of beneficiary*] ("Beneficiary") in the maximum aggregate amount of USD [*amount*].

Undertaking. Issuer undertakes to Beneficiary to pay Beneficiary's demand for payment for an amount available under the Standby and in the form of Annex A (Payment Demand) [or *Annex B (Payment Demand after Notice of Non-Extension)*] completed as indicated and presented to Issuer at the following place for presentation: in Maricopa County, Arizona at or before the close of business on the expiration date.

Overdrawing. If a demand exceeds the amount available, but the presentation otherwise complies, Issuer undertakes to pay the amount available.

Expiration. The expiration date of this Standby is valid until \_\_\_\_\_ 20\_\_\_\_.

Automatic Extension. The expiration date of this Standby shall be automatically extended for successive one-year periods, unless [30] or more calendar days before the then current expiration date Issuer gives written notice to Beneficiary that Issuer elects not to extend the expiration date. Issuer's written notice must be sent by *registered, certified, or priority express mail or nationally recognized overnight courier* to Beneficiary's above-stated address [*and to the attention of [office, officer, or other attention party]* or, *alternatively, be received by Beneficiary's attention party*] [30] or more calendar days before the then current expiration date.

Payment. Payment against a complying presentation shall be made within three business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary.

ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590). This Letter of Credit is not assignable.

Issuer's Charges and Fees. Issuer's charges and fees for issuing, amending, or honoring this Standby are for Applicant's account and shall not be deducted from any payment Issuer makes under this Standby. [*Issuer undertakes to Beneficiary to pay the charges and fees of any bank nominated in this Standby to advise [and confirm] this Standby for acting on such nomination.*]

[Communications. Communications other than demands may be made to Issuer in the manner and at the place for presentation and also as follows: **[address for mailed, couriered, telephone, telefax, or electronic communications]**. Communications other than for notices of non-extension may be made to Beneficiary at Beneficiary's above-stated address and also as follows: **addresses for mailed, couriered, telephone, telefax, or electronic communications**.]

[Issuer's name]

[signature]

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
By \_\_\_\_\_ [bank name] \_\_\_\_\_, a \_\_\_\_\_  
\_\_\_\_\_ [bank officer's signature] \_\_\_\_\_  
\_\_\_\_\_ [bank officer's name printed] \_\_\_\_\_  
Its \_\_\_\_\_ [bank officer's title] \_\_\_\_\_  
Phone: \_\_\_\_\_ [bank officer's phone number] \_\_\_\_\_



**ANNEX A: PAYMENT DEMAND**  
**(ISP98 Model Government Standby (U.S.) Form 11.1)**

To: [Issuer name and address]

From: Development Services Department  
City of Chandler  
P.O. Box 4008  
Mail Stop 405  
Chandler, AZ 85244-4008

Date: \_\_\_\_\_, 20\_\_\_\_

Re: Standby Letter of Credit No. [reference number], dated [date], issued by [issuers name] ("Standby").

Ladies and Gentlemen:

The undersigned beneficiary demands payment of USD [insert amount] under the Standby. Beneficiary states that Applicant is obligated to pay to Beneficiary the amount demanded as provided in [the contract, regulation, or other document that identifies the underlying obligations to the government beneficiary]. Beneficiary requests that payment be made by wire transfer to an account of Beneficiary as follows: [Insert name, address, and routing number of beneficiary's bank, and name and number of beneficiary's account].

[Beneficiary's name and address]

By its authorized officer:

[Insert original signature]

[Insert typed/printed name and title]

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the Development Services Director of the City of Chandler.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at (480) 782-3410 so that I can correct it. Also, please immediately notify the City Attorney at (480) 782-4656.

Thank you.

\_\_\_\_\_  
City of Chandler, Development Services Director



**City Council Memorandum      Development Services      Memo No. 23-003**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**Thru:** Joshua H. Wright, City Manager  
 Andy Bass, Deputy City Manager  
 Derek D. Horn, Development Services Director  
**From:** Alisa Petterson, Senior Planner  
**Subject:** PLH22-0064 Horsepower Auto Group - Propane Tank

**Request:** Use Permit approval for two 1,000 gallon propane tanks

**Location:** Queen Creek Commerce Center, located at the southwest corner of Queen Creek Road and Hamilton Street

**Applicant:** Greg Foutz, Horsepower Automotive Group

**Proposed Motion:**

Move City Council approve Use Permit PLH22-0064 Horsepower Automotive Group - Propane Tank, for the installation of two 1,000 gallon propane tanks, subject to the conditions recommended by Planning and Zoning Commission.

**Background Data:**

- Zoned PAD for office/warehouse/industrial type uses (2013).
- Zoning code requires Use Permit approval for bulk storage of natural and propane gas for tanks exceeding 500 gallons.

**Surrounding Land Use Data:**

North	Across Queen Creek Road: Vacant land, zoned for future industrial use and an existing church in unincorporated Maricopa County.	South	Existing agricultural uses in unincorporated Maricopa County.
East	Across Hamilton Street: Existing industrial, zoned PAD for Planned Industrial (I-1).	West	Existing Union Pacific Railroad tracks, zoned as PAD. Existing single family residential, then PAD for Residential zoned land.

**Proposed Development:**

Building Use	Industrial use: manufacture of aftermarket accessories for trucks and SUVs.
Hours of Operation	5:00 am until 5:00 pm, Monday - Friday, with additional hours in evenings and on weekends as needed.
Total Square Feet of Building	163,072 total square feet
Proposal	Installation of two (2) 1,000 gallon gas storage tanks
Type of Gas to be Stored	Propane

### **Review and Recommendation:**

This Use Permit request is for installation of two (2) 1,000 gallon propane gas tanks to be located south of the existing building, within the truck dock and maneuvering area at the interior of the site. The tanks will be fully screened from view, secured on the site, and all safety measures will be addressed.

The tanks will be screened in a manner that is consistent with other ground-mounted equipment existing on site. The height of the tanks is 4'-3" and the proposed screen walls will be 5'-0" high. Solid masonry walls with stucco finish painted to match the existing building will be provided south and east of the new tanks to screen primary views, with chain link security fencing and an access gate provided at the less-visible west and north sides. A series of steel bollards will be provided to protect the enclosure and the tanks from damage.

Planning staff has reviewed the request and finds the proposed addition of gas storage tanks to be a compatible land use within the existing industrial property. As of the writing of this memo, no known complaints or concerns have been voiced by the nearby property owners or business owners to either the applicant or staff.

### **Public / Neighborhood Notification**

- This request was noticed in accordance with the requirements of the Chandler Zoning Code.
- A neighborhood meeting sign was posted on the site and on social media via NextDoor.
- A neighborhood meeting was held on December 21, 2022. No one attended other than staff and the applicant.
- As of the writing of this memo, Planning staff is not aware of opposition to the request

### **Planning and Zoning Commission Vote Report**

Planning and Zoning Commission meeting: January 18, 2023  
Motion to Approve

In Favor: 6    Opposed: 0    Absent: 1 (Koshiol)    Abstain: 0

## **Recommended Conditions of Approval**

Planning staff recommends Planning and Zoning Commission move to recommend approval of the Use Permit, subject to the following conditions:

1. Substantial expansion or modification beyond the approved exhibits (Narrative, Site Plan with elevations and enclosure details), as kept on file in Case No. PLH22-0064, shall void the Use Permit and require new Use Permit application and approval, unless otherwise amended via conditions herein.
2. Use Permit approval does not constitute Final Development Plan approval; compliance with the details required by all applicable codes and conditions of the City of Chandler and this Use Permit shall apply.
3. The site shall be maintained in a clean and orderly manner.
4. The Use Permit is non-transferable to other locations.

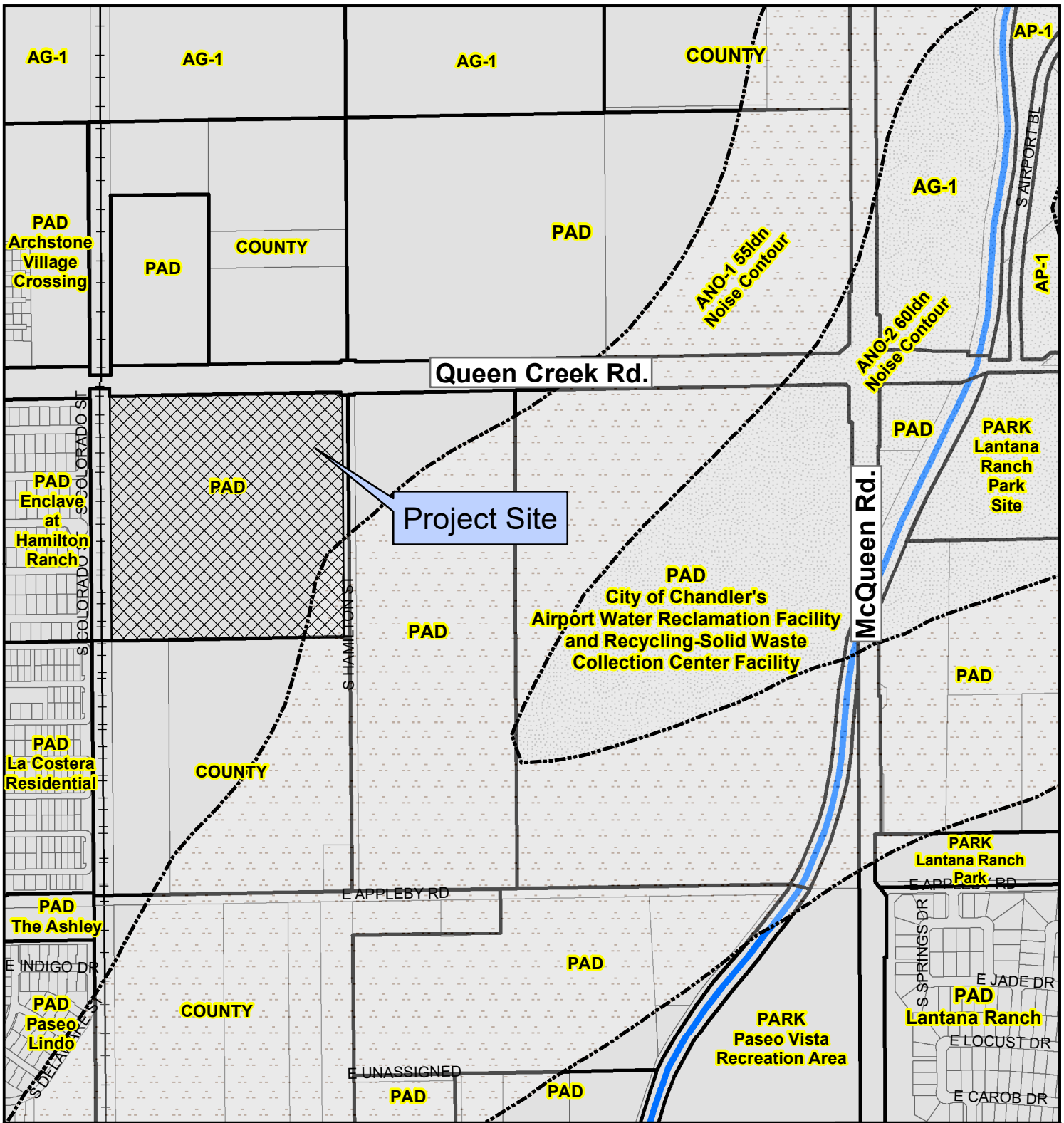
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## **Attachments**

