ARIZONA COURT OF APPEALS

DIVISION ONE

BARRY GOLDWATER INSTITUTE FOR PUBLIC POLICY RESEARCH, Plaintiff/Appellant, v. CITY OF PHOENIX; JEFF BARTON; DENISE ARCHIBALD, and SHEREE RUCKER, Defendants/Appellees.	No. 1 CA-CV 24-0176 Maricopa County Superior Court No. CV2023-003250

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INTRODUCTION

The Superior Court properly denied the request for special action relief filed by the Barry Goldwater Institute for Public Policy Research ("Appellant" or "Goldwater Institute"). The record below demonstrates that the "best interests of the state" in maintaining the confidentiality of bargaining proposals exchanged under the City of Phoenix's "meet and confer" ordinance to avoid collusion among employee organizations, disruption of the bargaining process, over-politicization, performative bargaining, and the heightened risk of impasse outweighed any public interest in the disclosure of the proposals (which may never be adopted). This Court should uphold the Superior Court's ruling.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

This case arises from the Goldwater Institute's public records requests for bargaining proposals exchanged between the City of Phoenix ("City") and the Phoenix Law Enforcement Association ("PLEA"), an employee association which represents sworn peace officers in the Phoenix Police Department below the rank of Sergeant.

A. The Meet and Confer Ordinance

The City has adopted a "meet and confer" ordinance to facilitate a harmonious and cooperative relationship between the City and its employees.

Plaintiff/Appellant Goldwater Institute's Appendix ("APP") at APP.004 ¶ 6. As explained in the preamble:

> It is the purpose of this ordinance to obligate the City, public employees, and their representatives, acting within the framework of the law, to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages, hours and working conditions. It is also the purpose of this ordinance to promote the improvement of employer-employee relations by providing a uniform basis for recognizing the right of public employees to join, or refrain from joining, organizations of their own choice and be represented by such organizations in their employer-employee relations and dealings with the City in accordance with the provisions of this ordinance. It is also the purpose of this ordinance that the results of agreements between the employer and the employees will be drafted into written memoranda of understanding.

Phoenix City Code ("P.C.C.") ch. 2, art. XVII, § 2-209(4).

The meet and confer ordinance provides for the creation of several separate bargaining units comprised of employees with a shared community of interest:

> Public employees within the following categories shall constitute an appropriate unit:
> 1. Employees in positions classed as "office" including clerical and pre-professional.
> 2. Employees in positions classed as "field" including labor, custodial, trades and equipment operation. There are hereby established the following appropriate field units:
>   a. Field Unit I—Sanitation Division of the Public Works Department; District Operations, Golf Course, and Special Operations Divisions of the Parks and Recreation Department (excluding library guards); Administrative Services Division of the City Clerk Department; Human Services and Aging Services Divisions of the Human Resources Department; Street Maintenance Division and Sign Manufacturing, Maintenance, Street Marking and

Parking Meter Sections of the Street Transportation Department.

b. Field Unit II—Phoenix Convention Center Department; Aviation Department; Water Services Department; Engineering Department; Housing Conservation, Elderly Housing and Occupancy, Conventional Housing and Disbursed Housing Divisions of the Urban Neighborhood Improvement and Housing Department; Equipment Management and Facilities Maintenance Divisions of the Public Works Department; Library Department (library guards only); Management Information Systems Department; Real Estate and Materials Management Divisions of the Finance Department; Traffic Signal Construction and Maintenance Section of the Street Transportation Department.

3. Police officers—Below the rank of Sergeant.
4. Firefighters—Up to and including the rank of Captain.

P.C.C. ch. 2, art. XVII § 2-212(A).

The purpose of dividing employees into the aforementioned bargaining units is to "insure an effective representation of employee interests and [] promote the effectiveness of City operations for purposes of meeting and conferring[.]" *Id*. For instance, police officers undoubtedly have interests that diverge significantly from those of clerical workers, given the unique role of law enforcement. Recognizing this, the ordinance ensures that these groups have separate representatives to advocate on their behalf, and that each group participates in an individualized bargaining process with the City.

B. Meet and Confer Ordinance bargaining process

The City's meet and confer ordinance ("Ordinance") establishes a six-step bargaining process between the City and the authorized representatives for recognized units, which culminates in the parties entering into a memorandum of understanding ("MOU"):

1. On or before December 1 of any year in which meeting and conferring is authorized by this ordinance and the terms of memorandums of understanding in effect pursuant thereto, authorized employee organizations shall submit their proposed memorandum of understanding in writing to the City Manager or his designee, and shall file a copy thereof with the City Clerk as a public record.
2. [O]n or before December 8, each authorized employee organization shall be afforded the opportunity to make a presentation regarding its proposed memorandum of understanding and information in support thereof to a meeting of the City Council.
3. At its next meeting, the City Council shall provide on its agenda an opportunity for public comment on the proposals of the authorized employee organization.
4. On or before January 5, the City's designated representatives shall submit to the authorized employee organization the City's written response to its proposals and shall concurrently file copies thereof with the City Clerk as a public record.
5. Upon agreement being reached on a memorandum of understanding between the representatives of the parties, it shall be immediately submitted to the City Council and the employee organization.
6. After the proposed memorandum of understanding has been approved by the authorized employee organization, it shall be filed with the City Clerk of the City of Phoenix. At the earliest practicable date thereafter the City Council of the City of Phoenix shall provide on its agenda an opportunity for public comment on the terms of the memorandum of understanding prior to the Council acting thereon.

APP.005-06 ¶¶ 14-18; s*ee* P.C.C. ch. 2, art. XVII, § 2-218.

The cornerstone of this process is the duty to meet and confer in good faith, which is described as follows:

> Meet and confer is the performance of the mutual obligation of the public employer through its chief administrative officer or his designee and the designees of the authorized representative to meet at reasonable times, including meetings in advance of the budget-making process; and to confer in good faith with respect to wages, hours and other terms and conditions of employment or any question arising thereunder, and the execution of a written memorandum of understanding embodying all agreements reached…

P.C.C. ch. 2, art. XVII § 2-210(11).

Each cycle, the meet and confer process does not culminate in a wholly new MOU between the parties. APP.035-36 at 19:23-20:4. Rather, the parties negotiate revisions and amendments to the existing MOU. *Id*; APP.288. The process of negotiating these changes begins when the employee organization's authorized representative makes a written proposal to the City on a specific item or subject. APP.288 ¶ 3. The parties then negotiate the proposal terms. *Id*. If an agreement is reached on the proposal, it is reduced to writing in a "Tentative Agreement" or "TA." *Id*. This process of written proposal, negotiation and, if agreement is reached, the drafting of a written TA, continues until all issues for that period's negotiation are resolved. APP.285 ¶ 6.

The nature of a TA is truly "tentative." APP.288 ¶ 3. At any time, the parties can re-open any TA when attempting to resolve a different proposal. APP.288 ¶ 3. In other words, no agreement is final until all agreements are final. *Id*. Once *all* the TAs are agreed to, they are inserted into the then-current MOU, which is placed before the respective principals *(i.e.,* rank and file employee group members and City Council) for final approval. P.C.C. ch. 2, art. XVII § 2-218(F).

The Ordinance also includes guardrails to minimize the possibility of political influence. For instance, during the negotiation process of proposals and TAs, in between the second and fifth steps set forth above, employee organizations are prohibited from "[d]iscussing negotiation matters with members of the City Council[.]" P.C.C. ch. 2, art. XVII § 2-220(B)(8). Furthermore, if negotiations reach an impasse, the City is prohibited from "discussing with members of the City Council negotiation issues in dispute from the time the dispute is submitted to the fact-finding process and extending to the time that the fact-finder's report is made public." P.C.C. ch. 2, art. XVII § 2-220(A)(6).

C. The negotiations between PLEA and the City

The City currently recognizes five bargaining units under the meet and confer ordinance.[1] APP.279 ¶ 3. The negotiations run concurrently for all units. *Id*.

[1] The Units are: (1) Laborers' International Union of North America (LIUNA), Local 777; (2) the American Federation of State, County, and Municipal

This lawsuit arises from the City's negotiations with Unit 4, which is comprised of sworn peace officers below the rank of Sergeant who are represented by PLEA. APP.005 ¶ 7.

In late 2022, the City commenced the meet and confer process with PLEA and the other four units. APP.005 ¶ 8; APP.006 ¶ 22; P.C.C. ch. 2, art. XVII § 2-218. Before negotiations began, the City and PLEA entered into a set of written "Ground Rules" which included the following confidentiality requirement designed to promote candor and good faith discussions and to avoid potential disruptions that may ensue if the parties negotiate under a public spotlight:

> Neither party shall make any unilateral public statements with respect to their positions on issues addressed at the bargaining table, or other matters that may affect the Meet and Confer process, until such time as [the Phoenix Employment Relations Board] has declared that an impasse exists and the matter has been submitted to the City Council.

Defendant City of Phoenix Supplemental Appendix ("D.APP") at 002-016; APP.098 at 82:3-10.[2]

On or about December 1, 2022, PLEA submitted a letter of intent "to engage in wage and benefit negotiations beginning January of 2023." APP.006 ¶ 22.

Employees (AFSCME), Local 2384; (3) the American Federation of State, County, and Municipal Employees, Local 2960; (4) the Phoenix Law Enforcement Association; and (5) the International Association of Fire Fighters (IAFF), Local 493. APP.279 ¶ 3.

[2] The City also entered into "ground rules" with the other four bargaining units. *See, e.g.*, APP.285 ¶ 5.

Thereafter, the City complied with its obligations under the meet and confer ordinance by (1) affording PLEA the opportunity to make a presentation to the City Council and (2) scheduling a City Council meeting to allow public comment on changes to the MOU. APP.006 ¶¶ 24, 25; D.APP.017-028; D.APP.029-042.

In December 2022, the Goldwater Institute made a public records request for all bargaining proposals exchanged between the City and PLEA. APP.007 ¶ 30. In early January, the City responded by accurately stating that it had no records relating to this request for draft MOUs and proposals because, as discussed below, negotiations did not begin until mid-January. APP.007-08 ¶¶ 31, 32, 34.

Thereafter, during the week beginning January 16, 2023, the City began concurrent negotiations with the five bargaining units. APP.280 ¶ 6. Around the start of these negotiations, the Goldwater Institute submitted a public records request for:

> [a]ll draft Memoranda of Understanding ('MOUs')" between the City and PLEA contemplated for the fiscal year(s) beginning July 1, 2023; (2) "[a]ll proposals for MOUs currently being negotiated—or set to be negotiated per City Code Section 2-218" between those parties for the same time period, and (3) "[a]ny communications to or from City officials regarding PLEA's failure to submit a draft MOU for the fiscal year(s) beginning July 1, 2023.

APP.007 ¶ 30; APP.008 ¶ 36.

After some initial dialogue between the parties, City Attorney Julie Kriegh sent a February 23, 2023 response referencing the "best interests of the state" exception to disclosure and noting that:

> Releasing these types of materials would create a chilling effect on the parties' willingness to candidly engage with each other and would hinder the negotiations process. While negotiations are proceeding, the City does all it can to ensure the confidentiality of what happens at the bargaining meetings, including entering into confidentiality agreements with each bargaining unit. While the negotiations are proceeding, the City believes that the best interests of the City protect it from disclosing any draft proposals discussed at the bargaining table.
> A public body may designate a record as confidential when releasing the record "would have an important and harmful effect on the duties of the officials or agency in question" detrimental to the best interests of the state. *Ariz. Bd. of Regents v. Phoenix Newspapers Inc.*, 167 Ariz. 254, 257-58, 806 P.2d 348, 351-52 (1991). A balancing act of countervailing interests is appropriate in weighing the possible adverse impact of disclosure against the public's right to inspection. *Id*.
>
> APP.008-09 ¶¶ 37-41.

This lawsuit followed. APP.010 ¶ 46. The Goldwater Institute seeks to compel production of the *draft* proposals between the City and PLEA, which were generated during the confidential phase of negotiations. *See* IR.1. However, as discussed in detail below, the City properly withheld the bargaining proposals based on the "best interests of the state" exception to Arizona's public records law.

While the parties' draft proposals were not released, the public was provided ample opportunity to provide feedback on the draft MOU prior to ratification by the City Council. *See, e.g.*, APP.006 at ¶ 25. Specifically, after final agreement was

reached between the City and PLEA, the draft MOU was submitted for public comment at the City Council's April 19, 2023 meeting. APP.010 ¶ 48. Pursuant to the Ordinance, the City Council was prohibited from taking action to approve or reject the agreement until after receiving public comment on the draft. *See* P.C.C. ch. 2, art. XVII § 2-218(G). The City Council voted to approve the draft MOU on May 3, 2023. APP.010 ¶ 49.

II. PROCEDURAL HISTORY

On March 1, 2023, the Goldwater Institute filed a Verified Complaint for Statutory Special Action and Injunctive Relief, along with an Application for Order to Show Cause. IR.1-3. The Goldwater Institute requested that the Superior Court compel the City to provide the described public records, grant both preliminary and permanent injunctions to prevent the City from withholding these records, and issue a declaratory judgment stating that the City could not withhold the records under the Arizona Public Record Law. IR.1 at 14.

