



City of Phoenix

PLANNING AND DEVELOPMENT DEPARTMENT

To: Lori Bays
Assistant City Manager

Date: March 25th, 2026

From: David Benton
Chief Counsel

Subject: ITEM 80 ON THE MARCH 25, 2026, FORMAL AGENDA – AUTHORIZATION TO GRANT ALIGNED A BINDING WAIVER OF ENFORCMENT (WAIVER) OF THE SPECIAL PERMIT PROVISIONS FOR DATA CENTERS (ORDINANCE S-52435) - DISTRICT 1

Item 80 is a request to grant Aligned a Binding Waiver of Enforcement (Waiver) of the Special Permit Provisions for Data Centers under Ordinance G-7396.

Following the City of Phoenix's adoption of Ordinance G-7396 on July 2, 2025, which established a regulatory framework for data centers, Aligned Data Centers submitted a demand to the City under A.R.S. § 12-1134, asserting that the ordinance diminished the fair market value of its property located at 3151 W. Behrend Drive, Phoenix, AZ 85027 (APN 206-12-206), 19640 N. 31st Avenue, Phoenix, AZ 85027 (APN 206-12-207), and 3202 W. Behrend Drive, Phoenix, AZ (APN 206-12-208B). Pursuant to A.R.S. § 12-1134(E), Ordinance G-7396 authorizes the City Council, in its sole discretion, to grant binding waivers of the regulatory requirements for data centers.

Staff has continued to engage with Aligned regarding the conditions of this Waiver to ensure that the proposed data center will adequately address and mitigate potential health and safety impacts on neighboring properties. Accordingly, the Waiver (Exhibit A) to Ordinance S-57217 has been revised to address these additional considerations. See enclosed Exhibit A, which will replace the existing Exhibit A within the Ordinance.

This waiver does not constitute approval or denial of on-site generation. Applicant acknowledges that a review process would be required.

Approved: _____

Lori Bays, Assistant City Manager

EXHIBIT A

WHEN RECORDED RETURN TO:

City of Phoenix
Department of Law
ATTN: City Attorney
200 W. Washington Street, 13th Floor
Phoenix, AZ 85003

BINDING WAIVER OF ENFORCEMENT

THIS BINDING WAIVER OF ENFORCEMENT (“Waiver”) is granted by the City of Phoenix (the “City”) as of the date of City Council approval set forth below to Aligned Data Centers (Behrend) Propco, LLC (the “Owner”) as owner of the real property located at 3151 W. Behrend Drive, Phoenix, AZ 85027 (APN 206-12-206), 19640 N. 31st Avenue, Phoenix, AZ 85027 (APN 206-12-207), and 3202 W. Behrend Drive, Phoenix, AZ (APN 206-12-208B), which is more particularly described in **Exhibit B**, as attached hereto and incorporated herein (the “Property”) pursuant to the terms and conditions herein.

Recitals:

- A. On July 2, 2025, the Phoenix City Council adopted Ordinance G-7396 (the “Data Center Regulations”) amending the City of Phoenix Zoning Ordinance to establish data centers as a defined use and to allow this use in certain zoning districts within the City, pursuant to a special permit that addresses health and safety impacts common to this land use (the “Special Permit”). The primary purpose of a Special Permit is to protect public health and safety by requiring the proposed data center to address and mitigate potential health and safety impacts on neighboring properties, including, among other things, fire and public safety threats, hazardous materials, energy use, water use, and noise pollution.
- B. Pursuant to A.R.S. § 12-1134 (“Proposition 207”), private property owners may seek compensation if they believe enactment of a land use law results in a diminution in value of the private real property as of the date of its enactment. By its terms, Proposition 207 does not apply to land use laws enacted to protect the public’s health and safety. Proposition 207 allows the City to issue a binding waiver of enforcement of the land use law to avoid any demand for compensation.
- C. On October 13, 2025, Owner submitted a demand for \$75,435,397 of compensation under Proposition 207, for alleged impacts relating to the Data Center Regulations (the “Claim”).
- D. In response to the Claim, the City requested health and safety information from the Owner to evaluate whether the Owner’s proposed use of the Property for a data center included sufficient health and safety mitigation measures to allow for a data center use on the Property without unreasonable impacts to public health and safety.

- E. The Owner desires to foster good relationships with the surrounding neighbors and the City.
- F. In response to the City's request, the Owner has provided the City with health and safety information for evaluation. The Owner acknowledges that, to the best of its knowledge and belief, the health and safety information submitted to the City for review is a true and accurate description and depiction of the future location and operation of the data center on the Property.
- G. The City Manager has reviewed and evaluated the submitted information and has prepared a recommendation to the City Council to issue the Owner this Waiver, subject to the terms and conditions herein, to use the Property for a data center without adhering to the Special Permit requirement in Section 5 of the Data Center Regulations, codified at Section 647.A.2.kk of the Zoning Ordinance of the City of Phoenix (collectively, the "Waived Requirements").