Vicinity Maps

Narrative

Site Plan, Enlarged Plan, Elevation, Details, Rendering & Color Information



## PLH22-0064 Horsepower Automotive Group



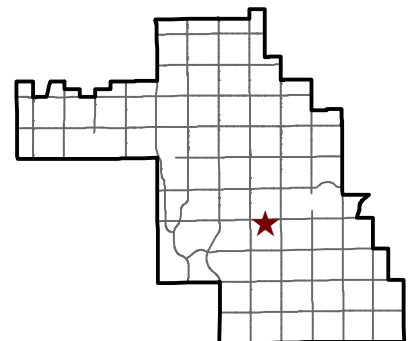
### Project Details

555 E. Queen Creek Rd.

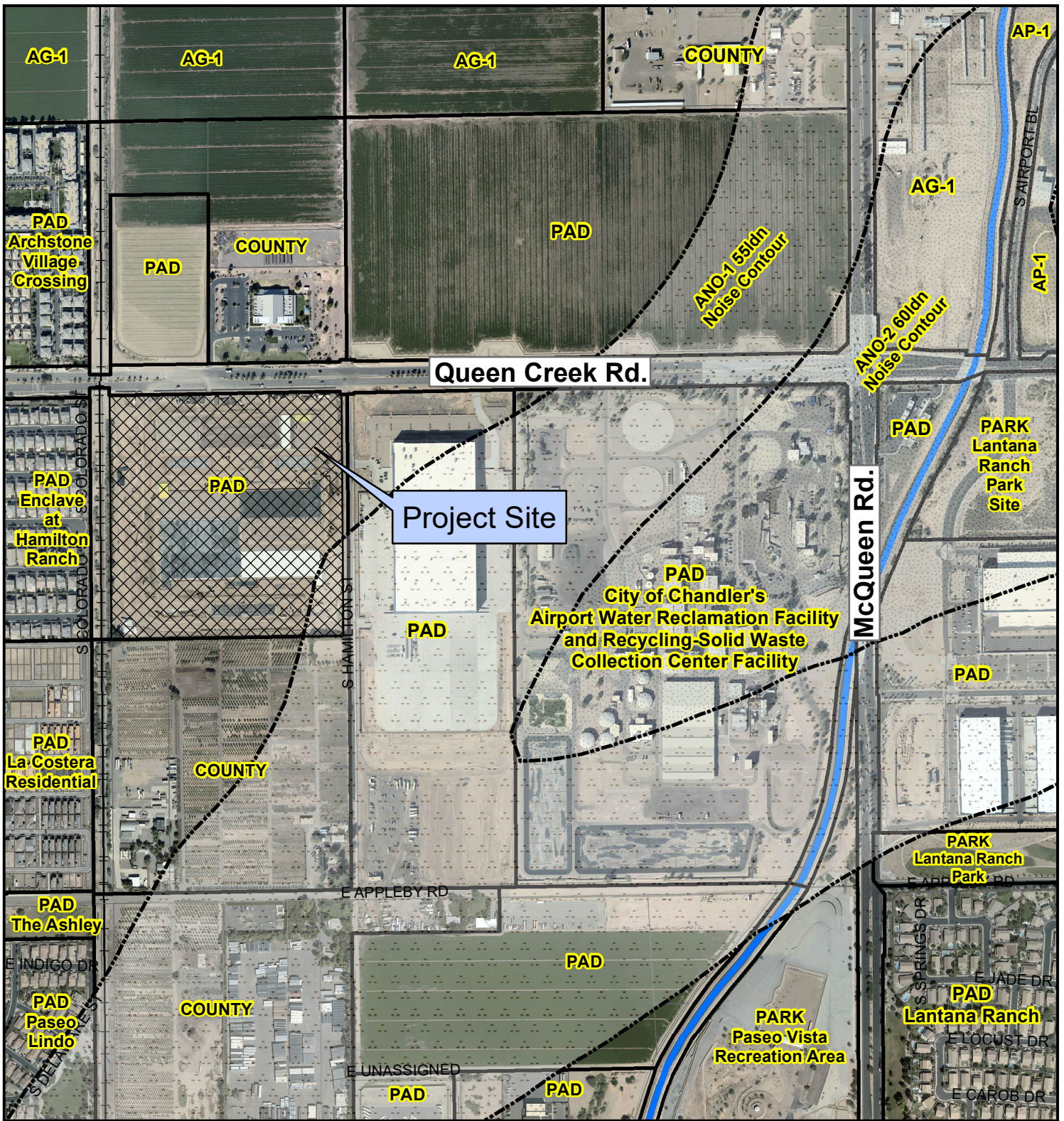
Request Use Permit to install propane bulk storage consisting of (2) 1,000 gallon tanks



City of Chandler Planning Division  
[chandleraz.gov/planning](https://chandleraz.gov/planning)  
 For more information visit:  
<https://gis.chandleraz.gov/planning>







## PLH22-0064 Horsepower Automotive Group



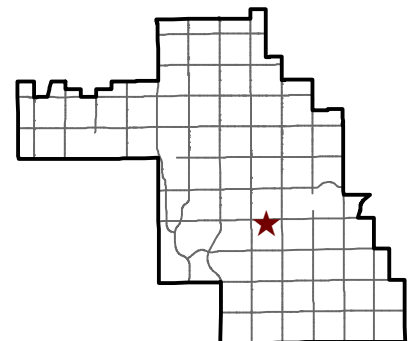
### Project Details

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Request Use Permit to install propane bulk storage consisting of (2) 1,000 gallon tanks



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To Whom It May Concern:

Our company manufactures aftermarket accessories for trucks and SUV's. We produce our products mostly from welded steel components that require a powder coating finish. As we move into the new facility in Chandler we will have 2 powder coating ovens on site that require propane for the burners in the oven to cure the powder coating finish. The tanks will be located at the back of the building and we will have copper plumbing lines that will carry the propane to the ovens.

We wont have any activities outside of the building related to the propane tanks at all. Just the placement of the tanks and when the vendor will come to refill them weekly.

The tanks are stationary and don't have anything that will generate any noise from the day to day use of the tanks.

At the proposed size we will have to have the vendor fill the tanks once per week on normal business operations. That will entail them pulling up with a medium size propane tank truck and connecting a fill hose to the stationary tanks to fill them on site.

Our current schedule for the production we will run a single shift in the powder coating department that will start at about 5:00 am and run until about 5:00 pm Monday through Friday. In some cases we may expand hours to cover a second shift or a weekend from time to time depending on the work backlog and flow. But all of that work will be done inside the building so it shouldn't impact anything outside or make any noise outside of the building.

Addictive Desert Designs

308 S Extension Rd Ste 101

Mesa, AZ 85210

855-ADD-8992

[www.addictivedesertdesigns.com](http://www.addictivedesertdesigns.com)

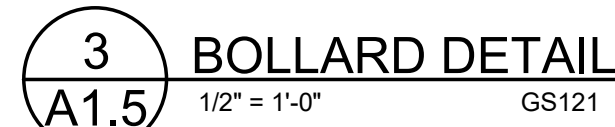
DV8 Offroad

6400 Sycamore Canyon Blvd Ste A

Riverside, CA 92507

951-680-9595

[www.dv8offroad.com](http://www.dv8offroad.com)



  **SITE PLAN**  
1" = 100'-0"

0 100 200 300



2/9/2022 1:25:20 PM

**City Council Memorandum      Development Services    Memo No. 22-052**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**Thru:** Joshua H. Wright, City Manager  
Andy Bass, Deputy City Manager  
Derek D. Horn, Development Services Director  
**From:** Benjamin Cereceres, City Planner  
**Subject:** PLH22-0005 Crown Castle Wireless

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**Proposed Motion:**

Move City Council continue Use Permit PLH22-0005 Crown Castle Wireless to the March 23, 2023, City Council meeting, as requested by the applicant.

**Background/Discussion**

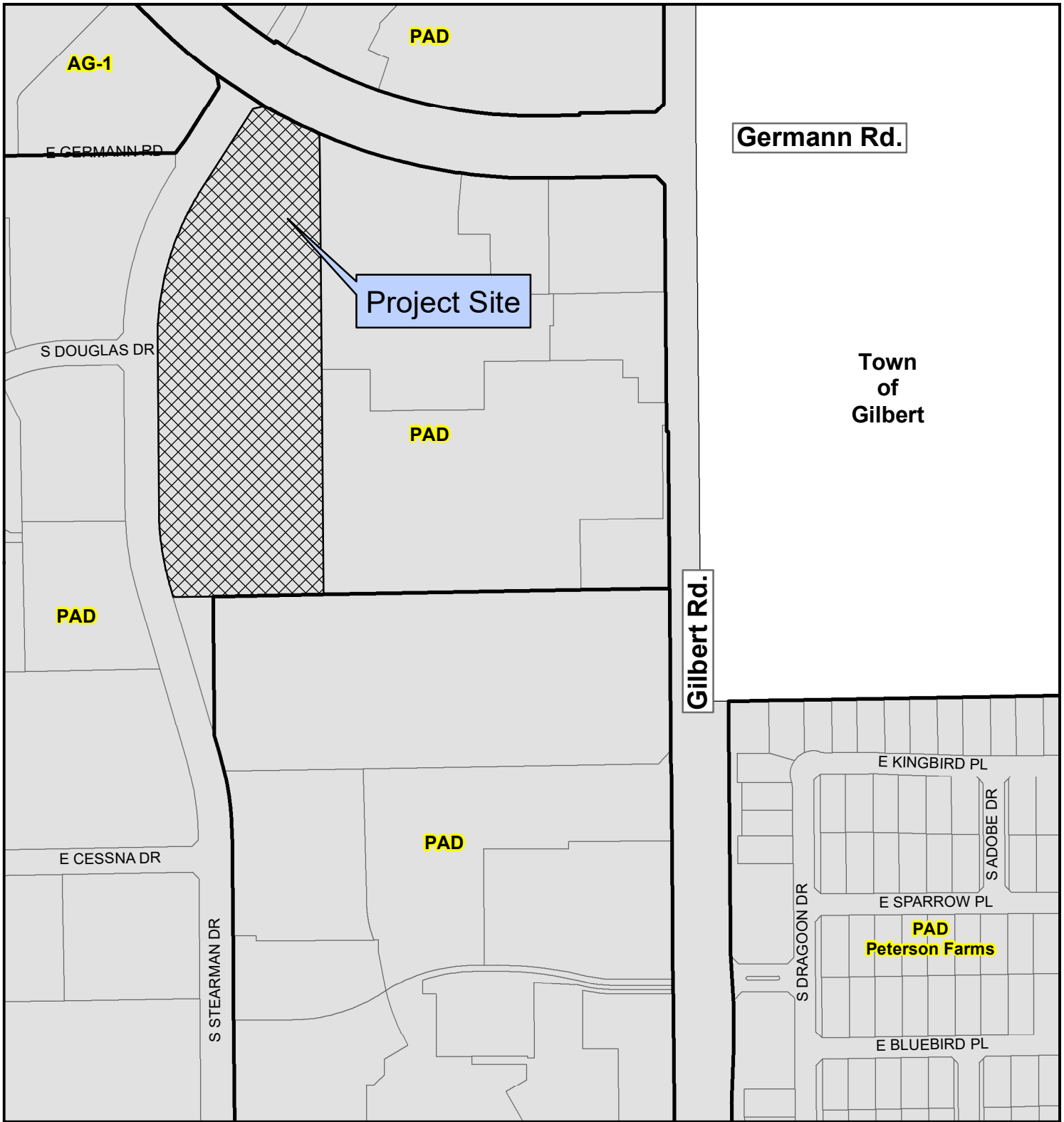
The project was discussed at the December 7, 2022, Design Review Committee meeting. The Planning and Zoning Commission continued this item to their March 1, 2023, hearing upon the applicant's request for more time to make modifications as discussed during the Design Review Committee meeting.