Over the following weeks, the parties fully briefed the issues, and an oral argument was held. IR.18; IR.19-22; IR.23. On May 24, 2023, the Superior Court filed an Under Advisement Ruling denying the Goldwater Institute's request for special action relief, injunctive relief, and declaratory judgment. IR.30. Specifically, the Court concluded that the deleterious consequences of public disclosure of draft bargaining proposals outweighed any public interest in perusing

drafts. *See* IR.30 at 4 ("Here, the Court finds the declarations establish potential material harm (i.e., potential for undue pressure, impasse, and collusion) that outweighs the presumption in favor of disclosure.").

Thereafter, the Goldwater Institute requested a full evidentiary hearing, which was set for December 12, 2023 (the "Evidentiary Hearing"). IR.37; IR.40 at ¶ 9. This allowed the Goldwater Institute to conduct discovery, including depositions, and to cross-examine the City's witnesses. IR.37; IR.40. After the Evidentiary Hearing, the Superior Court again denied the Goldwater Institute's request for disclosure of bargaining proposals based on the best interests of the state. IR.64; APP.003-16. The Goldwater Institute subsequently initiated this appeal. IR.70.

STATEMENT OF ISSUES

Did the Superior Court correctly conclude that the "best interests of the state" exception favors non-disclosure of draft bargaining proposals based on evidence that producing the requested documents would result in the politicization of labor negotiations, collusive activities among the five bargaining units that negotiate simultaneously, public posturing by negotiators, diversion of resources to public relations and member maintenance, an increased risk of extreme bargaining positions resulting in impasse, and a chilling effect on the free exchange of ideas?

STANDARD OF REVIEW

The Goldwater Institute misstates the proper standard of review in an apparent attempt to lessen its burden.

Under Arizona law, a special action is the proper vehicle for challenging the alleged denial of access to public records. A.R.S. § 39-121.02(A) ("Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the Superior Court, pursuant to the rules of procedure for special actions against the officer or public body."). In their Opening Brief, the Goldwater Institute cites to *Korwin v. Cotton* for the proposition that the appellate court must "view the facts and inferences drawn from those facts in the light most favorable to the party against whom judgment was entered." Pl./Appellant's Opening Br. at 9; 234 Ariz. 549, 554 (Ct. App. 2014). However, the *Korwin* court reviewed the trial court's grant of summary judgment in a civil matter alleging First Amendment violations, circumstances that have no applicability to this special action proceeding. *See, e.g.*, *Id.* at 552-54.

The Arizona Supreme Court has recognized that an appeal from the denial of access to public records involves two different standards of review. One standard is applied to findings of fact, while a different standard is used to evaluate conclusions of law. *Scottsdale Unified Sch. Dist. No. 48 of Maricopa Cnty. v.*

KPNX Broad. Co., 191 Ariz. 297, 302 ¶ 20 (1998) ("In reviewing the trial court's findings of fact, we apply two different standards of review.").

The appellate court reviews the trial court's findings of fact for an abuse of discretion and will affirm unless the findings are clearly erroneous. *Id*. ("We will uphold [the trial court's] findings of fact unless clearly erroneous."); *Smith v. Town of Marana*, 254 Ariz. 393, 396 ¶ 10 (Ct. App. 2022) (same); *Hodai v. City of Tucson*, 239 Ariz. 34, 39 ¶ 8 (Ct. App. 2016) (same); *Jud. Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 395 ¶ 8 (Ct. App. 2011) (same). Therefore, contrary to the Goldwater Institute's mistaken assertion, this Court should grant significant deference to the trial judge's assessment of the witnesses and exhibits, and to the factual findings that supported the denial of special action relief.

On the other hand, the Superior Court's legal conclusions drawn from those facts are reviewed *de novo*. *Smith*, 254 Ariz. at 396-97. "Thus, the trial court's determination of "whether plaintiffs wrongfully denied defendants access to public records 'is an issue of law'" subject to *de novo* review. *Id*. at 397.

When the correct standard of review is applied, there can be little debate about the Superior Court's conclusion based on the City's evidence, including the testimony of four witnesses who have directly participated in the bargaining process, that the state's best interests outweigh the Goldwater Institute's purported entitlement to draft bargaining proposals.

ARGUMENT

The Superior Court correctly concluded, based on the overwhelming weight of the evidence presented at the Evidentiary Hearing, that the City properly denied the Goldwater Institute's public record request under the "best interests of the state" exception to public records law.

I. The City's interests, including those of its residents and employees, weigh heavily in favor of withholding the requested records.

Arizona's public records statute reads: "Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours." A.R.S. § 39–121. Although this statute has been interpreted to favor disclosure, this presumption is not absolute. The Arizona Supreme Court has opined:

> While access and disclosure is the strong policy of the law, the law also recognizes that an unlimited right of inspection might lead to substantial and irreparable private or public harm; thus, where the countervailing interests of confidentiality, privacy or the best interests of the state should be appropriately invoked to prevent inspection, we hold that the officer or custodian may refuse inspection. Such discretionary refusal is subject to judicial scrutiny.

Carlson v. Pima County, 141 Ariz. 487, 491, (1984) (citations omitted).

Thus, public officials can withhold public records by showing that non-disclosure promotes confidentiality, privacy, or the best interests of the state. *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 348-49 ¶ 18 (Ct. App. 2001).

The "best interests of the state" standard is not confined to the narrow interest of either the official who holds the records or the agency he or she serves. *Id.* It includes the overall interests of the government and the residents of the City. *Id.* at 349. To justify withholding public documents, the [City's] interest in non-disclosure must "outweigh the general policy of open access[,]" not the narrow interest of the requesting party. *Id.*

As the Superior Court correctly held, the City's interests in maintaining the confidentiality of bargaining proposals during negotiations outweighs the policy of open access by protecting the integrity of the bargaining process. In performing this balancing test, it is important to evaluate the Goldwater Institute's request within the context of the bargaining framework. As background, the bargaining process within the Ordinance contemplates, in no uncertain terms, *when* public participation is permitted. Notably, the Ordinance allows for public comment on initial and final proposals before the City Council votes for approval. However, it does not provide for public involvement or comment during the negotiation period between these stages. *See, e.g.*, P.C.C. ch. 2, art. XVII § 2-218(A)-(H).

This format is intentional and effectively balances public transparency with the integrity of the meet and confer process. It helps prevent collusion, de-politicizes negotiations, avoids public posturing by negotiators, reduces the risk of impasses, fosters candid and open exchanges of ideas without undue pressure from

constituents, and maintains the morale of City employees, each of which will be explained in more detail below. Disclosing proposals during negotiations, as requested by the Goldwater Institute, would undermine these goals and protections. Therefore, non-disclosure of draft proposals during negotiations is in the City's best interest and far outweighs any general interest in the disclosure of *draft* proposals, which by virtue of their tentative, non-final status, do not result in any expenditure of public funds.

The Superior Court properly weighed and applied testimony from each of the City's witnesses, who have *personally participated* in the City's meet and confer process, to validate the above-stated harms.[3] The City's witnesses testified about concrete, non-speculative consequences that are likely to occur if bargaining proposals are made public during the negotiation process. These consequences demonstrate that the Superior Court correctly ruled in favor of non-disclosure.

Collusive Activities

As an initial matter, the public disclosure of bargaining proposals during ongoing negotiations would place the City at a severe disadvantage, because the City negotiates simultaneously with five different bargaining units. The risk of

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[3] At the December 12, 2023 Evidentiary Hearing, the City called four witnesses: Jason Perkiser, Assistant Human Resources Director over Labor Relations for the City; Darrell Kriplean, President of PLEA; Frank Piccioli, President of AFSCME Local 2960; and Bryan Willingham, President of the United Phoenix Firefighters Association Local 493. APP.134; APP.157; APP.173; APP.186.

collusive activities between the units is obvious, weighing in favor of confidentiality.

During the Evidentiary Hearing, Jason Perkiser, the City's lead spokesperson during negotiations, testified that the disclosure of proposals during negotiations risks turning negotiations from one-on-one to "five against one," which would completely subvert the entire purpose of separating the bargaining units. APP.282 ¶ 10.

He stated:

> Allowing a public record requester to obtain confidential bargaining proposals also puts the City at a disadvantage at the negotiation table. This is because the various bargaining groups could unite and effectively collude against the City, turning the negotiations from one-on-one negotiations to "five against one" negotiations. This is not a speculative concern. In my experience, the various bargaining groups are very interested in what is happening with the other groups and seeing if they can leverage what is being done elsewhere in their negotiations with the City. Moreover, if all the proposals were publicly available, the various employee groups might pressure each other not to accept deals with the City until collective concessions are made.

Id.

It is not difficult to envision a collusive scenario. For instance, if the City promises Unit 1 a 5% pay increase and Unit 2 a 3% pay increase, it follows naturally that Unit 2, upon accessing the City's proposal to Unit 1, would demand an equal raise. In other words, publicity is likely to lead to every Unit demanding the most favorable terms granted to any counterpart, thereby increasing the risk of

impasse and/or resulting in suboptimal outcomes that are disadvantageous to the taxpayer. There is nothing unduly speculative about this scenario. Rather, it is the type of common-sense determination courts are well-equipped to make.

The Superior Court, applying its discretion to determine the weight of the evidence presented, found Perkiser's testimony particularly persuasive, as it demonstrated the probability of specific, material harm resulting from disclosure. APP.012. The distinct probability of collusive activities among the five bargaining units – even unintentionally – is not in the best interest of the City or its residents.

In an effort to combat this conclusion, the Goldwater Institute cites to COPCU, a group comprised of the heads of bargaining units, to show that collusion already exists. *See generally*, Pl./Appellant's Opening Br. at 25-26. But this contention does not survive scrutiny.

The testimony on COPCU established that participants discuss broad strategies and high-level issues, but never share specific proposals. *See, e.g.*, APP.170 at 154:4-15. This is a far cry from publicizing real-time negotiations. Indeed, PLEA's lead negotiator emphasized the risks of disclosing detailed information during an ongoing bargaining cycle, stating:

> **Mr. Paladini**: Okay. Are you -- when the negotiations are ongoing, how careful are you about what information you share with your rank-and-file members?
> **Mr. Piccioli**: We keep things general. Again, I usually have some open houses. You know, we talk about how there's progression being made, how we're working towards things. When the budget comes out the

> City, we present that. But we never give specifics even to our members during negotiations.
> **Mr. Paladini**: How come?
> **Mr. Piccioli**: It would violate our strategy you know, telling people that, for instance, we're starting at 15 percent pay increase would -- would bring them up to the level of going, well, then I expect a 15 percent. But it's a common strategy, obviously, to start high and work ourselves towards a middle ground.
>
> APP.170-71 at 154:16-155:5.

Furthermore, the fact that there may be high-level discussions among COPCU members (*i.e.*, the negotiators for the employee associations) does not bring publicity to the City's bargaining proposals and counter-proposals. So, for example, it does not alter the risk that the City's offer of a 5% pay increase to one unit will be shared with others, thereby resulting in an across-the-board demand that every unit receive the same amount. Thus, the Goldwater Institute's argument regarding COPCU communications does not negate the City's strong interest in avoiding collusion.

Politicizing the Negotiation Process

The Superior Court correctly recognized and weighed the potential harm of politicizing the negotiation process if draft bargaining proposals are disclosed. All the City's witnesses, *from both sides of the negotiating table*, expressed concerns about the detrimental impact of publicizing draft reports. *See, e.g.*, APP.279-83; APP.284-87; APP288-91; APP292-94.

Jason Perkiser testified to this issue:

> Producing documents exchanged during the "blackout" negotiation period in response to a public records request would effectively make the negotiations public and would inject undesirable pressures, both political and otherwise, into the negotiation process. These pressures include the desire to please and save face with constituents, which can incentivize negotiators to engage in posturing and staking out (and maintaining) hardline positions.

APP.281 ¶ 9.

Again, it is common sense (and not unduly speculative) that people behave differently under a spotlight as compared to their behavior in private. Thus, this factor weighs heavily in favor of non-disclosure.

Free Exchange of Ideas

The Superior Court correctly determined that disclosing draft bargaining proposals would negatively impact the free exchange of ideas and proposals, a cornerstone of any negotiation process. Bargaining proposals are rarely made in isolation. Relying on confidentiality, the parties often engage in a "straw man" tactic, where each side makes proposals they do not expect to be accepted to position themselves to obtain a better result by trading away certain terms.

This is a strategic decision that can help break stalemates. Confidentiality allows bargaining officials to make these proposals freely, knowing they will not need to explain them to potentially unhappy constituents. As Bryan Willingham testified, "… a lack of confidentiality in the process would likely result in external

pressure and influence from citizens or partisan groups. The parties would necessarily be forced to spend a substantial amount of time publicly explaining and defending each of their proposals. It could also hinder the parties' ability and willingness to compromise. This would increase the likelihood of impasse and cost the parties significant time, money, and other resources." APP.293 ¶ 6.

