

**CITY CLERK
ORIGINAL**

**C-8355
02/12/2013**

**SECTION 457 CUSTODIAL ACCOUNT AGREEMENT
WITH WELLS FARGO BANK, N.A.**

THIS SECTION 457 CUSTODIAL ACCOUNT AGREEMENT is made by and between the **City of Glendale, Arizona** (herein "Employer"), and Wells Fargo Bank, National Association (herein "Custodian").

WHEREAS, Employer maintains an eligible deferred compensation plan(s) (herein the "Plan(s)") under section 457 of the Internal Revenue Code.

WHEREAS, Employer desires to set aside Plan(s) assets to be held in a funded arrangement under section 457(g) of the Internal Revenue Code maintained for the exclusive benefit of Plan(s) participants and their beneficiaries.

WHEREAS, section 457(g)(3) of the Internal Revenue Code provides that custodial accounts described in section 401(f) of the Internal Revenue Code shall be treated as trusts pursuant to that section.

WHEREAS, Employer desires to engage the services of the Custodian to hold all assets and income of the Plan(s) in a custodial account for the exclusive benefit of participants and their beneficiaries, as defined in section 401(f) of the Internal Revenue Code.

WHEREAS, the Custodian is willing to act as custodian and deemed trustee of the Plan(s) as set forth in section 457(g)(3) of the Internal Revenue Code to provide these services for the Plan(s) on the condition that Employer has entered or is entering into a service agreement with Great-West whereby Great-West will provide recordkeeping services for all Plan(s) assets held pursuant to this Agreement.

NOW, THEREFORE, Be it resolved, that the Employer desires to appoint and hereby so appoints, effective as of **March 1, 2013**, Wells Fargo Bank, National Association, and Wells Fargo Bank, National Association desires to accept such appointment and to accept the custody continued hereby. The parties also hereto agree as follows:

1. Establishment of Custodial Account.
 - a. In order to carry out the purposes of the Plan(s), Employer hereby creates and establishes a custodial account (herein the "Custodial Account"). The Custodian accepts the Custodial Account and agrees to act as Custodian hereunder, but only on the terms and conditions set forth in this Agreement. Subject to the terms and conditions of this Agreement, all right, title and interest in and to the Custodial Account shall be vested exclusively in the Custodian.
 - b. The Custodial Account shall include only those assets that the Custodian accepts. Only assets actually received by the Custodian will become part of the Custodial Account. The Employer acknowledges and agrees that it is responsible for effectuating the transfer of any Plan(s) assets to be held in the Custodial Account to Custodian.
 - c. The Custodial Account established hereunder is intended to satisfy the requirements of section 457(g)(3) of the Internal Revenue Code, and to be treated as a trust solely for purposes of applicable tax laws under rules similar to the rules under section 401(f) as contemplated by that section. In no event shall the Custodial Account be treated as a trust for purposes of state law. Notwithstanding anything herein to the contrary, it shall be

impossible, prior to the satisfaction of all liabilities with respect to the employees and their beneficiaries covered by the Plan(s), for any part of the funds of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of the participants or their beneficiaries as provided for in the Plan(s). Except as provided in the Plan(s) and consistent with applicable law, the assets of the Custodial Account shall never inure to the benefit of the Employer and shall be held for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan(s) and Custodial Account. The Employer agrees that it will abide by this provision and that it will not cause the Custodian to violate this rule either by its direction or otherwise.

2. Services to be Provided by Custodian and Obligations of the Parties. The obligations of the Custodian shall be limited to those expressly imposed upon it by this Agreement, notwithstanding any reference herein to the Plan(s), and no further duties or obligations of the Custodian, such as a duty to value Plan(s) investments, determine the prudence or authorization of any Plan(s) investment, or diversify Plan(s) investments, shall be implied. The Custodian shall not be liable in discharging its duties hereunder if it acts in good faith and in accordance with the terms of this Agreement and in accordance with applicable federal tax laws, rules and regulations. The Custodian shall, upon direction from Employer, perform the following services; provided, however, that for purposes of this Agreement the Custodian may rely on direction by the Employer to Great-West pursuant to and consistent with the terms of the services agreement among the parties thereto:
 - a. Open and maintain a Custodial Account in the name of the Plan(s) and hold in such an account all cash, securities and other property initially deposited plus any additional cash and securities that may be received from time to time for the Custodial Account; provided, however, that nothing in this Agreement shall require the Custodian to maintain actual physical custody of assets held for the Plan(s), to which the Custodian has title, through a broker held securities account or insurance company separate account, or to maintain actual physical custody of mutual fund shares. The Custodian shall have no duty or authority to ascertain whether any contributions should be made to the Custodial Account pursuant to the Plan(s), to determine the amount of any contribution to be made pursuant to the terms of the Plan(s), or to bring any action to enforce any obligation to make any contribution to the Plan(s).
 - b. Act upon written direction from the Employer or from one or more investment advisors duly appointed in writing by the Employer, as provided in Section 5 hereof. The Custodian shall have no duty to determine any facts or the propriety of any action taken or omitted by it pursuant to such directions.
 - c. Be responsible for the collection of all investment income relating to the assets in the account.
 - d. Make payments from the Custodial Account to participants or their beneficiaries as the Employer shall direct in writing, and amounts so paid shall no longer constitute a part of the Custodial Account. The Employer shall report withholding of any federal, state or local taxes that may be required to be withheld with respect to such payments and shall remit such amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and remitted.
 - e. The Employer shall pay or, if not paid by the Employer, shall direct the Custodian to pay from the Custodial Account, the reasonable expenses relating to the Plan(s) and Custodial Account, including, without limitation, investment management, accounting, legal, actuarial expenses, and any expenses which have been approved by the Employer; provided, however