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**Attachments**

Vicinity Maps





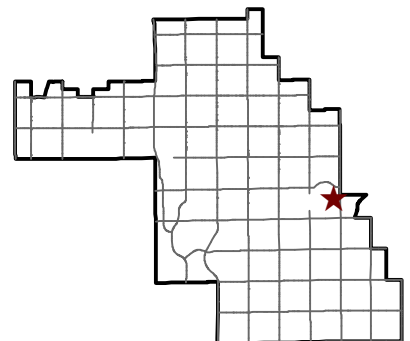
**PLH22-0005 Crown Castle Wireless**



**Proposed Project Details**  
2055 S. Stearman Dr.  
Request Use Permit approval to install  
a wireless communication facility



City of Chandler Planning Division  
[chandleraz.gov/planning](http://chandleraz.gov/planning)  
For more information visit:  
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## PLH22-0005 Crown Castle Wireless



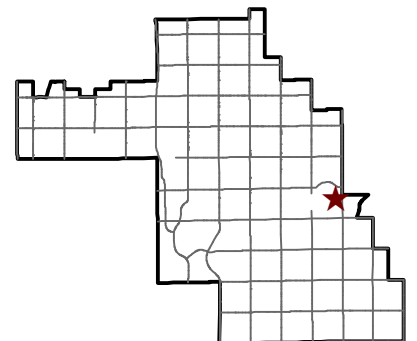
### Proposed Project Details

2055 S. Stearman Dr.

Request Use Permit approval to install  
a wireless communication facility



City of Chandler Planning Division  
[chandleraz.gov/planning](https://chandleraz.gov/planning)  
 For more information visit:  
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**City Council Memorandum      Facilities and Fleet    Memo No. N/A**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**Thru:** Joshua H. Wright, City Manager  
Dawn Lang, Deputy City Manager - CFO  
**From:** Mike Hollingsworth, Facilities & Fleet Manager  
**Subject:** Agreement No. FF3-910-4540, with kilowatt Engineering, Inc., dba kW Engineering, Inc., for the City Facility Energy Audit

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**Proposed Motion:**

Move City Council approve Agreement No. FF3-910-4540, with kilowatt Engineering, Inc., dba kW Engineering, Inc., for the City Facility Energy Audit, in the amount of \$121,985.

**Background/Discussion:**

The Buildings and Facilities Division proposes to conduct an energy audit to specifically focus on building mechanical systems and their controls. On average, 40% of energy costs in commercial buildings are attributed to heating, ventilation, and cooling systems. The audit would be applied to the City's buildings with the highest electrical usage. These facilities include Chandler City Hall, Police Department Downtown Station, Chandler Municipal Court, Tumbleweed Recreation Center, Public Works & Development Services, Information Technology, and Downtown Library. The audit will be performed in two phases:

1. Investigation Phase: Perform an American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Level 2 Energy Audit that conforms to the latest ASHRAE 211 Standard, including but not limited to:

- Perform energy survey to verify existing systems sequences and baseline operational behavior.
- Deploy a building analytics system. This step, a 6-8 week process, will occur concurrently with the Investigation phase and carry through the Implementation and Monitoring phase. This system will interface with the

existing building management system and be used to identify, support, and validate suggested conservation measures and commissioning.

- Propose energy conservation measures inclusive of savings and estimated implementation cost (including anticipated return on investment).

Implementation of low or no cost opportunities, obtained through the building analytics system, will begin during Q2 CY 2023. Capital improvement cost measures, based on investigation findings, identified in Q3 CY 2023.

- Produce investigation report aggregating the information detailed above estimated Q3 CY 2023.

The Investigation Phase is anticipated to be complete in Q2-Q3 of calendar year (CY) 2023.

2. Implementation and Monitoring Phase will support the City with implementation and construction of selected energy conservation measures: The scope of work includes an ongoing process of evaluation, implementation, and monitoring changes for desired savings and operational effectiveness, including:

- Develop initial scopes of work for the City to seek contractor quotes.
- Develop updated sequence of operations to be provided to controls contractor for implementation.
- Provide services to verify the proper installation and implementation of contracted activities.

The Implementation and Monitoring Phase is anticipated to occur between Q3 of CY 2023 and Q2 of CY 2024.

### **Evaluation:**

On August 2, 2022, City staff issued Request for Proposal No. FF3-910-4540 for the City facility energy audit. Notification was sent to all registered vendors. Three proposals were received from the following offerors:

KFI Engineers  
kW Engineering, Inc.  
McKinstry Essention, LLC

The Evaluation Committee evaluated the proposals recommends award to kW Engineering, Inc., which submitted the most advantageous offer to the City in accordance with the evaluation criteria.

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## Fiscal Impact

Account No.	Fund Name	Program Name	Dollar Amount	CIP Funded Y/N
401.3210.6210.6BF628	General Government Capital Fund	Existing City Building Renov/Rep	\$121,985	Y

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## Attachments

Agreement



City Clerk Document No. \_\_\_\_\_

City Council Meeting Date: February 9, 2023

**CITY OF CHANDLER SERVICES AGREEMENT  
CITY FACILITY ENERGY AUDIT  
CITY OF CHANDLER AGREEMENT NO. FF3-910-4540**

THIS AGREEMENT (Agreement) is made and entered into by and between the City of Chandler, an Arizona municipal corporation (City), and kilowatt Engineering, Inc, dba kW Engineering, Inc, a California corporation (Contractor), (City and Contractor may individually be referred to as Party and collectively referred to as Parties) and made \_\_\_\_\_, 2023 (Effective Date).

**RECITALS**

A. City proposes to conduct energy audits at City facilities as more fully described in Exhibit A, which is attached to and made a part of this Agreement by this reference.

B. Contractor is ready, willing, and able to provide the services described in Exhibit A for the compensation and fees set forth and as described in Exhibit B, which is attached to and made a part of this Agreement by this reference.

C. City desires to contract with the Contractor to provide these services under the terms and conditions set forth in this Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and the mutual promises contained in this Agreement, City and Contractor agree as follows:

**SECTION I: DEFINITIONS**

For purposes of this Agreement, the following definitions apply:

**Agreement** means the legal agreement executed between the City and the Contractor

**City** means the City of Chandler, Arizona

**Contractor** means the individual, partnership, or corporation named in the Agreement

**Days** means calendar days

**May, Should** means something that is not mandatory but permissible

**Shall, Will, Must** means a mandatory requirement

**SECTION II: CONTRACTOR'S SERVICES**

Contractor must perform the services described in Exhibit A to the City's satisfaction within the terms and conditions of this Agreement and within the care and skill that a person who provides similar services in Chandler, Arizona exercises under similar conditions. All work or services

furnished by Contractor under this Agreement must be performed in a skilled and workmanlike manner. Unless authorized by the City in writing, all fixtures, furnishings, and equipment furnished by Contractor as part of the work or services under this Agreement must be new, or the latest model, and of the most suitable grade and quality for the intended purpose of the work or service.

### **SECTION III: PERIOD OF SERVICE**

Contractor must perform the services described in Exhibit A for the term of this Agreement.

Following execution of this Agreement by City, the Contractor will immediately commence work and will complete all services described within eighteen months from the date the Contractor is granted access needed by City Information Technology.

### **SECTION IV: PAYMENT OF COMPENSATION AND FEES**

Unless amended in writing by the Parties, Contractor's compensation and fees as more fully described in Exhibit B for performance of the services approved and accepted by the City under this Agreement must not exceed \$121,985. Contractor must submit requests for payment for services approved and accepted during the previous billing period and must include, as applicable, detailed invoices and receipts, a narrative description of the tasks accomplished during the billing period, a list of any deliverables submitted, and any subcontractor's or supplier's actual requests for payment plus similar narrative and listing of their work. Payment for those services negotiated as a lump sum will be made in accordance with the percentage of the work completed during the preceding billing period. Services negotiated as a not-to-exceed fee will be paid in accordance with the work completed on the service during the preceding month. All requests for payment must be submitted to the City for review and approval. The City will make payment for approved and accepted services within 30 days of the City's receipt of the request for payment. Contractor bears all responsibility and liability for any and all tax obligations that result from Contractor's performance under this Agreement.

All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, the City may approve a fully documented request for a price adjustment. The City shall determine whether any requested price increases for extension terms is acceptable to the City. If the City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.

### **SECTION V: GENERAL CONDITIONS**

5.1 Records/Audit. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to this Agreement and records of accounts between the City and Contractor must be kept on the basis of generally accepted accounting principles and must be made available to the City and its auditors for up to three years following the City's final acceptance of the services under this Agreement. The City, its authorized representative, or any federal agency, reserves the right to audit Contractor's records to verify the accuracy and appropriateness of all cost and pricing data, including data used to negotiate this Agreement and any amendments. The City reserves the right to decrease the total amount of Agreement price or payments made under this Agreement or request reimbursement from the Contractor following final contract payment on this Agreement if,

upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data. The Contractor will include a similar provision in all of its contracts with subcontractors providing services under the Agreement Documents to ensure that the City, its authorized representative, or the appropriate federal agency, has access to the subcontractors' records to verify the accuracy of all cost and pricing data. The City reserves the right to decrease Contract price or payments made on this Agreement or request reimbursement from the Contractor following final payment on this Agreement if the above provision is not included in subcontractor agreements, and one or more subcontractors refuse to allow the City to audit their records to verify the accuracy and appropriateness of all cost and pricing data. If, following an audit of this Agreement, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data, and the cost discrepancies exceed 1% of the total Agreement billings, the Contractor will be liable for reimbursement of the reasonable, actual cost of the audit.