Public disclosure of draft bargaining proposals may also lead unit members to second-guess or attempt to influence the negotiation process – a particularly significant concern for the unit represented by PLEA, which has approximately 2,200 members. APP.279-80 ¶ 3. The results would be detrimental, as professional negotiators are knowledgeable and work for the group's best interests, while individual members may have their own agendas. Bryan Willingham, who is President of a bargaining unit with 400 less members than PLEA, expanded on these concerns, stating:

> If – if we had to occupy our time with explaining to our 1,800 members, as well as the 1.7 million people potentially. Obviously, that – not all 1.7 would be calling us, but if we had to continually explain our work schedule, the benefits, and the way they're constructed, how – the derivation thereof, and all of the complexities that surround the nature of our work – I'm not familiar with any city in the country that has the timelines and the strict adherence to those timelines, and how quickly we move through those processes, it would – it would drown us. I think it would paralyze us.
>
> APP.195 at 179:6-16.

Put simply, public disclosure has the potential to increase labor unrest and lead to more costly and disruptive impasses. As such, creating an environment that promotes the free exchange of ideas is in the best interests of the City and the public and outweighs the need for disclosure of bargaining proposals during the negotiation period.

Each of these reasonably foreseeable consequences is likely to impair labor relations, create conflict between the City and its workforce, negatively impact public services, and result in inefficient expenditures of public funds. As such, the balance is heavily tilted in the City's favor.

Cases from numerous jurisdictions are instructive and persuasive as to the above-referenced interests. The City's concerns regarding potential collusion between employee bargaining units are analogous to concerns that arise in the procurement context where bidders gain an advantage if they learn the substance of competing bids during the bidding and negotiation process. In *Michaelis, Montanari & Johnson v. Superior Ct.*, the City of Los Angeles received a public records request for bids responsive to an active procurement request. 38 Cal. 4th 1065, 1068 (Cal. 2006). The attorney for the City of Los Angeles objected to the records request, arguing that releasing the requested records "would seriously impact the government's ability to negotiate a fair and cost-effective proposed contract" and that the requested disclosure "would irretrievably corrupt the process

and harm not only [the City of Los Angeles], but also city taxpayers who may not receive the best value in return for the expenditure of their tax dollar." *Id*. at 1069.

The California Supreme Court agreed, finding that "the public interest in nondisclosure clearly outweigh[ed] the public interest in disclosure" and that "[n]ondisclosure during the negotiation process . . . tends to reduce the possibility of collusion, price-fixing, or bid-rigging tactics." *Id*. at 1074. A similar analysis applies to the City's interests in this case, where disclosure of bargaining proposals during key negotiation periods would put the City at a disadvantage at the negotiating table, potentially turning one-on-one negotiations into five against one negotiations (with all five bargaining units presenting a united front against the City). APP.282 at ¶ 10.

The decision of the New Hampshire Supreme Court in *Talbot v. Concord Union Sch. Dist.*, 114 N.H. 532, 323 A.2d 912 (1974) is also informative. There, the court found that "substantial authority" supported the proposition that "the delicate mechanisms of collective bargaining would be thrown awry if viewed prematurely by the public." *Id*. at 535. The Court further noted that several state labor boards "have gone so far as to hold that a party's insistence on bargaining in public constituted a refusal to negotiate in good faith, reasoning that bargaining in the public arena 'would tend to prolong negotiations and damage the procedure of compromise inherent in collective bargaining.'" *Id*.

Similar concerns exist for the City of Phoenix and the five bargaining units if records generated during the confidential phase of negotiations were made public. In such a scenario, rather than negotiate in good faith, the negotiators would be incentivized to stake out unreasonable positions (likely meant to please their constituents) from which retreat would be difficult without losing face. This would make the negotiation process more performative and less substantive in nature. All these effects would add time and expense to the process to the certain detriment of the best interests of the City and its citizens, potentially leading to worse outcomes for all parties involved.

Importantly, these common sense and easily foreseeable consequences are weighed against the public's interest in reviewing ***draft proposals***, most of which will never come to fruition. While the public undoubtedly has an interest in how its tax dollars are spent, ***not one penny is expended based on the exchange of a draft***. Nor is any public policy established. The Superior Court recognized this in denying disclosure, aptly stating: "The draft –non-final – MOUs and negotiating documents at issue do not reflect City policy or final action. Instead, when an MOU is poised for approval, the public has an opportunity to be heard. The public process allows an opportunity for transparency, advocacy, and accountability." APP.013. When correctly framed, the predominance of the City's interests is undeniable.

II. The City articulated its non-speculative interests with sufficient specificity.

The Goldwater Institute attempts to minimize the City's interests by describing them as "speculative." *See* Pl./Appellant's Opening Br. at 34. However, in applying the *Carlson* balancing test, the City need not show that the concerns or problems created by disclosure *have already occurred or will for certain occur*. Rather, when applying the balancing test, Arizona courts have relied on reasonable predictions that the release of the requested documents may result in negative consequences.[4]

For instance, the Arizona Supreme Court held that the best interests of the state overcame the presumption of disclosure when the Arizona Board of Regents received a request for records on prospective candidates for the Arizona State University ("ASU") president position. *Arizona Bd. of Regents v. Phoenix Newspapers, Inc.*, 167 Ariz. 254, 256 (1991). In reaching this conclusion, the Court found it reasonable to predict or forecast that negative consequences "may" or "could" occur based on the release of the resumes of all 256 prospective candidates:

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[4] It is disingenuous for the Goldwater Institute to insist that the City produce evidence of actual consequences from disclosure of bargaining proposals, given that such disclosure has not previously occurred during the City's bargaining process.

> The prospect may not know that he or she has been nominated, may not wish to be, and may find it embarrassing and harmful to his or her career. A candidate, on the other hand, may actively seek the office . . . Revealing the names of all prospects, those nominated without their permission, and even those nominated with the prospects' tacit permission, could chill the attraction of the best possible candidates for the position.

Id. at 258 (emphasis added).

The *Board of Regents* Court concluded that the Board "may balance the interest of ASU and the people of Arizona in selecting the best possible president with the public's right to knowledge of the selection process and the names of persons seriously considered for the position." *Id*. Notably, the Court did not wait for the harm to ensue to grant approval to withhold public records.

Similarly, the City may balance its interests in maintaining the integrity of the meet and confer process and securing the best possible bargain for the City and its taxpayers with the public's right to comment and provide input on each proposal exchanged between the City and the employee groups.

In another case deciding that the best interests of the state outweighed the public's right to inspect documents, the Arizona Supreme Court considered the anticipated harm if a school district released teacher names and birthdates. *Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297 (1998). There, the Court found:

> With both a name and birth date, one can obtain information about an individual's criminal record, arrest record (which may not include

> disposition of the charges), driving record, state of origin, political party affiliation, social security number, current and past addresses, civil litigation record, liens, property owned, credit history, financial accounts, and, quite possibly, information concerning an individual's complete medical and military histories, and insurance and investment portfolio.

Id. at 302 (emphasis added). Again, the court did not wait for proof of stolen identities before concluding that the documents may be withheld.

The Arizona Court of Appeals' decision in *Hodai v. City of Tucson* likewise supports the City's position. There, a citizen requested public records relating to cell phone surveillance technology used by law enforcement. 239 Ariz. 34, 39-40 (Ct. App. 2016). In opposing the request, the City of Tucson offered a declaration from an FBI agent who, based on his familiarity with the technology, opined that knowledge of how the equipment works "could easily lead to development and employment of countermeasures." *Id*. Notably, the Court did not insist on evidence that the surveillance measures had been defeated before finding the "best interests" exception applicable. Instead, the court found the declaration sufficient to carry the City's burden, reasoning: "That a person experienced with the technology believes it could be "easily" thwarted if the information was released is not merely a possible harm based on a hypothetical situation, but one rooted in experience." *Id*. By the same token, the City is relying on witness testimony that is rooted in direct experience with the City's meet and confer process. As with the declaration

in *Hodai*, the City's witness testimony cannot be characterized as unduly speculative.

The Goldwater Institute's reliance on *Cox Arizona Publications, Inc. v. Collins* does not support a different conclusion. 175 Ariz. 11 (1993). There, a public official argued in global generalities about the possible harm that might result from the release of police records. *Id.* at 13. The court, however, found that it was incumbent on the official to specifically demonstrate how production of the documents would violate rights of privacy or confidentiality, or would be "detrimental to the best interests of the state." *Id.* at 14. Notably, the public official did not attempt to make such a showing. *Id.* The *Cox* court contrasted the public official's threadbare arguments with the *Board of Regents* decision, where the defendant articulated specific concerns that would be detrimental to the search for a university president. *Id.*

This case more closely resembles *Board of Regents*. Here, the City has articulated specific harms that are reasonably likely to result from disclosure of bargaining proposals, rather than citing mere generalities. As the trial court observed in its ruling:

> The direct testimony of the City's witnesses supports a conclusion that the City has a strong interest in maintaining the confidentiality of the records at issue. Specifically, the documents at issue are created and exchanged as part of a confidential negotiation process. The witnesses explained that producing the documents during the negotiation process may result in politicizing labor negotiations,

> collusive activities among bargaining units, public posturing by negotiators, and hindering the free exchange of ideas or proposals without undue influence of constituents. The concern raised by the witnesses is based, in part, on the compressed time frame for labor negotiations. Court found the testimony of Jason Perkheiser, Assistant Human Resources Director over Labor Relations for the City of Phoenix, and Darrel Kriplean, president of PLEA and lead negotiator for labor negotiations, relevant and persuasive. Mr. Perkheiser and Mr. Kriplean both have experience negotiating with the bargaining unit at issue. []. The testimony from the City's witnesses identify anticipated costs associated with an impasse in negotiations. For example, in the case of an impasse, the negotiation process becomes more expensive for the taxpayers. The City's witnesses further established that disclosure of the documents may result in the politicization of the bargaining process that might affect the City's ability to get the best value for the available tax dollars. Such a result has the potential to affect the City's interests, including the taxpayers' interests.

APP.012.

This reasoning, grounded in the knowledge and experience of direct participants in negotiations, tips the balance strongly in favor of non-disclosure.

III. The Goldwater Institute's remaining legal arguments are also unpersuasive.

The Goldwater Institute also attempts to rely on a patchwork of legal arguments in its Opening Brief, none of which survive scrutiny.

For example, the Goldwater Institute makes the misguided assertion that the draft documents must be produced because they were created by City negotiators and PLEA representatives who are paid government salaries funded by taxpayers. *See* Pl./Appellant's Opening Br. at 29. If this argument were correct, no public

record would be immune from disclosure. Pending criminal investigation documents are created by law enforcement personnel who are paid government salaries funded by taxpayers. Sensitive and classified documents are generated by Homeland Security staff who are paid government salaries funded by taxpayers. Internal transaction memoranda are drafted by government negotiators who are paid government salaries funded by taxpayers. The Goldwater Institute's argument that all documents created by government employees on the government payroll must be disclosed would gut the "best interests of the government" exception to disclosure.

The Goldwater Institute's argument that the Court gave undue weight to the interests of private parties, *i.e.*, the employer organizations, is also unavailing. *See* Pl./Appellant's Opening Br. at 17. As an initial matter, private interests can be legitimate grounds for withholding records, such as a teachers' interests in not having their identities stolen based on the release of their dates of birth or the interest of a family in not reliving the horrors of a 911 call regarding an injured child. *See, e.g.*, *Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297 (1998); *A.H. Belo Corp. v. Mesa Police Dept.*, 202 Ariz. 184, 187-88 (Ct. App. 2002) (finding privacy interests of child and family outweighed public interest in audio recording of 9-1-1 call containing "recorded suffering" of child while at home). But, in this case, the bargaining

process involves two parties (the City and the employee organization), so the public and private interests are necessarily interconnected. In other words, any negative consequences that befall the labor organizations will also impact the City by disrupting or interfering with the bargaining process. Furthermore, those consequences will almost certainly trickle down to the public by causing impasse and/or suboptimal agreements.

Finally, perhaps recognizing the compelling nature of the City's evidence regarding the deleterious consequences of public disclosure, the Goldwater Institute pivots to arguing that the Superior Court applied the incorrect legal standard. Specifically, the Goldwater Institute quibbles with the Superior Court's use of the word "potential" when describing the anticipated harm from disclosure, which the Goldwater Institute contends is a lesser requirement than "probable." *See* Pl./Appellant's Opening Br. at 12. However, the Superior Court correctly articulated the legal standard in its decision, stating: "The probability of 'specific, material harm' must be shown." APP.011.

Moreover, regardless of the exact verbiage, the decision makes clear that the Superior Court found the City's reasonable predictions of harm (whether labeled as probable or potential) outweighed the public's interest. This is all that *Carlson* balancing test requires to withhold public records. The Superior Court did not err in applying the legal standard and holding that disclosure is unwarranted.

IV. The Superior Court properly exercised its discretion by crediting the City's evidence over the Goldwater Institute's witnesses.

The Superior Court correctly minimized the weight of the Goldwater Institute's testimonial evidence when deciding that the "best interests" exception to public records law applies. At the Evidentiary Hearing, the Goldwater Institute called three witnesses who argued in favor of disclosure: Isabel Garcia, Community Safety Strategist for Poder in Action ("Poder"); Joseph Shoplock, Jr., the President of the Professional Fire Fighters of Idaho; and Robert Brown, Plaintiff's expert witness. APP.030; APP.054; APP.080.