Waiver:

NOW, THEREFORE, in consideration of the mutual benefits and covenants herein, the City of Phoenix and Owner agree as follows:

- 1. Incorporation of Introduction and Recitals. The introduction and recitals set forth above are acknowledged by the City and the Owner to be true and correct and are incorporated herein by this reference.
- 2. Binding Waiver of Enforcement. Pursuant to its authority under A.R.S. § 12-1134, the City acknowledges and agrees that the Waived Requirements shall not be enforced nor applicable to the Property, subject to the following (the "Health and Safety Requirements"):
 - a. Fire and First Responder Requirements:
 - i. Owner shall provide a plan for fire roads, vertical clearance, and access points, and shall coordinate with the Phoenix Fire Department (the "Department") to create a safe radius and fire response plan to address building collapse potential.
 - ii. Owner shall describe fire sprinkler systems that will be installed, including early detection systems and clean agent suppression systems. If such systems include proprietary information due to the nature of the system, the City (and any other jurisdictions likely to respond to incidents on the Property due to the automatic aid system) will execute the necessary non-disclosure agreements.
 - iii. Owner shall provide the Department with building layouts, plans and drawings and provide and coordinate response training with emergency responders. If such layouts, plans or drawings include proprietary information due to nature of the system, the City (and any other jurisdictions

- likely to respond to incidents on the Property due to the automatic aid system) will execute the necessary non-disclosure agreements.
- iv. Owner shall provide measures to prevent or mitigate thermal run away and off-gas monitoring from battery fires. To include efforts to mitigate the creation of an urban heat island by reducing heat absorption with reflective surfaces and vegetation, increasing shade, and improving energy efficiency in buildings and infrastructure.
 - v. Owner shall describe how smoke and off gases will be managed.
 - vi. Prior to the issuance of a Certificate of Occupancy for any data center use, Owner shall provide site tours for the Department and participate in pre-incident planning to educate the Department regarding access, apparatus positioning, fire protection systems, location of hazardous processes, location of monitoring equipment, building construction and interior configuration, contact information for responsible parties, etc.
 - vii. Provide BESS specifications and locations, comply with local guidelines, and provide updates to the Department as project engineering progresses
 - viii. Provide hazardous materials management plans, the location of all hazardous materials and related safety data sheets and comply with all Community Right to Know requirements. For purposes of this agreement, hazardous materials are as defined in the Fire Code.
 - ix. Data center uses will provide fire department access points, shut-offs for power, fuel, and water, and a digital site plan for use by first responders.
 - x. All uses will comply with the Phoenix Fire Code.
 - xi. No unpermitted installations or modifications will be made to approved fire and life safety systems.
 - xii. Data center uses will integrate regional hazardous materials mitigation and disaster response with local emergency management agencies.

b. Energy Use Requirements:

- i. The Owner has delivered to the City: 1) a letter from Arizona Public Service Company (“APS”) that demonstrates its capacity to serve a data center development on the Property and 2) a completed load service study by APS which determines that APS can serve the proposed data center use. Prior to the issuance of a Certificate of Occupancy for any data center building or portion thereof, the Owner will provide the City a copy of a load commitment agreement with APS that confirms its capacity and commitment to serve such proposed data center use.
- ii. Nuclear power generation shall never be permitted on the Property.
- iii. Permanent power generation shall not be permitted on the Property, except for emergency backup generators. Owner may only operate emergency backup generators in the event of a utility outage or for periodic testing and maintenance.
- iv. All on-site power generation shall meet or exceed emissions standards for non-attainment zones and shall comply with the Noise Mitigation Requirements.

- c. Water Use Requirements:
 - i. Water use on the Property shall not degrade or compromise the adequacy of the water supply for fire suppression efforts.
 - ii. If applicable, the Property shall comply with Ordinance G-7237, which provides that developments that use an average of 250,000 gallons of water or more per day are required to provide a Water Conservation Plan and that developments that use an average of 500,000 gallons of water or more per day are required to demonstrate a minimum of 30% water reuse in the Water Conservation Plan. If applicable, the Water Conservation Plan must be reviewed and approved by the Water Services Department (WSD) prior to preliminary site plan approval.

- d. Noise Mitigation Requirements:
 - i. Data center uses will not generate noise in excess of 55 dB(A) between 7:00 AM and 10:00 PM or 45 dB(A) between 10:00 PM and 7:00 AM when measured from the property line of the nearest residentially-zoned property.
 - ii. The project will utilize industry-standard noise mitigation strategies, acoustical designs, and materials to reduce overall noise levels to meet City standards. Specific methods to mitigate noise and ensure compliance with the noise limits set forth above require staff approval and shall be stipulated as a condition of Final Site Plan approval.
 - iii. If supported by an updated noise study, the noise limits set forth above may be adjusted to a level that does not exceed the level of existing background noise.
 - iv. Backup generators, chillers, HVAC units, and other noise-generating equipment that will generate noise in excess of 55 dB(A) will be screened, placed between buildings, or located and oriented away from residential uses whenever possible. If such equipment is roof-mounted, it shall be screened for sound mitigation.