5.2 Alteration in Character of Work. Whenever an alteration in the character of work results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project schedule, the work will be performed as directed by the City. However, before any modified work is started, a written amendment must be approved and executed by the City and the Contractor. Such amendment must not be effective until approved by the City. Additions to, modifications, or deletions from this Agreement as provided herein may be made, and the compensation to be paid to the Contractor may accordingly be adjusted by mutual agreement of the Parties. It is distinctly understood and agreed that no claim for extra work done or materials furnished by the Contractor will be allowed by the City except as provided herein, nor must the Contractor do any work or furnish any materials not covered by this Agreement unless such work is first authorized in writing. Any such work or materials furnished by the Contractor without prior written authorization will be at Contractor's own risk, cost, and expense, and Contractor hereby agrees that without written authorization Contractor will make no claim for compensation for such work or materials furnished.

5.3 Termination for Convenience. The City and the Contractor hereby agree to the full performance of the covenants contained herein, except that the City reserves the right, at its discretion and without cause, to terminate or abandon any service provided for in this Agreement, or abandon any portion of the Project for which services have been performed by the Contractor. In the event the City abandons or suspends the services, or any part of the services as provided in this Agreement, the City will notify the Contractor in writing and immediately after receiving such notice, the Contractor must discontinue advancing the work specified under this Agreement. Upon such termination, abandonment, or suspension, the Contractor must deliver to the City all drawings, plans, specifications, special provisions, estimates and other work entirely or partially completed, together with all unused materials supplied by the City. The Contractor must appraise the work Contractor has completed and submit Contractor's appraisal to the City for evaluation. The City may inspect the Contractor's work to appraise the work completed. The Contractor will receive compensation in full for services performed to the date of such termination. The fee shall be paid in accordance with Section IV of this Agreement, and as mutually agreed upon by the Contractor and the City. If there is no mutual agreement on payment, the final determination will be made in accordance with the Disputes provision in this Agreement. However, in no event may the payment exceed the payment set forth in this Agreement nor as amended in accordance with Alteration in Character of Work. The City will make the final payment within 60 days after the Contractor has delivered the last of the partially completed items and the Parties agree on the final payment.



If the City is found to have improperly terminated the Agreement for cause or default, the termination will be converted to a termination for convenience in accordance with the provisions of this Agreement.

5.4 Termination for Cause. The City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events: in the event that (a) the Contractor fails to perform pursuant to the terms of this Agreement, (b) the Contractor is adjudged a bankrupt or insolvent, (c) the Contractor makes a general assignment for the benefit of creditors, (d) a trustee or receiver is appointed for Contractor or for any of Contractor's property (e) the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, (f) the Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or (g) the Contractor fails to cure default within the time requested. Where Agreement has been so terminated by City, the termination will not affect any rights of City against Contractor then existing or which may thereafter accrue.

5.5 Indemnification. The Contractor (Indemnitor) must indemnify, defend, save and hold harmless the City and its officers, officials, agents and employees (Indemnitee) from any and all claims, actions, liabilities, damages, losses or expenses (including court costs, attorneys' fees and costs of claim processing, investigation and litigation) (Claims) to the extent caused or alleged to be caused, in whole or in part, by the negligent or willful acts, or errors or omissions, or willful misconduct of the Contractor or any of its owners, officers, directors, agents, employees, or subcontractors in connection with this Agreement. This indemnity includes any claim or amount arising out of or recovered under workers' compensation law or on account of the failure of the Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Contractor must indemnify Indemnitee from and against any and all Claims, except those to the extent arising solely from Indemnitee's own negligent or willful acts or omissions. The Contractor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to this Agreement. The obligations of the Contractor under this provision survive the termination or expiration of this Agreement.

5.6 Insurance Requirements. Contractor must procure insurance under the terms and conditions and for the amounts of coverage set forth in Exhibit C against claims that may arise from or relate to performance of the work under this Agreement by Contractor and its agents, representatives, employees, and subcontractors. Contractor and any subcontractors must maintain this insurance until all of their obligations have been discharged, including any warranty periods under this Agreement. These insurance requirements are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits stated in Exhibit C are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Agreement by the Contractor, the Contractor's agents, representatives, employees, or subcontractors. Contractor is free to purchase such additional insurance as may be determined necessary.

5.7 Cooperation and Further Documentation. The Contractor agrees to provide the City such other duly executed documents as may be reasonably requested by the City to implement the intent of this Agreement.

5.8 Notices. Unless otherwise provided, notice under this Agreement must be in writing and will be deemed to have been duly given and received either (a) on the date of service if personally served on the party to whom notice is to be given, or (b) on the date notice is sent if by electronic mail, or (c) on the third day after the date of the postmark of deposit by first class United States mail, registered or certified, postage prepaid and properly addressed as follows:

<b>For the City</b>	<b>For the Contractor</b>
Name: <u>Christina Pryor</u>	Name: <u>Sanjiv Devnani</u>
Title: <u>Purchasing Manager</u>	Title: <u>Principal</u>
Address: <u>175 S. Arizona Ave. 3<sup>rd</sup> Floor</u> <u>Chandler, AZ 85225</u>	Address: <u>287 17<sup>th</sup> Street, Suite 300</u> <u>Oakland, CA 94612</u>
Phone: <u>480-782-2403</u>	Phone: <u>801-599-2388</u>
Email: <u>christina.pryor@chandleraz.gov</u>	Email: <u>devnani@kw-engineering.com</u>

5.9 Successors and Assigns. City and Contractor each bind itself, its partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party in respect to all covenants of this Agreement. Neither the City nor the Contractor may assign, sublet, or transfer its interest in this Agreement without the written consent of the other party. In no event may any contractual relation be created between any third party and the City.

5.10 Disputes. In any dispute arising out of an interpretation of this Agreement or the duties required not disposed of by agreement between the Contractor and the City, the final determination at the administrative level will be made by the City Purchasing and Materials Manager.

5.11 Completeness and Accuracy of Contractor's Work. The Contractor must be responsible for the completeness and accuracy of Contractor's services, data, and other work prepared or compiled under Contractor's obligation under this Agreement and must correct, at Contractor's expense, all willful or negligent errors, omissions, or acts that may be discovered. The fact that the City has accepted or approved the Contractor's work will in no way relieve the Contractor of any of Contractor's responsibilities.

5.12 Withholding Payment. The City reserves the right to withhold funds from the Contractor's payments up to the amount equal to the claims the City may have against the Contractor until such time that a settlement on those claims has been reached.

5.13 City's Right of Cancellation. The Parties acknowledge that this Agreement is subject to cancellation by the City under the provisions of Section 38-511, Arizona Revised Statutes (A.R.S.).

5.14 Independent Contractor. For this Agreement the Contractor constitutes an independent contractor. Any provisions in this Agreement that may appear to give the City the right to direct the Contractor as to the details of accomplishing the work or to exercise a measure of control over the work means that the Contractor must follow the wishes of the City as to the results of the work only. These results must comply with all applicable laws and ordinances.

5.15 Project Staffing. Prior to the start of any work under this Agreement, the Contractor must

assign to the City the key personnel that will be involved in performing services prescribed in the Agreement. The City may acknowledge its acceptance of such personnel to perform services under this Agreement. At any time hereafter that the Contractor desires to change key personnel while performing under the Agreement, the Contractor must submit the qualifications of the new personnel to the City for prior approval. The Contractor will maintain an adequate and competent staff of qualified persons, as may be determined by the City, throughout the performance of this Agreement to ensure acceptable and timely completion of the Scope of Services. If the City objects, with reasonable cause, to any of the Contractor's staff, the Contractor must take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel agreed to by the City.

5.16 Subcontractors. Prior to beginning the work, the Contractor must furnish the City for approval the names of subcontractors to be used under this Agreement. Any subsequent changes are subject to the City's written prior approval.

5.17 Force Majeure. If either party is delayed or prevented from the performance of any act required under this Agreement by reason of acts of God or other cause beyond the control and without fault of the Party (financial inability excepted), performance of that act may be excused, but only for the period of the delay, if the Party provides written notice to the other Party within ten days of such act. The time for performance of the act may be extended for a period equivalent to the period of delay from the date written notice is received by the other Party.

5.18 Compliance with Laws. Contractor understands, acknowledges, and agrees to comply with the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. All services performed by Contractor must also comply with all applicable City of Chandler codes, ordinances, and requirements. Contractor agrees to permit the City to verify Contractor's compliance.

5.19 No Israel Boycott. By entering into this Agreement, Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of the Agreement, not to engage in a boycott of Israel as defined by state statute.

5.20 Legal Worker Requirements. A.R.S. § 41-4401 prohibits the City from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A. A breach of this warranty will be deemed a material breach of the Agreement and may be subject to penalties up to and including termination of the Agreement. City retains the legal right to inspect the papers of any Contractor's or subcontractor's employee who provides services under this Agreement to ensure that the Contractor and subcontractors comply with the warranty under this provision.

5.21 Lawful Presence Requirement. A.R.S. §§ 1-501 and 1-502 prohibit the City from awarding a contract to any natural person who cannot establish that such person is lawfully present in the United States. To establish lawful presence, a person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. This requirement does not apply to business organizations such as corporations, partnerships, or limited liability companies.

5.22 Forced Labor of Ethnic Uyghurs Prohibited. By entering into this Agreement, Contractor certifies and agrees Contractor does not currently use and will not use for the term of this Agreement: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; or (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

5.23 Covenant Against Contingent Fees. Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the Chandler City Council, or any City employee has any interest, financially, or otherwise, in Contractor's firm. For breach or violation of this warrant, the City may annul this Agreement without liability or, at its discretion, to deduct from the Agreement price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

5.24 Non-Waiver Provision. The failure of either Party to enforce any of the provisions of this Agreement or to require performance of the other Party of any of the provisions hereof must not be construed to be a waiver of such provisions, nor must it affect the validity of this Agreement or any part thereof, or the right of either Party to thereafter enforce each and every provision.