Tellingly, none of the Goldwater Institute's witnesses have had direct involvement in the bargaining process between the City and PLEA (or any other employee organization). In contrast, the City presented the best and most compelling evidence in existence in this case – the testimony of persons who are personally involved in bargaining under the Ordinance. The Superior Court appropriately downplayed the significance of the Goldwater Institute's witnesses to arrive at the proper legal conclusion.

Isabel Garcia

Ms. Garcia testified as a representative of Poder, a nonprofit organization that lobbies for police reform. APP.034-35 at 18:22-19:6. The Court rightly discounted Ms. Garcia's testimony, stating that it "reflect[ed] her desire to obtain

better outcomes for her constituency group as opposed to protecting the labor negotiation process itself." APP.013.

During the Evidentiary Hearing, Ms. Garcia expressed a general desire for access to draft proposals to advance her advocacy goals. *See e.g.*, APP.039 at 23:12-15. However, her testimony ultimately demonstrated that disclosing draft proposals would offer little practical value or benefit to her organization or the general public.

As an initial matter, Ms. Garcia testified that Poder has effectively influenced the terms of MOUs between the City and PLEA, regardless of the availability of draft proposals. APP.045 at 29:11-16. Standing alone, this undermines her rationale for public disclosure.

Furthermore, Ms. Garcia conceded that the City's bargaining process results in changes to an existing MOU, rather the creation of a new document, thereby allowing advocacy groups (such as Poder) to focus on education and lobbying for the entire lifespan of an MOU, which usually ranges from 2 to 4 years. APP.045-46 at 29:22-30:4. In other words, the existing process affords Ms. Garcia, Poder, and the general public ample opportunity to review the content of the current MOU, assess policy preferences, and advocate for changes in the subsequent MOU. There is simply no compelling need for draft proposals.

Moreover, as Ms. Garcia also conceded, when a proposed MOU is presented to the public, it includes highlighted changes from the previous version, which assists advocacy groups such as Poder in focusing on specific updates. APP.041 at 25:10-12. In addition, Ms. Garcia acknowledged that the City's Ordinance requires public disclosure of the draft MOU and an opportunity for comment at a City Council meeting prior to approval. APP.040-41 at 24:23-25:2.

Despite conceding that Poder is permitted to comment on a negotiated MOU (as opposed to theoretical proposals that may never come to fruition), Ms. Garcia contends that knowing *who* proposed the changes would be 'important.' APP.041 at 25:16-22. This argument does not withstand scrutiny.

To illustrate why this information is of little practical value, the City posed the following question at the Evidentiary Hearing: "Would you be more willing to accept less oversight of police if the proposal came from the City versus PLEA?" APP.041 at 25:23-24. Ms. Garcia responded, "No, of course not." APP.041 at 25:25. This exchange demonstrates why disclosing draft proposals offers little benefit to the public; as Ms. Garcia is advocating for or against *issues* not *parties* to the negotiations. Therefore, knowing where the proposals originated is largely immaterial.

This is not the only area in which Ms. Garcia's testimony highlighted the minimal, if not nonexistent, benefit from releasing real-time bargaining proposals.

Ms. Garcia conceded that many proposals will never be included in the final document. The following exchange is telling:

> **Mr. Coleman**: You do understand that many proposed terms don't actually make it into the final agreement, correct?
> **Ms. Garcia**: Yeah, I can understand that.
> **Mr. Coleman**: And you agree in negotiations, an initial offer can often look very different than a final agreement?
> **Ms. Garcia**: Yeah, I can understand that.
> **Mr. Coleman**: For example, somebody could ask for a 50 percent wage increase to start, and they can ultimately agree on a 2 percent wage increase at the end of the day, right?
> **Ms. Garcia**: Right.
> **Mr. Coleman**: And you understand that the City's -- under the City's process, the public has the opportunity to give feedback to the city council on the actual agreement reached between PLEA and the City, right?
> **Ms. Garcia**: Right.
>
> APP.044 at 28:3-17.

To more finely illustrate this point, during the 2023 negotiation cycle, the parties traded approximately 54 proposals, yet the final MOU included minimal substantive changes. APP.043-44 at 27:23-28:5.

Allowing the public to weigh in on opening offers has little value, as these offers are often extreme or outlandish and are likely to be quickly discarded or significantly revised. Moreover, the Ordinance already ensures that the public can provide feedback on the tentative agreement between the parties—a far more meaningful opportunity, as it involves real, concrete terms that have been agreed upon by both negotiating teams.

Allowing millions of citizens and thousands of unit members to second-guess and micromanage the negotiation process in real time would provide little, if any, benefit. Ms. Garcia conceded that Poder has been successful in effectuating change under the current system, which brings to mind the adage, "if it's not broken, don't fix it." Conversely, the probable harms of real-time release of proposals – such as collusion, politicization, and impasse – clearly outweigh Ms. Garcia's purported interests in knowing the origin of draft proposals that are unlikely to be adopted. Thus, the Superior Court correctly concluded that Ms. Garcia's testimony did not shift the balance in favor of disclosure.

Joseph Shoplock Jr.

In denying the Goldwater Institute's request for disclosure of bargaining proposals, the Superior Court rightly gave little weight to the testimony of Mr. Joseph Shoplock Jr., the President of the Professional Fire Fighters of Idaho. Mr. Shoplock testified—both in his Declaration and orally—about his perspective on labor negotiations in Idaho, particularly before and after the enactment of a 2015 law aimed at increasing transparency in collective bargaining. APP.054-58 at 38:18-42:6. By offering Mr. Shoplock's testimony, the Goldwater Institute sought to persuade the Superior Court that, as a matter of policy, draft proposals should be released to the public. As a fundamental flaw, however, policy decisions are reserved for the legislature and fall outside the purview of the judiciary.

Mr. Shoplock's testimony also had no relevance to *the City's meet and confer process*. In the Under Advisement Ruling, the Superior Court found that Mr. Shoplock's testimony was not "persuasive or particularly probative largely because he is not directly involved in labor negotiations." APP.014. His testimony clearly supports this finding.

First and foremost, Mr. Shoplock has no bargaining experience under the City's Ordinance. APP.063 at 47:17-19. Collective bargaining is not a one-size-fits-all process; the needs of one bargaining unit may differ from those of another, requiring negotiators to adapt their tactics and approaches accordingly. Furthermore, different bargaining rules, such as the City's unique six-step process that involves concurrent negotiations with five bargaining units, can influence behavior and outcomes.

The City's process is markedly different from Idaho, where simultaneous bargaining typically does not occur. APP.064 at 48:15-17; APP.254 ¶ 23. Also, bargaining in a large metropolitan area like Phoenix involves a wide range of political pressures that may not exist in Idaho. Mr. Shoplock's testimony might have been more probative if he had a deep understanding of the City's bargaining process. However, when asked if he considered himself knowledgeable about the City of Phoenix's meet and confer process, he unequivocally answered, "No, Sir." APP.063 at 47:20-22. Thus, when comparing Idaho and Phoenix, Shoplock's

opinions are of limited value, and the Court rightly minimized the weight given to his testimony on this basis.

Mr. Shoplock's testimony should also be discounted due to the significant difference in the size of the bargaining units involved. At the Evidentiary Hearing, Mr. Shoplock testified that his bargaining unit in Idaho consisted of 53 employees. APP.060 at 44:11-14. In contrast, PLEA represents over 2,200 employees in its bargaining unit. APP.279 ¶ 3. Given this disparity, it is unsurprising that Idaho's transparency law may produce different results if interposed on the City's bargaining process. Mr. Shoplock acknowledged this when asked, "Would you agree that it could be a very different process to negotiate on behalf of 2,200 members versus the 53 members of the [Fire Department] bargaining unit?" APP.063 at 47:13-16. He responded, "Yes, I think that makes sense." *Id.* This comes as no surprise, because inviting arm-chair quarterbacking from 53 members is materially different than involving 2,200 members. Mr. Shoplock's admission further undermines the weight of his testimony and any attempt to draw parallels between Idaho and Phoenix.

Moreover, any effort by the Goldwater Institute to use Mr. Shoplock's testimony to downplay the harms of releasing draft proposals should be disregarded, as he has never personally participated in bargaining negotiations in Idaho since the 2015 transparency law took effect. APP.059 at 43:17-19. It is

entirely reasonable to expect that someone testifying about the impacts of the Idaho statute would have experience bargaining under it. This lack of experience severely undermines the relevance of his testimony.

Finally, much of Mr. Shoplock's testimony at the Evidentiary Hearing supports the Appellee's arguments, lending weight to the Superior Court's findings. Mr. Shoplock acknowledged that publicly releasing drafts during negotiations could require more time responding to constituency feedback. APP.061 at 45:16-19. He also admitted that releasing drafts during simultaneous bargaining could result in collusion (APP.065 at 49:21-25), impasse (APP.064-66 at 48:22-50:13), and an increased risk of outside influence among politicians (APP.066 at 50:1-13). For all these reasons, the Superior Court correctly found that Mr. Shoplock's testimony did not shift the balance in favor of the Goldwater Institute.[5]

Mr. Brown

Mr. Brown's testimony did little, if anything, to support the Goldwater

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[5] In a gross over-generalization, the Goldwater Institute claims Shoplock's testimony established that Idaho's public bargaining law produced no adverse consequences throughout the state. Obviously, Shoplock lacks the personal knowledge to make such a sweeping statement that encompasses all negotiations state-wide, and his experience with a 53-member unit cannot be extrapolated across the myriad negotiations that exist in a jurisdiction with nearly two million residents. Even if Idaho negotiations were probative of the impact of disclosure on the Phoenix bargaining process, Shoplock's experiences are too limited to support any meaningful conclusions on the impact of publicity.

Institute's argument that the "best interests of the state" exception should not apply. Therefore, the Superior Court rightly gave it minimal weight in its Under Advisement Ruling.

First, it is highly questionable whether Mr. Brown should be classified as an expert. His testimony was unpersuasive due to a startling lack of research, analysis, methodology, or discernible standards. Although he claimed to have expertise on the impact of publicity on bargaining negotiations, he conceded that he has never participated in negotiations with public disclosure (APP.096 at 80:3-10), has not conducted independent research on the effects of public disclosure on the bargaining process (APP.090 at 74:7-9), does not have a degree in labor relations (APP.088 at 72:13-15), has never held an academic position in the field of labor relations (APP.089 at 73:3-5), failed to utilize any measurable standards or generally accepted methodology for his opinions (APP.089-90), and has never published any scholarly articles on labor relations (APP.089 at 73:6-8).

Additionally, Mr. Brown did not interview anyone with real-life experience in the disclosure of bargaining proposals (APP.090 at 74:3-9) or conduct surveys of jurisdictions with statutes requiring public negotiations (APP.090 at 74:7-9). Moreover, as noted in the Under Advisement Ruling, Mr. Brown even based part of his conclusions on a definition of "labor unrest" he found on the internet – hardly the basis for beneficial or trustworthy testimony. APP.014.

Indeed, the following concession is particularly illuminating regarding the unreliability of Brown's opinions:

> **Mr. Coleman**: You didn't do anything to specifically analyze the impact of releasing bargaining proposals between the City and PLEA?
> **Mr. Brown**: That's correct.

APP.102 at 86:10-13.

Given these admissions, his opinions amounted to little more than off-the-cuff speculation, lacking any meaningful standards or analysis. Consequently, the Superior Court was correct in assigning minimal weight to Mr. Brown's testimony.

To make matters worse, Mr. Brown's prior experience (which he relies on in lieu of data or objective criteria) has little relevance to the issues before the Court. For instance, Mr. Brown admitted that he has not bargained for a union in 37 years, and that his last two decades of experience have been limited to New Mexico, where state and local laws differ significantly from Arizona. APP.091 at 75:11-14; APP.093 at 77:18-20. He also conceded that he has never participated in negotiations under the City's Ordinance (APP.091 at 75:21-23), admitted that variations in bargaining statutes and rules can impact labor negotiations (thereby diminishing the relevance of his New Mexico experience) (APP.091 at 75:7-10), and acknowledged that the City's bargaining process is "drastically" different from those he has worked under or assessed based on the compressed timeline and heightened level of transparency built into the process (APP.091-92 at 75:24-76:2).

Perhaps most significantly, Brown has never bargained under a system requiring public disclosure, which is the precise issue on which he purports to give expert testimony:

> **Mr. Coleman**: Well, you've never personally been involved in any negotiations that were done in public, correct?
> **Mr. Brown**: That's correct.
> **Mr. Coleman**: 100 percent of the negotiations you participated in in your entire 40-year career have been in a confidential setting?
> **Mr. Brown**: That is correct.
> **Mr. Coleman**: And you've never participated in a process in which the parties were required to publicly disclose their bargaining proposals?
> **Mr. Brown**: That is correct.
>
> APP.096 at 80:3-6.