3. Waiver Subject to Health and Safety Requirements. This Waiver is subject to the Owner's continuing obligations as follows:

- a. Owner shall not cause or allow any installations or material modifications to the Property that: (i) are inconsistent with, adversely impact, or undermine the Fire and First Responder Requirements, the Energy Use Requirements, the Water Use Requirements, or the Noise Mitigation Requirements; (ii) reduce established standards and efficiencies of life safety systems; (iii) lead to system failures that endanger life safety; or (iv) are not at all times in compliance with the City of Phoenix Fire Code.
- b. Owner shall not cause or allow any material changes to the Energy Use Requirements, including but not limited to the method of providing on-site power for backup purposes, or the method of power delivery from designated energy utility providers, with no less than 120 days' notice to the City.

- c. Owner shall not introduce potentially hazardous conditions without proper notice, review and permitting. For example, Owner shall not allow or undertake the installation of unpermitted battery energy storage systems or the degradation of water supplies that compromise fire suppression efforts.
 - d. Owner shall obtain and maintain throughout the term, a CSA STAR Level 2 assurance (either STAR Certification or STAR Attestation) based on the then-current version of the Cloud Controls Matrix (CCM). Evidence of current STAR Level 2 status (certificate or most-recent attestation report) shall be provided to City prior to issuance of a certificate of occupancy for any Data Center use.
 - e. Identify a qualified point of contact (e.g., a designated Chief Information Security Officer or equivalent with at least five years of relevant experience), including contact information, responsibilities for maintenance of CSA STAR certification, and a commitment to updates submitted to the City upon material changes.
 - f. Pursuant to Phoenix Zoning Ordinance § 703(A)(5), Owner shall screen power and other critical infrastructure, as defined by Phoenix Zoning Ordinance § 202.
 - g. Owner shall only use power from existing power infrastructure in the immediate vicinity. Owner shall not seek the installation of new transmission infrastructure to bring additional power outside of the immediate vicinity to the site.
4. Recordation. This Waiver shall be adopted by Resolution of the City of Phoenix City Council and recorded by the City in its entirety in the Official Records of Maricopa County, Arizona, not later than 10 days after this Waiver takes effect.
5. Covenants Running with the Land. The Owner and the City acknowledge and agree this Waiver runs with the Property and is binding upon the City and the Owner, its successors, assigns, and any subsequent owners or lessees of the Property.
6. Bar to Action. The Owner and the City acknowledge and agree this Waiver shall serve as a bar to any future claim for diminished value based upon the adoption of the Data Center Regulations or otherwise arising from the facts and circumstances of the Claim.
7. Governing Law. This waiver, and all rights and obligations created hereby, shall be determined and governed by the laws of the State of Arizona.

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PASSED by the City Council of the City of Phoenix this 25th day of March 2026.

MAYOR

Date

ATTEST:

Denise Archibald, City Clerk

APPROVED AS TO FORM:
Julie M. Kriegh, City Attorney

BY: _____

REVIEWED BY:

Ed Zuercher, City Manager

Acknowledgement

By signing below, the undersigned represents and warrants that they are the lawful Owner of the Property or duly authorized to sign this Waiver on behalf of the Owner, and that this Waiver is knowing and voluntary.

Owner/Authorized Agent: _____

Title: _____

Date: _____

**State of Arizona)
County of Maricopa) ss.**

Subscribed and sworn to before me this ___ day of _____, 20___, by

_____.

Notary Public

My Commission Expires: _____

Exhibit B
Legal Description of the Property

APN 206-12-206

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

Lot 3, AMERICAN EXPRESS PHASE I AMENDED, according to Book 326 of Maps, page 29, records of Maricopa County, Arizona.

PARCEL NO. 2:

Appurtenant covenants, conditions and restrictions in instrument recorded January 18, 1988 in Document No. 88- 022488.

PARCEL NO. 3:

Appurtenant easements for private driveway, emergency vehicle use, as set forth on Map recorded October 25, 1988 in Book 326 of Maps, page 29, records of Maricopa County, Arizona.

PARCEL NO. 4:

Appurtenant easements as set forth in the Declaration of Reciprocal Skyway, Driveway, Utility Line and Loading Dock Easements, recorded July 5, 2001 in Recording No. 2001-0600488 and Amendment recorded August 1, 2005 in Recording No. 20051088466, records of Maricopa County, Arizona; Thereafter, Second Amendment to Declaration of Reciprocal Skyway, Driveway, Utility Line and Loading Dock Easements recorded September 20, 2021, in Recording No. 20211013319, records of Maricopa County, Arizona.