5.25 Disclosure of Information Adverse to the City's Interests. To evaluate and avoid potential conflicts of interest, the Contractor must provide written notice to the City, as set forth in this Section, of any work or services performed by the Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. Such notice must be given seven business days prior to commencement of the services by the Contractor for a third party, or seven business days prior to an adverse action as defined below. Written notice and disclosure must be sent to the City's Purchasing and Materials Manager. An adverse action under this Agreement includes, but is not limited to: (a) using data as defined in the Agreement acquired in connection with this Agreement to assist a third party in pursuing administrative or judicial action against the City; or (b) testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; or (c) using data to produce income for the Contractor or its employees independently of performing the services under this Agreement, without the prior written consent of the City. Contractor represents that except for those persons, entities, and projects identified to the City, the services performed by the Contractor under this Agreement are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the City's interests. Contractor's failure to provide a written notice and disclosure of the information as set forth in this Section constitute a material breach of this Agreement.

5.26 Data Confidentiality and Data Security. As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by, obtained by, or transmitted to the Contractor or its subcontractors in the performance of this Agreement. The Parties agree that all data, regardless of form, including originals, images, and



reproductions, prepared by, obtained by, or transmitted to the Contractor or its subcontractors in connection with the Contractor's or its subcontractor's performance of this Agreement is confidential and proprietary information belonging to the City. Except as specifically provided in this Agreement, Contractor or its subcontractors must not divulge data to any third party without the City's prior written consent. Contractor or its subcontractors must not use the data for any purposes except to perform the services required under this Agreement. These prohibitions do not apply to the following data provided to the Contractor or its subcontractors have first given the required notice to the City: (a) data which was known to the Contractor or its subcontractors prior to its performance under this Agreement unless such data was acquired in connection with work performed for the City; or (b) data which was acquired by the Contractor or its subcontractors in its performance under this Agreement and which was disclosed to the Contractor or its subcontractors by a third party, who to the best of the Contractor's or its subcontractors knowledge and belief, had the legal right to make such disclosure and the Contractor or its subcontractors are not otherwise required to hold such data in confidence; or (c) data which is required to be disclosed by virtue of law, regulation, or court order, to which the Contractor or its subcontractors are subject. In the event the Contractor or its subcontractors are required or requested to disclose data to a third party, or any other information to which the Contractor or its subcontractors became privy as a result of any other contract with the City, the Contractor must first notify the City as set forth in this Section of the request or demand for the data. The Contractor or its subcontractors must give the City sufficient facts so that the City can be given an opportunity to first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure. Unless prohibited by law, within ten calendar days after completion or termination of services under this Agreement, the Contractor or its subcontractors must promptly deliver, as set forth in this Section, a copy of all data to the City. All data must continue to be subject to the confidentiality agreements of this Agreement. Contractor or its subcontractors assume all liability to maintain the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Contractor, its employees, agents or subcontractors. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Section must be deemed to cause irreparable harm that justifies injunctive relief in court. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. A violation of this Section may result in immediate termination of this Agreement without notice.

**5.27 Personal Identifying Information-Data Security.** Personal identifying information, financial account information, or restricted City information, whether electronic format or hard copy, must be secured and protected at all times by Contractor and any of its subcontractors. At a minimum, Contractor must encrypt or password-protect electronic files. This includes data saved to laptop computers, computerized devices, or removable storage devices. When personal identifying information, financial account information, or restricted City information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed. In the event that data collected or obtained by Contractor or its subcontractors in connection with this Agreement is believed to have been compromised, Contractor or its subcontractors must immediately notify the City contact. Contractor agrees to reimburse the City for any costs incurred by the City to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach. Contractor agrees that the requirements of this Section must be incorporated into all subcontracts entered into by Contractor. It is further agreed that a violation of this Section must

be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor or its subcontractors under this Section must survive the termination of this Agreement.

5.28 Jurisdiction and Venue. This Agreement is made under, and must be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect hereto must be brought in the courts located in Maricopa County, Arizona, and for this purpose, each Party hereby expressly and irrevocably consents to the jurisdiction and venue of such court.

5.29 Survival. All warranties, representations, and indemnifications by the Contractor must survive the completion or termination of this Agreement.

5.30 Modification. Except as expressly provided herein to the contrary, no supplement, modification, or amendment of any term of this Agreement will be deemed binding or effective unless in writing and signed by the Parties.

5.31 Severability. If any provision of this Agreement or the application to any person or circumstance may be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application will not be affected and will be enforceable to the fullest extent permitted by law.

5.32 Integration. This Agreement contains the full agreement of the Parties. Any prior or contemporaneous written or oral agreement between the Parties regarding the subject matter is merged and superseded.

5.33 Time is of the Essence. Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

5.34 Date of Performance. If the date of performance of any obligation or the last day of any time period provided for should fall on a Saturday, Sunday, or holiday for the City, the obligation will be due and owing, and the time period will expire, on the first day after which is not a Saturday, Sunday or legal City holiday. Except as may otherwise be set forth in this Agreement, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Chandler time) on the day of performance.

5.35 Delivery. All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. The Contractor will retain title and control of all goods until they are delivered and accepted by the City. All risk of transportation and all related charges will be the responsibility of the Contractor. All claims for visible or concealed damage will be filed by the Contractor. The City will notify the Contractor promptly of any damaged goods and will assist the Contractor in arranging for inspection.

5.36 Third Party Beneficiary. Nothing under this Agreement will be construed to give any rights or benefits in the Agreement to anyone other than the City and the Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive

benefit of City and the Contractor and not for the benefit of any other party.

5.37 Conflict in Language. All work performed must conform to all applicable City of Chandler codes, ordinances, and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and those in the Exhibits, the provisions in this Agreement prevail.

5.38 Document/Information Release. Documents and materials released to the Contractor, which are identified by the City as sensitive and confidential, are the City's property. The document/material must be issued by and returned to the City upon completion of the services under this Agreement. Contractor's secondary distribution, disclosure, copying, or duplication in any manner is prohibited without the City's prior written approval. The document/material must be kept secure at all times. This directive applies to all City documents, whether in photographic, printed, or electronic data format.

5.39 Exhibits. The following exhibits are made a part of this Agreement and are incorporated by reference:

Exhibit A - Project Description/Scope of Services  
Exhibit B - Compensation and Fees  
Exhibit C - Insurance Requirements  
Exhibit D - Special Conditions

5.40 Special Conditions. As part of the services Contractor provides under this Agreement, Contractor agrees to comply with and fully perform the special terms and conditions set forth in Exhibit D, which is attached to and made a part of this Agreement.

5.41 Cooperative Use of Agreement. In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide services on a school district property at least five times during a month, the Contractor will submit a full set of fingerprints to the school of each person or employee who may provide such service. The District will conduct a fingerprint check in accordance with A.R.S. 41-1750 and Public Law 92-544 of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor will comply with the governing body fingerprinting policies of each individual school district/public entity. The Contractor, sub-contractors, vendors and their employees will not provide services on school district properties until authorized by the District.

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

5.42 Non-Discrimination and Anti-Harassment Laws. Contractor must comply with all applicable City, state, and federal non-discrimination and anti-harassment laws, rules, and

regulations.

5.43 Licenses and Permits. Beginning with the Effective Date and for the full term of this Agreement, Contractor must maintain all applicable City, state, and federal licenses and permits required to fully perform Contractor's services under this Agreement.

5.44 Warranties. Contractor warrants that all work and services will be provided in accordance with the care and skill that a person who provides similar services in Chandler, Arizona exercises under similar conditions, and the Contractor must furnish a one-year warranty on all work and services performed under this Agreement. Contractor must furnish, or cause to be furnished, a two-year warranty on all fixtures, furnishings, and equipment furnished by Contractor, subcontractors, or suppliers under this Agreement. Any defects in design, workmanship, or materials that do not comply with this Agreement must be corrected by Contractor (including, but not limited to, all parts and labor) at Contractor's sole cost and expense. All written warranties and redlines for as-built conditions must be delivered to the City on or before the City's final acceptance of Contractor's services under this Agreement.

5.45 Emergency Purchases. City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

5.46 Non-Exclusive Agreement. This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

5.47 Budget Approval Into Next Fiscal Year. This Agreement will commence on the Effective Date and continue in full force and effect until it is terminated or expires in accordance with the provisions of this Agreement. The Parties recognize that the continuation of this Agreement after the close of the City's fiscal year, which ends on June 30 of each year, is subject to the City Council's approval of a budget that includes an appropriation for this item as expenditure. The City does not represent that this budget item will be actually adopted. This determination is solely made by the City Council at the time Council adopts the budget.



This Agreement shall be in full force and effect only when it has been approved and executed by the duly authorized City officials.

**FOR THE CITY**

By: \_\_\_\_\_

Its: Mayor

**FOR THE CONTRACTOR**

By Sanjin Derrani

Its: CEO

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

City Attorney

*JMB*

**ATTEST:**

By: \_\_\_\_\_

City Clerk

## **EXHIBIT A**

### **SCOPE OF SERVICES**

The Contractor will perform energy audits in City facilities, in accordance with the Contractor's proposal dated September 8, 2022 and the Scope of Services described below.

#### **SCOPE OF SERVICES**

##### **Included Facilities**

The following facilities will be included in the energy audit.

- Chandler City Hall, 175 S. Arizona Avenue (Approx. 139,000 sq. ft.)
- Police Department Downtown Station, 250 E. Chicago Street (Approx. 78,500 sq. ft. Shared chill water system with Chandler Municipal Court)
- Chandler Municipal Court, 200 E. Chicago Street (Approx. 32,000 sq. ft. Shared chill water system with Police Department Downtown Station)
- Tumbleweed Recreation Center, 745 E. Germann Road (Approx. 64,000 sq. ft.)
- Development Services, 215 E. Buffalo Street (Approx. 50,500 sq. ft. Shared chill water system with Information Technology)
- Information Technology, 275 E. Buffalo Street (Approx. 18,000 sq. ft. Shared chill water system with Development Services)
- Downtown Library, 22 S. Delaware Street (Approx. 64,000 sq. ft.)

##### **Investigation Phase**

The Contractor will provide an ASHRAE Level 2 Energy Audit that conforms to the latest ASHRAE 211 Standard. Tasks in this Phase include:

- Establish environmental control standards including:
  - Temperature, humidity, and pressure relationship requirements
  - Setback temperature parameters
  - Occupancy schedule
  - Occupant permission to adjust temperature setpoint
  - Allowable range for occupants to locally adjust setpoints
  - Override time limits
  - Performance KPIs
- Understanding existing controls infrastructure, access, and analytics deployment
- Establish and test communication to data sources
- Finalize point list
- Integrate points into SkySpark
- Conduct analysis of data
- Estimate savings, costs and incentives
- Report and presentation

##### **Implementation and Monitoring Phase**

The Contractor will support the City with the following implementation and construction phase tasks:

- Develop updated sequence of operations to be provided to controls contractor for implementation.
- Provide commission services to verify the proper installation and implementation of contracted activities. This includes but is not limited to point-to-point verification and functional testing.