As a further flaw, and not surprisingly given his lack of relevant experience, Mr. Brown's attempts to minimize the impact of disclosure do not survive scrutiny. For instance, he argues that the risk of collusion should be disregarded because labor organizations already share information. APP267-68. But then, he acknowledges that PLEA, the sole employee organization whose records have been requested in this special action lawsuit, does not share information with other units, so the release of bargaining proposals between the City and PLEA may increase the risk of collusion:

> **Mr. Coleman**: Okay. Do you understand that the matter in dispute in this issue -- in this lawsuit -- is whether the City has to release bargaining proposals between the City and PLEA? Do you understand that?
> **Mr. Brown**: I understand that.
> **Mr. Coleman**: Okay. And now, you have no evidence of any collusion between PLEA and any other bargaining Unit of the City, correct?

Mr. Brown: No, I do not. And it would not be unusual for the police not to work with the other Units.
Mr. Coleman: You have no evidence of any information sharing between PLEA and any other bargaining Unit?
Mr. Brown: I do not.
Mr. Coleman: And in fact, you've stated in your deposition that PLEA would be the last group that would be involved in collusion or information sharing, because they don't normally interact with the other associations.
Mr. Brown: That is exactly what I said.
Mr. Coleman: All right. And would you agree that if PLEA and the City don't disclose their bargaining proposals, other Units won't have insight into what's happening in their negotiations?
Mr. Brown: I don't know if I could make a blanket statement like that, but it certainly would limit their ability to know what's going on.
Mr. Coleman: Okay. But if the City were required to publicly release the proposals exchanges to PLEA, other Units would be able to review those proposals, right?
Mr. Brown: Correct.
Mr. Coleman: And those other Units could potentially insist that they get the exact same concessions that PLEA gets, right?
Mr. Brown: They could.
Mr. Coleman: And if they don't get those same concessions, that could increase the risk of impasse?
Mr. Brown: It could.

APP.099-101 at 83:25-85:8.

Furthermore, even if some collusion is already happening between PLEA and other units (which is not supported by any record evidence), this does not mean the City is prohibited from taking measures to prevent the harm from worsening by withholding draft bargaining proposals from full public disclosure.

This was not the only inconsistency in Mr. Brown's opinions. He opined in his expert report that the risk of increased politicization in the negotiation process from releasing the draft proposals is exaggerated because the process is already

politicized. APP.109 at 93:2-9; APP.270-71. However, at the Evidentiary Hearing, Mr. Brown directly contradicted his earlier statements by acknowledging that sharing bargaining proposals with public officials increases the likelihood that they may attempt to influence the outcome of negotiations. APP.110 at 94:20-24.

Mr. Brown stated that he did not believe publicity would increase the risk of impasse, but then conceded it would be hard to judge. APP.102-04 at 86:14-88:25. Moreover, despite acknowledging that several jurisdictions require public negotiations, Mr. Brown admittedly made no effort to conduct interviews, surveys, or research to determine if publicity impacted the rate of impasse. APP.105 at 89:1-16. Once again, Mr. Brown was content to rely upon off-the-cuff speculation that is untethered to any facts or data.

Mr. Brown also argued half-heartedly that publicity will not lead to an increase in labor unrest. APP.272-73. Quite surprisingly, despite his years of experience in labor relations, Mr. Brown resorted to an internet search for the term "labor unrest" and determined that it referred to a strike –an unusual conclusion given that public sector strikes are illegal. APP.111 at 95:8-20. When confronted with a more expansive definition, he acknowledged that disclosing proposals to PLEA's 2,200 members could take time and attention away from actual negotiations, increase divisiveness among members, and present a hindrance to the bargaining process. APP.113 at 97:5-20. He further admitted that people behave

differently in public versus private, so publicity may cause a party to take more extreme positions when negotiating. APP.114 at 98:1-9.

In sum, not only were Mr. Brown's initial opinions unreliable based on a lack of methodology or supporting data, but when pressed on them, he repeatedly conceded the validity of the City's concerns about the consequences of disclosure.

In sum, the Goldwater Institute's witnesses were unable to articulate any factually supporting grounds that favor disclosure over confidentiality.

V. The Superior Court correctly concluded that the City may withhold draft proposals until the adoption of the next MOU.

The City presented testimony that bargaining issues are often deferred until the next cycle due to trade-offs or other strategic considerations, so the risks associated with public disclosure continue even after the MOU is finalized. In contrast, the Goldwater Institute largely ignored this issue at the Evidentiary Hearing. The Court found the City's evidence persuasive:

> The City contends that release of the negotiation proposals before the next negotiation cycle is contrary to the best interests of the state. In particular, the City's witnesses address the sensitivities of the collective bargaining process and the role that negotiation proposals play in reaching agreements. The witnesses further explained how proposed revisions are sometimes strategic and related to a greater – longer term negotiating strategy. Additionally, some discussion points are often tabled for subsequent negotiations. Accordingly, the dangers associated with collusion, politicization, impasse, creating friction amount employees and bargaining units, etc. remain even after the current MOU is final.
> Withholding the negotiation proposals indefinitely does not comport with the best interests of the state exception. See e.g., *Church of*

> *Scientology v. City of Phoenix Police Dept.*, 122 Ariz. 338 (1979). In *Church of Scientology*, the police department sought to withhold "inter and intra-agency communications" some twenty years old. The police department made no showing of any ongoing investigation or potential harm likely to result from producing the records. Here, the City has provided uncontroverted testimony describing in detail the potential harm to the collective bargaining process. The City seeks to limit disclosure of the draft negotiation materials only until the next MOU is final. Limiting access to negotiating drafts for a limited period (i.e., until the next MOU is finalized) is consistent with the application of the best interests exception.
>
> APP.015.

The Goldwater Institute makes only a perfunctory reference to this issue in its Opening Brief, arguing that the Court wrongly adopted a sweeping, categorial exemption to the public records law. Pl./Appellant's Opening Br. at 13-14. Not so. As shown above, the Court fashioned a narrow, time-limited exemption based on "uncontroverted" evidence presented by the City.

The Goldwater Institute waived its argument regarding the scope of the exception based on its non-opposition in the Superior Court. In any event, this case is easily distinguishable from *Mitchell v. Superior Court* (cited in Opening Brief), where the court rejected a "general rule that [kept] all presentence reports confidential even after sentencing." 142 Ariz. 332 (1984). Here, the Superior Court acknowledged that records may not be shielded in perpetuity and fashioned a ruling of limited duration that appropriately balances the competing interests of the public and the City.

CONCLUSION

For the foregoing reasons, the City respectfully requests that this Court affirm the Superior Court's Under Advisement Ruling and deny the Goldwater Institute's requested relief.

RESPECTFULLY SUBMITTED this 22nd day of August, 2024.

By */s/ Stephen B. Coleman*
Stephen B. Coleman
Jon M. Paladini
Attorneys for Appellees/Defendant

CERTIFICATE OF COMPLIANCE

This certificate of compliance concerns:

1. A brief and is submitted under Rule 14(a)(5).

2. The undersigned certifies that the brief to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 11,039 words.

3. The document to which this Certificate is attached does not exceed the word limit of 14,000 words that is set by Rule 14 for opening briefs.

By */s/ Stephen B. Coleman*
Stephen B. Coleman
Jon M. Paladini
7730 E. Greenway Road, Ste. 105
Scottsdale, AZ 85260
Attorneys for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2024, I electronically filed the foregoing with the Clerk of the Court by via the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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ARIZONA COURT OF APPEALS

DIVISION ONE

BARRY GOLDWATER INSTITUTE FOR PUBLIC POLICY RESEARCH, Plaintiff/Appellant, v. CITY OF PHOENIX; JEFF BARTON; DENISE ARCHIBALD, and SHEREE RUCKER, Defendants/Appellees.	No. 1 CA-CV 24-0176 Maricopa County Superior Court No. CV2023-003250

APPENDIX TO DEFENDANT/APPELLEES ANSWERING BRIEF

Stephen B. Coleman (State Bar #021715)
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APPENDIX INDEX

Description	Record Location	Page Number
Defendant Trial Exhibit No. 2 City of Phoenix 2023 Ground Rules	Entered into Evidence 12/12/23	D.APP.002 - D.APP.016
Defendant Trial Exhibit No. 3 December 7, 2022 City Council Formal Meeting Agenda	Entered into Evidence 12/12/23	D.APP.017 – D.APP.028
Defendant Trial Exhibit No. 4 December 14, 2022 City Council Formal Meeting Agenda at No. 45	Entered into Evidence 12/12/23	D.APP.029 – D.APP.042

City of Phoenix and LIUNA Local 777 (Unit 1)
2023 Meet and Confer
Ground Rules

The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location**: Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations or virtual platform (a Virtual/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes**: Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson**: The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s)**: As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording**: Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals**: All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements**: All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.U. has been reached.
8. **Intent**: Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.
9. **Confidentiality**: Neither party shall make any unilateral public statements with respect to their positions on issues addressed at the bargaining table, or other matters that may affect the Meet and Confer process, until such time as PERB has declared that an impasse exists and the matter has been submitted to the City Council. Any response to information made public by any representative of the city would not violate this ground rule.
10. **Team size**: Team size is limited to 8 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
11. **General Civility**: No name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue.

12. **Caucuses**: Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
13. **Sidebar**: The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
14. **FMCS**: At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:

Union _____ Date 11/3/22

City _____ Date 11/3/2022

City of Phoenix and AFSCME Local 2384 (Unit 2)
2023 Meet and Confer
Ground Rules

The Parties agree to the following negotiation ground rules:

1. **Negotiation Location**: Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes**: Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson**: The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s)**: As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 48 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording**: Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals**: All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements**: All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Understanding when agreement on the entire M.O.U. has been reached.
8. **Intent**: Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.
9. **Team size**: Team size is limited to 10 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
10. **Code of Conduct**: The parties will conduct themselves professionally. If there are any issues with this or any of the other ground rules established herein, the parties' lead spokespersons will confer to try to resolve them. The parties will do so without interference with any party's rights under the Meet and Confer Ordinance. (e.g., no name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue). If the conduct of a person in the meeting room or participating via virtual format disrupts or interrupts either party, thereby preventing progress at the table, the affected party will immediately notify the lead spokesperson of the other party. The lead spokespersons will then confer and attempt to resolve the interruption.

11. **Caucuses**: Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
12. **Sidebar**: The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
13. **FMCS**: At any point the parties can mutually agree to utilize the FMCS.
14. **Bold font**: Bold font currently showing in the 2021 – 2023 MOU will be removed in the new contract. All new language in the new contract will be reflected in bold font to show the changes.

Union — Date: 10-21-2022

City — Date: 10-21-2022

City of Phoenix and AFSCME Local 2960 (Unit 3)
2023 Meet and Confer
Ground Rules

The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location**: Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes**: Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson**: The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s)**: As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording**: Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed. Exchange of notes will take place upon request.
6. **Submission of Proposals**: All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements**: All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.U. has been reached.
8. **Intent**: Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.
9. **Confidentiality**: The parties agree to keep the negotiations process as confidential as possible, and not make public statements regarding the negotiations unless it is to respond to inaccurate or defamatory articles publicly posted or stated by a third party or to respond to the press after the point of impasse. This provision is not intended to prohibit or otherwise prevent the Union or the City from updating its members or City Council on the status and progress of negotiations. Either party can terminate the provisions of this section with 24 hours notice to the other party.
10. **Team size**: Team size is limited to 10 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.

City of Phoenix and AFSCME Local 2960 (Unit 3)
2023 Meet and Confer
Ground Rules

11. **Code of Conduct**: The parties will conduct themselves professionally. If there are any issues with this or any of the other ground rules established herein, the parties' lead spokespersons will confer to try to resolve them. The parties will do so without interference with any party's rights under the Meet and Confer Ordinance.
12. **Caucuses**: Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
13. **Sidebar**: The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
14. **FMCS**: At any point the parties can mutually agree to utilize the FMCS.
15. **Information Requests**: The City agrees to promptly furnish to the Union any requested information and/or documents relevant to the parties' proposals and bargaining positions. Any documents or information related to and/or supporting any proposal shall be promptly provided upon request without the Union having to file an official public records request.

AGREED TO AND ACCEPTED BY:

Union — Date: 10/18/2022

City — Date: 10/18/2022

City of Phoenix and PLEA (Unit 4)
2023 Meet and Confer
Ground Rules

The Parties agree to the following meet and discuss ground rules:

1. **Negotiation Location**: Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes**: Any necessary changes to dates, times, and/or locations for future negotiation sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson**: The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s)**: As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording**: Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals**: All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements**: All tentative agreements will be documented in writing, signed and dated, and shall only become part of the Memorandum of Understanding when agreement on the entire M.O.U. has been reached.
8. **Intent**: Except for agreements reached, the language and intent of the M.O.U. shall remain the same.
9. **Confidentiality**: Neither party shall make any unilateral public statements with respect to their positions on issues addressed at the bargaining table, or other matters that may affect the Meet and Confer process, until such time as PERB has declared that an impasse exists and the matter has been submitted to the City Council. Any response to information made public by any representative of the city would not violate this ground rule.
10. **Caucuses**: Either party can caucus at any time.
11. **Courtesy**: As a matter of common courtesy, parties shall keep each other informed as to how long they anticipate a caucus might take and provide periodic timely updates every 30 minutes when in caucus.
12. **Sidebar**: The chief spokesperson from either side can ask for a sidebar with the other chief spokesperson during negotiations.