that expenses paid pursuant to this section shall not include fees for custodial services to Custodian.

3. Powers of the Custodian. The Custodian is authorized and empowered to:
- a. Hold assets in the name of the Custodian, which may include entering into depository arrangements for the safekeeping of records relevant to the ownership of such assets with any entity or entities as the Custodian may choose.
 - b. Invest the assets of the Custodial Account in such investment vehicles as directed by Employer or a duly appointed investment advisor, including annuity or insurance contracts issued by licensed insurance companies, and to enter into amendments to such annuity or insurance contracts as so directed. The Custodian shall have no duty or responsibility to determine the appropriateness of any Plan(s) investment, or to cause such investments to be changed. The Employer shall be responsible to determine whether the Plan(s) and the investments directed by it are authorized by state law. The Custodian shall forward all notices, proposed contract amendments, rate or fee changes or other communications regarding all annuity or insurance contracts held in the Custodial Account to the Employer, and shall act on behalf of the Custodial Account with respect to any such notice, proposed amendment, change, or other communication only as directed by the Employer. Any rights of a contractholder under any such group annuity contract to discontinue, amend, or otherwise modify the contract shall be exercised only upon the specific written direction of the Employer to the issuer of the contract or by the Custodian at the Employer's express written direction.
 - c. Make transfers among investment vehicles or disbursements from the Custodial Account as directed by the Employer or, if applicable, by the Plan(s) participants.
 - d. Employ agents other than persons on its regular payroll and delegate to them such ministerial and other non-discretionary duties as it sees fit and to rely upon such information furnished by such agents.
 - e. Vote any securities held in the Custodial Account, issue proxies to vote such securities, or exercise any other rights incidental to the securities including tender offers, as directed by the Employer.
 - f. Pay taxes of any and all kinds levied or assessed against the Custodial Account as directed by the Employer.
 - g. Delegate to Great-West, any or all ministerial duties arising out of this Agreement, and appoint Great-West as agent of Custodian for such purposes, including opening accounts with investment companies, and paying expenses and making distributions from the Custodial Account. In no event shall Custodian delegate to Great-West the right to hold title to the assets of the Plan(s) or Custodial Account.
 - h. Make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any other instruments that may be necessary or appropriate to carry out the custodianship duties and powers.
 - i. Hold uninvested such cash funds as may appear reasonably necessary based upon directions of the Employer to meet the anticipated cash requirements of the Plan(s) from time to time and to deposit the same or any part thereof, either separately or together with other funds

under the control of the Custodian, in its own deposit department or to deposit the same in its name as Custodian in such other depositories as it may select.

- j. Institute, prosecute, maintain, or defend any proceeding at law or in equity concerning the Custodial Account or the assets thereof, at the sole cost and expense of the Custodial Account, and to compromise, settle, and adjust any claims and liabilities asserted against or in favor of the Custodial Account or of the Custodian; but the Custodian shall be under no duty or obligation to institute, maintain, or defend any action, suit, or other proceeding unless it shall have been indemnified to its satisfaction against any and all loss, cost, expense, and liability it may sustain or anticipate by reasons thereof.
 - k. Retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
4. Reports. Custodian, or agent of Custodian, shall furnish to Employer and any duly appointed investment advisors a periodic statement of account no less frequently than annually, reflecting an inventory of assets in the account, all activity during the previous period, and a market value for the assets of the account. Custodian, or its agent, will furnish such reports including reports to Employer's accountant or other examiners upon Employer's request which shall be based upon the records maintained by Great-West, and which shall be provided to Custodian on a quarterly basis.
 5. Authorized Persons. The Employer and any duly appointed investment advisor shall furnish a list to the Custodian (and from time to time whenever there are changes therein) of the individuals authorized to transmit instructions to the Custodian concerning the assets in the account and written direction regarding the form of such instructions. If the Employer has implemented the voice response system for participants, all participants are deemed to be authorized individuals solely for purposes of directing investment of their individual account balances. The Custodian shall be entitled to rely on instructions from participants received through the voice response system as well as on the oral advice as confirmed in writing or written advice of other authorized individuals. The Custodian shall treat as genuine and may rely on any notice or communication without further verification that it reasonably believes is from an authorized party, as defined above, and shall be protected in doing so by the Employer.
 6. Compensation Payable to Custodian. The Custodian shall be entitled to receive reasonable compensation for services provided under this Agreement in connection with the Plan(s). Such compensation shall be paid as set forth on the fee schedule attached hereto as Exhibit 1, and may be changed from time to time by agreement of the parties.