The Contractor will provide and deploy its SkySpark building analytics software. This will occur concurrently with the Investigation Phase and carry through the Implementation and Monitoring Phase. The building analytics will be used to support and validate commissioning and extend for 12 months past project acceptance. The system must provide coverage for the sites' entire building management system connected HVAC system including terminal units (i.e. VAVs, FCUs, etc.). The system will provide the following services:

- Trend and store BMS data within the analytics software database, external to the BMS.
- Deploy trend data analytic rules that will cover the following standard issues:
  - Sensor flatline
  - Sensor out of calibration
  - Sequence of operation conflicts

**Additional Services**

The Contractor will provide additional, closely related services upon request from the City.

## EXHIBIT B COMPENSATION AND FEES

### Section 1 – Scope of Services Fees

Fees are inclusive of all services described in the Scope of Services.

Description	Fee
<b>Chandler City Hall</b>	
Investigation Phase	\$ 10,340
Implementation and Monitoring Phase	\$ 14,000
<b>Chandler City Hall Total</b>	<b>\$ 24,340</b>
<b>Police Department Downtown Station</b>	
Investigation Phase	\$ 5,925
Implementation and Monitoring Phase	\$ 8,000
<b>Police Department Downtown Station Total</b>	<b>\$ 13,395</b>
<b>Chandler Municipal Court</b>	
Investigation Phase	\$ 5,150
Implementation and Monitoring Phase	\$ 5,000
<b>Chandler Municipal Court Total</b>	<b>\$ 10,150</b>
<b>Tumbleweed Recreation Center</b>	
Investigation Phase	\$ 9,850
Implementation and Monitoring Phase	\$ 12,000
<b>Tumbleweed Recreation Center Total</b>	<b>\$ 21,850</b>
<b>Development Services</b>	
Investigation Phase	\$ 8,250
Implementation and Monitoring Phase	\$ 8,000
<b>Development Services Total</b>	<b>\$ 16,250</b>



<b>Information Technology</b>	
Investigation Phase	\$ 6,000
Implementation and Monitoring Phase	\$ 7,500
<b>Information Technology Total</b>	<b>\$ 13,500</b>
<b>Downtown Library</b>	
Investigation Phase	\$ 10,500
Implementation and Monitoring Phase	\$ 12,000
<b>Downtown Library Total</b>	<b>\$ 22,500</b>
<b>Project Grand Total</b>	<b>\$ 121,985</b>

## Section 2 – Additional Services

Hourly fees for services available upon request from the City.

<b>Service Description</b>	<b>Hourly Fee</b>
Energy Modeling	\$ 200
Transition to Electrification Evaluation and Strategic Planning	\$ 260
Design Services	\$ 180

## **EXHIBIT C INSURANCE**

### **INSURANCE**

#### General.

- A. At the same time as execution of this Agreement, the Contractor shall furnish the City a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.
- F. Use of Subcontractors: If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. *Commercial General Liability-Occurrence Form.* Contractor must maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized

to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.

- B. *Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles*  
*Vehicle Liability:* Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. *Workers Compensation and Employers Liability Insurance:* Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

Additional Policy Provisions Required.

- A. *Self-Insured Retentions or Deductibles.* Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
1. The Contractor's insurance must contain broad form contractual liability coverage.
  2. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
  3. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  4. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
  5. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
  6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of three years following completion and acceptance of the

Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability insurance during this three year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

7. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

B. *Insurance Cancellation During Term of Contract/Agreement.*

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within ten days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after 30 days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven days of receipt of insurers' notification to that effect.

A. *City as Additional Insured.* The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.



## **EXHIBIT D TO AGREEMENT SPECIAL CONDITIONS**

### **ACCESS TO SECURED FACILITIES**

Contract Worker Access Controls, Badge and Key Access Requirements. A Contract Worker shall not be allowed to begin work in any City facility without: (A) The prior completion and the City's acceptance of the required background screening; and (B) when required, the Contract Worker's receipt of a City issued badge. A badge will be issued to a Contract Worker solely for access to the City facility(s) to which the Contract Worker is assigned. Each Contract Worker who enters a City facility must use the badge issued to the Contract Worker. Any and all fees associated with security badging will be assessed in compliance with Chandler City Code §4-22.

Key Access Procedures. If the Contract Worker's services require keyed access to enter a City facility(s), a separate key issue/return form must be completed and submitted by Contractor for each key issued.

Stolen or Lost Badges or Keys. Contractor shall report lost or stolen badges or keys to the City immediately. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees prior to issuance of a new badge or key.

Return of Badges or Keys. All badges and keys are the property of the City and must be returned to the City within one business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Contractor shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.

Contractor's default under this Section shall include, but is not limited to the following: (1) Contract Worker gains access to a City facility(s) without the proper badge or key; (2) Contract Worker uses a badge or key of another to gain access to a City facility; (3) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (4) Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (5) Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Contractor acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three business days from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, Contractor shall be liable for and shall pay to the City the sum of \$1,000.00 for each breach by Contractor of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Contractor breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages in the event that Contractor breaches this Section. The parties further agree

that three breaches by Contractor of this Section arising out of any default within a consecutive period of three months or three breaches by Contractor of this Section arising out of the same default within a period of 12 consecutive months shall constitute a material breach of this Agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.



**City Council Memorandum      Information Technology    Memo No. N/A**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**Thru:** Joshua H. Wright, City Manager  
Dawn Lang, Deputy City Manager - CFO  
Sandip Dholakia, Chief Information Officer  
**From:** Owen Zorge, Chief Information Security Officer  
**Subject:** Purchase of Proofpoint Network Security Software

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**Proposed Motion:**

Move City Council approve the purchase of Proofpoint network security software, from SHI International, Inc., utilizing the Omnia Partners Contract No. 2018011-02, in an amount not to exceed \$222,711, for the period of one year, beginning April 11, 2023, through April 10, 2024.

**Background/Discussion:**

The City of Chandler's data security roadmap includes prevention of confidential data loss and data security breaches. Detection, prevention, and encryption technologies help to ensure information is not disclosed via email messages that could lead to identity theft or data breaches. Staff is requesting approval to continue the use of this technology with the City's current email system to prevent data loss and unintentional exposures, as well as facilitate the ability to send messages via specific security policies utilizing data encryption. These email security services have been in use since 2005.

This request also includes new features. Isolation Browser is a tool which provides additional protection to the City network through its ability to isolate work that needs to be done on suspicious websites or the dark web by Police Department personnel. The other new module is Targeted Attach Protection, which further analyzes and blocks advanced threats before reaching the inbox of City employees. Additionally, this purchase includes a full suite of recent and engaging security awareness and anti-phishing training to educate our City users how to

protect the City by following security best practices and identifying and reporting threats and incidents.

Securing the City's electronic messaging systems and training users on security best practices meets liability, risk management, and regulatory compliance objectives.

**Evaluation:**

The City of Mesa, on behalf of Omnia Partners, competitively solicited and awarded a contract for information technology solutions and services. The City has a current agreement with Omnia Partners allowing for the cooperative use of its contracts.

Fiscal Impact				
Account No.	Fund Name	Program Name	Dollar Amount	CIP Funded Y/N
403.1290.5419.0.0.0	Technology Replacement Fund	N/A	\$222,711	N



**City Council Memorandum      Management Services      Memo No. 23-025**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**Thru:** Joshua H. Wright, City Manager City  
Dawn Lang, Deputy City Manager - CFO  
**From:** Danielle Wells, Revenue and Tax Manager  
**Subject:** Special Event Liquor Licenses and Temporary and Permanent Extensions of  
Liquor License Premises Administratively Approved

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**Background/Discussion**

Staff works directly with the requestor and the Arizona Department of Liquor Licenses and Control (DLLC) on liquor licenses for Special Events, Temporary Extensions of Premises, and Permanent Extensions of Premises. All requirements for Special Events and Temporary Extensions of Premises are reviewed by staff through the applicable committee (Special Events Committee for Special Events on City property or the Temporary Sales and Promotional Events (TSPE) Committee for Special Events on private property), and Code requirements for Permanent Extension of Premises are reviewed by the Planning Division for Council action. Related Planning City Code requirements that require City Council action include: Permanent Extension of a Bar Series 6 or 7 requires a Use Permit to expand the footprint and any Permanent Extension with entertainment added or expanded requires an Entertainment Use Permit (EUP).

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**Attachments**

Special Event Liquor Licenses and Temporary and Permanent Extensions of  
Liquor License Premises Administratively Approved



February 9, 2023

## **Special Event Liquor and Extensions of Liquor Premises Approvals**

### **Special Event Liquor Licenses**

Organization Name: Ahwatukee Lacrosse Inc.

Applicant: Bill Lynch

Event Details: Ahwatukee Lacrosse Bags Tourney on Sunday, February 26, 2023 from 11:00 a.m. until 6:00 p.m.

Location: Sandbar Mexican Grill, 7200 W. Ray Road

Organization Name: Chandler Chamber of Commerce

Applicant: Theresa Crandall-Kimble

Event Details: Chandler Chamber Ostrich Festival on Thursday, March 16, 2023 from 4:00 p.m. until 11:00 p.m., Friday, March 17, 2023 from 2:00 p.m. until Midnight, Saturday, March 18, 2023 from 10:00 a.m. until Midnight and Sunday, March 19, 2023 from 10:00 a.m. until 11:00 p.m.

Location: Tumbleweed Park, 745 E. Germann Road

Organization Name: Downtown Chandler Community Foundation

Applicant: Rebecca Hill

Event Details: Beer, Bourbon, BBQ & Bands on Friday, March 3, 2023 from 4:00 p.m. until 11:00 p.m. and Saturday, March 4, 2023 from Noon until 11:00 p.m.

Location: Dr. A.J. Chandler Park West, 3 S. Arizona Avenue

Organization Name: Greater Cause Foundation, DBA The Greater Cause

Applicant: Jillian Corwin

Event Details: KNIX BBQ & Beer Festival on Saturday, March 25, 2023 from Noon until 10:00 p.m.

Location: Tumbleweed Park, 745 E. Germann Road

Organization Name: Greater Cause Foundation, DBA The Greater Cause

Applicant: Jillian Corwin

Event Details: Southwest Cajun Fest on Saturday, February 4, 2023 from 2:00 p.m. until 9:00 p.m.

Location: Dr. A.J. Chandler Park-Stage Plaza, 178 E. Commonwealth Avenue

Organization Name: Blue Collar Vineyard, LLC

Applicant: JoAnne Brown

Event Details: Wine Vendor at Fine Arts & Wine Festival on Friday, February 17, 2023 from 10:00 a.m. until 5:00 p.m., Saturday, February 18, 2023 from 10:00 a.m. until 5:00 p.m. and Sunday, February 19, 2023 from 10:00 a.m. until 5:00 p.m.