13. **Team Size**: Team size is limited to 8 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
14. **General Civility**: No name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue.
15. **FMCS**: At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:

For the Union — October 3, 2022 (Date)

For the City — 10/3/2022 (Date)

City of Phoenix and IAFF Local 493 (Unit 5)
2023 Meet and Confer
Ground Rules

1. **Negotiation Location**: Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.

2. **Session Changes**: Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.

3. **Lead Spokesperson**: The parties agree that each side will have a primary spokesperson at the bargaining table.

4. **Notice of Subject Matter Expert(s)**: As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.

5. **No Recording**: Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.

6. **Submission of Proposals**: All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.

7. **Tentative Agreements**: All tentative agreements will be documented in writing, signed and dated, and shall only become part of the Memorandum of Understanding when agreement on the entire M.O.U. has been reached.

8. **Intent**: Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.

9. **Confidentiality**: Neither party shall make any unilateral public statements with respect to their positions on issues addressed at the bargaining table, or other matters that may affect the Meet and Confer process, until such time as PERB has declared that an impasse exists and the matter has been submitted to the City Council. Any response to information made public by any representative of the city would not violate this ground rule.

10. **Caucuses**: Either party can caucus at any time.

11. **Courtesy**: As a matter of common courtesy, parties shall keep each other informed as to how long they anticipate a caucus might take and provide periodic timely updates every 30 minutes when in caucus.

12. **Sidebar**: The chief spokesperson from either side can ask for a sidebar with the other chief spokesperson during negotiations.

13. **Team Size**: Team size is limited to 9 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.

14. **Code of Conduct**: No name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue.

15. **FMCS**: At any point the parties can mutually agree to utilize the FMCS.

Union — Date: 9/27/22

City — Date: 9/27/2022

City of Phoenix and PPSLA (Unit 6)
2023 Meet and Discuss
Ground Rules

The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location**: Meetings will be held at the PPSLA office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes**: Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson**: The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s)**: As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording**: Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals**: All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements**: All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.A. has been reached.
8. **Confidentiality**: The parties agree that neither the representatives of the City or PPSLA will make any public statements with respect to their positions on issues being discussed at the table, or other matters that may affect the Meet and Discuss process.
9. **Team size**: Team size is limited to 8 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
10. **Code of Conduct**: The parties will conduct themselves professionally (e.g., no name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue). If the conduct of a person present in the meeting room or participating via virtual format disrupts or interrupts either party, thereby preventing progress at the table, the affected party will immediately notify the lead spokesperson of the other party. The lead spokespersons will then confer and attempt to resolve the interruption.

City of Phoenix and PPSLA (Unit 6)
2023 Meet and Discuss
Ground Rules

11. **Caucuses**: Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
12. **Sidebar**: The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
13. **FMCS**: At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:

Association — Date: 9/13/22

City — Date: 9/13/2022

City of Phoenix and ASPTEA (Unit 7)
2023 Meet and Discuss
Ground Rules

The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location**: Meetings will be held at the ASPTEA office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes**: Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson**: The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s)**: As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording**: Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals**: All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements**: All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.A. has been reached.
8. **Confidentiality**: The parties agree that the representatives of the City and ASPTEA shall not make any unilateral public statements regarding the negotiations process unless it is to respond to inaccurate or defamatory articles publicly posted or stated by a third party.
9. **Team size**: Team size is limited to 10 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
10. **Code of Conduct**: The parties will conduct themselves professionally (e.g., no name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue). If the conduct of a person present in the meeting room or participating via virtual format disrupts or interrupts either party, thereby preventing progress at the table, the affected party will immediately notify the lead spokesperson of the other party. The lead spokespersons will then confer and attempt to resolve the interruption.

City of Phoenix and ASPTEA (Unit 7)
2023 Meet and Discuss
Ground Rules

11. **Caucuses**: Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
12. **Sidebar**: The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
13. **FMCS**: At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:

Jason Stokes — 09/12/2022
For the Association — Date

Jason Perkiser — Sep 12, 2022
For the City — Date

Unit 7 Ground Rules 2023

Final Audit Report 2022-09-12

Created:	2022-09-12
By:	Jason Stokes (jstokes@asptea.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAgQ6Hf0W-0PI0RHKe-JvY0-oEE_OmyQOi

"Unit 7 Ground Rules 2023" History

Document created by Jason Stokes (jstokes@asptea.com)
2022-09-12 - 5:50:22 PM GMT- IP address: 70.188.208.226

Document emailed to Jason Perkiser (jason.perkiser@phoenix.gov) for signature
2022-09-12 - 5:50:57 PM GMT

Email viewed by Jason Perkiser (jason.perkiser@phoenix.gov)
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Document e-signed by Jason Perkiser (jason.perkiser@phoenix.gov)
Signature Date: 2022-09-12 - 6:15:55 PM GMT - Time Source: server- IP address: 163.116.139.113

Agreement completed.
2022-09-12 - 6:15:55 PM GMT

City of Phoenix

Agenda
City Council Formal Meeting

Meeting Location:
City Council Chambers
200 W. Jefferson St.
Phoenix, Arizona 85003

Wednesday, December 7, 2022 **2:30 PM** **phoenix.gov**

*****REVISED Dec. 6, 2022*****

Items with Additional Information: 20, 84; Item Requested to be Withdrawn: 79; Item Added: 85

OPTIONS TO ACCESS THIS MEETING

Virtual Request to speak at a meeting:

- ***Register online*** *by visiting the City Council Meetings page on phoenix.gov* ***at least 2 hours prior to the start of this meeting****. Then, click on this link at the time of the meeting and join the Webex to speak:* https://phoenixcitycouncil.webex.com/phoenixcitycouncil/onstage/g.php?MTID=ebdc6aec9166a3d5adafcc263917782fc

- **Register via telephone** at 602-262-6001 **at least 2 hours prior to the start of this meeting,** noting the item number. Then, use the Call-in phone number and Meeting ID listed below at the time of the meeting to call-in and speak.

In-Person Requests to speak at a meeting:

- Register in person at a kiosk located at the City Council Chambers, 200 W. Jefferson St., Phoenix, Arizona, 85003. Arrive **1 hour prior to the start of this meeting**. Depending on seating availability, residents will attend and speak from the Upper Chambers, Lower Chambers or City Hall location.

- Individuals should arrive early, 1 hour prior to the start of the meeting to submit an in-person request to speak before the item is called. After the item is called, requests to speak for that item will not be accepted.

At the time of the meeting:

- **Watch** the meeting live streamed on phoenix.gov or Phoenix Channel 11 on Cox Cable, or using the Webex link provided above.

- **Call-in** to listen to the meeting. Dial 602-666-0783 and Enter Meeting ID 2555 842 3093# (for English) or 2557 499 9443# (for Spanish). Press # again when prompted for attendee ID.

- **Watch** the meeting in-person from the Upper Chambers, Lower Chambers or City Hall depending on seating availability.

Para nuestros residentes de habla hispana:

- Para registrarse para hablar en español, llame al 602-262-6001 **al menos 2 horas antes del inicio de esta reunión** e indique el número del tema. El día de la reunión, llame al 602-666-0783 e ingrese el número de identificación de la reunión 2557 499 9443#. El intérprete le indicará cuando sea su turno de hablar.

- Para solamente escuchar la reunión en español, llame a este mismo número el día de la reunión (602-666-0783; ingrese el número de identificación de la reunión 2557 499 9443#). Se proporciona interpretación simultánea para nuestros residentes durante todas las reuniones.

- Para asistir a la reunión en persona, vaya a las Cámaras del Concejo Municipal de Phoenix ubicadas en 200 W. Jefferson Street, Phoenix, AZ 85003. Llegue 1 hora antes del comienzo de la reunión. Si desea hablar, regístrese electrónicamente en uno de los quioscos, antes de que comience el tema. Una vez que se comience a discutir el tema, no se aceptarán nuevas solicitudes para hablar. Dependiendo de cuantos asientos haya disponibles, usted podría ser sentado en la parte superior de las cámaras, en el piso de abajo de las cámaras, o en el edificio municipal.

CALL TO ORDER AND ROLL CALL

BOARDS AND COMMISSIONS

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LIQUOR LICENSES, BINGO, AND OFF-TRACK BETTING LICENSE APPLICATIONS

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3	**Liquor License - Sicilian Butcher**	District 2 - Page 21
4	**Liquor License - Yasha from Russia**	District 3 - Page 26
5	**Liquor License - Special Event - Arizona Matsuri**	District 4 - Page 31
6	**Liquor License - Marz Market**	District 4 - Page 32
7	**Liquor License - Special Event - Arizona Super Bowl Host Committee**	District 7 - Page 37
8	**Liquor License - 125 Lounge**	District 7 - Page 38
9	**Liquor License - Miel de Agave**	District 7 - Page 40
10	**Liquor License - Sauvage Wine Bar + Shop**	District 7 - Page 45
11	**Liquor License - Selection Sauvage**	District 7 - Page 50
12	**Liquor License - Special Event - Community Food Connections, Inc.**	District 8 - Page 52

PAYMENT ORDINANCE (Ordinance S-49194) (Items 13-18) Page 53

13 **Baggage Airline Guest Services, Inc.**

14 **GBD Labs, LLC doing business as Crosswalk Labs**

15	**Phoenix Sister Cities, Inc.**	
16	**BTE Body Company, Inc.**	
17	**Settlement of Claim(s) Espinoza v. City of Phoenix**	
18	**Settlement of Claim(s) Miller v. City of Phoenix**	

ADMINISTRATION

19	**Canvass of Vote - November 2022 City Council Election**	District 2 - Page 55 District 4 District 6 District 8
*20	***ADDTIONAL INFORMATION (SEE ATTACHED MEMOS)*** Union Comments on Proposed Changes to Memoranda of Understanding**	Citywide - Page 56
21	**Proposed 35th Avenue and Carter Road Annexation - Public Hearing**	District 7 - Page 57
22	**Acceptance and Dedication of Easements and Deeds for Sidewalk, Public Utility and Roadway Purposes (Ordinance S-49207)**	District 1 - Page 64 District 4 District 6 District 8
23	**Acceptance of an Access Easement Between 50th Street and Interstate 10 from Kyrene Elementary School District No. 28 (Ordinance S-49210)**	District 6 - Page 66
24	**Authorization to Sell City-owned Real Property Near 75th Avenue and Baseline Road to Salt River Project (Ordinance S-49198)**	District 7 - Page 67
25	**Acquisition of Real Property for Roadway Improvements along the Grand Canal at Indian School Road (Ordinance S-49200)**	District 4 - Page 69
26	**Acquisition of Real Property for a Pedestrian and Bicycle Path along the Grand Canal between 47th and**	District 4 - Page 70 District 5

	75th Avenues (Ordinance S-49212)	
27	**Acquisition of Real Property for Sidewalk Improvements along 7th Avenue from Mountain View Road to Cheryl Drive, and along Mountain View Road from 7th Avenue to 3rd Drive (Ordinance S-49208)**	District 3 - Page 72
28	**Service and Repair of Appliances - IFB 18-213 - Amendment (Ordinance S-49216)**	Citywide - Page 74
29	**Citywide Fence Supply and Service - Requirements Contract - IFB 18-207 - Amendment (Ordinance S-49223)**	Citywide - Page 75
30	**Real-Time Captioning (CART) and Sign Language Interpreter Services - ADSPO 13-00002282 - Amendment (Ordinance S-49232)**	Citywide - Page 77
31	**Printing of Optical Scan Ballots and Ballot Packet Assembly Contract - EXC 20-060 - Request for Award (Ordinance S-49238)**	Citywide - Page 78
32	**Background Screening and In-Processing/Onboarding Services Contract (Ordinance S-49219)**	Citywide - Page 80
33	**Transfer of Retirement Funds to Arizona State Retirement System (Ordinance S-49204)**	Citywide - Page 81
34	**Transfer of Retirement Funds to Arizona State Retirement System (Ordinance S-49215)**	Citywide - Page 82
	COMMUNITY SERVICES	
35	**Request to Enter Into a Lease Agreement with the Deer Valley Unified School District for a Modular Classroom for the Head Start Birth to Five Program and to Sublease to Head Start Birth to Five Program Partners (Ordinance S-49202)**	District 1 - Page 83
36	**Request to Enter Into an Agreement to Provide Caregiver Supportive Services with A.T. Still University**	Citywide - Page 85

	of Health Sciences - CarePlaCe Program (Ordinance S-49209)	
37	**Request to Amend Contract with Community Bridges, Inc for COVID-19 Related Homeless Services - Street Outreach (Ordinance S-49213)**	Citywide - Page 87
38	**Request to Retroactively Accept and Disburse Nina Mason Pulliam Charitable Trust Grant Funds (Ordinance S-49224)**	Citywide - Page 89
39	**Request to Enter into Agreements to Provide Refugee and Immigrant Services (Ordinance S-49227)**	Citywide - Page 90
40	**Request to Retroactively Accept American Association of Retired Persons Foundation Digital Skills Ready@50+ Grant Funds (Ordinance S-49228)**	Citywide - Page 92
41	**Request to Enter into an Agreement with Vander Weele Group, LLC for Home Visit Rating Scale Observation Services (Ordinance S-49231)**	Citywide - Page 93
42	**Phoenix Public Library's Fiscal Year 2022-23 Application for Arizona State Library's State Grants-In-Aid Funds**	District 5 - Page 95 District 7 District 8
43	**Maintenance of Environmental Units at Pueblo Grande Museum Requirements Contract - IFB 23-024 Request for Award (Ordinance S-49211)**	District 8 - Page 97
44	**First Things First Grant Application and IGA (Ordinance S-49230)**	Citywide - Page 99 District 1 District 7 District 8
45	**Community Development Block Grant Funded Housing Rehabilitation Americans with Disabilities Act Modifications Program Request For Proposal Issuance Request**	Citywide - Page 101