Reasonable compensation includes float received from the deposit of funds pending investment or presentment of checks for payment in non-interest bearing suspense or demand deposit accounts maintained by Wells Fargo for brief periods of time in order to facilitate the servicing of the plan. The Custodian receives compensation from the use of these uninvested funds, which accrues on payments made from the Plan (such as distributions and expense payments) and on contributions or other funds received too late in the day to be invested for the Plan that same day. Float on distribution payments begins to accrue when the funds are transferred from the Plan to a trust clearing account (generally within one business day of the distribution request), and ends on the date the payment clears or is returned to the Plan. Checks are generally mailed within two business days of the distribution request. Float on contributions and other funds received too late in the day to be invested that same day (or received without sufficient information to invest them properly) begins to accrue on the date the funds are received and ends on the date the amounts are deposited to the plan, which is generally the next business day if the Custodian has complete information relating to the investment of such funds; float may continue to accrue if the Custodian has insufficient information regarding the

contributions or deposits to invest them properly in the Plan (e.g., incomplete participant contribution information or incorrect account number).

Depending on its anticipated funding needs, uninvested funds are generally used to either reduce the Custodian's overall borrowing from other sources (such as in the Federal Funds market) or invested in short-term investments (such as its Federal Reserve Account). Uninvested funds from the Plan are not segregated from other deposit funds, so attributing an exact earnings or interest factor applicable to the Plan's uninvested funds is not possible. Earnings on the float (or the corresponding reduction in borrowing, depending on anticipated funding needs) depends on numerous factors such as current interest rates, Federal Funds rates, credit risk, and the duration of the particular debt instrument.

7. Amendment and Termination. This Agreement may be amended by written agreement of the parties at any time. This Agreement shall continue in effect unless or until terminated by either party upon thirty (30) days' written notice to the other party; provided that Custodian shall continue to act as Custodian of the Custodial Account until a successor Custodian is appointed. If no successor Custodian is appointed within ninety (90) days of such written notice of termination, Custodian shall be authorized to petition a court of competent jurisdiction for a declaration appointing a successor Custodian, and to charge the Custodial Account for the reasonable costs, fees, and expenses of such legal process. Upon termination, all securities held in the account shall be delivered by the Custodian to a successor custodian appointed by the Employer or as otherwise directed in writing by the Employer. Notwithstanding the foregoing, this Agreement shall automatically terminate in the event that a contract for the provision of one or more funding mediums for the Custodial Account and recordkeeping services through Great-West are discontinued or terminated without renewal, effective as of the date of such discontinuance or termination, with no further notice from or to either party; provided that Custodian shall continue to act as Custodian of the Custodial Account until a successor Custodian is appointed. If no successor Custodian is appointed within ninety (90) days of such written notice of termination, Custodian shall be authorized to petition a court of competent jurisdiction for a declaration appointing a successor Custodian, and to charge the Custodial Account for the reasonable costs, fees, and expenses of such legal process.
8. Limitation of Liability. Custodian shall not be liable for any claims, liabilities, or expenses arising from or alleged to arise from any action or inaction taken by Custodian pursuant to the direction of Employer or any authorized agent thereof. Employer specifically releases Custodian from any liability except to the extent Custodian has committed negligence or malfeasance in the exercise of its responsibilities hereunder, or has breached the provisions of this Agreement.
9. Notices.