Location: Dr. A.J. Chandler Park West, 3 S. Arizona Avenue

### **Temporary Extensions of Liquor License Premises**

None

### **Permanent Extensions of Liquor License Premises**

None



**City Council Memorandum      Development Services Memo No.**

**Date:** February 6, 2023  
**To:** Mayor and Council  
**From:** Development Services Department  
**Subject:** Study Session and Regular Minutes of December 7, 2022, Planning and Zoning Commission

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**Attachments**

December 7, 2022 Study Session Minutes  
December 7, 2022 Regular Meeting Minutes

# Meeting Minutes

## Planning and Zoning Commission

### Study Session

December 7, 2022 | 5:00 p.m.  
Chandler City Council Chambers  
88 E. Chicago St., Chandler, AZ



### Call to Order

The meeting was called to order by Chairman Heumann at 5:00 p.m.

### Roll Call

#### Commission Attendance

Chairman Rick Heumann  
Vice Chairman David Rose  
Commissioner Erik Morgan  
Commissioner Sherri Koshiol  
Commissioner Michael Quinn  
Commissioner Jeff Velasquez

#### Staff Attendance

Kevin Mayo, Planning Administrator  
David de la Torre, Planning Manager  
Lauren Schumann, Principal Planner  
Harley Mehlhorn, City Planner  
Darsy Olmer, Associate Planner  
Tulili Tuitelelapaga-Howard, Planning Intern  
Thomas Allen, Assistant City Attorney  
Julie San Miguel, Clerk

#### Absent

Commissioner Kyle Barichello

### Scheduled/Unscheduled Public Appearances

Members of the audience may address any item not on the agenda. State Statute prohibits the Board or Commission from discussing an item that is not on the agenda, but the Board or Commission does listen to your concerns and has staff follow up on any questions you raise.

### Consent Agenda and Discussion

#### 1. November 16, 2022, Planning and Zoning Commission Meeting Minutes

Move Planning and Zoning Commission approve Planning and Zoning Commission meeting minutes of the Study Session of November 16, 2022, and Regular Meeting of November 16, 2022.

## **2. PLH22-0060 MEDICAL MARIJUANA CODE AMENDMENT**

KEVIN MAYO, PLANNING ADMINISTRATOR presented details regarding a citizen initiative amending the city zoning code by amending ARTICLE II.-DEFINITIONS, ARTICLE XXI.-TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, and ARTICLE XXII.-ADDITIONAL HEIGHT AND AREA REGULATIONS as they relate to regulating medical marijuana facilities, medical marijuana cultivation sites, and medical marijuana infusion food establishments. Proposed amendments include expanding hours of operation, increasing square-footage size limitations, and permitting the colocation of a medical marijuana facility with its affiliated onsite medical marijuana cultivation site and/or medical marijuana infusion food establishment when approved through a Conditional Use Permit.

COMMISSIONER VELASQUEZ thanked staff for the presentation and asked if 5,000 square feet is within range of what other neighboring municipalities have adopted for this type of use.

KEVIN MAYO, PLANNING ADMINISTRATOR responded the limitations on square footage are above us by significant margins of 25,000 to 10,000, except Glendale who is 6,000 for dispensary, 25,000 for cultivation, and 10,000 for infusion. He further stated Town of Gilbert is 5,000 for dispensary, 5,000 for cultivation, and 5,000 for infusion.

COMMISSIONER MORGAN would like staff to confirm the requested square footage for dispensary, cultivation, and infusion. He asked if the square footage requirement would include the ancillary or is that 25% in addition to the 5,000 square feet.

KEVIN MAYO, PLANNING ADMINISTRATOR responded, the retail side belongs in commercial and the production growth side belongs in industrial; therefore, in an industrial area there could be 5,000 square feet of cultivation and 5,000 square feet infusion food establishment for 10,000 square feet. He explained if someone met the criteria and went through the use permit process, they could get 2,500 feet of dispensary for a total of 12,500 total square feet.

COMMISSIONER MORGAN asked if the stipulations are similar to a brewery, like SanTan Brewery where there is an area to make product and an area to serve.

KEVIN MAYO, PLANNING ADMINISTRATOR replied those are tied differently because of the entertainment component, he explained the entertainment use permit has different regulation criteria. He further explained, if they do not have the entertainment then it would be viewed similarly it's off the arterial, it's ancillary to the production side, and things like that.

CHAIRMAN HEUMANN asked if the area for selling products is limited to 2,500 square feet is the area for selling products and does this change the separations from daycare and schools because he was on City Council in 2011 when the ordinance was written in 2011.



KEVIN MAYO, PLANNING ADMINISTRATOR responded the 2,500 square feet is for selling products. He further explained the list of protected land uses; daycare, residential, schools, and churches will stay the same and the separation requirements of a quarter mile for all of those and one mile separation for another dispensary or medical marijuana use. He confirmed that will stay the same and it's not proposed to change with this code change.

CHAIRMAN HEUMANN asked what do neighboring cities do in terms of hours of operation. He mentioned, he is curious about the 7:00 a.m. time as there were times you could not buy alcohol before a certain time.

KEVIN MAYO, PLANNING ADMINISTRATOR stated this time is consistent with other cities and presented a list. He pointed out start times range between 6:00 a.m. to 8:00 a.m. and end times range between 7:00 p.m. – 9:00 p.m., he mentioned the four other dispensaries in Chandler are controlled by Maricopa County and they do not have any limitations on their hours. He explained Maricopa County does not restrict the start time and they can start whenever they want. He stated the proposed hours are consistent with the other jurisdictions benchmarked, but also against the fact that the county doesn't have a start time.

CHAIRMAN HEUMANN stated there is one dispensary in the City of Chandler on Chandler Blvd and 56<sup>th</sup> Street and asked if the others are on county islands.

KEVIN MAYO, PLANNING ADMINISTRATOR stated that is correct, there is one on South Arizona Avenue near Riggs, another near Chandler Heights and Gilbert Rd, another on the southwest corner of Chandler Blvd and Gilbert, and the last one is in west Chandler south of the 202.

CHAIRMAN HEUMANN asked if staff was aware of any security issues with those sites, including the one in Chandler.

KEVIN MAYO, PLANNING ADMINISTRATOR stated staff is not aware of any security issues and mentioned if the Applicant were to come up, they could advise of how this use is the most regulated in the state.

CHAIRMAN HEUMANN confirmed there were no further questions or comments from the Commission Members.

### **3. PLH22-0054 & PLH22-0059 GAME SHOW BATTLE ROOMS**

DARSY OMER, ASSOCIATE PLANNER presented details regarding the request for Rezoning from Planned Area Development (PAD) for C-1-Neighborhood Commercial uses to PAD for C-2-Community Commercial uses within an existing commercial center located at 6909 W. Ray Road, generally located at the southeast corner of Ray Road and 56th Street and Use Permit approval for a Series 7 Beer and Wine Bar license for Suite 29 located within the same commercial center.



CHAIRMAN HEUMANN asked what is a game show battle room.

DARSY OMER, ASSOCIATE PLANNER replied it's a place that hosts different types of classic television game shows like Wheel of Fortune for people to play.

CHAIRMAN HEUMANN confirmed there were no further questions or comments from the Commission Members.

#### **4. PLH22-0039 MOUNTAIN VIEW ESTATES**

DAVID DE LA TORRE, PLANNING MANAGER presented details regarding the request for Preliminary Development Plan approval for housing product design to be constructed on a 16-lot single-family subdivision located on the north side of Riggs Road approximately ¼ mile east of Lindsay Road.

CHAIRMAN HEUMANN asked is this the project that had issues with the ditch.

DAVID DE LA TORRE, PLANNING MANAGER stated yes, the ditch was a big part of this project in 2019.

CHAIRMAN HEUMANN mentioned that he remembers this from 2019 and this looks good. He stated black and white is noted on staff's report on color and asked if black will only be used as an accent.

DAVID DE LA TORRE, PLANNING MANAGER responded the primary colors are white, black, and bronze and the black is an accent color.

CHAIRMAN HEUMANN asked if this will be gated.

DAVID DE LA TORRE, PLANNING MANAGER confirmed the project will not be gated.

CHAIRMAN HEUMANN stated this is a beautiful project and confirmed there were no further questions or comments from the Commission Members.

#### **5. PLH22-0049 ELLIOT'S STEAKHOUSE**

DARSY OMER, ASSOCIATE PLANNER presented details regarding the request for Entertainment Use Permit approval for indoor live entertainment and indoor and outdoor speakers for background music. The business is located at 81 W. Boston Street, generally located at the southwest corner of Arizona Avenue and Boston Street in downtown Chandler.

CHAIRMAN HEUMANN asked if the location is the old Sasha's space that Gavin and his group manage.

DARSY OMER, ASSOCIATE PLANNER confirmed the location is where the Sasha's restaurant was previously.

CHAIRMAN HEUMANN stated he looks forward to this addition to downtown and mentioned that Gavin and his group are great operators and for those who do not know, they also have Hidden House and Brick Yard. He thanked staff and confirmed there were no further questions or comments from the Commission Members.

#### **6. PLH22-0050 MAPLE HOUSE**

HARLEY MEHLHORN, CITY PLANNER presented details regarding the request for Use Permit approval for a Series 7 Beer and Wine Bar License and Entertainment Use Permit approval to allow outdoor speakers and acoustic live entertainment. The business is located at 198 W. Boston Street on the northeast corner of Boston and California streets in downtown Chandler.

CHAIRMAN HEUMANN asked if they will be serving food.

HARLEY MEHLHORN, CITY PLANNER stated there is no full-service kitchen proposed, therefore from staff's understanding the menu will consist of charcuterie boards and other concessions.

CHAIRMAN HEUMANN confirmed there were no further questions or comments from the Commission Members.

#### **7. Cancellation of the December 21, 2022, and January 4, 2023, Planning and Zoning Commission Hearings**

Move Planning and Zoning Commission cancel December 21, 2022, and January 4, 2023, Planning and Zoning Commission Hearings.

## **Calendar**

The next Study Session will be held before the Regular Meeting on Wednesday, January 18, 2023, in the Chandler City Council Chambers, 88 E. Chicago Street.

## **Adjourn**

The meeting was adjourned at 5:31 p.m.



Kevin Mayo, Secretary



Rick Heumann, Chairman

# Meeting Minutes

## Planning and Zoning Commission

### Regular Meeting

December 7, 2022 | 5:30 p.m.  
Chandler City Council Chambers  
88 E. Chicago St., Chandler, AZ



### Call to Order

The meeting was called to order by Chairman Heumann at 5:38 p.m.