46	**Flood Irrigation Repair and Replacement Services Contract (Ordinance S-49225)**	Citywide - Page 102

ECONOMIC DEVELOPMENT

47	**Arizona Office of Economic Opportunity AZQUEST Grant (Ordinance S-49218)**	Citywide - Page 103
48	**Amend Ordinance - Redevelopment and Purchase Agreement (City Contract No. 147086) with High Street Fillmore, LLC. and High Street Fillmore Phase 2, LLC. (Ordinance S-49222)**	District 7 - Page 105
49	**Authorization to enter into a license with Steel & Spark, LLC for the installation of Temporary Structures for Activation of City-Owned Lots in Downtown Phoenix (Ordinance S-49226)**	District 7 - Page 107
50	**Theatrical Spotlights Contract - IFB 20-006 Request for Award (Ordinance S-49203)**	District 7 - Page 109
51	**Operable Wall Inspection, Maintenance and Repair Contract - RFA PCC 22-007 Request for Award (Ordinance S-49214)**	District 7 - Page 111 District 8

PUBLIC SAFETY

52	*****ITEM CORRECTED (SEE ATTACHED MEMO)*** (CONTINUED FROM JUNE 1 AND SEPT. 21, 2022) - Sale of Unclaimed and Forfeited Firearms Contract - Requirements Contract - RFP 22-113 (Ordinance S-48689)**	Citywide - Page 113
53	**Aircraft Parts and Services- IFB 18-137 - Amendment (Ordinance S-49197)**	Citywide - Page 118
54	**Fixed Wing Airplane Contract RFP 22-094 - Request for Award (Ordinance S-49201)**	Citywide - Page 120
55	**Fire Department Automatic Aid Agreement (Ordinance S-49233)**	Citywide - Page 122

56	**Intergovernmental Agreement with Maricopa County for Participation in the Securing the Cities Program (Ordinance S-49234)**	Citywide - Page 124
57	**Add Sworn Positions in Fire Department for Staffing Relief (Ordinance S-49237)**	Citywide - Page 126
58	**Wiretap Intercept System - Requirements Contract - RFA 19-015 - Amendment (Ordinance S-49206)**	Citywide - Page 128
	TRANSPORTATION AND INFRASTRUCTURE	
59	**Hydrant Fueling System Modification (Ordinance S-49196)**	District 8 - Page 130
60	**Heating, Ventilation, Air Conditioning, Refrigeration Systems, Components, Equipment/Controls, Maintenance, Repair, and Installation Services - AVN RFP 19-009 - Amendment (Ordinance S-49221)**	District 1 - Page 132 District 8 Out of City
61	**Ground Lease with KOR Medical Arizona, LLC. (Ordinance S-49235)**	District 8 - Page 134
62	**Geosynthetic Liner Purchase for State Route 85 Landfill, Cell 2 - IFB 23-SW-019 Requirements Contract (Ordinance S-49199)**	Out of City - Page 136
63	**Fuel Terminal Services - Contract Recommendation (Ordinance S-49220)**	Citywide - Page 139
64	**Amend City Code - Section 36-158, Schedule I, Local Speed Limits at 27 Locations (Ordinance G-7062)**	Citywide - Page 140
65	**Answering and Dispatching Services - RFP 63-2307 - Request for Award (Ordinance S-49195)**	Citywide - Page 183
66	**Street Transportation Department Soils and Materials Testing On-Call Services for Calendar Years 2023-24 (Ordinance S-49217)**	Citywide - Page 185
67	**Salt River Project Construction License for Subsurface**	District 5 - Page 188

	Utility Excavation Purposes for Lift Station 48 Redundant Force Main - WS90501007-1 (Ordinance S-49229)	
68	**Arizona Department of Transportation Off System Bridge Program Call for Projects through Maricopa Association of Governments in Federal Fiscal Year 2023 (Ordinance S-49236)**	Citywide - Page 189
69	**End Shores Contract - IFB 2223-WDD-512 - Request for Award (Ordinance S-49205)**	Citywide - Page 191

PLANNING AND ZONING MATTERS

70	**Final Plat - Desert Park 5 - PLAT 220009 - Northwest Corner of Desert Park Lane and 14th Street**	District 6 - Page 193
71	**Final Plat - 7th St. Industrial-Phase 2 - PLAT 220021 - Northeast Corner of 10th Street and Hammond Lane**	District 8 - Page 194
72	**Final Plat - Elevate on the Preserve Amended - PLAT 220098 - Southeast Corner of Central Avenue and Dobbins Road**	District 8 - Page 195
73	**Amend City Code - Ordinance Adoption - Rezoning Application Z-47-22-1 - Southwest Corner of 35th Avenue and Paradise Lane (Ordinance G-7058)**	District 1 - Page 196
74	**Amend City Code - Ordinance Adoption - Rezoning Application Z-SP-5-22-1 - Southwest Corner of 35th Avenue and Paradise Lane (Ordinance G-7059)**	District 1 - Page 204
75	**Amend City Code - Ordinance Adoption - Rezoning Application Z-57-22-4 - Southeast Corner of 7th Street and Whitton Avenue (Ordinance G-7060)**	District 4 - Page 212
76	**Amend City Code - Ordinance Adoption - Rezoning Application Z-41-22-8 (2333 Thomas PUD) - Approximately 270 Feet West of the Southwest Corner of 24th Street and Thomas Road (Ordinance G-7057)**	District 8 - Page 219

77	**Amend City Code - Ordinance Adoption - Rezoning Application Z-58-22-8 - Southeast Corner of 44th Street and Mckinley Street (Ordinance G-7061)**	District 8 - Page 227
78	*****REQUEST TO CONTINUE (SEE ATTACHED MEMO)*** (CONTINUED FROM OCT. 12, 2022) - Public Hearing - Appeal of Hearing Officer Decision - Abandonment of Right-of-Way - ABND 220011 - 4640 East Camelback Heights Way**	District 6 - Page 235
*79	*****REQUEST TO WITHDRAW (SEE ATTACHED MEMO)*** (CONTINUED FROM MARCH 2, APRIL 6, JUNE 1 AND SEPT. 7, 2022) - Public Hearing and Ordinance Adoption - Rezoning Application Z-20-21-4 - Approximately 1,300 Feet North of the Northeast Corner of Central Avenue and Indian School Road (Ordinance G-6964)**	District 4 - Page 290
80	**(CONTINUED FROM NOV. 2, 2022) - Public Hearing and Ordinance Adoption - Planning Hearing Officer Application PHO-1-22--Z-26-15-4 - Northwest Corner of Central Avenue and Pierson Street (Ordinance G-7053)**	District 4 - Page 307
81	**Public Hearing/Formal Action - PCD Major Amendment - Rezoning Application Z-91-C-99-2 - Approximately 815 Feet West of the Northwest Corner of North Valley Parkway and Dove Valley Road**	District 2 - Page 377
82	**Public Hearing and Ordinance Adoption - Rezoning Application Z-16-22-1 - Approximately 300 Feet South of the Southwest Corner of 31st Avenue and Dynamite Boulevard (Ordinance G-7063)**	District 1 - Page 426
83	**(CONTINUED FROM NOV. 2, 2022) - Public Hearing and Ordinance Adoption - Planning Hearing Officer Application PHO-2-22--Z-47-17-8 - Approximately 130 feet North of the Northwest Corner of 19th Avenue and Latona Lane (Ordinance G-7054)**	District 8 - Page 501

*84 ***ADDITIONAL INFORMATION (SEE ATTACHED MEMO)*** District 2 - Page 612
Public Hearing and Resolution Adoption - General Plan Amendment GPA-DSTV-3-22-2 - Mayo Boulevard between 40th Street and the Loop 101 Freeway, and Tatum Boulevard between Deer Valley Drive and Mayo Boulevard (Resolution 22087)

ADD-ON ITEMS

*85 ***REQUEST TO ADD-ON (SEE ATTACHED MEMO)*** District 2 - Page 625
Intergovernmental Agreement with Arizona State Land Department to Require and Fund Street Improvements in North Phoenix (Ordinance S-49239)

REPORTS FROM CITY MANAGER, COMMITTEES OR CITY OFFICIALS

000 CITIZEN COMMENTS

ADJOURN

City of Phoenix

Report

Agenda Date: 12/7/2022, **Item No.** *20

ADDITIONAL INFORMATION (SEE ATTACHED MEMOS) Union Comments on Proposed Changes to Memoranda of Understanding

Under the terms of the Meet and Confer Ordinance, employee organizations are afforded an opportunity to comment after having submitted proposed changes to existing Memoranda of Understanding (MOUs) by Dec. 1, 2022.

This item on the agenda allows the unions to inform the City Council as to their priorities, concerns, and general goals for the Meet and Confer process.

The Meet and Confer Ordinance also requires that the public be given an opportunity to make comments on the union proposals at the Dec. 14, 2022, City Council meeting.

Responsible Department
This item is submitted by Assistant City Manager Lori Bays and the Human Resources Department.

City of Phoenix

Agenda
City Council Formal Meeting

Meeting Location:
City Council Chambers
200 W. Jefferson St.
Phoenix, Arizona 85003

Wednesday, December 14, 2022 **2:30 PM** **phoenix.gov**

OPTIONS TO ACCESS THIS MEETING

Virtual Request to speak at a meeting:

- ***Register online*** *by visiting the City Council Meetings page on phoenix.gov* ***at least 2 hours prior to the start of this meeting****. Then, click on this link at the time of the meeting and join the Webex to speak:* https://phoenixcitycouncil.webex.com/phoenixcitycouncil/onstage/g.php?MTID=ec9a0f66af641c42e2de17b3b3a8cba52

- **Register via telephone** at 602-262-6001 **at least 2 hours prior to the start of this meeting,** noting the item number. Then, use the Call-in phone number and Meeting ID listed below at the time of the meeting to call-in and speak.

In-Person Requests to speak at a meeting:

- Register in person at a kiosk located at the City Council Chambers, 200 W. Jefferson St., Phoenix, Arizona, 85003. Arrive **1 hour prior to the start of this meeting**. Depending on seating availability, residents will attend and speak from the Upper Chambers, Lower Chambers or City Hall location.

- Individuals should arrive early, 1 hour prior to the start of the meeting to submit an in-person request to speak before the item is called. After the item is called, requests to speak for that item will not be accepted.

At the time of the meeting:

- **Watch** the meeting live streamed on phoenix.gov or Phoenix Channel 11 on Cox Cable, or using the Webex link provided above.

- **Call-in** to listen to the meeting. Dial 602-666-0783 and Enter Meeting ID 2556 727 9147# (for English) or 2554 328 1664# (for Spanish). Press # again when prompted for attendee ID.

- **Watch** the meeting in-person from the Upper Chambers, Lower Chambers or City Hall depending on seating availability.

Para nuestros residentes de habla hispana:

- Para registrarse para hablar en español, llame al 602-262-6001 **al menos 2 horas antes del inicio de esta reunión** e indique el número del tema. El día de la reunión, llame al 602-666-0783 e ingrese el número de identificación de la reunión 2554 328 1664#. El intérprete le indicará cuando sea su turno de hablar.

- Para solamente escuchar la reunión en español, llame a este mismo número el día de la reunión (602-666-0783; ingrese el número de identificación de la reunión 2554 328 1664#). Se proporciona interpretación simultánea para nuestros residentes durante todas las reuniones.

- Para asistir a la reunión en persona, vaya a las Cámaras del Concejo Municipal de Phoenix ubicadas en 200 W. Jefferson Street, Phoenix, AZ 85003. Llegue 1 hora antes del comienzo de la reunión. Si desea hablar, regístrese electrónicamente en uno de los quioscos, antes de que comience el tema. Una vez que se comience a discutir el tema, no se aceptarán nuevas solicitudes para hablar. Dependiendo de cuantos asientos haya disponibles, usted podría ser sentado en la parte superior de las cámaras, en el piso de abajo de las cámaras, o en el edificio municipal.