Notices to the Employer shall be directed and mailed as follows:

City of Glendale
5850 W. Glendale Avenue
Glendale, AZ 85301
Attention: Jim Brown, Acting Director of Human Resources

Employer EIN [REDACTED]

Notices to the Custodian shall be directed and mailed as follows:

Wells Fargo Bank, N.A.
Institutional Retirement and Trust
1740 Broadway, MAC#C7300-105
Denver, CO 80274
Attention: Leslieann Gallagher and Andrea L. Stellish

Notices to Great-West shall be directed and mailed as follows:

Great-West Life & Annuity Insurance Company
8515 East Orchard Road
Englewood, Colorado 80111

Attention: Laura G. Miller
AVP & Counsel, Legal Department

Great-West Group No.: **98742-01**

10. Written Direction. If a provision of this agreement requires that a communication or document be provided to the Custodian in writing or written form, that requirement may also be satisfied by a facsimile transmission, electronic mail or other electronic transmission of text (including electronic records attached thereto), if the Custodian reasonably believes such communication or document has been signed, sent or presented (as applicable) by any person or entity authorized to act on behalf of the Employer. If this agreement requires that a communication or document be signed, an electronic signature satisfies that requirement. Any electronic mail or other electronic transmission of text will be deemed signed by the sender if the sender's name or electronic address appears as part of, or is transmitted with, the electronic record. The Custodian will not incur any liability to anyone resulting from actions taken reasonably and in good faith reliance on such communication or document. Nor shall the Custodian incur any liability in executing instructions from any person or entity authorized to act on behalf of the Employer prior to receipt by it of notice of the revocation of the written authority of such person or entity.
11. Inspection Privileges. The books, records, documents, accounting procedures, and practices of the Custodian relevant to this Agreement are subject to examination by the Employer, including but not limited to an annual audit by an independent auditor designated by the Employer.
12. Governing Law. This Agreement shall be governed by and enforced under the laws of the State of **Arizona**. The Custodial Account hereby created is situated in Colorado and all questions regarding its administration shall be determined under the law of the State of Colorado.
13. Severability. In case any provisions of this Agreement shall be held illegal or invalid for any reason, their illegality or invalidity shall not affect the remaining parts of this Agreement, and this Agreement shall be construed and enforced as if the illegal and invalid provisions had never been a part of the Agreement.
14. Assignment. This Agreement shall not be assigned without the express written consent of all parties to this Agreement, which consent shall not be unreasonably withheld; provided, however, that this provision is subject to and shall in no way limit the effect of Section 3 hereof (relating to the power of Custodian to delegate certain duties to Great-West, and appoint Great-West as its agent for certain purposes).
15. Successors and Assigns. This Agreement shall be binding upon the respective successors and assigns of the Employer and the Custodian.
16. The attached "Addendum" is hereby incorporated as part of this Agreement.

16. Effective Date. This Agreement shall be effective **March 1, 2013.**

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

EMPLOYER:

City of Glendale,
an Arizona municipal corporation

By: Horacio Skunko
Its: ACTING CITY MANAGER
Date FEBRUARY 13, 2013

ATTEST:

Darice McCarty
City Clerk (SEAL)

APPROVED AS TO FORM:

[Signature]
City Attorney

CUSTODIAN:

Wells Fargo Bank,
National Association

By: Charles R. Dawsey
Its: VP
Date 3/4/2013

ATTACHMENT A

SHAREHOLDER COMMUNICATIONS ACT DISCLOSURE

Plan Name: City of Glendale Deferred Compensation Plan

The Securities and Exchange Commission adopted the Beneficial Owner Information Disclosure Rule #14b-2 (Rule) in 1986 as part of its effort to improve communications between publicly held companies and beneficial owners of the securities registered in the name of certain nominees.

Under these rules, Wells Fargo is required to contact each customer for whom we hold securities and determine whether you authorize us to provide your name, address and share position to the issuer of the securities you own. For your protection, the rules prohibit the requesting company from using your name and address for any purpose other than corporate communications.

Please complete the authorization below by checking one of the alternatives. Note: Under the Rule, Wells Fargo is required to treat a non-response as a "YES" disclosure response.

- You are authorized to release my name, address and share position ("YES" response).
- You are NOT authorized to release my name, address and share position ("NO" response).

City of Glendale, AZ
Employer

Authorized Signature: Horatio Skantz

Title: Acting City Manager

Date: February 15, 2013

EXHIBIT 1

FEE SCHEDULE

Wells Fargo Bank, N.A.

and

Great West Life & Annuity Insurance Company

Schedule of Charges for Custodial Services

This Schedule may be revised or modified at time of renewal of the Employer's Service Agreement with Great-West.

Base Charge

The Custodian's compensation for the custodial services being provided under this agreement is included in the fees being received by Great-West under the Service Agreement between the Employer and Great-West. Great-West will forward such custodial fees to Wells Fargo Bank, N.A. at no additional cost to the Employer.

ADDENDUM

Custodian ("Contractor") further agrees as follows:

I. Immigration Law Compliance.

- A. Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- C. City of Glendale ("City") retains the legal right to inspect the papers of Contractor or subcontractor employee who performs work under this Agreement to ensure that Contractor or any subcontractor is compliant with the warranty under subsection (A) above.
- D. City may conduct random inspections, and upon request of the City, Contractor shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section I.
- E. Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- F. Contractor's warranty and obligations under this Section I to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

II. Prohibitions. Contractor certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

III. Conflicts. This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.