### Roll Call

#### Commission Attendance

Chairman Rick Heumann  
Vice Chairman David Rose  
Commissioner Erik Morgan  
Commissioner Sherri Koshiol  
Commissioner Michael Quinn  
Commissioner Jeff Velasquez

#### Staff Attendance

Kevin Mayo, Planning Administrator  
David de la Torre, Planning Manager  
Lauren Schumann, Principal Planner  
Harley Mehlhorn, City Planner  
Darsy Olmer, Associate Planner  
Thomas Allen, Assistant City Attorney  
Julie San Miguel, Clerk

#### Absent

Commissioner Kyle Barichello

### Pledge of Allegiance

The Pledge of Allegiance was led by Commissioner Erik Morgan.

### Scheduled and Unscheduled Public Appearances

Members of the audience may address any item not on the agenda. State Statute prohibits the Board or Commission from discussing an item that is not on the agenda, but the Board or Commission does listen to your concerns and has staff follow up on any questions you raise.



# Consent Agenda and Discussion

## 1. November 16, 2022, Planning and Zoning Commission Meeting Minutes

Move Planning and Zoning Commission approve Planning and Zoning Commission meeting minutes of the Study Session of November 16, 2022, and Regular Meeting of November 16, 2022.

## 2. PLH22-0060 MEDICAL MARIJUANA CODE AMENDMENT

A citizen initiative amending the city zoning code by amending ARTICLE II.-DEFINITIONS, ARTICLE XXI.-TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, and ARTICLE XXII.- ADDITIONAL HEIGHT AND AREA REGULATIONS as they relate to regulating medical marijuana facilities, medical marijuana cultivation sites, and medical marijuana infusion food establishments. Proposed amendments include expanding hours of operation, increasing square-footage size limitations, and permitting the colocation of a medical marijuana facility with its affiliated onsite medical marijuana cultivation site and/or medical marijuana infusion food establishment when approved through a Conditional Use Permit.

Proposed Motion:

Move Planning and Zoning Commission recommend approval of a citizen initiative Zoning Code amendment to ARTICLE II.-DEFINITIONS, ARTICLE XXI.-TABLE OF PERMITTED USES FOR NONRESIDENTIAL DISTRICTS, and ARTICLE XXII.-ADDITIONAL HEIGHT AND AREA REGULATIONS as they relate to regulating medical marijuana facilities, medical marijuana cultivation sites, and medical marijuana infusion food establishments. Proposed amendments include expanding hours of operation, increasing square-footage size limitations, and permitting the colocation of an ancillary medical marijuana facility with its affiliated onsite medical marijuana cultivation site and/or medical marijuana infusion food establishment when approved through a Conditional Use Permit.

## 3. PLH22-0054 & PLH22-0059 GAME SHOW BATTLE ROOMS

Request for Rezoning from Planned Area Development (PAD) for C-1-Neighborhood Commercial uses to PAD for C-2-Community Commercial uses within an existing commercial center located at 6909 W. Ray Road, generally located at the southeast corner of Ray Road and 56th Street and Use Permit approval for a Series 7 Beer and Wine Bar license for Suite 29 located within the same commercial center.

Proposed Motions:

Move Planning and Zoning Commission recommend approval of Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses within an existing commercial center.

Move Planning and Zoning Commission recommend approval of a Use Permit for a Series 7 Beer and Wine Bar license located within the same commercial center.

Recommended Conditions of Approval:

Move Planning and Zoning Commission recommend approval of Rezoning from Planned Area Development (PAD) for Neighborhood Commercial (C-1) uses to PAD for Community Commercial (C-2) uses subject to the following conditions:

Rezoning

1. Uses permitted shall be those permitted in the Community Commercial (C-2) zoning district.
2. Landscaping shall be in compliance with current Commercial Design Standards.
3. The site shall be maintained in a clean and orderly manner.
4. The landscaping in all open-spaces shall be maintained by the property owner or property owners' association, and shall be maintained at a level consistent with or better than at the time of planting.
5. The landscaping in all rights-of-way shall be maintained by the adjacent property owner or property owners' association.

Move Planning and Zoning Commission recommend approval of Use Permit for a Series 7 Beer and Wine Bar license subject to the following conditions:

Use Permit

1. Substantial expansion or modification beyond the approved exhibits (Floor Plan and Narrative) shall void the Use Permit and require new Use Permit application and approval.
2. The Use Permit is non-transferable to any other location or any new owner.
3. The site shall be maintained in a clean and orderly manner.
4. This Use Permit approval is solely for a Series 7 Beer and Wine Bar license.
5. The Use Permit shall remain in effect for two (2) years from the date of City Council approval. Continuation of the Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler



#### **4. PLH22-0039 MOUNTAIN VIEW ESTATES**

Request for Preliminary Development Plan approval for housing product design to be constructed on a 16-lot single-family subdivision located on the north side of Riggs Road approximately ¼ mile east of Lindsay Road.

Proposed Motion:

Move Planning and Zoning Commission recommend approval of Preliminary Development Plan PLH22-0039 Mountain View Estates for housing product design to be constructed on a 16-lot single family subdivision, subject to the conditions as recommended by Planning staff.

Recommended Conditions of Approval

Planning staff recommends Planning and Zoning Commission move to recommend approval of the Preliminary Development Plan, subject to the following conditions:

Preliminary Development Plan

1. Development shall be in substantial conformance with the Development Booklet, entitled "Mountain View Estates PDP Submittal", dated November 7, 2022 and kept on file in the City of Chandler Planning Division, in File No. PLH22-0039, modified by such conditions included at the time the Booklet was approved by the Chandler City Council and/or as thereafter amended, modified or supplemented by the Chandler City Council.
2. The covenants, conditions and restrictions (CC & R's) to be filed and recorded with the subdivision shall mandate the installation of front yard landscaping by either the homeowner or the Developer at the time of construction of a home on a lot, and in no event shall occur any later than 180 days from the date of occupancy with the homeowners' association responsible for monitoring and enforcement of this requirement.
3. Each garage shall be pre-wired to provide 240V electrical capacity necessary to accommodate future electric vehicle charging equipment.
4. Preliminary Development Plan approval does not constitute Final Development Plan approval; compliance with the details required by all applicable codes and conditions of the City of Chandler and this Preliminary Development Plan shall apply.

#### **5. PLH22-0049 ELLIOT'S STEAKHOUSE**

Request for Entertainment Use Permit approval for indoor live entertainment and indoor and outdoor speakers for background music. The business is located at 81 W. Boston Street, generally located at the southwest corner of Arizona Avenue and Boston Street in downtown Chandler.

Proposed Motion:

Move Planning and Zoning Commission recommend approval of Entertainment Use Permit case PLH22-0049 Elliot's Steakhouse for live indoor entertainment and indoor and outdoor speakers for background music.

Recommended Conditions of Approval

Planning staff recommends Planning and Zoning Commission move to recommend approval of the Entertainment Use Permit, subject to the following conditions:

1. Substantial expansion or modification beyond the approved attachments (Floor Plan and Narrative) shall void the Entertainment Use Permit and require new Entertainment Use Permit application and approval.
2. Live piano or any other live music on the front patio shall require a new Entertainment Use Permit application and approval.
3. Entertainment activities shall only be permitted on Sunday-Thursday from 3:00 p.m. - 10:00 p.m. and on Friday-Saturday from 3:00 p.m. - 12:00 a.m.
4. The Entertainment Use Permit is non-transferable to any other location.
5. The site shall be maintained in a clean and orderly manner.
6. No noise shall be emitted from external speakers or live entertainment in such a manner that exceeds the general level of noise by uses outside the premises of the business and disturbs adjacent businesses and residential areas.
7. The establishment shall provide a contact phone number for a responsible person (i.e., bar owner and/or manager) to any interested neighbors and property owners to resolve noise complaints quickly and directly.
8. The entertainment Use Permit shall remain in effect for two (2) years from the date of City Council approval. Continuation of the Entertainment Use Permit beyond the expiration date shall require reapplication to and approval by the City of Chandler.

**6. PLH22-0050 MAPLE HOUSE**

Request for Use Permit approval for a Series 7 Beer and Wine Bar License and Entertainment Use Permit approval to allow outdoor speakers and acoustic live entertainment. The business is located at 198 W. Boston Street on the northeast corner of Boston and California streets in downtown Chandler.

#### Proposed Motion:

Move Planning and Zoning Commission recommend approval of Use Permit for a Series 7 Beer and Wine Bar License and Entertainment Use Permit to allow outdoor speakers and acoustic live entertainment, located at 198 W. Boston Street on the northeast corner of Boston and California streets in Downtown Chandler, subject to the conditions recommended by Planning staff.

#### Recommended Conditions of Approval

Planning staff recommends Planning and Zoning Commission move to recommend approval of the Use Permit, subject to the following conditions:

1. Substantial expansion or modification beyond the approved exhibits (Site Plan, Floor Plan and Narrative) shall void the Use Permit and require new Use Permit application and approval.
  2. The Liquor Use Permit and Entertainment Use Permit are non-transferable to any other location.
  3. The site shall be maintained in a clean and orderly manner.
  4. All live entertainment shall be acoustic.
  5. The hours of live entertainment shall be limited to 4:00 pm – 9:00 pm Sunday through Thursday and 4:00 pm to 11:00 pm on Friday and Saturday.
  6. No noise shall be emitted from external speakers in such a manner that exceeds the general level of noise emitted by uses outside the premises of the business and disturbs adjacent businesses and residential areas.
  7. The establishment shall provide a contact phone number for a responsible person (i.e., brewery owner and/or manager) to any interested neighbors and property owners to resolve noise complaints quickly and directly.
  8. The Entertainment Use Permit shall remain in effect for two (2) year from the date of City Council approval. Continuation of the Entertainment Use Permit beyond the expiration date shall require re-application to and approval by the City of Chandler
- 7. Cancellation of the December 21, 2022, and January 4, 2023, Planning and Zoning Commission Hearings**
- Move Planning and Zoning Commission cancel December 21, 2022, and January 4, 2023, Planning and Zoning Commission Hearings.



## Consent Agenda Motion and Vote

VICE CHAIRMAN ROSE moved to approve the Consent Agenda of the December 7, 2022, Regular Planning and Zoning Commission Meeting; Seconded by COMMISSIONER QUINN.

Motion carried unanimously (6-0).

## Member Comments/Announcements

KEVIN MAYO, PLANNING ADMINISTRATOR announced this is the last Planning and Zoning Commission Meeting of 2022. He thanked the Commission Members, on behalf of staff and complimented the group for being supportive. He mentioned over the years this Commission has been awesome in helping professionals gain confidence in public speaking and thanked the group for their efforts in 2022. He stated staff is looking forward to 2023 and wished everyone a safe and Happy Holiday.


CHAIRMAN HEUMANN stated this has been a great commission to work and wished everyone Happy Holidays.

## Calendar

The next regular meeting will be held on Wednesday, January 18, 2023, in the Chandler City Council Chambers, 88 E. Chicago Street.

## Adjourn

The meeting was adjourned at 5:42 p.m.



Kevin Mayo, Secretary



Rick Heumann, Chairman