CALL TO ORDER AND ROLL CALL

BOARDS AND COMMISSIONS

1	**Mayor and Council Appointments to Boards and Commissions**	Page 13

LIQUOR LICENSES, BINGO, AND OFF-TRACK BETTING LICENSE APPLICATIONS

2	**Liquor License - Special Event - Our Lady of Czestochowa Roman Catholic Parish Phoenix**	District 1 - Page 15
3	**Liquor License - Anzio's Italian Restaurant**	District 1 - Page 16
4	**Liquor License - Sofia's Mexican Cuisine**	District 1 - Page 21
5	**Liquor License - Plaza Bonita Family Mexican Restaurant**	District 2 - Page 26
6	**Liquor License - Clearwater Mayo**	District 2 - Page 28
7	**Liquor License - First Watch Restaurant #0203**	District 2 - Page 32
8	**Liquor License - Lux Max Annex**	District 2 - Page 36
9	**Liquor License - Playa II**	District 3 - Page 41
10	**Liquor License - First Watch Restaurant #42**	District 3 - Page 43
11	**Liquor License - Mariscos Empalme**	District 3 - Page 47
12	**Liquor License - Shea Cheese**	District 3 - Page 52
13	**Liquor License - Special Event - Brophy College Preparatory**	District 4 - Page 57
14	**Liquor License - First Watch Restaurant #0041**	District 4 - Page 58

15	**Liquor License - First Watch Restaurant #0202**	District 4 - Page 63
16	**Liquor License - JC Convenience Store**	District 5 - Page 68
17	**Liquor License - Jimmy's Quick Stop**	District 5 - Page 73
18	**Liquor License - Rum Runner's Bar**	District 6 - Page 78
19	**Liquor License - Clearwater Ahwatukee**	District 6 - Page 80
20	**Liquor License - Sudhalle Taphouse**	District 6 - Page 85
21	**Liquor License - Sushi Friend**	District 6 - Page 91
22	**Liquor License - Special Event - Children's Cancer Network**	District 7 - Page 96
23	**Liquor License - 805 Wine Shop**	District 7 - Page 97
24	**Liquor License - X Club Phoenix**	District 7 - Page 102
25	**Liquor License - Yogis Grill**	District 7 - Page 107
PAYMENT ORDINANCE (Ordinance S-49240) (Items 26-32)		Page 112
26	**North American Region of the Airports Council International doing business as Airports Council International - North America**	
27	**eRAD Inc.**	
28	**QCM Technologies, Inc.**	
29	**Archer Western Construction, LLC**	
30	**Settlement of Claim(s) Williams v. City of Phoenix**	
31	**Settlement of Claim(s) Quintero v. City of Phoenix**	
32	**Settlement of Claim(s) Adams v. City of Phoenix**	

ADMINISTRATION

33	**Runoff Election - March 14, 2023 - Amend Election Precinct Legal Descriptions (Ordinance S-49282)**	Citywide - Page 115
34	**Reappointment of a Municipal Court Judge**	Citywide - Page 116
35	**American Rescue Plan Act Reallocation Funds - The Moreland, XWings, and Affordable Housing and Homelessness Projects**	Citywide - Page 117
36	**XWing Non-Congregate Shelter - EXC 22-0049 - Request for Award (Ordinance S-49284)**	District 7 - Page 119
37	**Acceptance of a Traffic Control Easement at 18th Street and McDowell Road (Ordinance S-49241)**	District 8 - Page 121
38	**Acceptance of an Easement for Water Purposes (Ordinance S-49259)**	District 2 - Page 122
39	**Acceptance and Dedication of Easements for Sidewalk and Public Utility Purposes (Ordinance S-49251)**	District 8 - Page 123
40	**Grant of a Public Utility Easement on City-owned Property Near Central Avenue and Deer Valley Drive (Ordinance S-49243)**	District 1 - Page 124
41	**Building and Plumbing Materials - ADSPO14-00003936 - Amendment (Ordinance S-49246)**	Citywide - Page 127
42	**Office Moving Services - IFB 17-184 - Amendment (Ordinance S-49250)**	Citywide - Page 129
43	**Crane Rentals - IFB 16-004 - Amendment (Ordinance S-49255)**	Citywide - Page 130
44	**Plants, Cacti, Succulents, and Trees Contracts - RFQu 23-026 - Request for Award (Ordinance S-49257)**	Citywide - Page 131
45	**Public Comment on Proposed Changes to Memoranda**	Citywide - Page 133

	of Understanding Submitted by Authorized Employee Organizations	
46	**Amendments to Pay Ordinance S-47689 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49267)**	Citywide - Page 134
47	**Amendments to Classification Plan S-5815 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49268)**	Citywide - Page 136
48	**Amendments to Pay Ordinance S-47689 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49270)**	Citywide - Page 138
49	**Amendments to Classification Plan S-5815 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49271)**	Citywide - Page 140
50	**Amendments to Classification Plan S-5815 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49274)**	Citywide - Page 142
51	**Amendments to Pay Ordinance S-47689 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49275)**	Citywide - Page 145
52	**Amendments to Classification Plan S-5815 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49276)**	Citywide - Page 148
53	**Amendments to Pay Ordinance S-47689 in Accordance with Human Resources Committee 616 Recommendations (Ordinance S-49277)**	Citywide - Page 151
54	**Stop-Loss Insurance for Active Employee Medical and Pharmacy Benefits (Ordinance S-49280)**	Citywide - Page 154
55	**Benefits Consultant for Solicitation Services - RFP HR 22-007 - Request for Award (Ordinance S-49266)**	Citywide - Page 155

56	**Request for City Council to Meet in Executive Session on Dec. 16, 2022 at 10 a.m.**	Citywide - Page 157
57	**Request for City Council to Call to Meet in Executive Session on Specific Dates January through December 2023**	Citywide - Page 158
	COMMUNITY SERVICES	
58	**Authorization to Apply, Accept, Disburse Funds and Enter into Agreements for an Urban and Innovative Agriculture Community-Based Organization Fund Grant (Ordinance S-49285)**	Citywide - Page 159
59	**Additional Choice Neighborhoods Program Resources (Ordinance S-49244)**	District 8 - Page 161
60	**Additional Resources for Public Housing Capital and Other Improvements (Ordinance S-49245)**	District 3 - Page 164 District 5 District 6 District 8
61	**Library Media Materials and Related Services Contract - RFQu 22-148 - Request for Award (Ordinance S-49254)**	Citywide - Page 167
62	**Amendment to the 2020-24 Consolidated Plan's 2022-23 Annual Action Plan**	Citywide - Page 170
63	**Request to Amend Contract with Wilson Elementary School District #7 (Ordinance S-49252)**	District 8 - Page 172
64	**Enter Into an IGA with the Cities of Avondale, Buckeye, Goodyear, Mesa, and Tempe, Maricopa County, Gila River Indian Community, Salt-River Pima Indian Community, Salt River Project Agricultural Improvement and Power District, MAG and Arizona Board of Regents for the Rio Reimagined Urban Waters Ambassador (Ordinance S-49265)**	District 7 - Page 174 District 8 Out of City
65	**Parks and Recreation Department and Arizona State University Intergovernmental Agreement for Phoenix**	Citywide - Page 176

Afterschool Center Tutoring Program (Ordinance S-49263)

ECONOMIC DEVELOPMENT

66 **Development Agreement with Chevelle Properties LLC for Installation of Public Infrastructure (Ordinance S-49260)** Citywide - Page 178

PUBLIC SAFETY

67 **Authorization to Accept Donation of Lock Boxes from Phoenix Realtors** Citywide - Page 181

68 **Amend Current Ordinance to Add Paseo Hills Elementary to 2022-23 List of School Districts (Ordinance S-49278)** Citywide - Page 182

69 **Authorization to Enter into an Agreement with the Police Executive Research Forum for Training (Ordinance S-49262)** Citywide - Page 183

70 **Spartan Vehicle Robot (Ordinance S-49281)** Citywide - Page 184

71 **Paraclete Ballistic Shields - IFB 18-029 - Amendment (Ordinance S-49248)** Citywide - Page 185

72 **Ammunition Products Statewide - AZ State Cooperative CTR043473 - Amendment (Ordinance S-49264)** Citywide - Page 186

TRANSPORTATION AND INFRASTRUCTURE

73 **Bus and Dial-a-Ride Public Transportation Agency Safety Plan - Request for Approval** Citywide - Page 188

74 **Heavy-Duty Zero to Low Emission Buses Contract - COOP 22-107 - Request for Award (Ordinance S-49249)** Citywide - Page 265

75 **Transition to Zero Emission Heavy-Duty Bus Fleet** Citywide - Page 267

76 **Contract Amendment for Market Rate Adjustment to Transdev Services, Inc. Fixed Route Transit Services** Citywide - Page 272

	Agreement (Ordinance S-49269)	
77	**Contract Amendment for Market Rate Adjustment to First Transit, Inc. Fixed Route Transit Services Agreement (Ordinance S-49272)**	Citywide - Page 276
78	**Contract Amendment for Market Rate Adjustment to MV Transportation, Inc. Paratransit Services Agreement (Ordinance S-49273)**	Citywide - Page 280
79	**Solid Waste Yard Container Management Services Agreement (Ordinance S-49247)**	District 2 - Page 284 District 7
80	**Fuel System Service and Parts Contract Amendment (Ordinance S-49258)**	Citywide - Page 286
81	**Contract Amendment with Ameresco, Inc. for SR85 Landfill Gas Processing (Ordinance S-49261)**	Out of City - Page 287
82	**Intergovernmental Agreement with Flood Control District of Maricopa County for 27th Avenue and Olney Avenue Storm Drain Project - Amendment 3 (Ordinance S-49253)**	District 8 - Page 289
83	**Shared Micromobility Revenue Contract Solicitation - Request for Award - RCS 63-2213 (Ordinance S-49256)**	District 7 - Page 292 District 8
84	**Licensing for Bridge Management Software - American Association of State Highway and Transportation Officials - Amendment (Ordinance S-49279)**	Citywide - Page 297
85	**Odor and Corrosion Control Services - Amendment (Ordinance S-49242)**	Citywide - Page 299
86	**Citywide General Construction Job Order Contracting Services - Amendment - 4108JOC209 (Ordinance S-49283)**	District 7 - Page 301
	PLANNING AND ZONING MATTERS	
87	**Final Plat - Deer Valley-Building A & B - PLAT 220051 -**	District 1 - Page 303

	North of Alameda Road and East of 19th and 15th Avenues	
88	**Final Plat - Deer Valley-Building C - PLAT 220052 - North of Alameda Road and East of 19th Avenue**	District 1 - Page 304
89	**Final Plat - 4338 W. Thomas Road - PLAT 220056 - 4338 W. Thomas Road**	District 4 - Page 305
90	**Final Map of Dedication - 59th Avenue Spectrum - MOD 220004 - 59th Avenue and North of Baseline Road**	District 7 - Page 306
91	**Final Plat - 67th Avenue & Broadway - PLAT 220041 - Southwest Corner of 67th Avenue and Broadway Road**	District 7 - Page 307
92	**Final Plat - NEC of 7th Ave & McKinley - PLAT 220079 - Northeast Corner of 7th Avenue and McKinley Street**	District 7 - Page 308
93	**Final Plat - Haven at Washington - PLAT 220030 - Northeast Corner of 11th Street and Jefferson Street**	District 8 - Page 309
94	**Final Plat - Sanctuary at South Mountain - PLAT 220074 - South of Olney Avenue and East of 22nd Avenue**	District 8 - Page 310
95	**Abandonment of Easement - ABND 220029 - Northeast Corner of Jefferson and 11th Streets (Resolution 22090)**	District 8 - Page 311
96	**Waiver of Federal Patent Easement - ABND 210051 - 25300 N. 17th Ave. (Resolution 22091)**	District 1 - Page 312
97	**Waiver of Federal Patent Easement - ABND 210067 - 1750 W. Alameda Road (Resolution 22088)**	District 1 - Page 313
98	**Waiver of Federal Patent Easement - ABND 210068 - Parkview Lane and 17th Avenue (Resolution 22089)**	District 1 - Page 314
99	**Amend City Code - Official Supplementary Zoning Map 1239 (Ordinance G-7064)**	District 2 - Page 315

REPORTS FROM CITY MANAGER, COMMITTEES OR CITY OFFICIALS

000 CITIZEN COMMENTS

ADJOURN

City of Phoenix

Report

Agenda Date: 12/14/2022, **Item No.** 45

Public Comment on Proposed Changes to Memoranda of Understanding Submitted by Authorized Employee Organizations

This item is to provide public comment on proposals submitted by employee organizations.

Summary

Under the terms of the Meet and Confer Ordinance, employee organizations are offered the opportunity to make a presentation to the City Council regarding proposed changes to the existing Memoranda of Understanding (MOUs), which occurred this year on Dec. 7, 2022.

The Meet and Confer Ordinance provides that at the next City Council meeting following presentations by employee organizations, the public shall be afforded an opportunity to comment on the proposals. This item on the agenda provides that opportunity.

Responsible Department

This item is submitted by Assistant City Manager Lori Bays and the Human Resources Department.

CERTIFICATE OF COMPLIANCE

This certificate of compliance concerns:

1. A brief and is submitted under Rule 14(a)(5).

2. The undersigned certifies that the brief to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 11,039 words.

3. The document to which this Certificate is attached does not exceed the word limit of 14,000 words that is set by Rule 14 for opening briefs.

By */s/ Stephen B. Coleman*
Stephen B. Coleman
Jon M. Paladini
7730 E. Greenway Road, Ste. 105
Scottsdale, AZ 85260
Attorneys for Appellees

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2024, I electronically filed the foregoing with the Clerk of the Court by via the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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