PARCEL NO. 5:

Appurtenant easements as set forth in the Supply and Maintenance Easement Agreement, recorded August 1, 2005 in Recording No. 20051088465, records of Maricopa County, Arizona; Thereafter, Amendment to Supply and Maintenance Agreement recorded September 20, 2021, in Recording No. 20211013320, records of Maricopa County, Arizona.

PARCEL NO. 6:

A perpetual, non-exclusive easement as set forth in that certain Reciprocal Easement Agreement recorded September 20, 2021, in Recording No. 20211013322, records of Maricopa County, Arizona.

APN 206-12-207

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

LOT 1, CROSSPOINT AT BEARDSLEY, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, IN BOOK 330 OF MAPS, PAGE 27.

PARCEL NO. 2:

A NONEXCLUSIVE EASEMENT FOR UTILITIES BY OR PURSUANT TO THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AMERICAN EXPRESS PLAZA AT DEER VALLEY VILLAGE" RECORDED JANUARY 18, 1988, AS 88-022488, OF OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 3:

A NONEXCLUSIVE EASEMENT FOR LOADING DOCK BY OR PURSUANT TO THAT CERTAIN "EASEMENT AGREEMENT" RECORDED OCTOBER 14, 1997, AS 97-0713898 AND AMENDED AND RESTATED RECORDED SEPTEMBER 20, 2021 AS 2021-1013321, BOTH OF OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

Arizona.

APN 206-12-208B

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF PHOENIX, IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

Parcel No. 2

That portion of Lot 2, CROSSPOINT AT BEARDSLEY, PHASE 2, according to Book 340 of Maps, page 31, records of Maricopa County, Arizona, described as follows:

COMMENCING at the North quarter corner of Section 26, Township 4 North, Range 2 East of the Gila and Salt River Base and

Meridian, Maricopa County, Arizona; thence South 00 degrees 08 minutes 50 seconds East, along the East line of the Northwest quarter of said Section 26, 1978.94 feet; thence North 89 degrees 26 minutes 34 seconds West, 35.00 feet to the Southeast corner of Lot 1 of CROSSPOINT AT BEARDSLEY, a subdivision, according to Book 330 of Maps, page 27, records of Maricopa County, Arizona and the TRUE POINT OF BEGINNING; thence South 00 degrees 08 minutes 50 seconds East, along the West line of the East 35.00 feet of said Northwest quarter of Section 26, a distance of 318.04 feet, to the Northeasterly right-of-way line of Yorkshire Drive as shown on the Map of Dedication, Yorkshire Drive, according to Book 319 of Maps, page 8, records of Maricopa County, Arizona;

thence South 45 degrees 12 minutes 08 seconds West, along said right-of-way line, a distance of 29.52 feet; thence North 89 degrees 26 minutes 53 seconds West, along the Northerly right-of-way line of said Yorkshire Drive, 8.58 feet to the beginning of a tangent curve concave Southerly, said curve having a radius of 1035.00 feet; thence Southwesterly, 463.20 feet along the arc of said curve and said right-of-way line, through a central angle of 25 degrees 38 minutes 31 seconds to a point of tangency; thence South 64 degrees 54 minutes 09 seconds West, along said tangent and said right-of-way line, 59.83 feet to the beginning of a non-tangent curve concave Southwesterly and to the centerline of an 80 foot wide public utility easement according

to Recording No. 88-455402, records of Maricopa County, Arizona, the center of said curve bears South 64 degrees 54 minutes 09 seconds West, a distance of 5635.93 feet; thence Northwesterly, 607.34 feet along the arc of said curve and along the centerline of said easement, through a central angle of 06 degrees 10 minutes 27 seconds to a point of compound curvature of a curve concave Southwesterly, having a radius of 595.00 feet; thence Northwesterly 152.10 feet along the arc of said curve and along said centerline through a central angle of 14 degrees 38 minutes 47 seconds to a point of tangency; thence North 45 degrees 55 minutes 06 seconds West, a distance of 59.56 feet to the South line of AMERICAN EXPRESS PHASE I AMENDED, according to Book 326 of Maps, page 29, records of Maricopa County, Arizona; thence South 89 degrees 26 minutes 34 seconds East along said South line, a distance of 529.99 feet to the West line of Lot 1 of the aforementioned CROSSPOINT AT BEARDSLEY; thence South 00 degrees 33 minutes 26 seconds West along said West line, a distance of 223.94 feet to the Southwest corner of said Lot 1; thence South 89 degrees 26 minutes 34 seconds East along the South line of said Lot 1, a distance of 428.21 feet to the Southeast corner of said Lot 1 and the TRUE POINT OF BEGINNING